



**The EU as a Regional Actor:
Regional Conflicts**

Sijbren de Jong, Steven Sterkx & Jan Wouters

Working Paper N° 7

February 2010

Abstract

The EU enacts its security policy on different levels and through various frameworks and structures of cooperation. One of these levels is the regional dimension (i.e. within the Union) where the EU acts as a regional security actor. This paper puts forward an analysis of the regional dimension of regional conflicts by assessing (i) the institutional dimension underpinning this issue, (ii) the EU's policy output in the field of regional conflicts, and (iii) an evaluation of the Union's institutional and output dimension; this 'check-up' of EU policy through the assessment of its coherence, the current levels of accountability, and the legitimacy of EU action enables a reflection on the merits of EU policy in the security field.

About the Authors

Sijbren de Jong is Research Fellow and PhD Candidate at the Leuven Centre for Global Governance Studies (GGS) KU Leuven.

Steven Sterkx is Project Manager at the Leuven Centre for Global Governance Studies (GGS) KU Leuven.

Jan Wouters is Professor of International Law and International Organisations and Director of the Leuven Centre for Global Governance Studies (GGS) KU Leuven.

Table of Contents

Introduction.....	1
Institutional Dimension of the ESDP	1
Division of Competences in the Field of Conflict Resolution/Crisis Management	6
Decision-Making Methods.....	9
Impact Treaty of Lisbon.....	10
EU Conflict Resolution Policy Objectives, Output and Legal Instruments.....	12
Key-legislative Measures	12
Military Capabilities.....	18
Civilian Crisis Management	23
Civilian Headline Goal 2008 & 2010	25
Evaluation of the Institutional and Output Dimensions.....	29
Coherence	29
Accountability	33
Legitimacy.....	35
Input Legitimacy	35
Output Legitimacy	36
Conclusion.....	43

The EU as a Regional Actor : Regional Conflicts¹

Sijbren de Jong, Steven Sterkx & Jan Wouters

Katholieke Universiteit Leuven

Introduction

The European Security and Defence Policy (ESDP) is an important element of the CFSP. The ESDP includes the gradual framing of a common defence policy which might lead to a common defence in time. The ESDP aims to allow the Union to develop its civilian and military capacities for crisis management and conflict prevention at international level, thus helping to maintain peace and international security. The ESDP (as part of the CFSP) as such is the main motor behind the Union's peace operations aimed at regional conflicts.

This paper provides first an overview of the development of the ESDP, an analysis of the ESDP's institutional dimension. Second, an overview is given of the Union's policy output and the legal instruments of the ESDP at EU level. Third, an evaluation is made of the Union's policy coherence, the checks and balances on its output as well as its legitimacy in the field of conflict resolution.

Institutional Dimension of the ESDP

The first initiatives towards a common European defence policy originated shortly after World War II. In 1948 the Treaty on Economic, Social and Cultural Collaboration and Collective Self-Defence was signed in Brussels between Belgium, France, Luxembourg, the Netherlands and the UK. The Treaty aimed at economic, social and cultural collaboration as well as collective defence.² The Treaty was however soon to be overshadowed by other arrangements. The primary security

¹ An earlier version of this paper was presented at an EU-GRASP workshop in July 2009 hosted by UNU-CRIS.

² This Treaty is also known as the "Brussels Treaty". It was signed on 17 March 1948 and entered into force on 17 March 1948. For the Treaty text, see: http://www.ena.lu/brussels_treaty_17_march_1948-020302282.html. Accessed on 1 June 2009.

organisation soon became the North Atlantic Treaty Organization (NATO), established by the North Atlantic Treaty signed in Washington D.C. on 4 April 1949.³

The “Paris Agreements”⁴ of 1954 provided for the accession of Germany to NATO and the modification of the 1948 Brussels Treaty by the Protocol signed in Paris on 23 October 1954⁵ that established the Western European Union (WEU) but stated that the WEU would “rely on the appropriate Military Authorities of NATO for information and advice on military matters”.⁶ The WEU received a less prominent role in the following decades due to the development of organisations such as the Council of Europe (CoE)⁷, the OECD⁸, the establishment of the European Coal and Steel Community (subsequently the EEC/EC) and the Euratom Treaty. Especially since the 1970s the WEU became a dormant organisation, and NATO was the key institutional actor in the field of Western European security. Its counterpart was the Warsaw Treaty Organization.⁹ During the 1970s West and East met in the framework of the Conference on Security and Cooperation in Europe (CSCE), which first resulted in the 1974 Helsinki Final Act¹⁰ and would gradually develop into a permanent forum and eventually, in 1994¹¹, into the Organization on Security and Cooperation in Europe (OSCE) which forms a regional arrangement under Chapter VIII of the UN Charter (Naert 2008: 11-12).

³ The North Atlantic Treaty. For the Treaty text, see: <http://www.nato.int/docu/basic/txt/treaty.htm>. Accessed on 1 June 2009.

⁴ The Paris Agreements, signed on 23 October 1954, restore sovereignty to the Federal Republic of Germany (FRG), which fully supports the Atlantic Alliance, and result in the creation of Western European Union (WEU).

⁵ The Brussels Treaty was amended by the Paris Agreements. For the Treaty text, see: <http://www.weu.int/Treaty.htm>. Accessed on 1 June 2009.

⁶ Art. IV Modified Brussels Treaty.

⁷ On 5 May 1949, in London, the Foreign Ministers of Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom sign the Statute of the Council of Europe. It enters into force on 3 August 1949. For the Treaty text, see: <http://www.ena.lu/statute-council-europe-london-1949-020302418.html>. Accessed 1 June 2009.

⁸ The Convention on the Organisation for Economic Co-operation and Development was signed on 14 December 1960 in Paris. It entered into force on 30 September 1961. For the Treaty text, see: http://www.oecd.org/document/7/0,3343,en_2649_201185_1915847_1_1_1_1,00.html. Accessed on 1 June 2009.

⁹ The Warsaw Treaty Organization was established by the Treaty of Friendship, Cooperation and Mutual Assistance Between Albania, Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, Romania and the Soviet Union, signed in Warsaw on 14 May 1955. Entered into force on 6 June 1955 (“Warsaw Pact”). For the Treaty text, see: <http://www.ena.lu/treaty-friendship-cooperation-mutual-assistance-warsaw-14-1955-020300531.html>. Accessed on 1 June 2009.

¹⁰ 1 August 1975.

¹¹ Meeting in Budapest on 5 and 6 December 1994, the Heads of State or Government of the States participating in the Conference on Security and Cooperation in Europe (CSCE) decide to give the CSCE a new impetus by renaming it the ‘Organisation for Security and Cooperation in Europe’ (OSCE) and by providing it with new resources. Their object is to refashion the CSCE as a primary instrument for early warning, conflict prevention and crisis management in the region. For the Summit Declaration, see: <http://www.ena.lu/csce-summit-document-genuine-partnership-new-era-budapest-december-1994-020006462.html>. Accessed on 1 June 2009.

The 1970s saw the institutionalisation of European Political Cooperation (EPC) and the setting up of the TREVI group.¹² Shortly before the adoption of the SEA in 1986, an effort was made to reactivate the WEU in the Rome Declaration of 27 October 1984¹³ that led, among others, to the adoption of the Platform on European Security Interests by the WEU ministerial Council on 27 October 1987.¹⁴ Furthermore, in 1990 Portugal and Spain acceded to the WEU. However, the WEU also became active in the field of operations: it conducted mine-clearing naval operations in the Persian Gulf in 1987-1988, helped enforce the UN embargo following the Iraqi invasion of Kuwait in 1990 and helped enforce UN sanctions in the Yugoslav conflicts in the Adriatic Sea and on the Danube (Naert 2008: 12-13; Bloed & Wessel 1994: xvii-xxix).

Particularly following the end of the Cold War and the establishment of the European Union, a European security and defence policy started to be developed. The Maastricht Treaty saw the replacement of EPC by the Common Foreign and Security Policy (CFSP). Current Article 2 TEU states the Union's objectives and also a particular objective with respect to the CFSP and a common defence policy. The framing of a common defence policy was only an "eventual" aim and that of a "common defence" only a possible future one. The WEU also envisaged the new kind of operations that might be required in the new security environment and to that end adopted the "Petersberg tasks" in its 19 June 1992 Bonn Ministerial Declaration.¹⁵

Over the next years the WEU intensified its relations with the EU and NATO which eventually led to the drafting in Berlin in 1996 of the so-called "Berlin+ arrangements". Paragraph 17 of the final communiqué noted:¹⁶

"[...] in particular the steps taken towards implementing the concept of separable but not separate capabilities:

¹² TREVI stands for Terrorisme, Radicalisme, Extrémisme et Violence International.

¹³ See WEU, "WEU History. Reactivation of the WEU". Available from: <http://www.weu.int/>. Accessed on 1 June 2009. The Rome Declaration is available from: <http://www.ena.lu/declaration-weu-foreign-defence-ministers-rome-27-october-1984-020004571.html>. Accessed on 1 June 2009.

¹⁴ On 27 October 1987 in The Hague, given the development of East–West relations, the Foreign and Defence Ministers of the Member States of Western European Union (WEU) adopt a 'Platform on European Security Interests'. By emphasising the essential nature of Western Europe's contribution to the balance of conventional and nuclear forces in a Europe which remains divided, they confirm their determination to strengthen the European pillar of the Atlantic Alliance and to develop a European identity in defence matters. For the text, see: <http://www.ena.lu/platform-european-security-interests-hague-27-october-1987-020003523.html>. Accessed on 1 June 2009.

¹⁵ Petersberg Declaration adopted by the Ministerial Council of the Western European Union (WEU) on 19 June 1992, paragraph II.4.

¹⁶ See Press Communiqué M-NAC-2 (96) 165, para. 17. Available from: <http://www.nato.int/docu/pr/1996/p96-165e.htm>. Accessed on 1 June 2009.

- the decisions of the Council in Permanent Session on political guidance concerning the elaboration of European command arrangements within NATO able to prepare and conduct WEU-led operations;
- the decisions of the Council in Permanent Session regarding the arrangements for identifying NATO capabilities and assets which might be made available to the WEU for a WEU-led operation;
- the progress to date on arrangements for the release, monitoring and return or recall of Alliance assets and capabilities;
- the decision of the Council in Permanent Session with respect to modalities of cooperation with the WEU;
- the progress on work regarding planning and conducting exercising for WEU-led operations, following receipt of illustrative profiles for WEU missions”.

It would take until 1999 before these arrangements were finalised at NATO’s April 1999 Washington summit (Naert 2008: 22).

The Treaty of Amsterdam enabled the Union to subsequently develop its ESDP and introduced significant changes in the area of security and defence. It empowered the European Council to decide to set up a common defence that might result from the progressive framing of a common defence policy (see also paragraph 1.1 *infra*). Furthermore, it inserted the “Petersberg tasks” into the competences of the Union (see also paragraph 1.1 *infra*). Two relatively minor additions however also warrant some attention, namely the safeguarding of the integrity of the Union¹⁷ and a specific inclusion of international law principles on external borders in relation to the objective to preserve peace and strengthen international security.¹⁸ The progressive framing of a common defence policy was also to be supported “as Member States consider appropriate” by cooperation between them in the field of armaments.¹⁹

The above development, taking place around the period of the Kosovo crisis of 1998-1999, was made possible by the Anglo-French summit Declaration of Saint-Malo of 4 December 1998²⁰ and was further manifested at EU level by the 1999 Cologne European Council. In its conclusions, a declaration was issued on the further development of a common European Security and Defence

¹⁷ Art. 11(1) TEU, first indent.

¹⁸ Art. 11(1) TEU, third indent.

¹⁹ Art. 17(1) third paragraph TEU.

²⁰ See Joint Declaration issued at the British-French Summit, Saint-Malo, France, 3-4 December 1998.

Policy and the Presidency report on this policy was endorsed as the basis for further work.²¹ This was further elaborated at the Helsinki European Council²² and the institutional framework for the ESDP was gradually put in place in the course of 2000 and 2001. This framework includes the Political and Security Committee (PSC), the EU Military Committee (EUMC)²³ and EU Military Staff (EUMS)²⁴. It also comprises an EU Satellite Centre²⁵ and EU Institute for Security Studies²⁶, both

²¹ European Council, 1999, *Presidency Conclusions*, Cologne European Council, 3-4 June 1999, ANNEX III European Council Declaration on Strengthening the Common European Policy on Security and Defence. See also, ANNEX III Presidency Report on strengthening of the common European policy on security and defence.

²² European Council, 1999, *Presidency Conclusions*, Helsinki European Council, 10-11 December 1999, paras. 25-29 and the reports in ANNEX IV.

²³ See Council Decision 2000/144/CFSP of 14 February 2000 setting up the Interim Military Body, OJ L 49/2 of 22 February 2000; this Decision was later replaced by Council Decision 2001/79/CFSP of 22 January 2001 setting up the Military Committee of the European Union, OJ L 27/4 of 30 January 2001; See also Council Decision 2006/451/EC of 27 June 2006 appointing the Chairman of the Military Committee of the European Union, OJ L 179/55 of 1 July 2006; Council Decision 2003/401/EC of 19 May 2003 appointing the Chairman of the Military Committee of the European Union, OJ L 139/34 of 6 June 2003; and Council Decision 2001/309/CFSP of 9 April 2001 appointing the Chairman of the Military Committee of the European Union, OJ L 109 of 19 April 2001.

²⁴ Council Decision 2000/145/CFSP of 14 February 2000 on the secondment of national experts in the military field to the General Secretariat of the Council during an interim period, OJ L 49/3 of 22 January 2001; this Decision was later replaced by Council Decision 2001/80/CFSP of 22 January 2001 on the establishment of Military Staff of the European Union, OJ L 27/7 of 30 January 2001; Council Decision 2001/80/CFSP applied as of 11 June 2001, see Decision 2001/442/CFSP of the Secretary-General of the Council/High Representative for the Common Foreign and Security Policy of 8 June 2001 on the application of the Council Decision on the establishment of Military Staff of the European Union, OJ L 155/18 of 12 June 2001. See also Council Decision 2000/178/CFSP of 28 February 2000 on the rules applicable to national experts in the military field on secondment to the General Secretariat of the Council during an interim period, OJ L 57 of 2 March 2000; later replaced by Council Decision 2001/496/CFSP of 25 June 2001 on the rules applicable to national military staff on secondment to the General Secretariat of the Council in order to form the European Union Military Staff, OJ L 181 of 4 July 2001, as amended by Council Decision 2002/34/EC of 20 December 2001 amending the Council Decision of 25 June 2001, 22 December 2000, 25 June 1997 and 22 March 1999 with regard to the daily allowance received by national military staff and national experts on detachment to the General Secretariat of the Council, OJ L 15/29 of 17 January 2002 and Council Decision 2003/400/EC of 19 May 2003 amending Decision 2001/496/CFSP, Decision 2001/41/EC, the Council Decision of 25 June 1997 and the Council Decision of 22 March 1999 as regards the subsistence allowances of national military staff and experts on secondment to the General Secretariat of the Council, OJ L 139/33 of 6 June 2003.

²⁵ Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre, OJ L 200/5 of 25 July 2001; as amended by Council Joint Action 2006/998/CFSP of 21 December 2006 amending Joint Action 2001/555/CFSP on the establishment of a European Union Satellite Centre, OJ L 405/60 of 30 December 2006 (*corrigendum* OJ L 29/23 of 3 February 2007 and OJ L 240/58 of 1 June 2007). See also the Staff Regulations of the European Satellite Centre, OJ L 39/44 of 9 February 2002, as replaced by those in OJ L 235/28 of 12 September 2005.

²⁶ Council Joint Action 2001/554/CFSP on the establishment of a European Union Institute for Security Studies, OJ L 200 of 25 July 2001, as amended by Council Joint Action 2006/1002/CFSP of 21 December 2006 amending Joint Action 2001/554/CFSP on the establishment of a European Union Institute for Security Studies, OJ L 409/181 of 30 December 2006 (*corrigendum* OJ L 36/66 of 8 February 2007). See also the Staff Regulations of the European Union Institute for Security Studies, OJ L 39/18 of 9 February 2002, replaced by those in OJ L 235 of 12 September 2005.

taken over from the WEU, and a Committee for Civilian Aspects of Crisis Management (CIVCOM).²⁷ The EC also set up a rapid reaction financing ability.²⁸

The year 2003 saw the coming into force of the Treaty of Nice and the ESDP being declared more operational by the Council. The Council stated on 19-20 May 2003 that “the EU now has operational capability across the full range of Petersberg tasks, limited and constrained by recognised shortfalls. These limitations and/or constraints are on deployment time and high risk may arise at the upper end of the spectrum of scale and intensity, in particular when conducting concurrent operations”.²⁹ Moreover, in 2003 the EU launched its first civilian and military ESDP operations which have been increasing in number, variety and size ever since (Naert 2008: 35; see also *infra* note 67). These operational developments were strengthened from a strategic point of view by the adoption of the European Security Strategy in 2003³⁰ (Naert 2008: 35; Biscop & Andersson 2007).

Division of Competences in the Field of Conflict Resolution/Crisis Management

As mentioned earlier, the ESDP forms part of the CFSP and includes the progressive framing of a common defence policy under Articles 2 and 17 TEU, which includes humanitarian rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking, and which might lead to a common defence if the European Council so decides. As the ESDP is part of the CFSP, many of the instruments available under the CFSP³¹ can also apply to the ESDP and the ESDP is subject to the CFSP rules, except where stipulated otherwise.³² This entails, for example, that constructive abstention is possible in the ESDP. Constructive abstention (qualified by making a formal declaration under Article 23(1) TEU) entails that the member of the Council in question is not obliged to apply the decision, yet accepts that the decision commits the Union. An exception of

²⁷ Council Decision 2000/354/CFSP of 22 May 2000 setting up a Committee for Civilian Aspects of Crisis Management, OJ L 127 of 27 May 2000.

²⁸ Council Regulation (EC) No 381/2001 of 26 February 2001 creating a rapid-reaction mechanism, OJ L 57/5 of 27 February 2001. See also Regulation (EC) no 1717/2006 of the European Parliament and the Council of 15 November 2006 establishing an Instrument for Stability, OJ L 327 of 24 November 2006.

²⁹ Council of the European Union, Declaration on EU Military Capabilities, Council Doc. 9379/03 (Presse 138). Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/Declaration%20on%20EU%20Military%20Capabilities%20-%20May%202003.pdf>. Accessed on 2 June 2009.

³⁰ See Council of the European Union, *A Secure Europe in a Better World, European Security Strategy*, Brussels, Council of the European Union, 12 December 2003.

³¹ These instruments include *inter alia* common strategies, joint actions and common positions and the conclusion of international agreements on the basis of Art. 24 TEU.

³² See European Council, *supra* note 20, ANNEX III Presidency Report on Strengthening of the common European policy on security and defence. Para 2 reads that “[t]he aim is to strengthen the CFSP by the development of a common European policy on security and defence... Decisions to act would be taken within the framework of the CFSP according to the appropriate procedures in order to reflect the specific nature of decisions in this field.

the ESDP is that enhanced cooperation in the CFSP³³ for the implementation of a joint action or a common position “shall not relate to matters having military or defence implications”.³⁴ The discussion concerning the Union’s competence with respect to the ESDP is therefore limited to those aspects of the EU Treaty that carry a reference to ESDP tasks or operations and/or deviate from the general CFSP provisions.

As part of the CFSP, the ESDP entails an outward focus: the ESDP only covers civilian and military crisis management operations outside the EU (and possibly in the future a common defence against outside aggression) (Österdahl 2001: 369; Weller 1998: 62-63). Defining the scope of the ESDP depends on what is precisely defined by “the progressive framing of a common defence policy”, which is being developed, and by the humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking” which form part of it (Naert 2008: 109). Defence is at times understood as meaning territorial defence (Schöllhorn 1996: 33-34), whereas security is seen as a broader concept including the use of military resources for non territorial defence operations (Jaberg 1998: 95-140). The latter view has been used by the European Parliament (EP) at one stage³⁵ and finds further support in Articles 23(2) and 28(3).³⁶

An alternative reading would be to understand “defence” as referring to all military matters. This would be more in line with the practice under the WEU³⁷; the current state of the ESDP; the Danish position³⁸; and with the meaning of Defence as used in most Member States’ Ministries of Defence (Duke 2001: 157-159). The inclusion of military security better corresponds to practice and it is submitted that this is clearly covered by the common defence policy (Gerteiser 2002: 95-97). It is, however, less clear whether this also includes defence in the strict sense. Although practice thus far does not support this, it should be borne in mind that the common defence policy will be framed

³³ Art. 27a(1) TEU

³⁴ Art. 27b TEU.

³⁵ European Parliament, Resolution on the Gradual Establishment of a Common Defence Policy for the European Union of 14 May 1998, OJ C 167/190 of 1 June 1998. The Resolution states that “a clear distinction should be made between security and defence, with the concept of security covering Petersberg operations and the concept of defence including territorial defence and the protection of the vital interests of the Member States”.

³⁶ These Articles create specific rules for matters or decisions having “military or defence” implications and as such are not assumed to constitute the same thing.

³⁷ See the preliminary conclusions on the formulation of a Common European Defence Policy, approved by the WEU Ministerial Council in Noordwijk on 14 November 1994. See para. 5 of the Noordwijk Declaration. Available from: <http://www.weu.int/documents/941114en.pdf>. Accessed on 1 June 2009.

³⁸ Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union “[w]hich have defence implications” and this is seen as including all military operations even those not of a territorial defence nature.

progressively (Naert 2008: 111; von Kielmansegg 2006: 188-192).³⁹ At present however, the ESDP comprises less than would be permitted and as such a debate over a common defence is clearly excluded (Naert 2008: 111).

As Article 17(2) TEU merely lists “humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking” as being *included* in the framing of a common defence policy, this seems to suggest that this list of tasks is not exhaustive (Koutrakos 2006: 455; von Kielmansegg 2006: 195-192). This interpretation is supported by the European Security Strategy which states that “we should think in terms of a wider spectrum of missions. This might include joint disarmament operations, support for third countries in combating terrorism and security sector reform. The last of these would be part of broader institution building”.⁴⁰

Depending on how strict one defines the term ‘peacekeeping’, the missions at hand will either be limited to pure peacekeeping tasks or may contain enforcement elements. However, deciding this may not be necessary as the ESDP tasks also include “tasks of combat forces in crisis management, including peacemaking” and the latter includes peacekeeping with elements of peace enforcement. In the EU Treaty, peacemaking is considered a task of combat forces in crisis management⁴¹, thereby implying the use of armed force. As peacekeeping is mentioned separately and peacemaking involves armed forces, EU crisis management therefore must minimally include peacekeeping with peace enforcement elements (Naert 2008: 117; Schöllhorn 1996: 44-45).

The EU may conduct ESDP operations either autonomously or with recourse to NATO assets.⁴² Furthermore, the obligations and role of NATO are not affected according to Article 17(1) second paragraph TEU, there will be no *unnecessary duplication*⁴³ and the EU will only act when NATO as a

³⁹ According to von Kielmansegg the concept of “defence” (“der Verteidigungsbegriff”) in the EU Treaty encompasses territorial defence but also the military side of CFSP more generally.

⁴⁰ Council of the European Union, *supra* note 29, p. 12.

⁴¹ The term “crisis management” is used within the EU as a general term for ESDP operations. Para. 1 of the Cologne European Council Declaration on the ESDP reads: “[i]n pursuit of our Common Foreign and Security Policy objectives and the progressive framing of a common defence policy, we are convinced that the Council should have the ability to take decisions on the full range of conflict prevention and crisis management tasks defined in the Treaty on European Union, the “Petersberg tasks”. See European Council, 1999, *supra* note 20, ANNEX III European Council Declaration on Strengthening the Common European Policy on Security and Defence, para.1.

⁴² *Ibid.*, para. 1 reads that the EU “must have the capacity for autonomous action”. Furthermore, according to para. 4 of the Presidency report annexed to the European Council Conclusions, *supra* note 20, the European Union “will have to determine, according to the requirements of the case, whether it will conduct: EU-led operations using NATO assets and capabilities or EU-led operations without recourse to NATO assets and capabilities”.

⁴³ *Ibid.*, Presidency report, para. 4 reads that “[a]s regards military capabilities, Member States need to develop further forces (including headquarters) that are suited also to crisis management operations, without any unnecessary duplication”. Furthermore, para. 27 of the Helsinki European Council Presidency Conclusions states that “[t]his

whole is not engaged.⁴⁴ This last element has, however, been narrowed down somewhat as there appears to be some competition in operations. Nevertheless, it is said that complementarity does not hinder concurrent operations so long as they are sufficiently distinct in nature and reflect the strengths of the two organisations. Moreover, non-EU European NATO members should be allowed to participate in ESDP operations, though without affecting the EU's decision-making autonomy⁴⁵ (Naert 2008: 38-39 and 44).

The ESDP shall respect the principles of the United Nations Charter and the primary role of the UN Security Council. This stems from Article 11(1) TEU and was confirmed by the Cologne and Helsinki European Council.⁴⁶

Decision-Making Methods

As the ESDP is subject to the CFSP rules, except where stipulated otherwise, the same general decision-making methods apply. Exceptions to the rule are the exclusion of qualified majority voting for “decisions having military or defence implications”.⁴⁷ Another specific ESDP rule is that the sending of armed forces requires a decision by each Member State for its forces (even when it

process will avoid unnecessary duplication and does not imply the creation of a European army”. See: European Council, 1999, *Presidency Conclusions*, Helsinki European Council, *supra* note 21, para. 27.

⁴⁴ European Council, 1999, *Presidency Conclusions*, Helsinki European Council, para. 27 reads: “[t]he European Council underlines its determination to develop an autonomous capacity to take decisions and, where NATO as a whole is not engaged, to launch and conduct EU-led military operations in response to international crises”.

⁴⁵ European Council, Cologne European Council, *supra* note 20, ANNEX III European Council Declaration on Strengthening the Common European Policy on Security and Defence. Para 1 reads that the EU wants to develop an effective EU-led crisis management “in which NATO members, as well as neutral and non-allied members, of the EU can participate fully and on an equal footing in the EU operations” and the EU “will put in place arrangements that allow non-EU European allies and partners to take part to the fullest possible extent in this endeavour”. The annexed Presidency report, see *supra* note 20, adds in para. 5 that a successful ESDP will require “satisfactory arrangements for European NATO members who are not EU Member States to ensure their fullest possible involvement in EU-led operations, building on existing consultation arrangements within WEU” and “arrangements to ensure that all participants in an EU-led operation will have equal rights in respect of the conduct of that operation, without prejudice to the principle of the EU’s decision-making autonomy, notably the right of the Council to discuss and decide matters of principle and policy”.

⁴⁶ Para 2 of the Cologne Presidency Report, see *supra* note 20, reads that “[t]he European Union is committed to preserve peace and strengthen international security in accordance with the principles of the UN Charter as well as the principles of the Helsinki Final Act and the objectives of the Charter of Paris, as provided for in Article 11 of the EU Treaty” and para. 26 of the Helsinki European Council Presidency Conclusions, see *supra* note 21, reads “[t]he Union will contribute to international peace and security in accordance with the principles of the United Nations Charter. The Union recognises the primary responsibility of the United Nations Security Council for the maintenance of international peace and security”.

⁴⁷ Art. 23(2) TEU. See paragraph 1.1 *supra*.

has agreed to an ESDP operation).⁴⁸ However, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications.⁴⁹

Judging from the above it is immediately clear that the exclusion of qualified majority voting for decisions having military or defence implications and the requirement for a decision by each Member State for its forces impact directly upon the ESDP. As most decisions within the ESDP have military or defence implications, decision-making in the Council can be a cumbersome process to arrive at a solution that carries enough weight and is acceptable to all Members of the Council.

As ESDP decisions also impact on other second and third pillar policies - such as for example trade policy (e.g. arms trade) and human rights - the level of cross-pillarisation occurring with regard to ESDP measures, is likely to be high.

Impact Treaty of Lisbon

The Lisbon Treaty inserts a new section into the Treaty which gives ESDP its own section, thereby also symbolically upgrading it from a “European” into “Common Security and Defence Policy” (CSDP), while still being within the CFSP. This change could induce a greater willingness on the part of the Member States to develop a “military arm” of the EU. However, the reference to NATO as the foundation of the Member States’ security policy shows ambivalence in this respect (Dagand 2008: 7). Similarly the current Article 17 TEU will be kept, reasserting the “progressive framing of a common Union defence policy” that “will lead to a common defence, when the European Council, acting unanimously, so decides”.⁵⁰

The scope of the “Petersberg tasks” shall be extended by the Lisbon Treaty to “joint disarmament operations; military advice and assistance task; peacemaking and post-conflict stabilisation; conflict prevention and post-conflict stabilisation missions” and also contribute to combating terrorism “in supporting third countries in their territories”⁵¹ (Gros-Verheyde 2007: 36)

⁴⁸ European Council, *supra* note 20, ANNEX III Presidency Report on Strengthening of the common European policy on security and defence. Para. 3 of the Presidency Report states that “[d]ecisions relating to crisis management tasks, in particular decisions having military or defence implications will be taken in accordance with Article 23 of the Treaty on European Union. Member States will retain in all circumstances the right to decide if and when their national forces are deployed”. Furthermore, the Helsinki Presidency Report on ESDP states that “[t]he commitment of national assets by Member States to such operations will be based on their sovereign decision”. See European Council, *supra* note 21.

⁴⁹ See *supra* note 37.

⁵⁰ Art. 28A TREATY OF LISBON, OJ C 306/34 of 17 December 2007.

⁵¹ Art. 28B(1) TREATY OF LISBON, OJ C 306/35 of 17 December 2007.

The European Defence Agency (EDA), created in July 2004,⁵² shall be inserted into the legal framework of the CSDP.⁵³ Only two other agencies (the European Space Agency (ESA) and Euratom's Supply Agency) are mentioned by name within the Treaty. This seems to indicate that the Member States want to reinforce the EDA's leading role in pushing forward both the development of EU operational capabilities and EU as a military actor on the international scene, and address the underlying rhetoric-resources gap at the centre of the CFSP (Dagand 2008: 7; Duke 2008: 18; Gros-Verheyde 2007: 36-37). Large parts of the 2004 Joint Action founding the EDA are reproduced in the Treaty. The purpose is, presumably, to attach particular importance to the role of the Agency as a motor for addressing the underlying gap between rhetoric and resources within the CFSP (Duke 2008: 18).

The Lisbon Treaty also institutionalises the "implementation of a mission" by a group of Member States that are "willing and have the necessary capability for such a task" on behalf of the Union and "entrusted" by the Council.⁵⁴ The ARTEMIS mission led by France in the Democratic Republic of Congo (see paragraph 2.1 *infra*) is thereby formally recognised, which constitutes an institutionalisation of such practice (Dagand 2008: 7).

The mutual defence clause and the solidarity clause⁵⁵ are inserted into the Treaty of Lisbon and promote the principles on which the EU is based i.e. solidarity with, and assistance to, other Member States (Dagand 2008: 8; Duke 2008: 17; Gros-Verheyde 2007: 36). The mutual defence clause shows similarity with an "Article 5" type obligation.⁵⁶ The relevant article in the Lisbon Treaty states that "[i]f 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 the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States".⁵⁷ The last sentence of Article 28A(7) Treaty of Lisbon refers, in particular, to NATO. Treaty of Lisbon. The solidarity

⁵² Council Joint Action 2004/551/CFSP of 12 July 2004 on the establishment of a European Defence Agency, OJ L 245/17 of 17 July 2004.

⁵³ Art. 28D Treaty of Lisbon.

⁵⁴ Arts. 28A(5) and 28C Treaty of Lisbon, OJ C 306/35 and 306/36 of 17 December 2007.

⁵⁵ See for example the Declaration issued after the 2004 Madrid bombings: Declaration on Combating Terrorism, Brussels, 25 March 2004, pp. 2-3. Available from:

http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/79637.pdf. Accessed on 11 May, 2009.

⁵⁶ Art. 5 of the North Atlantic Treaty (NATO Treaty) reads that "[t]he Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked... "

⁵⁷ Art. 28A(7) TREATY OF LISBON, OJ C 306/35 of 17 December 2007.

clause represents a new legal mechanism of assistance between Member States when one of them is the victim of a terrorist attack, natural or man-made disaster.⁵⁸ The EU shall then mobilise all the instruments at its disposal, including military resources made available by Member States, to assist. This is in addition to the new provision on civil protection⁵⁹ (Dagand 2008: 8; Duke 2008: 17-18).

The Lisbon Treaty extends “enhanced cooperation” to the defence and security field, thereby deleting the current Article 27B TEU which prohibits this extension.⁶⁰ “Permanent structured cooperation” is intended to allow those Member States “whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework”.⁶¹ Permanent, structured cooperation is specifically designed for the CSDP which, unlike enhanced cooperation under the CFSP, does not require a threshold of participants to proceed (Dagand 2008: 8; Gros-Verheyde 2007: 36).

The High Representative (HR) of the Union for Foreign Affairs and Security Policy conducts the Union’s CSDP, making proposals and executing the policy as the Council’s representative. The EP must be regularly consulted by the High Representative on the main aspects and basic choices of the CSDP and on how the policy evolves. The Parliament’s view must be “duly taken into consideration”. Special representatives may be involved in briefing the EP⁶² (Gros-Verheyde 2007: 37).

EU Conflict Resolution Policy Objectives, Output and Legal Instruments

Key-legislative Measures

As of May 2009, the EU has undertaken 21 different ESDP missions of either a military, civilian or hybrid character. 8 civilian, 2 military and 2 hybrid missions are currently ongoing. Measures taken by the Union in the field of conflict resolution and crisis management have been directed at different areas including *inter alia* the use of certain types of weapons in violent conflict, (either in general, or aimed at their usage in particular countries or regions);⁶³ humanitarian aid;⁶⁴ civilian

⁵⁸ Art. 222 TFEU, OJ C 115/148 of 9 May 2008.

⁵⁹ Art. 196 TFEU, OJ C 115/135 of 9 May 2008.

⁶⁰ Art. 329 TFEU, OJ C 115/190 of 9 May 2008.

⁶¹ Art. 28E TREATY OF LISBON, OJ C 306/37 of 17 December 2007 and the Protocol on permanent structured cooperation, OJ C 306/153 of 17 December 2007.

⁶² Art. 21a TREATY OF LISBON, OJ C 306/31 of 17 December 2007.

⁶³ Such measures include, *but are not limited to*, Council Decision 2009/42/CFSP of 19 January 2009 on support activities in order to promote among third countries the process leading towards an Arms Trade Treaty, in the

crisis management;⁶⁵ promotion of long-term stability in countries suffering from violent conflict;⁶⁶ civil protection;⁶⁷ ESDP missions to conflict regions (2003- present);⁶⁸ and the appointment of

framework of the European Security Strategy, OJ L 17/39 of 22 January 2009; Council Joint Action 2008/113/CFSP of 12 February 2008 in support of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (SALW) in the framework of the EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition, OJ L 40/16 of 14 February 2008; Council Decision 2006/1000/CFSP of 11 December 2006 concerning the implementation of Joint Action 2002/589/CFSP with a view to a European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons in Latin America and the Caribbean, OJ L 367/77 of 22 December 2006; Council Decision 2005/852/CFSP of 29 November 2005 for the destruction of small arms and light weapons (SALW) and their ammunition in Ukraine, OJ L 315/27 of 1 December 2005; Council Decision 2005/784/CFSP of 7 November 2005 extending and amending Decision 1999/730/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia, OJ L 295/53 of 11 November 2005; Council Decision 2004/901/CFSP of 22 December 2004 amending Decision 1999/730/CFSP implementing Joint Action 1999/34/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia, OJ L 379/111 of 24 December 2004; Council Decision 2004/833/CFSP of 2 December 2004 implementing Joint Action 2002/589/CFSP with a view to a European Union's contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons, OJ L 359/65 of 4 December 2004; Council Decision 2004/792/CFSP of 22 November 2004 extending and amending Decision 1999/730/CFSP implementing Joint Action 1999/34/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia, OJ L 348/47 of 24 November 2004; Council Decision 2004/791/CFSP of 22 November 2004 extending and amending Decision 2002/842/CFSP implementing Joint Action 2002/589/CFSP with a view to a European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons in South East Europe, OJ L 348/46 of 24 November 2004; Council Decision 2004/790/CFSP of 22 November 2004 extending and amending Decision 2003/276/CFSP implementing Joint Action 2002/589/CFSP with a view to a European Union's contribution to the destruction of ammunition for small arms and light weapons in Albania; Council Decision 2003/276/CFSP of 14 April 2003 concerning the implementation of Joint Action 2002/589/CFSP with a view to a European Union's contribution to the destruction of ammunition for small arms and light weapons in Albania, OJ L 99/60 of 17 April 2003; Council Decision 2003/543/CFSP of 21 July 2003 concerning the implementation of Joint Action 2002/589/CFSP with a view to a European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons in Latin America and the Caribbean, OJ L 185/59 of 24 July 2003; Council Decision 2002/842/CFSP of 21 October 2002 concerning the implementation of Joint Action 2002/589/CFSP with a view to a European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons in South East Europe, OJ L 289 of 26 October 2002; Council Joint Action 2002/589/CFSP of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, OJ L 191 of 19 July 2002; Council Decision 1999/730/CFSP of 15 November 1999 implementing Joint Action 1999/34/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia, OJ L 294/5 of 16 November 1999; Joint Action 1999/34/CFSP of 17 December 1998 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons, OJ L 9 of 15 January 1999.

⁶⁴ Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty, OJ L 284 of 31 October 2003; Council Regulation (EC) No 1257/96 of 20 June 1996 concerning humanitarian aid, OJ L 163 of 2 July 1996. The provisions covered by Regulation 1257/96 remain in principle outside of the scope of the Rapid Reaction Mechanism / Instrument for Stability unless the Commission decides otherwise.

⁶⁵ Council Regulation (EC) No 381/2001 of 26 February 2001 creating a rapid-reaction mechanism, OJ L 57/5 of 27 February 2001. * No longer in force, succeeded by the Instrument for Stability (IfS), see: Regulation (EC) no

1717/2006 of the European Parliament and the Council of 15 November 2006 establishing an Instrument for Stability, OJ L 327 of 24 November 2006.

⁶⁶ Such measures include, *but are not limited to*, Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability. This Regulation replaced Regulation 381/2001 creating a rapid-reaction mechanism and repealed the Regulations concerning action against anti-personnel mines (1724/2001 and 1725/2001). See also Regulation (EC) No 1889/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a financing instrument for the promotion of democracy and human rights worldwide, OJ L 386 of 29 December 2006.

⁶⁷ Civil protection, however, deals more with the response to natural or technological risks that may carry serious environmental consequences. The measures that were taken in this area deal more with the management of the crisis situations to which they can lead, as opposed to contributing to actual conflict resolution (mostly external to the Union).

⁶⁸ Only measures taken with respect to the initiation of ESDP missions and amendments to their mandates are mentioned. For related acts, see: <http://consilium.europa.eu/showPage.aspx?id=268&lang=en>. Accessed on 4 June 2009. Measures include, *but are not limited to*, Georgia: Council Joint Action 2009/294/CFSP of 23 March 2009 amending Joint Action 2008/736/CFSP on the European Union Monitoring Mission in Georgia, EUMM Georgia, OJ L 79/60 of 25 March 2009; Council Decision 2008/901/CFSP of 2 December 2008 concerning an independent international fact-finding mission on the conflict in Georgia, OJ L 323/66 of 3 December 2008; Council Joint Action 2008/736/CFSP of 15 September 2008 on the European Union Monitoring Mission in Georgia, EUMM Georgia, OJ L 248/26 of 17 September 2008; Council Joint Action 2004/523/CFSP of 28 June 2004 on the European Union Rule of Law Mission in Georgia, EUJUST THEMIS, OJ L 228/21 of 29 June 2004; Democratic Republic of Congo: Council Joint Action 2008/491/CFSP of 26 June 2008 amending and extending Council Joint Action 2007/406/CFSP on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (EUSEC RD Congo), OJ L 168/42 of 28 June 2008; Council Joint Action 2008/485/CFSP of 23 June 2008 amending and extending Joint Action 2007/405/CFSP on the European Union police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (EUPOL RD Congo), OJ L 164/44 of 25 June 2008; Council Joint Action 2007/406/CFSP of 12 June 2007 on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (EUSEC RD Congo), OJ L 151/52 of 13 June 2007; Joint Action 2007/405/PESC of 12 June 2007 on the European Union police mission undertaken in the framework of reform of the security sector (SSR) and its interface with the system of justice in the Democratic Republic of the Congo (EUPOL RD Congo), OJ L 151/46 of 13 June 2007; Council Joint Action 2007/192/CFSP of 27 March 2007 amending Joint Action 2005/355/CFSP on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC), OJ L 87/22 of 28 March 2007; Council Joint Action 2007/147/CFSP of 27 February 2007 repealing Joint Action 2006/319/CFSP on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process, OJ L 64/44 of 2 March 2007; Council Joint Action 2006/913/CFSP of 7 December 2006 amending and extending Joint Action 2004/847/CFSP on the European Union Police Mission in Kinshasa (DRC) regarding the Integrated Police Unit (EUPOL Kinshasa) Extension into 2007, OJ L 346/67 of 9 December 2006; Council Decision 2006/412/CFSP of 12 June 2006 on the launching of the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process (Operation EUFOR RD Congo), OJ L 163/16 of 15 June 2006; Council Joint Action 2006/319/CFSP of 27 April 2006 on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process, OJ L 116/98 of 29 April 2006; Council Joint Action 2006/303/CFSP of 25 April 2006 amending and extending Joint Action 2005/355/CFSP on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC), OJ L 112/18 of 26 April 2006; Council Joint Action 2005/355/CFSP of 2 May 2005 on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (DRC), OJ L 112/20 of 3 May 2005; 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), OJ L 367/30 of 14 December 2004; Council Decision 2003/432/CFSP of 12 June 2003 on the launching of the European Union military operation in the Democratic Republic of Congo (ARTEMIS), OJ L 147/42 of 14 June 2003; Council Joint Action 2003/423/CFSP of 5 June 2003 on the European Union military operation in the Democratic Republic of Congo (ARTEMIS), OJ L 143/50 of 11 June 2003; Council Common Position 2003/319/CFSP of 8 May 2003 concerning European Union support for the implementation of the Lusaka

Ceasefire Agreement and the peace process in the Democratic Republic of Congo (DRC) and repealing Common Position 2002/203/CFSP, OJ L 115/87 of 9 May 2003; Afghanistan: Council Decision 2008/884/CFSP of 21 November 2008 implementing Joint Action 2007/369/CFSP on the establishment of the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN), OJ L 316/21 of 26 November 2008; Council Joint Action 2008/643/CFSP of 4 August 2008 amending Joint Action 2007/369/CFSP on establishment of the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN), OJ L 207/43 of 5 August 2008; Council Joint Action 2007/369/CFSP of 30 May 2007 on establishment of the European Union Police Mission in Afghanistan (EUPOL AFGANISTAN), OJ L 139/33 of 31 May 2007; Bosnia and Herzegovina (BiH): Council Decision 2004/803/CFSP of 25 November 2004 on the launching of the European Union military operation in Bosnia and Herzegovina (ALTHEA), OJ L 353/21 of 27 November 2004; Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina (ALTHEA), OJ L 252/10 of 28 July 2004; Council Joint Action 2004/569/CFSP of 12 July 2004 on the mandate of the European Union Special Representative in Bosnia and Herzegovina and repealing Council Joint Action 2002/211/CFSP, OJ L 252/7 of 28 July 2004; Council decision 2002/845/CFSP of 30 September 2002 concerning the conclusion of the Agreement between the European Union and Bosnia and Herzegovina (BiH) on the activities of the European Union Police Mission (EUPM) in BiH, OJ L 293 of 29 October 2002; Council Joint Action 2002/210/CFSP of 11 March 2002 on the European Union Police Mission, OJ L 70 of 13 March 2002; Kosovo: Council Joint Action 2008/228/CFSP of 17 March 2008 amending and extending Joint Action 2006/304/CFSP on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo, OJ L 75/78 of 18 March 2008; Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, OJ L 42/92 of 16 February 2008; Council Joint Action 2007/778/CFSP of 29 November 2007 amending and extending Joint Action 2006/304/CFSP on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo, OJ L 312/68 of 30 November 2007; Council Joint Action 2006/304/CFSP of 10 April 2006 on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo, OJ L 112/19 of 26 April 2006; Palestinian Territories: Council Joint Action 2008/958/CFSP of 16 December 2008 amending Joint Action 2005/797/CFSP on the European Police Mission for the Palestinian Territories, OJ L 338/75 of 17 December 2008; Council Joint Action 2008/862/CFSP of 10 November 2008 amending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EUBAM Rafah), OJ L 306/98 of 15 November 2008; Council Decision 2008/482/CFSP of 23 June 2008 amending Decision 2008/134/CFSP on the European Union Police Mission for the Palestinian Territories, OJ L 163/52 of 24 June 2008; Council Joint Action 2008/379/CFSP of 19 May 2008 amending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EUBAM Rafah), OJ L 130/24 of 20 May 2008; Council Decision 2008/134/CFSP of 18 February 2008 implementing Joint Action 2005/797/CFSP on the European Union Police Mission for the Palestinian Territories, OJ L 43/38 of 19 February 2008; Council Joint Action 2007/359/CFSP of 23 May 2007 amending and extending Joint Action 2005/889/CFSP on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah), OJ L 133/51 of 25 May 2007; Council Joint Action 2005/797/CFSP of 14 November 2005 on the European Union Police Mission for the Palestinian Territories, OJ L 300/65 of 17 November 2005; Council Joint Action 2005/889/CFSP of 12 December 2005 on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah), OJ L 327/28 of 14 December 2005; Iraq: Council Joint Action 2008/480/CFSP of 23 June 2008 amending and extending Joint Action 2005/190/CFSP on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX, OJ L 163/50 of 24 June 2008; Council Joint Action 2008/304/CFSP of 14 April 2008 amending and extending Joint Action 2005/190/CFSP on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX, OJ L 105/10 of 15 April 2008; Council Joint Action 2007/760/CFSP of 22 November 2007 amending and extending Joint Action 2005/190/CFSP on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX, OJ L 305/58 of 23 November 2007; Council Joint Action 2006/708/CFSP of 17 October 2006 amending and extending Joint Action 2005/190/CFSP on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX, OJ L 291/43 of 21 October 2006; Council Joint Action 2006/413/CFSP of 12 June 2006 amending and extending Joint Action 2005/190/CFSP on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX, OJ L 163/17 of 15 June 2006; Council Joint Action 2005/190/CFSP of 7 March 2005 on the European Union Integrated Rule of Law Mission for Iraq, EUJUST LEX, OJ L 62/37 of 9 March 2005; Chad and Central African Republic: Council Decision 2008/101/CFSP of 28 January 2008 on the launching of the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR

special representatives, heads of mission and force commanders.⁶⁹ In addition to the missions mentioned under footnote 68, the EC/EU has also launched operations before 1999 which would

Tchad/RCA), OJ L 34/39 of 8 February 2008; Council Joint Action 2007/677/CFSP of 15 October 2007 on the European Union military operation in the Republic of Chad and in the Central African Republic, OJ L 279/21 of 32 October 2007; Former Yugoslav Republic of Macedonia (FYROM): Council Joint Action 2005/826/CFSP of 24 November 2005 on the establishment of an EU Police Advisory Team (EUPAT) in the Former Yugoslav Republic of Macedonia (FYROM), OJ L 307/61 of 25 November 2005; Council Joint Action 2004/789/CFSP of 22 November 2004 on the extension of the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL PROXIMA), OJ L 348/40 of 24 November 2004; Council Decision 2003/563/CFSP of 29 July 2003 on the extension of the European Union military operation in the Former Yugoslav Republic of Macedonia (CONCORDIA), OJ L 190/20 of 30 July 2003; Council Decision relating to the launch of the EU Military Operation in the former Yugoslav Republic of Macedonia (CONCORDIA), Council Doc. 7537/03, Brussels, 18 March 2003; Council Joint Action 2003/92/CFSP of 27 January 2003 on the European Union military operation in the Former Yugoslav Republic of Macedonia (CONCORDIA), OJ L 34/26 of 11 February 2003; Aceh: Council Joint Action 2005/643/CFSP of 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission — AMM), OJ L 234/13 of 10 September 2005; Sudan & Darfur: Council Joint Action 2007/887/CFSP of 20 December 2007 repealing Joint Action 2005/557/CFSP on the European Union civilian-military supporting action to the African Union missions in the Darfur region of Sudan and in Somalia, OJ L 346/28 of 29 December 2007; Council Joint Action 2007/245/CFSP of 23 April 2007 amending Joint Action 2005/557/CFSP on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan with regard to the inclusion of a military support element providing assistance to the setting up of the African Union Mission in Somalia (AMISOM), OJ L 106/65 of 24 April 2007; Council Joint Action 2005/557/CFSP of 18 July 2005 on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan, OJ L 188/46 of 20 July 2005; Moldova and Ukraine: Memorandum of Understanding between the European Commission, the government of the Republic of Moldova and the government of Ukraine on the European Commission Border Assistance Mission to the Republic of Moldova and to Ukraine, available from: http://www.eubam.org/files/0-99/73/memorandum_of_understanding_en.pdf. Accessed on 4 June 2009; Guinea-Bissau: Council Joint Action 2009/405/CFSP of 18 May 2009 amending Joint Action 2008/112/CFSP on the European Union mission in support of security sector reform in the Republic of Guinea-Bissau (EU SSR GUINEA-BISSAU), OJ L 128/50 of 27 May 2009; Council Joint Action 2008/112/CFSP of 12 February 2008 on the European Union mission in support of security sector reform in the Republic of Guinea-Bissau (EU SSR GUINEA-BISSAU), OJ L 40/11 of 14 February 2008; Somalia: Council Decision 2008/918/CFSP of 8 December 2008 on the launch of a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta), OJ L 330/19 of 9 December 2008; Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast, OJ L 301/33 of 12 November 2008; Council Joint Action 2008/749/CFSP of 19 September 2008 on the European Union military coordination action in support of UN Security Council resolution 1816 (2008) (EU NAVCO), OJ L 252/39 of 20 September 2008.

⁶⁹ Measures include, *but are not limited to*, Georgia: Council Joint Action 2008/796/CFSP of 13 October 2008 amending the mandate of the European Union Special Representative for the South Caucasus, OJ L 272/19 of 14 October 2008; Council Joint Action 2008/760/CFSP of 25 September 2008 appointing the European Union Special Representative for the crisis in Georgia, OJ L 259/16 of 27 September 2008; Political and Security Committee Decision EUMM/1/2008 of 16 September 2008 appointing the Head of the European Union Monitoring Mission in Georgia (EUMM Georgia), OJ L 319/79 of 29 November 2008; Political and Security Committee Decision THEMIS/1/2004 of 30 June 2004 concerning the appointment of the Head of Mission of the EU Rule of Law Mission in Georgia, in the context of ESDP, EUJUST THEMIS (2004/540/CFSP), OJ L 239/35 of 9 July 2004; Democratic Republic of Congo: Political and Security Committee Decision EUSEC/2/2008 of 24 June 2008 on the appointment of the Head of Mission for the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (EUSEC RD Congo), OJ L 168/41 of 28 June 2008; Political and Security Committee Decision EUSEC/1/2008 of 12 February 2008 on the appointment of the Head of Mission for the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of the Congo (EUSEC RD Congo), OJ L 56/63 of 29 February 2008; Council Joint Action of 10 December

2002 amending and extending the mandate of the European Union Special Representative for the African Great Lakes Region, OJ L 334/5 of 11 December 2002; Afghanistan: Political and Security Committee Decision EUPOL AFGHANISTAN/1/2008 of 3 October 2008 concerning the appointment of the Head of Mission of the European Union Police Mission in Afghanistan (EUPOL AFGHANISTAN), OJ L Council Joint Action 2008/612/CFSP of 24 July 2008 concerning the appointment of the European Union Special Representative for Afghanistan, OJ L 197/60 of 25 July 2008; Bosnia and Herzegovina (BiH): Political and Security Committee Decision BiH/14/2008 of 21 November 2008 on the appointment of an EU Force Commander for the European Union military operation in Bosnia and Herzegovina (ALTHEA), OJ L 319/80 of 29 November 2008; Political and Security Committee Decision EUPM/1/2008 of 24 October 2008 concerning the appointment of the Head of Mission/Police Commissioner of the European Union Police Mission (EUPM) in Bosnia and Herzegovina, OJ L 298/30 of 7 November 2008; Council Joint Action 2008/130/CFSP of 18 February 2008 extending the mandate of the European Union Special Representative in Bosnia and Herzegovina (BiH), OJ L 43/22 of 19 February 2008; Political and Security Committee Decision EUPM/3/2007 of 30 November 2007 concerning the appointment of the Head of Mission/Police Commissioner of the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH), OJ L 329/63 of 14 December 2007; Council Joint Action 2007/748/CFSP of 19 November 2007 amending Joint Action 2007/87/CFSP amending and extending the mandate of the European Union Special Representative in Bosnia and Herzegovina, OJ L 303/38 of 21 November 2007; Political and security committee decision BiH/10/2007 of 25 September 2007 on the appointment of an EU Operation Commander for the European Union military operation in Bosnia and Herzegovina, OJ L 293/8 of 10 November 2007; Political and security committee decision BiH/12/2007 of 25 September 2007 on the appointment of the Head of the Command Element at Naples for the European Union military operation in Bosnia and Herzegovina, OJ L 293/9 of 10 November 2007; Council Joint Action 2007/748/CFSP of 19 November 2007 amending Joint Action 2007/87/CFSP amending and extending the mandate of the European Union Special Representative in Bosnia and Herzegovina, OJ L 303/38 of 21 November 2007; Council Joint Action 2005/825/CFSP of 24 November 2005 amending the mandate of the European Union Special Representative in Bosnia and Herzegovina, OJ L 307/59 of 25 November 2005; Political and Security Committee Decision BiH/4/2004 of 19 October 2004 on the appointment of the Head of the EU Command Element at Naples for the European Union military operation in Bosnia and Herzegovina (2004/821/CFSP), OJ L 357/38 of 2 December 2004; Political and Security Committee Decision BiH/2/2004 of 24 September 2004 on the appointment of an EU Operation Commander for the European Union military operation in Bosnia and Herzegovina (2004/733/CFSP), OJ L 342/22 of 27 October 2004; Council Joint Action 2004/569/CFSP of 12 July 2004 on the mandate of the European Union Special Representative in Bosnia and Herzegovina and repealing Council Joint Action 2002/211/CFSP, OJ L 252/7 of 28 July 2004; Council decision 2004/188/CFSP of 23 February 2004 concerning the appointment of the Head of Mission/Police Commissioner of the European Union Police Mission (EUPM), OJ L 58/27 of 26 February 2004; Kosovo: Corrigendum to Council Joint Action 2009/137/CFSP of 16 February 2009 extending the mandate of the European Union Special Representative in Kosovo, OJ L 91/31 of 3 April 2009; Political and Security Committee Decision EUPT/1/2008 of 6 June 2008 amending Decision EUPT/2/2007 appointing the Head of the European Union Planning Team (EUPT Kosovo), OJ L 173/30 of 3 July 2008; Political and Security Committee Decision EULEX/1/2008 of 7 February 2008 concerning the appointment of the Head of Mission of the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, OJ L 42/99 of 16 February 2008; Palestinian Territories: Political and Security Committee Decision EUPOL COPPS/1/2008 of 16 December 2008 concerning the appointment of the Head of the European Union Police Mission for the Palestinian Territories, OJ L 344/139 of 20 December 2008; Political and Security Committee Decision EUBAM Rafah/1/2008 of 11 November 2008 concerning the appointment of the Head of Mission of the European Union Border Assistance Mission at the Rafah Crossing Point (EUBAM Rafah), OJ L 306/99 of 15 November 2008; Council Joint Action 2008/133/CFSP of 18 February 2008 amending and extending the mandate of the European Union Special Representative for the Middle East peace process, OJ L 43/34 of 19 February 2008; Political And Security Committee Decision EUPOL COPPS/1/2007 of 30 October 2007 concerning the extension of the mandate of the Head of Mission/Police Commissioner of the European Union Police Mission for the Palestinian Territories (EUPOL COPPS) (2007/737/CFSP), OJ L 298/22 of 16 November 2007; Sudan & Darfur: Council Joint Action 2005/556/CFSP of 18 July 2005 appointing a Special Representative of the European Union for Sudan, OJ L 188/43 of 20 July 2005; Council Joint Action 2008/110/CFSP of 12 February 2008 amending and extending the mandate of the European Union Special Representative for Sudan, OJ L 38/28 of 13 February 2008; Former Yugoslav Republic of Macedonia (FYROM): Political and Security Committee Decision Proxima/2/2004 of 30 November 2004 concerning the appointment of the Head of Mission of the EU Police Mission in the former Yugoslav Republic of Macedonia, EUPOL PROXIMA (2004/846/EC), OJ L 367/29 of 14 December 2004; Moldova and Ukraine: Council

probably be qualified as crisis management operations today, in particular the EU's administration of the city of Mostar⁷⁰ and the EC/EU Monitoring Mission (ECMM/EUMM) in the former Yugoslavia.⁷¹

Military Capabilities

The Cologne European Council of June 1999 established that “the Union must have the capacity for autonomous action, backed by credible military forces, the means to decide to use them, and the

Joint Action 2005/776/CFSP of 7 November 2005 amending the mandate of the European Union Special Representative for Moldova, OJ L 292/13 of 8 November 2005; Guinea Bissau: Political and Security Committee Decision EU SSR GUINEA-BISSAU/1/2008 of 5 March 2008 concerning the appointment of the Head of Mission of the European Union mission in support of security sector reform in the Republic of Guinea-Bissau, EU SSR GUINEA-BISSAU, OJ L 73/34 of 15 March 2008; Somalia: Political and Security Committee Decision Atalanta/4/2009 of 27 May 2009 on the appointment of an EU Operation Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta), OJ L 132/20 of 29 May 2009; Political and Security Committee Decision Atalanta/1/2009 of 17 March 2009 on the appointment of an EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta), OJ L 76/45 of 24 March 2009; Political and Security Committee Decision ATALANTA/1/2008 of 18 November 2008 on the appointment of an EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta), OJ L 317/24 of 27 November 2008.

⁷⁰ The initial basis was a Memorandum of Understanding approved by the Council at its meeting on 13 and 14 June 1994 and signed in Geneva on 5 July 1994. Subsequent decisions were Council Decision 94/776/EC of 28 November 1994 appointing an Ombudsman for Mostar for the duration of the European Union administration of Mostar, OJ L 312/34 of 6 December 1994; Council Decision 94/790/CFSP of 12 December 1994 concerning the joint action, adopted by the Council on the basis of Article J.3 of the Treaty on European Union, on continued support for European Union administration of the town of Mostar, OJ L 326/2 of 17 December 1994; Council Regulation 95/23/CFSP of 6 February 1995 supplementing Decision 94/790/CFSP concerning the joint action, adopted by the Council on the basis of Article J.3 of the Treaty on European Union, on continued support for European Union administration of the town of Mostar, OJ L 33 of 13 February 1995; Council Decision 95/517/CFSP of 4 December 1995 concerning the joint action, adopted by the Council on the basis of Article J.3 of the Treaty on European Union, on continued support for European Union administration of the town of Mostar, OJ L 298/4 of 11 December 1995; Council Decision 95/552/CFSP of 19 December 1995 supplementing Decision 95/517/CFSP concerning the joint action, adopted by the Council on the basis of Article J.3 of the Treaty on European Union, on continued support for European Union administration of the town of Mostar, OJ L 313 of 27 December 1995; and Council Decision 96/744/CFSP of 20 December 1996 on the phasing out of the European Union operations in Mostar, OJ L 340 of 30 December 1996.

⁷¹ The ECMM was established by a Memorandum of Understanding signed on 13 July 1991 and was renamed EUMM by Council Joint Action 2000/811/CFSP of 22 December 2000 on the European Union Monitoring Mission, OJ L 328/53 of 23 December 2000. It has been extended and amended by Council Joint Action 2005/807/CFSP of 21 November 2005 extending and amending the mandate of the European Union Monitoring Mission (EUMM), OJ L 303/61 of 22 November 2005; Council Joint Action 2006/867/CFSP of 30 November 2006 extending and amending the mandate of the European Union Monitoring Mission (EUMM), OJ L 335/48 of 1 December 2006 (*corrigendum* OJ L 349/59 of 12 December 2006); and Council Joint Action 2007/40/CFSP of 22 January 2007 amending Joint Action 2002/921/CFSP extending the mandate of the European Union Monitoring Mission (EUMM), OJ L 17/22 of 24 January 2007. The Mission was terminated on 31 December 2007, see EU Doc. S/375/07 of 27 December 2007.

readiness to do so, in order to respond to international crises without prejudice to actions by NATO".⁷²

The Helsinki European Council of December 1999 built on the work of the Cologne European Council and established the so-called Helsinki Headline Goal (HHG, or 2003 Headline Goal). It set, among others, the following goals: (i) cooperating together voluntarily in EU-led operations, Member States must be able to deploy rapidly and then sustain forces capable of the full range of Petersberg tasks as set out in the Amsterdam Treaty, including the most demanding, in operations up to corps level (up to 15 brigades or 50,000-60,000 persons); (ii) new political and military bodies and structures needed to be established within the Council to enable the Union to ensure the necessary political guidance and strategic direction to such operations, while respecting the single institutional framework.⁷³

During the Laeken European Council In December 2001, the Member States agreed on identified shortcomings in military capabilities and agreed on a plan of action to remedy them, the so-called European Capability Action Plan (ECAP). The plan included measures aimed at optimising existing capabilities; the co-production, financing and acquisition of capabilities; the optimising of procurement processes. These measures were looked at in particular from a European level.⁷⁴ In 2003, the Council confirmed that the EU had reached operational capability across the full range of Petersburg tasks, albeit limited and constrained by recognised shortfalls. These shortfalls centred on the deployment time and the occurrence of high risk at the upper end of the spectrum of scale and intensity, in particular when conducting concurrent operations.

In a response to the adoption of the European Security Strategy (which identifies regional conflicts as one of the key threats to the Union)⁷⁵ and to address the shortfalls with respect to the 2003 HG, the European Council adopted the 2010 Headline Goal in June 2004.⁷⁶ The 2010 HG included the main parameters for the development of EU military capabilities with a 2010 horizon, notably the

⁷² European Council 1999, *supra* note 20, ANNEX III European Council Declaration on Strengthening the Common European Policy on Security and Defence, para.1. See also para. 4 of the Presidency report annexed to the European Council Conclusions, *supra* note 20.

⁷³ Council of the European Union, Helsinki Headline Goal, available from: <http://www.consilium.europa.eu/uedocs/cmsUpload/Helsinki%20Headline%20Goal.pdf>. Accessed on 4 June 2009.

⁷⁴ Council of the European Union, 2368th Council meeting General Affairs, Brussels, 19-20 November 2001. Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/European%20Capability%20Action%20Plan%20-%20Excerpt%20Press%20Release%20November%202001.pdf>. Accessed on 4 June 2009.

⁷⁵ Council of the European Union, *supra* note 29, p. 4.

⁷⁶ European Council, 2004, *Presidency Conclusions*, Brussels European Council, 17-18 June 2004, point 62.

definition of the level of ambition on rapid reaction battlegroups. The EU should be able to take the decision to launch an operation within 5 days of the approval of the Crisis Management Concept by the Council. Forces should be able to start implementing their mission on the ground within 10 days after the EU has decided to launch the operation. Relevant air and naval capabilities should be included. Member States committed themselves to be able, by 2010, to respond to a crisis with rapid and decisive action applying a fully coherent approach to the whole spectrum of crisis management operations covered by the Treaty on the European Union (Petersberg tasks and potentially joint disarmament operations, support for third countries in combating terrorism and security sector reform as indicated by the European Security Strategy). Agreement was also reached on addressing the deficiencies that were identified with respect to the 2003 HG, particularly in the areas of strategic sea and airlift capabilities.⁷⁷

Specific goals included the establishment of a civil-military cell within the EUMS,⁷⁸ with the capacity to rapidly set-up an operation centre for a particular operation; the establishment of the EDA in 2004;⁷⁹ the implementation, by 2005, of EU Strategic lift joint coordination, with a view to achieving by 2010 necessary capacity and full efficiency in strategic lift (air, land and sea) in support of anticipated operations; the complete development, by 2007, of rapidly deployable battlegroups including the identification of appropriate strategic lift, sustainability and debarkation assets; the availability of an aircraft carrier with its associated air wing and escort by 2008; improving the performance of all levels of EU operations by developing appropriate compatibility and network linkage of all communications equipment and assets both terrestrial and space based by 2010; developing quantitative benchmarks and criteria that national forces declared to the HG have to meet in the field of deployability and in the field of multinational training.⁸⁰

Throughout the years following the adoption of the 2010 HG, many efforts were made by the Member States in order to reach the goals set therein. The EDA's Long-Term Vision (LTV) report

⁷⁷ Council of the European Union, Headline Goal 2010 approved by General Affairs and External Relations Council on 17 May 2004, endorsed by the European Council of 17 and 18 June 2004. Available from: <http://www.consilium.europa.eu/uedocs/cmsUpload/2010%20Headline%20Goal.pdf>. Accessed on 4 June 2009.

⁷⁸ See *supra* note 24.

⁷⁹ See *supra* note 51.

⁸⁰ European Headline Goal 2010, *supra* note 76, p. 3. See also: Council of the European Union, Military Commitment Conference, Brussels, 24 November 2004, Declaration on European Military Capabilities. This document reiterates the obligations under the 2010 Headline Goal. Available from: <http://www.consilium.europa.eu/uedocs/cmsUpload/MILITARY%20CAPABILITY%20COMMITMENT%20CONFERENCE%2022.11.04.pdf>. Accessed on 4 June 2009.

published in October 2006 outlined the sort of capabilities which Europe's armed forces would need for possible ESDP military operations in the future. The report pledged capability development towards increased (i) synergy in coordination of effects with non-military actors; (ii) agility in speed of reaction and deployability combined with the capacity to reconfigure for optimum force size and balance and being able to move quickly at the tactical level; (iii) selectivity as meaning a wide range of capabilities, and the means to ensure an informed and appropriate choice at each stage of the operation; (iv) sustainability in suggesting the right logistic support and theatre access.⁸¹

The LTV set the tone for the EDA Steering Board to task the EDA with the establishment of an ESDP Capacity Development Plan (CDP) based on the 2010 HG process and the LTV which had the aim of conducting a more detailed and evidence-based analysis of future capability needs and the mutual disclosure of national medium-to-long term planning. The initial CDP was presented to the EDA Steering Board on 8 July 2008. Among its main conclusions was the importance of intelligence and information-sharing during operations in complex environments; the need for flexible and agile responses to unpredictable threats; the requirement to coordinate military and civilian activities in crisis management operations; and the challenge of recruiting talented and well-qualified personnel for the armed forces. The EDA's Steering Board agreed on twelve topics for specific action including, but not limited to, counter man portable air defence systems, computer network defence, and medical support.⁸²

In order to improve the availability of helicopters in EU operations, a series of measures on helicopter training were envisaged which would allow cooperation between Member States and increase the operational availability of aircrew, along with on upgrading of existing aircraft. The CDP placed additional emphasis on enhancing network capabilities through information technology in order to link all actors in an operation together so that information can be reliably shared. Protection against sea mines, maritime surveillance, biological agent detection and combating terrorist bombs were among the issues discussed. It was furthermore agreed that a trial would be

⁸¹ See European Defence Agency, An Initial Long-Term Vision for European Defence Capability and Capacity Needs, endorsed by the Steering Board on 3 October 2006. See in particular Section IV on implications for capability development, pp. 21-25. Available from:

<http://www.eda.europa.eu/webutils/downloadfile.aspx?fileid=105>. Accessed on 5 June 2009.

⁸² European Defence Agency, EU governments endorse capability plan for future military needs, pledge joint efforts, Brussels 8 July 2008. Available from: http://www.consilium.europa.eu/uedocs/cmsUpload/080708-PR_Capability_plan.pdf. Accessed on 5 June 2009.

set up of a European Support Platform for connecting industry with planners and commanders, in order to provide help to meet the logistic requirements of EU operations.⁸³

On 19 November 2007, the Council approved the Progress Catalogue 2007 which identified quantitative and qualitative military capability shortfalls on the basis of the requirements as set out in its earlier edition of 2005. In December of 2008 the Council issued a Declaration on strengthening available capabilities within Europe.⁸⁴ The Declaration states the developments made within the Union with respect to the HG and the operations it had conducted (see paragraph 2.1 *supra*). In addition, several initiatives were proposed that aim to improve force projection in operations *inter alia* by means of establishing a European air transport fleet and a European Carrier Group Interoperability Initiative; strengthening information-gathering and space-based intelligence through satellites; improving the protection of forces through a new mine clearance programme and a future surveillance UAV project; strengthening interoperability and the ability of European personnel to work together through exchanges of young officers and improved functioning of the European Security and Defence college. It also noted the fragmentation of defence markets and of the European defence industry and claimed that these characteristics make companies less competitive and weaken the security of supply of European forces in the long term. To this end it calls for the restructuring of the defence technological and industrial base, including making the defence procurement procedures within the European Union more transparent.⁸⁵ Furthermore, in order to strengthen research and technology, with a view to acquire the necessary capabilities and to ensure the future competitiveness of the European defence industry, a European Defence Research and Technology Strategy was approved on 10 November 2008.⁸⁶

⁸³ European Defence Agency, EU governments endorse capability plan for future military needs, pledge joint efforts, Brussels 8 July 2008

⁸⁴ Council of the European Union, Declaration on strengthening capabilities, Council Doc. 104676, Brussels, 11 December 2008, available from:

http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/esdp/104676.pdf. Accessed on 5 June 2008.

⁸⁵ Council of the European Union, Declaration on strengthening capabilities, Council Doc. 104676, Brussels, 11 December 2008. See also the initiatives by the Commission to this end: European Commission: *Green Paper: Defence Procurement*, COM(2004) 608 final of 23 September 2004; Communication from the Commission to the Council and the European Parliament on the results of the consultation launched by the Green Paper on Defence Procurement and on the future Commission initiatives, COM(2005) 626 final of 6 December 2005; European Commission, Interpretative Communication on the application of Article 296 of the Treaty in the field of defence procurement, COM(2006) 779 final of 7 December 2006.

⁸⁶ See European Defence Agency, *Framework for a European Defence Research & Technology Strategy*. Available from: <http://www.eda.europa.eu/WebUtils/downloadfile.aspx?fileid=325>. Accessed on 5 June 2009.

Civilian Crisis Management

The Helsinki European Council adopted an Action Plan on crisis management using non-military instruments which aimed (i) at strengthening the synergies between and responsiveness of national, collective and NGO resources in order to avoid duplication and improve performance, while maintaining the flexibility of each contributor to decide on the deployment of assets and capabilities in a particular crisis, or via a particular channel; (ii) at enhancing and facilitating the EU's contributions to, and activities within, other organisations, such as the UN and the OSCE whenever one of them is the lead organisation in a particular crisis, as well as EU autonomous actions; and (iii) at ensuring inter-pillar coherence.⁸⁷ It furthermore asked for the coordination of tools for, and the establishment of, a coordinating mechanism for civilian crisis management. The incoming Portuguese Presidency was requested, together with the Secretary General/High Representative, to carry forward the work on the strengthening of the Common European Security and Defence Policy (CESDP) as a matter of priority, including conflict prevention and a committee for civilian crisis management.⁸⁸ A preparatory document on how such a CIVCOM would look like and what its tasks would be was released by the Council on 10 March 2000.⁸⁹ It was established on 22 May 2000.⁹⁰

An Action Plan for Civilian Aspects of ESDP was adopted by the European Council in 2004.⁹¹ The Action Plan called *inter alia* for the development of a Civilian Headline Goal (CHG) to be established by the Capabilities Conference in November 2004; the strengthening of synergies between its civilian and military crisis management instruments both as regards the development of generic concepts and tools and the planning and conduct of operations, in Brussels and in the field;

⁸⁷ European Council, *supra* note 21, ANNEX 2 to ANNEX IV Presidency Report on Non-Military Crisis Management of the European Union.

⁸⁸ European Council, *supra* note 21, point 29.

⁸⁹ See Council of the European Union, Preparatory document related to CESDP: establishment of a European Union Committee for Civilian Crisis Management. Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/Preparatory%20document%20CESDP%20-%20Committee.pdf>. Accessed on 5 June 2009. Its tasks consist of supporting and facilitating the day-to-day work of the Council Secretariat coordinating mechanism, fully interacting with the Commission, in helping to pre-identify the resources available for the Union's crisis response; supporting the Presidency and the Secretary General/High Representative in defining concrete targets for the Member States' and EU's collective civilian capabilities in response to crises; setting standards for training and providing a forum for sharing experience and best practice; identifying opportunities for bilateral or multilateral cooperation between Member States.

⁹⁰ See Council Regulation (EC) No 381/2001 of 26 February 2001 creating a rapid-reaction mechanism, OJ L 57/5 of 27 February 2001. See also Regulation (EC) no 1717/2006 of the European Parliament and the Council of 15 November 2006 establishing an Instrument for Stability, OJ L 327 of 24 November 2006.

⁹¹ European Council, *supra* note 75.

ensuring coherence between the ESDP and the fight against organised crime; the contribution to coherence between security and development; working towards making civilian capabilities more operational; addressing identified legal and administrative difficulties relating to procurement arrangements (see also *supra*)⁹²; ensuring coordination, establishing links and strengthening synergies between the different training initiatives within the ESDP; strengthening the work with partners such as the UN, OSCE and third states in crisis management operations; and exchange of information with representatives from non-governmental organisations and civil society.⁹³

In October 2004 an EU Chiefs of Police (EU-CoPs) meeting on police missions within the framework of the ESDP was organised under the auspices of the Dutch Presidency. In their Declaration, the EU-CoPs welcomed the initiative to establish a European Gendarmerie Force (EGF).⁹⁴ Furthermore, they called for *inter alia*: the further development of appropriate operational planning and support capabilities in order to conduct several police missions simultaneously; increased availability of the right expertise and experts for EU police missions; further training for EU personnel, both in pre-deployment and in the missions; the improvement of EU rapid deployment capabilities; an enhanced capability to set-up multinational Headquarters; procurement regulations that ensure the timely arrival of equipment in mission areas; processes to be put in place to identify and deploy rapidly the required numbers of qualified personnel; further promotion of the crucial link between police missions and broader Rule of Law aspects, *inter alia* by ensuring synergies between ESDP and Justice and Home Affairs activities, especially with a view to better managing transition periods and exit strategies; consistency of the EU response with regard to the fight against organised crime, notably by defining a cross-pillar regional approach and liaising extensively during the planning

⁹² See also *supra* note 84.

⁹³ Council of the European Union, Action Plan for the Civilian Aspects of ESDP, Adopted by the European Council (17-18 June 2004). Available from: <http://www.consilium.europa.eu/uedocs/cmsUpload/Action%20Plan%20for%20Civilian%20Aspects%20of%20ESDP.pdf>. Accessed 5 June 2009.

⁹⁴ The European Gendarmerie Force (EGF) was established on 18 October 2007 Between the Kingdom of Spain, the French Republic, the Italian Republic, the Kingdom of The Netherlands and the Portuguese Republic. The original Declaration of Intent dated back to 17 September 2004. For the Treaty Text, see: <http://www.eurogendfor.org/referencetexts/EGF%20Treaty%20english%20version.pdf>. Accessed on 5 June 2009. Its tasks include: performing security and public order missions; monitoring and advising local police in their day-to-day work, including criminal investigation work; conducting public surveillance, traffic regulations, border policing and general intelligence; performing criminal investigation work, covering detection of offences, tracing of offenders and their transfer to the appropriate judicial authorities; protecting people and property and keeping order in the event of public disturbances; training of police officers as regards international standards; training of instructors, particularly through co-operation programs.

period with all relevant European structures engaged in the fight against organised crime.⁹⁵ The calls made in this Declaration contributed to the forming of a CHG.

Civilian Headline Goal 2008 & 2010

The call from the Council for the development of a CHG came with the Civilian Capabilities Conference in November 2004.⁹⁶ The CHG aimed at establishing goals to allow the EU to further define and build up the civilian capabilities the Union needs for future tasks and challenges by 2008.⁹⁷ The Declaration partly recalled the Declaration made by the EU-CoPs and in addition called for *inter alia* adequate financial resources that meet the EU's ambitions in the field of civilian ESDP; appropriate arrangements and mechanisms in the areas of operational support, logistics, security of personnel and mission protection given the more challenging and less benign environments in which the EU is likely to operate in the near future; the promotion of effective close co-ordination and coherence between Community and ESDP activities; the conduct of exercises (civilian and civil-military) to test and validate procedures and ensure efficiency; and pre- and in-mission training in order to make the capabilities as effective and interoperable as possible.⁹⁸

Whereas the military HG was set for 2010, the CHG was set for 2008. It was adopted on 7 December 2004.⁹⁹ It reiterates the goals set out *supra* by the EU-CoPs and the Civilian Capabilities Conference. It confirmed the will to deploy integrated civilian crisis management packages which respond to the specific needs on the ground while making use of the full range of its crisis management capabilities with the ability to conduct concurrent civilian missions at different levels of engagement.¹⁰⁰ The CHG was to be developed under the auspices of the Council, overseen by the PSC and supported by CIVCOM according to an approach based on four stages: (i) the development of key planning assumptions and illustrative scenarios (to be completed by April 2005); (ii) the drawing up of a Capabilities Requirements List (to be completed by July 2005) which sets out needs in terms of

⁹⁵ Declaration of EU Chiefs of Police following the meeting on police aspects in the ESDP-framework, Warnsveld, the Netherlands, 25 October 2004.

⁹⁶ Council of the European Union, Civilian Capabilities Conference: Ministerial Declaration, Brussels, 22 November 2004. Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/COMMITMENT%20CONFERENCE%20MINISTERIAL%20DECLARATION%2022.11.04.pdf>. Accessed on 5 June 2009.

⁹⁷ Council of the European Union, Civilian Capabilities Conference: Ministerial Declaration, Brussels, 22 November 2004, p.2.

⁹⁸ Council of the European Union, Civilian Capabilities Conference: Ministerial Declaration, Brussels, 22 November 2004, pp. 3-4.

⁹⁹ Council of the European Union, Civilian Headline Goal 2008, Council Doc. 15863/4, Brussels, 7 December 2004.

¹⁰⁰ Council of the European Union, Civilian Headline Goal 2008, Council Doc. 15863/4, Brussels, 7 December 2004, p. 3.

personnel, equipment, planning, logistics and mission support, as well as command and control requirements and the multifunctional capability packages required; (iii) an assessment of national contributions and identification of capability shortfalls (end of 2005) coupled with a Capabilities Improvement Plan to identify shortfalls and prioritise which resources to develop; and (iv) a thorough follow-up of the process by means of providing a regular review of capabilities.¹⁰¹

The 2008 CHG was eventually replaced by a CHG for 2010 after calls that, because the European Council had put both military and civilian capability development on separate, parallel tracks, the different aims and timelines for the respective HGs had not facilitated the identification of possible synergies and gaps between civilian and military capabilities.¹⁰² The 2010 CHG was adopted on 19 November 2007.¹⁰³ It acknowledged the progress made under the 2008 CHG, yet noted that there was scope for further and more focused action.¹⁰⁴ In addition to the 2008 HG, the 2010 HG calls for: (i) the improvement of quality, (ii) the enhancing of availability, (iii) the development of instruments, and (iv) the achieving of synergies.¹⁰⁵

With respect to improving quality, requests were made for *inter alia* a robust and systematic lessons-learned process; the improvement of field security, including intelligence where relevant; the further development of the interface between Police and the wider Rule of Law sector; the further development, in line with agreed concepts, of rapidly deployable police elements, notably Integrated Police Units and Formed Police Units (IPU and FPU), including the creation of a European training dimension for IPU and FPU, coherent and in line with the overall ESDP training approach; an evaluation of the functioning of the Civilian Response Teams (CRT), completion of the CRT pool of experts and the identification and implementation of concrete steps for improving the CRT system and making it more operational; and the mainstreaming of human rights and gender issues into concepts and conduct of the CHG 2010 process.¹⁰⁶

¹⁰¹ Council of the European Union, Civilian Headline Goal 2008, Council Doc. 15863/4, Brussels, 7 December 2004, pp. 5-7.

¹⁰² Council of the European Union, Final Report on the Civilian Headline Goal 2008, Council Doc. 14807/07, approved by the ministerial Civilian Capabilities Improvement Conference and noted by the General Affairs and External Relations Council on 19 November 2007, p.19.

¹⁰³ Council of the European Union, Civilian Headline Goal 2010, Council Doc. 14823/7, approved by the ministerial Civilian Capabilities Improvement Conference and noted by the General Affairs and External Relations Council on 19 November 2007.

¹⁰⁴ Council of the European Union, Civilian Headline Goal 2010, Council Doc. 14823/7, p. 1.

¹⁰⁵ Council of the European Union, Civilian Headline Goal 2010, Council Doc. 14823/7, pp. 3-5.

¹⁰⁶ Council of the European Union, Civilian Headline Goal 2010, Council Doc. 14823/7, p.3.

With respect to enhancing availability, the CHG 2010 calls *inter alia* for the Member States to be invited to regularly review their potential ability to contribute to ESDP missions; updated relevant information on civilian ESDP, including background and requirements for past, ongoing and upcoming missions; the continued raising of secondable civilian personnel for ESDP, which, under the CHG 2008, received particular attention; the involvement in civilian ESDP of key national stakeholders, notably in the Police and the wider Rule of Law sectors.¹⁰⁷

The development of practical/technological applications in order to further support and improve the ability of the EU to plan and conduct missions in all the phases of action was requested. Furthermore, the carrying forward of work on the Civilian Capability Management Tool (development of which started under the CHG 2008) and Information Exchange Requirements (integrated inter-service civilian-military project ongoing) was requested. Other relevant calls included in the CHG 2010 were a “civilian lessons-learned process” and the improvement of mission security (personnel protection), including intelligence capability within civilian ESDP missions where relevant.¹⁰⁸

In order to achieve synergies, the CHG 210 calls *inter alia* for a common stock-taking event of civilian and military ESDP capabilities, as well as those capabilities available to the European Community, towards the end of CHG 2010; the further exploitation of synergies with third-pillar actors (Article 36 Committee and EU bodies such as EUROPOL and EUROJUST), including the EU-CoPs Task Force¹⁰⁹; and the identification and exploitation of possible synergies with other actors in civilian crisis management, which include international organisations, regional organisations and other major actors, e.g. non-EU States and civil society through NGOs and civil society organisations. This is to be in line with agreed principles and in full respect of the EU's autonomous decision-making powers.¹¹⁰

In 2008 the CHG 2010 started to review illustrative scenarios, assess required capabilities and survey civilian capabilities. This work was to inform the report to Ministers on civilian ESDP preparedness in November 2008, covering the status of available resources for ESDP civilian crisis

¹⁰⁷ Council of the European Union, Civilian Headline Goal 2010, Council Doc. 14823/7, p. 4.

¹⁰⁸ Council of the European Union, Civilian Headline Goal 2010, Council Doc. 14823/7, pp. 3-4.

¹⁰⁹ The EU Police Chiefs Task Force was set up to develop personal and informal links between the heads of the various law-enforcement agencies across the EU, and to exchange information and assist with the development of more spontaneous interaction and closer cooperation between the various national and local police forces and other EU law-enforcement agencies. It held its first meeting in April 2000. Since then, regular meetings have provided task force members with the opportunity to exchange information at high levels on European policing issues and practices.

¹¹⁰ Council of the European Union, Civilian Headline Goal 2010, Council Doc. 14823/7, *supra* note 102, p. 5.

management in Member States;¹¹¹ the progress made towards increased coherence between the EU's crisis management tools; an assessment of the capacity of the EU civilian crisis management structures (e.g. for planning and conducting operations, security, procurement, finance); and the status of the implementation of the latest Ministerial Guidelines/Civilian Capability Targets.¹¹² Thereafter, the two phases already carried out in 2008 will be repeated, namely the "Report on Civilian Preparedness", due in October 2009, and the "Civilian Capability Targets", which should be finished by November 2009. In the following years leading up to 2010, the phases will follow each other as envisaged by the new Civilian ESDP Capability Planning Process.¹¹³

In November 2008, the Council issued conclusions on the ESDP in which it reiterated the issues expressed *supra*. In addition, it called for the development of a model suited to rapid-reaction situations, based on the procedures for the rapid deployment of the missions in Georgia, Rafah and Aceh (see *supra*). The conclusions also stressed the importance of developing national strategies to facilitate the deployment of mission personnel and encourage the exchange of good practices between Member States. The conclusions moreover mentioned the need to strengthen the coherence between ESDP missions and other European Union instruments. The Ministers agreed to review at their November 2009 meeting the progress made in developing civilian capabilities, with particular reference to these points as well as the points indicated *supra*.¹¹⁴

In December 2008 the Council issued a Declaration on the strengthening of capabilities within the framework of the ESDP in the future.¹¹⁵ The Declaration states that, in order to meet current security challenges and respond to new threats, Europe should be capable *inter alia* of deploying 60 000 troops within 60 days for a major operation, within the range of operations envisaged in the Headline Goal 2010 and in the Civilian Headline Goal 2010. The EU should, moreover, be capable of planning and conducting simultaneously a series of operations and missions of varying scope: two major stabilisation and reconstruction operations with a suitable civilian component, supported by up to 10 000 troops for at least two years; two rapid-response operations of limited duration using *inter alia* EU battle groups; an emergency operation for the evacuation of European nationals (in less than ten days), bearing in mind the primary role of each Member State as regards its nationals and making use of the consular lead State concept; a maritime or air surveillance/interdiction

¹¹¹ See Council of the European Union, 2903rd External Relations Council Meeting, Conclusions on the ESDP, Brussels, 10 and 11 November 2008.

¹¹² Council of the European Union, Civilian Headline Goal 2010, Council Doc. 14823/7, *supra* note 102, p. 7.

¹¹³ Council of the European Union, Civilian Headline Goal 2010, Council Doc. 14823/7, *supra* note 102, p. 7.

¹¹⁴ Council of the European Union, *supra* note 110, pp. 2-3.

¹¹⁵ Council of the European Union, *supra* note 83.

mission; a civilian-military humanitarian assistance operation lasting up to 90 days; around a dozen ESDP civilian missions (inter alia police, rule-of-law, civilian administration, civil protection, security sector reform, and observation missions) of varying formats, including in rapid-response situations, together with a major mission (possibly up to 3000 experts) which could last several years. For its operations and missions, the European Union uses, in an appropriate manner and in accordance with its procedures, the resources and capabilities of its Member States, of the European Union itself and, if appropriate for its military operations, of NATO.¹¹⁶ Furthermore, the Council encourages the Secretary-General/High Representative's efforts to set up a new, single civilian-military strategic planning structure for ESDP operations and missions in order to enhance the coherence between the civilian and military aspects of EU operations.¹¹⁷

Evaluation of the Institutional and Output Dimensions

Coherence

Coherence within the ESDP centres to a large extent on the degree of consistency and the availability and good use of synergies between EU military and civilian action within the framework of the ESDP. Furthermore, the HG 2010 states that the Member States have committed themselves to be able, by 2010, to respond with rapid and decisive action, applying a fully coherent approach to the whole spectrum of crisis management operations covered by the Treaty on European Union as well as stating a desire to exploit synergies with third pillar actors.¹¹⁸ Another important item of coherence is the degree of consistency and synergy in external action vis-à-vis other organisations, such as NATO. A final aspect is the degree of coherence in the operational theatre when conducting ESDP operations, be they civilian, military or hybrid in nature.

In terms of general coherence between civilian and military aspects, the Commission has already called for such increased coherence in 2000 in its Communication on Conflict Prevention.¹¹⁹ In order to address coherence, the Commission suggested the systematic exchange of Country Strategy Papers and corresponding documents from the Member States, as well as other regular

¹¹⁶ Council of the European Union, *supra* note 83, p. 1.

¹¹⁷ Council of the European Union, *supra* note 83, p. 2.

¹¹⁸ Headline Goal 2010, *supra* note 76, point 2. See also Council of the European Union, Civilian Capabilities Improvement Conference 2007, Ministerial Declaration, Brussels, 19 November 2007, points 2, 6, and 7; Final Report on the Civilian Headline Goal 2008, *supra* note 101, point 6; Civilian Headline Goal 2010, *supra* note 102, point 2.

¹¹⁹ European Commission, Communication from the Commission on Conflict Prevention, COM(2000) 211 final of 11 April 2001, p. 11.

exchanges of information (on country analyses, best practices, policy initiatives, etc.).¹²⁰ Judging from the recommendations suggested by the Council *supra* it appears that these concerns have been taken on board. It remains to be seen, however, if they have been effectively implemented given their repetitive nature in successive documents.

Several repeated calls have since been made for ESDP military and civil actions to form a more coherent whole.¹²¹ Specific calls included the suggestion that the CHG should ensure the establishment of sufficient numbers of well-qualified personnel - for both the civilian ESDP priority areas and mission support - to enable the EU to establish a coherent civilian presence on the ground where crisis situations require it to do so.¹²² The European Commission was fully associated with the CHG process in accordance with the goal of making coherent use of Community and civilian ESDP instruments. Commission representatives were invited to all CHG 2008 experts' workshops, and actively participated in most of them. In the capability development process concerning Civil Protection capabilities, all assets and capabilities registered in the database of the Community Civil Protection Mechanism were presumed to be also available for civil protection interventions in crisis management situations, unless Member States explicitly excluded them. This was done in order to avoid unnecessary duplication.¹²³

The Guidelines for Command and Control Structure for EU Civilian Operations in Crisis management were adopted in June 2007.¹²⁴ The Guidelines introduced a Civilian Operation Commander in order to establish a clearer chain of command for civilian ESDP operations. They also sought to render the civilian command structure more comparable with the military levels of command, thereby facilitating civil/military coordination, mutual support and coherence.¹²⁵ Also, in terms of the ability of the Union to rapidly respond to crises in correspondence with the Headline Goal, the battlegroup concept has to be coherent with the overarching Military Rapid Response

¹²⁰ European Commission, Communication from the Commission on Conflict Prevention, COM(2000) 211 final of 11 April 2001, p. 11.

¹²¹ In November 2008, the Council reiterated once more a general call for strengthening coherence between ESDP missions and other EU instruments, hinting at a still generally perceived need to do so. This was again reiterated in December 2008. See Council of the European Union, 2903rd External Relations Council Meeting, *infra* note 126, p.3.

¹²² Council of the European Union, *supra* note 117, point 6.

¹²³ Final Report on the Civilian Headline Goal 2008, *supra* note 101, point 6.2.

¹²⁴ Council of the European Union, Guidelines for Command and Control Structure for EU Civilian Operations in Crisis management, Council Doc. 10381/07, Brussels, 17 June 2007.

¹²⁵ Council of the European Union, CFSP Guide – compilation of relevant texts, Council Doc. 10898/08, Brussels, 18 June 2008, p. 208.

concepts.¹²⁶ Furthermore, general calls are repeatedly made to strengthen the coherence between missions under the ESDP and other instruments of the European Union, indicating that this is not yet the case at the time of reporting.¹²⁷ In May 2009 the Council confirmed that an analysis of the impact of the revised Military Rapid Response concept on the Air and Maritime Rapid Response concepts had been undertaken. It underlined once more, however, the need to ensure an overall coherence of all concepts relating to Rapid Response, thereby indicating that this was still a point of concern in May 2009.¹²⁸

Regarding the coherence of operations carried out with NATO and other organisations, it is said that the complementarity between EU battlegroups and the NATO Response Force (NRF) is important in terms of ensuring mutually reinforcing synergies between both organisations.¹²⁹ Also, the Council reacted satisfactorily to the efforts of the EDA to ensure complementarity with the Organization for Joint Armament Cooperation (OCCAR)¹³⁰ and the consistency of its work with NATO.¹³¹ Furthermore, in order to ensure consistency and continuity the EDA was said to participate in monitoring programs (the conduct of which has been transferred and entrusted to OCCAR) and is invited to give OCCAR recommendations on these programs.¹³² In May 2009 the Council called for efforts to continue to improve coherence and mutually reinforce the development of military capabilities and transparency in the framework of the EU-NATO Capability Group. To this end further efforts are needed (according to the Council) to ensure effective working methods of the Capability Group. Furthermore, the participation of all the EU Member States would further facilitate the exchange of information in the field of military capabilities.¹³³

Other efforts undertaken to ensure transparency and coherence between the two organisations have included the PSC-North Atlantic Council (NAC) meetings, EU and NATO Military Committees' meetings, as well as meetings with non-EU European NATO members and other candidate

¹²⁶ Headline Goal 2010, *supra* note 76, point 4.

¹²⁷ See for example Council of the European Union, 2903rd External Relations Council Meeting, Conclusions on European Security and Defence Policy, Brussels, 10 and 11 November 2008, p. 19.

¹²⁸ Council of the European Union, 2943rd External Relations Council Meeting, Council conclusions on European Security and Defence Policy, Brussels 18 May 2009, point 45.

¹²⁹ Council of the European Union, Military Commitment Conference, Brussels, 24 November 2004, Declaration on European Military Capabilities, point 16; See also Council of the European Union, *supra* note 127, p. 8.

¹³⁰ The Organisation Conjointe de Coopération en Matière d'Armement (OCCAR) was established by an Administrative Arrangement on 12 November 1996 by the Defence Ministers of France, Germany, Italy and the UK. Its aim is to provide more effective and efficient arrangements for the management of certain existing and future collaborative armament programmes.

¹³¹ Council of the European Union, *supra* note 127, p. 9.

¹³² Council of the European Union, *supra* note 127, p. 13.

¹³³ Council of the European Union, *supra* note 128, point 70.

countries to the EU. Regular staff-to-staff meetings on issues of common interest between EU and NATO experts were established in order to advance the development of a common Information Gathering tool accessible to all Member States, based on the NATO Defence Planning Automated Software System under specific conditions relating to the decision-making autonomy of both organisations. NATO experts have expressed a readiness to work with the EU on a tool, which would satisfy both EU and NATO requirements.¹³⁴

With respect to raising situational awareness and coherence in ESDP operations, the Council noted in November 2006 that improvements had been made enhancing situational awareness in theatre. The goal is to achieve a high degree of common situational awareness among EU actors as this constitutes an important element in ensuring that EU crisis management efforts are coherent and effective.¹³⁵ With respect to individual ESDP operations, and as a matter of example, the Council noted in May 2009 that coherence of EU action in Bosnia and Herzegovina (BiH) (see paragraph 2.1 *supra*) involving all EU actors, including the Commission and EU Heads of Mission, remains important. It further stated that the EU Force Commander, the European Union Special Representative and the Head of European Union Police Mission in BiH, continue to consult each other regularly prior to taking action. European Forces in BiH (EUFOR) have also maintained a close working relationship, including on operational matters, with other international actors. Furthermore, cooperation with NATO continues to work well with respect to Operation ALTHEA.¹³⁶ Regarding the EUSEC RD Congo mission (see *supra*), the Council stated that, in order to complement in a coherent manner its primary advisory role in the reform of the arms, EUSEC would implement or supervise projects in areas such as gender, human rights, health and infrastructure, financed or initiated by Member States and/or the EC.¹³⁷

To sum up, judging from the above it is clear that progress has been made in improving coherence between civilian and military aspects of ESDP: across the whole spectrum of crisis management operations, between the Union and other organisations, and in the operational theatre with respect to ESDP operations. Some further remarks are needed, however: the repeated calls for increased coherence between civilian and military aspects of ESDP, as well as between the ESDP instruments and other instruments of the Union, seem to hint at the continued need to do so. Given that this was

¹³⁴ Council of the European Union, *supra* note 128, point 71.

¹³⁵ Council of the European Union, 2761st External Relations Council Meeting, Council Conclusions on European Security and Defence Policy, Brussels, 13 and 14 November 2006.

¹³⁶ Council of the European Union, *supra* note 128, point 5.

¹³⁷ Council of the European Union, *supra* note 128, point 25.

already addressed by the Commission in 2000, it seems that although some progress has been made in this area, there still remains room for improvement.

In terms of the Union's ability to react rapidly across the whole spectrum of crisis management operations, repeated calls have been made for the establishment of sufficient numbers of well-qualified personnel to cover civilian ESDP priority areas and mission support. Furthermore, the Council also underlined very recently the need to ensure an overall coherence of all concepts relating to Rapid Response. Judging from these remarks, it seems that this area is not yet as coherent as is envisaged for 2010.

Cooperation with other organisations seems to be proceeding according to plan and avoids any unnecessary duplication. Also, the cooperation efforts made in the missions in BiH and the complementary work done in the framework of EUSEC RD Congo mission contribute to the enhancement of the overall level of coherence.

Accountability

As the majority of important decisions taken in the field of conflict resolution fall within the realm of the CFSP, the analysis of accountability is also limited to this area. The primary responsibility for the formulation of the CFSP lies with the national foreign ministers meeting within the Council. In practice, most decisions are prepared in the PSC which holds twice-weekly meetings with CFSP ambassadors stationed in Brussels. In PSC meetings, as in the Council, the representatives of the Member States, the Council Secretariat and the Commission are constantly present and contribute to the formulation of common positions. The EP, on the contrary, is represented neither physically by a representative nor virtually through reference to its positions and opinions (Thym 2006: 110).

On the basis of Article 21 TEU, the Parliament is currently only "regularly informed" and "consulted on the main aspects and basic choices" of the CFSP. The Presidency has the obligation to "ensure that the views of the EP are duly taken into consideration". It is, however, nowhere defined what this specifically entails. Moreover, Article 21 TEU does not arrange for any Parliamentary involvement in the adoption of *individual* CFSP measures, such as Joint Actions, Common Positions or Common Strategies. Officially the Parliament is not even informed about the topics that are

debated in the Council. The Treaty only provides for regular information and consultation “on the main aspects and basic choices” of the CFSP.¹³⁸

Legally speaking, such general information and consultation on the main lines of development fall short of the “consultation procedure” under the EC Treaty, which gives the Parliament at least a formal say during the adoption of individual measures – a disregard for this consultation mechanism resulting in an annulment by the Court of Justice.¹³⁹ The Parliament, however, does not find itself “adequately consulted” on the basis of the existing general mechanism of information and consultation. It rejects the approach followed by the Council of submitting a descriptive list of CFSP activities carried out in the previous year, and considers such a practice as clearly infringing on Article 21 TEU as far as prior consultation of the EP is concerned.¹⁴⁰

The Interinstitutional Agreement of 17 May 2006 between the Parliament, the Council and the Commission on budgetary discipline and sound financial management¹⁴¹ provides for the regular holding of CFSP consultation meetings between the Parliament and the Presidency of the Council and goes somewhat to amending this issue. However, the Parliament stresses that these meetings should not only be aimed at keeping the Parliament informed about CFSP current missions but should also be understood as an opportunity to exchange views on forthcoming needs, intended actions in the field of CFSP and the EU’s medium and long-term strategies in third countries. The Parliament goes on to state that the extensive and active network built up by the EP with third countries represents a valuable means of assessing the potential needs for CFSP.¹⁴²

The Parliament has certain rights as co-legislator and budgetary authority under the EC Treaty. It is not surprising, therefore, that the Parliament has tried to use its powers under the EC budgetary procedure to get more control over CFSP decision-making and extend its powers beyond the limitation and consultation rights. Nothing guarantees, however, that the Parliament will eventually

¹³⁸ Art. 21 TEU.

¹³⁹ See ECJ, Case C-138/79 *Roquette Frères v Council* [1980] ECR 3333.

¹⁴⁰ See European Parliament, Report on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP, 14 April 2005, Doc. P6_TA_PROV(2005)0132 (draft report A6-0062/2005), para. 1.

¹⁴¹ Decision of the European Parliament and of the Council of 22 October 2008 on the mobilisation of the European Globalisation Adjustment Fund, in accordance with point 28 of the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management, OJ C 139 of 14 June 2006.

¹⁴² European Parliament, Report on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP in 2007, 27 January 2009, Doc. P6_TA(2009)0074, report A6-0019/2009, suggestions para. 1.

gain more rights in the CFSP through its budgetary powers. The Council finds that the granting of minimal funds (when compared to the overall external relations budget) is an annoying stumbling block for the realisation of the CFSP. As such, the Council does not seem prepared to yield to Parliament's "democratic blackmail" and has had recourse to extra-budgetary means of financing through national contributions (Thym 2006: 115-116).

As was briefly described in paragraph 1.2 *supra*, sending armed forces abroad requires a decision by each Member State in relation to its own forces (even when it has agreed to an ESDP operation).¹⁴³ The national parliaments of the Member States are thus able to exert some influence on the decision of whether or not to actively participate in an ESDP operation and as such hold EU level decision-making to account, at least as far as national participation is concerned.

Legitimacy

Input Legitimacy

In terms of the Union's input legitimacy, paragraph 3.2 *supra* showed that the provisions on the CFSP provide the EP with relatively little power to hold the Council to account. It is therefore valid to conclude that the level of input legitimacy of the Union with regard to its policy on conflict resolution/crisis management is low.

With respect to public opinion within the EU, the 66th Eurobarometer of December 2006 shows that more than two out of three respondents support a common foreign policy (Eurobarometer 2006: 22).¹⁴⁴ A similar story emerges when respondents are asked about a common European defence policy. As much as three out of four respondents acknowledge that they are in favour of a common security and defence policy (Eurobarometer 2006: 25).¹⁴⁵ Defence does not seem to be an area of grave concern within the Union, as a mere 2% of respondents indicated it as being one of two issues of most concern to their country (Eurobarometer 2007: 67).¹⁴⁶ On an individual level this picture does not differ greatly as only 1% of the respondents in December 2008 indicated that defence is

¹⁴³ See *supra* note 37.

¹⁴⁴ Response to question: "What is your opinion on each of the following statements? Please tell me for each statement whether you are for it or against it. A common foreign policy among the Member States of the EU, towards other countries".

¹⁴⁵ Response to question: "What is your opinion on each of the following statements? Please tell me for each statement whether you are for it or against it. A common defence and security policy among EU Member States".

¹⁴⁶ Response to the question: "What do you think are the two most important issues facing (OUR COUNTRY) at the moment?"

one of two of the most important issues facing them at the moment (Eurobarometer 2008: 25).¹⁴⁷ In terms of decision-making levels, however, defence is seen as an area where the EU can play a vital role alongside national governments. 62% of the respondents stated that decisions on defence should be made jointly within the EU (Eurobarometer 2007: 13).¹⁴⁸ In December 2008 this figure is even slightly higher, at 64% (Eurobarometer 2008: 50).¹⁴⁹ In terms of budget spending, 20% of the respondents think that most of the EU budget *is* spent on defence and foreign policy, whereas 17% *would like* the EU budget to be spent on defence and foreign policy (Eurobarometer 2008: 68).¹⁵⁰

Output Legitimacy

With respect to the Union's output legitimacy, the HG 2010 and the CHG 2010 are central to analysing the effectiveness of the Union's security and defence operations, whether military or civilian in nature. In the end, the effectiveness of an ESDP operation in terms of conflict resolution/crisis management is determined to a large extent by the degree to which the Union is able to respond both rapidly (in time) and sufficiently (in number and relative power) to a crisis situation.

The Union's capabilities should enable it to act swiftly and thoroughly within theatre operations, contributing to a successful ending of an ESDP mission. The Union has, since the inception of the ESDP, conducted a wide range of operations, many of which have been completed, with a significant number still underway. The effectiveness of EU action *within the operational theatre* determines whether its capabilities have been put to good use. Therefore, the Union's level of output legitimacy is, to a large extent, determined by the successful conclusion of ESDP operations.

Military Capability

In 2006 the Council released a progress overview concerning the development of military capabilities, the so-called Capabilities Improvement Chart 2006.¹⁵¹ This chart details specific progress made with respect to the Union's military capabilities in the period 2002-2006.

¹⁴⁷ Response to question: "And personally, what are the two most important issues you are facing at the moment?"

¹⁴⁸ Response to question: "Decisions should be made jointly within the European Union for ...".

¹⁴⁹ Response to question: "For each of the following areas, do you think decisions should be made by the (NATIONALITY) Government, or made jointly within the European Union?"

¹⁵⁰ Response to questions: "On which of the following do you think most of the European Union budget is spent?" "And on which of the following would you like European Union budget to be spent?"

¹⁵¹ Council of the European Union, Capabilities Improvement Chart I/2006. Available from: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/esdp/89603.pdf. Accessed on 8 June 2009.

In terms of the Union's land capabilities, the level of capability has remained approximately the same as before 2002. The Union's Attack Helicopter Battalions, Medium/Heavy Helicopter Transport Battalions, Reconnaissance and Liaison Helicopter Battalions, Nuclear, Biological and Chemical Battalions (NBC), the Surveillance and Target Acquisition (STA) units/ UAV battalions and the Medical Collective Protection unit were deemed to be significant in terms of capability. Problems identified with the NBC Battalions were solved and improvements were made with regard to the Union's Deployable Laboratories, yet the document also noted a qualitative shortfall. Readiness shortfalls were identified with the Composite Army Aviation Battalions and the Logistic Battalion.¹⁵²

The Union's maritime capabilities (Carrier Based Air Power, Helicopter Carrier, Primary Casualty Receiving Ship, Port and Shipping advisory Team and Amphibious Brigade HQ) also remained approximately the same as before 2002. Improvements were recorded with regard to the Seaport of Disembarkation Units (SPODs). Readiness shortfalls were noted with regard to the Amphibious Brigade HQ. None of the Union's maritime powers/units were deemed as significant in terms of capability. The Union's air powers showed that the Union's capabilities with regard to Suppression of Enemy Air Defence (SEAD), Air to Air Refuelling (AAR), Combat Search and Rescue (CSAR), Cruise Missile and Precision Guided Munitions equipped aircraft (PGM), Dispersed Operating Base (DOB) Air Traffic Control (ATC) and Fire & Crash Support Element, DOB Fuel distribution Support Element and DOB Personnel Support Element were deemed significant in terms of capability and remained approximately in the same condition as before 2002. The problems associated with the Combined Air Operations Centre (CAOC) and the Tactical Air Support for Maritime Operations aircrafts (TASMO) were solved according to the Council, whereas readiness shortfalls remained an issue with both.¹⁵³

With respect to the EU's Command, Control, Communications and Intelligence (C3I), all components (Operation Headquarters (OHQ), Force Headquarters (FHQ), Land Component Commander (LCC) Headquarters, Maritime Component Commander (MCC) Headquarters, Air Component Commander (ACC) Headquarters) were deemed significant in terms of capabilities. However, qualitative shortfalls were noted in all of them. The Union's components of Intelligence, Surveillance, Target Acquisition and Reconnaissance (ISTAR) (Imagery Intelligence Collection, Signal Intelligence Collection, Early Warning and Distant Detection Strategic Level, Theatre Surveillance and

¹⁵² Council of the European Union, Capabilities Improvement Chart I/2006, p. 3.

¹⁵³ Council of the European Union, Capabilities Improvement Chart I/2006, pp. 4-5.

Reconnaissance Air Picture, Theatre Surveillance and Reconnaissance Ground Picture) all remained approximately at pre-2002 levels and were all considered significant in terms of capability.¹⁵⁴

In terms of the EU's strategic mobility, the Strategic Sealift capability remained approximately at pre-2002 levels and was deemed significant. Readiness shortfalls were recorded however, with respect to the Strategic Airlift, particularly in relation to passenger aircrafts. Furthermore, qualitative shortfalls were noted with respect to Tactical Ballistic Missile Defence, in spite of its capabilities being seen as significant.¹⁵⁵

Some further improvements were made with respect to general deficiencies identified in 2005, notably the problems associated with the Patrol Vessels / Corvettes (PV/FS), Mechanised Infantry Battalions, Ground Based Air Defence (GBAD) Batteries, the Medical Treatment Facilities (including Theatre ashore and afloat Medical Treatment Facilities) and the Forward Tactical Aeromedical Evacuation Helos were solved. Only the General Maintenance Engineer Battalions were seen as being significant in terms of capability. All the other forces remained approximately at the pre-2002 level and were not seen as significant in terms of capability. Moreover, readiness shortfalls were recorded with the Amphibious Ships, Aircraft Carrier (CV) Based Recce Pods, Division HQs, Mechanised Infantry Battalions (in spite of improvements made), Amphibious Infantry Battalions, Field Artillery Battalions (amphibious), Short Range Air Defence (SHORAD) Battalions, Group Based Air Defence (GBAD) Medium Level Battalions, GBADs (in spite of improvements made), GBAD Batteries (amphibious), Combat Engineer Battalions (amphibious), Reconnaissance Squadrons (amphibious), Medical Treatment Facilities (including Theatre ashore and afloat Medical Treatment Facilities) (in spite of improvements made), Multinational Support Unit (MSU) Battalions and Forward Tactical Aeromedical Evacuation Helos (in spite of improvements made).¹⁵⁶

On 1 January 2007, the EU Battlegroup Concept reached full operational capability, with the ability to conduct two rapid response operations of battlegroup size (1,500 men). Since that date, the EU has been able to fulfil its ambition of having the capacity to undertake two concurrent single battlegroup-sized rapid response operations, including the ability to launch both operations simultaneously.¹⁵⁷ The Council noted in November 2007 that the most critical shortfalls in terms of

¹⁵⁴ Council of the European Union, Capabilities Improvement Chart I/2006, pp. 5-6.

¹⁵⁵ Council of the European Union, Capabilities Improvement Chart I/2006, p. 6.

¹⁵⁶ Council of the European Union, Capabilities Improvement Chart I/2006, pp. 7-8.

¹⁵⁷ EU Council Secretariat – Factsheet – EU Battlegroups, Brussels, February 2007, p.1. Available from: http://www.consilium.europa.eu/uedocs/cmsUpload/Battlegroups_February_07-factsheet.pdf. Accessed on 8 June 2009.

military capability relate to the areas of force protection, deployability and information superiority.¹⁵⁸ The EU Operations Centre reached operational capability on 1 January 2007 and was successfully activated for the first time during exercise MILEX in June 2007.¹⁵⁹ Furthermore, in 2007 the EDA achieved the general effective functioning of the regime on defence procurement with a good degree of transparency among subscribing Member States. It furthermore adopted a Code of Conduct for promoting transparency and encouraging coordination of investments in the field of defence testing and evaluation facilities, contributing to improved cooperation among participating Member States and reducing overcapacities.¹⁶⁰

Also, in November 2007 the Council approved the Progress Catalogue 2007 which identified quantitative and qualitative military capability shortfalls on the basis of the requirements set out in the Requirements Catalogue 2005 and the contributions compiled in the Force Catalogue 2007. The overall conclusion was that the EU, with a view to 2010, has the capability to conduct the full spectrum of ESDP operations within the parameters of the Strategic Planning Assumptions, with different levels of operational risk arising from the identified shortfalls. Critical shortfalls were noted with respect to the capability to transport forces to theatre, to deploy them in theatre, to protect them and to acquire information superiority.¹⁶¹

In order to improve the EU's strategic airlift capability, the Strategic Airlift Interim Solution (SALIS) was approved by 15 EU Member States plus Canada and Norway, thereby ensuring by contract the timely availability of an additional capability to deploy outsized cargo. The SALIS contract is due to expire in 2012. Russian and Ukrainian Antonov aircraft are being used as an interim solution to

¹⁵⁸ Council of the European Union, 2831st External Relations Council Meeting, Council Conclusions on ESDP, Brussels, 19-20 November 2007, point 24. See also EU Council Secretariat, European Security and Defence Policy – Development of European Military Capabilities, Brussels, September 2008, p. 5. Available from: <http://www.consilium.europa.eu/uedocs/cmsUpload/080905FactsheetcapacitesmilitairesEN.pdf>. Accessed on 8 June 2009.

¹⁵⁹ See: Council of the European Union, *supra* note 157, p. 6. Exercise MILEX is a Command Post Exercise (CPX) and focused on the key military aspects of crisis management. No troops were deployed. During the conduct of the exercise the EU Operations Centre (EU OpsCentre), composed of military and civilian elements, was activated for the first time. The exercise focused on the interaction between the EU OpsCentre in Brussels and an EU Force Headquarters (FHQ) in Enköping (Sweden), in the context of an autonomous EU-led military operation. This exercise provided a good opportunity to train the personnel of the OpsCentre and its interaction with the FHQ. In parallel with this exercise, internal training activities for civilian personnel were also conducted.

¹⁶⁰ Council of the European Union, *supra* note 157, p. 8.

¹⁶¹ EU Council Secretariat, European Security and Defence Policy – Development of European Military Capabilities, Brussels, September 2008, p. 1. Available from: <http://www.consilium.europa.eu/uedocs/cmsUpload/080905FactsheetcapacitesmilitairesEN.pdf>. Accessed on 8 June 2009.

meet shortfalls in European strategic airlift capabilities, pending deliveries of Airbus A400M aircraft, expected to start in 2010.

Civilian Crisis Management

The 2006 Civilian Capabilities Improvement Conference noted that progress had been made on rapidly-deployable capabilities. In particular, a pool of experts deployable in CRTs, a CRT training program, standard structures for Integrated Police Units and Formed Police Units (IPUs/FPUs) were established. By the end of 2006 the Union had a pool of almost 100 pre-identified and trained experts, deployable within 5 days.¹⁶²

The CHG 2008 yielded various results including *inter alia* a set of scenarios corresponding to future challenges for civilian ESDP, allowing the EU to anticipate actual ESDP mission requirements which emerge over time; a detailed reference list of civilian capabilities possibly required for the conduct of ESDP missions, which allowed the preparation of a Civilian Capability Management Tool that facilitates mission planning and recruitment of civilian personnel for ESDP missions as well as systematic capability planning for possible future ESDP missions; a set of recommendations and guidelines on the raising of personnel for EU civilian crisis management; awareness raising concerning civilian ESDP in Member States as well as among potential contributors to ESDP actions, such as international organizations, non-EU States, NGOs and civil-society organisations; the development of the CRTs (see *supra*); and aiding the development of police elements, notably IPUs and FPUs.¹⁶³

Despite this progress, the Final Report on the CHG mentions several aspects for further consideration, including *inter alia* the need to further develop civilian crisis management capabilities both in qualitative and quantitative terms; the need to continue to increase the political visibility of civilian capability development in Member States and at EU level; the need to improve mission security and the inclusion of intelligence where relevant; the stepping up of efforts to identify and exploit possible synergies between civilian and military ESDP capabilities of Member States and all relevant capabilities of the Community; expanding coordination with third-pillar actors; a more appropriate application of the CRTs (deployment occurred mostly on an individual basis as opposed to the team format originally envisaged); more systematic learning from EU-led

¹⁶² Council of the European Union, Civilian Capabilities Improvement Conference 2006 Ministerial Declaration, Brussels, 13 November 2006, p. 1.

¹⁶³ Final Report on the Civilian Headline Goal 2008, *supra* note 101, pp. 4-5.

operations and exercises; and the introduction of periodic reviews of Member States' indications of potential availability and the possibility to update such indications.¹⁶⁴

The November 2008 External Relations Council announced that the Watchkeeping Capability and Civilian Planning and Conduct Capability had attained full operational capability in August and November 2008 respectively. Due to the full operational capability of these two capabilities, the Union was able to have ten civilian missions deployed in eight theatres of operation as of December 2008.¹⁶⁵ It also listed several measures that should be accomplished as priority actions in the course of 2009 including *inter alia* the development of a model suited to rapid-reaction situations, based on the procedures for the rapid deployment of the missions in Georgia, Rafah and Aceh (see *supra*); speeding up the development of capability management tools, improving training for personnel and continuing to strengthen CRTs; improving the capacity of crisis management structures to give missions the necessary support for their deployment, particularly with regard to administrative and financial matters, logistics, and human resources management; developing national strategies to facilitate the deployment of mission personnel and encourage exchange of good practices between Member States; strengthening coherence between ESDP missions and other European Union instruments and developing synergies with the capabilities of other players, in particular those of other international organisations, partner States and civil society organisations.¹⁶⁶

The December 2008 Declaration on Strengthening Capabilities called for priority objectives in 2010 including *inter alia* the strengthening of the EU's capability to plan and deploy several missions at the same time (see also *supra*), in particular in rapid-response situations; continuing to develop suitable management tools for efficiently mobilizing capabilities needed for civilian missions; improving training for personnel; developing the administrative, financial, logistical and human resources aspects of the mission support function; developing national strategies to facilitate the deployment of mission personnel and encourage the exchange of best practices between Member States; strengthening coherence and synergies between ESDP missions and other EU instruments (see also *supra*); and introducing a proper feedback system for ESDP civilian missions.¹⁶⁷

¹⁶⁴ Final Report on the Civilian Headline Goal 2008, *supra* note 101, pp. 5-7.

¹⁶⁵ Council of the European Union, *supra* note 83, p. 2.

¹⁶⁶ Council of the European Union, *supra* note 110, pp-2-3. See also para. 2.3.1 *supra*.

¹⁶⁷ Council of the European Union, *supra* note 83, pp. 2-3.

ESDP Operations

Currently 13 ESDP operations in total (both civilian and military) are still underway.¹⁶⁸ Nine ESDP missions have been completed thus far. Of these missions, three were in the Democratic Republic of Congo (see *supra*). The other six were in Sudan, FYROM (three missions), Georgia and the Indonesian Province of Aceh. Operations ranged in size from the modest (the 15 personnel assigned to the security sector reform mission in Guinea-Bissau) to Operation Althea in Bosnia and Herzegovina, which at its peak involved 7,000 troops (reduced, in February 2007, to 2,500 backed up by an ‘over the horizon’ reserve) (Menon, 2009, p. 229).

Generally speaking, the EU interventions seem to have had a positive impact. Observers welcomed the outcomes of the missions in FYROM (Dobbins 2008: 92-94). Furthermore, EU and NATO interventions in FYROM may have contributed to averting civil conflict (Menon 2009: 229). The peace accord that was brokered in Aceh has held through, and a report by Oxfam (2008) has noted that EUFOR Chad “has made many civilians feel safer through its activities, which include patrolling known dangerous routes, destroying unexploded ordnance, making contact with local leaders, and positioning itself defensively around civilians during rebel and government fighting”.

Despite this success, military missions in particular have been somewhat limited in scope. The first ESDP military deployment (Operation Concordia in FYROM) involved only 400 personnel, whereas other Balkan deployments were notable for the relatively benign theatres into which they were deployed (Dobbins 2008: 98). A significant proportion of EU military interventions have been in accordance with action on the ground by other institutions (NATO troops preceded those of the EU in both Macedonia and Bosnia, while the Union operated alongside UN forces in Congo) (Menon 2009: 230). A consequence of this limited scale has been the missions’ inability to fully resolve problems on the ground, as seen by a UNSG Report noting that EU intervention addressed “only the consequences and not the issues underlying the conflict in Chad” (2008: para. 52). Operation Artemis, deployed to the Democratic Republic of Congo in 2003, was the object of much hostile comment from humanitarian groups for being “totally insufficient” to meet the challenges there, due to its restricted scope in terms of both space and time (ICG 2006a). Médecins Sans Frontières (2003) complained that European forces managed to guarantee civilian safety only in very limited areas. Also, the security sector reform mission in the Democratic Republic of Congo was criticised for its small size and limited budget (Gegout 2007: 6). Finally, the operation in the Democratic Republic of Congo in 2006 failed to solve the fundamental problems on the ground and withdrew

¹⁶⁸ See <http://www.consilium.europa.eu/uedocs/cmsUpload/mapENmay09.pdf>. Accessed on 15 June 2009.

while tensions were still high (Gegout 2007: 8). With respect to civilian operations, the International Crisis Group was very critical of the EU's police training mission in Bosnia, emphasising that crime rates increased after its deployment and that EU officials failed to act on information about war criminals, interpreting their mandate as narrowly as possible (ICG 2006b).

Critique at the level of ambition shown by Member States has been most fierce in those instances when the Union has not intervened at all (Dobbins 2008: 107-108). During the Darfur crisis of 2004 and the outbreak of violence within the Democratic Republic of Congo in the second half of 2008, EU deployments were discussed and eventually rejected (Menon 2009: 231). This is an ever more pressing issue due to the declared operationability of the ESDP a month prior to the outbreak of violence in Darfur (see *supra*). At the time of the debates concerning deployment, the Union was anxious (especially given what had happened in Iraq) to act on the basis of a UN Security Council resolution. Yet the text eventually agreed on in August 2005 made any deployment conditional on the agreement of the Sudanese government, a consent which never came (Menon 2009: 231).

However, UN authorisation was not absent when fighting erupted in the Democratic Republic of Congo in late 2008. In December, the UN Secretary-General himself appealed directly to the Union for an intervention force. Moreover, by this time, not only had the EU Member States gathered considerable experience of military interventions in sub-Saharan Africa, they had also developed capabilities designed specifically to facilitate such interventions (cf EU-Battlegroups) (Jacoby & Jones 2008: 316; Ulriksen et al. 2004: 522-523; Cornish & Edwards 2005: 808). Ultimately, however, no consensus could be reached (Menon 2009: 232).

Conclusion

Judging from the above, it is fair to say that significant progress has been made with regard to the HG, particular with respect to the Battlegroup concept. Several areas warrant attention, however. The Union's maritime powers/units are insignificant in terms of capability. Also, the CAOC and TASMO suffer from readiness shortfalls. Strategic airlifts remain problematic as well as Tactical Ballistic Missile Defence. Furthermore, many of the 2005 deficiencies were not adequately dealt with and remain short of full operational capability (see *supra*). When requested to deploy across multiple theatres over the full spectrum of ESDP operations this could pose difficulties for the Union, thereby hampering its output legitimacy.

The EU has made significant progress with respect to the CHG 2008. Improving qualitative and quantitative capabilities, as well as synergies with ESDP military operations, remain a point of consideration, however (for a full list, see *supra*). In order to fully attain the CHG 2010, much work still needs to be done. Therefore, in order for the Union's output legitimacy with respect to civilian crisis management to be fully in line with its objectives, much depends on the progress that is made in the course of 2009.

Finally, there appears to be disagreement about the effectiveness of ESDP operations. The positive comments on the missions in FYROM, Aceh and Chad notwithstanding (see *supra*), critical voices have been heard on the limited scope and ambition displayed by ESDP missions. As the results differed significantly per mission, it is difficult to judge whether ESDP missions displayed *overall* a sufficient level of output legitimacy. In spite of this criticism, one has to note that the EU has often undertaken missions that others, such as the US, have not been willing to conduct, and despite being limited their ambitions have generally been achieved. Furthermore, the limited scope of missions has served to convince Member States to contribute in the first place (Menon 2009: 230-231). Also, the fact that European interventions were increasingly carried out under an ESDP instead of a UN flag has served as somewhat of a reassurance for Member States concerned about the open-ended nature of UN operations (Dobbins 2008: 97).

References

Official EU Documents

Council of the European Union, 1999. *Helsinki Headline Goal*, Helsinki, 10 and 11 December 1999. Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/Helsinki%20Headline%20Goal.pdf>.

Council of the European Union, 2000. *Preparatory document related to CESDP: establishment of a European Union Committee for Civilian Crisis Management*. Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/Preparatory%20document%20CESDP%20-%20Committee.pdf>.

Council of the European Union, 2001. *2368th Council meeting General Affairs*, Brussels, 19-20 November 2001. Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/European%20Capability%20Action%20Plan%20-%20Excerpt%20Press%20Release%20November%202001.pdf>.

Council of the European Union, 2003. *A Secure Europe in a Better World, European Security Strategy*, Brussels, 12 December 2003.

Council of the European Union, 2003. *Declaration on EU Military Capabilities*, Council Doc. 9379/03 (Presse 138). Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/Declaration%20on%20EU%20Military%20Capabilities%20-%20May%202003.pdf>.

Council of the European Union, 2004. *Action Plan for the Civilian Aspects of ESDP, Adopted by the European Council*, Brussels, 17 and 18 June 2004. Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/Action%20Plan%20for%20Civilian%20Aspects%20of%20ESDP.pdf>.

Council of the European Union, 2004. *Civilian Capabilities Conference: Ministerial Declaration*, Brussels, 22 November 2004. Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/COMMITMENT%20CONFERENCE%20MINISTERIAL%20DECLARATION%2022.11.04.pdf>.

Council of the European Union, 2004. *Civilian Headline Goal 2008*, Council Doc. 15863/4, 7 December 2004.

Council of the European Union, 2004. *Declaration of EU Chiefs of Police following the meeting on police aspects in the ESDP-framework, Warnsveld, the Netherlands, 25 October 2004, endorsed by the General Affairs and External Relations Council on 22 November 2004*. Brussels, 22 and 23 November 2004.

Council of the European Union, 2004. *Headline Goal 2010 approved by General Affairs and External Relations Council on 17 May 2004 endorsed by the European Council of 17 and 18 June 2004*. Brussels, 17 and 18 June 2004. Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/2010%20Headline%20Goal.pdf>.

Council of the European Union, 2004. *Military Commitment Conference, Declaration on European Military Capabilities*. Brussels, 24 November 2004, Available from:

<http://www.consilium.europa.eu/uedocs/cmsUpload/MILITARY%20CAPABILITY%20COMMITMENT%20CONFERENCE%2022.11.04.pdf>.

Council of the European Union, 2006. *2761st External Relations Council Meeting, Council Conclusions on European Security and Defence Policy*, Brussels, 13 and 14 November 2006.

Council of the European Union, 2006. *Capabilities Improvement Chart I/2006*. Available from:

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

Council of the European Union, 2006. *Civilian Capabilities Improvement Conference 2006 Ministerial Declaration*, Brussels, 13 November 2006.

Council of the European Union, 2007. *2831st External Relations Council Meeting, Council Conclusions on ESDP*. Brussels, 19-20 November 2007.

Council of the European Union, 2007. *Civilian Capabilities Improvement Conference 2007, Ministerial Declaration*. Brussels, 19 November 2007.

Council of the European Union, 2007. *Civilian Headline Goal 2010 approved by the ministerial Civilian Capabilities Improvement Conference and noted by the General Affairs and External Relations Council*, Council Doc. 14823/7, 19 November 2007.

Council of the European Union, 2007. *Final Report on the Civilian Headline Goal 2008 approved by the ministerial Civilian Capabilities Improvement Conference and noted by the General Affairs and External Relations Council*, Council Doc. 14807/07, 19 November 2007.

Council of the European Union, 2007. *Guidelines for Command and Control Structure for EU Civilian Operations in Crisis management*, Council Doc. 10381/07, 17 June 2007.

- Council of the European Union, 2008. *2903rd External Relations Council Meeting, Conclusions on the ESDP*. Brussels, 10 and 11 November 2008.
- Council of the European Union, 2008. *CFSP Guide – compilation of relevant texts*, Council Doc. 10898/08, 18 June 2008.
- Council of the European Union, 2008. *Declaration on strengthening capabilities*, Council Doc. 104676, 11 December 2008, available from:
http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressData/en/esdp/104676.pdf.
- Council of the European Union, 2009. *2943rd External Relations Council Meeting, Council conclusions on European Security and Defence Policy*. Brussels, 18 May 2009.
- EU Council Secretariat, 2007. *Factsheet – EU Battlegroups*, Brussels, February 2007. Available from:
http://www.consilium.europa.eu/uedocs/cmsUpload/Battlegroups_February_07-factsheet.pdf.
- EU Council Secretariat, 2008. *European Security and Defence Policy – Development of European Military Capabilities*, Brussels, September 2008.
- Eurobarometer, 2006. *Standard Eurobarometer 66, First Results*, December 2006.
- Eurobarometer, 2007. *Standard Eurobarometer 67, First Results*, June 2007.
- Eurobarometer, 2008. *Standard Eurobarometer 70, First Results*, December 2008.
- European Commission, 2001. *Communication from the Commission on Conflict Prevention*, COM(2000) 211 final, 11 April 2001.
- European Commission, 2004. *Green Paper: Defence Procurement*, COM(2004) 608 final, 23 September 2004.
- European Commission, 2005. *Communication from the Commission to the Council and the European Parliament on the results of the consultation launched by the Green Paper on Defence Procurement and on the future Commission initiatives*, COM(2005) 626 final, 6 December 2005.
- European Commission, 2006. *Interpretative Communication on the application of Article 296 of the Treaty in the field of defence procurement*, COM(2006) 779 final, 7 December 2006.
- European Council, 1999. *Presidency Conclusions*, Cologne European Council, 3-4 June 1999
- European Council, 1999. *Presidency Conclusions*, Helsinki European Council, 10-11 December 1999.
- European Council, 2004. *Presidency Conclusions*, Brussels European Council, 17-18 June 2004.
- European Defence Agency, 2006. *An Initial Long-Term Vision for European Defence Capability and Capacity Needs*, Brussels, 3 October 2006.
- European Defence Agency, 2007. *Framework for a European Defence Research & Technology Strategy*. Brussels, 19 November, 2007. Available from:
<http://www.eda.europa.eu/WebUtils/downloadfile.aspx?fileid=325>.
- European Defence Agency, 2008. *EU governments endorse capability plan for future military needs, pledge joint efforts*, Brussels 8 July 2008. Available from:
http://www.consilium.europa.eu/uedocs/cmsUpload/080708-PR_Capability_plan.pdf.
- European Parliament, 2005. *Report on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP*. Doc. P6_TA_PROV(2005)0132 (draft report A6-0062/2005), Brussels, 14 April 2005.

European Parliament, 2009. *Report on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP in 2007*. Doc. P6_TA(2009)0074, report A6-0019/2009, Brussels, 27 January 2009.

Doctrine

Biscop, S., & Andersson, J.J., eds. 2007. *The European Security Strategy – Forging a Global Europe*. London: Routledge.

Bloed, A., & Wessel, R. A., eds. 1994. *The Changing Functions of the Western European Union (WEU): Introduction and Basic Documents*. Dordrecht: Nijhoff.

Cornish, P., and Edwards, G., 2005. The strategic culture of the European Union: a progress report *International Affairs*, 81(4), pp. 801-820.

Dagand, S., 2008. The Impact of the Lisbon Treaty on CFSP and ESDP. *European Security Review*, 37, pp. 5-9.

Dobbins, J., 2008. Europe's role in nation building. *Survival*, 50(3), pp. 83-110.

Duke, S., 2008. The Lisbon Treaty and External Relations. *EIPASCOPE 2008/1*. Maastricht: European Institute of Public Administration.

Duke, S., 2001. CESDP: Nice's Overtrumped Success? *European Foreign Affairs Review*, 6, pp. 155-175.

Gegout, C., 2007. The EU and security in the Democratic Republic of Congo: unfinished business. *CFSP Forum*, 4(6), pp. 5-9.

Gerteiser, K., 2002. *Die Sicherheits- und Verteidigungspolitik der Europäischen Union. Rechtliche Analyse der gegenwärtigen Struktur und der Optionen zur weiteren Entwicklung*. Frankfurt am Main: Peter Lang.

Gros-Verheyde, N., 2007. Defence Policy is enshrined in new treaty. *Europolitics Special Edition: Treaty of Lisbon, Here is What Changes!* 35(3407), pp.36-37

ICG, 2006a. 'Congo crisis: military intervention in Ituri', *ICG Africa Report N°64*, 13 June 2003.

ICG, 2006b. Bosnia's stalled police reform: no progress, no EU. *Crisis Group Europe Report N°164*, 6 September 2005

Jacoby, W., & Jones, C., 2008. The EU battle groups in Sweden and the Czech Republic: what national defense reforms tell us about European rapid reaction capabilities. *European Security*, 17(2), pp. 315-338.

Jaberg, S., 1998. *Systeme kollektiver Sicherheit in und für Europa in Theorie, Praxis und Entwurf: ein systemwissenschaftlicher Versuch*. Baden-Baden: Nomos.

Graf, von Kielmanssegg S., 2006. Die verteidigungspolitischen Kompetenzen der Europäischen Union. *Europarecht (EuR)*, 41, pp. 182-200.

Koutrakos, P., 2006. *EU International Relations Law*. Oxford: Hart.

Médecins sans Frontières, 2003. *Ituri: unkept promises? A pretence of protection and inadequate assistance*. MSF report. 25 July 2003. Paris.

Menon, A., 2009. Empowering Paradise? The ESDP at ten. *International Affairs*, 85(2), pp. 227-246.

Naert, F., 2008. *International Law Aspects of the EU's Security and Defence Policy, With a Particular Focus on the Law of Armed Conflict and Human Rights*. Ph.D. diss., University of Leuven, Belgium.

Österdahl, I., 2001. The EU and its Member States, Other States, and International Organizations – The Common European Security and Defence Policy after Nice. *Nordic Journal of International Law*, 70, pp. 341-372.

Oxfam, 2008. Mission incomplete: why civilians remain at risk in eastern Chad. *Oxfam Briefing Paper n°119*, Oxford.

Schöllhorn, H., 1996. *Der sicherheitspolitische Handlungsrahmen der Europäische Union: eine Darstellung der rechtlichen und tatsächlichen Möglichkeiten für operative Maßnahmen der Krisenbewältigung*. Baden-Baden: Nomos.

Thym, D., 2006. Beyond Parliament's Reach? The Role of the European Parliament in the CFSP. *European Foreign Affairs Review*, 11(3), pp. 109-127.

Ulriksen, C., Gourlay, C., & Mace, C., 2004. Operation Artemis: the shape of things to come? *International Peacekeeping*, 11(3), pp. 508–525.

United Nations Secretary General, 2008. *Report of the Secretary-General on the United Nations Mission in the Central African Republic and Chad*. S/2008/444, 8 July 2008.

Weller, M., 1998. The European Union within the “European Security Architecture”, in M. Koskenneemi, ed. *International Law Aspects of the European Union*. The Hague: Kluwer International.



EU-GRASP

Changing Multilateralism: the EU as a Global-regional Actor in Security and Peace, or EU-GRASP in short, is an EU funded FP7 Programme. EU-GRASP aims to contribute to the analysis and articulation of the current and future role of the EU as a global actor in multilateral security governance, in a context of challenged multilateralism, where the EU aims at “effective multilateralism”. This project therefore examines the notion and practice of multilateralism in order to provide the required theoretical background for assessing the linkages between the EU’s current security activities with multi-polarism, international law, regional integration processes and the United Nations system.

Partners

EU-GRASP is coordinated by the United Nations University – Comparative regional Integration Studies (UNU-CRIS). The other partners of EU-GRASP are based worldwide and include: University of Warwick (UK), University of Gothenburg (Sweden), Florence Forum on the Problems of Peace and War (Italy), KULeuven (Belgium), Centre for International Governance Innovation (Canada), Peking University (China), Institute for Security Studies (South Africa) and Ben-Gurion University of the Negev (Israel).

EU-GRASP Working Papers

Contact: EU-GRASP Coordination Team
72 Poterierei – B-8000 – Bruges – Belgium
Email: faert@cris.unu.edu or efanta@cris.unu.edu

Additional information available on the website: www.eugrasp.eu

