

Is a Constitutional framework *really* needed for the development of a ESDP?*

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INTRODUCTION

On 12 December 2003, under Italian Presidency, the Brussels European Council meeting came to a close without an agreement on a new Constitutional Treaty for the European Union (see Closa 2004; *El País*, 14.12.03). This treaty would have been the result of the work of the European Convention (March 2002-July 2003) and that of the IGC (Intergovernmental Conference) that followed the Convention during October-December 2003. The objective of the reform was to simplify the existing EU treaties but also to agree on a modified decision-making system for an enlarged EU, and, thus, facilitate the emergence of a more influential EU in the world.

How the draft Constitutional Treaty would alter the existing security and defence arrangements has been discussed elsewhere (Fernández 2003a; Fernández 2003b; Fernández 2003c; Everts and Keohane 2003; Walls Cushman 2004; see also Aldecoa 2004; Barbé and Mestres 2004; Duke 2003). We can summarize these changes as follows:

- extending the so-called Petersberg missions;
- strengthening military capabilities, including rapid reaction forces, the way these forces are financed, and how to deploy them faster;
- introducing a mutual defence clause and a solidarity clause (natural disasters and international terrorism);
- the creation of a European Armaments, Research and Military Capabilities Agency;
- the introduction of flexibility in defence issues mainly through the concept of 'structured cooperation';
- the creation of an EU Minister for External Affairs;
- a single international legal personality for the EU.

As there was no agreement on the draft Treaty, the above and other changes have been put on hold¹. However, there have been developments in EU security and defence matters before and after mid-December 2003. This paper analyses those developments in light of

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¹ Disagreements over the distribution of votes in the Council and over the number of Commissioners in an enlarged EU were presented as the main reasons for the failure in the Brussels European Council meeting.

the current paralysis over the EU constitutional draft. Its main objective is to discuss whether a constitutional framework is indeed necessary for the emergence of a true EU defence, or, if the current situation where progress is made irrespective of the adoption of a Constitution can continue for the foreseeable future.

The paper consists of 4 parts: The first Part describes recent developments in EU defence, with an emphasis on events since the failed Brussels meeting. The second Part analyses the reasons why progress on defence has continued to take place. The third Part assesses the consequences that those developments can have in the future, especially if they remain outside a Constitutional framework. The fourth part addresses the related question of transatlantic relations, in particular how EU defence developments can be reconciled with the current US administration unilateral stance on international affairs. The fifth Part concludes by trying to offer an answer to the question of whether a constitutional framework is indeed needed for the emergence of an ESDP. Conversely, it also considers the question of whether an ESDP is needed for a European Constitution. There follows a general conclusion summarizing the main points of this paper.

1. Developments in ESDP since the end of the European Convention's work

What have been the developments in the ESDP since the end of the European Convention's work? We can group them under the following sub-headings:

- agreement over the first ever European security strategy (the so-called 'Solana doctrine');
- progress towards a common defence procurement market and the setting up of an armaments agency;
- developments towards specific military headquarters for the ESDP;
- a rapid deployment force;
- actual use of EU forces in peace-keeping operations in the world.

The so-called 'Solana doctrine' was first presented to the European Council meeting held near Salonica in June 2003 in order to coincide with the official end of the Convention's work. It was later formally accepted in the December Brussels European Council meeting (*A secure Europe in a better world – European Security Strategy*, Brussels, 12 December 2003). This document is the first of its kind. It fills an important gap as it is the first attempt to define the EU's global interests and how the Union proposes to defend and promote them. It also identifies the new threats and challenges that the EU is currently facing in the world. These are:

- international terrorism,
- proliferation of weapons of mass destruction,

- regional conflicts,
- failed states,
- organised crime.

To a large extent the document is also a response to the new US doctrine (see section 4 below). To date the Union had produced three specific CFSP common strategies (respectively on Russia in May 1999, on the Ukraine in December 1999, and on the Mediterranean in June 2000) but it is the first time that there is a global approach to foreign and security policies, although there was a previous attempt in 1992 with the so-called 'Asolo List', during the Portuguese Presidency of that year. But that particular document mainly amounted to a list of geographical priority areas and some vague criteria for drawing it up (see Berenskoetter 2004: 2). The Solana paper is supposed to be the 'bible' for any future EU foreign and security policy, in particular for ESDP operations. It is therefore relevant to this paper as it falls within the wider framework of EU defence matters.

There has also been progress towards a common defence procurement market and the setting up of an armaments agency. In the first instance, following work on the 'Headline Goals' linked to the setting up of a Rapid Deployment Force of about 60000 troops (declared operational in Laeken in December 2001), there has been progress on identifying the current weaknesses that national EU defence policies and industries encounter, and, more importantly, on what needs to be done. As the previous Treaty provisions explicitly excluded the defence industry from open competition (article 296.1 of the Treaty of Rome), a reform had to be included in the Treaties of Amsterdam and of Nice (see IAA Report 2003: 79). Accordingly, article 17.1 mentions the progressive framing of a common defence policy, including cooperation between member states in the field of armaments. Recent progress also reflects further work carried out towards such an objective since the 1998 Saint-Malo Franco-British Declaration and the launch of the ESDP. Currently, there is a lot of work being done to try and facilitate an integrated defence procurement market in Europe (see IAA 2003 Report). More specifically, the setting up of an armaments agency (which was included as one of the Convention's proposal) is being set up irrespective of the problems on the draft Treaty. Thus, a Defence Agency Establishment Team began its work in February 2004 with a view to having an operational Agency by June of that same year (Presidency Report on the ESDP presented to the Brussels European Council Meeting, 9.12.03, doc.15814/03; CFSP Press Communiqué 'Javier Solana, EU High Representative for the CFSP, appoints the leader of the Defence Agency Establishment Team', doc.S0025/04, 28.01.04; see also Sorroza and García 2004).

Furthermore, there has been progress towards the setting up of specific EU military headquarters for the ESDP. The discussion of this question came to a fore during the controversy (and deep EU divisions) over the Iraq war when France, Germany, Belgium and Luxembourg met *à quatre* in April 2003. The main bone of contention was whether to set up autonomous EU headquarters, meaning separate from NATO or headquarters linked to those already existing in NATO. In the second half of 2003, once an effort was made to try and heal existing deep EU internal divisions, the British played an intermediary role and added their own weight to the Franco-German axis, thus facilitating an agreement at the end of 2003 over a autonomous EU military planning cell in Brussels. As was predicted in early 2003:

‘An autonomous European military planning element, independent of NATO (...) will be established within the existing European military staff in Brussels, whose present task is to advise the European Council on strategic developments. (... Moreover,) a European planning cell is to be introduced into NATO’s supreme military headquarters, SHAPE, near Mons, Belgium, whose international staff will continue to have the responsibility for planning Europe’s NATO-assisted operations’ (Bonnart 2003).

Such a double deal facilitates the so-called ‘Berlin plus’ agreement between the EU and NATO which was agreed in late 2002 for operations where EU members of NATO need to use some of the Alliance’s assets but without its participation (see Andrés 2003).

There was also agreement over the need to prepare a rapid deployment force of 1500 troops to be deployable within 10 days to a distance of up to 4000 kms for a period of 30 to 120 days (*El País*, 30.11.03, ‘Nace una Europa de la defensa que incluye unidades de combate’). This will eventually apply to all EU member states from 2007 if possible, but for the time being it will apply to countries that currently possess such capabilities, namely, the UK, France, Italy and Germany. This would represent a much smaller force than the one already provided in the earlier Headline Goal objective (60000 troops). Another EU force that remains valid. Equally, it would be distinct from the newly announced NATO Response Force (NRF) of 20000 troops (*El País*, 16.10.03, ‘España aporta 2.200 soldados a la fuerza rápida de la OTAN’). Thus, this flexible approach reflects in practice the proposed ‘structured cooperation’ that is included in the draft Constitutional Treaty.

There have also been developments in the actual use of EU forces in peace-keeping operations in the world: in the FYROM Macedonia, and in the Congo (respectively operations Concordia and Artemis). Operation Concordia was the first EU military operation where the EU used NATO assets. The possibility of EU forces replacing NATO in Bosnia this year is also being considered.

From the above, it becomes clear that despite the problems that the draft treaty has encountered in recent months, there has been clear progress on the ground towards a ESDP. There have been new documents, new organs and new plans. There have been a number of actual actions throughout the world with more being planned for the future. This reality must be contrasted to the paralysis of the Constitution debate, following the December 2003 *debâcle* in Brussels.

2. Reasons for extra-constitutional progress in ESDP

Clearly, there is a need for more defence in the EU and there equally is the necessary political will from at least some member states to do so. The 'lessons' of the 1991 Gulf War, those from Bosnia in the mid-1990s, and from Kosovo in 1999, but also those from 11th September 2001, Afghanistan in 2002 and Iraq in 2003, have made the Europeans realize that the EU will not be taken seriously in world affairs if it does not acquire a defence dimension with real military muscle. Disagreements continue over what kind of defence structure but the need to go beyond the Nice treaty amendments is clearly signalled in the intentions of all actors involved. Now that the wider demand has been confirmed and now that all member states and EU institutions have expressed the need to move forward on defence, what still remains to be finalised are the details. As we all know, the devil is in the detail. We suggest here a number of (not necessarily mutually exclusive) reasons for such a development, building on a number of leading theories of International Relations/European foreign policy (see *FORNET first plenary meeting on 25-26 April 2003 sessions on theoretical and conceptual approaches to CFSP/ESDP*: www.fornet.info).

First, the realist explanation: both France and the UK are looking for more power and influence within the enlarged EU, as those two countries remain of primordial importance for any future ESDP. It is therefore not a coincidence that Chirac and Blair took the initiative at Saint-Malo, a process that momentarily slowed down due to the profound Franco-British divergence over Iraq but a process that has now re-started in the post-Iraq war period. Because of the multifarious nature of power (i.e. not exclusively military), the economic powerhouse that Germany is has been added to this push. To a certain extent, this triangle could be reversed in time as, chronologically speaking, the French have been closer to the Germans (the Franco-German axis, since the 1963 Elysée Treaty). It could therefore be argued that it is Blair who is joining now Chirac and Schroeder. Such a development is also consistent with the traditional realist argument about an international division of labour among alliance members, thus bringing what the UK is best at: defence (especially as a counterweight to its absence from the single currency system). There will also be clear economic benefits for the arms industries of all countries that possess one. Six

of them are important actors in this field: Britain, France, Germany, Italy, Spain, Sweden. Whereas another eight of them include some form of defence industrial activities, although with a much lesser direct employment effect (the Netherlands, Greece, Finland, Portugal, Denmark, Austria, Belgium and Luxembourg; see IAA report 2003: 38). But the limits of cooperation are also clear, not only in the need to have a small group leading the process (and the fear of a *Directoire*), but also in the tension that appeared between France and Britain over who was going to head the newly constituted Arms Agency (see Fernández 2004).

Second, there are explanations that are more closely related to the pluralist school of thought in international relations, and more specifically, FPA (foreign policy analysis) and its domestic sources of foreign policy approach (see Clarke 1996). According to this approach, we can refer to two different but related levels: (i) at the domestic level of EU member states there were a series of reasons for such developments ranging from poor economic results in France and Germany, to the will to project economic power beyond Europe (Germany) and general international power (France), to the UK's need to show its own public opinion that it had an autonomous foreign and security policy (i.e. from that of the USA) following the failure to find WMDs in Iraq. So, national preferences for European integration arise through domestic political bargaining of internal interests which are then further bargained at the EU level in an intergovernmental fashion (Morasvcik 1993). (ii) at the EU level, and especially as a result of the Iraq war of 2003, EU political actors, but also public opinions, are demanding a major international role and a single EU voice. For instance it has been argued that as a result of the conflict in Iraq in 2003 there is now evidence of an emerging European public opinion (Menendez del Valle 2003). This approach is somewhat *wishful thinking* in our view because it ignores both the overall impact of the Iraq saga on the EU (Chari and Cavatorta 2003), and there was no unanimity among public opinions (Kritzinger 2003; Binzer Hobolt and Klemmensen 2003). Finally, it fails to consider the general discrepancies between the views of the elites and their respective publics or issues such as the volatility of public opinion on foreign policy issues² (see Stavridis 1993; see also Stavridis 2001a). The saga over Iraq appears to confirm that the need to militarize the EU did not only come from elites (including the military) but also from below, meaning from interventionists demanding respect of international law (as was the case in Iraq in 1991), from those using ethical grounds for military action (as was the case in Kosovo in 1999), and from those wanting an autonomous EU voice (as was the case over Iraq in 2003). If one adds the need for a more proactive EU voice (including in military terms), then calls made by those public opinions and elites for 'more Europe' in

² It is also important to note that whereas the EP agreed to a common resolution on the situation in Iraq prior and after the war (respectively in January and September 2003), it was unable to do so in March 2003 after the start of hostilities.

defence in order to avoid US unilateralism can also explain why all those domestic sources of defence policy are facilitating the emergence of an ESDP, with or without a Constitution.

Third, a Europeanisation approach³ (that would in part combine the approaches of neo-institutionalists, of traditional institutionalists, and of constructivists) would argue that because the European integration process has reached a new stage with the introduction of the euro, European citizenship and other similar developments, it is a logical consequence of institutional *spill over* to address now defence issues. The existence of ESDP organs and instruments, combined with Mr. CFSP and other specific foreign policy decision-making procedures, create the conditions for the progressive Europeanisation of the way defence officials think and behave, both at the EU and at the national levels. However, this approach does not take this development for granted. Thus, following its own logic, it calls for the establishment of a 'European defence academy' and a 'European diplomatic school' in order to set the long term bases for such a development (Mendez-Vigo 2002; Final Report Group VII 2002: 6; Sobrino 2003; Fernández 2003a; Monar 2000; the February 2004 Press Release of the French Defence Ministry about *the Collège Européen de Sécurité et de Défense*: www.defense.gouv.fr, 12.02.04). For the time being, the Commission proposal to eventually join all existing national diplomatic services and Commission delegations abroad into a big European diplomatic corps confirms the institutionalist approach to more defence in Europe. The constructivist dimension stems from the socialization effect of such a process, initially reported as a 'coordination reflex' in the EPC literature during the 1980s.

3. Implications of ESDP developments outside the Convention's framework

Do the above developments fit with the draft Treaty provisions? With cooperation *à la carte* and flexible cooperation⁴, there is clear risk of cacophony. We should not forget that the ESDP is and will form part of the Second Pillar of the enlarged EU, that is to say the CFSP. Therefore if there is no agreement over a CFSP, the emergence of an ESDP will be more problematic. How to deal with Iraq's continued violations of UN Security Council decisions, and subsequently, how to react to the US-led attack on Iraq in March 2003 meant not only fast deteriorating EU-US relations (Hoffmann 2003; Gnesotto 2003; Pond 2004; see also Kagan 2002; Berenskoetter 2004), but also deep EU divisions. For instance, the *letter of eight* followed by that of *the ten* (especially because it also involved new member

³ For details see Closa 2001: 11-21, see also Stavridis 2003.

⁴ These two concepts are not identical, the former referring to member state(s) opting to join in or not, and the latter offering a more structured form of cooperation where exceptions are allowed, usually for a limited period of time.

states – for details see IUEE Dossier 2003) had profound implications for the conclusions of the Convention on defence matters (e.g. the inclusion of ‘structured cooperation’ in defence), as well as for the post-Convention work of the IGC. Although one of the main bones of contention remains the voting systems in the EU ministerial Council(s), the lack of agreement over Iraq has continued to poison both trans-Atlantic and EU relations. The deteriorating situation in Iraq itself and the non-finding of weapons of mass destruction have weakened the positions of the pro-US governments of Tony Blair, José Maria Aznar and Silvio Berlusconi. Ironically, the governments of Jacques Chirac and Gerard Schroeder began to show signs of eventually joining the post-war reconstruction and other efforts (although the Germans have excluded sending troops). We also need to mention that *ad hoc* cooperation does not limit itself to defence issues. To illustrate our case, we will only mention the ‘farfical’ outcome of the Blair initiative in late 2002 during the Belgian Presidency to invite Chirac and Schroeder to an ‘intimate strategy dinner ... [in 10 Downing Street which was gatecrashed] by the Italian, Spanish, Dutch and Belgian prime ministers’ (quotes from Pond, 2004: 10). A multiplication of such meetings may hamper in the longer term the emergence of a coherent EU voice in foreign and defence matters.

To a large extent, developments in defence fit with the proposed ‘structured cooperations’, as a number of (varying) *ad hoc* coalitions have emerged in recent months. First, as was mentioned above, in April 2003, the Brussels meeting *à quatre* (France, Germany, Belgium and Luxembourg) proposed progress on defence, including a European HQ separate from that of NATO. Other EU countries, especially those who are backing the USA in Iraq, expressed their disagreement with this initiative. However, again as noted above, in late 2003 an agreement was reached between the EU (as a whole) and NATO over a separate EU HQ, and a joint one within that of NATO’s own headquarters in Mons. In late 2003 and early 2004 (especially during February – see *El País*, 11.02.04, ‘París, Londres y Berlín aceleran la política de defensa europea’), the big three EU states (France, Germany and the UK) acted jointly on a number of issues ranging from economics to foreign and defence policy matters. Britain’s joining of the Franco-German axis (a long standing tradition in European integration) has created two new developments: it appears that a new form of *European engine* (from two big states to three big states) is developing at a time when enlargement will mean a European Union with 25 member states, that is to say a context where the traditional Franco-German axis can no longer dominate. Furthermore, it confirms the fact that European defence cannot function with only France and Germany. Britain is quintessential for the emergence of a truly efficient ESDP. This was made clear after the 1998 Franco-British Saint-Malo Declaration (for details see Howorth 2000a; Howorth 2000b) but it came into disrepute at least at the rhetorical level with the deep EU divisions over Iraq. Now that the situation in Iraq is one of a post-war type with the US-UK Occupation recognised as such by the United Nations,

both France and Germany are acting in unison in order to regain momentum in EU defence matters. This development may be a prelude of things to come in the future. In that respect, it would fit with the concept of 'structured cooperation' in defence as envisaged in the draft Constitution. In practice, and perhaps because there is still no constitutional framework on this development, the Franco-German-British initiative fell foul of the other EU states, be they 'big' (Italy, Spain and Poland) or small (Ireland, etc). The fear of an emerging *Directoire* re-appeared in the EU political debate. Thus, on the eve of a recent official visit to Madrid, the Portuguese PM, José Manuel Durao Barroso, declared in a revealing interview that: 'Lo que no es aceptable es que dos o tres países se reúnan, cocinen todo y luego nos den a nosotros la comida. Es, pura y simplemente, inaceptable'⁵ (*El País*, 12.02.04). In that respect the 'cushion' of institutional arrangements (as it would be confirmed by a constitutional treaty) is badly missing, especially for smaller states which have traditionally been concerned with the possibility of such a development (Chrysochoou et. al 2003, pp 154-156), but also for other EU institutions (Commission, Parliament).

Any development that goes beyond the current paralysis that the Constitutional Treaty is experiencing is to be welcome. Progress on defence falls clearly in that category and is therefore to be considered as a positive development. Defence also reflects the now well-established step-by-step (or incremental) approach to integration. Thus, the overall theological debate might be 'stuck' but, on the ground, changes do materialize. In the future it will indeed be easier to just reproduce commitments that have already taken place in real terms into a constitutional draft, rather than the opposite. It remains to be seen however if these types of developments deal effectively with the wider question of a 'Europeanist versus an Atlanticist' view of defence in the EU (see Howorth 2000b). What remains problematic is how the above developments fit with the current US foreign policy of President Bush, where the objective makes the coalition and not the other way round.

4. Does the strengthening of the ESDP fit with US unilateralist foreign and defence policy?

Here we cover two dimensions to the question of whether the strengthening of the ESDP fits with the US unilateralist foreign and defence policy (see also Berenskoetter 2004; IIRI-KIIB 2003). First, how the US strategic doctrine has evolved under the Bush

⁵ 'what is not acceptable is for two or three states to meet, and cook up a meal that they then give to us all to eat. It is purely and simply unacceptable' (our translation).

administration and its impact on the EU's own defence situation. Second, how the Solana doctrine fits into this new world situation.

It is well known that the USA has had an ambivalent attitude towards European defence because it has strongly favoured its development but only within the confines of the transatlantic alliance. Throughout the past fifty years of European integration, this attitude has not varied dramatically, even when changes occurred in Washington. There is therefore a clear preference in American administrations for developments that would not affect the United States 'primacy' in the world. As Berenskoetter (2004: 17-18) stresses the US preference could not be clearer: 'building up a greater foreign and defence identity within the EU are welcomed as long as this takes place within a NATO framework'. At the same time, the Americans are well aware of the 'unipolar predicament' (Kagan 2004: 69) and Europe is seen as one of the ways to maintain/restore some of America's need for international legitimacy. This ambivalent US attitude is not exclusively linked to neo-conservative thinking in the USA and hence it represents an approach that would outlive Bush's presidency, assuming the latter is not re-elected in November 2004. Indeed, as early as in 1992, the US Defence Planning Guidance set out principles in favour of promoting US leadership in the world and efforts at discouraging competition from other industrialised countries. This approach was reiterated by Rumsfeld in 'Guidance and Terms of Reference' in 2001 and in the 2001 Quadrennial Defense Review (QDR, 22 June 2001: 1). The QDR establishes four objectives:

- to insure support from allied countries and friends,
- to dissuade future military competition,
- to limit military capacities in critical regions in an effort to prevent or stop aggression;
- to ensure the defeat of any enemy if deterrence were to fail.

The main idea is that the USA is a power that is "second to no one". This explains in part the American attitude towards European defence. The EU is allowed to develop its own defence only in so far as it does not represent any direct threat to US military power. Moreover, for European states to keep friendly relations with the USA (as NATO allies) it means that the EU cannot embark upon defence initiatives that the US dislikes. Moreover, as the new US strategic doctrine accepts preventive and preemptive attacks, divergent views between the two sides of the Atlantic have also become greater. President George W. Bush said:

'The war of terror will not be won to the defensive. We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge. In the world we have entered, the only path to safety is the path of action' (NSSD 2002. See also National Strategy to Combat Weapons of Mass Destruction, December 2002, The White House, Washington. See also Garcia 2003; Davis 2004).

In response to the above, the EU discussed its defence options in the Convention caucus and in the subsequent IGC but also over the publication of the Solana Strategy Paper (as noted above, first presented to the Salonica European Council meeting in June 2003 and finally adopted in the Brussels European Council meeting in December 2003 *despite* the failure to adopt the draft Constitutional Treaty). This document is 'as good as it gets' as it has to reconcile 'well-known differences among the "big three" member states, France, Germany and the United Kingdom' (Berenskoetter 2004: 2, order of quotes reversed in original)⁶. The analysis of new threats is the same as that of the US documents but there are differences of opinion mainly over Europe's preference for the promotion of an international order which is based on effective multilateralism (Fernández 2003c). Equally, non-military means are given clear preference: trade and development policies, economic cooperation, and political dialogue (in practical terms, European Arrest Warrant, plus reinforcing existing and new institutions such as the ICC or the International Atomic Energy Agency, as well as other means such as export controls and dealing with illegal shipments and illicit procurement). The Solana document underlines however the values that the Europeans do share with the Americans (freedom, free market, democracy and human rights), and also the need for reinforced cooperation at the bilateral or multilateral level (NATO). When the Solana paper declares that 'our aim should be an effective and balanced partnership with the USA' it is trying to defuse any risk of being considered a potential military competitor according to the NSSD doctrine. Similarly, it confirms Europe's commitment to Western defence. But to a certain extent, it equally shows that the EU cannot counterbalance US military power right now. From this perspective it is clear that, for the time being, and, especially if the EU concentrates on strengthening its civilian capabilities, there is no challenge to the US policy. The real issue then becomes what will happen in the future. Thus, the 'mind gap' between the two sides of the Atlantic over their respective security strategies 'appears very real' (Berenskoetter 2004: 21; see also Kagan 2002), especially in the longer term.

In practical terms, it means that for the time being, the real issue is how to reconcile the two sides of the Atlantic, or better said, the 'old Europe' with the USA over a number of issues. Now that Spain has experienced a significant change of policy following the election victory of the PSOE on 14 March 2004, and that Poland is in the midst of a political crisis following the resignation of its PM on 27 March 2004, it remains to be seen how that process will take place.

⁶ We should also mention here that one of the main differences between the June and the December drafts resides in the clear spelling out of the UN as the only source of legitimacy and permission for military interventions. It is a fact that the June version was as US-friendly as possible as it preceded the visit by EU President-in-office Costas Simitis to the USA and it therefore required as friendly a reception as possible (see also Berenskoetter 2004: 18).

Indeed, the EU differences go much deeper than Iraq. Past or ongoing examples would include former Yugoslavia or the Middle East. Thus, to the EU rhetorical unanimous condemnation of the assassination of the 'spiritual' leader of Hamas Sheikh Ahmed Yassin, we must contrast the diverging voting behaviour at the UN security Council on the US-vetoed resolution that was debated on 24 March 2004. On the one hand, France and Spain voted in favour, and on the other, Britain and Germany abstained (www.un.org). One can but add similar discrepancies over the Mediterranean (Feliú, Lorenzo and Salomón 2003; López and Hernando de Larramendi 2003), Russia, Haiti or China (in particular discrepancies between the big EU states, see *Le Monde*, *IHT* and *El País* in early 2004). Thus, Martín Ortega has quite clearly identified the Mediterranean as 'the Achilles heel of transatlantic relations' (Ortega 2004). Even if it true that differences between the two sides of the Atlantic often reflect existing differences among Europeans (Isak 2004), the current US preeminence in the world and the foreign policy choices of the Bush administration make the emergence of a truly autonomous EU foreign and defence policy all the more difficult. It is however correct to point out that the Europeans should get their act together if they do not want the Americans to exploit those divergences (the 'Mars versus Venus' argument). Thus, *Le Monde* (9-11.12.03) reported that:

'[I]a Commission critique vivement le soutien inconditionnel de M. Berlusconi au président russe. Jacques Chirac multiplie les égards envers Moscou. Berlin et Londres se taisent tandis que le Danemark, la Suède et le président du Parlement européen réitèrent leurs critiques sur la Tchétchenie' (see also *International Herald Tribune*, 8-9.11.03).

What remains problematic is that Berlusconi's stance was criticised, rightly, by *Le Monde* in its editorial as a 'shame for Europe' (9-10.11.04, our translation), whilst it underplayed, wrongly, France's stance on the issue ('l'engagement européen de la Russie'; see also *Le Monde*, 25.02.04, 'Jacques Chirac prend la défense de la Russie contre l'UE'). Chirac is also diverging from EU foreign policy over China and Taiwan (*El País*, 28.01.04). There are also important divergences over how to respond to the US plan for a *Greater Middle East*, where Germany appears to agree with it (John Vinocur's articles in *IHT* on 27.02 and 01.03.04) in spite of the existence of the EU sponsored EuroMediterranean Partnership since 1995 (which excludes the USA). We also need to mention to what extent the 'lessons from Iraq' will affect the 'lessons from Kosovo' when the USA decided against any European influence in conflict situations (Günther 2000; Brenner 2002).

5. The Constitutional framework, the ESDP and integration theories

In this section, we consider first if a constitutional framework is needed for an ESDP, and, conversely, if an ESDP is needed for a Constitution. Second, we assess the implications of these two related, but different, questions for theories of integration in EU defence matters.

As we have seen, there have been various important developments in the fields of defence and security matters in spite of a general lack of progress on the Constitutionalization front. It is therefore clear that there is no *absolute* need for a constitutional framework for progress on a EU defence project to be made. In February 2004, the implementation part of the European Armaments, Research and Military Capabilities Agency began with a operational date set for June. So, in contradistinction from the lack of progress on the Convention debate, practical steps are being taken in the ESDP. Similarly, if the three 'big three' states agree on a number of political issues and move on towards a *Directoire* that acts like a driving force for deeper defence integration, then we could see in practice the application of the planned 'structured cooperation' foreseen in the Draft Constitutional Treaty. It is in this area that progress should take place as these three EU states have clear common interests (for details see Fernández 2004).

A possible negative side to this limited cooperation exercise would be a tendency for participating states to concentrate more on their national interests rather than on more common European ones. That is to say, it would amount to what can be described as a defence dimension of the Milwardian European rescue of the nation-state. In this particular respect, the lack of institutional supervision or control that a constitutional framework would create will be obviously and blatantly lacking. In the medium to longer term this might lead to a dissolution of any emerging common interests. Furthermore, from the viewpoint of third states and other organisations, such a kind of limited cooperation outside a formal treaty framework may lead to difficulties in identifying the EU as a single and coherent international actor in security and defence matters. Part of the constitutionalization exercise is related to identity-making in the EU, especially in a Union that includes 25 member states. Thus, both externally (how the EU is perceived by non-EU actors) and internally (by EU institutions and citizens), it is *desirable* to create a constitutional framework rather than leave current ESDP developments in the defence field outside such a context.

Conversely, we need to address the question of whether an ESDP is needed for a Constitution. In our opinion, such a dimension is extremely important (Fernández 2003d⁷). It is essential for the autonomy of the EU as a political and actor in the international arena. All constitutional arrangements include an external dimension that refers to security and defence matters. Even if national constitutional arrangements are not particularly detailed

⁷ Stavridis' approach is similar but does not concentrate on its constitutional dimension. Instead he suggests that a lack of ESDP affects the democratic dimension of the whole process, see Stavridis 2001a and Stavridis and Vallaniatou 2003.

over these aspects (international agreements, role of armed forces), they would be needed in a European Constitution for the following reasons:

- first, the specific legal order of the Union requires a definition of its international role, a spelling out of its international values, and a hierarchy of its means for international action (division of powers, shared powers, etc.). A clear identification of the above would be best served in a constitutional treaty. It would also facilitate a constant monitoring of future developments and thus facilitate a clear assessment of its failures and successes.
- second, by including the ESDP in a Constitutional treaty, EU citizens will be directly involved in its ratification process. Admittedly this would only represent a partial and rather limited popular participation but it would be an advantage over a non-constitutional approach.
- third, as there is no EU armed forces (a 'European army' in popular parlance), the EU will continue to depend on national EU military and civilian capabilities for some time. Thus, a clear definition of national military duties towards the EU's emerging ESDP will facilitate its development.

Finally, we should not forget that the whole post-world war II European integration process is based on a constant interaction between political integration (political union) and defence cooperation. The initial attempts in European integration were based on a (failed) EDC or European Defence Community with a European Political Community in the 1950s. The Fouchet Plans in the 1960s failed because its first draft was too intergovernmental and its second too federal. The more successful EPC (European Political Cooperation) represented the other side of the EPU or European Political Union as the initial EPC reports made it clear (see Stavridis 1997). The institutionalization of the integration process with Maastricht (Amsterdam, Nice and beyond) made it also clear that one of its fundamental pillars would be its external dimension: initially as one of its three constituting pillars, and now as one of its two dimensions (internal and external). The fact that the ESDP is included in the CFSP pillar, and is not given an autonomous structure, confirms that there can be no political union without defence.

We now turn to the implications of the above for theories of integration in an effort to assess if recent developments in EU defence matters allows us to favour one or more of the previously discussed three schools of thought. We think that the realist approach is helpful only in showing some of the limits of integration but it cannot explain why despite Iraq, despite the 'old versus new Europe' claims, despite the current paralysis over the Constitution, there have been important progress on the ESDP. Domestic developments in key EU member states do offer some explanation but they cannot account for the reconciliation of diverging views especially between the Franco-German axis and the UK-

led one. Thus, we favour the Europeanisation approach and more specifically its neo-institutionalist version (see Chrysochoou et al 2003; Closa 1994; Rosamond 2000). We do not necessarily subscribe to the automaticity of a spill over effect that is generated solely by the institutional framework available. The need for political will is obviously necessary as well. But institutional links facilitate the emergence and sustainability of such a process. By creating a habit of cooperation ('socialisation effect') that spreads through institutions and individuals, the overall approach to public policy matters, including defence, alters from a strictly national to a European perspective. But all these shifts also require a legal framework to ensure that they are accepted by the various citizens of Europe. Therefore, a constitutional framework would help ensure both legitimacy and efficiency for the ESDP, even if this is only likely in the longer term.

CONCLUSIONS

From the above, we can make a number of conclusions.

1. progress towards an EU defence does not depend on its constitutionalization as recent developments have demonstrated (arms agency, headquarters, rapid deployment forces). Another clear example is the decision for an early implementation of the solidarity clause included in the draft Constitutional Treaty, following the terrible terrorist attacks in Madrid on 11 March 2004 (*El País*, 25.03.04).
2. a constitutional framework would perhaps avoid in the future *ad hoc* coalitions and other forms of informal arrangements. But, on the one hand, the proposed inclusion of 'structured cooperation' shows that flexibility can also pertain to more institutionalized arrangements, and, on the other hand, the recent saga over the non-respect of the stability pact over financial and budgetary discipline also confirms that institutionalized systems are not always as solid in their implementation. Similarly, following the terrorist attacks in Madrid on 11 March 2004, it was stressed that the transposition of the Euro-warrant agreed in the aftermath of 11th September to national legislation had yet to materialize in five member states.
3. truthful to the history of European integration, there will be a combination of progress and drawback in EU defence. In some areas, there will be 'more Europe' and in other less, or at least of a different type, that is to say not all-inclusive. Similarly, practical developments will also shape future developments. For instance, the French decision to build a non-nuclear aircraft carrier will allow for more defence cooperation with Britain (*Le Monde*, 14.02.04).
4. any progress towards an EU defence will at the end of the day depend on how much real progress there is towards a CFSP. What remains equally clear from this study is the observation that, irrespective of progress achieved to date, there is still no single EU voice in the world.

We can also mention that there remains a number of other issues that we have not dealt with in this paper. We can briefly mention *inter alia* the implications of progress in EU defence for the concept of a civilian power Europe (see Smith 2000; Stavridis 2001b), the need to democratize defence policy (see Stavridis and Vallianatou 2003), or the wider NATO debate (its enlargement, its future, its relation with the EU, etc; see Edmunds 2003). There is also little doubt that the new EU member states will have an important impact on the way the EU's CFSP and ESDP will develop in the future (Czaplinski 2004; Isak 2004). However, we hope that this paper has shed some light on the reasons why, despite the current paralysis over the European Constitution, progress on defence in the EU has continued, even if it remains at a slow pace. In our view, even if a constitutional framework is not *really* needed for further progress, it is clear that it is *really desirable* to possess one.

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