

5. Mai 2003



MATHIAS JOPP / SASKIA MATL
INSTITUT FÜR EUROPÄISCHE POLITIK

**PROPOSALS FOR AMENDMENTS TO THE DRAFT ARTICLES OF THE
TREATY ESTABLISHING A CONSTITUTION FOR EUROPE**

- FINAL VERSION -

General Comments

The provisions on foreign, security and defence policy in this constitutional draft include a number of positive elements such as a solidarity clause and the introduction of new forms of flexibility (structured cooperation and closer cooperation).

However, the draft fails in generalising QMV. The use of QMV can still be blocked by a single member state as long as the European Council decides on the case by unanimity. This requires an amendment of the present draft article 9 in Part II of the Constitution.

Also, there is too much emphasis placed throughout this constitutional draft on the role of the European Council. It appears to be the decision-making centre/government of the Union whereby the Council becomes an executive or administrative body. This needs to be changed and clarified: The European Council sets the guidelines and identifies the strategic interests of the Union. The Council, on a proposal by the Foreign Minister, makes the decisions according to Art. 9, Part II of the Constitution.

In the whole text, the rights of the European Parliament need to be reserved and strengthened. Our amendments include some more precise provisions in that respect aiming at the consultation procedure and at transparency over activities of the Council or groups of member states.

PART I – TITLE V

Article 29: The Union's common foreign and security policy

1. The European Union shall undertake to conduct a common foreign and security policy, based on the progressive development of mutual political solidarity and common security among Member States, ~~the progressive identification of questions of general interest and the achievement of an ever increasing degree of convergence of Member States' actions.~~¹
2. The European Council shall identify the Union's strategic interests and determine the general objectives² of its common foreign and security policy. The Council of Ministers shall frame this policy in accordance with the arrangements in Part Two of the Constitution.
3. The European Council shall adopt the guidelines and the Council of Ministers ~~shall adopt~~ the necessary decisions.³
4. The common foreign and security policy shall be put into effect by the Union's Minister for Foreign Affairs and by the Member States, using national and Union resources.
5. Member States shall consult one another within the Council and the European Council on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the Council or the European Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall feel committed to show mutual solidarity.

¹ The rest of the sentence should be deleted since it sounds very much as if member states started to reinvent the wheel in foreign and security policy-making just as Europe was in the times of the early seventies when the development of the EPC started.

² The European Council should define general objectives. Their specification should be the task of the Council.

³ It should be made clear that the European Council is primarily responsible for adopting the guidelines for the Union's foreign policy whereas the Council is responsible for making the necessary decisions.

6. The European Parliament shall be consulted on the main aspects and basic choices of the common foreign and security policy, and shall be kept informed of how it develops by the Council or the Union's Minister for Foreign Affairs.

7. Decisions relating to the common foreign and security policy shall be adopted by ~~the European Council and~~ the Council of Ministers unanimously by qualified majority, except in the cases referred to in Part Two of the Constitution. ~~They~~The Council shall act on a proposal from a Member State or from the Union's Minister for Foreign Affairs, alone or together with the Commission.⁴

~~8. The European Council may unanimously decide that the Council should act by a qualified majority in cases other than those referred to in Part Two of the Constitution.~~

Article 30: Common security and defence policy

1. The common security and defence policy, which is an integral part of the common foreign and security policy, shall provide the Union with an operational capability which makes use of military and civilian means. The Union may deploy them on tasks outside the Union to preserve peace and strengthen international security in accordance with the principles of the United Nations Charter.

2. The common security and defence policy shall include the progressive framing of a common defence policy in the perspective of a European Security and Defence Union~~for the Union~~. This will lead to a common defence, when the European Council, ~~acting unanimously,~~ so decides.⁵ It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements. The policy of the Union in accordance with this Article shall not prejudice the specific character of the security

⁴ The wording of this paragraph of Art. 29 falls behind the provisions of the Treaty of Nice. In fact the Treaty of Nice allows for decisions taken by unanimity, by unanimity with constructive abstention and by qualified majority. Decisions, which are legal acts of the Union, should only be made by the Council according to the decision-making procedures in Part II of the Constitution. The European Council should primarily adopt guidelines and define strategic interests. The Foreign Minister should table its proposals to the Council. The Council may then decide whether it is necessary to involve the European Council. When underlining OMV in paragraph 7, paragraph 8 is to be deleted.

⁵ The unanimity principle should not be stressed permanently. It would be sufficient to follow the wording of Art. 17 of the Nice Treaty. The ESDU should be added as a longterm abjective in accordance with the Franco-German proposals.

and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

3. Member States shall make military and civilian capabilities available to the common security and defence policy, to contribute to the objectives defined by the Council. Member States shall undertake progressively to improve their military capabilities. Those Member States which establish multinational forces together may also make those forces available to the common security and defence policy.⁶

A European Armaments and Strategic Research Agency shall be established to identify operational requirements, to put forward measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, and to assist the Council in evaluating the improvement of its military capabilities. ~~Those Member States which establish multinational forces together may also make those forces available to the common security and defence policy.~~ In the framework of financial means attributed to the agency, it may support arms procurement processes.⁷

4. Decisions on the implementation of the common security and defence policy, including those initiating a task as referred to in this Article, shall be adopted by the Council ~~acting unanimously~~⁸ on a proposal from the Union's Minister for Foreign Affairs or from a Member State. The Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States for preserving the values of the Union and for serving its interests.⁹ The

⁶ Following the logic of this paragraph this sentence should be put here instead of having it at the end of the second sentence of this paragraph.

⁷ It is important to have the Armaments Agency in the Constitution. However, the Agency runs the risk to become a paperwork organisation should it not administer a certain budget with which it can manage armaments projects on behalf of member states. This would be very important for reducing the waste of money through duplication in defence procurement spending.

⁸ There is no need to mention the procedure of decision-making by the Council since this is precisely laid down in Art. 9 of part II of the Constitution. Introducing here the unanimity rule for decisions of the Council on military missions would also fall behind the Nice Treaty. Art. 23 of the Nice Treaty excludes majority voting, but provides for unanimity with constructive abstention, also with respect to decisions having defence implications.

⁹ It would make sense to give the tasks of member states an overarching objective.

execution of such a task shall be governed by Article 18 in Part Two, Title B, of the Constitution.

6. Those Member States which fulfil higher criteria for military capabilities and which have made more binding commitments to one another in this area with a view to more demanding tasks shall establish structured cooperation within the Union framework. Such cooperation shall be governed by the provisions of Article 20 of Part Two, Title B, of the Constitution.

7. Until such time as the European Council has acted in accordance with paragraph 2 of this Article, closer cooperation shall be established, in the Union framework, as regards mutual defence. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military and other, in accordance with Article 51 of the United Nations Charter. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article 21 of Part Two, Title B, of the Constitution.

8. The European Parliament shall be consulted on the main aspects and basic choices of the common security and defence policy, and shall be kept regularly informed by the Council, or the Minister for Foreign Affairs of how it develops.¹⁰

¹⁰ It is a tradition in the existing Treaties to define who is going to inform whom.

Article X: Solidarity clause

In application of the principle of solidarity, the Union shall mobilise all the instruments at its disposal, including military resources, to:

- prevent the terrorist and other forms of threat;
- protect democratic institutions and the civilian population from any terrorist attack;
- assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack .

The detailed rules for implementing this provision appear in Article X of Part Two, Title B, of the Constitution.