

The European Draft Constitutional Treaty and the Future of the European Defence Initiative: A Question of Flexibility

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I Introduction

One of the greatest challenges to the drafters of the EU Constitution came in the area of security and defence. It is paradoxical that, in the event, this proved to be the policy area in which clear and substantial progress was arguably the most consensual. Such progress was by no means predictable. Two huge coordination challenges arose: military capabilities and security policy itself. The ongoing tensions between the different dyads of EU Member States – allies and neutrals, Atlanticists and Europeanists, ‘extroverts’ and ‘introverts’, ‘biggs’ and ‘smalls’, professionals and conscripts – hardly augured well for a smooth constitutional ride. Moreover, in the context of enlargement, the necessary stages towards a concomitant deepening were far from obvious. The military capabilities of most accession states were in a different league from those of many EU Member States. Moreover, the Iraq war of 2003 appeared to have driven a further wedge between ‘new’ and ‘old’ Europeans. There were therefore likely to be fierce constitutional squabbles not only over *decision-making* but also over the very *scope* of the ESDP.¹ Meanwhile, on the ground, in 2004 for the first time ever, EU military forces, under an EU flag, were engaging in – and preparing to engage in further – combat missions. If the ESDP was to make progress towards the stark new world of operational capacity, new forms of flexible cooperation would be required – forms which would preserve the EU’s political unity and control while allowing variegated ‘coalitions of the willing’ to engage in real military operations, forms which would help the disparate – and growing – range of agencies and actors involved in this policy sector to coordinate decision-making, not only in the

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¹ Although *ESDP* was not coined as an acronym until late 1999, it gradually acquired currency as the best short-hand for the European security and defence project. I shall use it throughout this paper, as opposed to NATO’s attempts to create internal mechanisms to facilitate European-only missions with *ESDI*; and as opposed to *CSDP* (Common Security and Defence Policy), the new acronym introduced in the Convention/IGC process, which will no doubt supersede *ESDP* but has not yet entered the lexicon.

field of armaments and military capabilities, but also in the overall area of security policy. A central challenge was to ensure that cooperative ventures and coalitions, as well as policymaking itself, were subsumed within the EU framework rather than electing, as had so often been the case in the past, to function outside of it.

Facilities for ‘flexibility’ had been introduced in the mid-1990s within the IGC discussions preceding the Amsterdam Treaty.² The 1990s indeed saw many variants on flexible combinations of Member States: based on time (‘multi-speed’), space (‘variable geometry’) and matter (*Europe à la carte*). The differences between the latter – in many ways choices between opting in and opting out – were explained by Stubb:

Variable geometry exemplifies the middle ground between multi-speed and *à la carte*. . . . By definition, variable geometry is more integrationist than *à la carte*. The former can create a hard core, which drives for deeper integration in a specific policy area, the latter is usually characterized by miscellaneous co-operation in areas that are not considered to intrude on national sovereignty.³

Through the introduction of new instruments such as ‘enhanced cooperation’, ‘constructive abstention’ and explicit ‘opt-outs’,⁴ the Amsterdam Treaty attempted to facilitate methods of short-circuiting the increasingly constraining need for unanimity. Yet, the danger in all these procedures was that the EU would break up into an inner core and an outer fringe. At the time, though, these measures had little bearing on the ESDP. Since serious security and defence policy cooperation was still little more than a gleam in the eye of a handful of defence planners, little could be done in practice to kick-start a policy area that many still wished to keep out of the EU altogether.

All that changed in December 1998 with the Franco-British summit in Saint-Malo and with the United Kingdom government’s decision to embrace EU defence and security cooperation.⁵ For a number of years, despite ongoing differences between EU Member States, both over military substance and over eventual political objectives, cooperation and indeed integration appeared to be the name of the game.⁶ However, it was by no means plain

² Antonio Missiroli, ‘CFSP, Defence and Flexibility’ (2000) *Chaillot Paper 38* (WEU Institute for Security Studies, Paris), pp. 5–15. Some of the references in the following pages owe a debt to one of my senior essay students at Yale, Stéphane Lesaffre.

³ Alexander C-G. Stubb, ‘A Categorization of Differentiated Integration’ (1996) 34/2 *Journal of Common Market Studies*: 289.

⁴ Denmark, for instance, was granted a formal opt-out from the entire ESDP policy area – a concession it had negotiated ‘preemptively’ at Maastricht.

⁵ See, on this, my ‘Britain, NATO and CESDP: Fixed Strategy, Changing Tactics’ (2000) 3 *EFA Rev*, pp. 1–20.

⁶ See, on this, my ‘NATO, the EU and the Quest for European Autonomy’ in Jolyon

sailing. By the time the Giscard Convention convened in early 2002, several major strains were threatening to complicate the infant ESDP's progression towards adolescence and maturity. First, France's continuing pursuit of maximalist *finalité* – with the ESDP progressively emerging as a potential alternative to NATO – was still causing ructions with the United Kingdom (the co-sponsor of Saint-Malo and the necessary partner in driving the ESDP process forward). Second, the United Kingdom's apparent shift of focus after the terrorist attacks of 11 September 2001 to a more global approach to security issues exacerbated these tensions with Paris.⁷ Third, the continuing reluctance of Germany to move towards a more interventionist security policy and to increase defence spending, was putting a brake on the ESDP process and encouraging other smaller Member States, themselves more wedded to 'softer' forms of power projection, to question some of the EU's military ambitions. Fourth, the prospect of embracing ten new Member States, nine of which, at that time, possessed armed forces of questionable military value,⁸ raised the prospect of deep divisions within the ESDP between the included and the excluded.

The Convention's draft Constitutional Treaty of July 2003 was nevertheless a minor triumph in terms of squaring some of these circles. Diedrich and Jopp considered it:

a major breakthrough . . . that would have seemed unachievable only two years ago. . . . New opportunities for flexibility probably represent one of the most impressive [sic] innovations for CFSP and ESDP in the draft Constitutional Treaty. The member states now possess a range of options that enable them to go ahead without waiting for all partners to follow.⁹

Significantly, things got even better over the following year. At least six instruments of flexibility were eventually incorporated into the consolidated constitutional draft (August 2004).¹⁰ Some of these new elements of flexibility had explicitly been ruled out in the penultimate draft of the Constitutional Treaty as drawn up by the Convention. In the pages that follow, I shall

Howorth and John Keeler (eds), *Defending Europe: NATO and the Quest for European Autonomy* (Palgrave, London & New York, 2003), pp. 1–19 (with John Keeler).
s from scratch?

⁷ See my 'France, Britain and the Euro-Atlantic Crisis' (2003) 45/4 *Survival*, pp. 173–192.

⁸ Or in some cases did *not* even possess . . . Note on Baltics building up niche forces from scratch?

⁹ Udo Diedrichs and Mathias Jopp, 'Flexible Modes of Governance: Making CFSP and ESDP Work' (2003) XXXVIII *The International Spectator*: 29.

¹⁰ For the text of the 6 August 2004 Treaty Establishing a Constitution for Europe, see: <ue.eu.int/igcpdf/en/04/cg00/cg00087.en04.pdf> (accessed 11 October 2004). For the instruments of flexibility and their references, see Annex I below.

examine four main areas of innovation which, taken together, illustrate an encouragingly pragmatic – and flexible – approach to a massive challenge. Potentially the most important innovation of all was the introduction of ‘structured cooperation’ (I-41(6) and III-312).

II Structured Cooperation

A major driver behind structured cooperation was the determination of a small number of countries to forge ahead with a ‘core group’ of countries in the area of security and defence. In particular, France and Germany, for different reasons, were keen to promote a security ‘Euro-zone’ and during the Convention deliberations had put forward a paper in the Working Group on Defence proposing a similar process to that which had been introduced for the Euro.¹¹ They had received explicit or implicit support from, inter alia, Valdo Spini, an Italian MP¹² and more significantly from Wim van Eekelen, the former Dutch defence minister and WEU Secretary General.¹³ But already, the discussion turned on the key issue of whether the core group would restrict its activities to building military capacity or would aspire to conduct military operations in the name of the Union. For traditional Atlanticists, including the Dutch, while the former should be promoted, the latter should be ruled out as potentially undermining NATO.¹⁴ For some of the new accession countries, however, the very notion of a core group was unacceptable.¹⁵ Unlike ‘constructive abstention’, which was mainly a mechanism to assist decision-making, enhanced cooperation (as it was still called) had clear integrative implications. Furthermore, many participants in the Working Group were suspicious of the proponents’ motivations, the fear being that *exclusion* of the weaker Member States was part of the strategic plan. However, the Working Group’s Chairman, Michel Barnier, included, in his Final Report, in addition

¹¹ *Working Document 28 – WG VIII*, ‘Franco-German comments on the preliminary draft final report of Working Group VIII “Defence”,’ (4 December 2002), p. 17.

¹² Valdo Spini, Representative of the Parliament of Italy, *Working Document 43 – WG VIII* (6 December 2002), p. 2.

¹³ ‘[T]here is no clear rationale for excluding the possibility of reinforced cooperation from the field of security and defence, provided the requirements of transparency and openness are preserved.’ Wim van Eekelen, *Working Document 2 – WG-VIII* (19 September 2002), p. 4.

¹⁴ *Working Document 28 – WG VIII*, ‘Dutch comments on the preliminary draft final report of Working Group VIII’ (4 December 2002), p. 4. Nevertheless, the Dutch would accept military operations unanimously authorized by the European Council.

¹⁵ Danuta Hübner, Representative of the Government of Poland, *Working Document 25 – WG VIII* (21 November 2002), p. 3; Rihards Pīks, Representative of the Parliament of Latvia, *Working Document 29 – WG VIII* (4 December 2003), p. 2.

to a plea that enhanced cooperation should be extended to the ESDP realm, the proposal that:

the new treaty should consequently provide for a **form of closer cooperation between Member States** [stress appears in text], open to all Member States wishing to carry out the most demanding tasks and fulfilling the requirements for such a commitment to be credible. One of the conditions for taking part in this 'defence Euro-zone' would have to be a form of presumption that pre-identified forces and command and control capabilities would be available.¹⁶

The implications of this wording seemed ominous to the dissenters. Not only did it look like a 'self-electing club', but it looked like one which intended to try to embark on autonomous military operations in the name of the EU, yet with little or no control by non-participating states. These features, real or imaginary, nevertheless also made their way – along with the new term 'structured cooperation' – into the Convention's June 2003 Draft Constitutional Treaty (Article III-213), despite attempts by up to 30 Convention members (from the United Kingdom, Ireland, Sweden, Finland, Estonia and Latvia) to delete the entire article. Structured cooperation was born amid considerable controversy.

The controversy was heightened by the general impact on EU cohesion of the Iraq War and above all by the four-party 'summit' in Brussels on 29 April 2003 between France, Germany, Belgium and Luxembourg. Widely denounced at the time as divisive (both of the EU and of NATO) and provocative (in that it appeared to launch an EU defence core which *excluded* the United Kingdom),¹⁷ the summit Declaration was in fact relatively anodyne. Far from constituting an attack on NATO, the Declaration stressed, in its opening paragraph, the 'shared values and ideas' which constituted the 'transatlantic partnership', itself characterized as a 'strategic priority' for Europe.¹⁸ However, the centrepiece of the summit was the proposal to create

¹⁶ European Convention. Final Report of Working Group VIII – Defence, 12 December 2002, p. 19, accessed at <register.consilium.eu.int/pdf/en/02/cv00/00461en2.pdf>.

¹⁷ Paul Taylor, 'Anti-War EU States Seek Defense Pact Without UK', *Yahoo News*, 21 March 2003; Charles Grant, 'A Military Plan to Cut Europe in Two', *Financial Times*, 16 April 2003; Charles Bremner, 'Paris and Berlin prepare Alliance to rival NATO', *The Times*, 28 April 2003; Judy Dempsey and Guy Dinmore, 'Defence Plan could rival NATO', *Financial Times*, 29 April 2003; Ian Black, 'France, Germany Deepen UK Rift', *The Guardian*, 30 April 2003; David R. Sands, 'EU Plan draws rapid reaction', *The Washington Times*, 30 April 2003; Mike Peacock, 'Blair slams EU defence plan, says glad to miss it', *Reuters*, 30 April 2003.

¹⁸ The text of the Declaration at <www.elysee.fr/cgi-bin/auracom/aurweb/search/voir?aur_file=discours/2003/0304EUDF.html&DATE=28042003-30042003&aur_offset_rec=4>. The aim of the summit was explicitly stated as being to reinforce European military capacity in order to 'give the Atlantic Alliance a new vitality'. Chancellor Schroeder and Prime Minister Verhofstadt both insisted that the summit was in no way undermining of NATO.

a European Union of Security and Defence (UESD) involving a number of objectives on the part of its members, most of which were uncontroversial,¹⁹ but including an EU operational planning unit to be located at Tervuren near Brussels. It was around this last proposal that controversy was to rage. A number of other initiatives were proposed, most of which were subsequently to find themselves written into Constitutional Treaty.²⁰ Aside from the planning cell, the most controversial part of the text – at least potentially – was the proposal that the states joining the UESD would make a mutual defence pact, would systematically harmonize their positions on security and defence, and would coordinate their efforts both on military capacity and on investment and procurement. Although the detail remained vague (and contained many devils), the thinking behind the UESD clearly seemed modelled on economic and monetary union: a core group of countries would forge ahead (including in the preparation of military operations) and would leave others with the choice of joining or being left out. In the climate of the time, it was hard not to see it as exclusionary, and difficult to believe that it would enhance the role of NATO. The combined effect of the 29 April summit and the 18 July Conventional Draft was to imply a major struggle between Europeanists and Atlanticists over the heart and soul of the ESDP.

Yet this did not happen. Over the course of summer 2003, both sides moved towards one another.²¹ British enthusiasm for developing military capacity, for early warning systems, for appropriate planning facilities (including the strengthening of HQ capacity), for a defence agency and other military objectives were all entirely compatible with the main UESD proposals. What London remained concerned about were the implications in structured cooperation that a small number of self-selected states could short-circuit decision-making ‘at 25’ and that the initiative was really designed as an alternative to NATO.²² At the same time, France in particular knew that a

¹⁹ An EU rapid reaction force; an EU air transport command; an EU nuclear, biological and chemical ‘protection unit’; an EU First Aid and Support Unit to dispatch humanitarian aid within 24 hours of a disaster; EU tactical training units for pilots and helicopter crews as well as naval officers.

²⁰ Enhanced cooperation in defence, including the possibility for participating states to take on additional responsibilities; a ‘solidarity clause’; additional Petersberg Tasks; a European Defence Agency; a European Defence College. Only the latter failed to make it into the Constitutional Draft.

²¹ The detailed position papers emanating from London, Paris and Rome are interesting and instructive in tracing the shifts. But space does not allow a detailed study of them in this paper.

²² UK MOD, ‘ESDP: 29 August Meeting: UK Food for Thought Paper’. The paper is reproduced in Antonio Missiroli (ed.), ‘From Copenhagen to Brussels: European Defence – Core Documents’ (2004) *Chaillot Paper 67* (WEU Institute for Security Studies, Paris), pp. 204–207. The paper is highly suspicious of the need to go beyond enhanced cooperation (which it claimed could work well ‘at 25’) and embrace something even more integrative called structured cooperation.

UESD without the United Kingdom would be but a pale shadow of what it could be with the British on board. The desire to have the United Kingdom involved was equally strong in Berlin for slightly different reasons. Pragmatism prevailed. After a successful meeting of Defence Ministers in Rome on 29 August 2003, during which a number of misperceptions were dispelled, Blair, Chirac and Schroeder set their 'sherpas' working on a trilateral compromise which was duly agreed at a summit in Berlin on 20 September 2003. Although press comment focused on the continuing differences of opinion between the three men over Iraq policy, the real significance of the trilateral summit came on the ESDP. In a nutshell, there was a trade-off. In exchange for solid reassurances from Chirac and Schroeder that structured cooperation would be neither exclusionary nor inimical to NATO, Blair dropped his opposition both to the proposal itself (in which, with misperceptions dispelled, he could actually detect great potential) and to the EU operational planning cell (which everybody knew was primarily symbolic).

Consequently, the Italian Presidency was able to bring forth new drafts of a text on what was now to be called 'permanent structured cooperation'.²³ Under Articles I-41(6) and III-312, the main issue is the decision-making procedure for establishing initial and subsequent membership of the format as well as facilities for suspending membership if any country failed to honour its commitments. The changes brought in (rejection of the proposal to list the participating countries in the Protocol, removal of the requirement for participants to have to fulfil 'higher military capability criteria', ability for countries to join and to leave) all succeeded in making explicitly inclusive a procedure which had previously been implicitly exclusive. The United Kingdom was sufficiently confident to agree to decision-making under this project taking place through QMV, the normal coefficients for both a majority and for blocking minorities applying. More significant, however, were the terms of the Protocol annexed to the Treaty²⁴ which governed the criteria for membership. Gone were all of the implications (true or false) about 'forging ahead' and conducting military operations which emerged, rightly or wrongly, from the earlier texts. Instead, the criteria were restricted explicitly to the development of military capacity (see below Annex II). The conduct of military operations, on the other hand, would depend on a unanimous vote in the Council (I-41(4)).

Whether the United Kingdom's initial suspicions about structured cooperation involving 'military operations [or] a small group of countries establishing new institutions or headquarters'²⁵ were genuine or just part of

²³ Missiroli, note 22 above, pp. 432–444.

²⁴ <[www.fco.gov.uk/Files/kfile/CIG%2086-04%20ad01%20consolidated%20\(Protocols\)%20280604.pdf](http://www.fco.gov.uk/Files/kfile/CIG%2086-04%20ad01%20consolidated%20(Protocols)%20280604.pdf)>, pp. 287–291.

²⁵ 'The CER Guide to the Brussels Summit', *Briefing note* (London: Center for European Reform, 5 December 2003), p. 7, <www.cer.org.uk/pdf/briefing_cer_igc.pdf>.

the atmospherics remains unclear. In his testimony to the House of Commons Standing Committee on the IGC, Foreign Secretary Jack Straw made much of the fact that structured cooperation was ‘simply about capabilities, not operations’ – a point he made in numerous other speeches and statements.²⁶ In fact, the wording of I-41(4), which makes it crystal clear that EU military operations can only be authorized by a unanimous vote in Council, is identical in the August 2004 Treaty to that in the Convention’s July 2003 draft. United Kingdom fears about decisions being taken on military missions under structured cooperation by a minority were therefore technically without foundation. Moreover, as Straw himself pointed out to the parliamentary committee, EU operations were explicitly restricted, under articles I-41(1) and III-309, to the expanded Petersberg Tasks.²⁷ There could be no question of the EU being involved in any other type of military intervention, whether planned by a self-selecting coalition of the willing or not. One is forced to conclude that the bad blood between Paris and London over Iraq had so clouded communication between the two capitals that deep mutual suspicions were aroused over a project on which – objectively – both countries actually saw pretty much eye to eye.²⁸

At the end of the day, the successful inclusion of the procedures on structured cooperation reflected parallel and ultimately compatible desires on the part of the United Kingdom (not to be sidelined and to ensure that the ESDP be ‘entirely consistent with NATO’), Germany (to bring the United Kingdom back into the loop and to pursue anything which smacked of integrative potential²⁹) and France (to re-establish its defence partnership with Europe’s leading military power and to push ahead with the creation of a defence vanguard).³⁰ The smaller EU and NATO countries, especially the new

²⁶ Jack Straw, Hearing before the Parliament Standing Committee on the Intergovernmental Conference (1 December 2003), <www.publications.parliament.uk/cgi-bin/ukparl_hl?DB=ukparl&STEMMER=en&WORDS=structur+cooper+&COLOUR=Red&STYLE=s&URL=/pa/cm200304/cmstand/interg/st031201/31201s01.htm#muscat_highlighter_first_match>.

²⁷ The Petersberg Tasks which served as the basic objectives of ESDP from the outset have been extended and now cover ‘joint disarmament operations, *humanitarian and rescue tasks*, military advice and assistance tasks, conflict prevention and *peace-keeping tasks*, *tasks of combat forces in crisis management, including peacemaking* and post-conflict stabilisation’ (italicized items were the original 1992 Petersberg Tasks). This better reflects the synthesis of military and civilian activities which the EU wishes to promote – as well as providing a more comprehensive list of the activities in which the EU is now actively engaged.

²⁸ The inability of the French and the British to ‘understand’ one another in these situations – given the intensity of ‘coordinative discourse’ between them is an extraordinary phenomenon which merits serious attention.

²⁹ These two objectives may appear at first sight to be contradictory. But appearances can be deceptive.

³⁰ Barry Posen wraps up the aims of all three countries as being mainly a continuing desire to ‘strut and fret their hour upon the stage’ (conversation with the author, 12 August 2004).

accession states, were reassured by the lead taken by the United Kingdom and objections to structured cooperation effectively vanished. Some EU neutrals may well have continuing reservations about their own eventual membership, but most EU Member States will probably aspire to join. This is all the more likely in that the capabilities required for membership have been identified as either a niche contribution or delivery of (or participation in) one of the Battle Groups currently being planned under the new *Headline Goal 2010*.³¹ Most EU Member States, given the political will, should be able to find a way of joining.

What all this means in practice is that the EU has now given itself the wherewithal to organize, from among its Member States, a number of high intensity combat units for intervention overseas in crisis areas calling for rapid response, perhaps at the behest of the UN. The emphasis is on interoperability, deployability, sustainability and concurrence.³² These military operations will attempt to spread the load among the EU's Member States through the instrument of structured cooperation. Clearly, the large military powers will bear the main brunt, especially in the early years. But, as a United Kingdom FCO official recently put it, 'if a crisis arose in South-Eastern Europe which could be appropriately handled by a coalition comprising Romania, Hungary, Poland, Italy and a niche contribution from one or two Baltic states, fantastic! Why shouldn't they?'.³³ Structured cooperation aims to bring as many Member States as possible militarily up to speed as rapidly as possible. A fine line will have to be drawn between allowing some of the larger Member States to create unbridgeable capabilities gaps within the EU and allowing some of the smaller member states, in the name of commonality, to slow down the ESDP process so much that it becomes compromised. It is all about *capacity*. What use the EU makes of that capacity is entirely up to the Council, acting unanimously. No Member State will be forced to do anything. But the potential to do lots – in the name and under the flag of the EU – is considerable. This is a minor

³¹ The 2004 Franco-British initiative, subsequently joined by Germany, for the deployment of intervention units or 'battle groups' of 1 500 troops for combat in jungle, desert or mountain conditions can be seen as an attempt to move beyond the abstractions of the HHG arithmetic and to achieve something qualitatively concrete. This new development became an EU initiative at the meeting of EU foreign and defence ministers in May 2004. The ground units will be joined by appropriate naval and air groups. The battle groups will be deployable within 15 days and sustainable in the field for up to 30 days. Refer to Article 1(b) of Protocol (Annex II below).

³² According to the *Headline Goal 2010* paper, '*Interoperability* can be broadly defined as the ability of the armed forces to work together and to interact with other civilian tools. It is an instrument to enhance the effective use of military capabilities as a key enabler in achieving the EU's ambitions in Crisis Management Operations. *Deployability* involves the ability to move personnel and materiel to the theatre of operations, while *sustainability* involves mutual logistic support between the deployed forces.' *Concurrence* is the ambition of being able to mount several (perhaps up to three) such missions at the same time.

³³ Author interview in FCO, 28 June 2004.

revolution in EU affairs. It is underscored by the fact that the acronym *ESDP* has been replaced in the new constitutional draft by *CSDP* (Common Security and Defence Policy),³⁴ implying a reversion to the emphasis on commonality which informed the early manifestations of this policy area. Coalitions of the willing are good. But nobody should lose sight of the fact that all Member States are – increasingly – in this thing together.

I have concentrated on structured cooperation because it is potentially the most ground-breaking of the flexibility mechanisms introduced via the Constitution. But there are several others which I shall now consider more briefly.

III Solidarity Clause

Proposals to institute some kind of mutual assistance³⁵ clause among EU Member States have a long and distinguished pedigree – even pre-dating the EU itself since such a clause was one of the main aims and achievements of the Brussels Treaty of 1948. According to Article V of the WEU (‘Modified Brussels’) Treaty of 1954,

If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power.

However, not only had the WEU commitment been officially subsumed under NATO’s Article 5 commitment in 1949, but the status of the WEU text, given the organization’s de facto demise in 1999, remained uncertain. A group of EU Member States, led by France and Germany, had proposed merging the EU and WEU in 1997, effectively bringing the mutual assistance commitment under the aegis of the EU. But this proposal had been vehemently opposed by John Major’s government and vetoed at Amsterdam by the incoming prime minister, Tony Blair. The events of 11 September 2001 served to remind EU Member States that mutual assistance was not included in the Petersberg Tasks. Again, two separate drivers emerged to take matters forward on this issue.

Within the context of the Convention’s Working Group on defence, the issue of a mutual assistance clause aroused fierce passions. To cut a very long story

³⁴ See Title V, Chapter II, Section 2.

³⁵ Legally, distinctions need to be made between ‘mutual defence’, ‘mutual assistance’ and ‘solidarity’. In practice, these notions are often confused. Although the NATO Article 5 and the WEU Article V commitments are often referred to as ‘mutual defence’ clauses, they are, strictly speaking, ‘mutual assistance’ mechanisms.

short, the following note from the Group's Secretariat relating to a meeting on this issue on 29 October 2002 gives a sense of the range of opinion:

On the issue of a solidarity commitment, there was a clear difference of views within the group. Several suggested that it would be useful to have some sort of commitment, which in any case reflected the existing general commitments to solidarity in the Treaty. Some recognised that not all Member States would be able to sign up to such a commitment and that it would therefore have to include either an 'opt-in' or 'opt-out' provision. Some suggested that any such provision would depend in part on the future of the collective defence guarantee within WEU (Article V). Others said that they would not wish to see any form of collective commitment. Some argued that it would be politically unacceptable; others preferred not to include anything which might undermine existing commitments such as that within NATO.³⁶

Notwithstanding this degree of complexity, the Working Group recommended *both* the introduction into the Treaty of a solidarity clause outlining procedures in the event of a terrorist attack *and* an opt-in facility whereby those Member States who wished to take over the mutual assistance commitments of the WEU Treaty be authorized to do so within the framework of the Union.³⁷ In parallel, the Franco-German motor continued to pursue the notion of the UESD and, at the (in)famous quadripartite summit of 29 April 2003, put forward the suggestion that the Constitution include 'a general clause on solidarity and common security, binding all member states in the European Union, and allowing for a response to risks of any sort that threaten the Union'.

These various proposals, despite continuing fierce opposition from both neutral and Atlanticist Member States,³⁸ nevertheless worked their way into

³⁶ 'Summary of the meeting held on 29 October 2002', *CONV 399/02* (12 November 2003).

³⁷ Final Report of the Working Group VIII – Defence, no. 57 and no. 63. For good measure, the Report also suggested the drafting of a 'solidarity and common security clause' (no. 60) as proposed by the Franco-German contribution to the Working Group's activities..

³⁸ No fewer than 24 Convention members sponsored amendments, in the final Convention plenary process, to delete the mutual assistance clause altogether. On the other side of the argument, one leading European security expert, Francois Heisbourg, had argued, in a seminar organized by the Convention's Working Party on Defence, that it was precisely because, in the wake of the terrorist attacks of 11 September 2001 on the USA, NATO's collective defence guarantee under Article 5 had been jettisoned by America, that the EU needed to introduce its own collective defence clause: «L'Alliance n'est plus dans la pratique l'organisation de défense collective qu'elle était : 92% des forces américaines ne sont pas ou plus affectées à l'OTAN, il n'y a plus d'automatisme de l'engagement américain dans une organisation qui n'est plus perçue par l'Amérique - engagée dans une redéfinition générale de son rôle dans le nouveau

the Convention's draft text of 18 July 2003. The thinking was sharpened somewhat by the new formulation, in Article I-40(2),³⁹ of the paragraph on common defence:

The common security and defence policy *shall* include the progressive framing of a common Union defence policy. This *will* lead to a common defence, when the European Council, acting unanimously, so decides. [my italics]

This was considerably stronger than the wishy-washy wording in Article 17 of the Treaty of Amsterdam.⁴⁰ It served as the basis for the proposal, in Article I-40(7), that those Member States which did not wish to wait on the European Council's decision, should be allowed to anticipate it:

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 or other, in accordance with Article 51 of the United Nations Charter. In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article III-214.

Those 'detailed arrangements' in III-214 read as follows:

1. The closer cooperation on mutual defence provided for in Article I-40(7) shall be open to all Member States of the Union. A list of Member States participating in closer cooperation shall be set out in the declaration [*title*].
2. A Member State participating in such cooperation which is the victim of armed aggression on its territory shall inform the other participating States of the situation and may request aid and assistance from them. Participating Member States shall meet at ministerial level, assisted by

contexte - comme le cadre approprié des réponses à ces nouvelles menaces», <www.iss-eu.org/activ/content/rep7.pdf>.

³⁹ The numbering of the Treaty articles changes somewhat in the 6 August 2004 final version. This I-40(2) became I-41(2).

⁴⁰ 'The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide.'

their representatives on the Political and Security Committee and the Military Committee.

This remained quite unacceptable both to neutrals, who feared involvement despite the apparent opt-in mechanism, and to Atlanticists, still suspicious about the implications for NATO. Three major elements of the proposals remained contentious: the voluntary nature of participation, the vagueness of the reference to ‘close cooperation’ with NATO, and the very principle of anticipating the EU’s decision on common defence. Moreover, the political symbolism of such arrangements was far more obvious than its practical value.

In the event, the controversial proposals on a mutual assistance clause were also factored in to the tripartite compromises of late 2003. Under the Italian presidency, a new text was proposed which effectively drew some of the potential teeth in the original Convention draft. Not only did the crucial first sentence on anticipating the decision of the EU disappear altogether, along with any reference to ‘mutual defence’, but the requirement to ‘give’ aid and assistance to a Member State under attack was watered down to one in which Member States ‘shall have an obligation’ of aid and assistance. The requirement to work in ‘close cooperation’ with NATO was replaced by the considerably more robust statement that:

Commitments and cooperation in this area shall be consistent with commitments under NATO, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation (6 August 2004 Text I-41(7)).

Finally, the ‘detailed arrangements’ under III-214 were completely scrapped, along with the article itself. On the other hand, a new ‘solidarity clause’ in the event of a terrorist attack or a natural or man-made disaster, which had been introduced into the Convention’s draft (I-42), remained unaffected by this redrafting, as did the detailed arrangements for its implementation (III-231).⁴¹ These items were retained in the August 2004 text as I-43 and III-329.

The debate on a mutual assistance (or mutual defence) clause was confused and confusing. Many of the proposals were wrapped up with parallel proposals on what eventually became structured cooperation. Symbolism often took precedence over pragmatism. Agendas were multiple and cross-cutting. Some might argue that the fact that the opponents of any such clause succeeded, in the final draft constitutional text, of stripping it of much of its bite, suggests that little progress has been made since Amsterdam when Blair took it off

⁴¹ With the one exception that a proviso was added to the Constitutional draft to the effect that any response with military implications would come under III-201(1) which has to do with constructive abstention.

the agenda altogether. However, in the context of a Constitution which has already enshrined structured cooperation, the very fact that a specific clause on mutual assistance is included in the text at all represents a significant step forward. A quasi-democratic process (the Convention) generated a proposal which, while strongly supported by many Member States, was regarded as anathema by many others. Flexibility was required to square the circle. In the end, bilateral, trilateral and eventually general intergovernmentalism reached a compromise whereby a text was agreed which, while no doubt not entirely satisfying its advocates, offended nobody. Initial opposition was not to the statement of mutual assistance as such. Rather it was to what individual Member States, for one reason or another, *thought* it implied: hence a great deal of sound and fury in the discussions and rather less light. What emerged was a largely common sense recognition that, in the event of attack against a Member State, the others will do what they feel they can (or wish to) do to help out. It is a small step towards the recognition of common interests, rights and responsibilities. In conjunction with other such steps, it acquires real political significance. The EU is explicitly pulling ever more closely together, even in these areas which were once the last (and indeed the first) bastion of sovereignty. Another indicator of this same inexorable trend was the summer 2004 launch of the long-awaited European Defence Agency.

IV European Defence Agency

The proposal from the Convention and IGC is for the creation of a European Defence Agency subject to the authority of the Council. Its formal title is the European Armaments, Research and Military Capabilities Agency (EARMCA) but it is already being referred to for short as the EDA. Its outline in the Constitutional Treaty of August 2004 (Article III-311) is reproduced in Annex III.⁴² Armaments cooperation has hitherto taken place rigorously outside the EU framework. Two main reasons lie behind this belated decision to change tack. The first is the relative failure of previous attempts to coordinate procurement and armaments cooperation. The second is the accelerating reality of the ESDP and the concurrent perceived need to link capabilities to armaments production. The urgency of these drivers is reflected in the fact that, at the Thessaloniki Council in June 2003, it was agreed not to await ratification of the Treaty in order to launch the EDA which had been proposed in the Convention's draft constitution. The agency was to be

⁴² For the most complete official document on the EDA, see Council Joint Action 2004/551/CFSP of 12 July 2004 on the establishment of the European Defence Agency, accessed at <ue.eu.int/uedocs/cmsUpload/1_24520040717en00170028.pdf>.

created immediately. In early 2004, an Agency Establishment Team set about clarifying its objectives and role and narrowed down four basic purposes:

- To work for a more comprehensive and systematic approach to defining and meeting the ESDP's *capability* needs;
- To promote *equipment collaboration*, both to contribute to defence capabilities and to foster further restructuring of European defence industries;
- To encourage the widening and deepening of regulatory approaches and the achievement of a European defence *equipment market*;
- To promote defence-relevant *research and technology* (R&T), 'pursuing collaborative use of national defence R&T funds' and 'leveraging other funding sources', including those for dual use or security-related research.⁴³

The EDA will be guided by a Steering Board meeting at the level of Defence Ministers, nominally headed by the HR-CFSP (later Union Minister for Foreign Affairs) and managed by a Chief Executive.⁴⁴ However, it will initially enjoy only a tiny budget (EUR25 million in 2005), a sign that governments remain uncertain about how far they can trust their own political instincts.

The implications of these developments have already been subjected to detailed scrutiny⁴⁵ and it is redundant to repeat the findings of that study here. However, the EDA raises a number of crucial questions about European capabilities which deserve attention. First, and most significant, is the extent to which any new agency can substitute for political will and can short-circuit the powerful forces binding national governments and domestic clients. Some progress has been registered in this sphere – notably with the creation of the European Aeronautic, Defence and Space company (EADS) – but the current restructuring problems of the European armaments giant, which is seeking to break out of the 'dual sovereignty' underpinning its foundation,⁴⁶ merely emphasize the nature of the problem. Hundreds of thousands of jobs are at

⁴³ Private policy paper by Burkard Schmitt, Deputy Director of the EU Institute for Security Studies. I am most grateful to Dr Schmitt for sending me this paper, on which I have drawn in the following paragraphs. For an earlier paper by Schmitt, see 'Progress towards the European Defence Agency', *Analyses*, (WEU Institute for Security Studies, Paris), Winter 2004.

⁴⁴ After a fierce battle between France and the UK, the Chief Executive was named as Nick Witney, the former head of the UK Ministry of Defence International Security Policy Division.

⁴⁵ Burkard Schmitt, 'The European Union and Armaments: Getting a bigger bang for the Euro' (2003) *Chaillot Paper 63* (WEU Institute for Security Studies, Paris). The author examines the implications for procurement, research and the defence market.

⁴⁶ The management structure of EADS scrupulously respects the need for balance between the company's French and German partners.

stake and no government is likely to ignore that stricture. If the EDA were to restrict its activities to lowest common denominator programmes, there would be little point in launching it. The aim is to get a much better bang for the EUR180 billion currently being (mis-)spent by the EU on defence. Industry leaders have been outspoken in insisting that, this time, governments, 'having willed the end' will simply have to 'will the means'.⁴⁷ Second (back to inclusion/exclusion), alternative agencies such as the Western European Armaments Group (WEAG) embrace Member States (Norway, Turkey) which might, from bitter experience, fear marginalization rather than closer involvement. These countries and the EDA will have to learn to work in harmony with one another. Third, most of the major organisms promoting armaments cooperation, such as OCCAR or the Letter of Intent (LoI) group,⁴⁸ currently operate outside of any EU framework. In its initial stages, the EDA will 'incorporate or assimilate the principles and practices of the relevant elements of pre-existing arrangements/groupings/organizations (OCCAR, LoI, Framework Agreement, WEAG/WEAO)'.⁴⁹ Indeed, the success of the EDA will depend in large part on its ability to work with these existing organisms and to give greater coherence to their efforts.

But in working out the nuts and bolts of the Agency's remit in summer 2004, a combined Council and Commission team ran up against a number of hurdles. First, in thinking through the relationship between the EDA and the Council, it became clear that, where only a few years ago EU Defence Ministers did not meet at all in any format, they will henceforth meet both in the GAC and in the Steering Board. This raises turf issues, in particular challenging the role of COREPER as the privileged entry point to the Council of Ministers. Second, there was disagreement over the precise powers of the Steering Board, particularly with respect to working programmes and budgets. Some Member States fear the Council's loss of political guidance over the EDA. Issues such as voting patterns (QMV or unanimity) remain unresolved. Further, in its relations with the Commission, the EDA will have to tread a synergetic tightrope. Two recent initiatives by the Commission overlap the remit of the EDA in highly sensitive areas. First, the launch of the European Security Research Programme, from 2006, aims to close the gap between civilian and military defence research, an issue which will also lie at the heart of the EDA's activities. Second, the inexorable move towards Commission involvement in the defence market which was flagged by the

⁴⁷ Statement on EDA signed by the CEOs of Europe's three largest defence companies (EADS, BAES, Thales), as reported by Judy Dempsey, 'EU Defence Agency Approved', *Financial Times*, 15 June 2004.

⁴⁸ The former coordinates procurement and the latter a regulatory framework for the main European armaments producing nations.

⁴⁹ Report of the Agency Establishment Team, April 2004.

September 2004 DG Internal Market Green Book. As Schmitt notes, ‘it is increasingly recognized that national defence markets in Europe are too small today to sustain a viable defence industry, and that there is a need for more transparency and intra-European competition. One can therefore assume that some action will be taken in this area, in particular since defence market and industrial issues will also be on the agenda of the Agency.’⁵⁰

The EDA offers the first real opportunity for the EU to bring its defence planning, military capability objectives and armaments coordination in line with the urgent tasks it is facing on the ground. Again, the very fact that it has been obliged to establish the EDA speaks volumes about the centrality – and also the limitations – of intergovernmentalism. Once again, we have an Agency being established in Brussels because of the perceived need to impose coherence on a multifaceted range of armaments-related actors and activities. And once again, governments are expressing nervousness about their own creation. Nobody expects the EDA (at least in its early years) to engage in radical restructuring of key sectors such as fighter aircraft.⁵¹ Therefore, to quote the IISS, the EDA will have to be ‘pragmatic and practical, focusing on areas where the agency can make a visible difference, thereby establishing credibility that could foster greater ambitions for the future’.⁵² The EU governments are poised to take a major step forward towards more rational armaments and defence planning. The dynamics of the ESDP suggest that they will progressively situate their national plans within a European framework. This would be the first step on a potentially very long road. But even the longest journey has to start with the first step.

V The Multiplication of Institutional Agencies: Too Many Cooks?

The superimposition, after 1999, on an already complex institutional nexus of a range of new foreign and security policy agencies was always likely to be a sensitive process. In addition to the existing competent bodies – the rotating Presidency, the General Affairs Council (GAC), the Political Committee (PoCo), COREPER, the Council Secretariat, and the Commission’s Directorate General for External Relations (Relex) – the new century witnessed the arrival of the High Representative for the CFSP

⁵⁰ Schmitt policy paper.

⁵¹ Few analysts believe that the next generation fighter aircraft, France’s *Rafale* and the British, German, Italian and Spanish *Eurofighter-Typhoon*, can possibly justify their cost given that the combat roles for which they were invented are highly unlikely. But no country is likely to close down its own assembly line. Instead, the EDA could help find ways to adapt these aircraft to more likely roles and to scale down near-term purchases, thus freeing large amounts of cash for more relevant – and crucial – projects.

⁵² [IISS], ‘The European Defence Agency’ (2004) 10/5 *Strategic Comments*.

(HR), the Political and Security Committee (COPS⁵³), the European Union Military Committee (EUMC) and the European Union Military Staff (EUMS). In reality, the transition proved relatively smooth – despite a number of predictable initial inter-agency tensions between established players and new players, between national capitals and Brussels, between political and military functions. More significant institutional shifts, however, loom as a consequence of the recommendations of the European Convention, taken up in the June 2004 Constitutional Draft. The most important one has to do with the attempt to define an overarching position able to coordinate the work of the many different existing CFSP/ESDP agencies.

1. The Union Minister for Foreign Affairs.

The Union Minister for Foreign Affairs (UMFA) has emerged from the Convention and IGC processes as – at least potentially – an immensely powerful figure.⁵⁴ At first glance, this looks like the very opposite of ‘flexibility’, and indeed opposition to the creation of the post was forthcoming essentially from the smaller Member States who feared yet another ‘super-post’ with the potential to deliver *ukases*. The post-holder’s basic functions are laid out in Article I-28 (see Annex IV below). He or she will combine the current responsibilities of both the HR-CFSP and the Commissioner for External Relations, thus having one foot in the Council and one (as Vice-President) in the Commission. This will allow him or her to coordinate the two main thrusts of the EU’s external policy: security and overseas aid. The UMFA will also contribute both to the preparation of and to the implementation of CFSP/ESDP and will chair the Foreign Affairs Council. He or she will represent the Union in international organizations and at international conferences, will ‘conduct political dialogue’ on the Union’s behalf, and can convene an emergency meeting of the FAC within 48 hours (or, in a real crisis, even sooner). The postholder,⁵⁵ elected for a five-year term, will replace the previous semestrial rotating Presidency, thus accumulating even more authority. Moreover, the UMFA will preside over a European External Action Service, which is intended to be introduced within one year after entry into force of the Treaty. There are many significant obstacles to the creation of such an EU Diplomatic

⁵³ PSC, as an acronym, being unpronounceable, the committee is normally referred to by its French acronym COPS.

⁵⁴ There are no fewer than 65 references to the functions of this post in the Draft Constitution. Moreover, it is not insignificant that whereas in the Convention draft his functions were often referred to as ‘responsibilities’, in the Constitutional draft these have become ‘powers’.

⁵⁵ At the European Council in June 2004, it was agreed that the first post-holder will be Javier Solana.

Service which are too complex to enter into here.⁵⁶ They involve extremely delicate negotiations between the Commission (Relex) and the Council, not to mention the Parliament and the national capitals. The remit of the Service is referred to in Article III-296(3).⁵⁷ Establishing it will be a major task of the UMFA's first year in office.

Some have questioned whether the vast range of responsibilities accruing to the Foreign Minister's post will be within the physical and mental powers of a single individual. There is a danger that the post-holder will be so torn between the different agencies to which she or he is attached that the result will be dysfunctional blockage.⁵⁸ Delegation will be indispensable. If delegation can be properly organized, however, the advantages of having this central pillar of cohesion will outweigh the disadvantages of inter-agency complexity. But the bottom line is clear. The requirements of coordination in the broad field of the CFSP and in the more critical field of the ESDP are now so urgent that the creation of this post literally imposed itself. Almost all think-tank papers on the issue in the years prior to the Convention proposed its creation. Now it is (almost) here.

How the UMFA will handle relations with powerful foreign ministries such as the Quai d'Orsay or the FCO remains to be seen. Javier Solana as HR-CFSP was totally sidelined during the 2003 Iraq crisis. But the fact that, subsequent to that crisis, both London and Paris, not to mention all the other capitals, concurred in the creation of this central post implies at the very least that they see the urgent need for greater coordination in this increasingly vital policy area. Two further issues arise. First, how will this new office-holder cooperate with the Convention's other innovation, the President of the European Council who, in addition to 'chairing and driving forward' the work of the Council, will *also* 'ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the Union Minister for Foreign Affairs' (Article I-22)? An analogy often deployed is that of the US President and the Secretary of State. This is doubly misleading. Both those office-holders exercise clear lines of

⁵⁶ On this issue, see Simon Duke, 'Preparing for European Diplomacy?' (2002) 40/5 *Journal of Common Market Studies*.

⁵⁷ 'In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organization and functioning of the European External Action Service shall be established by a European decision of the Council. The Council shall act on a proposal from the Union Minister for Foreign Affairs after consulting the European Parliament and after obtaining the consent of the Commission.'

⁵⁸ Simon Duke, 'The Convention, the Draft Constitution and External Relations: effects and implications for the EU and its international role' (2003) *Working Paper 2003/W/2* (European Institute for Public Administration, Maastricht), p. 16.

authority, whereas their new EU counterparts will still have to coexist with powerful heads of state and government and with influential foreign ministers. Moreover, between the US President and the Secretary of State there is a hierarchical relationship entirely missing from the new EU positions. The best way round any potential clash of responsibilities would be a *de facto* division of labour whereby the President of the European Council concentrates on the preparation and implementation of essentially non-CFSP/ESDP aspects of Council business, leaving most foreign and security policy coordination to the UMFA. In this way, the two executives can come together to coordinate CFSP/ESDP issues whenever such coordination becomes essential. External representation will follow the norms of protocol. The US President would not expect to interact with the UMFA, whereas the latter would expect to be received by the Chinese foreign minister.

Second, how will the UMFA interact with the President of the Commission who has also traditionally sought to represent the EU in foreign places and who equally has the right to attend sessions of the European Council? There are fears that the dual-hatting of the UMFA could compromise the collegiality of the Commission. Although the UMFA will be a Commissioner like all the others, he or she will also *not* be like them in that the UMFA will also carry all of the gravitas of the Council. In instances of conflict between these two agencies, the UMFA will decide for him or herself on which side of the fence to come down. Moreover, the explicit fusing of the civil and military aspects of the EU's external action at the heart of the UMFA's portfolio could have one of two results. Either it will help consolidate the coherence of the EU's foreign and security policy, or it will spark a renewed struggle for preponderance between the Council and the Commission, particularly with respect to the more civilian tasks hitherto exclusively managed by the latter. One way round this potential minefield is for the Commission President to concentrate on *implementation* of EU policy while the UMFA focuses on *elaboration and policy-initiative*. Jose Manuel Durao Barroso and Javier Solana appear to be a team that can deliver. If so, they will perform an inestimable service to the Union.

Although turf-battles between these many powerful institutions seem written into the fabric of the Constitution, at the same time their very existence bears witness to their genuine need. To paraphrase Voltaire, since the post of UMFA did not exist, it was necessary to invent it. This will be the first time in the history of the European project that the supranational and the intergovernmental functions have been merged in a single individual. The post-holder will have to demonstrate extraordinary diplomatic skills. He or she will, in effect, have to demonstrate infinite *flexibility* while holding firm on basic principles. This goes way beyond discussions of structure and agency, without denying the importance of the latter. Much, in all of these

instances of potential clash, will depend on the personalities of the individuals involved. When a complex dish is being prepared, it is good to have numerous cooks in the kitchen. But for the dish to come out right, there has to be a head chef. Increasingly, that will not just involve following somebody else's recipe. It will involve having a major hand in the writing of the recipe.

VI Conclusion

The four elements of 'flexibility' analysed above should be seen as part of a vast empirical quest, on the part of many EU actors, for procedures, agencies and forms which will maximize efficiency and hasten desired outcomes – in a complex, multinational, multi-sector, multi-form political and historical process. I have attempted to explain how, via the Convention, the IGC and the Constitutional drafts, by a constantly iterative process, the EU finally reached the point where it currently finds itself. To engage, briefly, with the theoretical literature on European integration, the following concluding comments seem in order. Both liberal intergovernmentalists and supranational institutionalists seem to wish to stake out a territory fenced by a dominant or mono-causal explanatory factor for European cooperation (the former) or integration (the latter): on the one hand the sovereign state as a unitary actor involved in bargaining, on the other hand supranational institutions with multiple actors at multiple levels involved in integrating. The key element here is that each of these two camps believes that *its* dominant explanation *trumps* that of the other. However, apart from the delights of intellectual jousting, it is not clear why anybody would wish to detect mono-causal or even dominant drivers behind complex political and historical processes. When, in 1958, the United Kingdom prime minister was asked by a young journalist what can most easily steer a government off its chosen course, Harold Macmillan replied: 'Events, dear boy! Events!' Since 1989, and especially since 11 September 2001, events have run way ahead of the capacity of politicians – even strong ones – to determine their course.

In an early study of the ESDP, I coined the concept of 'supranational intergovernmentalism'.⁵⁹ By that I meant the process whereby a profusion of agencies of intergovernmentalism are currently taking permanent root in Brussels and, through dialogue and socialization factors, reaction to events and a host of other dynamics are gradually creating a tendency for policy to be formulated and even driven, in increasing measure, from within that city. Governments, often against their wishes, are being forced in directions they had not anticipated. Vivien Schmidt has outlined a variety of 'mediating

⁵⁹ Jolyon Howorth, 'European Integration and Defence: the Ultimate Challenge?' (2000) *Chaillot Paper 43* (WEU Institute for Security Studies, Paris), pp. 36 and 84.

factors' which help explain such changes in government policy on major issues.⁶⁰ Although her factors were applied to the European political economy, they are easily adaptable to other policy areas. Vulnerability – in strategic terms – is a factor which, in the last 15 years, has risen dramatically to the top of policy-makers' agendas. It is largely exogenous and a prime example of 'events'. Political-institutional capacity – an endogenous ability to impose or negotiate change has also evolved markedly in the field of the ESDP. European statesmen, even the most powerful, have been proven time and again to be inadequate to the task of driving forward a coherent European response to the external environment. Policy legacy and preference – the extent to which long-standing approaches remain valid – is likewise a factor to which even the most powerful statesmen have been forced to adapt.⁶¹ Above all, discourse – the ability to change preferences by altering actors' perceptions of the available options – has proven to be an immensely powerful factor in driving forward the ESDP process.⁶² Ideas, norms and values have come into their own. Policy preferences which, only a few years previously, would have seemed unimaginable to many a leading actor, have in recent years and in this crucial policy area rapidly been embraced and integrated into the mainstream. Above all, the decision to pool that last bastion of sovereignty – defence and security policy – with all its limitations and caveats, constitutes a sea change in the way the EU and its Member States will henceforth relate to the outside world. The reality is deeply empirical and lends itself badly, if at all, to theoretical speculation.

The four measures analysed above all aim to help ensure that, in the CFSP/ESDP area, there will, in fact, *not* be a multi-speed Europe, *nor* variable geometry and above all *no* Europe *à la carte*. For, far from representing genuine flexibility, these forms in fact herald the break-up of the EU as it has hitherto functioned. They all aim, in some way, to differentiate between an inner core and an outer fringe. Instead, the innovations analysed, cumulatively and collectively, amount to a genuinely flexible and pragmatic attempt to square the circles of unity and diversity, of inclusiveness and dynamism in this, the toughest policy area of all: security and defence policy.

⁶⁰ Vivien A. Schmidt, *The Futures of European Capitalism*, (Oxford University Press, Oxford, 2002), pp. 63–67.

⁶¹ Consider the irony of it being a *Gaullist* president, Jacques Chirac, who reversed his socialist predecessor's inhibitions about bringing France back into the NATO fold in 1995; or of it being a British prime minister, Tony Blair, who, at Saint-Malo in 1998, acted as midwife to European defence integration. Of course, France retains a fondness for 'Gaullism' and the UK is unlikely to abandon 'Atlanticism'. But both countries recognize that they must hang together – for fear of hanging separately.

⁶² On this, see my 'Discourse, Ideas and Epistemic Communities in European Security and Defence Policy' in Claudio Radaelli and Vivien Schmidt (eds), 'Europeanisation, Policy Change and Discourse' (2004) *27/2 West European Politics* (Special Edition), pp. 29–52.

This phenomenon belies the prescriptions of both theoretical schools. Liberal intergovernmentalists have long assured us that, especially in this area of high politics, such developments cannot and will not happen. Supranational institutionalists, on the other hand, can scarcely explain such major progress in a policy area which is overwhelmingly associated with the European Council and its agencies. And yet, by any measure, it seems to be working. The process is worth keeping an eye on.

Annex I

Principal Elements of ESDP Flexibility in the Draft Constitution

1. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy. (I-41(3))
2. A European Armaments, Research and Military Capabilities Agency shall be established to identify operational requirements, to promote 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, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities. (III-311)
3. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. (I-41(5))
4. 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. (I-41(6))
5. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. (I-41(7))
6. Should a Member State fall victim to a terrorist attack or a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council. (III-329)

[N.B. Further details about the operating procedures for these items can be found in the relevant Articles of Part III, Title V and Part III Title VI.]

Annex II

Protocol on permanent structured cooperation established by Articles I-41(6) and III-312 of the Constitution

Article 1

The permanent structured cooperation referred to in Article I-41(6) of the Constitution shall be open to any Member State which undertakes, from the date of entry into force of the Treaty establishing a Constitution for Europe, to:

- (a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the European agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as the “Agency”), and
- (b) have the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as combat formations, with support elements including transport and logistics, capable of carrying out the tasks referred in Article III-210, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

Article 2

To achieve the objectives laid down in Article 1, Member States participating in permanent structured cooperation shall undertake to:

- (a) cooperate, as from the entry into force of the Treaty establishing a Constitution for Europe, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives in the light of the security environment and of the Union’s international responsibilities;
- (b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;
- (c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;
- (d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within NATO, the shortfalls perceived in the framework of the “Capability Development Mechanism”;

(e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the Agency.

Article 3

The Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established *inter alia* on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations, and decisions adopted in accordance with Article III-312 of the Constitution.

Annex III

European Armaments, Research and Military Capabilities Agency (European Defence Agency)

Article III-311 (new)

1. The European Armaments, Research and Military Capabilities Agency, established by Article I-41(3) and subject to the authority of the Council, shall have as its task to:

- (a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
- (b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;
- (c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;
- (d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
- (e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.

2. The Agency shall be open to all Member States wishing to be part of it. The Council, acting by qualified majority, shall adopt a European decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

Annex IV

Article I-28: The Union Minister for Foreign Affairs

1. The European Council, acting by qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs. The European Council may end his or her term of office by the same procedure.
2. The Union Minister for Foreign Affairs shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The Union Minister for Foreign Affairs shall preside over the Foreign Affairs Council.
4. The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He or she shall ensure the consistency of the Union's external action. He or she shall be responsible within the Commission for responsibilities falling to it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the Union Minister for Foreign Affairs shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.