
The EU's new relations with NATO shuttling between reliance and autonomy

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Contents

I. Introduction	400
II. EU-NATO relations in the making	401
1. NATO-WEU negotiations in 1996	401
2. NATO's objections crystallise to 'three D's'	404
a) De-linking/De-coupling	405
b) Discrimination	405
c) Duplication	407
3. NATO's Berlin Plus Agreement and the EU's Headline Goal Task Force	408
4. EU's capabilities commitment Conference and NATO's 'three I's'	411
5. EU Summit in Nice and NATO's Berlin Double Plus Agreement	414
6. EU's proposals for the involvement of non-European NATO allies	417
7. EU-NATO Co-operation Pact	419
III. Conclusions	421
1. NATO's primacy	423
2. EU access to NATO assets	429
3. Summary	430

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I. Introduction

The conceptual and practical challenges of co-operation between the EU and NATO can be classified in several categories. The first category encompasses divergences between the EU Member States regarding the parameters of the tasks that the European Security and Defence Policy (ESDP) should perform. These divergences have an important, albeit indirect impact on the ESDP-NATO relationship. The second category includes issues that bring intra-EU divergences about the direct influence of ESDP relative to NATO into focus. This concerns especially the eleven members of the EU who are also members of NATO,¹ and how they set priorities as far as the roles of NATO and of the EU in European security are concerned. A third category comprises practical issues that have the potential to prevent EU-led military operations, in particular EU access to NATO assets. Generally, for the EU to act under the aegis of ESDP when using NATO assets, three conditions have to be met: EU Member States must agree on which tasks the EU should perform; they must concur on taking a specific action; finally NATO must allow the EU to employ NATO assets. Unless these criteria are fulfilled, any potentially EU-led operation is compromised.

In spite of the gradual progress ESDP has made during the last years – much of which has been institutional –, and in spite of the progress the two organisations have made in institutionalising their relationship, there are a number of key aspects that are unresolved or at least open to further improvement.

This article begins by providing a chronicle of what the EU calls ESDP and what NATO has long time called European Security and Defence Identity (ESDI)². As will be elaborated in detail, the history of ESDP-NATO relations reveals very much of what is currently at the centre of discussion. This framework chapter therefore adds perspective and, indeed, fuels the present efforts that the EU and

¹ 4 EU Member States are not members of NATO: Finland, Ireland, Austria, Sweden. 6 European NATO Members are not Member States of the EU: Czech Republic, Hungary, Iceland, Norway, Poland, Turkey. 10 countries are set to join the EU on 1 May 2004: Cyprus, Malta, the Czech Republic, Poland, Hungary, Estonia, Latvia, Lithuania, Slovakia, Slovenia. The last five countries are also expected to join NATO by around the same time, together with Bulgaria and Romania. The EU will then have 25 Member States with 19 being member of NATO. NATO will then have 26 members with 7 countries not being EU Member States.

² NATO has always continued to use the term ESDI. The EU, by contrast, beginning with the Cologne European Council in June 1999, shifted to using the term ESDP to emphasize that this was a policy of the EU, and not only a kind of identity derived from NATO. Only very recently, NATO has agreed to adopt the new term and now uses both of them. The 'E' in ESDP stands for European in the sense of EU, which does not exclude, but also does not guarantee that the EU might allow other European countries to participate in shaping it. The NATO term 'ESDI', on the other hand, is a term which has been shaped by the new NATO Strategic Concept of 1991, which predated the Maastricht Summit, speaking of the 'creation of a European identity in security and defence' and which addresses the roles of other European institutions such as the EC, WEU and OSCE. The 'E' in ESDI therefore has a broader connotation than in ESDP and definitely includes all European members of NATO.

NATO face as they search for closer relations. Subsequently, the joint declaration of NATO and EU of 16 December 2003 will be addressed. On behalf of both organisations, the EU-Secretary General and High Representative for the CFSP, *Solana*, and NATO's Secretary General *Lord Robertson* adopted an accord which they appreciated as a 'vital milestone in the history of NATO-EU relations'.³ The official announcement of a strategic partnership, however, may appear to be somewhat premature given the longstanding gap between capabilities and expectations that has ruled the development of ESDP from its very beginning. Therefore, it will finally be examined if, at least in the nearer future, the reciprocal relations between EU and NATO will still be more about political will and tactics than about common long-term goals and strategy.

II. EU-NATO relations in the making

The ESDP process has first and foremost been fraught with political manoeuvres of whether ESDP will be within NATO or outside it. In general, the emergence of ESDP has for a long time suffered to show the kind of sensitivity that the non-EU NATO-members, Europeans as well as the United States (hereinafter U.S.), have been looking for. This overall assessment illustrates some of the irony of the entire EU/ESDP-NATO process: Since 11 of the 15 ESDP members are also members of NATO, it must seem strange if so much of what was drafted by the EU appeared as though no NATO-friendly hand had touched it.⁴ On the other hand, NATO's attempts to come to terms with the creation of ESDP is characterized by a rather intractable contradiction. Either ESDP will do so little that it will not make up for shortfalls in NATO capabilities. Or ESDP will try to do so much, at the expense of NATO's primacy, that the latter would become less effective and thus decisively weakened.

1. NATO-WEU negotiations in 1996

Negotiations about the relationship between NATO and the EU with regard to the latter's ESDP began with what, in practice, ESDP's proper relationship with NATO should be. The WEU Member States wanted a capacity to take military actions if and when NATO was not inclined to act. Some Allies, notably the U.S., were concerned that only few if any European states would provide the resources needed

³ NATO Press Release (2002) 142, 16 December 2002.

⁴ Compare *Daalder*, Are the United States and Europe heading for divorce?, *International Affairs* (2001) 531-545.

for a full-fledged WEU.⁵ Also, there were concerns that promoting a WEU that was truly independent could weaken NATO's capacity to act. Thus, step by step, a compromise emerged according to which NATO should help to facilitate the creation of ESDI, but not as a completely independent entity. Instead, ESDI would be built up within NATO. This effort implied that a portion of the NATO structure would be made available on the basis of a concept of 'separable but not separate military capabilities' which could be employed by NATO or the WEU.⁶

The 'grand bargain'⁷ between NATO and WEU, sealed in Berlin and Brussels in June 1996, had several key elements: First, ESDI could take advantage of NATO's newly developed concept of the Combined Joint Task Force (CJTF) headquarters. Indeed, CJTF could provide a mechanism for enabling the WEU to be effective without having to duplicate military command arrangements.⁸ Secondly, all European NATO members would be able to take part in WEU-led operations, including European command arrangements, if they chose to do so. However, it was expressly agreed that NATO would remain the essential forum for security consultations and pursuit of common security objectives, that the Allies were ready to pursue common security objectives through the Alliance wherever possible, and that there would be full transparency between NATO and the WEU in crisis management.⁹ Finally, and this is of critical importance, it was agreed that there should be a single, multinational command structure, respecting the principle of unity of command.¹⁰

Despite this agreement, practical details of the relationship remained to be worked out. After all, the Brussels and Washington Treaties both contain commitments

⁵ *Kupchan*, In Defence of European Defence: An American Perspective, *Survival* 42 (Summer 2000) 56-80; *Sloan*, The United States and European Defence, *Chaillot Paper* 39 (April 2000), Institute for Security Studies, Western European Union.

⁶ See Ministerial Meeting of the North Atlantic Council, Declaration of the Heads of State and Government, NATO Headquarters, Brussels, Press Communiqué M-1 (94) 3, January 10-11 (1994) paragraph 9. For more details see Meeting of the North Atlantic Council in Defence Ministers' Session, Final Communiqué, Brussels, NATO Press Communiqué M-NAC (DM)-2 (96) 89, June 13 (1996).

⁷ *Hunter*, The European Security and Defence Policy, NATO's Companion - or Competitor?, RAND National Defence Research Institute (2002) 13-18.

⁸ Meeting of the North Atlantic Council in Defence Ministers' Session, June 13, 1996, op. cit. (fn. 6), paragraph 7.

⁹ Meeting of the North Atlantic Council in Defence Ministers' Session, June 13, 1996, op. cit. (fn. 6), paragraph 7.

¹⁰ 'Unity of command' basically means that, whatever NATO assets are made available to the WEU, this should not impair NATO's capacity to act. Interestingly, a critical implication behind that agreement was merely noted. NATO basically relies upon what individual Allies are prepared to commit for use. Thus, as European Allies contemplated what capabilities or assets they would have to seek from NATO, the U.S. agreed that some of its own forces could be made available to the WEU and serve under its command, even under circumstances where the U.S. chose not to become engaged.

for Allies to aid one another in the event of external aggression. In theory, the Brussels Treaty does even more to commit its Member States to take military action than does the Washington Treaty.¹¹ In reality, however, the WEU clause clearly stands back since the WEU does neither have a serious military structure nor the political and strategic engagement of the U.S.¹² The U.S. was implicitly concerned that a European non-member of NATO might join the WEU. If such a country were subjected to external aggression, the other WEU states would have to come to its aid which, in practice, could mean exposing NATO to risks as well. Indeed, this would possibly allow NATO to be entered through the 'back door'. Therefore, the U.S. adopted a formal position that any WEU member would also have to be a NATO member.¹³

Fundamental concerns also arose about the EU's capacity for directing WEU actions. The Amsterdam Treaty provided that EU members would act on an 'equal footing', including decisions about what the WEU should do to fulfil any of the Petersberg Tasks.¹⁴ This provision clearly indicated that EU decisions related to the WEU would include non-NATO members¹⁵, with the potential of shaping NATO policy and certainly of gaining access to NATO proprietary information, all without sharing the responsibilities and practices of NATO membership. Likewise, doubts arose about the shape of the North Atlantic Council's (NAC) authority over the release of NATO assets for WEU use. This provision preserves veto power for all NATO Allies; inevitably the question was raised whether particularly the U.S. would be willing, when actually challenged, to implement its

¹¹ See the Modified Brussels Treaty: 'Each high contracting party will afford the Party so attacked all the military and other aid and assistance in [its] power' (Article V). Compare the respective Article 5 North Atlantic Treaty: 'Each ally will join in taking such action as it deems necessary, including the use of armed force.'

¹² Rummel, Die ESDP als Instrument autonomen Handelns, in Reiter/Rummel/Schmidt (eds.), *Europas ferne Streitmacht. Chancen und Schwierigkeiten der Europäischen Union beim Aufbau der ESDP. Forschungen zur Sicherheitspolitik*, Band 6 (2002).

¹³ Given that the EU, like NATO, was embarking on an enlargement process, this condition had real substance, especially since the U.S. was in no way implying that it would support NATO membership for any country that happened to find its way into the EU and thus chose to join the WEU. See *van Eekelen*, EU, WEU, and NATO: Towards a European Security and Defence Identity, NATO Parliamentary Assembly, Sub-committee on Defence and Security Co-operation between Europe and North America, October 6 (1999) paragraph 23. In effect, the U.S. was asking for a veto on any country that takes this path, unless, by its own volition, NATO also grants admittance. See *van Eekelen*, EU, WEU, and NATO: Towards a European Security and Defence Identity, *ibid*. See also *Edwards*, Europe's Security & Defence Policy and Enlargement: The Ghost at the Feast?, Robert Schuman Centre for Advanced Studies, EUI Working Papers (2000) No. 69.

¹⁴ Article 17 paragraph 3 Amsterdam Treaty: 'When the Union avails itself of the WEU to elaborate and implement decisions of the Union on the [Petersberg] tasks [...] all Member States shall be entitled to participate fully in the tasks in question [...] on an equal footing in decision-taking in the WEU.'

¹⁵ Finland, Sweden, Austria, and (at the time not even a member of NATO's Partnership for Peace) Ireland. Furthermore, in time, the WEU might also include Central European states as full members that joined the EU but not NATO.

pledge, even to put some of its own military personnel under WEU command, outside of the NATO command structure.¹⁶

2. NATO's objections crystallise to 'three D's'

After a two-year period of relative silence, a French-British initiative gave new life to ESDP. At first reading, the St. Mâlo declaration of December 4, 1998, was simply a call for speeding up the process of implementing what had been agreed upon at the Amsterdam EU Summit on CFSP, namely including the 'progressive' framing of a common defence policy.¹⁷ But it also broke new ground. It is true that the declaration honoured the collective defence provisions of NATO. However, it was eloquently silent on NATO's implicit primacy. Absent also was the explicit idea of an ESDI within the NATO framework that could make use of 'separable but not separate' military capabilities. Right on the contrary, it was asserted that 'the Union must have the *capacity for autonomous action*'.¹⁸ The declaration also argued that the EU would need its own appropriate structures and a capacity to analyse situations, have sources of intelligence, and undertake strategic planning – all areas where either NATO as a whole or the U.S. in particular had pre-eminence.¹⁹

Notwithstanding additional issues, the notion of 'autonomous action' has since continued to bedevil discussion across the Atlantic. At the NATO foreign ministers' meeting in Brussels on December 8, 1998, the then U.S. Secretary of State Albright recalled support for an ESDI within the Alliance and any such measures that enhance European capabilities. Then she set out standards for judgment that instantly became known as the 'three D's':

'The key to a successful initiative is to focus on practical military capabilities. Any initiative must avoid pre-empting Alliance decision-making by *de-linking* ESDI from NATO, avoid *duplicating* existing efforts, and avoid *discriminating* against non-EU members.'²⁰

¹⁶ Besides, France especially was not convinced that NATO needed to remain pre-eminent for military operations that did not fall under the Washington Treaty's Article 5 (response to external attack) as for those that did. See *Parmentier*, Redressing NATO's Imbalances, *Survival* 42 (summer 2000) 96-112.

¹⁷ Joint Statement at the Franco-British Summit, Saint-Mâlo, France, in Rutten, From St. Mâlo to Nice, European defence, *Chaillot Papers* 47 (May 2001) 8.

¹⁸ Joint Statement at the Franco-British Summit, Saint-Mâlo, France, in Rutten, From St. Mâlo to Nice, European defence, *ibid.* [emphasis added]

¹⁹ It was also noted that military action would only take place 'when the Alliance as a whole is not engaged,' though, and that European capacities should be developed 'without unnecessary duplication.' The term '*when* the Alliance as a whole' has subsequently been changed to '*where* the Alliance as a whole', thereby provoking a debate what the term 'where' means: a geographic, temporal, or functional term. Compare White House, Press Secretary, Remarks by the President and Prime Minister Blair in Joint Press Conference, Camp David, Maryland, February 23 (2001).

a) De-linking/De-coupling

'De-linking' most obviously related to the idea of autonomous European action. Besides, behind the concern about de-linking was the longstanding reservation that, somehow, actions by either the U.S. or its Allies would lead the security on the two sides of the Atlantic to be *de-coupled*. This concern is of purely political character. From a legal point of view, a reproach could only be based on Article 8 Washington-Treaty:

'Each Party declares that none of the international engagements now in force between it and any other of the Parties or any third State is in conflict with the provisions of this Treaty, and undertakes not to enter into any international engagement in conflict with this Treaty.'

Article 8 does not serve, however, as a substantial claim to refrain from any ESDP agreement. ESDP does not imply conflicting commitments which is the more obvious as ESDP is not directed to territorial defence.²¹ But as a political matter, it gained great currency despite the fact that the risk of de-coupling goes against two aspects of ESDI which would be welcomed by NATO and the U.S. First, the Europeans would be doing more for defence and hence for intra-allied burden sharing. Besides, some military capacity could reassure Europeans of their ability to take some actions under circumstances in which the U.S. chose not to become engaged. By this argument, ESDI should reinforce European confidence in U.S. commitments to European security and thus the political and military *coupling* of the two sides of the Atlantic.

b) Discrimination

Discrimination against non-EU NATO members was a more tangible issue. At the time of St. Mâlo, five members of NATO were not EU members (Iceland, Norway, Turkey, Canada, U.S.) and at present, with the Czech Republic, Hungary and Poland, there are eight non-EU members.²² Furthermore, Denmark had chosen not to become a full member of WEU.

In principle, the issue whether any or all of these states are able to take part in WEU military operations should not have been an insoluble problem since, as a necessary condition for releasing any NATO assets for use by WEU, the NAC first has to approve by consensus. But the St. Mâlo declaration had brought into play the possibility of autonomous European military actions, e. g. without calling

²⁰ Albright, The right balance will secure NATO's future, Financial Times, December 7 (1998) 1 [emphasis added].

²¹ Given the relatively small size and limited range of actions by any European force, as formally presented in the Petersberg Tasks, the risk of de-coupling appeared to be minimal, however.

²² Compare footnote 1.

upon NATO assets. Would now non-EU NATO members be able to take part in WEU operations under these conditions? Notably, that point had already been settled in the Maastricht Treaty, albeit at that time quite theoretically:

*'[Non-EU] European Member States of NATO are invited to become associate members of WEU in a way which will give them the possibility to participate fully in the activities of WEU.'*²³

The issue has since resurfaced, as ESDP has become more of a reality. In one form or another, virtually all non-EU NATO members have made clear their concerns about being sidelined. Here again, it is worth extrapolating that the Washington Treaty does not generally forbid different treatment. The treaty does not include a rule demanding equal treatment between NATO members. Of course, Member States are not allowed to act against each other; but they are not hindered to act without any partner of the Alliance. The discrimination issue is, however, not only about the interests of the affected non-EU NATO countries. In fact, it is deeply rooted in the abiding sense within NATO of a share of experience, risks and a political-strategic perspective.

Particularly for Turkey, as the most durable candidate country to the EU, the discrimination issue is of a fundamental character.²⁴ As ESDI/ESDP has developed beyond the necessary reliance on NATO assets (and Turkey's potential veto), the issue of whether or not Turkey would be able to take full part within EU-led operations has come up. This topic arose as late as the Washington Summit of April 1999, even though NATO's new Strategic Concept was quite clear:

*'The Allies were prepared to make NATO's assets and capabilities available for operations in which the Alliance is not engaged militarily under the political control and strategic direction either of the WEU or as otherwise agreed, taking into account the full participation of all European Allies if they were so to choose.'*²⁵

Right in this sense, the Cologne EU Council Summit on 4 June, 1999, set the goal of developing

'an effective EU-led crisis management in which NATO members, as well as neutral and non-allied members of the EU, can participate fully and on an equal footing in the EU operations; and arrangements made would allow non-

²³ Maastricht, II. Declaration, December 10 (1991) [emphasis added].

²⁴ At the Helsinki EU Summit a year later, Turkey was finally put on the list of countries that would be destined to join the Union, Helsinki European Council, Presidency Conclusions, December 10-11 (1999) paragraph 12.

²⁵ NATO, The Alliance's Strategic Concept, April 23 (1999) Release NAC-S (99) 65, paragraph 30 [emphasis added].

EU European Allies and partners to take part to the fullest possible extent in this endeavour.²⁶

c) Duplication

The most important of the ‘three D’s’ refers to duplication. The injunction ‘to avoid duplicating existing efforts’ was a plea not to spend scarce resources on a second set of capabilities that they could just as easily obtain from NATO.²⁷ Given that the military budgets of most European states are in fact decreasing, this was not a small matter but rather a major argument for creating ESDI within NATO. Again, from a legal point of view, the EU Member States are virtually free to create their own structures. This is valid although Article 17 paragraph 2 of the Amsterdam Treaty stated that it is the WEU that provides the EU with access to an operational capability²⁸ while the WEU-Treaty itself explicitly recognises NATO’s primacy in military matters:

‘Recognising the undesirability of duplicating the military staffs of NATO, the Council and its Agency will rely on the appropriate military authorities of NATO for information and advice on military matters.’²⁹

However, this provision only contains a political command to avoid duplication. It does not set up a legal barrier. Nevertheless, it appears to make little sense to try to create a second set of military goods anyhow, especially since neither NATO nor the Headline Goal Task Force in effect owns much of this hardware, but rather calls upon national contributions. The new Article 17 of the Treaty of Nice has mainly replaced the provisions on the EU’s relations to the WEU. As a consequence, the latter is no longer foreseen as (an integral part of) the means providing the EU with access to an operational capability.

The issue of ‘unnecessary duplication’ continues to be at the centre of debate, not least because NATO is occupied with the different pace of military modernization

²⁶ European Council, Presidency Conclusions, June 3-4 (1999) ‘Annex III, European Council Declaration on Strengthening the Common European Policy on Security and Defence,’ paragraph 3 [emphasis added].

²⁷ Compare Schake, Constructive Duplication: Reducing EU reliance on US military assets, Center for European Reform, Working paper (January 2002).

²⁸ Article 17 para. 2 Amsterdam Treaty reads: ‘The Western European Union (WEU) is an integral part of the development of the Union providing the Union with access to an operational capability notably in the context of paragraph 2. It supports the Union in framing the defence aspects of the common foreign and security policy as set out in this Article. The Union shall accordingly foster closer institutional relations with the WEU with a view to the possibility of the integration of the WEU into the Union, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.’

²⁹ Article IV para. 2 WEU-Treaty.

among the partners ('interoperability').³⁰ NATO launched a new Initiative on Defence Capabilities (DCI), focusing in particular on technology and interoperability, in all areas critical to the successful execution of joint military operations.³¹ Clearly, DCI was not created as a result of the debate on ESDI/ESDP. Yet there was a link: One of the U.S.' major motives for having a viable European pillar within the Alliance was to provide a political incentive for creating defence capabilities that otherwise, in all likelihood, would not exist, if only for lack of domestic political support.³²

3. NATO's Berlin Plus Agreement and the EU's Headline Goal Task Force

At NATO's Washington Summit in April 1999, the Allies acknowledged the EU's resolve to have the capacity for autonomous action so that it can take decisions and approve military action where the Alliance as a whole is not engaged.³³ Moreover, in the course of debate, NATO stated its readiness to adopt the necessary arrangements for EU access to the collective assets and capabilities of the Alliance.³⁴ Additionally, NATO endorsed two points of particular concern to France.³⁵ It was agreed that arrangements worked out would make provisions for 'assured EU access to NATO planning capabilities to contribute to military planning for EU-led operations.' Also, it was ensured that there would be a 'presumption of availability to the EU of pre-identified NATO capabilities and common assets for use in EU-led operations.'³⁶

³⁰ This difference in pace had become apparent during military operations in Bosnia, especially in areas such as communications and sustainability of military operations, and was reinforced later, and much more intensely, during the Kosovo conflict. For greater detail see *Naumann*, *Europas doppelte Lücke. Die amerikanischen Streitkräfte sind in der Technologie den Europäern um Jahre voraus*, Frankfurter Allgemeine Zeitung, March 11 (2002) 12.

³¹ This program and a framework for action were formally adopted at the April 1999 Washington Summit, which also set up a High-Level Steering Group to foster its implementation within the Alliance. DCI aims in particular to improve Alliance capabilities in five, overlapping areas: 'Mobility and deployability', 'Sustainability', 'Effective engagement', 'Survivability' and 'Interoperable communications'. For explanation and greater detail see Defence Capabilities Initiative, NATO Press Release NAC-S (99) 69, April 25, 1999.

³² *Schwarz*, *Europäische Sicherheits- und Verteidigungspolitik: Auf dem Weg zur Realisierung?*, Stiftung Wissenschaft und Politik - AP 3127 (April 2000) 19-23.

³³ NATO, Washington Summit Communiqué, Press Release NAC-S (99) 64, April 24 (1999) para. 9.

³⁴ NATO, Washington Summit Communiqué, April 24, 1999, *ibid.*, paragraph 9. The North Atlantic Council will approve these arrangements, which will respect the requirements of NATO operations and the coherence of its command structure. Hereby, NATO also acknowledged that the agent for operating ESDI would be the *EU* rather than the *WEU*. Compare *Kremer/Schmalz*, *Nach Nizza - Perspektiven der Gemeinsamen Sicherheits- und Verteidigungspolitik, integration* (2001) 160.

³⁵ For greater detail see *Deloche-Gaudez*, Frankreichs widersprüchliche Position in der Gemeinsamen Außen- und Sicherheitspolitik, in Müller-Brandeck-Bocquet (ed.), *Europäische Außenpolitik. GASP- und ESVP-Konzeptionen ausgewählter EU-Mitgliedstaaten* (2002) 120-134.

This new arrangement came to be called *Berlin-plus*. In order to balance out the aforementioned endorsements, it re-affirmed NATO's primacy in terms of actual use of military force, demanded no 'unnecessary duplication', implicitly restated the 'separable but not separate' military capabilities principle and insisted that non-EU NATO members be engaged. In return, NATO accepted 'autonomous EU-action', although without precisely defining that term, and increased the chances that NATO would not try to undercut the deal in the midst of a crisis.

Despite this far-reaching acknowledgement, however, at the EU meeting in Cologne, about a month later, the heads of state and government noted that the European Council

'should have the ability to take decisions on the full range of conflict prevention and crisis management tasks defined in the Treaty on European Union, the 'Petersberg Tasks.' [...] the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises without prejudice to actions by NATO.'³⁷

Emphasis was thus placed on 'assured EU access to NATO planning capabilities able to contribute to military planning for EU-led operations' and on 'the presumption of availability to the EU of pre-identified NATO capabilities and common assets for use in EU-led operations'.³⁸ Remarkably, there was neither a word about NATO's primacy nor about building ESDI/ESDP within NATO. There was nothing about protecting the requirements of NATO action nor about the coherence of command chain or about avoiding unnecessary duplication. All this inevitably led to the impression that the new phrase in order to respond to international crises 'without prejudice to actions by NATO' was to be a deliberate effort to evade the formulation 'where the Alliance as a whole is not engaged', which had been so carefully worked out shortly before.

The following Helsinki EU Summit in December 1999 marked a great step forward in ESDP institution building. It also seemed to help resolve the ongoing disagreement about the concept of 'NATO first'. Helsinki's most important innovation was to set a 'Headline Goal' for deploying and sustaining forces able to pursue the full range of Petersberg Tasks, in operations up to corps level, including provisions for support and rotation, in excess of 200,000 troops all told.³⁹ To

³⁶ NATO, Washington Summit Communiqué, April 24 (1999) op. cit. (fn. 33), paragraph 9.

³⁷ Cologne European Council, June 3-4 (1999) Presidency Conclusions, para.1.

³⁸ Cologne European Council, June 3-4 (1999) Presidency Conclusions, *ibid.*

³⁹ See Helsinki European Council, Presidency Conclusions, December 10-11 1999, 'Presidency Progress Report to the Helsinki European Council on Strengthening the Common European Policy on Security and Defence'. The force should be militarily self-sustaining and have all command and support services needed; it should be deployable within 60 days and be sustainable for at least a year. For

make this possible, the EU decided to create a wide range of command, control, intelligence, and strategic transport capabilities – again those areas that, under the 1996 Berlin agreement, would principally come from the U.S. in the event of transferring NATO assets. Furthermore, the European Council adopted measures relevant to EU involvement in all phases and aspects of crisis management, and created new permanent political and military bodies within the Council:

- A standing Political and Security Committee in Brussels, including national representatives at senior/ambassadorial level (PSC).
- The military committee of chiefs of defence, represented by military delegates (EUMC).
- The military staff to provide military expertise and support (EUMS).⁴⁰

At first glance, the new elements seemed to be suspiciously similar to NATO's institutional structure.⁴¹ However, in contrast to the amount of attention that the EU Member States naturally paid to the Headline Goal Task Force, from NATO's standpoint, the most reassuring fact should have been its modesty. The Rapid Reaction Force (RRF) could not, for instance, undertake an operation of the complexity of NATO's efforts during the Kosovo conflict.⁴² Nevertheless, this 'modesty' immediately introduced another issue: If the Europeans were actually engaged in an operation with such complex institutional arrangements, how effectively could they hand over operations to NATO if military escalation required a more capable military organization?⁴³ Apart from that last question, the Helsinki Summit was heavy on addressing NATO's concerns by including commitments

'for full consultation, co-operation and transparency between the EU and NATO [and for] necessary dialogue, consultation and co-operation with NATO and its non-EU members. [And the EU states agreed to define] appropriate arrangements [that would] allow non-EU European NATO members and other interested States to contribute to EU military crisis management.'⁴⁴

greater detail see *Algieri/Lindley-French*, Enhancing the European Union as an International Security Actor – A Strategy for Action by the Venusberg Group Bertelsmann Foundation Publishers (2000).

40 See, in great depth, *Andréani*, Why Institutions matter, *Survival* 42 (summer 2000) 81-95.

41 Even though there was no hint at a second Europe-based integrated military command structure.

42 *De Wijk/Rutten*, Output Criteria, Input Indicators, in Heisbourg (ed.), European Defence: Making it work, *Chaillot Papers* 42 (September 2000) Institute for Security Studies, Western European Union.

43 This issue of handing over military operations has in the meantime become a reality the other way around with the EU taking over the NATO operation in Macedonia. For greater detail see at the end of this paper.

44 Helsinki European Council, Presidency Conclusions, December 10-11 (1999) op. cit. (fn. 39), 'Common European Policy on Security and Defence' paragraph II.

Indeed, the European Council underlined

'its determination to develop an autonomous capacity to take decisions and, *where NATO as a whole is not engaged*, to launch and conduct EU-led military operations in response to international crises. This process will avoid unnecessary duplication and *does not imply the creation of a European army*'.⁴⁵

4. EU's Capabilities Commitment Conference and NATO's 'three I's'

By the time of the European Council Summit at Santa Maria da Feira on 19-20 June, 2000, the EU had made additional major strides towards developing the modalities of the new ESDP. Two efforts, however, continued to stand out: ESDP's relationship to third parties in Europe (NATO members and aspirants to join the EU) and its direct relationship with NATO.

Regarding the first, as a matter of principle, exchanges with the non-EU European NATO members would be 'when the subject matter requires it, such as on questions concerning the nature and functioning of EU-led operations using NATO assets and capabilities'.⁴⁶

There was a clear bow to the importance of NATO's DCI:

'EU-objectives in the field of military capabilities and those arising, for those countries concerned from NATO's, will be *mutually reinforcing*'.⁴⁷

⁴⁵ Helsinki European Council, Presidency Conclusions, December 10-11 (1999) op. cit. (fn. 39), Annex 1 to Annex IV, 'Consultation and Cooperation with Non-EU Countries and with NATO' [emphasis added]. Compare *Gordon, Their Own Army?*, Making European Defence Work, Foreign Affairs (July/August 2000) 28-30.

⁴⁶ Santa Maria da Feira European Council, Presidency Conclusions, June 19-20 (2000) Annex I Presidency Report on Strengthening the Common European Security and Defence Policy. During the permanent phase, there would be two meetings during each EU presidency between the EU and the 15 candidates for membership and two additional meetings with the 6 non-EU European NATO members. During an operational phase, the non-EU European NATO members could take part when there was recourse to NATO assets and capabilities, but they would have to be invited to take part when the EU did not use NATO assets, *ibid.*, 'Appendix I, Arrangements to Be Concluded by the Council on Modalities of Consultation and/or Participation That Will Allow the Non-EU European NATO Members and Other Countries Which Are Candidates for Accession to the EU to Contribute to EU Military Crisis Management,' paragraph 14-16. Candidate countries for EU admission may also be invited to take part in EU-led operations. Every country taking part, by deploying significant military forces, will have the same rights and obligations as the EU participating Member States in the day to day conduct of that operation, although termination of an operation would be done solely by the Council, after consultations with those other participating countries.

⁴⁷ Santa Maria da Feira European Council, Presidency Report, June 19-20 (2000), *ibid.*, Annex I, Appendix 2, Principles for Consultation with NATO on Military Issues and Recommendations on Developing Modalities for EU/NATO Relations, paragraph 2 [emphasis added].

For this goal, EU was to propose to NATO four 'ad hoc working groups' tackling the issues security⁴⁸, definition of capability goals⁴⁹, EU-access to NATO assets and capabilities⁵⁰, and the definition of permanent arrangements⁵¹. But again, from NATO's point of view, there was no reassurance as far as the avoidance of a separation of security responsibilities, the possibility for NATO's oversight of transferred assets, its right of recall and the importance of preserving the integrity of NATO's command structure were concerned.

During the second half of 2000, the EU Member States made formal commitments with regard to the forces they would provide to a notional Headline Goal Task Force. The key event took place on November 20, at the so-called Capabilities Commitment Conference, defining for the long term what at NATO would be called 'force generation'.

In line with the decisions made at Helsinki and Feira, EU Member States pledged to supply, on a voluntary basis, contributions resulting in a pool of more than 100,000 troops and approximately 400 combat aircrafts and 100 vessels.⁵² This Force Catalogue included potential contributions from 14 of the 15 EU states.⁵³ There were also commitments from six other countries, including four aspiring for EU membership.⁵⁴ The Conference did not just focus on a potential wish list

⁴⁸ This ad hoc working group should reach an agreement, especially regarding information exchange and access by designated officials from the EU and its Member States to NATO planning structures. This should lead to an EU-NATO security agreement.

⁴⁹ This group would devise modalities for the relationship with DCI, to permit the EU to draw, as needed, on NATO military expertise. Furthermore – as implicit testament to the practical value EU/ESDP seeks to gain from NATO – Member States would use existing defence planning procedures including, as appropriate, those available in NATO and the Planning and Review Process of the Partnership for Peace.

⁵⁰ This group would focus on two variants: when the EU would use NATO assets and when it would not, with the goal of drawing up an agreement, to be ready by the time the EU becomes operational. Notably, the document identifies where the EU thinks the difficulty lies: 'The EU looks forward to substantial progress within NATO' – and not between the two organizations, see Santa Maria da Feira European Council, Presidency Report, June 19–20 (2000), *op. cit.* (fn. 46), Annex I, paragraph A [emphasis added].

⁵¹ This group would work out the nature of EU-NATO relations, which would formalise structures and procedures for consultation between the two organizations in times of crisis and non-crisis, see Santa Maria da Feira European Council, Presidency Report, June 19–20 (2000), *op. cit.* (fn. 46), Annex I, para. D.

⁵² See Military Capabilities Commitment Declaration, Brussels, November 20 (2000). For more details see *Rummel*, Die ESVP als Instrument autonomen Handelns, in Reiter/Rummel/Schmidt (eds.), *Europas ferne Streitmacht. Chancen und Schwierigkeiten der Europäischen Union beim Aufbau der ESVP*. Forschungen zur Sicherheitspolitik, Band 6 (2002).

⁵³ Denmark did not contribute by virtue of a derogation from the Amsterdam Treaty in regard to defence.

⁵⁴ Turkey was prepared to offer the future Rapid Reaction Force some 5,000 troops, Norway pledged 1,200, the Czech Republic roughly 1,000, Hungary 450, Poland 1,000 (Framework Brigade) and Slovakia 350. For greater detail see *Rapson*, Building the Means and Capabilities for Crisis Management Under the CESDP, WEU Assembly, Document A/1715 Addendum, December 1 (2000).

of forces, which, by the way, were mainly the same ones that would be committed to NATO operations. It also took account of shortfalls.⁵⁵ This admonition also revealed an ongoing tension between the potential use of NATO assets and the gaining of capacity for autonomy of action. Consequently, the Member States committed to take steps to ensure the coherent development of overlapping EU and NATO capabilities, and that arrangements with NATO would include transparency, co-operation and dialogue.⁵⁶

The U.S. welcomed the Capabilities Commitment Conference, albeit under the prerequisite that the EU force be available to both NATO and the EU.⁵⁷ As this was certainly not the case for the RRF itself, the question of military capabilities was part of what was soon crystallizing as a principal objection. NATO Secretary General *Lord Robertson* summarized these objections and turned the debate from Secretary Albright's three D's to a set of positive formulations:

'For my part, I will ensure that ESDI is based on three key principles, the three *P*'s: *improvement* in European defence capabilities, *inclusiveness* and transparency for all Allies, and the *indivisibility* of transatlantic security, based on our shared values.'⁵⁸

The U.S. government endorsed the three I's while translating the third one to 'indivisibility of security structures'.⁵⁹ In sum, the U.S. called for a concrete NATO-EU relationship, so that organizational decisions about future military operations would not be taken in isolation by either NATO or the EU. Major questions remained in the area of common planning.⁶⁰

⁵⁵ Compare Military Capabilities Commitment Declaration, Brussels, November 20, 2000, paragraph 4: 'To be able to carry out the full range of Petersberg tasks certain capabilities need to be improved both in quantitative and qualitative terms in order to maximise the capabilities available to the Union. To that end, the Member States will aim to identify as soon as possible the complementary initiatives which they may implement.' For greater detail see *Rapson*, *ibid*.

⁵⁶ From NATO's point of view, it is also important that the Capabilities Commitment Conference explored the possibility of using command headquarters separate from NATO's CJTF headquarters, which had been offered to WEU in 1996.

⁵⁷ 'United States Backs European Rapid Reaction Force,' Department of State, November 20 (2000).

⁵⁸ *Robertson*, NATO Assembly 15 (1999) [emphasis added]. Compare *van Eekelen*, Building European Defence: NATO's ESDI and the European Union's ESDP, Committee Reports, NATO Parliamentary Assembly (November 2000) para. 18-24.

⁵⁹ *Albright/Cohen*, Get ESDI Right: Europe Should Beef up Its Military Capabilities, *Wall Street Journal Europe*, March 24 (2000) 70.

⁶⁰ 'Planning' has two basic aspects. 'Operational planning' is just what the name implies: what the Alliance does through its commands to get ready to conduct military actions. 'Defence planning' is for the longer term and relates to the military goals and efforts of individual countries and the Alliance as a whole. A few days before the European Council Summit in Nice, U.S. Secretary of Defence *Cohen*, insisted that 'whatever is done for ESDP is consistent with NATO's DCI.' Also, he warned that if the Europeans want 'a separate operational planning capability from that of NATO itself, then that is going to weaken the ties between the U.S. and NATO and NATO and the EU', *Cohen*, Remarks at the NATO Informal Defence Ministerial, October 10, 2000, Department of

5. EU Summit in Nice and NATO's Berlin Double Plus Agreement

In terms of developing NATO's confidence about the future of ESDP, the EU Summit of Nice was important not only because of what it did achieve, but also because of what it did not achieve. Nice focused on the further elaboration of the PSC, the EUMC, and the EUMS.⁶¹ It also acknowledged the results of the Capabilities Commitments Conference, and signalled the Member States' determination to make the necessary efforts to improve their operational capabilities further, focusing on command and control, intelligence and strategic air and naval transport capabilities.⁶² In terms of co-operation with NATO, the EU-Member States merely stated: 'The EU hopes for a favourable reaction from NATO so that these arrangements can be implemented on a mutually satisfactory basis.'⁶³ Indeed, the EU clearly drew a distinction between situations where NATO assets and capabilities would be involved and where they would not be. In the former case, operational planning should be carried out by the Alliance's planning bodies, but for an autonomous EU operation it would be carried out within one of the European strategic level headquarters. In the former case, non-EU European Allies would be involved according to NATO procedures. But in the latter case, in which non-EU NATO Allies would be invited to take part, they could send liaison officers in order to exchange information on operational planning and the contributions envisaged.⁶⁴

Not surprisingly, for the non-EU members of NATO this process was a step back. According to them, joint planning should precede deciding who would undertake an operation, NATO or the EU, followed by an evaluation of the need for NATO assets, transfer of such assets and subsequent planning, all to be conducted regularly, consistently and transparently to NATO planners and procedures. To put it bluntly: The issue of the locus of planning could create a serious impediment to making decisions on the basis of the principle of 'where NATO as a whole is not engaged.' For NATO that bridge could hardly be crossed until it has had a chance to review a situation, plan for it, and then judge whether it will become engaged or not. Conversely, the ESDP proposal for a bifurcated planning system presupposed that the 'NATO engaged' issue had been decided even before the locus for

Defence News Briefing, Brussels, December 5 (2000). For further information see *Hunter, The European Security and Defence Policy, NATO's Companion - or Competitor?*, RAND National Defence Research Institute (2002) 105.

⁶¹ Nice European Council, Presidency Conclusions, December 7-9 (2000) Annex VI, On the European Security and Defence Policy, II. Establishment of Permanent Political and Military Structures. Compare *Jopp/Reckmann/Regelsberger, Ansatzpunkte und Optionen zur institutionellen Weiterentwicklung von GASP und ESVP, integration* (2002) 230.

⁶² Nice European Council, *ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

planning could be agreed upon. In addition to this proposal concerning the decision-making procedure, the EU heads of state and government argued:

'In the field of operational planning, the Military Staff of the NATO Alliance with responsibility for handling EU requests will be accessible to experts from the Member States who also wish without discrimination.'⁶⁵

Most remarkably, there was no reciprocal right for NATO with regard to any EU planning.⁶⁶ This formulation also had particular implications for non-EU NATO members. Turkey especially was concerned about the fact that the decision whether it were to be engaged or not would in any case come relatively late: Once the EU starts to examine an option requiring the use of NATO assets, particular attention will be paid to consultation of the six non-EU European NATO members. But it will be only after the Council has chosen the strategic military options that the operational planning work is presented to the non-EU European NATO members. Only then will these countries be enabled to determine the nature and volume of their contribution.⁶⁷ According to the Nice Summit proposal, they would be able to take part in a Committee of Contributors. However, it would be the PSC that would exercise the political control and strategic direction of the operation, taking account of the views expressed by the Committee of Contributors.⁶⁸ Thus, Turkey might find an operation in a contiguous region affecting its interests, without being able to fully participate in EU activities. That is why Turkey placed a hold on completing work within NATO for developing cooperative arrangements concerning ESDP. And although a wide range of critical details were in fact agreed upon and pledges made for completing permanent arrangements, NATO proceeded on the principle that 'nothing will be agreed until everything is agreed'.⁶⁹ Undoubtedly, the issue of EU access to NATO planning was the linchpin of discussion. The practical effect was that the complex efforts to elaborate ESDP institutions had produced a political setback in relations with at least one NATO country.

Two things became clear by the beginning of 2001. The EU had moved fast in building up a military institution with capacity for autonomous decision - if not, in fact, autonomous action. The rise of this institution was posing some complex problems for NATO. One very important question remained: When, in the development of a crisis and the response to it by both NATO and the EU, would it become relevant whether the Alliance would or would not be engaged? Un-

⁶⁵ Nice European Council, *op. cit.* (fn. 51).

⁶⁶ Including that conducted by national headquarters.

⁶⁷ *Ibid.*, (B) Operational Phase.

⁶⁸ *Ibid.*

⁶⁹ See Ministerial Meeting of the North Atlantic Council, Final Communiqué, NATO Headquarters, Brussels, NATO Release M-NAC-2 (2000) 1124, December 14-15 (2000).

questionably, in terms of magnitude and palpable challenge, the development of any but the most clear-cut crises would be so ambiguous that the ESDP mechanisms would probably be well into play before NATO's. This understanding shows that NATO's primacy might have to be regained or asserted after another institution was already exercising its responsibilities. And, on closer inspection, this question proves a formula for competition - in practice, if not in theory.

At the Göteborg meeting of June 14, 2001, the first Summit joined by a U.S. president and all EU-heads of state and government, the U.S. was to emphasize these central issues, without any EU endorsement:

'The U.S. welcomes the efforts of the EU to strengthen its capabilities and to develop the ability to manage crises, including through military operations, where NATO as a whole is not engaged, and in a manner that is fully coordinated, where NATO interests are involved, and transparent with NATO, and that provides for the fullest possible participation of non-EU European Allies. In particular, the commitments made by the EU Member States concerning military capabilities will, as they are implemented, strengthen both the EU and the European pillar of the Atlantic Alliance.'⁷⁰

During spring of 2001, NATO and EU sought to resolve the key outstanding issues. Informally, it was agreed that the PSC would normally rely on what the Committee of Contributors would decide by consensus when the interests of any non-EU NATO member was involved. However, final agreement founded.⁷¹

Again, the most critical issues related to ESDP planning procedures. At the 29 May meeting of NATO in Budapest, foreign ministers formally held out what afterwards came to be known as 'Berlin-double-plus': EU-assured access to NATO operational planning; presumed availability of NATO assets; identification of EU command options and adaptation of NATO defence planning.⁷²

⁷⁰ The White House, Office of the Press Secretary, Summit of the US and the EU, Göteborg, June 14, 2001. Immediately following the Summit with the U.S. President, the EU stressed civilian aspects of crisis management, Presidency Report to the Göteborg European Council on European Security and Defence Policy, June 11, 2001. In addition, the Göteborg European Council took steps to promote ESDP's military capabilities, *ibid.* paragraph 11.

⁷¹ Turkey sought greater assurances about its role in the ESDP consultative process and its participation in EU activities under ESDP. Conversely, according to the Greek representation with the EU, too much would have been conceded. For more details see *Hermann/Hort*, *Türkei gibt Widerstand gegen EU-Eingreiftruppe auf*, Frankfurter Allgemeine Zeitung, December 4 (2001) 7; *Bacia*, *Warten auf das Ja aus Athen*, Frankfurter Allgemeine Zeitung, December 10 (2001) 6; *Griechenland bekräftigt Vorbehalte zum Kompromiß von Istanbul und arbeitet Gegenvorschlag aus*, Bulletin Quotidien Europe Nr. 8159, February 27 (2002); *Spanische Präsidentschaft schlägt neue Lösungen für das griechisch-türkische Problem vor*, Bulletin Quotidien Europe Nr. 8212, March 16 (2002); *Bacia*, *Nicht länger Spielverderber. Die Diplomaten Griechenlands haben in Sevilla den Ball an die Türkei zurückgegeben*, Frankfurter Allgemeine Zeitung, June 24 (2002) 12; *Hermann*, *Auf dem Weg nach Kopenhagen. Nur mit Griechenland zusammen kann die Türkei Steine aus dem Weg räumen*, Frankfurter Allgemeine Zeitung, August 5 (2002) 8.

⁷² Compare NATO Press Release (2001) 013 Foreign Ministers' Meetings - Budapest, 29-30 May, 2001.

At the EU Laeken Summit on 14-15 December, 2001⁷³, as well as at the Seville Summit on 21-22 June, 2002, the Member States reaffirmed their determination to finalise swiftly arrangements with NATO by underlining the mutual enforcement:

‘Consultation and co-operation between EU and NATO have continued [...] in order to make possible the most appropriate military response to a given crisis [...], while fully respecting the decision-making autonomy. Contacts with NATO have continued with a view to establishing as soon as possible the outstanding permanent arrangements [...]. These agreements are essential for the ESDP and will substantially increase the Union’s available capabilities. [...] the EU has sent [...] a proposal [for] a comprehensive agreement on all outstanding permanent arrangements.’⁷⁴

6. EU’s proposals for the involvement of non-EU European NATO allies

As a result, the four issues identified at the Budapest NATO meeting, plus the ‘participation issue’, were to constitute the agenda for a final NATO-EU bargain. At the Brussels Summit, 24 and 25 October 2002, the European Council agreed to implement the Nice provisions on the involvement of the non-EU European members of NATO. Noteworthy, it was first expressly confirmed that

‘under no circumstances, nor in any crisis, will ESDP be used against an Ally, on the understanding, reciprocally, that NATO military crisis management will not undertake any action against the EU or its Member States.’⁷⁵

With regard to the participation of the non-EU European Allies in peace-time ESDP consultations, it is stated in Annex II⁷⁶ that the EU will have permanent and continuing consultations, covering the full range of security, defence and crisis management issues. These so-called 15 + 6 meetings shall be facilitated especially

⁷³ ‘Through the continuing development of the ESDP [...] the Union is now capable of conducting some crisis-management operations. The Union is determined to finalise swiftly arrangements with NATO. These will enhance the EU’s capabilities to carry out crisis-management operations over the whole range of Petersberg tasks. In the same way, the implementation of the Nice arrangements with the Union’s partners will augment its means of conducting crisis-management operations.’, Presidency Report to the Laeken European Council December 14-15, 2001, Declaration on the Operational Capability of the Common European Security and Defence Policy.

⁷⁴ Presidency Report to the Seville European Council on June 21-22, 2002, on European Security and Defence Policy, point 4.

⁷⁵ Presidency Report to the Brussels European Council of October 24-25, 2002, Annex II, ESDP: Implementation of the Nice provisions on the involvement of the non-EU European Allies, paragraph 2. Notably, this commitment is based ‘on the understanding, reciprocally, that NATO military crisis management will not undertake any action against the EU or its Member States. It is also understood that no action will be undertaken that would violate the principles of the Charter of the United Nations.’

⁷⁶ Ibid.

‘by the appointment of permanent interlocutors with the PSC. To provide for dialogue with the EUMC and to help prepare the 15 + 6 meetings at Military Committee representative level, the non-EU European Allies may also designate interlocutors with the Military Committee. The designated interlocutors with the various EU bodies will be able, on a day-to-day basis, to pursue bilateral contacts, which will underpin the regular 15 + 6 consultations.’⁷⁷

Conversely, to strengthen relations with the EUMS and national Headquarters involved in EU-led operations,

‘arrangements in NATO for non-NATO EU members will be taken as a basis for developing appropriate arrangements for the non-EU European Allies in the EU military structures [...]. If operational planning is conducted in NATO, the non-EU European Allies will be fully involved. If operational planning is conducted in one of the European strategic-level Headquarters, the non-EU European Allies as contributors will be invited to send officers to that Headquarters.’⁷⁸

As to the modalities for participation in future EU-led operations, it is distinguished between the case of an EU-led operation using NATO assets and capabilities, and operations that do not require such recourse. With regard to the first, non-EU European Allies will, if they wish, participate in the operation, and will be involved in its planning and preparation in accordance with the procedures laid down within NATO. As far as the latter is concerned, non-EU European Allies will be invited, upon a decision of the Council, to participate.⁷⁹

For the involvement in preparation, planning and management of an EU-led operation, it is foreseen that

‘contacts at all levels with non-EU European Allies will be intensified as the pre-crisis stage unfolds through 15 + 6 consultations and other arrangements. This process will be important for discussing provisional military contributions from the non-EU European Allies during the pre-operational phase, and relevant military factors during the development of strategic military options, in order to inform the planning and preparation on which a Council decision to launch an EU-led operation will be based, [...], including consolations at PSC and EUMC levels, to discuss the development of the Concept of Operations and related issues such as command and force structures.’⁸⁰

Following a decision by the Council to undertake a military operation and a force generation conference, the Committee of Contributors should be established and

⁷⁷ Ibid, paragraph 3-5.

⁷⁸ Ibid, paragraph 6.

⁷⁹ Ibid, paragraph 12.

⁸⁰ Ibid, paragraph 12.

convened in order to discuss the finalisation of the initial operational plans and military preparations for the operation. As foreseen in Nice, the Committee of Contributors will play a key role in the day-to-day management of the operation, being the main forum where contributing nations collectively address questions relating to the employment of their forces in an operation, as well as take decisions on the day-to-day management, including possible adjustments to objectives, by consensus. To this end, it is confirmed that the views expressed by the Committee of Contributors will be taken into account by the PSC as it considers issues of political control and strategic direction of the operation.⁸¹

7. EU-NATO Co-operation Pact

With the agreement to implement the Nice provisions on the involvement of non-EU European Allies in EU-led operations using NATO assets, the EU finally enabled itself to pave the way for access to NATO planning capabilities contributing to military planning for EU-led operations.

At the Copenhagen Summit, 13 December, 2002, the EU and NATO have taken a major step forward in putting into effect the permanent partnership between the two organizations. The NAC agreed to adopt a series of decisions with a view to maintaining a close and transparent relationship with the EU and supporting EU-led operations in which the Alliance as a whole is not engaged militarily in accordance with the decisions taken at the Washington Summit.

In a joint declaration on ESDP, the High Representative for the CFSP, *Solana*, and NATO Secretary General *Lord Robertson* announced the following agreement:

‘THE EUROPEAN UNION AND THE NORTH ATLANTIC TREATY ORGANISATION,

- Welcome the strategic partnership established between the European Union and NATO in crisis management, founded on our shared values, the indivisibility of our security and our determination to tackle the challenges of the new Century;
- Welcome the continued important role of NATO in crisis management and conflict prevention, and reaffirm that NATO remains the foundation of the collective defence of its members;
- Welcome the European Security and Defence Policy (ESDP), whose purpose is to add to the range of instruments already at the European Union’s

⁸¹ It is also stated that the Council Secretariat will prepare a record of discussions at each Committee of Contributors meeting, which will be forwarded to PSC and EUMC representatives in time for the next meetings of the respective Committees. The Operation Commander will report on the operation to the Committee of Contributors so that it can exercise its responsibilities and key role in the day to day management of the operation, *ibid*, paragraph 18.

disposal for crisis management and conflict prevention in support of the Common Foreign and Security Policy, the capacity to conduct EU-led crisis management operations, including military operations where NATO as a whole is not engaged;

- Reaffirm that a stronger European role will help contribute to the vitality of the Alliance, specifically in the field of crisis management;
- Reaffirm their determination to strengthen their capabilities;

Declare that the relationship between the European Union and NATO will be founded on the following principles:

- Partnership: ensuring that the crisis management activities of the two organisations are mutually reinforcing, while recognising that the European Union and NATO are organisations of a different nature;
- Effective mutual consultation, dialogue, co-operation and transparency;
- Equality and due regard for the decision-making autonomy and interests of the European Union and NATO;
- Respect for the interests of the Member States of the European Union and NATO;
- Respect for the principles of the Charter of the United Nations, which underlie the Treaty on European Union and the Washington Treaty, in order to provide one of the indispensable foundations for a stable Euro-Atlantic security environment, based on the commitment to the peaceful resolution of disputes, in which no country would be able to intimidate or coerce any other through the threat or use of force, and also based on respect for treaty rights and obligations as well as refraining from unilateral actions;
- Coherent, transparent and mutually reinforcing development of the military capability requirements common to the two organisations;

To this end:

- The European Union is ensuring the fullest possible involvement of non-EU European members of NATO within ESDP, implementing the relevant Nice arrangements, as set out in the letter from the EU High Representative on 13 December 2002;
- NATO is supporting ESDP in accordance with the relevant Washington Summit decisions, and is giving the European Union, *inter alia* and in particular, assured access to NATO's planning capabilities, as set out in the NAC decisions on 13 December 2002;
- Both organisations have recognised the need for arrangements to ensure the coherent, transparent and mutually reinforcing development of the capa-

bility requirements common to the two organisations, with a spirit of openness.'⁸²

NATO Secretary General *Lord Robertson* added:

'These decisions will provide a permanent framework for joint action in support of peace and stability. They will open a new chapter in what has already been a very fruitful co-operation. Allies are determined to speedily conclude the detailed arrangements for implementing each of the elements of Berlin+. These arrangements should be in place by 1 March 2003.'⁸³

This last date referred to the envisaged EU take-over of the NATO military operation in Macedonia (FYROM). Short time before, at the Brussels Summit, the European Council had reaffirmed its readiness to take over the NATO military operation and had requested the relevant EU bodies to examine all the necessary options in order to achieve this objective. The European Council had noted that this follow-on operation would take place within the context of the spirit of partnership in crisis management established between the EU and NATO, albeit under the prerequisite that an agreement should be reached in time.⁸⁴

III. Conclusions

A decisive factor for the future relations between ESDP and NATO lies in the way in which EU partners conceive of the Petersberg Tasks. The EU has defined the Petersberg Tasks insofar as the RRF should be able to perform 'humanitarian and rescue tasks; peace-keeping tasks; tasks of combat forces in crisis management, including peace-keeping.' This catalogue covers the full range from low intensity to high intensity military operations. However, so far it seems that precisely the elasticity of the definition results in a vast spectrum of opinion within the EU itself about what the thrust of the Petersberg Tasks really is. While for some Member States, like France, this spectrum could extend to the high-intensity end of crisis management operations, other countries, such as Sweden and Finland, seem only willing to support humanitarian operations.⁸⁵ This lack of clarity in the implementation of the Petersberg Tasks reveals that the EU is divided over what

⁸² EU-NATO Declaration on ESDP, NATO Press Release (2002) 142, 16 December 2002.

⁸³ NATO Press Release (2002) 140, 13 December 2002.

⁸⁴ Presidency Report to the Brussels European Council on October 24-25, 2002, Annex II, ESDP: Implementation of the Nice provisions on the involvement of the non-EU european Allies, paragraph 24.

⁸⁵ For a comprehensive analysis see *Müller-Brandeck-Bocquet* (ed.), *Europäische Außenpolitik. GASP- und ESDP-Konzeptionen ausgewählter EU-Mitgliedstaaten* (2002).

sort of military capability it should give itself and thus what the thrust of ESDP's missions in general should be. Since the decision-making in this field works on the basis of consensus, the internal confrontation potentially places some limitations on the types of military missions that the EU could conduct, regardless of the relationship to NATO.

This somewhat sober assessment can be illustrated by some recent events. For instance, the final report of the working group 'defence' of the European Convention reflects some of the indicated difficulties in that it recommends an extension of the Petersberg tasks, while conceding that a strong diversity exists between Member States as regards the level of their capabilities and the willingness to commit themselves actively even to tasks already included in the Treaty.⁸⁶ As a consequence, several members of the group supported the idea of providing for a form of *closer co-operation* between Member States in military matters, wishing to carry out the most demanding tasks and fulfilling the requirements for such a commitment of being credible.⁸⁷ This proposal has been incorporated into the Constitution Draft of the European Convention, which the Praesidium submitted on 12 June, 2003:

'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 more demanding missions shall establish structured co-operation within the Union framework.'⁸⁸

The likelihood of future disagreements about the implementation of ESDP is – even more explicitly – underlined by the contentious declaration of the Heads of State and Government of Germany, France, Luxembourg and Belgium on European Defence, on 29 April, 2003. This declaration follows the ambiguous model of a core Europe (with implicitly promoting a Franco-German leader-

⁸⁶ Final report of Working Group VIII – Defence (CONV 461/02), 16 December 2002, para. 54, <http://european-convention.eu.int>. The Group recommends that the description of the Petersberg tasks be expanded to include specific reference to other tasks involving the use of military resources: a) conflict prevention (early warning, confidence and security building measures, etc.); b) joint disarmament operations (weapons destruction and arms control programmes); c) military advice and assistance ('defence outreach': cooperation with the military forces of a third country or of a regional/sub-regional organisation on developing democratically accountable armed forces, by the exchange of good practices, e.g. through training measures); d) post-conflict stabilisation; e) support for a third country's authorities, at their request, in combating terrorism.

⁸⁷ It is added that one of the conditions for taking part in such a 'defence Euro-zone' would have to be a form of presumption that pre-identified forces and command and control capabilities would be available. Another condition might be participation in multinational forces with integrated command and control capabilities, *ibid.* Compare also *Bono*, European Security and Defence Policy: theoretical approaches, the Nice Summit and Hot issues, 39 – 41 (February 2002), available at <http://www.esdpdemocracy.net/word/ESDP&Democracy.pdf>.

⁸⁸ Praesidium of the Convention, Text of Part I and Part II of the Constitution, CONV 797/1/03, Brussels, 12 June 2003, Article I-40: Specific provisions for implementing the common security and defence policy, 6., <http://european-convention.eu.int/docs/Treaty/cv00797-re01.en03.pdf>.

ship⁸⁹), however by leaving open the final destination of the process of further integrating of the Member States' defence policies. And while confirming the transatlantic partnership as an essential strategic priority for Europe, those four EU members also state:

[...] We believe we must improve EU capabilities with regard to operational planning and conducting operations while avoiding useless duplications and competition between national capabilities. To this end, we propose [...] the creation of a nucleus collective capability for planning and conducting operations for the European Union. When in use, it will be reinforced by national staff.⁹⁰

Inevitably, this proposal has provoked doubts, if not undisguised suspicion, that in spite of the avowal of transatlantic commitment, such EU-capacities with regard to operational planning and conducting operations be aimed at setting a counterweight to the EU-NATO framework agreement which conversely intends to provide for the access to NATO capabilities.⁹¹

Notwithstanding the repercussions of intra-EU political divergence on ESDP's relationship to NATO - which, of course, must be regarded as its heaviest burden -, there remain several open questions of a quite conceptual character. As an in-depth analysis of potential developments that could influence the current status of ESDP-NATO relations is beyond the scope of this article,⁹² the following conclusions are limited to some remarks with regard to the two most contentious issues: NATO's primacy and the access to its assets in the event of future EU operations. Both are embodied as 'guarantees' in the EU-NATO framework agreement, which is therefore to be taken as a basis for a provisional stocktaking of the mutual relationship.

1. NATO's primacy

Even if the EU Member States were to resolve their divergent perspectives on ESDP in principle, it still remains to define which military missions the EU

⁸⁹ Schmidt, ESVP und Allianz nach dem Vierergipfel, Stiftung Wissenschaft und Politik, Deutsches Institut für Internationale Politik und Sicherheit, SWP-Aktuell 20 (Mai 2003) 2. Compare also Bertram/Schild/Heisbourg/Boyer, Starting over. For a Franco-German Initiative in European Defence, SWP-Studie (November 2002) 23-25.

⁹⁰ Declaration of the Heads of State and Government of Germany, France, Luxembourg and Belgium, 29 April 2003 in Brussels, <http://www.dgap.org/english/tip/tip0302/doku0302.html>.

⁹¹ See, in great depth, Schmidt, op. cit. (fn. 89).

⁹² For a forward look on possible developments, compare Davis, The Long-term Outlook for NATO and ESDP: Moving Toward Tighter Cooperation or the Breakup of the Western Alliance?, 216-229, in Krause/Wenger/Watanabe (eds.) Studies in Contemporary History and Security Policy, Volume 11: Unraveling the European Security and Defense Policy Conundrum.

should conduct and which NATO should conduct. The joint declaration does not lay down a specific distribution for future scenarios but allows for three different configurations: military operations that are conducted by NATO only; military operations that are conducted by the EU using NATO assets; and military operations that are conducted by the EU only.

First of all, in terms of operational fields, EU and NATO are potentially taking action in similar geographic areas. This goes without closer inspection as far as Europe is concerned, and it is moreover illustrated by the engagement of both organisations in the former Yugoslav Republic of Macedonia (FYROM), where the EU has launched a military operation since 31 March, 2003 (Operation 'Concordia').⁹³ This operation follows NATO's operation 'Allied Harmony', which ended on the same day.⁹⁴ The EU-operation makes use of NATO assets and capabilities, which was made possible – as the Council explicitly states – by the completion of work on EU-NATO arrangements, including an agreement on the security of information.⁹⁵ This hand-over of military engagement establishes a precedent and, indeed, has been largely appreciated as proof of the ability to close co-operation between both organisations.

Overlapping – as well as subsequent – military operations are not even excluded outside of Europe. In the course of a contentious debate during the 1990s about endowing NATO with a mandate to operate beyond Europe, such operations remain no longer out of reach. On this matter, most recently NATO's readiness to take on new roles and missions in new parts of the world has been reaffirmed ('out-of-area'). According to the NATO foreign ministers meeting in Madrid on 12 June, 2003, the implementation of decisions and initiatives launched at the landmark NATO Summit in Prague last November⁹⁶ show that NATO's trans-

⁹³ Compare Council, Joint Action 2003/92/CFSP of 27 January 2003 on the European Union military operation in the Former Yugoslav Republic of Macedonia, O.J. L 34 of 11 February 2003, 26.

⁹⁴ The anticipated duration of the EU-led operation is six months.

⁹⁵ Council Conclusions of 18 March 2003 on ESDP-Operation in FYROM: 'The operation makes use of NATO assets and capabilities. This was made possible following the completion of the work on the different issues concerning the relations between the EU and NATO. In this context, an exchange of letters took place between the Secretary General/High Representative of the EU and the Secretary General of NATO. This exchange of letters constitutes the framework of the strategic partnership between the EU and NATO in crisis management, in full conformity with the principles agreed at successive meetings of the European Council. The Council welcomed the arrangements agreed between the EU and NATO.', <http://ue.eu.int/arym/pdf/ESDPen.pdf> (9/4/2003). A Committee of Contributors has been set up for the operation. Fourteen non-EU countries participate in this operation alongside thirteen EU Member States (all member states except Denmark and Ireland). See Decision of the Political and Security Committee decision setting up the Committee of Contributors for the EU-led operation in FYROM (6451/03), 18 February 2003, available at <http://ue.eu.int/arym/pdf/st06451en03.pdf>. Compare also NATO Press Release (2003) 022, 14 March 2003.

⁹⁶ At the Prague Summit, 21-22 November, 2002, NATO Heads of State and Government invited seven countries to Accession Talks and committed themselves to equip NATO with new capabilities to meet the security threats of the 21st century, <http://www.nato.int/docu/comm/2002/0211-prague/index.htm>.

formation is well underway.⁹⁷ This resolve is demonstrated by NATO's decision to take over of the command of the ISAF peacekeeping force in Afghanistan in August, 2003, and also by its willingness to assist Poland in its Iraq mission. Just like NATO, the EU has deliberately avoided limiting the geographical competence of its military actions.⁹⁸ In spite of many predictions, that an EU military intervention will most unlikely occur beyond Europe⁹⁹, the EU actually decided to lead a military operation in Congo (Codename 'Artemis') on 5 June, 2003.¹⁰⁰ France will act as framework nation for the operation which will be conducted without recourse to NATO assets.¹⁰¹

It remains to be seen whether the potential overlapping of NATO and EU military operations in terms of geographical radius of action provides for future conflicts or, on the contrary, paves the way for effective co-operation. Admittedly, the parallel establishment of NATO's new Response Force (NRF), as agreed at the Prague Summit, and the EU's RRF could create a potential source of conflict, because they likewise envision a force available for deployment in a crisis and moreover may cause friction due to the 'overlapping membership' problem: sev-

⁹⁷ Defence Ministers Meetings 12-13 June 2003, NATO Press Release (2003)055.

⁹⁸ It is remarkable that at a very early stage in the build-up of the RRF, the High Representative for CFSP *Javier Solana* had announced that EU's RRF could even operate in Africa, as well as places as far a field as East Timor. Compare *Ilsemann/Kock/Szander*, Europa baut eigene Armee, *Der Spiegel* 29 (1999), 188-191.

⁹⁹ *Medcalf*, Cooperation between the EU and NATO, 105, in Krause/Wenger/Watanabe (eds.) *Studies in Contemporary History and Security Policy*, Volume 11: *Unraveling the European Security and Defense Policy Conundrum*.

¹⁰⁰ See Adoption by the Council of the Joint Action on the European Union military operation in the Democratic Republic of Congo (DRC), Brussels, 5 June 2003, 9957/03 (156), available at <http://ue.eu.int/pressData/en/er/76047.pdf>. The operation will be conducted in accordance with the mandate set out in United Nations Security Council Resolution 1484 of 30 May 2003. In implementation of this Resolution, the Secretary-General of the United Nations has requested UN Member States to provide a temporary stabilisation force in Ituri Region (DRC). Third States may be invited to participate in the operation.

¹⁰¹ To some extent, the EU decision for taking action in Congo can be regarded as a demonstration of the ESDP's role intended to underpin CFSP as a global policy. However, it can not be induced that further EU military intervention with RRF will be likely to occur beyond Europe. A first reason is that the EU's perception of the location of the principal present and future security challenges is in Europe. The EU has consistently defined strategy in terms of the regional aspects of security and the European continent has remained the primary, if not the sole focus of EU strategic thinking. An implication of this perception is that European militaries generally do not possess - and until now have not sought to acquire - power projection capabilities to intervene in contingencies beyond Europe. Moreover, there is a sense of reluctance among many EU members to endow the RRF with the capabilities to intervene globally. These constraints clearly suggest that the European continent is likely to remain the focus of and arguably the only feasible theatre for the engagement of most European militaries for the foreseeable future. The EU's available power and military capabilities demonstrate that although the EU has portrayed itself as a global power, its military capabilities do not allow it to perform a global military role, even if consensus could be forged to that end.

eral NATO states also form the EU's RRF.¹⁰² Only as a provisional result, it can be perceived that EU's RRF and NATO's NRF geographically will stand by in overlapping areas, at least in Europe, thereby arguably opening the possibility of conflicts which could further complicate co-operation between the EU and NATO.

However, both organisations appear to have clarified the issue of operational responsibility by reaching consensus in terms of the formula that the EU is free to conduct military operations 'where NATO as a whole is not engaged'. The framework agreement states:

'[The EU and NATO] welcome the European Security and Defence Policy (ESDP), whose purpose is to add to the range of instruments already at the European Union's disposal for crisis management and conflict prevention in support of the Common Foreign and Security Policy, the capacity to conduct EU-led crisis management operations, including military operations *where NATO as a whole is not engaged*.'¹⁰³

As pointed out in greater detail above, this long-time heavily contested formula implies a 'right of first refusal' for the benefit of NATO decision makers. In other words, NATO should have the right to decline intervention in a given matter before the EU can decide to act. Only if NATO decides not to intervene, then the EU force may be activated. Arguably, to some extent this condition is relegating ESDP to the position of a convenient sub-contractor for addressing those tasks that NATO (and, by implication, the U.S.) does not consider to be core tasks for its military. In any case, under the auspices of NATO's right of refusal, ESDP is not likely to become the 'autonomous' and robust security and defence capability that some EU Member States (may) want it to be. From that point of view, it is not without reservation to share the view that EU-NATO relations are mounting to the 'genuine strategic partnership in crisis management', as announced in the Joint Declaration of both organisation's Secretary Generals.¹⁰⁴ Admittedly, inasmuch as the tasks of peacemaking and peacekeeping mirror the expectations that some EU Member States have about the ESDP's scope, there are some benefits to such a limited vision of the ESDP. Moreover, its present military capabilities would seem to indicate that such an interpretation is even a realistic and desirable vision of the functional tasks of ESDP, at least in the short run. Conversely, how-

¹⁰² Simpson, NATO After Prague: What Next?, New York University, December 2003, available at <http://www.nyu.edu/globalbeat/syndicate/simpson120202.html>. Simpson/Lindborg, The Results of the Prague Summit and the Challenges Ahead, NATO E-MAIL SERIES, available at <http://www.basicint.org/update/041202-PF.htm>. Compare on the other hand Bacia, Keine Konkurrenz. Das Projekt einer modernen Nato-Interventionstruppe nützt auch den militärischen Plänen der EU, Frankfurter Allgemeine Zeitung, 5 November (2002) 12.

¹⁰³ NATO Press Release (2002) 142, 16 December 2002 [emphasis added].

¹⁰⁴ NATO Press Release (2002) 142, 16 December 2002.

ever, it is difficult to predict whether those countries with a more ambitious view will remain satisfied with this NATO-first and EU-second arrangement, especially if it should turn out as a division of labour which codifies NATO as a full-scale crisis-manager, whereas ESDP-actions are restricted to lower-scale peace-keeping tasks.

For a provisional statement, it seems as if the formula 'where NATO is not engaged' may in future not necessarily turn out to be as explosive as sometimes suspected. This is because the implicit 'NATO first'-rule may at the core not likely come into play but under exceptional circumstances where both organisations at the same time wish to be engaged. Otherwise, it would surely maintain a potential prerogative, albeit of limited significance. It is important to note that the first EU crisis management without recourse to NATO assistance in Congo has not been accompanied by a preceding NATO announcement not to intervene. Instead, the EU followed the request by the Secretary General of the United Nations to provide a temporary stabilisation force.¹⁰⁵

Closely associated with the possible political impact of NATO's right of refusal is the issue of how EU Member States view the relative weight of the EU *vis-à-vis* NATO when actually adopting a decision to conduct a military operation. As it is well known, Great Britain (as well as some other Member States) have persistently tended to point out that most military operations will be conducted by NATO only or by the EU using NATO assets. In contrast, other Member States, like France, have tended to emphasize that most military operations will be conducted by the EU only or by the EU using NATO assets. Thus, only some Member States do proclaim that ESDP's starting point is principally and above all a European project which only exceptionally involves making use of NATO assets. For others, the starting point is a reflection on the best means of safeguarding the Atlantic Alliance. Despite some convergence between British and French positions, as it has been perceived in the aftermath of the St. Mâlo 'breakthrough', one does not seem exaggerate when regarding these two key security players as representatives of two different visions of the role of the ESDP, which is only but representative of a similarly wide spectrum of opinion among all other EU Member States. Notably, both approaches will soon be able to refer to practical experiences. While the EU's mission in Macedonia is being conducted with recourse to NATO assets, the EU operation in Congo will be carried out without NATO assistance. However, irrespective of the final outcome of both EU-missions in Macedonia and in Congo, both cases of action obviously reveal different approaches to the role of the ESDP and the influence the EU should have relative to NATO.

¹⁰⁵ The operation which will be conducted in accordance with the mandate set out in United Nations Security Council Resolution 1484 (2003). This Resolution authorises the deployment until 1 September 2003 of an interim emergency multinational force. Draft Council Decision on launching the European Union military operation in the Democratic Republic of Congo, 10 June, 2003 (10326/03), available at <http://ue.eu.int/pesd/congo/docs/st10326.en03.pdf>.

Finally, another area in which the framework agreement appears to have established clarity about which tasks NATO and the EU should perform is collective defence. According to the joint declaration, both organisations reaffirm that NATO remains the foundation of the collective defence of its members.¹⁰⁶ Though the wording does not expressly exclude that the EU might endorse in one way or another a clause of solidarity, as it is discussed in the working group of the European Convention¹⁰⁷, it is undeniable that collective defence shall remain NATO's responsibility. Anyhow, there is still a degree of ambiguity present. From the outset, the EU has not attempted to portray ESDP as a potential defence capability. Rather, it appeared to have shunned a defence role by declining to adopt all of the WEU's functions at the Cologne summit. Nonetheless, as the acronym ESDP includes a reference to 'defence', it might be somewhat misleading if the EU's ambitions do not extend to collective defence, all the more with Article 17 paragraph 1 TEU (Nice) stating that CFSP '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.' The Draft Constitution of the European Convention even foresees a more far-reaching formulation while leaving open the precise compatibility with NATO-linked obligations:

'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. [...] The policy of the Union in accordance with this Article shall not prejudice the specific character of the security 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.'¹⁰⁸

In sum, emphasizing NATO's exclusive responsibility for collective defence (for its members) therefore contributes only little to clarifying the EU and NATO's functional responsibilities in general.

¹⁰⁶ Moreover, the current absence of a direct conventional military threat to Europe might be viewed as encouraging just because this scenario is likely to be the exception rather than the rule.

¹⁰⁷ Final report of Working Group VIII - Defence (CONV 461/02), 16 December 2002, para. 54, available at <http://european-convention.eu.int>.

¹⁰⁸ Praesidium of the Convention, Text of Part I and Part II of the Constitution, CONV 797/1/03, Brussels, 12 June 2003, Article I-40: Specific provisions for implementing the common security and defence policy, 2., <http://european-convention.eu.int/docs/Treaty/cv00797-re01.en03.pdf> [emphasis added].

2. EU access to NATO assets

The conceptual difficulties of practical co-operation between the EU and NATO, as described above, presuppose to some extent that the EU actually will be gaining access to NATO assets and that it can employ these in future EU-led operations. Like the agreement over the right of first refusal, this issue is officially perceived as being resolved, after the corresponding insertion into the EU-NATO arrangement.

'NATO is supporting ESDP in accordance with the relevant Washington Summit decisions, and is giving the European Union, *inter alia* and in particular, assured access to NATO's planning capabilities.'¹⁰⁹

As already described in greater detail, the Turkish veto on EU access to NATO assets has long bedeviled ESDP-NATO relations. After the breakthrough with the specific Greek-Turkish agreement¹¹⁰ allowing NATO's commitment, the question is now whether the proclaimed 'assured access' has become reality. Can the access to NATO assets really be taken for granted? As outlined above, the only way that the EU can use NATO assets is by collective approval of all NATO members. Arguably, this has not been changed through the official commitment because the EU is not entitled to effectively use NATO capabilities for any specific operation. Non-EU NATO members do effectively reserve a right to veto on any potentially EU-led operation that would employ NATO assets.¹¹¹

Naturally, the close and at the same time complex relationship between the EU and non-EU NATO members reduces the likelihood of a situation in which the EU would conduct an operation that was – diametrically – opposed to the wishes of NATO (especially the U.S.). But it is difficult to imagine a situation in which the U.S. would allow NATO assets to be used by the EU if it disapproved of the course and progress of an EU-led operation. The reliance of the EU on NATO assets – and the acquiescence of the non-EU NATO Allies – therefore raises the question of what EU-'autonomy' in taking military action really signifies. Insofar as the EU is dependent on access to NATO assets, it might therefore rather be argued that a true assurance of availability would demand that the EU's crisis-management priorities would take precedence over NATO's responsibilities and thereby, by implication, U.S.' interests.¹¹² Thus, even after NATO and the EU reached

¹⁰⁹ NATO Press Release (2002) 142, 16 December 2002.

¹¹⁰ For greater detail compare NATO Parliamentary Assembly, Sub-Committee on transatlantic defence and security co-operation, Reform of NATO Command Structure and the NATO Response Force, 53 DSCTC 03 E, 23 April 2003 (rapporteur: *Julio Miranda Calha*), IV. ESDP and NATO, para. 49.

¹¹¹ The effective veto wielded by non-EU NATO member states, due to the EU's reliance on NATO assets, would clearly not apply if the EU were conducting an operation that did not rely on NATO assets.

¹¹² *Schake*, op. cit., (fn. 27), 22.

agreement on the terms of EU access to NATO assets, the initial acquiescence of NATO members (via the NAC) does not necessarily guarantee a long-term commitment.

A well-known solution that has constantly been proposed to overcome this problem is duplicating of NATO assets, which would enable a less dependent relationship to emerge. This approach is obviously at the root of the aforementioned declaration of the four governments of France, Germany, Belgium and Luxembourg. (By the way, the proposal of creating a nucleus collective capability for planning and conducting operations for the EU implicitly affirms that the EU access to NATO assets is just not assured in terms of a long-term commitment.) Constructive duplication, however, is based on changes in two key areas. The first necessity would be an understanding between EU Member States that duplication of NATO assets is in fact desirable. The prospects of such an understanding are far from certain given the divergent positions of Member States which are in favour of substantial duplication and those, which apparently do not support duplication (at all).¹¹³ The second necessity is the long overdue increase in defence expenditure by European governments.¹¹⁴ It is widely recognized that European governments spend significantly less on defence than the U.S., mainly due to differences in threat perception, strategic priorities and subsequent required military capabilities. As much as this gap in spending has long been and still is a source of contention within NATO, and despite the periodic re-emergence of the burden-sharing debate, the EU suffers the same challenges, even if the build-up of the RRF seems to be working rather well. At present, the prospect of 'assured access' to NATO assets does little to encourage European governments to spend more on defence. This arguably brings into question how serious EU Member States are about enhancing the EU's role in security and defence beyond institution building. The impact of substantially increased spending, however unlikely this may seem at present, would also only become visible in the longer run. This means again that the question of access to assets - NATO's and EU-own - is a long-term project without a quick-fix solution.

3. Summary

Effective and constructive co-operation between the EU and NATO remains an unfinished project. This is not to be considered as merely denying assessment of the attempts to mutual *rapprochement* which have been undertaken so far. By defi-

¹¹³ As has been exemplified by the NATO mission in Macedonia even though the forces are essentially all European, NATO has established a 'US-face' for the mission, if only to instil confidence and credibility.

¹¹⁴ Compare only *Missiroli/Schmitt*, More Euros for European Capabilities. Budgetary discipline and/or defence expenditure?, Institute for Security Studies, Analysis (June 2002), <http://www.iss-eu.org>.

nition, the ESDP-NATO relationship is a continuous challenge demanding ongoing efforts from both sides. As far as that goes, this article only identified some current obstacles which are open to further work and improvement, and as far as practical experiences are concerned, some encouraging, albeit initial progress has been demonstrated in the subsequent engagement in Macedonia.

In sum, however, the key feature of the ESDP-NATO relationship clearly lies in strategic divergences between the U.S. and the Europeans, and in differences among the Europeans themselves. For the future of transatlantic security relations, differences in interpreting of strategic goals will be much more important than any technical issue, such as the interpretation of NATO's 'right of first refusal' and the precise formulation of EU access to NATO assets.

Against this background, the future political structure may be that the current NATO structure will be maintained, with mainly U.S. control and significant discrepancies in military capabilities amongst its members. This would require that the U.S. and the EU recognize a sustained interest in maintaining NATO as the transatlantic security forum, in spite of the capabilities gap and other structural deficiencies that make interaction so complex. However, continuing on this course with the U.S. as the chief military power within NATO and the EU's only gradual progress in the enhancement of the ESDP could lead to a marginalization of NATO, if the U.S. were to increasingly act militarily outside of NATO's institutional framework but in the guise of ad-hoc coalitions – as has been shown in the Afghanistan and Iraq military campaigns – which may make use of NATO's resources albeit without being politically responsible *vis-à-vis* the NAC.¹¹⁵

The U.S. and Europeans might come to seriously considering the establishment of the much discussed 'division of labour' in order to resolve the capabilities gap in the long term. As often proposed, the EU's RRF could handle peacekeeping efforts, such as those that had become necessary after military action in the Balkans, and the U.S., either on the basis of ad-hoc coalitions and, by implication, outside NATO, or within the NATO-framework and through its Response Force, could act more globally and in instances where substantial military force is required. It may be argued that if an official 'division of labour' were to be established within NATO, the EU would eventually earn more authority within NATO and be able to develop credibility based on its ability to fulfil peacekeeping missions on its own. On the other side, any kind of official division of labour could also have the directly opposite effect of permanently relegating Europe to low-end security tasks, while the U.S. would set the terms for (NATO's) high-end military action.¹¹⁶ If it were to come that way, however, the continuation of the present

¹¹⁵ Compare Bono, L'ambiguïté des relations OTAN-PESD: faux débat ou enjeu réel?, *La revue internationale et stratégique*, n° 48 (2002-2003) 130.

¹¹⁶ Howorth, ESDP and the Quest for European Autonomy: a historical necessity?, *International Security Forum*, 14-16 October, 2002, http://www.isn.ethz.ch/5isf/5/Papers/Howorth_paper_VI-3_2.pdf.

structure would allow the Europeans to constantly progress with the ESDP at their own will, with European military security essentially rooted within NATO. While this is certainly not perfect in the light of the aforementioned interoperability problems, this scenario would be backed up by the strong commitment the U.S. and the EU both have dedicated to the transatlantic alliance – but it would require continuous dialogue in order to function efficiently for both powers.