



UCD Professor *Ben Tonra* writes on the implications for foreign, security and defence policy that arise from the proposed European Constitution

Since 1999 the European Union has sought to add a military dimension to its existing foreign and security policy. The European Security and Defence Policy (ESDP) which results, has been tentative in its construction, gradual in its development and is the culmination of a series of compromises among the Member States. In fact, if you read the existing treaties, you will find no mention of the European Rapid Reaction Force, the EU military committee or 'battle groups'.

When the Convention on the Future of Europe met under the chairmanship of former French President Valéry Giscard d'Estaing in February 2002, the defence issue was one of the 'tough nuts' that had to be cracked. The proposals that emerged from that convention were then presented to the Member States in July 2003. The aim was to integrate foreign, security and defence policy, give it a clear operational mandate and lines of political control, institutionalise its decision-making

procedures and place it firmly on the European policy agenda. The resulting proposal for a European Constitutional Treaty signed on October 29 this year, is a major landmark not only in the development of the EU's international capacity but in the development of the Union itself.

The treaty itself provides for a number of new developments related to the Union's common foreign, security and defence policy:



EUFOR Commander Major General David Leakey.

1. The creation of a new post, that of Minister for Foreign Affairs, who will have responsibility for the Union's overall foreign, security and defence policy.

This individual will chair meetings of the EU foreign Ministers and, at the same time, shall be a Vice President of the Commission (Article I-28). Considerable attention has focused on this proposal, the objective being to enhance the consistency of the Union's role in the world by drawing together the Union's sometimes disparate policies. The merged job is designed to provide a visible political figure with overall responsibility for the conduct of the Union's foreign policy, but answerable to the Union's Member States.

The Minister will be appointed by and will be accountable to the Heads of State and Government. In practice, there is some concern that drawing together these two very different dimensions of the Union's international capacity may prove difficult in terms of accountability and institutional cohesion, especially since very different decision making rules will continue to govern each dimension of policy.

2. The creation of a European defence agency (Article I-41.3) (Article III-311)

The Treaty lays the basis also for improved defence procurement and research by providing for the establishment of a European Armaments, Research and

Military Capabilities Agency (Article I-41.3 and Article III-311). This Agency is designed to monitor the capabilities of Member States, to promote harmonisation of defence procurement, reduce costs and prevent expensive duplication in the sphere of armaments. On 17 & 18 June 2004, the European Council agreed unanimously to establish this Agency.

The Constitutional Treaty puts these developments on a constitutional footing. The Agency, based in Brussels, is run by a Steering Board, composed of representatives of the participating EU Member States (either Foreign or Defence Ministers) and of a representative of the Commission. The Steering Board is chaired by the Head of the Agency who is assisted by a Chief Executive and supported by a

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permanent international staff mainly selected from the Member States. The Agency is open to all the Member States, should they wish to join. Senior national officials of the member states will receive regular reports from the Agency and will provide guidelines on matters relating to CFSP and ESDP. The Agency's immediate priority is to work closely with the existing EU Military Committee (EUMC) to ensure that the European Rapid Reaction Force and the EU Member States have the infrastructure necessary to undertake successfully the widened range of agreed Petersberg Tasks.

3. The capacity to delegate military tasks to a subgroup of member states (Article I-41.5) (Article III-310)

Under the proposed constitution, the Council of Ministers takes the decision to undertake a mission involving Petersberg Tasks. Examples of missions to date are Operation Concordia in Macedonia and Operation Artemis in the Democratic Republic of Congo. Participation is voluntary and on a case-by-case basis.

Article I-41.5 allows the Council of Ministers to entrust to a sub-group of Member States the execution of a particular task. While the Member States involved and the Union's Minister for Foreign Affairs are charged with the management of such a task, they are also required to keep the Council of Ministers as a whole regularly informed. The constitution provides for a situation where events on the ground change and for the subsequent referral back to the Council of Ministers for further consideration and/or decision. Article III-198.1 states that "If there is a change in circumstances having a substantial effect on a question subject to [such] a European decision, the Council of Ministers shall review the principles and objectives of the action and adopt the necessary European decisions." Similarly, Article III-310.2 provides that, in the event that the completion of Petersberg Tasks entrusted to certain Member States result in "major new consequences" or "require amendment" the Member States participating shall refer the matter to the Council of Ministers to adopt the necessary European decisions.

The UN has welcomed proposals for the EU to contribute in this way more effectively to crisis management and to the provision of multilateral military capabilities which are needed for UN crisis management operations.



Valéry Giscard D'Estaing, the key architect of the EU Constitution.

4. The creation of 'permanent structured cooperation' in defence/military affairs among those states wishing to participate therein and which meeting certain agreed criteria (Article I-41.6) Article (III-312)

The Constitutional Treaty provides in Article I-41.6 for "permanent structured co-operation." This facilitates those member states "whose military capabilities fulfil

higher criteria and which have made more binding commitments to one another in this area" – to undertake "the most demanding missions . . . within the Union framework", subject to the unanimous agreement of all Member States.

A treaty protocol outlines the rationale behind and the conditions for those joining in this tighter realm of military cooperation. A Member State wishing to participate in structured co-operation must have the

capacity to supply by 2007, targeted combat units for deployment within a period of five to 30 days, "in particular in response to requests from the United Nations Organisation." Effectively, this envisages a truly rapid reaction force with the EU Armaments Research and Military Capabilities Agency responsible for assessing Member States' capabilities.

5. A solidarity clause in the event of a terrorist attack on the Union (Article I-43) (Article III-329)

A new provision was included following the Madrid train bombings. Here the Union and its Member States agree to act jointly if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Member States undertake to mobilise all instruments at their disposal, "...including the military resources made available by the Member States" so as to prevent a terrorist threat, to protect democratic institutions and civilian populations, to assist a Member State in the event of such an attack or natural or human disaster. Implementing provisions are provided in Article III-329.

6. An External Action Service is to be established (Article III-296.3)

Another innovative provision is for a new European External Action Service, under the authority of the EU Minister for Foreign Affairs as set out in Article III-296.3. This article proposes a single

organisational structure, which shall assist the Union Minister for Foreign Affairs in fulfilling his or her mandate and shall work in co-operation with the diplomatic services of the Member States.

The joint service will be composed of officials from the Commission, the Council Secretariat and seconded officials from the national foreign ministries, offering administrative, managerial and policy support to the new Minister for Foreign Affairs. The European Council on 17 & 18 June 2004 agreed that preparations for the External Action Service would commence as soon as the Constitutional Treaty was signed (29 October 2004).

It is important to temper the perception of this External Action Service as an embryonic foreign ministry. Its remit is to support policy as agreed by national government ministers and implemented by the EU Foreign Affairs Minister. This should mean the External Action Service acting in concert with, and supporting national diplomatic services in pursuit of shared goals and strategies. Furthermore, the task of staffing, co-ordinating and financing this new service will not be easy. There is scope for competition between the EU external action service and the national diplomatic services given that the national embassies will continue to operate independently.

7. An extension in the areas covered by the common defence policy – the so-called Petersberg Tasks

8. Article III-309 extends and clarifies the scope of the Petersberg Tasks to include joint disarmament operations, military advice and assistance tasks, conflict prevention and post conflict stabilisation, in addition to the long established tasks of humanitarian and rescue tasks, peacekeeping and tasks of combat forces in crisis management, including peace-making.

These are the tasks for which the European Rapid Reaction Force is being developed to fulfil. This extension

of the tasks was agreed easily at the Convention and was not modified at the IGC, reflecting the degree of consensus on the matter.

A number of key elements have also been carried forward from previous treaties into the new constitution:

9. A common defence has yet to be established and can only be done so by unanimous agreement of the member states

Reiterating the provisions of the previous three Treaties, the Constitutional Treaty (Article I-41.2 and Article I-41.7) allows for the possible foundation of a "common defence" but only "when the European Council so decides." The European Council may only make such a decision unanimously. Given this requirement for unanimity, the change in wording from "might lead to a common defence" to "will lead to a common defence" means that a common defence remains a matter of aspiration.

Article I-41.7 provides that if a Member State is the victim of an "armed aggression on its territory" the other Member States have "an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the UN Charter." This provides for the inherent right of individual or collective self-defence if an armed attack occurs against a member of the United Nations. This obligation, however, does not prejudice "...the specific character of the security and defence policy of certain Member States." i.e. the nonaligned and those that are members of NATO.

10. The 'specific character' of certain member states' defence policies is recognised and it is agreed that nothing within the treaty compromises this (Article I-41.2)

This wording, that EU policy "shall not prejudice the specific character of the security and defence policy of certain Member States" was introduced by the Maastricht Treaty as a means to recognise



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that the policies of the Member States in this area diverged substantially. While some – indeed most – states at the time were fully integrated into NATO's military command structures, at least one, France, was not and another member state, Ireland, was not a member of NATO. Other Member States, such as Denmark, also found this phrasing useful so as to underline their own policy approach. The provision therefore underlines the fact that the Union's defence policy does not override or countermand, national security and/or defence policies.

11. All decisions with a military/defence implication must be taken unanimously (Article I-41.4) (Article III-300.4). There is no provision which will allow such decisions, now or in the future, to be taken using a majority vote

Unanimity remains the general rule in CFSP (Article I-41.6) and the absolute norm in ESDP (Article III-300.4) - contrary to the wishes of some Member States, but to the relief of most others. This reflects the fact that these two areas are strongly intergovernmental, and is despite the fact that the maintenance of decision-making vetoes in these areas may mean that in crisis situations EU policy-making may be paralysed.

Article III 300.2 provides for just four exceptions to the unanimity rule within CFSP and adds that the European Council may unanimously decide to further extend the use of QMV in certain circumstances. This is subject to two crucial reservations – first, that QMV may not apply to any decisions having military or defence implications and second, that any Member State may apply an emergency veto on any such QMV decision for reasons of vital and stated reasons of national policy.

Member States, rather than exercise a veto, also have the option of constructive abstention (Article III-300.1) in which case the State in question may qualify its abstention by making a formal declaration as to its reasons. Enhanced co-operation may be used in CFSP subject to unanimous Council authorisation.

In brief, the Union's common security and defence policy is defined by the new constitution as being '...an integral part of the common foreign and security policy (which provides for the use of) ...an operational capacity drawing on assets civil and military.' This capacity can then be mobilised for missions outside the Union for peace-keeping, conflict prevention and strengthening international



An Taoiseach Bertie Ahern, the Irish Presidency unlocked the signing of the constitution.

security in accordance with the principles of the United Nations Charter.' And it is recognized that this is wholly dependent upon '...capabilities provided by the Member States.' (Article I-41.1)

In a sense, to speak of an EU force or EU military is a misnomer. There is, and will be, no EU force or EU military – instead, everything that the Union is attempting to construct is built exclusively from national military and civilian components. What the constitution provides is, in effect, a map of the decision-making procedures and command

structures necessary to construct temporary EU military-civilian coalitions in support of unanimously agreed operations. Each member state is then free to participate in, to agree with but abstain from or to veto each operation. That is the menu that is on offer to Ireland and its defence forces.

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