

The enlargement of the European Union and the European Security and Defence Policy

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A commitment to, and an ability to implement, the Common Foreign and Security Policy (CFSP) are among the accession criteria that must be met by a state applying for membership of the European Union (EU). This might imply certain constitutional reforms or even the modification of a candidate state's foreign policy to bring it into line with the 'CFSP *acquis*', since, in contrast with what is required of certain EU member states (i.e. Denmark), a candidate state must accept the CFSP in its entirety.

In the current round of negotiations for the enlargement of the EU, the candidate states' foreign and security policies have been closely aligned with the CFSP¹. This has been the result of two main factors: first, these states have adopted a policy of aligning themselves with the decisions taken within the heart of the EU, especially as regards the adoption of "common positions" on issues of importance within Europe, and second, a number of specific structures have been put in place aimed at ensuring the participation of the candidate states in various aspects of the CFSP, such as EU-led crisis management. Yet, although the content of the CFSP has been agreed on, a decision-making process which requires the unanimous support of all states will pose many operational difficulties in an enlarged EU.

This paper examines the regulations governing the participation of candidate states in the European Security and Defence Policy (ESDP). In addition, it looks at the provisions made by the European Union Treaty (EUT) to implement such a policy should it prove impossible to obtain a unanimous vote once the EU has been enlarged. The paper concludes by assessing the main contradictions to which current EUT regulations may give rise in seeking to define the ESDP within the framework of an enlarged EU.

Mechanisms for bringing candidate states into line with the European Security and Defence Policy

From the outset, the creation of the European Security and Defence Policy (ESDP) has involved the participation of European states that are non-EU members. This has come about for a number of reasons. First, the Union has typically called on other international organisations in developing its policy, and the presence in these organisations of non-EU states has led to the creation of mechanisms that allow the participation of the latter in the actions and decisions undertaken in this field by the EU. Second, the situation in Europe after the fall of the communist regimes meant that the European construction process had to consider the stability of the entire region. Thus, pressure was brought to bear on the European Security and Defence Policy to incorporate the former European communist states.

Against this background, the participation of the candidate states in the European Security and Defence Policy has been helped by two specific mechanisms: initially, by the Associate Statute of the Western European Union (WEU), and today the provisions adopted by the Nice European Council for the consultation and participation of third states in crisis management. This change in mechanism is a direct consequence of the EU's decision adopted in the Helsinki European Council to assume the functions previously carried out by the WEU.

The Associate Statute of the WEU

The origins of the WEU Associate Statute lie in the relations established with the Central and Eastern European countries in the early nineties². The WEU Associate Statute was, in fact, adopted in 1994, and developed out of the Consultation Forum established by the WEU in 1992³. The criteria for determining which countries could adhere to this Statute were (1) the existence of a European Association Agreement with the European Community and (2) recognition as a candidate state for admission to the EU⁴. Thus, this Statute was the forerunner of current EU provisions for the consultation

and participation of candidate states on matters related to crisis management. Associate membership enabled the states to become involved in certain WEU structures and to play an active role in WEU decisions regarding Petersberg operations.

The associates could participate in certain meetings of the WEU Council, although they were unable to block a decision that was the subject of consensus among the member states⁵. In addition, the associates received regular information on the activities of the WEU working groups, with the possibility of being invited to participate in them, and they were also given the chance of signing a liaison arrangement with the WEU Planning Cell.

Association to the WEU Petersberg missions included participation in the implementation of these operations, as well as in prior exercises and planning operations. However, such association could be denied by the decision of a majority of the WEU member states or by that of half of the member states including the Presidency. Moreover, if participation involved the sending of armed forces, the associate states had the same obligations as the other participants, which included the right of involvement in the command structures and in the Council's subsequent decision-making process, in accordance with previously established terms for each state⁶.

Finally, in practice the associates became more actively involved in the WEU organisms and other related forums⁷. Thus, for example, these states participated in the meetings organised by the WEU Committee of Military Delegates, in the meetings of the Transatlantic Forum and in the activities of the Eurogroup. Additionally, in 1998 the WEU Permanent Council strengthened links between the associates and the WEU Military Staff. Their participation was also extended to co-operation on matters related to arming within the Western European Armament Group (WEAG)⁸.

EU Arrangements for the consultation and participation of candidate states in crisis management

The EU's Security and Defence policy, designed and agreed upon in Nice, is not limited to the exclusive co-operation of its member states. Indeed, the European Council of

Cologne called for the participation of European states that were not EU members⁹. This highlights the open nature of the project, although it was also stressed that the ‘decision-making autonomy’ of the EU in this field should be respected¹⁰. The European Council of Nice established a unique arrangement for the consultation and participation of non-EU European states as long as they fulfilled, at least, one of these two criteria: either that they be a European NATO member or that they be a candidate for EU membership (Nice European Council, 2000: Annex VI of Annex VI). However, these arrangements favoured those states that belonged to the Atlantic Organisation.

The Brussels European Council (24 and 25 October 2002) has extended the participation of non-EU European allies. These developments are the direct consequence of Turkey’s concerns regarding the Nice arrangements and their effects on Turkish involvement in the ESDP¹¹: Turkey exchanged its associate member statute in the WEU for the right to participate in the Nice arrangements as a non-EU NATO ally, without any prospect of becoming a EU member in the foreseeable future¹². Furthermore, from the Turkish standpoint, the dispute between Turkey and Greece regarding the delimitation of the maritime boundary in the Aegean sea required a clear statement that, under no circumstances, will the ESDP be used against an ally. Hence, the Brussels European Council decisions not only contain this clear statement but, also, extend the participation of the non-EU European allies during peace-time ESDP consultations and in the EU-led operations that do not require use of NATO resources and capabilities¹³.

- a) The main principles underlying the participation of third countries in EU crisis management operations.

The arrangements agreed upon in Nice were designed in accordance with a set of principles defined at two previous European Councils: the European Council of Helsinki (December 1999) and the European Council of Feira (June 2000).

First, these Councils added the subjective participation of third countries, albeit in the broadest terms. Thus, the participation of third states includes European NATO

states which are non-EU members, the states applying for EU membership, and those eventually associated in crisis management led by the EU.

Second, the extent of this participation was limited. Thus, it was assumed that should the EU enter into dialogue, consultation and co-operation with third states, this would be conducted in such a manner that the decision-making autonomy of the EU and the single institutional framework of the Union were respected at all times. Moreover, when dealing with a EU operation, a distinction was drawn between the right to participate (which in certain cases applies to the European NATO members) and the right of the EU to invite third countries to take part in a specific operation. Specifically, the European NATO states have the right to take part in the EU operation if and when the operation depends on the resources of the Atlantic Alliance. When this is not the case, the participation of these states is subject to the prior invitation of the European Union, as is usually the case with other third states.

Third, the principle of equality of rights and duties was established among the effective participants of a EU operation; in other words, for those states having confirmed their participation in the operation through a significant deployment of military forces.

Finally, the institutionalisation of relations with third states participating in EU defence (principle of institutionalised relation) was agreed on. Such institutionalisation had to be put into operation through a unique structure for all the third countries affected. However, the operational rules of this structure had to contain specific mechanisms for the European NATO members.

- b) The arrangements adopted by the EU for the consultation and participation of third states in crisis management.

According to the principles agreed upon at Helsinki and Feira, the European Council of Nice adopted arrangements for the consultation and participation of third countries in crisis management. The third states that might benefit from these arrangements are restricted to the candidate states for EU membership and the European

states that are members of NATO¹⁴. The purpose of the agreements is twofold: (1) to permit regular consultation with these states, except during periods of crisis; and (2) to associate them in the widest possible way in EU military led operations, during a period of crisis.

Permanent arrangements for regular consultation with European NATO members and candidate states are based on the organisation of meetings at several levels (including the ministerial) between the EU and these states (EU+15)¹⁵. Within this framework, specific meetings are envisaged with the six European NATO states that are non-EU members (EU+6)¹⁶. The implementation of these arrangements is overseen by the Political and Security Committee (PSC). Furthermore, each third country will be able to establish, as part of its mission to the EU, a representative with responsibility for monitoring the ESDP. This representative will serve as an interlocutor with the PSC. At the same time, they may designate an officer to serve on the EU Military Staff, and who will act as a point of contact¹⁷. At least two information meetings are to be scheduled with these officers during each Presidency. Finally, the possibility of defining specific liaison arrangements is also provided for, especially during NATO/EU exercises.

The arrangements drawn up at Nice did not establish a closed list of issues, but rather took a flexible, pragmatic approach, which means they can be adapted to the specific needs of each moment. The document states that the EU+15 meetings will discuss matters related to the ESDP and their eventual implications for the affected countries. In addition, there will be discussions concerning the drawing up of EU capacity objectives, with the aim that these third states can contribute to the improvement of European military capacity. There will also be informative meetings discussing the monitoring of crisis situations¹⁸. Nevertheless, and following the decisions adopted by the European Council in October 2002, there will be additional meetings in the format of EU+6 in advance of PSC and EU Military Staff meetings where decisions may be taken on matters affecting the security interests of the non-EU European Allies¹⁹.

The Nice document identifies two stages in the implementation of arrangements in periods of crisis: the pre-operative and operative stages. The pre-operative stage is characterised by the outbreak of a crisis and initial studies regarding

the opportunities for and/or the need to undertake an operation. Within this framework, intensification of dialogue and consultations with third states are foreseen, as well as discussions concerning respective assessments of the situation. Furthermore, if the EU does not rule out the implementation of an operation, it will inform those countries that may potentially participate of its intentions. Particular attention needs to be paid to consultations with European NATO states when the use of Atlantic Alliance resources is envisaged in the carrying out of the EU operation.

The operative stage is set in motion once the EU Council decides on a strategic military option and initiates its operational planning²⁰. The steps in this planning are outlined to European NATO states and the other candidate states to accession. The aim here is that these states can determine the nature and the volume of their contribution to the EU operation. The formal invitation to participate in the operation is made once the Council agrees on the operation that is to be implemented. It should be noted that the invitation is governed by the terms agreed on at Helsinki, which means that European NATO states have the right to take part in a EU operation if Atlantic Alliance resources are to be used in the operation. If this is not the case, the participation of third states (European NATO members and candidates to accession) is preceded by a formal invitation from the EU Council. However, the conditions of participation of non-EU European allies in EU-led operations not requiring recourse to NATO resources and capabilities is specifically provided for in the Brussels European Council decisions of October 2002. Here it has been established that, when taking decisions regarding participation, the EU Council will take into account the security concerns of the non-EU European Allies. Should one of the non-EU European allies voice concerns that an envisaged autonomous EU operation was to be conducted in the geographic proximity of a non-EU European ally or that such an operation might affect its national security interests, then the Council would consult this ally and, depending on the outcome of these discussions, issue an invitation to participate (Brussels European Council, 2002: Annex II, point 12)

Although the political and strategic control over an operation lies with the EU Political and Security Committee (comprising representatives of the EU member

states), once an operation has been agreed upon, the Nice arrangements foresee the constitution of a specific organism – the Contributors Committee (ConCo) – on whom the day-to-day management of the operation will depend.

The ConCo is formed by representatives from those states participating in the operation. Hence, any third states that participate by contributing significant military forces as well as any EU member states that take part in the operation have the same rights and obligations regarding the management of the operation. Furthermore, all other EU member states, in addition to the Director of the EU Military Staff and the Commander of the operation, also have the right to attend. Usually, the presidency of ConCo will be held by a representative of the CFSP High-Representative or of the EU Presidency, who will be in charge of conveying to the PSC and to the Military Committee the results of its discussions.

The ConCo acts as the reference organism for the management of the operation. This does not mean that the ConCo can adopt any formal decision; its deliberations are limited to "positive contributions" for the further deliberation of the PSC. Indeed, the ConCo receives periodic information from the Commander of the operation and discusses the problems related to the management of the operation, expresses its opinion and formulates recommendations on any modifications in the operational planning. In addition, it issues statements on the planning of the eventual termination of the operation and the withdrawal of forces. In general, the PSC will give due consideration to the opinions expressed by the ConCo. Specifically, it is foreseen that the Military Committee and the PSC will consult ConCo on issues related to the planning of the eventual termination of the operation and the withdrawal of forces.

Consequences of the enlargement on procedures for the definition of a European Security and Defence Policy

The 23rd article of the EUT stipulates the decision-making procedures as regards the CFSP: unanimity, a qualified majority and a majority of Council members. However, it is clearly laid down in this article that a simple majority is reserved for procedural issues,

while a qualified majority cannot be applied to the taking of decisions with military or defence implications. Thus, unanimity is, to all intents and purposes, the sole procedure admissible in defining the ESDP. The difficulties that this poses within an enlarged EU are obvious given that the unanimity rule requires the highest level of consensus. Were this not the case, the contents of the ESDP would receive only a minimum commitment, which would make it difficult for the EU to carry out its work in the international arena. It is clear, therefore, that an alternative to the unanimity rule must be sought. This could be achieved by limiting the type of decisions that cannot be adopted by a qualified majority and by analysing ways of making the unanimity rule more flexible as observed in the Treaty itself.

What, therefore, should be understood as decisions and actions that have military or defence implications? The European Council has as yet not specified the range of this expression. In fact, to date it has only referred to this issue in the broadest terms: the Presidency Report passed by the European Council of Cologne limited itself to making the assumption that “decisions relating to crisis management tasks, in particular decisions having military or defence implications will be taken in accordance with Article 23 of the Treaty on European Union” (Cologne European Council 1999: Annex III, Presidency Report, section 3). It would seem that the Amsterdam version of the EUT might hold an interpretation that might limit the exclusion of a qualified majority to the operative decisions and actions of the EU; in other words, to those that require the use of means and resources of a military nature. Indeed, the Treaty twice includes the expression ‘decisions and actions of the Union which have defence implications’: first, in article 17.3 (where it is stated that: "The Union will avail itself to the WEU to elaborate and implement decisions and actions of the Union which have defence implications")²¹, and second, in the article 23 (excluding them from the adoption by qualified majority).

This suggests that only EU actions and decisions called for by the WEU cannot, under any circumstances, be adopted by qualified majority. In practice, it can be seen that the EU has referred to the WEU on each occasion that a decision of a military nature has been taken (from the use of the Satellite Centre in Torrejón to the co-ordination of operations of land de-mining, including also the delivering of humanitarian aid when this

requires military support). In other words, only those decisions with military or defence implications that have an operational dimension would remain excluded from the qualified majority procedure. This would leave the field open regarding military and defence issues of rather more diffuse profiles in which, given the conditions stated by article 23.2²², the use of the qualified majority procedure would be possible²³. Certainly, the feasibility of such an interpretation would require the political will of the EU member states. In the absence of this political will, the general rule for decision-making in the field of ESDP will continue to be unanimity²⁴.

Unanimity is clearly an intrinsically strict procedure. However, the EUT does include two means of making it more flexible and, importantly the Treaty does not exclude any CFSP field or any kinds of decision from their application. Thus, in the absence of reform, they represent two ways of special interest for the definition of ESDP within an enlarged EU.

In the first place, as introduced by the Treaty of Amsterdam, it has been agreed that abstentions from members attending the meeting or from represented members will not impede the decision-making process. Although for some this possibility was already implicit in the Maastricht Treaty, its explicit recognition is of importance, not only in juridical but also in political terms²⁵.

The second way of making unanimity more flexible – highly innovative in its working – was also incorporated by the Treaty of Amsterdam: the constructive abstention mechanism, which is described in the second paragraph of article 23.1. According to this article, the members of the Council that abstain from a vote may append to their abstention a formal declaration by which they are not obliged to apply the decision, but they agree that it will be binding for the Union. The Treaty only sets one limit: the maximum number of Council members using this mechanism cannot exceed one third of the votes weighed in accordance with article 205.2 of the European Community Treaty. If the number of constructive abstentions is above this threshold, the decision cannot be adopted²⁶. Thus, the constructive abstention mechanism becomes an instrument that allows member states not to block the adoption of a decision of the Council when they are not totally opposed to it. In this way they are not bound by the decision²⁷. In any case,

states must abstain from any action likely to conflict with or to impede Union action based on that decision. The constructive abstention mechanism makes the decision-making process in the field of ESDP much more flexible²⁸. To appreciate better its range of possibilities within an enlarged EU, it is necessary to study its application in the EU as it currently stands.

Today, with its fifteen member states, the total number of votes in the EU Council is 87. If we consider that Denmark does not take part in the process regarding decisions and actions of the Union that have defence implications, the number is reduced to 84, which means the threshold on constructive abstention is 28. This means that two of the 'big states' plus Spain (i.e. France-10, Italy-10, Spain-8) can resort to constructive abstention without restraining the adoption of a decision implementing, for instance, a Petersberg operation. This would not, however, be the case if three of the large members resorted to constructive abstention, because their votes would add up to 30. On the other hand, the constructive abstention of the four 'neutral' states (Austria-4, Sweden-4, Finland-3 and Ireland-3) would not prevent the adoption of this kind of decision. Thus only a minimum of three large states can restrain the adoption of decisions implementing the constructive abstention mechanism. Otherwise, the constructive abstention of, at least, four member states is required.

Declaration number 20, appended to the Treaty of Nice, considers the weighting of votes that will be attributed to the candidate countries in the future enlarged Council. According to the latest Commission Report on the progress being made towards accession by each of the candidate countries, Bulgaria and Romania will not be included within the first group. This means that in 2005 the EU will probably be enlarged to include 25 member states. With this in mind, the Brussels European Council held in October 2002 ruled on the weighting of votes in the Council for the period between accession and 31 December 2004 (using the vote distribution system currently in force)²⁹, and has postponed the Nice weighting of votes to January 1 2005. Thus two scenarios are possible.

- During the transitional period (between accession and 31 December 2004), in a EU with 25 members, and in which Denmark does not participate on matters of defence, the total number of votes in the Council is increased to 121 and the limit on constructive abstention is 40. Now, to block a decision the constructive abstention of four 'big states' will not be sufficient, since together they only constitute a vote of 40. The votes of at least one more member state are required to block a decision using this mechanism. In other words, blocking a decision will require the votes of at least five member states, four of whom must be 'big states'. On the other hand, the new member states will not be able to block the adoption of any decision by resorting to constructive abstention, since together they only have 37 votes.
- From January 1 2005, in a EU with 25 members, and in which Denmark does not participate in matters of defence, the total number of votes in the Council comes up to 314, placing the limit on constructive abstention at 104. Since every 'big state' will now hold 29 votes, two of these plus Spain (27 votes) and Poland (27) will be able to block a decision-making process by using the constructive abstention mechanism, since the sum of their votes is 112. Needless to say, the constructive abstention of four 'big states' will prevent the adoption of a decision ($29 \times 4 = 116$ votes). This means that, as from January 1 2005, the minimum number of states required to block a decision by implementing the constructive abstention system will be four, but only if each of them has 29 or 27 votes in the Council. Finally, it should be noted that here again the countries of the former Eastern block will not be able to block a decision using the constructive abstention mechanism, as their votes add up to just 101 (even if we include the votes of Bulgaria and Romania)³⁰. This means, for example, that a Petersberg operation can be initiated by the EU without the involvement of these states because of the fact that they have used the constructive abstention mechanism.

Thus, the proposed changes to the weighting of votes in the Council mean that the six 'big EU members' will play a very important role in defining and the putting into practice of the ESDP. This position is further strengthened if we consider that they are the main contributors of military equipment and forces in the implementation of any Petersberg operation. By contrast, there is no possibility of the new member states blocking a decision by using the constructive abstention mechanism as their votes fail to reach the required threshold.

Finally, the documents used as a basis for the ESDP include another point that might be useful for the efficient use of methods that make the unanimity rule more flexible. This is the fact that "member states will keep, in all circumstances, their right to decide whether their national forces should be deployed and the timing of such deployment"³¹. This includes both those member states that have voted in favour of a decision as well as those who have abstained (whether they have used the constructive abstention mechanism or not). Beyond the political consensus required to initiate a crisis management operation, the EUT regulations include several formulae that provide for a certain degree of disagreement among the EU member states, but which aim at avoiding the disagreement of the big member states of the EU.

Final remarks

The current EU enlargement process differs, in many aspects, from previous processes. Not only because of the number of candidate states, but also because the current process seeks to respond to the European geopolitical system that has arisen as a result of the fall of the communist regimes of the former Eastern block. The requirement that the EU operate as a stabilising element in the continent served to justify the convening of an intergovernmental conference for the Political Union, as well as the participation of the candidates states in the security and defence policy of the EU.

As regards this primary demand, the specific mechanisms initiated for the participation of these states derive directly from the model chosen at each step by the EU to build its security and defence policy – namely, the Associate Statute in the WEU and the current provisions agreed upon in the European Council of Nice. Here, it is necessary to highlight the consequences that derive from the decision of the EU to assume the functions previously performed by the WEU. From this moment on, and in spite of the intergovernmental nature of the CFSP and its ESDP, the EU cannot give its consideration to restricted participation statutes because of the complex, ambitious political character of the EU. Although the model that characterises the EU remains undefined, any link to a project for political union would probably mean that it would not be compatible with statutes of this kind. Second, such changes imply a reduction in the rights of the candidate states. In the Nice mechanisms, these states are not granted the right to take part in EU organisms (in contrast with the situation in the WEU), but several structures have been established ad hoc that grant them wide-ranging rights of with the ESDP. Thus, the candidate states now have to wait for a formal invitation from the EU to take part in their crisis management operations whereas, in the framework of the WEU, such participation had to be explicitly prevented by the majority decision of its member states (or half of them including the Presidency).

In addition, it is worth highlighting the discriminatory effect of the Atlantic Alliance on the candidate states. NATO membership status gives them access to the regime of rights that the EU recognises for those European states that are members of the organisation – a wider range of rights than those held by the EU candidate states. For example, membership of the Atlantic Alliance gives the candidate states the chance to attend specific meetings, as well as the right to take part in the crisis management operations of the EU that use Atlantic resources. Therefore, this right to participate is not linked to the call for the integration to the EU and, hence, to a wish to share in this common project. Rather it sends a clear message to the candidate states: integration within NATO greatly facilitates participation in the EU-ESDP.

Finally, it is worth returning to the decision-making process within the field of ESDP. The high degree of political awareness and common interests that the requirement of unanimity represents constitutes a handicap for the smooth functioning of an effective ESDP. What is particularly evident is the need to seek a convergence in the opinions of the EU member states. In addition, the criterion of 'state interest' should not constitute the key to configuring ESDP decisions. Related to this, and referring to the IGC in 2004, it seems that the qualified majority procedure should be extended, at least, to those decisions and actions which have military or defence implications. If we see how this procedure is regulated in article 23.2 of the EUT, this would not mean any great changes in the intergovernmental nature of the ESDP. Article 23.2 allows any member state to block the adoption of any decision by qualified majority, as long as it can justify its position on the grounds of explicit reasons of national policy. Opposition of this nature blocks the voting procedure and leads, in the best of cases, to the referral of the subject to the European Council, which has to reach a unanimous decision. Yet, the application of the qualified majority would not introduce significant changes to the particular right that allows every member state to choose whether to take part or not in EU operations. As can be deduced from the documents adopted in Cologne, this right is no longer linked to the way of voting in the Council. Finally, it should also be possible to extend the application of constructive abstention to those decisions currently taken by qualified majority. The states could then be allowed to use this mechanism so that they as individual states are not bound by the decision, while the EU can proceed to its adoption.

Notes

¹ The CFSP Chapter was provisionally closed with each of the candidate countries during the first half of 2000. The "Regular Reports" drawn up by the European Commission since 1998 on the progress being made towards accession by each of the applicant countries outline the adequacy of the policies and the adaptations made by each country. Bulgaria and Romania have

also brought their foreign and security policy in line with that of the EU (European Commission 2002).

² In April 1990 the WEU Council of Ministers directed the Presidency and the General Secretary to implement contacts with the newly-elected democratic governments of Central and Eastern Europe for the mutual exchange of information (WEU Council of Ministers, 1990: 8).

³ At the ministerial meeting, held in Bonn on 19 June 1992, between the WEU Council and representatives of Estonia, Latvia, Lithuania, Poland, Rumania, Hungary and the Czech and Slovakian Republics, it was agreed to set up a Consultation Forum. The Forum involved several annual meetings of the Ministers of Foreign Affairs, as well as meetings between the Permanent Council of the WEU and the ambassadors of the aforementioned countries (Moulias, 1995: 119). For further details of the developments taken within the Consultation Forum, see Dumoulin & Remacle, 1998: 240-2, and Robles Carrillo, 1997: 137-143.

⁴ In 1994, the nine states comprising the Consultation Forum joined the WEU as associate states: Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, Czech Republic, Rumania and Slovakia (WEU Council of Ministers, 1994: Part II). Slovenia joined in 1996 (WEU Council of Ministers, 1996: 1). Of these, the status of Hungary, Poland and the Czech Republic was changed in 1999 from associate state to associate member, following their incorporation as full NATO members (WEU Council of Ministers, 1999: Declaration on New associate members of the WEU: Hungary, Poland and the Czech Republic).

⁵ The associate states were not permitted to participate in Council meetings relating to the internal matters of the WEU, to WEU relations with the Atlantic Alliance and the EU, and to the application of article V of the Brussels Treaty.

⁶ According to Robles, the Associate Statute led "to the reorganisation of the WEU as a pan-European forum for co-operation on matters of security" (Robles Carrillo, 1997: 141-143).

⁷ In fact, after 1994 certain innovations saw the scope of the Associate Statute broadened. These are described in the Annual Reports of the WEU Council of Ministers to the Assembly (WEU Assembly, 1998: section II, and WEU Assembly, 1999: section II). In addition, the WEU Council declarations and communiqués included a section on the participation of associate states (WEU Council of Ministers, 1998: Third part, point 6).

⁸ In November 1997, the Ministers of Defence of the Western European Armament Group (WEAG) countries decided that the WEAG commissions and sub-groups would be entitled to determine whether the associates should take part in its meetings, depending on the subject under debate (WEU Council of Ministers, 1997: 40). Currently, the WEAG has nineteen members with full rights: the thirteen original members (European states of NATO) plus Austria, Finland, Sweden (EU states which are not members of NATO), Czech Republic, Hungary and Poland (states which were incorporated in November 2000, following their accession to the Atlantic Alliance).

⁹ At the European Council of Cologne the need was already recognised to establish certain procedures for the participation of European NATO states which were not also members of the EU, and to consider ways of ensuring the participation of WEU associate countries (Cologne European Council, 1999: Annex III, Declaration of the European Council on the strengthening of the common European security and defence policy, section 5).

¹⁰ An expression used in the Presidency Report to the European Council of Nice (Nice European Council 2000: Annex VI, section III, first paragraph).

¹¹ These concerns have been one of the reasons for Turkish opposition to the EU/NATO permanent arrangements, which allow for the use of NATO resources in the EU-led operations.

¹² The associate member statute was adopted by the WEU for the European member states of the Atlantic Alliance that were not members of the EU. The Statute's original rights were established in two WEU Council of Ministers Declarations: the Petersberg Declaration of June 1992, and the Kirchberg Declaration of May 1994 (WEU Council of Ministers, 1992: Part III, and WEU Council of Ministers 1994: Part III). In addition to the rights conferred by the Associate Statute, the associate members enjoyed the following set of rights: the right to participate fully in the meetings of the Council of Ministers, of its workings groups and of the subsidiary bodies, unless otherwise agreed by a majority of the WEU member states or of half the members including the Presidency; the right to speak but not to block a decision that is the subject of consensus among the member states; the right to nominate officers to the WEU Planning Cell; the right to be connected to the member states' telecommunications system (WEUCOM), and the right to participate in the implementation, planning and preparation of the WEU operations that use Atlantic Alliance resources and capabilities.

¹³ Specifically, the Brussels European Council states 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" (Brussels European Council 2002: Annex II, point 2).

¹⁴ The Seville European Council agreed to three specific arrangements for consultation and co-operation on crisis management between the EU and Russia, Canada and Ukraine. They include a mechanism for regular consultation with these countries. However, this mechanism is considerably limited compared with that provided for in the Nice arrangements. The possibility also exists for the EU to invite these countries to participate in EU crisis management operations. In the case of deploying large military forces, they will be invited to participate in the Committee of Contributors. Within this framework, their rights and duties in the day-to-day management of the operation will not differ from those of the EU member states (Seville European Council 2002 : Annex IV, V and VI of the Presidency Report on the ESDP).

¹⁵ The '15' are the thirteen states which are current candidates for accession, plus Norway and Iceland, which are both members of the Atlantic Alliance.

¹⁶ This is the case of Norway, Iceland, Turkey, Czech Republic, Hungary and Poland.

¹⁷ The non-EU European Allies may also designate interlocutors with the Military Committee (Brussels European Council 2002: Annex II, point 5).

¹⁸ The "Regulars Reports" from the European Commission on the progress made towards accession by each of the candidate countries refer to their participation in the EU Capacity Conferences and to the offers that some of them have already made.

¹⁹ The objectives of these consultations will be to exchange views and to discuss any concerns and interests raised by these Allies, so as to enable the EU to take them into consideration. As with the CFSP, these consultations will enable the non-EU European Allies to contribute to ESDP and to associate themselves with EU decisions, actions and declarations on ESDP (Brussels European Council 2002: Annex II, point 3).

²⁰ When the EU operation is carried out using Atlantic Alliance capabilities, the Alliance planning organisms monitor all operational planning. However, in autonomous operations, the European General Staff is in charge of monitoring the operational planning at a strategic level. In the latter case, non-EU member states that have been invited to take part can nominate a liaison officer to work with the European General Staff. However, when the planning is conducted by NATO organisms, the involvement of non-NATO member states in these tasks is determined by the modalities established by the Alliance.

²¹ It would seem that the fact that article 17.3 makes reference only to "decisions and actions of

the Union which have defence implications”, and not “decisions having military or defence implications”, as in article 23.2, is of little consequence. The reporting of article 17.3 is tributary of the formulation previously included in article J.4 of the Maastricht Treaty.

²² In other words, joint actions, common positions or any other decision based on a common strategy, as well as any decision according to which a joint action or a common position might be implemented.

²³ Needless to say, the opposite interpretation is also possible. As stated by Dashwood, it is not always easy to identify what we mean by "decisions with military or defence implications" and, thus, potentially, such an exception to the vote by qualified majority opens a wide breach in article 23.2, at least regarding those actions that have an operational dimension (Dashwood, 1998: 1034-35). It is obvious that only practice and, especially, political will tip the scales towards one interpretation or the other.

²⁴ Van Eekelen is especially critical of this point, given the non-obligation of the member states to take part in an operation against their will: "A coalition of the willing within the EU should have been made possible. In its absence the willing will organise their action outside the framework of the EU and, as in the case of Albania, also outside WEU" (Van Eekelen, 1998: 273). In general terms, Favret shows himself in favour of the substitution of unanimity by an enforced qualified majority or even of the possibility that a decision can be considered as adopted as long as a qualified majority does not oppose it (Favret, 1997: 586).

²⁵ In his assessment of the Maastricht Treaty, Vignes considered the substitution of consensus by the unanimity rule as being important, considering that "in Brussels, unanimity allows for abstention" (Vignes, 1991: 789).

²⁶ According to Haguenu-Moizard, the EUT has in this way incorporated a technique used in other international organisations, such as the European Organisation for Cooperation and Development. This incorporation represents a compromise between those states in favour of unanimity and those advocating the systematic use of the qualified majority – the case of Germany (Haguenu-Moizard, 1998: 242).

²⁷ In Dashwood's opinion, this is the objective of the constructive abstention mechanism (Dashwood, 1998: 1034).

²⁸ That constructive abstention can also be introduced in the making of ESDP has also been politically endorsed. The delegate Minister for Foreign Affairs of the GFR, when answering a question posed by a member of the WEU Assembly, stated that "Germany is favourable to the fact that constructive abstention may operate in the ESDP, as well as in those cases where a decision on an operation is implied" (WEU Assembly, December 1998).

²⁹ The Brussels European Council maintains the allocation of 10 votes only for Germany, France, United Kingdom and Italy; assigns 8 votes to Poland (as it also does for Spain); assigns 5 votes to the Czech Republic and Hungary (as is the case of the Netherlands, Greece, Belgium and Portugal); assigns 3 votes to Slovakia, Lithuania, Latvia, Slovenia and Estonia (as it does for Denmark, Finland and Ireland); and finally it assigns 2 votes to Cyprus and Malta (as it does for Luxembourg) [Brussels European Council 2002: Annex 1 to Annex I].

³⁰ It is perhaps worth noting that the adoption of a common standpoint by the countries of the former Eastern block cannot be assumed.

³¹ A point contained in the Presidency Report endorsed by the European Council in 1999 (Cologne European Council, 1999: Annex III, Presidency Report, section 3).

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