

*CENTRO STUDI STRATEGICI CARLO DE CRISTOFORIS*

# THE ESDP FROM MAASTRICHT TO LISBON

An Assessment of the Development of a European Security and  
Defence Policy

Oronzo Daloiso

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## **Abstract**

*The recent Libyan crisis showed both the current relevance of a common security project in Europe and the political difficulty of holding a united position in an international crisis. The project at stake is very ambitious because it entails a number of issues both at diplomatic and political level. This paper analyses the progressive development of a European foreign and security policy from Maastricht to Lisbon. Special attention is devoted to the implications that a European foreign policy has on NATO and the UN system. The final section presents the innovations of the Lisbon Treaty and raises two key problems which European policy-makers should take into account: lack of democratic control and institutional paralysis.*

# **The ESDP from Maastricht to Lisbon**

## **An Assessment of the Development of a European Security and Defence Policy**

Oronzo Daloiso\*

*Index: 1. Introduction – 2. Origins and establishment of ESDP – 3. Acquisition of common defence assets and capabilities – 4. Implementation of coercive measures within the UN system – 5. ESDP-NATO relations – 6. Developments of the Treaty of Lisbon – 7. Conclusions – 8. References.*

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‘This is a world of new dangers but also of new opportunities.  
The European Union has the potential to make a major contribution,  
both in dealing with the threats and in helping realise the opportunities.

An active and capable European Union would make an impact on a global scale.  
In doing so, it would contribute to an effective multilateral system  
leading to a fairer, safer and more united world’.

*Javier Solana*<sup>1</sup>

## 1. Introduction

The European Security Strategy, drawn up by Javier Solana and adopted by the European Council of Brussels on 12 and 13 December 2003, set out the basis for the security strategy of the European Union (EU) and its relation with the United Nations (UN). The EU has thus committed itself to reinforcing its cooperation with the UN to assist countries emerging from conflicts, and to enhancing its support for the UN in short-term crises. This commitment certainly constitutes a milestone for the integration of the Union, which has been concentrating since its beginning on common market. This is mainly because common market has a less problematic impact on transatlantic relations, while the beginning of a European common defence policy raises the question of how to relate it to the North Atlantic Treaty Organisation (NATO) and the UN.

The recent Libyan crisis showed both the current relevance of a common security project in Europe and the political difficulty of holding a united position during an international crisis. The interests at stake are primarily political in nature and they entail a number of issues both at diplomatic and at economical level. Some analysts have concluded that the EU cannot conduct a coherent foreign policy, because ‘states are driven by the self-help logic of international anarchy to maximize their power’.<sup>2</sup> Others, such as Jolyon Howorth, ‘paint a rosier picture than some analysts would like’.<sup>3</sup> This paper aims at analysing the progressive development of a European foreign and security policy in the light of historical events and from the angle of European treaties from Maastricht to Lisbon. Special attention is devoted to the

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<sup>1</sup> Concluding paragraph of ‘A secure Europe in a better World’, leading to the establishment of the European Security Strategy, drafted under the authority of Javier Solana and adopted by the European Council of Brussels on 12 December 2003.

<sup>2</sup> See Adrian Hyde-Price, ‘A ‘tragic Actor’? A realist Perspective on ‘Ethical Power Europe’’, *International Affairs* 84, no. 1 (2008).

<sup>3</sup> See Alistair J.K. Shepherd, ‘Security and Defence Policy in the European Union by J. Howorth’, *Journal of Common Market Studies* 45, no. 5 (2007).

implications of a European foreign policy on NATO and the UN system. The intent is to draw a comprehensive overview of the topic, given its importance and its slow development.

Article 53, paragraph 1, of the UN Charter concedes that regional organisations undertake coercive actions. Because no clear definition is given as to what a coercive action is, political scientists hold different opinions on its meaning. Some analysts believe that coercive actions only include measures involving the use of armed force, while others argue that they also include measures not involving the use of force, such as the actions contemplated in Article 41 of the Charter. According to a prominent doctrine, coercive actions are all those measures involving the use of force and coercing one country or one faction of the dispute to abstain from threatening or violating peace.<sup>4</sup> Petersberg missions can thus be considered as non-coercive measures because of the non-coercive use of armed forces. Should the initial non-coercive nature of force turn into a coercive use, notably because of an unexpected evolution of the dispute, it would require a Security Council authorisation.

The development of EU foreign and defence policy, and in particular its capacity of implementing coercive measures, is the core issue around which this paper is structured. It investigates the historical pathway of the European Security and Defence Policy (ESDP) and the subsequent acquisition of military capabilities, in order to show the progress of European defence from the Treaty of Maastricht to current days. Then, it analyses how the legal background of European coercive measures, namely Petersberg tasks, interacts with the framework of the UN Charter and to what extent it challenges EU-NATO relations. Finally, it identifies the innovative elements of European foreign policy introduced by the Treaty of Lisbon.

## 2. Origins and establishment of ESDP

The Treaty on European Union (TEU), signed in Maastricht on 7 February 1992 and entered into force on 1 November 1993, set out the basis for a defence policy of the European Union roughly forty years after the failure of the Treaty instituting the European Defence Community. The latter, signed in Paris by the six member states of the European Coal and Steel Community on 27 May 1952, envisaged the creation of a pan-European military bound to European political institutions. It never entered into force because the French National Assembly never ratified the treaty.

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<sup>4</sup> Benedetto Conforti, *Le Nazioni Unite*, 8<sup>th</sup> Ed. (Padova: CEDAM, 2010), 227; Christian Walter, 'Security Council Control over regional Action', in *Max Planck Yearbook of United Nations Law* (The Hague, London, Boston, 1997), 142.

The formulation of Article J.4, paragraph 1, represents a compromise between two different approaches to European defence.<sup>5</sup> On one side, countries such as the United Kingdom (UK) and the Netherlands supported the idea of a *common defence policy* constituted by political and non-operative initiatives of the EU. Defence would be left to Member States and to their probable coordination. On the other side, countries such as France and Germany were keener on creating a *common defence* in the form of an organisation run by European institutions and able to act politically and militarily. The solution found in Article J.4, paragraph 1, refers to the *eventual* definition of a common defence policy and the possibility of creating *in time* a common defence.<sup>6</sup>

Article J.4, paragraph 2, entrusts the Western European Union (WEU) with the task of implementing the European defence policy. Defined as ‘an integral part of the development of the Union’, the WEU is entitled ‘to elaborate and implement decisions and actions of the Union which have defence implications’. Furthermore, the Declaration on Western European Union, annex to the TEU, in its introduction asserts that ‘WEU Member States agree on the need to develop a genuine European security and defence identity and a greater European responsibility on defence matters’, which emphasises the importance of reinforcing the operative role of the WEU ‘by examining and defining appropriate missions, structures and means’. Hence, an organic connection exists between EU and WEU, the latter being ‘developed as the defence component of the European Union and as a means to strengthen the European pillar of the Atlantic Alliance’.<sup>7</sup> In short, the WEU should have become the military arm of the EU.

Since its creation, however, the European common defence has had two crucial difficulties. One concerns the means necessary to execute an eventual European mission, the other is related to the fact that decisions require unanimity and, for this reason, potential developments of the defence policy are subordinated to the common will of all Member States.<sup>8</sup> Unanimity continues to be a constant of European security and defence policy, while the question of operative means was settled in the Treaty of

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<sup>5</sup> Bino Olivi, *L'Europa difficile. Storia politica dell'Integrazione europea 1948-2000*, (Bologna: Il Mulino, 2001), 381.

<sup>6</sup> See Jolyon Howorth, ‘European Defence and the changing Politics of the European Union: Hanging Together or Hanging Separately’, *Journal of Common Market Studies* 39, no. 4 (2001).

<sup>7</sup> Paragraph 2 of the Declaration on Western European Union, annex to the Maastricht Treaty.

<sup>8</sup> For decisions concerning the common foreign and security policy (Article J.8, paragraph 2) and defence (Article J.4, paragraph 3), the Council of the European Union deliberates unanimously.

Amsterdam, signed on 2 October 1997.<sup>9</sup> Article 11, paragraph 1, widens the purposes of the common foreign and security policy, by including the safeguard of the ‘integrity of the Union in conformity with the principles of the United Nations Charter’ among them. Moreover, Article 17, paragraph 1, clause 1, reformulates the framing of a common defence policy into a *progressive*, rather than a *in time* process.

With regard to the relationship between EU and WEU, Article 17, paragraph 1, clause 2, reconfirms the fact that the WEU ‘is an integral part of the development of the Union’ and gives it ‘access to an operational capability’ in the field of defence, but Article 17, paragraph 1, clause 3, establishes that the Atlantic Alliance is the basis for collective defence.<sup>10</sup> Two main innovations are introduced by the Treaty of Amsterdam in the field of security and defence. Firstly, the inclusion in Article 17, paragraph 2, of the Petersberg tasks, originally adopted by the WEU Council in the Petersberg Declaration of 19 June 1992, and defined as ‘humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking’.<sup>11</sup> Secondly, the appointment of the High Representative for the common foreign and security policy in Article 18, paragraph 3.

The Treaty of Amsterdam is the fundamental basis which allowed further progress in common defence policy. The Anglo-French Declaration of Saint-Malo signed on 4 December 1998, for example, incorporated in the TEU all EU military operations involving the use of force and falling under the Petersberg scheme. Subsequently, the ESDP was officially instituted during the European Council of Cologne on 3-4 June 1999.<sup>12</sup> The Presidency Conclusions evoke the ‘need to give the European Union the necessary means and capabilities to assume its responsibilities regarding a common

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<sup>9</sup> See Daniel Vignes, ‘Et si Amsterdam avait fait encore une autre Chose de Bien: permettre de réaliser la Politique de Défense commune ?’, *Revue du Marché Commun et de L’Union Européenne*, no. 425 (1999).

<sup>10</sup> Relations between EU and WEU as well as WEU and NATO were defined in the ‘Declaration of Western European Union on the role of Western European Union and its relations with the European Union and with the Atlantic Alliance’, adopted by the Council of Ministers of WEU on 22 July 1997. The Declaration was integrated into Declaration No. 3, annex to the Treaty of Amsterdam.

<sup>11</sup> For an accurate analysis of provisions concerning foreign and security policy brought in by the Treaty of Amsterdam see Stefano Grassi, ‘L’Introduzione delle Operazioni di Peace-keeping nel Trattato di Amsterdam: Profili giuridici e Implicazioni politiche’, *La Comunità Internazionale* 53, no. 2 (1998); Fabrizio Pagani, ‘A new Gear in the CFSP Machinery: Integration of the Petersberg Tasks in the Treaty on the European Union’, *European Journal of International Law* 9, no. 4 (1998).

<sup>12</sup> See Paul J. Teunissen, ‘Strengthening the Defense Dimension of the EU: An Evaluation of Concepts, recent Initiatives and Developments’, *European Foreign Affairs Review* 4, no. 3 (1999).

European policy on security and defence’,<sup>13</sup> in order for the Union to play its full role on the international stage.

For this purpose, ‘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’.<sup>14</sup> Military operations would be guided by the EU, which would determine, depending on the case, if it is necessary to use NATO means or not. Relations between EU Member States and NATO do not change, as the Atlantic Alliance remains the basis for the collective defence of its members. Thus, commitments according to Article 5 of the Treaty of Washington and Article V of the Treaty of Brussels are safeguarded for Member States that are part of these treaties. The development of a European military framework clearly had an impact on the WEU. EU Member States turned from the idea that the WEU should be the military arm of the Union and, as it would be confirmed by the Treaty of Nice,<sup>15</sup> they assigned to the EU itself the leading role for managing Petersberg tasks, which the Amsterdam Treaty had attributed to the WEU.

The first concrete step to give Petersberg tasks a military capability was the signing of the Helsinki Headline Goal in the European Council of Helsinki on 10-11 December 1999. The target set for 2003 was the capability to deploy about 60,000 troops soldiers within 60 days of the order being given, but they have been deployable only since 1 January 2007 and are sustainable for up to a year. With the adoption of the Declaration on the operational capability of the Common European Security and Defence Policy, during the European Council of Laeken, ESDP became operative.<sup>16</sup> With this Declaration the European Council acknowledged the ‘creation of the appropriate EU structures’ as well as the fact that the EU would be able ‘to take on progressively more demanding operations’.<sup>17</sup>

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<sup>13</sup> Paragraph 1 of the Conclusions of the Presidency on strengthening the European common policy on security and defence, Annex III, European Council of Cologne, 3-4 June 1999.

<sup>14</sup> Ibid.

<sup>15</sup> The Treaty of Nice, signed on 26 February 2001, deleted the clause 2 of Article 17, paragraph 1, concerning the role of WEU. For the provisions of the Treaty of Nice on ESDP, see Anne Cammilleri, ‘Le Traité de Nice et la Politique européenne de Défense’, *Revue des Affaires Européennes* 2000, no. 4 (2001); Alberto A. Herrero de la Fuente, ‘La Política Exterior y de Seguridad Común de la UE tras la “cumbre” de Niza. La Política Europea de Seguridad y Defensa’, *Noticias de la Unión Europea*, no. 218 (2003); Thomas Jaeger, ‘Enhanced Cooperation in the Treaty of Nice and Flexibility in the Common Foreign and Security Policy’, *European Foreign Policy Review* 7, no. 3 (2002).

<sup>16</sup> Javier Solana, ‘La Politique Européenne de Sécurité et de Défense (PESD) est devenue opérationnelle’, *Revue du Marché Commun et de l’Union européenne*, no. 457 (2002).

<sup>17</sup> Annex II of the Presidency Conclusions, European Council of Laeken, 14-15 December 2001.



### 3. Acquisition of common defence assets and capabilities

After Laeken, the Union tried to develop its military crisis management capabilities even further, in order to be able to manage international crises without the help of NATO armed forces. The EU Battlegroups for rapidly deployable operations and the EU Gendarmerie Force were created, both supported by the European Defence Agency (EDA). For the Helsinki Headline Goal to be effective, EU Member States needed additional cooperation in their military capabilities, and for this reason they signed the Military Capabilities Commitment Declaration on 20 November 2000. Only when the European Capabilities Action Plan was established, Member States created nineteen working groups with the goal of solving possible shortfalls of EU military capabilities. However, a common agreement was so difficult to achieve that on 17 May 2004 the General Affairs and External Relations Council approved the Headline Goal 2010, subsequently endorsed by the European Council of 17 and 18 June 2004, which reviewed and minimised the objectives of the previous Helsinki Headline Goal.

The new document reconsidered the Petersberg tasks and the ability of the Union to effectively meet them within 2010. The target initially set for 2003 did not obtain much support from the UK, preoccupied for eventual tensions with NATO and the United States (US). By contrast, France and Germany called for a prompt European political answer to international crises. The compromise which was reached satisfied both sides as it focused on a qualitative rather than a quantitative progress of capabilities: ‘Interoperability but also deployability and sustainability’.<sup>18</sup> In addition, the Headline Goal 2010 intended to achieve ‘by 2010 necessary capacity and full efficiency in strategic lift (air, land and sea)’,<sup>19</sup> and to ‘improve the performance of all levels of EU operations by developing appropriate compatibility and network linkage of all communications equipment and assets both terrestrial and space based by 2010’.<sup>20</sup>

In this context, the EU Battlegroup appeared to be the best way to meet the Headline Goal 2010 priorities. Its scope is to foster the EU’s ability to respond to crises through quantitatively small, yet qualitatively good, military capabilities, and ‘These minimum force packages must be military effective, credible and coherent and should be broadly based on the Battlegroup concept’.<sup>21</sup> This concept derives from the Headline Goal 2003 and the initiative of the Saint-Malo Declaration, carried out by

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<sup>18</sup> Section A, paragraph 3 of Headline Goal 2010, approved by GAERC in Brussels on 17 May 2004.

<sup>19</sup> Ibid, Section A, paragraph 5, clause c.

<sup>20</sup> Ibid, Section A, paragraph 5, clause g.

<sup>21</sup> Ibid, Section A, paragraph 4.

France and the UK. When a high rank American diplomat declared that the US 'cannot accept independent EU structures that duplicate existing NATO capabilities',<sup>22</sup> the UK opposed reserves on the project and reassured NATO that operations would be limited and small-scale.

After reviewing its position, the UK promoted the Headline Goal 2010 and the possibility of organising military formations on a multinational basis or individually. This option, however, could not prevent the progress of a European rapid response to crises because the Battlegroup, that is the closest entity to a European army, reached full operational capacity on 1 January 2007. At the moment there exist fifteen EU Battlegroups, mostly multi-national, which rotate actively and are ready at any time to be deployed within 10-15 days from the decision of the European Council. They are sustainable for at least 30 days, which could be extended to 120 days if resupplied.

These Battlegroups neither replace the European Rapid Reaction Force nor compete with the NATO Response Force, because they become operational for a short and rapid time in international crises, to eventually prepare the ground for a larger and traditional force. The efficiency of rapid operations has been improved by the Niche capabilities: Finland is expected to deploy troops trained to combat chemical and biological weapons, Lithuania is expected to provide water purification units, Greece offers the Athens Sealift Co-ordination Centre and Ireland has bomb disposal experts.

On the whole, the Battlegroup concept was largely supported by Member States. This is because most national armed forces are under-funded and overstretched, and only five out of twenty-seven countries allocate two percent or more of GDP to their defence budget.<sup>23</sup> The EU has chosen to specialise in deploying rapid military forces, but policy decisions on the EU Battlegroup initiative require the unanimity of Member States. Accordingly, decisions to deploy national forces are taken by governments on a case-by-case basis, which means that the effective implementation of coercive measures largely relies on the possibility of reaching consensus or unanimity among Member States.

The EDA, approved on 12 July 2004 i.e. the same day in which the EU military operation in Bosnia and Herzegovina was endorsed by the Council, came to 'support the Member States and the Council in their effort to improve European defence capabilities in the field of crisis management and to sustain the European Security

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<sup>22</sup> See UK Parliamentary debate on 10 December 2003 : Column 1159. <http://www.publications.parliament.uk/pa/cm200304/cmhansrd/vo031210/debtext/31210-29.htm>.

<sup>23</sup> European Defence Agency, Defence Facts, National Defence Expenditure. (<http://www.eda.europa.eu>). All EU Member States except Denmark participate to the European Defence Agency.

and Defence Policy’.<sup>24</sup> The body is governed by the Head of the Agency, coinciding with the CFSP High Representative; the Steering Board, a core decision-making body composed of defence ministers of the participating Member States together with a representative of the European Commission; and finally the Chief Executive.

The Agency was meant to take forward the conclusions of Headline Goal 2010, by further developing defence capabilities in the field of crisis management, promoting and enhancing European armaments cooperation, strengthening the European defence industrial and technological base and creating a competitive European defence equipment market. Moreover, it was entrusted with promoting research aimed at leadership in strategic technologies for future defence and security capabilities, thereby strengthening Europe's industrial potential in this domain.<sup>25</sup> The EDA was not initially mentioned in the treaties (it would be incorporated in the Treaty of Lisbon) and it introduced the practice of qualified majority only in minor procedures.

The Council of Ministers, acting by unanimity, issues guidelines on an annual basis in relation to the work of the Agency and in particular with regard to its work program. Also, every three years, it approves unanimously a financial budget for the Agency and the appropriate financial rules. Decisions taken by the Steering Board follow the principle of qualified majority voting and only the representatives of the participating Member States are eligible to vote. If a representative opposes the decisions ‘for important and stated reasons of national policy’,<sup>26</sup> the vote is not taken and this can result in severe delays of the decision-making process. The decision is likely to be approved when a Member State is doubtful and abstains from participating in the initiative and thus from voting. The potential danger of this method is the stigmatisation of a two-speed Europe in the field of defence.

Two months after the institution of the EDA, during the informal meeting of EU Defence Ministers on 17 September 2004, the Declaration of Intent was signed by France, Spain, Italy, Portugal and the Netherlands, which completed the ability of the Union to manage coercive measures. The European Gendarmerie Force, which became fully operational on 20 July 2006, includes elements from the French Gendarmerie, the Italian Carabinieri, the Portuguese National Republican Guard, the Dutch Royal Marechaussee and the Spanish Civil Guard. The European Gendarmerie Force has permanent staff based in Vicenza, Italy, and is able to mobilize 800 gendarmes in less than 30 days and deploy up to 2,300 gendarmes.

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<sup>24</sup> Council Joint Action 2004/551/CFSP of 12 July 2004 on the establishment of the European Defence Agency, Article 2, paragraph 1.

<sup>25</sup> Ibid, See Article 5, paragraph 3, for the complete list of EDA's functions and tasks.

<sup>26</sup> Ibid, Article 9, paragraph 3.

Its scope is filling the operational gap in crisis-management operations between the time armed forces enter a theatre of operations and the time the police can normally perform. This military group carries out policing tasks where local police is failing or non-existent, particularly in post-conflict situations where public order is difficult to establish.

#### 4. Implementation of coercive measures within the UN system

With the establishment of ESDP, the EU obtained the military means and capacities that are necessary to conduct peacekeeping and international security operations. However, for the implementation of any coercive measure, the EU needs a Security Council resolution.<sup>27</sup> What is the relation between the EU and UN resolutions?<sup>28</sup>

The EU is neither bound to peacekeeping provisions of the UN Charter nor to the rights and obligations deriving from them, because it is not a member of the UN. These provisions are nonetheless applicable to all EU Member States by virtue of their membership to the UN. The signatories nations of the Charter have agreed to ‘refrain in their international relations from the threat or use of force’,<sup>29</sup> ‘confer on the Security Council primary responsibility for the maintenance of international peace and security’,<sup>30</sup> ‘accept and carry out the decisions of the Security Council’,<sup>31</sup> particularly when it deliberates according to Chapter VII of the Charter, and ‘give the United Nations every assistance in any preventive or coercive action it may take’.<sup>32</sup>

These countries respect the provisions of the Charter also in case they decide to implement decisions of the Security Council for the maintenance of international peace and security ‘through their action in the appropriate international agencies of which they are members’.<sup>33</sup> The EU falls under the provisions of Chapter VIII of the UN Charter, concerning the relations between the UN and regional organisations in the field of peace-keeping. The membership of EU Member States in the UN produces the effect that the EU is in fact bound to the provisions of the Charter

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<sup>27</sup> Barbara Sardella, ‘La Partecipazione della Comunità europea ad altre Organizzazioni internazionali’, in *Le Relazioni esterne dell’Unione Europea nel nuovo Millennio*, by Luigi Daniele (Milano: Giuffrè Editore, 2001), 215-244.

<sup>28</sup> For a normative account on this topic see Alessandra Lang, *Le Risoluzioni del Consiglio di Sicurezza e l’Unione Europea* (Milano: Giuffrè Editore, 2002).

<sup>29</sup> Charter of the United Nations, Article 2, paragraph 4.

<sup>30</sup> Ibid, Article 24, paragraph 1.

<sup>31</sup> Ibid, Article 25.

<sup>32</sup> Ibid, Article 2, paragraph 5.

<sup>33</sup> Ibid, Article 48, paragraph 2.

concerning the maintenance of international peace and security.<sup>34</sup> The compliance with these provisions is confirmed by the corresponding regulations of the TEU. According to Article J.1, which opens Title V concerning provisions on common and foreign security policy and fixing the scope of the Union in this field, the action of the EU in this matter is conducted ‘in accordance with the principles of the United Nations Charter’.

Further political acts adopted by the European Council can be interpreted in the same way. The Presidency Conclusions of the European Council of Cologne state that ‘The EU will thereby increase its ability to contribute to international peace and security in accordance with the principles of the UN Charter’.<sup>35</sup> The Presidency Reports approved at the European Council of Helsinki on 10-11 December 1999, in particular the report on ‘Strengthening the common European policy on security and defence’ and the report on ‘Non-military crisis management of the European Union’, recognise the primary role of the Security Council in the maintenance of international peace and security. The Presidency Conclusions of the European Council of Göteborg on 15-16 June 2001 recall the modalities of cooperation between EU and UN in the field of conflict prevention and crisis management because ‘the European Union’s evolving military and civilian capacities provide real added value for UN crisis management activities’.<sup>36</sup> Finally, in the Brussels meeting on 21 July 2003, the General Affairs and External Relations Council illustrates the importance of ‘developing EU civilian and military crisis management capabilities in such a way that UN action may effectively benefit from EU contribution in the same field’.<sup>37</sup>

The European Commission explained its position in an important Communication to the Council and the European Parliament on 10 September 2003. In this Communication, entitled ‘The European Union and the United Nations: the choice of multilateralism’,<sup>38</sup> the Commission declares that ‘With the creation of a European military capacity, the question of the EU’s possible contribution to UN-mandated peacekeeping and peace-making operations becomes more urgent than ever. As CFSP and ESDP are underpinned by the wish to act to uphold the principles

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<sup>34</sup> See Michael Barnett, ‘Partners in Peace? The UN, regional Organizations and Peace-keeping’, *Review of International Studies* 21, no. 4 (1995).

<sup>35</sup> Paragraph 1 of the ‘Presidency report on strengthening the European common policy on security and defence’, Annex III of the Presidency Conclusions, European Council of Cologne, 3-4 June 1999.

<sup>36</sup> Paragraphs 52, 53 and 54 of ‘Cooperating for peace and security’, Chapter V of the Conclusions.

<sup>37</sup> Council conclusions, ‘Development of the EU/UN Cooperation in Crisis Management’, paragraph 1.

<sup>38</sup> Recalling the Communication ‘Building an effective partnership with the United Nations in the fields of Development and Humanitarian Affairs’ of 30 April 2001, the Commission publishes a Communication to the Council and the European Parliament entitled ‘The European Union and the United Nations: the Choice of Multilateralism’.

and Charter of the UN, providing active and early support to UN-mandated or UN-led operations is a clear track for the progressive framing and deployment of the EU's security and defence policy and capabilities'.<sup>39</sup> While calling for an increasing role of the Union in the field of international peace and security, the Commission is strongly convinced that 'EU actions in this area will invariably be consistent with, and in many cases complementary to, decisions and frameworks developed by the UN'.<sup>40</sup>

EU's commitment to respect UN Charter provisions and principles is further confirmed by the Joint Declaration on UN-EU Co-operation in Crisis Management of 24 September 2003. This Declaration, in which the UN Secretary-General and the Presidency of the European Union declare that they welcome the existing co-operation between the UN and the EU in the area of civilian and military crisis management, creates a joint consultative mechanism to examine ways and means to enhance mutual co-ordination and compatibility in the field of planning, training, institutional and operative communication and 'best practices', namely the standardisation of procedures, mechanisms and logistic, as well as information exchange. Not only the European Union 'reasserts its commitment to contribute to the objectives of the United Nations in crisis management',<sup>41</sup> but it also confirms that 'the primary responsibility for the maintenance of international peace and security rests with the United Nations Security Council'.<sup>42</sup>

Even after the EU's most important enlargement wave in 2004, the gradual framing of the ESDP has always been developed within and in concordance with the system of the United Nations and under the auspices of multilateralism.<sup>43</sup> For this reason, to carry out the deployment of military means in a coercive manner, the EU requires a Security Council resolution as a necessary authorisation of legitimacy. This does not affect negatively the EU's ambition to implement coercive measures, but it surely demands that, in the moment of voting, there is no veto from one of the permanent members of the Security Council.

## 5. ESDP-NATO relations

In September 2002, the US Secretary for Defence, Donald Rumsfeld, put forward a proposal to create a NATO rapid reaction force. Subsequently, on 13 October 2004, at an informal meeting of NATO Defence ministers in Poiana Brasov, Romania,

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<sup>39</sup> Ibid, p. 7.

<sup>40</sup> Ibid, p. 13.

<sup>41</sup> Joint Declaration on UN-EU Co-operation in Crisis Management, paragraph 1.

<sup>42</sup> Ibid.

<sup>43</sup> 'The enlarging European Union at the United Nations: Making multilateralism matter', Published by the European Union, New York, May 2004.

NATO's Secretary General and Supreme Allied Commander for Europe formally announced that a NATO Response Force was ready to take on the full range of missions everywhere in the world. The official announcement arrived five months after eight central and eastern European countries had joined the EU. During the Iraqi crisis, trilateral discussions between France, Germany and the UK had led to an agreement on the creation of a European headquarters under the framework of a structured cooperation, with the possibility of a veto over military operations. After the meeting on 17 October 2003, the American ambassador to NATO, Nicholas Burns, openly criticised British Prime Minister Tony Blair for having accepted the structured cooperation, which was perceived as 'the most serious threat to NATO'.

Although the EU has been trying to find its role on the international stage, proposing itself as a new model of power, the US feared that this would undermine its role of global leader. In addition to the political difficulty of letting the European project take off, both the EU and NATO ask the participating countries to contribute with military capabilities and means, which results in duplicating resources and costs. Moreover, Nicolas Sarkozy's decision to re-establish very close relations with NATO has diluted the role that France has had in the development of an independent European foreign and security policy.

In practice, the Atlantic *rapprochement* of France means that nine hundred posts are given to France in NATO, at the expenses of the US and its European allies. In 1995 France had considered the possibility of rejoining NATO, but the project was abandoned because the US did not fully comply with France's requests. In 2009 France officialised its decision of reintegrating its military forces in the Atlantic Alliance. This change in French foreign policy could lead to an easier Anglo-French compromise on the permanent EU headquarters, but it also entails the danger that, once France fully enters NATO, it loses interest in pursuing a European common defence project.

On the other side of the Channel, British governments have initially supported the initiative of a permanent EU military planning headquarters, while UK defence officials strongly opposed the project, arguing that the NATO headquarter, SHAPE, is available to the EU on request. For this reason, the British official solution to the problem has turned towards a Europeanisation of NATO military planning and a closer cooperation between EU and NATO. In this way, the Atlantic Alliance maintains its exclusive competence in managing military operations and post-conflict missions. At the moment, the combination of military and civilian capabilities constitutes a unique feature of the EU and as such it is defended by France and Germany in particular. The view that the EU should speak with one voice in NATO

seems to be the most suitable one.<sup>44</sup> Negotiations could take place within the Union before NATO and then the common position could be presented at the Alliance headquarters.

A final aspect to take in consideration is the Turkish relation with NATO. Both Turkey and France opposed close EU-NATO relations, though for different reasons. France was traditionally keener on developing an independent European defence policy, whereas Turkey feared Cyprus and Malta could obtain strategic information from NATO if they had closer ties to the Alliance once in the Union. Turkey possesses the largest army in Europe, which is also why it has been actively contributing to EU's military operations. Now that France has embraced a more Atlantic position, Turkey is alone and reconsidering its position on EU-NATO relations in the light of its EU membership accession that continues to be postponed.

## 6. Developments of the Treaty of Lisbon

Approved by EU Member States on 17-18 June 2004 during the Brussels Intergovernmental Conference, the Treaty establishing a Constitution for Europe was directly rejected by France and the Netherlands through a referendum, and it was not ratified by seven other countries, namely the Czech Republic, Denmark, Ireland, Poland, Portugal, Sweden and the UK. Following the rejection of the treaty, on 23 June 2007 the EU leaders agreed on a detailed mandate for a new Intergovernmental Conference, whose task was the drawing up of a Reform Treaty by the end of 2007. On 19 October 2007 the informal European Council of Lisbon approved the final text and the Treaty of Lisbon was signed on 13 December 2007. In 2010, the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union were finally adopted.

The Treaty of Lisbon is important because, on the one hand, it fosters the intergovernmental nature of CFSP, on the other hand, it introduces new features for defence policy, namely the High Representative of the Union for Foreign Affairs and Security Policy, the European External Action Service (EEAS) and the qualified majority voting system.

The High Representative for the CFSP was substituted by the High Representative of the Union for Foreign Affairs and Security Policy entitled to 'conduct the Union's common foreign and security policy', 'contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council'.<sup>45</sup> The

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<sup>44</sup> On this subject see Christoph O. Meyer, *The Quest for a European strategic Culture: Changing Norms on Security and Defence in the European Union* (Basingstoke: Palgrave Macmillan, 2006).

<sup>45</sup> Article 18, paragraph 2, Consolidated version of the Treaty on European Union.



Commission is no longer the only institution that proposes initiatives of foreign and security policy to the Council, because the High Representative, ‘for the area of common foreign and security policy, [...] may submit joint proposals to the Council’.<sup>46</sup> Moreover, the High Representative is one of the vice-presidents of the Commission, while he occupies the post of European Commissioner for External Relations and European Neighbourhood Policy, and as such he constitutes a significant supranational element of EU foreign policy.

The post of High Representative of the Union for Foreign Affairs and Security Policy should give the EU a more united international position, by contributing to the development of a more coherent external policy. For instance, ‘when the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union’s position’.<sup>47</sup> Some analysts have interpreted this passage as a first step for a European seat at the UN. However, despite the fact that ‘the Union may conclude agreements with one or more States or international organisations’,<sup>48</sup> the UN Charter should be changed first, because regional organisation cannot join the United Nations as mentioned before.

The successful framing of a common foreign and security policy, given that the means to implement it already exist, is not just left to the High Representative: ‘In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States’.<sup>49</sup> Both the EEAS and the EDA were incorporated for the first time in a European treaty rather than in a *ad hoc* regulation.

The EEAS was meant to solve the problem of a possible duplication between the Council Secretariat and the Commission, and to facilitate the development of more effective EU external policies. It acts jointly with national diplomacies, manages the EU’s response to crises, has intelligence capabilities and cooperates with the Commission in areas which it shares competence with. However, although the High Representative and the EEAS can propose and implement policy, this competence is left to the Foreign Affairs Council which the High Representative chairs. The Presidency of EDA is also assigned to the High Representative, with the scope of

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<sup>46</sup> Ibid, Article 22, paragraph 2.

<sup>47</sup> Ibid, Article 34, paragraph 2.

<sup>48</sup> Ibid, Article 37.

<sup>49</sup> Ibid, Article 27, paragraph 3.

improving external policy coherence. Less attention has been given to the voting system, because qualified majority is only applied for its statute, seats and operational rules.<sup>50</sup>

This system also applies for the appointment of the High Representative<sup>51</sup> and the selection of Member States that participate to the Permanent Structured Cooperation.<sup>52</sup> Within three months following the notification of Member States to the Council and the High Representative, ‘the Council shall adopt a decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the High Representative’.<sup>53</sup> As the European Council determines strategic interests and objectives for the external action of the Union, the introduction of qualified majority only in minor matters precludes the possibility of an easier and quicker decision-making procedure: ‘the decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.’<sup>54</sup>

As a general principle, ‘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’.<sup>55</sup> The use of *will* instead of *might* or *may* is a sign of political will for the progress of EU’s defence policy, but unanimity is still an important limit.

The security and defence policy of the Union respects ‘the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation’,<sup>56</sup> but it also sets out the possibility of using the existing military means: ‘those Member States which together establish multinational forces may also make them available to the common security and defence policy’,<sup>57</sup> which confirms the possibility of using EU Battlegroups. Certainly, the political will necessary for an effective management of coercive measures does not just rely on Heads of States or national governments, but also on the individuals appointed to the posts of the Presidency of the European Council, the High Representative and the President of the

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<sup>50</sup> Ibid, Article 45, paragraph 2.

<sup>51</sup> Ibid, Article 18, paragraph 1.

<sup>52</sup> Ibid, Article 46, paragraph 3.

<sup>53</sup> Ibid, Article 46, paragraph 2.

<sup>54</sup> Ibid, Article 46, paragraph 6.

<sup>55</sup> Ibid, Article 42, paragraph 2.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid, Article 42, paragraph 3.

Commission. In fact, only a strategic cooperation and, possibly, a strategic coincidence of pro-European personalities can create the right momentum for the progress of European defence. The choice of Catherine Ashton confirms this and raises doubts as to why the important role of High Representative was not given to a stronger candidate.

## 7. Conclusions

The analysis carried out so far seems to confirm the accuracy of the estimates mentioned at the beginning of this paper. The Treaty of Lisbon, on the one hand, shows significant developments in the field of common foreign and security policy, on the other hand, it confirms the existence of difficulties and obstacles in an extremely sensitive matter where coexist strong national interests of Member States, often perceived as 'vital' and therefore unlikely to be sacrificed, or even limited, in the name of a common European approach. The constant rule of unanimity in the Council and the European Council represents the most visible manifestation of the concerns of Member States and is, according to a widespread opinion, the most serious problem that prevents an effective EU on the international scene.

In addition to the obvious view that the rule of unanimity precludes a common position of the EU, another more serious problem remains in the framework of the European foreign and security policy, namely the top-down and intergovernmental approach that characterizes a matter in which there is no democratic control. The European Parliament, as noted, is assigned a marginal role which hinders the possibility of fulfilling a function of control on the foreign policy of the Union. Nor can we realistically consider such democratic deficit solved by the recognition that 'Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens'.<sup>58</sup> However important, the indirect democratic legitimacy of the EU cannot replace the basic requirement of democracy that demands a direct representation of citizens and involves a central role of the Parliament in its relations with other institutions.

The need for democratic control is even more acute with the development of the military dimension of the security and defence policy, the expansion of the Petersberg tasks,<sup>59</sup> the obligation of collective defence,<sup>60</sup> the solidarity clause<sup>61</sup>, and finally the

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<sup>58</sup> Ibid, Article 10, paragraph 2.

<sup>59</sup> Ibid, Article 43, paragraph 1.

<sup>60</sup> Ibid, Article 42, paragraph 7.

<sup>61</sup> Article 222, Consolidated version of the Treaty on the Functioning of the European Union.

increasingly important role of the Union in combating terrorism and maintaining international peace and security. These developments, because of the implications they may have on the involvement of the Union and its Member States in conflict situations, need to be legitimised by the parliamentary institution that directly represents citizens, especially in a time where European people perceive a serious lack of accountability. If the EU truly longs for the fairer, safer and more united world mentioned in the paragraph concluding the European Security Strategy, more unity and coherence becomes essential for effective external relations. However, the historical legacy of the European Communities teaches that radical changes in the Old Europe happen only through the slow and patient *labor limae* of time and *Realpolitik*.

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