



From Feira to Nice: more *bonnes paroles*?

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Abstract

The conclusion of the Portuguese Presidency at Feira represents the latest stage in a process set into motion eighteen months earlier. The implications of the Feira conclusions for the Intergovernmental Conference (IGC) fall more into the maximalist camp (meaning that there is a need for significant treaty revision) given the ambitious deadline of the 'Headline Goals'. It is argued that the Amsterdam treaty revisions did not provide for sufficient flexibility in the security and defence areas and it is therefore imperative that treaty revision be addressed, even in the recesses of the 'parallel' IGC meeting on CFSP. Importantly, this effort must also be supported by the commitment of the necessary resources at the Capabilities Commitment Conference in November. Failure to do so risks ESDP becoming no more than *bonnes paroles*.

This short article attempts two tasks. In the first place it attempts a critical overview of the Portuguese Presidency Conclusions presented at Santa Maria da Feira (Feira hereafter) on 19-20 June in so far as the Common European Security and Defence Policy (ESDP) is concerned. Second, the Nice summit looms which marks the conclusion of the Intergovernmental Conference. Although CFSP issues are addressed in a series of parallel meetings to the IGC proper, treaty revisions may be required to support the aims of the Portuguese and current French Presidency if ESDP is to become more than *bonnes paroles*. The main aim of the IGC, which has been apparent since the European Council's Cologne summit, is to prepare the EU institutions for enlargement and, as such, relatively few changes if any can be anticipated to Title V of the Treaty on European Union (TEU) or related areas. While the main focus of the IGC is understandable, the ambitious goals of ESDP, which include the 'Headline Goals' that are supposed to be implemented by 2003, means that any modifications to the CFSP aspects of the TEU really have to be made now rather than held-over to the next IGC. In particular, the momentum that has been built up in the ESDP area may well necessitate treaty changes that could have a significant bearing for the EU as a whole. It is then a pity that the CFSP discussions are confined to a series of parallel discussions to the IGC-proper since this serves to denigrate an aspect of the EU's work that deserves more transparency.

An Overview and Critique of Feira

The Portuguese Presidency conclusions at Feira give room for both optimism regarding ESDP but also concern. The fact that the Presidency conclusions devoted a considerable amount of space, including one entire appendix, to ESDP testifies to its importance in terms of furthering the ability of the EU 'to assert its identity on the international scene', in the words of the Treaty on European Union.

The task of the Portuguese Presidency in so far as ESDP was concerned was to steer forward the agenda set into motion at St. Malo and, in the case of the non-military aspects of crisis management, at the Amsterdam IGC.¹

It was in this latter area

that most progress was made with the establishment of a Committee for civilian aspects of crisis management in May 2000 as well as proposals for a Rapid Reaction Facility and fund. As a counterpart to Helsinki's military 'Headline Goals', it was also agreed that the EU Member States should be able to provide up to 5,000 police officers for international missions across the range of conflict prevention and crisis management operations by 2003. The military aspects of crisis management saw some progress under the Portuguese Presidency but the central issue remains whether the EU Member States will actually devote the resources necessary to achieve the 'Headline Goals'. Whether the goals will be so much hot air or the beginning of a genuine conflict management capability will become evident at the Capabilities Commitment Conference to be held in Brussels on 20-

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21 November.²

The issue of how to avoid the 'discrimination' aspects of Madeleine Albright's '3 D's' (the others being duplication and decoupling) assumed much attention at Feira. A variety of interim and permanent modalities for dialogue, consultation and cooperation were provided for by the Portuguese Presidency at EU+6 format (EU plus the six non-EU European NATO members)³ or EU+15 (as before, plus candidates for EU accession). It is not entirely clear how any meaningful consultation or cooperation will respect the decision-making autonomy of the EU and its single institutional framework. Nor is it apparent that the non-EU countries will appreciate being lumped together into a 'single, inclusive structure'.

Strains may also become apparent between NATO and the EU since it was made apparent at Feira that, 'Upon a decision by the Council to launch an operation, the non-EU NATO members will participate if they so wish, in the event of an operation requiring recourse to NATO assets and capabilities'. In the event that NATO assets are not used they will, 'on a decision by the Council,' be invited to take part. The Council position seems to assume that there is more pre-delegated authority to use key NATO assets than may in fact be the case and it could also be construed by NATO as an attempt to force the release of the required assets under political duress. Furthermore, it is far from apparent that the EU and NATO are yet able to deal with each other 'on an equal footing' as the Portuguese Presidency maintains in its 'Principles for Consultation' between the organisations.

EU-NATO relations still require much attention and it is questionable whether the French Presidency will be able to make much progress on this when their own *rapprochement* with NATO is stalled. One of the more controversial aspects of making a reality of the ESDP will be the introduction of what could be termed a security culture into the predominantly civil structures of the Union. NATO as well as individual EU Member States are right to be concerned about the notoriously leak prone EU. Symptomatic of this problem was the decision by the High Representative for CFSP to introduce a tough new code on the protection of classified information applicable to the General Secretariat of the Council, which may include not only new internal practices but physical structures to enhance security, prompted allegations that a 'security state' and an 'end to EU openness' were in the offing.⁴ Detractors were quick to point out that the new rules would undermine Article 255 of the Treaty on European Communities,

which guarantees public access to EU documents, as well as Article 28 of the Treaty on European Union which explicitly applies Article 255 to the Common Foreign and Security Policy (CFSP). The applicability of Article 255 to the CFSP will presumably be addressed as part of the possible treaty revisions to Title V of the Treaty on European Union. This aside, the new code illustrates the sensitivity of introducing the necessary practices for handling materials at a level where NATO members will feel comfortable with sharing information which, in turn, is an essential aspect of any enhanced EU-NATO relations. Ten EU Member States agreed to the new restrictions (the Netherlands, Finland and Sweden voted against).⁵

Aside from this, the French Presidency in the lead up to the Nice summit promises to be of considerable interest for two further reasons. First, the EU's concentration on its relations with NATO under the Portuguese Presidency was, presumably, based on the premise that the WEU has 'completed its purpose'. Indications

from June 2000 suggest that the European Security and Defence Assembly (the revamped WEU Parliamentary Assembly) is not going to disappear. Moreover, there may be some good arguments for retaining the WEU based on the predictability of the divisive nature of the debates that would ensue if Article 17 of the TEU were subject to substantial amendment, which would occur if the WEU ceased to exist.

Second, it is far from clear that France and Britain (as well as others) understand the same thing by the search for 'the capacity for autonomous action' mentioned at St. Malo. The task of continuing the dialogue with NATO will make it difficult for the French administration not to be clearer about what they understand by 'autonomy' – and, hence, for others as well.

In conclusion, if the 'Headline Goals' are to be attained by 2003, the results of the Portuguese Presidency have to be developed in concrete and not merely rhetorical ways. The Capabilities Commitment Conference will provide perhaps the most important litmus test about whether the EU Member States are willing to match vision with reality. If they do not, ESDP will be so many *bonnes paroles*.

The IGC and Nice

The parallel ESDP discussions for the IGC reflect two sets of position that, for the sake of simplicity, we shall call the minimalist and maximalist positions. The former argue that Title V of the Treaty on European Union (TEU) requires little or no alteration while the latter

The Capabilities Commitment

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suggest that the TEU may require major alteration. Both will be examined in turn.

The minimalists base their argument on the inherent flexibility of Title V of the TEU and the associated articles relevant to the CFSP. Flexibility was deliberately built into the Amsterdam Treaty and especially in the second pillar where often competing views called for general, if not vague, language. Thus, the in-built flexibility would, for the minimalists, cover most if not all of the structural changes and developments discussed above and below.

It could therefore be argued that the institutional modifications to the second pillar decision-making structures (the Political and Security Committee, the Military Committee and the Military Staff) take their legal character from Article 25 of the TEU. Conflict prevention, which is not officially a 'Petersberg task' and does not therefore explicitly appear in Article 11, could nevertheless be implicit (since CFSP covers 'all questions relating to the security of the Union').⁶ The duties of the High Representative need, to some, further definition. To those who do not agree with this position, they are already outlined in the treaty as it stands. Similarly, closer relations with other security organisations (such as NATO) may not call for treaty revision since there is sufficient latitude in the existing wording to allow for enhanced links.

The WEU poses the largest challenge to the minimalist position since if it disappears altogether Article 17 of the TEU would require extensive (and controversial) revision. If, as the Cologne Presidency conclusions observed, the WEU will have 'completed its purpose' after the Petersberg-relevant tasks are transferred to the EU, the WEU will no longer be 'an integral part of the development of the Union', it will not provide 'access to an operational capability', nor will it 'support

the Union in framing the defence aspects' of the CFSP. The possibility of revising Article 17 to compensate for the WEU's disappearance would necessitate a major debate focusing on who frames the defence aspects of the ESDP and who provides access to an operational capability – issues that are of special sensitivity for the EU's neutral and non-aligned members as well as a number of non-EU NATO members. Even if the WEU continues to survive, minus its Petersberg components, the issue of whether those components that have been transferred need treaty status still needs addressing.

By way of contrast, the maximalist position relies not so much on legal niceties but more upon the political need to explain how the rapid development of ESDP should be reflected in a

modified TEU. Unlike the minimalists, the maximalist stance would agree that although flexibility or enhanced cooperation was introduced as a result of the Amsterdam modifications to the TEU, this did not extend to security and defence policy. Primarily for political reasons it might therefore be desirable to explain, for instance, how the existing treaty-based structures co-exist with the new interim structures, as well as any transferred WEU structures, and to elaborate upon their mandates. The Political and Security Committee (COPS), Military Staff and Military Committee alongside the Satellite Centre, the Institute for Security Studies and other transferred structures should therefore be incorporated into the treaty. The likelihood of confusion or even friction between the new interim components and, for example COREPER, has to be considered as well.

The question of when the interim structures become permanent remains open (al-

though there is already pressure to move them rapidly towards permanent status) and it might usefully be deliberated in the parallel CFSP talks whether there is

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any sustainable logic in having a Political Committee as well as a *permanent* COPS. Given the infrequent meetings of the Political Committee and the high-level representation of COPS, the case for COPS assuming the role of the Political Committee would seem compelling. By extension, the question of who should be responsible for military-level cooperation (including defence industrial aspects) is also likely to surface. The use of informal or *ad hoc* meetings of the EU defence ministers hints at the possible utility of considering what formal arrangements might be made for the defence ministers to meet at the level of Council.

The maximalist position is strengthened if some components of the WEU, such as the Security and Defence Assembly, continue to exist and lay claim to some elements of the 'transferred' components (under the current Title V the WEU remains an 'integral part of the development of the Union'). Whilst addressing the structural aspects of CFSP, maximalists may also argue for further elaboration of the High Representative's duties, especially in light of the increasingly complicated (and occasionally clashing) EU representation in external relations. The mandate and status of the new interim structures, especially COPS, may also be relevant since a case could be made for specification that the High Representative should preside over the new structures. This would have the advantage of not only increasing consistency between the WEU (at least for the meanwhile) but also NATO since the High Representative is not only Secretary-General of the WEU but also responsible for liaison with NATO's Secretariat. Specification of the role of the High Representative (and, by default, the Presidency) may also avoid the obvious difficulties of consistency when a non-WEU and/or non-NATO EU member assumes the Presidency.

The rapid development of non-military crisis management in the second pillar, most notably at Feira, must not be at the cost of the role of the Commission. Closer coordination will be required between the Council, Commission and the Council Secretariat since all have a legitimate role in a variety of non-military aspects of crisis management. Although this may not necessitate treaty revision, it nevertheless underscores the need for the Council and Commission to take

seriously their treaty-based responsibility for consistency. The addition of new non-military and military crisis management tasks also increases the pressure on the Presidency Troika to work in a complementary and non-competitive manner.

The development of relations with NATO, as specified at Feira, might also call for treaty revision, especially in so far as the right of association of non-EUNATO members is concerned. Currently a number of non-EU NATO members have been granted non-treaty based rights with regard to crisis management. In particular the need to ensure that

ESDP is compatible with the security and defence policy established with the NATO framework may require some buttressing of the wording of Article 17 TEU and, more generally, Title V.

Finally, the maximalist position could also argue from a legal standpoint that revision is necessary since a number of articles in the TEU and TEC could be contradictory. For instance, Article 11 (2) TEU obliges Member States to support the Union's external and security policy 'actively and unreservedly in a spirit of loyalty and mutual solidarity' while Article 23 allows for an EU Member State to block a QMV vote for 'important and stated reasons of national policy' in the context of joint actions and common positions adopted on the basis of a common strategy (the latter being adopted unanimously). Generally, the stipulations of Article 23, especially the double veto, are cumbersome and in urgent need of review. The stipulations in Article 17 of the TEU

regarding the field of armaments may also be at variance with Article 296 TEC.

On a less specific level, the whole question of CFSP's 'democratic deficit' may also surface and, in particular, with reference to the European Parliament's marginal role. A case can clearly be made for more legitimacy, especially with regard to sensitive issues of security and defence, and this will presumably mean deepening the involvement of both the EP as well as national parliaments. This could make for an interesting showdown between the WEU's European Security and Defence Assembly and the EP.

As is often the case, the IGC will probably continue to uphold the flexibility of Title V of the TEU and amendments will probably tend more towards the

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minimalist position. What will be of profound interest will be the fate of the WEU since if it has indeed 'completed its purpose' it will mean a revision of Article 17 which is at the heart of not only CFSP but future relations with NATO. In the absence of the WEU the EU Member States would have some uncomfortable questions to ask such as: who is responsible for defence (a question of particular interest to the neutral and non-aligned EU Member States) and who provides the EU with 'access to an operational capability'? Possible solutions might include a new declaration attached to the TEU which incorporates Article V of the Modified Brussels Treaty but which would initially bind the ten full WEU member states (although the declaration could of course be left open for others to associate). Alternatively (and less likely) references to the WEU in Article 17 TEU and elsewhere could in most cases substitute 'ESDP' in place of the WEU. The second question will be answered prior to the conclusion of the IGC at the Capabilities Commitment Conference and this may have profound effects for not only the French Presidency conclusions but the future shape and form of ESDP.

Conclusions

The most important outcome of the European Council's Feira summit for the future of ESDP is the provision for the Capabilities Commitment Conference to be convened in November. This is, to use the Americanism, where the rubber hits the road. A lacklustre outcome of the conference will challenge the credibility of not only the 'Headline Goals' but also ESDP and, more generally, CFSP. If the EU's ambition is to assert its role on the international scene, then both Bosnia and Kosovo have illustrated only too well that in addition to diplomatic intercession and economic leverage (both positive and negative), the Union has to be endowed with the ability to *credibly* threaten the use of military force and, if necessary, to use it. The parallel CFSP discussions to the IGC should bear this in mind.

Finally, it is not clear how the parallel discussions on CFSP will be merged into the final stages of the IGC. It is however clear that flexibility has its limits and political developments since 1998 demand treaty revisions to Title V and other select articles, even if legal quibbles suggest the need for minimal changes. The EU is on the brink of what could be one of the most profound changes in its history and, ironically, this is being

discussed in the recesses of a parallel process while the focus is on adapting existing EU institutions for the enlargement of the Union. The growing presence of khaki in the corridors of the EU institutions suggests not only that the EU is becoming something of a hybrid, a civilian power as well as a security actor, but that the practices and codes of the former must be adapted to allow for the latter.

NOTES

- ¹ The Joint Declaration issued at the British-French Summit, St Malo, 4 December 1998, made a call for the Union to have 'the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to subsequent crises'. Subsequent bilateral or multilateral statements have built upon elements of the St. Malo declaration. For an overview of these and other developments with regard to ESDP see, S. Duke (ed.), *Between Vision and Reality: CFSP's Progress on the Path to Maturity*, (Maastricht: European Institute of Public Administration, 2000).
- ² In spite of criticism of some of the non-EU NATO members as well as some Europe Agreement countries, the conference is to include only the EU15 although provision will be made after the conference for non-EU contributions.
- ³ Czech Republic, Hungary, Iceland, Norway, Poland and Turkey. This implicitly leaves open the question of what arrangements will be made for cooperation with the two North American NATO members.
- ⁴ Decision of the Secretary-General of the Council/High Representative for the Common Foreign and Security Policy, on measures for the protection of classified information applicable to the General Secretariat of the Council, 27 July 2000, 2000/C 239/01. For reactions see Statewatch, 'Solana Plans for the Security State and an End to EU Openness agreed', at <http://www.statewatch.org/jlu100/05solana.htm>.
- ⁵ The cabinet of the Netherlands government decided on 22 September to take the Council of the EU to the European Court of Justice over the decision to change the EU code on public access to documents. The cabinet observed, amongst other things, that the decision violated the right of public access to documents enshrined in Article 255 (TEC). The Legal Affairs Committee of the European Parliament also voted in favour of legal action against the Council on 13 September.
- ⁶ The WEU's 1992 Petersberg tasks were incorporated into the Treaty of Amsterdam following the Amsterdam IGC and they consist of 'humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peacemaking'. □