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The Linchpin COPS

Assessing the workings and
institutional relations of the Political
and Security Committee

By
Simon Duke

A previous version of this paper was presented at the 2004 Maastricht Forum on "European Integration: Making the Constitution Work" which was held at EIPA on 19 November 2004

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Associate Professor
European Institute of Public Administration, Maastricht (NL)

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The object of this study is to contribute to the understanding of the role and institutional relations of the Political and Security Committee or, as it is also known, COPS.¹ It is also a modest response to a gap in the published literature dealing with the higher committees in the EU; although the Committee of Permanent Representatives (COREPER) is well covered, the same is not true of the Article 36 committee in Justice and Home Affairs, the Economic and Financial Committee in the EMU area and, in the case of the EU's Common Foreign and Security Policy, COPS.² More generally the discussions surrounding the Convention on the Future of Europe and the subsequent constitutional treaty have also tended to focus on the top structures, most notably the roles of the High Representative for CFSP and the Commissioner for External Relations, perhaps to the detriment of a broader examination of how the EU's external relations work.

The significance of this study is hopefully also to be found in the growing importance and influence of many of these higher committees and, hence, our need to understand them more clearly. This applies with particular force to the COPS who, in spite of only being established in December 1999 at the Helsinki European Council, is portrayed as the 'linchpin' of the Union's crisis management efforts. The importance of this body is further underlined when one considers the rapid growth in the EU's crisis management operations (three alone in 2003) and the probable demand for more ambitious operations in the future.

Readers should note that the study does not purport to provide an explanation of how CFSP or EU external relations as a whole works. The scope of the examination is limited to COPS itself and the principal organs with which it interacts, especially COREPER and the Secretary-General/High Representative (SG/HR) for CFSP, Javier Solana. Nevertheless, the observations below are based on the premise that the COPS is not only an important but a critical committee in CFSP and, most notably, the European Security and Defence Policy (ESDP) areas.

The study commences by placing COPS in its historical context so that the evolution of the committee may be understood. The role of its predecessor, the Political Committee, was critical, not so much in the formal institutional sense, but as a way of preparing and conditioning the Political Directors of the Foreign Ministries of the Member States of the European Community into working together. Although based in the national capitals and senior figures in their own right, the meetings of the Political Directors contributed to the coordination reflex that evolved in Community external relations and, just as importantly, it provided the necessary spirit that enables the current COPS to operate in the institutional uncertainty that surrounds the committee.

The study then considers the role of the Political Committee, or in its newer guise the Political and Security Committee, under CFSP. Particular attention is paid to relations with COREPER and the High Representative for CFSP. It is though with the emergence of the crisis management aspects of CFSP that the committee seems to have developed a more coherent and visible persona. The active engagement of the EU in the civilian, police and military dimensions of crisis management affords a chance to examine the role of the committee both in theory and practice, as well as its relations with other important actors in this area such as the EU Military Committee or the Policy Unit.

Finally, the Treaty establishing a constitution for Europe includes many innovations and adaptations in the external relations area. The final section considers the potential impact on the committee of these

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1. The Political and Security Committee is officially abbreviated to COPS (from the French title *Le Comité politique et de sécurité*). Although technically correct to refer to COPS, the English abbreviation is also often used.
 2. Many of the existing published sources are referred to during the course of this examination of the COPS. The research has however benefited significantly from a number of unpublished sources and, in particular, Kai Kristian Kiessler, *The Political and Security Committee: Insight into EU decision-making: role strengths and weaknesses of the "linchpin" of CFSP and ESDP*, Collège d'Europe, 2002/2003 (unpublished) is noteworthy.

changes, including the possible advent of a Union Minister for Foreign Affairs, the European External Action Service and various forms of flexible cooperation in the crisis management area. We turn now to the first section examining the historical background to the Political and Security Committee.

The Origins of the Political Committee

Prior to the Treaty of Nice the Treaty on European Union referred to a Political Committee, which was often abbreviated to the 'PoCo'. The treaty gives this committee responsibility to 'monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative'.³ However, the PoCo predates the EU and CFSP since it has its origins in the European Political Cooperation (EPC) process which stemmed from a meeting of the Heads of State or Government in the Hague in December 1969 and the subsequent Luxembourg (or Davignon) report of the following year. The use of the word 'process' to describe EPC was significant since it was not an integral part of the Community but rather a parallel process, stemming from the realisation that the increasingly active and influential economic role being played by the Community on the world stage lacked any form of political (let alone security) complement. The European Council, or the Heads of State and Government, was supposed to coordinate these two streams so that the Community might enjoy a coherent international presence, although in practice the Foreign Ministers of the Community members have played a more influential role.

Under the EPC arrangements the Foreign Ministers would meet formally two times a year with the possibility of more informal meetings (called Gymnich meetings after the location of the first such meeting in 1974). The PoCo, composed of the Directors of Political Affairs of the Foreign Ministries of the Member States, initially met four times per annum. The committee's main tasks were to prepare discussions at the Ministerial level, to establish and direct the work of the Working Groups, to appoint groups of experts relating to a specific issue and, according to Simon Nuttall, to frequently take decisions 'on its own responsibility'.⁴ The Working Groups' reports include a summary drawing the attention of the PoCo to points which will require decisions for future action, or those which the committee should concentrate on.

The PoCo constituted the Political Directors of the Foreign Ministries as well as a representative of the Commission (the latter being important to ensure consistency between the *communautaire* aspects of the Union's external relations and the EPC aspects). As Nuttall has pointed out, the Political Directors were 'senior officials' although the precise role and rank differed from member state to member state and, in the case of the United Kingdom, the title even had to be created so that participation in the committee was possible. Nevertheless, the important point is that in each case the officials were sufficiently senior to have the authority and leverage to reach agreement with, of course, consultation with the relevant national capital. Given the relatively small number of officials involved, the committee soon developed a somewhat clubby atmosphere or, as it has been described, 'the coordination reflex, which is one of the features most peculiar to the EPC'.⁵

The Copenhagen report, delivered by the Foreign Ministers at their meeting in July 1973, increased the number of meetings at the ministerial level to four per annum while the restrictions on the number of meetings at the PoCo level, specified at four in the 1971 Luxembourg Report, was lifted and could be held 'as frequently as the intensification of work required'.⁶ The Luxembourg report also made provision

3. *Treaty on European Union*, Article 25.

4. Simon Nuttall, *European Political Cooperation*, (Oxford: Clarendon Press, 1992), p.16.

5. Alfred Pijpers, Elfreide Regelsberger, Wolfgang Wessels (eds.), *European Political Cooperation in the 1980s: A Common Foreign Policy for Western Europe?*, (Dordrecht: Martinus Nijhoff Publishers, 1988), p.56.

6. The Political Committee had already exceeded the limit having met nine times in the previous year.

for each Member State to appoint one of its foreign affairs officials as a correspondent to his counterparts in other ministries. Under the Copenhagen report the Group of Correspondents, as they became known, was entrusted with following the implementation of political cooperation and examining general or organisational issues. The group also prepared the work of the PoCo based on instructions from that committee. The correspondents' main function is to ensure that EPC (now CFSP) activity is consonant with national contributions. The correspondent will also be in constant touch with his counterparts.

A number of events in the international system, notably the Soviet invasion of Afghanistan in late December 1979, led to demands to strengthen EPC. In addition to a number of national initiatives, notably by France and Germany, the political directors were mandated to examine ways in which EPC could be strengthened. After two informal meetings at foreign minister level, a number of suggestions to this end were forwarded at the London Political Cooperation meeting of 13 October 1981. The London Report marked progress in some areas, but in others merely encapsulated what was happening anyway. The report commenced by reaffirming, even if somewhat vaguely, the commitment of the Member States to consultation and the desirability of achieving a common stance. It should be noted though that this referred to cooperation in foreign policy and security issues remained generally taboo until the Single European Act (see below) opened up cooperation on the political and economic dimensions of security.

As far as the PoCo explicitly was concerned, the main developments were the consensus on the Commission's participation in PoCo meetings, as a device to enhance consistency in the various areas of Community external relations and political cooperation, and provision for the PoCo to meet at short-notice (within 48 hours) for emergency contingencies. In spite though of the Commission's association with EPC, which would become 'full association' under the Single European Act, it had no real powers or jurisdiction under EPC. The role of the Group of Correspondents also grew since they were now entrusted with identifying those working group reports 'which are not likely to require substantive discussion in the Political Committee'.⁷ The Group of Correspondents was to play an increasingly important role in support of the PoCo, assisting with coordination of political cooperation issues within each foreign ministry, coordinating the distribution and allocation of work and assisting in the elaboration of national positions. In addition to the correspondents, the scope of the working groups and special experts was also enhanced by the London Report by assisting the PoCo to adopt a longer-term perspective on a variety of issues.

The Single European Act, of February 1986, established a clear distinction between the EPC structures and those of the Community, thus opting for a 'duopolistic procedure'.⁸ The Single European Act, although linking the European Communities and EPC, makes it clear that they remain legally separate. The preamble commits the Member States to 'implement this European Union on the basis, firstly, of the Communities operating in accordance with their own rules, and secondly, of European Co-operation among the signatory states in the sphere of foreign policy'.⁹ On the EPC side the Act introduced a number of relevant modifications including the addition of an EPC secretariat to assist the Presidency in this area, in whose rooms the Working Groups were supposed to convene. The EPC Secretariat of five was tasked with assisting the Presidency, working with the European Correspondents, assisting chairs of the Working Groups and maintaining the EPC archives.¹⁰

The PoCo resisted the demands to be tethered to Brussels and continued its preference for the 'travelling circus' that had typified EPC thus far.¹¹ This proved cumbersome since the meetings involved not only coordinating the schedules of the Political Directors but the staff who accompanied them as well. During the 1980s the Presidency had an average of around 60-80 meetings to organise during its office

7. 'London Report', *Europe Documents*, No. 1174, 17 October 1981, quoted in Panayiotis Ifestos, *European Political Cooperation: Towards a Framework of Supranational Diplomacy?* (Aldershot: Avebury, 1987), p.227.

8. Horst-Günter Krenzler and Henning C. Schneider, 'The Question of Consistency', in Elfriede Reglesberger, Philippe de Schoutheete de Tervarent and Wolfgang Wessels (eds.), *Foreign Policy of the European Union* (Boulder: Lynne Rienner Publishers, 1997), p.137.

9. *Single European Act*, Preamble.

10. The EPC Secretariat consisted of a seconded official from the residing Presidency and one each from the two preceding and following Presidencies. All were appointed for the period covering the five Presidencies.

11. Elfriede Reglesberger, 'The Institutional Set up and Functioning of EPC/CFSP', in Elfriede Reglesberger, Philippe de Schoutheete de Tervarent and Wolfgang Wessels (eds.), *Foreign Policy of the European Union* (Boulder: Lynne Rienner Publishers, 1997), p.71.

period, ranging from those schedules by the rules of the Foreign Affairs ministers and the PoCo, to the various Working Group meetings.¹²

The Single European Act codified many of the previous EPC developments into Article 30 of the treaty, complete with the vagaries that had surrounded previous reports. Under the act the parties undertook to 'inform and consult each other on any foreign policy matters of general interest so as to ensure that their combined influence is exercised as effectively as possible through co-ordination, the convergence of their positions and the implementation of joint action'.¹³

As the EPC developed, so too did the role of the PoCo. One of the initial functions of the committee was to set up and supervise working groups but the network of Working Groups not only became more specialised but more extensive as well. The parallel nature of the EPC was also to complicate the task of the PoCo since there was an inherent ambiguity as to where 'political issues' falling under the EPC's area and the more economic and trade related issues, which were Community competences, began and stopped. Nuttall refers to a number of cases where the PoCo sought to exercise political guidance over COREPER when it perceived an item with mixed community and EPC implications was under discussion.¹⁴ This had two general implications. First, it led to occasional confusion if not friction between COREPER and the PoCo although, as will be examined in more detail below, this was more the exception than the rule. Second, the Commission's reluctance to involve the EPC mechanisms in what were seen as Community competences was a reflection of a more general debate about the *communautaire* and intergovernmental aspects of EU external relations and the balance between them.

12. Alfred Pijpers, Elfriede Regelsberger, Wolfgang Wessels (eds.), p.52.

13. *Single European Act*, Article 30, Para.2(a).

14. See Nuttall, p.118.

The Political Committee and CFSP

As has been observed, under EPC a fairly rigid separation was enforced between those matters falling into EPC competences and those relating to the Community. The Treaty on European Union nominally ended the duopolistic 'Community-EPC' arrangement with the instigation of a single institutional framework. In practice the different *modus operandi* between the former EPC, now CFSP, and the Community was largely retained. CFSP therefore reflected the intergovernmental interests but with the proviso that consistency and continuity will be guaranteed through the institutional framework.

Under the Treaty on European Union the PoCo was tasked with 'monitoring the international situation' in the areas covered by CFSP and to contribute to the 'definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative', as well as monitoring the 'implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission'. Under EPC Ministers met routinely to consider non-Community related issues but under the new arrangements the EPC meetings were merged with the General Affairs Council, now the General Affairs and External Relations Council, consisting of the Foreign Ministers of the Member States.

An important aspect of the efforts to guarantee consistency is the cooperation between COREPER and the PoCo. In an important caveat, PoCo's functions are to be executed 'without prejudice' to Article 207 of the Treaty establishing the European Community. This article refers to COREPER who is 'responsible for preparing the work of the Council and for carrying out tasks assigned to it by the Council'. Significantly the treaty also makes the Council responsible for 'taking decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council'.¹⁵ This implied that COREPER, 'the central body in charge of preparing the implementing the Council work, entered the former exclusive domain of the political directors'.¹⁶ The position of COREPER was also clarified in the Council's internal Rules of Procedure which states in Article 19(2) that 'all items on the agenda for a Council meeting shall be examined in advance by Coreper, unless otherwise decided by Coreper (by simple majority) or by the Council (voting unanimously)'.¹⁷

Potential friction between COREPER and the PoCo was evident prior to the intergovernmental conference (IGC). Following Dublin I the formulation of the discussions on the agenda for political union were entrusted to COREPER and the PoCo. The role of the PoCo was however relatively short-lived when their role was assumed by personal representatives in May 1990.¹⁸ The question of the competences of the two organisations was therefore in the air during the IGC but, in spite of the discussion on this point, no agreement was forthcoming. As a consequence Declaration No. 28, appended to the treaty, states that the 'division of work between the Political Committee and the Committee of Permanent Representatives will be examined at a later stage, as will the practical arrangements for merging the Political Cooperation Secretariat with the General Secretariat of the Council and for cooperation between the latter and the Commission'.

15. Treaty on European Union, Article 13, Para. 3.

16. Regelsberger et al., *op cit.* p.76.

17. Council of the European Union, General Secretariat, *Presidency Handbook*, (Luxembourg: Office for Official Publications of the European Communities, 2001), p.20.

18. Colette Mazzucelli, *France and Germany at Maastricht: Politics and Negotiations to create the European Union*, (New York: Garland Publishing Inc., 1997), p.70.

The failure to reach an agreement during the IGC left the question open of which of the bodies should have the final say before an item was submitted to the Council for decision. The Maastricht treaty itself would also muddle the competences issue by introducing a variety of instruments in the CFSP area which, by their very nature, were of a mixed political, legal or financial effect. Joint Actions (Article J.4) in particular were more likely than not to have political elements, which justifiably the PoCo would wish to concern itself with, as well as legal and financial issues (or ‘means to be made available’) which would concern COREPER.

The PoCo based its mandate on Article J.15 of the Maastricht Treaty, under which they could ‘contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative’. Although explicit mention of COREPER is not made in Title V of the Treaty on European Union (covering CFSP), reference to the Treaty Establishing the European Community and COREPER’s role therein is made in two locations.¹⁹ As has been noted, PoCo’s role was to be carried out without prejudice to the role of COREPER. Whatever clarity may have existed on paper, the confusion over competences was made manifest in a variety of practical ways, such as in the scheduling of meetings. It was further exacerbated by the incorporation into the EU’s single institutional framework of the Working Groups which, under EPC, had consisted of EPC specific working groups and those groups dealing with other aspects of external relations. This led to rather predictable confusion and friction about to whom the Working Groups should report.

Quite aside from the introduction of the European Union with its single institutional framework, Elfriede Reglesberger noted that the PoCo suffered from the burdens of national responsibility which often ‘does not allow them to devote enough energy and time to CFSP’.²⁰ Regelsberger also notes that ‘their professional background is traditionally outside the Community business – a factor that emphasizes the problem of the pillarization of the Union’s external relations instead of fostering consistency’. Hence, the uncertain relations with COREPER II and concerns about professional preparedness were to hamper the early years of the PoCo’s adjustment to CFSP.²¹ The more general macro-political questions regarding the desirable balance between the *communautaire* and intergovernmental aspects of the Union’s external relations were also to add to the confusion regarding the PoCo’s role. Some were therefore concerned that more involvement of COREPER could lead to the seeping *communautarisation* of EU external relations while others held exactly the opposite belief, that an extension of the PoCos role would strengthen the role of the Member States.

Nuttall alludes to the same point when he observes that ‘the question was not just a battle over turf, although that counted; it also involved a debate on the style and culture of foreign policy making in the EU’.²² To him the PoCo typified the ‘old ways of the EPC’ which were highly flexible and pragmatic, ‘lightly burdened with precedent and neglectful of legal form, in which considerations of ‘high policy’ came foremost’.²³ By way of contrast, COREPER concentrated on law and procedure as well as opinion ‘outside the charmed circle of diplomacy’.²⁴

An agreement between the two institutions was reached in May 1992, but it was not until 1995 that a practical *modus vivendi* was established between the two bodies.²⁵ The 1992 agreement made it clear that the PoCo ‘formally has a subordinate role vis-à-vis the Permanent Representatives Committee’.²⁶ Thus, although the PoCo is entitled to bring its opinions directly to the attention of the Council, COREPER may add comments of its own, and the general responsibility for the preparation of Council meet-

19. Mention is made in Article J.15 (now Article 25) as well as in Article J.18 (now Article 28) which specifically applies Article 151 (now Article 207) to Title V.

20. Regelsberger et al., *op cit.* p.76.

21. COREPER II, composed of the permanent representatives (CORPER being the deputy permanent representatives) addresses all issues covered by the European Councils and in the General Affairs, Budget, Development, Ecofin, Justice and Home Affairs Councils.

22. Simon Nuttall, *European Foreign Policy*, (Oxford: Oxford University Press, 2000), p.246.

23. *Ibid.* Loc cit.

24. *Ibid.* Loc cit.

25. Texte du Comité Politique au Groupe des Représentants Personnels des Ministres concernant les relations entre le Comité Politique et le COREPER dans le cadre de la PESC, Annex III, Doc. 6252/95, *Fonctionnement du Conseil et organisation du Secrétariat Général*, 11 May 1992, cited in Ramses A. Wessels, *The European Union’s Foreign and Security Policy: A Legal Institutional Perspective*, (The Hague: Kluwer International, 1999), p. 81.

26. Jap W. de Zwaan, *The Permanent Representatives Committee: Its Role in European Union Decision-Making* (Amsterdam: Elsevier, 1995), p.178,

ings lies unambiguously with the Permanent Representatives. In addition to the abovementioned document the PoCo presented its own guidelines to enhance the functioning of CFSP.²⁷ The documents confirmed that the PoCo provides the political analysis which the Council requires prior to decision-making and that the committee should prepare opinions for all CFSP agenda items of the General Affairs Council. The task then for COREPER was to decide on the preparation and presentation of matters for the Council's meetings. Thus, generally speaking COREPER was expected to refrain from editing or altering the PoCo's opinion, unless COREPER feels it to be imperative on legal, financial or institutional grounds. In turn, the PoCo was expected to leave the legal, financial and institutional issues to COREPER.

To assist the procedures further COREPER added the group of CFSP Counsellors in 1994, as mentioned above. The Counsellors exercise primarily an intermediary function, meeting between the PoCo and COREPER's meetings, prior to a General Affairs Council. The group comprises a representative from every Member State, as well as the Council Secretariat General (DG-E) and the Commission (DG RELEX). The group, which in essence works like a horizontal working group, meets at least weekly and has rapidly become an established part of the CFSP workings. The group has an important, if not always particularly easy, function; they will attempt to act as intermediaries in between the Permanent Representatives and the national officials sitting in the PoCo. The group will also deal with draft decisions that may lead to the imposition of Community economic sanctions.

In spite of the apparent clarification of the respective roles of the PoCo and COREPER, the overall CFSP decision-making system was still seen as ponderous and thus subject to further discussion in the 1997 intergovernmental conference. The resultant Amsterdam Treaty introduced a number of innovations in the external relations area – notably the introduction of the High Representative for CFSP and the Policy Planning and Early Warning Unit – but the changes in so far as the PoCo were concerned were relatively minor. The main change was that the Maastricht treaty stated that the committee was to comprise the 'Political Directors', while the Amsterdam version no longer stipulates this.

27. 'Fonctionnement de la PESC', recommendations of the Political Committee, 12 July 1994, noted by the Council on 18 July 1994, Doc. 8390/94; and *Orientations internes du Comité Politique visant à améliorer le fonctionnement de la PESC*, Conclusions of the 297th Political Committee meeting, 28 April 1995, COREU PESC/SEC 411, cited in Wessels, p.81.

The Amsterdam Treaty and PoCo's *modus operandi*

The Amsterdam stipulations were to have several effects. First, since the PoCo did not have to be expressly the Political Directors, the possibility of holding meetings at the deputy Political Director level was therefore open. The frequency of meetings at the full Political Director level had necessarily been limited (only monthly), due to the demanding schedules of those occupying these positions in the Member States. The possibility of holding more frequent meetings, at both director and deputy levels, was thus opened. The potential for more meetings was also to prove useful as CFSP developed and, in particular, when the European Security and Defence Policy (ESDP) emerged in the late 1990s.

Nevertheless, the treaty changes also introduced complications in terms of the institutional weight of the PoCo, especially vis-à-vis COREPER. The Political Directors are senior in status to the Permanent Representatives, while the Deputy Political Directors, of senior or ambassadorial rank, were normally junior to the Permanent Representatives. However, whatever the potential structural complications of this arrangement, the increased frequency of meetings of the PoCo outweighed any potential drawbacks in the relationship between the two organisations.

If we set the treaty aside for the moment, the Council's own internal rules of procedure following the Amsterdam treaty are of interest. According to the internal explanation of CFSP's *modus operandi* the PoCo is the 'primary body for advice on and the conduct of CFSP'. But, since the General Affairs Council (GAC) features both Community and CFSP issues on its agenda, 'COREPER has responsibility for integrating CFSP items into the GAC agenda and ensuring decisions are adequately prepared'. Traditionally, COREPER does not reopen 'the substance of PoCo recommendations, except where necessary to ensure the coherence between first and second pillar aspects of a single dossier'.²⁸

It was however the assumption by the EU of a number of crisis management tasks in the Amsterdam Treaty that would have the largest impact on the PoCo. This was to lead to the evolution of the PoCo into its new guise, the Political *and Security* Committee.

28. Council of the European Union, Guide for those Chairing CFSP Working Groups, (Luxembourg: Office for Official Publications of the European Communities, 1998), p.17.

Security enters the equation

Successive crises in the western Balkans in the early 1990s, as well as more general changes in the international environment, led to a fundamental rethinking of how the Union should provide for its security and contribute to regional and international stability. A British-French initiative at St Malo in December 1998 marked an important development for the EU since it called 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 international crises’.²⁹ The declaration also called for ‘appropriate structures’ to be created for decision-making and implementation within this area. The legal parameters for the declaration were provided by the Amsterdam Treaty which had provided for the Union, without prejudice to the role of NATO or the specific character and defence policy of the EU Member States, to take action in the context of the so-called ‘Petersberg tasks’ which comprise ‘humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking’.³⁰

The first Presidency who had to grapple with the practical implications of the St. Malo declaration was the German Presidency in the first half of 1999. The Presidency circulated a paper in February 1999 in which it urged that ‘the prime focus of our debate should be on how Europe can possess appropriate structures and capabilities ... to conduct crisis management in the sense of the Petersberg tasks’.³¹ The following month a second Presidency paper was discussed at an informal meeting of the EU foreign ministers at Eltville. This paper observed that, with regard to decision-making in the field of security and defence, ‘necessary arrangements have to be made which will also ensure political control and strategic direction of EU-led operations’.³² By the conclusion of the German Presidency slightly more concrete proposals had taken shape. Amongst other proposals, the Presidency advocated the creation of ‘a permanent body in Brussels (Political and Security Committee) consisting of representatives with pol/mil expertise’.³³ The ‘pol’ part was to be modelled on the existing PoCo while the ‘mil’ expertise was to be provided by the EU Military Committee ‘consisting of Military Representatives making recommendations to the Political and Security Committee’.³⁴

The following Presidency, Finland, met with strong urging from France for rapid progress on the St. Malo proposals those of the German Presidency. In a letter to the Finnish Presidency President Chirac proposed as an initial step, ‘Anfin de créer une dynamique, il est propose, dans un premier temps, de mettre en place á Bruxelles le Comité politique et de sécurité et le Comité militaire dont nous avons retenu le principe á Cologne’.³⁵ The establishment of these bodies was also linked to the appointment of Javier Solana as the first High Representative for CFSP who assumed his duties in October 1999. In an accompanying position paper, *Plan d’Action sur la defence Européenne*, it was suggested that the PoCo

29. Franco-British Summit, Joint Declaration on European Defence, St. Malo, 4 December 1998, quoted in Simon Duke, *The Elusive Quest for European Security: From EDC to CFSP*, (Basingstoke: Macmillan/St Antony’s, 2000), pp. 354-55.

30. Article 17 (2) *Treaty on European Union*. The tasks had originally been adopted by the Western European Union in 1992 and were incorporated into the Amsterdam revisions to the Treaty on European Union.

31. *Informal Reflection at WEU on Europe’s Security and Defence*, German Presidency Paper, Bonn, 24 February 1999, in Maartje Rutten, ‘From St-Malo to Nice: European Defence: Core documents’, *Chaillot Papers*, No. 47, May 2001, p.14.

32. *Informal meeting of EU Foreign Ministers*, Eltville, 13-14 March 1999, in Rutten, p.18.

33. *Presidency Report on Strengthening of the Common European Policy on Security and Defence*, European Council, Cologne, 3-4 June 1999, in Rutten, p.44.

34. *Ibid.* Loc cit.

35. *French Action Plan: Letter from M. Jacques Chirac, President of the French Republic, to the Finnish Presidency of the European Union*, 22 July 1999, in Rutten, p.48.

should become 'le Comité politique et de Sécurité (COPS)', composed of competent representatives in political-military affairs and charged with following CFSP-related issues, including those with defence implications. The paper suggested that, under the authority of the European Council and the Council, COPS 'devrait pouvoir assurer le contrôle politique et la direction stratégique d'opérations conduites par l'Union'.³⁶ It should be composed of permanent representatives, of ambassadorial rank, who should be different from the permanent representatives to the North Atlantic Council (in other words, no 'double hatting') and should be able to convene at the level of political directors. The High Representative should be the High Representative for CFSP and should be able to address directives and receive recommendations from the EU Military Committee, as well as create working groups where necessary.

Given the importance of France and the United Kingdom moving in tandem, as a precondition for the success of the nascent ESDP, the British reaction to the French paper is worth noting. The composition of COPS was seen by France as a senior body which, emphatically, was separate from NATO. The British differed on two points. First, 'although open to persuasion that the level should be ambassadorial', the difficulties involved in convening the Political Directors with frequency was seen as unrealistic.³⁷ The preferred option was therefore to aim at deputy political director level with provision, if need be, for COPS to convene at full political director level. The second difference concerned 'dual hatting' where the United Kingdom saw advantages in allowing such an arrangement, especially since it would facilitate any borrowing arrangements between the two organisations (the 'Berlin plus' arrangements) and, perhaps more importantly, ameliorate American concerns regarding the proposed new body.

Underpinning the respective French and British positions were of course some well-worn themes. The composition and level of the committee would send out signals regarding how serious the Union was about developing genuinely 'autonomous' defence capabilities. A high-level, permanent, committee would underline this determination with possibly negative connotations for NATO (including for some EU NATO members) and transatlantic relations. The British preference for lower-level representation, with the possibility of dual-hatting, was designed to assuage these concerns but also appeared to water down the extent to which the Union was intent on developing European autonomy in the defence area. To France a lower-level body may lack the political weight and presence on the international stage which was so necessary to the successful launch of a credible ESDP. It was therefore of little surprise when the first COPS 'ambassadors' were appointed that France made a senior appointment, presumably to underline France's role in CFSP and, more particularly, ESDP. Conversely, the United Kingdom chose to appoint at a lower level (although still very able) to the COREPER and NATO ambassadors, presumably to clearly indicate its commitment to European as well as transatlantic security ties.

Significantly, mention of the committee was excluded from a joint declaration following an Anglo-French summit on defence in November 1999. The declaration merely mentioned the importance of setting out the 'political and military structures to enable the Council to take decisions on EU-led military operations, to ensure the necessary political control and strategic direction' of Petersberg operations.³⁸ The question of who should chair COPS was also unresolved in the face of opposition to the French suggestion that it should be the High Representative for CFSP which, to many, represented a significant dilution of the normal duties of the Presidency in this area.

In spite of disagreement over the precise composition and structure of the COPS, there was agreement on the need to make progress in the ESDP area. With this in mind, the Finnish Presidency was able to secure agreement that a number of permanent political and military bodies 'will be established within the Council'.³⁹ The standing COPS will be composed of 'national representatives of senior/ambassadorial level' – thus leaving the issue of their precise composition open. The COPS will 'deal with all aspects of the CFSP, including the ESDP' and, in case of a military crisis management operation, 'the PSC will exercise, under the authority of the Council, the political and strategic direction of the operation'.⁴⁰ Until

36. Ibid. p.51.

37. Jolyon Howorth, 'Franco-British Defence Cooperation', in Simon Duke (ed.), *Between Vision and Reality: CFSP's Progress on the Path to Maturity*, (Maastricht: European Institute of Public Administration, 2000), p. 43.

38. *Joint Declaration on European Defence*, Anglo-French summit, London, 25 November 1999, in Rutten, p.78.

39. European Council, Helsinki, 10-11 December 1999, *Presidency Conclusions*, Annex, 'Presidency Progress Report to the Helsinki European Council on Strengthening the Common European Policy on Security and Defence', in Rutten, pp.86-7.

40. The terms 'ESDP' was widely used until the initial 'C' was quietly dropped since it was felt to be redundant. To avoid confusion, the term 'ESDP' will be used throughout.

such time as a 'standing' committee could be established, it was agreed that a number of interim bodies could be established within the Council – the interim EU Military Committee (iEUMC), interim Military Body (iEUMB) and the interim COPS (iCOPS).⁴¹

The iCOPS did not come into official existence until February 2000 and first convened the following month.⁴² The task of the iCOPS was, as with the PoCo of old, to deal with CFSP matters in close contact with the High Representative but also to 'prepare recommendations on the future functioning of the ESDP' which included following up the Helsinki 'Headline Goals'.⁴³ The presiding Portuguese Presidency had as their general mandate in this area to continue progress towards the 'Headline goal' target and to strengthen ESDP. Further work was initiated under the presidency on the institutional development of the interim political and military bodies. One of the background questions behind the interim bodies was whether their legal status, once permanent, would necessitate treaty amendment. The advice from the Council's Legal Service was quoted in the conclusions of the Presidency. It advised that 'the conclusions of the Cologne and Helsinki European Councils regarding European security and defence can be implemented without it being legally necessary to amend the Treaty on European Union' but that such amendments might be necessary, 'if the intention is to transfer the Council's decision-making powers to a body made up of officials, or to amend the Treaty's provisions regarding the WEU'.⁴⁴ It thus fell to the French Presidency to conclude the institutional arrangements for ESDP on a permanent basis.

One of the issues under discussion as ESDP developed, both in institutional and general terms, was what kind of relations should be established between the EU and NATO. A significant practical step in this regard was the first meeting of the iCOPS and the North Atlantic Council (NAC) in the EU Council headquarters on 19 September 2000. This was to be the first of a regular series of meetings between the two bodies. Javier Solana noted the importance of establishing close relations between the EU and other relevant security-related bodies, but also noted that 'while we have looked to NATO and the WEU for ideas, they do not provide all the answers'.⁴⁵ The NATO Handbook of 2001 comments that the regular meetings between the two organisations 'are rapidly moving from the theory of ESDI/ESDP to consultation and cooperation on concrete and topical issues, such as the situation in the Western Balkans'.⁴⁶ However, in spite of the growing importance attached to the NAC-COPS relationship, it remains limited by the different decision-making capacity of the two bodies. The former 'has effective political authority and powers of decision' and can meet at different levels (Permanent Representatives, ministerial level or Heads of State or Government) whereas the COPS is, as we have seen, a significant but different body. Nevertheless, the consultations between the two bodies have proven beneficial to both organisations, enhancing the exchange of information and the consultation process in a reasonably collegial atmosphere. The national ambassadors, from NATO and the COPS, will sit together in the meetings arranged in alphabetical country order.⁴⁷

41. The Interim Military Body would later become the EU Military Staff.

42. The interim COPS was established by a Council Decision of 11 February 2000. See *Official Journal of the European Communities*, L 049, 22 February 2000, p.1.

43. Rutten, p.87. The Headline Goals were designed to enable the EU, by 2003, to deploy within 60 days and sustain them for at least one year, military forces of up to 60,000 persons capable of the full range of Petersberg tasks.

44. *Presidency Conclusions*, European Council, Santa Maria da Feira, 19-20 June 2000, in Rutten, p.125.

45. *Intervention by Dr Javier Solana*, High Representative for CFSP, PSCi/NAC first joint meeting, Brussels, 19 September 2000, in Rutten, p.140.

46. *NATO Handbook*, (Brussels: NATO Office of Information and Press, 2001), p.103.

47. Kai Kristian Kiessler, *The Political and Security Committee: Insight into EU decision-making: role strengths and weaknesses of the "linchpin" of CFSP and ESDP*, Collège d'Europe, 2002/2003 (unpublished).

Nice, COPS and the aftermath

The conclusion of the French Presidency at the Nice European Council on 7-9 December 2000 saw mixed progress on ESDP generally. Some aspects of the conclusions, especially the enunciation of EU-NATO relations, were dismissed as 'littered with ifs and buts and apparent contradictions, the text does little to clarify the EU's new defence role'⁴⁸. At any rate, the malcontents aside, the French Presidency conclusions noted that the permanent structures, which comprise the former 'interim' structures (including the iEUMC and iEUMB) established earlier on in the year, would enable the EU to⁴⁹:

- develop a consistent European approach to crisis management and conflict prevention;
- ensure synergy between the civilian and crisis management aspects of crisis management, and;
- cover the full range of Petersberg tasks.

In an annex attached to the report, the COPS was described as 'the linchpin of European security and defence policy and of CFSP' and, with this in mind, the COPS's mandate was inherited from its interim ancestor which was to 'deal with all aspects of the CFSP, including the ESDP'.⁵⁰ The SG/HR may chair the COPS after consulting with the Presidency, especially in case of a crisis. This latter point marked a crucial, and welcome, concession by the French Presidency.

The specifics of the COPS's mandate indicate an extensive range of responsibilities that indicate considerable autonomy and potential influence. Its responsibilities include:

- Keeping track of the international situation in areas falling within the CFSP, help define policies by drawing up "opinions" for the Council, either at the request of the Council or at its own initiative, and monitor the implementation of agreed policies;
- Examine the areas of the General Affairs Council (GAC) in which it is involved;
- Provide guidelines for other committees on matters falling within the CFSP;
- Maintain a privileged link with the SG/HR and special representatives;
- Send guidelines to the EUMC and receive the opinions and recommendations of the EUMC and the chairman of the committee, who liaises with the EUMS, takes part, where necessary, in COPS meetings;
- Receive information, recommendations and opinions from the Committee for Civilian Aspects of Crisis Management and send it guidelines on matters falling within the CFSP;
- Coordinate, supervise and monitor discussions on CFSP issues in various Working Parties.

48. 'EU ministers sign treaty but defence plan rankles', *The Guardian*, 27 February 2001, quoted in Assembly of the WEU, *The follow-up to the Nice decisions on the ESDP and the completion of the project for European defence*, 18 June 2001, Doc. A/1733, at http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2001/1733.html#P212_33575

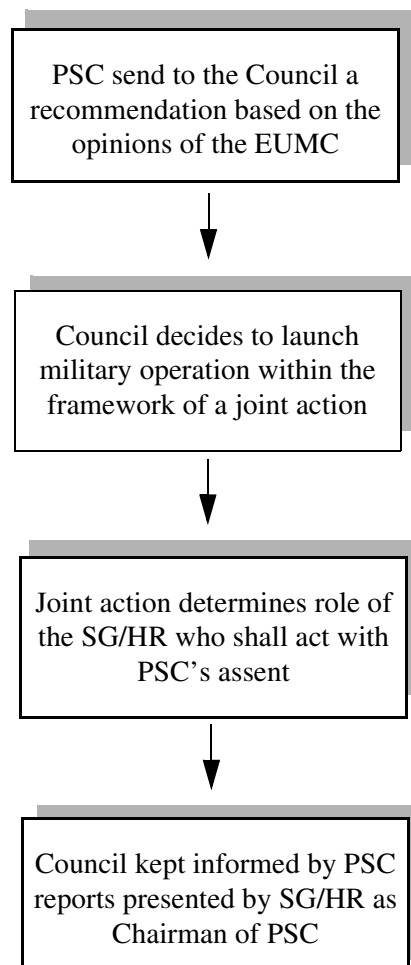
49. European Council, Nice, 7-9 December 2000, *Presidency Conclusions*, Part IV: ESDP, Annex III to Annex VI, 'Political and Security Committee', in Rutten, pp.191-192.

50. The idea of the COPS as a 'linchpin' was reinforced in a separate contribution by the SG/HR to the Nice European Council. Solana wrote that 'it is essential that a single body should have access to all the information, proposals and initiatives relating to the crisis involved in order to make a global assessment' and that, following the Helsinki European Council, 'this role would fall to the Political and Security Committee'. Contribution by the Secretary-General/High Representative, *Procedures for Comprehensive, Coherent Crisis Management: Reference Framework*, 4 December 2000, Para. 2(3).

Apart from its liaison with other CFSP bodies, the COPS provided a ‘privileged forum’ for dialogue on ESDP (at EU+15 and EU+6 formats) and, under the auspices of the Council, it takes responsibility for the ‘political direction of the development of military capabilities’ and, as part of this, the COPS shall ‘receive the opinion’ of the EUMC assisted by the EUMS.⁵¹ The Secretary-General/High Representative may, after consulting the Presidency, chair the COPS. For work in the ESDP area, the COPS is assisted by the Politico-Military Working Party.

In a crisis the COPS is ‘the Council body which deals with crisis situations and examines all the options that might be considered as the Union’s response within the single institutional framework and without prejudice to the decision-making and implementation procedures of each pillar’. Since close coordination will be called for, the Presidency Report makes provision for the participation, where necessary, of the Chairman of the COPS in COREPER meetings and by Foreign Relations Counsellors, who maintain ‘effective permanent coordination’ between the CFSP discussions and other areas of EU external relations.

When faced with a crisis, COPS proposes to the Council the ‘political objectives to be pursued by the Union’ and recommends a ‘cohesive set of options’ with crisis settlement in mind. The COPS may draw up an opinion recommending to the Council the adoption of a joint action and, without prejudice to the Commission’s role, it may supervise the implementation of the measures adopted and assess their effectiveness. When military forces are involved, the COPS exercises ‘political control and strategic direction’ of the EU’s military response to a crisis, based upon the opinions and recommendations of the EUMC. Political and strategic direction of a military crisis management operation is handled as follows:



51. The EU+15 referred, at this time, to the non-EU European NATO members (the ‘Six’) plus the candidates for EU accession (minus the Republic of Cyprus). Most are now members of the EU and NATO respectively. The EU now has 25 members of which 19 are also NATO members.

On the basis of the activities of the COPS, the SG/HR will also direct the activities of the Situation Centre which, in turn, supports the COPS and provides it with 'intelligence in conditions appropriate to crisis management'.

Thus, for crisis management COPS is obviously a critical institution especially since it can exercise political and strategic direction of crisis management operations under the responsibility of the Council. The modifications to Article 25 TEU in the Nice Treaty are particularly profound since they attribute legal authority not only to the COPS but also to ESDP in general. The new article reads:

Without prejudice to Article 207 of the Treaty establishing the European Community, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission. Within the scope of this Title [CFSP], this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operations. The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political and strategic direction of the operation, without prejudice to Article 47'.

The significance of the Nice treaty amendments lies in the fact that COPS is authorised, in crisis management scenarios, to take relevant decisions regarding the political and strategic direction of such operations. In essence, in these particular circumstances, COPS assumes a function normally reserved for the Council. Although it would be an exaggeration to claim that this gives the COPS the same level of influence that the North Atlantic Council plays, it nevertheless serves as recognition that crisis scenarios may well demand some form of circumvented decision making.

COPS was established as a permanent institution by a Council decision of 22 January 2001.⁵² It should be noted that the general contretemps over the Nice Treaty, caused by the negative Irish referendum of the treaty, did not influence the fate of the committee since it was established by intergovernmental agreement.⁵³ In addition to the duties listed above, COPS also exercises political direction over the EU Institute for Security Studies, in Paris, and the EU Satellite Centre, in Torrejon, Spain – both were formerly part of the WEU.

52. *Official Journal of the European Communities*, L 027, 22 January 2001, pp.1-3.

53. Following this logic, it is therefore possible for the Union Minister for Foreign Affairs, the European Defence Agency and the European External Action Service to be established by intergovernmental consensus, regardless of the outcome of the referenda on the constitution.

COPS' modus operandi

The basic functions of the COPS with regard to CFSP changed little from their previous duties as the PoCo. When the Political Directors are not present, COPS is represented at ambassadorial or equivalent level and quite often, they are former Political Directors. The Commission is represented at COPS meetings. COREPER continues to process the preparatory work for the Council but the Chairman of COPS can participate, where necessary, in the work of COREPER. The COPS is assisted by European Correspondents, who are normally mid-ranking diplomats from the EU Member State who work very closely with their respective Political Directors. CFSP Working Groups will also help to elaborate options and documents for the COPS's consideration. The Commission representative and the Correspondents will examine any institutional, legal and financial aspects with special attention.

The agendas for the COPS and the GAC are agreed by the Presidency and the Secretariat, while the operational conclusions of the working groups, which are examined regularly, are approved by the COPS. The agendas are not in the public domain since the content of the discussions is potentially sensitive, especially if a specific region or country is under discussion. The COPS normally meet twice per week, on Tuesdays and Fridays, and additional meetings may take place prior to Council meetings, or when political dialogue with third parties demands their presence. The COPS consists of representatives of the Member States, the Commission member to the COPS and four Council Secretariat members. The national 'representatives' can often comprise more than the COPS members, which means that on issues that are particularly emotive or complex the meetings can easily consist of over one hundred people – so much for collegiality. However, the only exceptions to this are the Tuesday working lunches which are, by tradition, for the basic group referred to above. In the ESDP area, which is explored in detail below, the COPS meetings can include the Politico-Military Group, national experts and representatives from relevant backgrounds or departments.

Within the Secretariat, CFSP Unit desk officers are responsible for preparing the briefs of the chairs of both the COPS and the GAC. Directorate General E has principal responsibility for supporting the Presidency and the various working groups. The Director-General of DG-E, Robert Cooper, will attend the COPS meetings, as well as the Legal Secretariat and, where appropriate, officials from the various Directorates who have competence in the areas under discussion.⁵⁴ In addition to the preparation of meetings DG-E will also follow meetings and draft reports on the meetings, as well as ensuring that other relevant organisations (such as NATO) are informed of proceedings. Briefs may also originate from the Commission and the myriad of working groups in the CFSP area.⁵⁵

The Commission is represented in the COPS by Lodewijk Briet, Directorate A of DG RELEX, with CFSP responsibilities. The role of the Commission representative is of particular importance in the crisis management context when civilian crisis management is under discussion.⁵⁶ The role of the Commission is, above all, to ensure consistency which should also include a longer-term perspective on crisis management issues. For instance the existence of existing Community efforts to stabilise a crisis situation or longer-term post-conflict programmes that may assist in reconstruction efforts is of considerable importance to COPS in its deliberations. Although COPS may be aware of the existence of regional or national support programmes, the presence of Commission representation may be critical in providing a more

54. DG-E is divided into nine directorates and three groups addressing relations with other organizations, for full details see http://europa.eu.int/idea/bin/dispen.pl?lang=en&entity_id=7434.

55. In the CFSP/ESDP area alone there are over thirty working groups. See <http://register.consilium.eu.int> for a full list.

56. For more information see http://europa.eu.int/comm/external_relations/cfsp/intro/#3.

general context for the discussions. Similarly, the information at the Commission's disposal, especially that provided through the External Service and the Commission's own Crisis Management Centre, may prove of considerable importance for discussions in the COPS. The main preparatory work in terms of the coordination between the different RELEX DG's is the European Correspondent Unit, currently under David Turr.⁵⁷ The Commission representative to the COPS will therefore have a birds eye view of the Commission's position based on input from a number of DGs.

The Commission's presence is also of importance in the crisis management context if a potential operation is being discussed and the funding basis has to be provided for or clarified. The funding aspects have already proven challenging, as was the case for the modest EU Police Mission to Bosnia-Herzegovina which, since it did not have obvious 'military or defence implications' which would have clearly made it a matter for the Member States to address, became a matter of Community concern. Since the budget for CFSP is limited primarily to administrative and some operational expenditure and represents under 0.5% of the overall external relations budget, this aspect of the Commission's role is likely to increase in importance.

In addition to briefs that arise as a result of international developments, there are regular reports that may be built into CFSP joint actions.⁵⁸ The sheer volume of briefs means that the COPS ambassadors spend a considerable amount of time reading, often at short notice. In addition, political dialogue and meetings with third parties (such as the North Atlantic Council which is discussed below) make more demands on their agendas. Naturally, the recent enlargement to twenty-five has provoked fresh concerns about time management and how to conduct meetings. The amount of material to be addressed and the time limitations imply that the Presidency has a particularly important job in organising and prioritising the agenda of the COPS meetings, although the short-term in office of the Presidency and the demands imposed by the rotating Presidency on national administrations also complicates the picture.

Although the Presidency does not have editorial control of the briefs, close coordination between the working group chairs and the CFSP Unit desk officers is the norm. The briefs for the PoCo are transmitted to the Presidency via the internal cyrtptofax link between the CFSP Unit and the office of the Presidency's European correspondent, normally two days or so before the meeting. The final version of the brief is approved by the Secretary-General (i.e. the High Representative for CFSP) and the briefs for the GAC are then communicated to the Presidency via the Secretary-General's private office. The briefs for the PoCo and the GAC normally include draft conclusions. However, even if this deadline is observed (which is not always the case) this leaves little time for the COPS to actually read and digest the material.

The workload of the COPS is somewhat alleviated by the assistance of the Politico-Military Working Party and, more recently, the Nicolaidis Group. The Politico-Military Working Party is charged with responsibility for 'assisting the (interim) Political and Security Committee by carrying out preparatory work on the European Security and Defence Policy'.⁵⁹ The Politico-Military Working Party became permanent at the same time as COPS lost its interim adage and on 6 April 2001 COPS agreed on the need to update the brief of the Working Party.⁶⁰ The Politico-Military party generally address the more diplomatic aspects of ESDP, along with CIVCOM (for more details on the latter, see below) and they hold regular meetings (up to four times per week). Generally speaking the more technical work falls to the party, including work on the 'Berlin Plus' arrangements with NATO and operational details for CFSP operations. The Working Party will also meet with their counterpart NATO Working Groups. The 'politico-military' nature of the working party also leads to a combination of officials from both the Foreign Ministries as well as the Defence Ministries of the Member States.

The agenda for COPS meetings was initially prepared by an informal group but the growing demands on the COPS, especially due to the rapid growth of ESDP, led to understandable demands for more formal assistance. The demands led to the creation of an Antici-like group called the Nicolaidis

57. For details see

http://europa.eu.int/comm/staffdir/plsql/gsys_fonct.properties?pLang=EN&pSernum=11890&pUnite=21683.

58. It should be recalled that Article 25 of the Treaty on European Union states that the committee 'shall monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission'.

59. Council of the European Union, *Establishment of a Politico-Military Working Party*, Doc. 9953/00, Brussels, 30 June 2000.

60. See Council of the European Union, *Establishment of a Politico-Military Working Party*, Doc. 7992/01, Brussels, 12 April 2001.

group, named after its first chairman (during the Greek Presidency). The Nicolaidis group assists with the 'organisation of meetings' and this can include 'going through the provisional agendas in advance, fixing the order in which items for discussion would be taken and dealing if necessary with the practical arrangements for the meeting'.⁶¹ The second task of the group is to 'allow delegations to flag up in advance what the main issues of concern are to them, thereby enabling the members of COPS to prepare more effectively for their discussions and possibly to dispose more easily of less important questions'.⁶² The group is also able to identify points of special interest or concern in reports submitted to the COPS by the working parties as well as providing a 'useful point of contact' between the delegations and the General Secretariat.

The relevant CFSP desk officers, or their directors, will normally attend PoCo and the GAC when items fall within their particular areas of responsibility. In the meeting they will take notes and try to ensure accuracy and completeness in the ensuing reports. Reports from the PoCo meetings are, by convention, always in French (*relevés de conclusions*). The Presidency (which normally means the European correspondent and, in some cases, the CFSP counsellor) will clear the text of the *relevés* prior to their being released by the Secretariat as COREUs.⁶³ Following a PoCo meeting (or that of the GAC) the Presidency will decide on whether it is necessary to brief third countries on the outcome of the meeting. If the decision to do so is made, a member of the CFSP's General Affairs Directorate will brief representatives of 'like-minded' countries.⁶⁴

The principal differences between COPS and its successor, the PoCo, are not so much in working methods (although the demand of COPS have necessitated adjustment) but in its overall visibility and presence. It was argued earlier that PoCo was an essential, but limited, aspect of the gradual growth of the 'European reflex' in the Community's external relations. The senior level of the representation meant meetings were scarce and the PoCo was not therefore a particularly visible aspect of external relations. The advent of COPS, with its ability to meet at either Political Director or senior/ambassadorial levels, meant that COPS became in effect a permanent presence in the deliberations on CFSP. Its heightened profile, accompanied by the rapid development of CFSP, also meant heavier demands on the COPS members. These demands were to increase with the advent of ESDP and, with it, COPS assumed its most important role.

61. Council of the European Union, *Creation of a preparatory group for the PSC*, Doc. 8441/03, Brussels, 14 April 2003.

62. *Ibid.* Loc cit.

63. COREU (CORepondance EUropéenne) is an EU communications network between the EU Member States, the Commission and the Council.

64. These countries, excluding the EU candidates who are automatically briefed, include Australia, Canada, Iceland, Japan, Liechtenstein, New Zealand, Norway, Switzerland and the USA.

COPS and Crisis Management

The COPS was to come into its own with the evolution of ESDP in the late 1990s onwards. We have already seen how it was heralded as the ‘linchpin’ of EU crisis management. The COPS was to also have a decisive role in steering developments within ESDP on a range of issues, stemming from its ability under the Helsinki Presidency conclusions to deal with ‘all aspects of CFSP, including the ESDP’, such as elaborating upon crisis management structures as well as contentious issues such as the shape of the EU’s relations with the WEU. The permanent status of COPS, compared to its successor, also tended to emphasise the committee’s role, as did the ability to regularly consult the HR/SG or the Policy Unit. Although the political role of the COPS was better understood, based on the PoCo experience, the crisis managements remain less clear. Indeed, any such honing could only really be done as the result of initial trials.

The first crisis management exercise (CME 02) was held on 22-28 May 2002 in order to test the Union’s ability to take decisions on the use of its civilian and military capacities during a crisis scenario. The initial part of the exercise, deciding on an appropriate response, fell to COPS, following the presentation of a draft crisis management concept to the committee. The exercise, which was limited to head-quarter level, concluded when COPS had evaluated all of the military strategic options, as well as the full range of civilian aspects. The exercise was limited not only in the scope, but also the fact that involvement of other organisations (such as NATO in the event of a ‘Berlin Plus’ operation) were not specifically tested, nor were national ministers involved to the extent that they would be in a real crisis. In line with the conclusions of the French Presidency at Nice, the High Representative chaired the COPS after consultation with the Presidency.⁶⁵

The outcome of the exercise indicated that the ‘Union’s procedures, concepts and strategic planning capabilities were adequate and practical’.⁶⁶ The reviews of how COPS specifically functioned were ‘mixed’. On the positive side, COPS was seen as ‘adept at practical problem-solving’. However, on the negative side, some criticised the ‘lack of clear political leadership or guidance from the COPS and cited the process of selecting operational headquarters as problematic’.⁶⁷ More generally coordination problems were identified where there were areas of mixed competence (i.e. both the Commission and the Council could claim competence), such as policing roles. This was manifest particularly in the civilian crisis management area, where the Council has competence in civilian crisis management, while the Commission assumes the lead for structural conflict prevention and post-conflict reconstruction scenarios.

In the aftermath of the first crisis management exercise the European Council endorsed a ‘Draft European Union Exercise Concept’. The Concept, building upon the EU Exercise Policy of 14 May 2001, charged the COPS with ‘overall responsibility for the programming, planning, conduct, evaluation and reporting of all EU exercises, including the preparation of the annual EU exercise programme and the development of the Exercise Specifications (EXSPEC)’.⁶⁸

65. *Presidency Conclusions*, European Council, Nice 7-9 December 2000, Annex III to Annex VI reads, ‘After consulting the Presidency and without prejudice to Article 18 of the TEU, the Secretary-General/High Representative for the CFSP may chair the COPS, especially in the event of a crisis’.

66. Catriona Gourlay, ‘Putting ESDP to the test: The first crisis management exercise’, *European Security Review*, July 2002, No. 13.

67. *Ibid.* Loc cit.

68. *Draft European Union Exercise Concept*, European Council, Brussels, 19 March 2003, Para. 7, in Antonio Missiroli, ‘From Copenhagen to Brussels, European Defence: core documents’, *Chaillot Papers* No. 67, December 2003, p.54.

COPS and Crisis Management: procedures in theory

The procedures for crisis management were further specified in 2003 as a result of CME 02 the previous year. A 'Politico-Military Group' (PMG) forwarded 'Suggestions for procedures for coherent, comprehensive EU crisis management' which the COPS endorsed in March 2003, with the request for further advice from the EUMC and CIVCOM.⁶⁹ The suggestions covered a variety of crisis management scenarios, including those with 'the highest degree of complexity'.⁷⁰ The document is 'rather lengthy' and is a 'living document' in the sense that it will need 'to be continually revised in the light of experience'.⁷¹

The document adopts a layered approach to crisis management comprising six stages, from the routine phase through to termination of an operation. At each stage COPS has an important role, as do other bodies, but for the purpose of our examination the role of the COPS as the 'linchpin' will be the focus.

In the first 'routine' phase the Member States and the Commission carry out routine monitoring and exchanges of information within the COPS, as well as in the relevant Council working groups (both geographical and thematic). The COPS will share information, where relevant, with the EUMC if there are felt to be potential military implications, while CIVCOM 'provides information, formulates recommendations and gives advice on civilian aspects of crisis management to the COPS and other appropriate bodies'.⁷² The EUMC will provide risk assessment of potential crises and make recommendations to the COPS either at the latter's request, or on its own initiative, acting within guidelines forwarded by COPS.

Within the 'routine phase' there may also be consultation with NATO and other relevant parties (such as the EU candidates). The exchange of information between COPS and the North Atlantic Council (NAC) will either occur at one of the regularly scheduled meetings (no less than three times per Presidency) or at an additional meeting. The exchange of information could also occur at ministerial level (although they meet less frequently) or at other levels (subsidiary, ad hoc or expert groups). It is also important to bear in mind that the dialogue with the non-EU European NATO members and the EU candidates is facilitated by the presence of an 'ESDP interlocutor' with regard to the COPS. Although there are different channels of communication at the routine phase, it is evident that COPS plays a central role as a decision *shaper* rather than maker.⁷³

The second phase, the crisis build up and the elaboration of the draft Crisis Management Concept (CMC), also places COPS in a central role. In this stage the attention of COPS has been drawn to an intensifying crisis and the flow of information, including intelligence, from Member States and the Commission intensified. The COPS may identify specific areas on which further information is required. At this stage COPS 'should have access to all necessary information processed through agreed channels (including from NATO, UN, OSCE and other international organisations) and to proposals and initiatives related to the crisis'.⁷⁴ The Situation Centre (SITCEN) will set up the collection of information and process it and report on the situation to the High Representative for CFSP as well as other relevant bodies, notably COPS and EUMC.

69. Council of the European Union, *Suggestions for procedures for coherent, comprehensive EU crisis management*, Doc. 7116/03, Brussels, 6 March 2003.

70. *Ibid.* p.iii.

71. House of Lords, Select Committee on the European Union, *Seventh Report*, Chapter 2 'The current state of civilian ESDP', Session 2002-3, 11 February 2003, Para. 10.

72. *Ibid.* p.5.

73. This distinction is drawn by Kiessler, pp-39-40.

74. *Ibid.* p.7.

The COPS will meet to discuss the incoming information with the aim of developing a common political understanding of the crisis. They may request input from the diplomatic Heads of Mission to assist in the assessment process. Advice and support may also come via the Director-General of the EUMS, 'under the direction of EUMC acting within the guidance of the PSC', from parent headquarters (HQ) of potential Operations headquarters (OHQ) and other strategic planning capabilities. The Commission will also inform the COPS of measures being considered or undertaken, as will the Member States. At this stage, the COPS may also request additional information or reports from the SITCEN, the Commission or the Member States.

If, based on the information at its disposal, COPS considers that EU action is appropriate, a draft CMC may be requested under COPS guidance. An ad-hoc crisis response coordinating team will prepare the draft CMC. The High Representative for CFSP will present the draft CMC to the COPS and, if relevant, the Commission will present those elements falling under Community competence. The COPS will then give guidance for the further development of the CMC and may request further guidance from the EUMC and CIVCOM on the military and civilian elements respectively. With the relevant input from the military and/or civilian bodies, COPS will:⁷⁵

- Make a general political assessment, keeping in mind the totality of measures applicable;
- After further discussion, if needed in an iterative process, agrees the CMC and forwards it to the Council with its opinion identifying the political objectives to be pursued by the Union and suggesting a comprehensive course of action comprising the different possible elements aimed at contributing to the settlement of the crisis.

With Council approval of the CMC, the third stage commences. On the basis of the approved CMC, COPS will instruct the relevant bodies to develop a strategic option. The COPS has to ensure that the strategic options are mutually coherent and will do this by:

- Giving guidance as appropriate, requesting the EUMC to issue a Military Strategic Options Directive (MSOD);
- Upon recommendation of the EUMC, may identify possible Operation Commander(s) (OpCdr);
- Give guidance for the further development of civilian instruments, including any possible police mission, and
- Coordinates the information strategy to be presented by the Presidency, the High Representative, the Commission and the Member States.

It should be noted, in passing, that the EU will at this stage also establish an 'intensified' dialogue with other relevant partners (such as the non-EU European NATO members, the OSCE or the UN) in which COPS will play a central role. The development of the military strategic options (MSO) is carried out under the aegis of the Director-General EUMS, while the Police Unit will develop the Police Strategic Options (PSO) and any civilian strategic options (CSOs) will be coordinated by CIVCOM. In the case of the PSOs and CSOs, CIVCOM and the Commission will work closely with the COPS to ensure a comprehensive overview of the means available to the EU and to coordinate resources between the EU and the Member States. The EUMC will forward the developed and prioritised MSO to the COPS, while CIVCOM will forward any PSOs and CSOs to the COPS, along with its evaluation and advice. The COPS will then evaluate the MSO, PSO and CSOs, when applicable to a given crisis scenario, and assess their overall coherence. The Commission will also present any options it is considering at this stage. Based on this assessment, COPS will then submit to the Council a draft decision to take action, including preferred options.

The fourth stage involves the (Council) decision to take action and the development of planning documents. The decision to take action (which would in most circumstances be a joint action) may authorise COPS to take the relevant decisions concerning the political control and strategic direction of the crisis management operation (CMO), which may also include the establishment of a Committee of Contributors (CoC). The MSO selected by the Council may imply an operation with, or without, the use of NATO assets and capabilities. In the case of the latter, COPS would address a request to NATO for the use of its assets and capabilities. In either eventuality, following a Council decision COPS will send the neces-

75. Ibid. p.10.

sary guidance to the EUMC to direct the EUMS to draft an Initiating Military Directive (IMD); this is then subject to COPS approval before its release is authorised by the EUMC. On the basis of the IMD, the OpCdr prepares a draft Concept of Operations (CONOPS) and a Statement of Forces Requirement (SOR). The COPS may request the EUMC to task the OpCdr, assisted by the EUMS, to present the operational planning work to the non-EU European NATO members as well as EU candidates which, in principle, have expressed an interest in participation.

On the civilian side, COPS may request to the High Representative for CFSP that the Police Unit develops the draft CONOPS and elaborates the Statement of Requirements (SOR). With the support of the EUMS, the EUMC will provide advice and recommendations to the COPS on the draft (military) CONOPS. A similar process is followed by CIVCOM regarding the draft civilian CONOPS. The COPS will agree upon the draft military and civilian CONOPS and present them to the Council for approval. With Council approval granted, the COPS will instruct the EUMC to task the OpCdr, in coordination with the EUMS, to commence the Force Generation process; in the case of NATO assets being envisaged for the operation, the COPS would meet with the NAC to confirm the availability of all pre-identified assets. The Council Secretariat will also prepare a Status of Forces Agreement (SOFA) at this stage to submit to the Council by the COPS on the basis of advice from the EUMC (for the military implications) and CIVCOM (for the civilian aspects, with consultation with the Head of the Police Mission, (Pol HoM) if relevant).

The COPS again assumes a central position in the development and adoption of an Operation Plan (OPLAN). The OPLAN is drafted by the OpCdr for the military aspects and the Pol HoM for any police aspects. The EUMC, supported by the EUMS, will provide advice to the COPS on the military aspects of the OPLAN, while CIVCOM does the same for the civilian elements. The COPS will consider and draft OPLANs, agree to them and submit them to the Council for approval. The COPS may also decide whether to convene a CoC, even prior to the finalisation of the OPLAN.

The CoC may be comprised of a military or civilian CoC, or even a joint CoC. The CoC will be supplied with detailed information regarding the situation on the ground, it will deal with various problems regarding the implementation of the operation and all day-to-day management aspects which are not exclusively under the OpCdr's mandate. The Committee will 'be consulted by the Military Committee and the COPS on matters relating to planning the end of the operation and the withdrawal of forces'.⁷⁶ The CoC is comprised of representatives of all parties involved in the operation (see below). All EU Member States are entitled to be involved, even if not participating in the operation, but only participating members may take part in the day-to-day management of the operation. Representation for the EU Member States is comprised of the representatives on the COPS and on the EUMC, chaired by a representative of the High Representative or the Presidency, assisted by the CEUMC or his Deputy. The Chairman will convey the outcome of the Committee's discussion to the COPS and the EUMC.

The formal decision by the Council to approve the military and/or civilian OPLANs, the Rules of Engagement and, where appropriate, the SOFA, marks the start of the fifth stage. In the implementation stage COPS exercise 'political control and strategic direction of the crisis management operation'. The COPS is the central body to which all supporting bodies (EUMC, Presidency, Commission, CIVCOM etc) report information on progress of the operation. If NATO assets are utilised in the operation, there may also be a joint meeting of the COPS and NAC to inform the latter of the use of its assets and capabilities.

The final phase, 'Refocusing of EU Action and Termination of Operations', commences with the COPS evaluation of 'the necessity of refocusing EU action, including the possibility of terminating some or all elements of the action'.⁷⁷ The refocusing element may necessitate a revised CMC which would involve the High Representative, the Commission, EUMC and CIVCOM and the CoC(s), providing the COPS with recommendations for possible adjustment. Having gathered the recommendations, COPS will forward to the Council its agreed recommendation. If the refocusing implies a termination of the military operation using NATO assets, COPS informs the NAC. In the event of the operation being ter-

76. *Presidency Conclusions*, European Council, Nice 7-9 December 2000, Annex VI to Annex VI, 'Arrangements Concerning non-EU European NATO members and other countries which are candidates for accession to the EU', in Rutten, p.203.

77. Council of the European Union, *Suggestions for procedures for coherent, comprehensive EU crisis management*, Doc. 7116/03, Brussels, 6 March 2003, p.27.

minated, COPS will request the EUMC (on the basis of reports by the OpCdr and the EUMS), CIVCOM, the Commission and the CoC(s) to provide their assessment of the lessons drawn from the operation; COPS then produces an overall assessment.

COPS and Crisis Management: procedures in practice

In its short time in existence COPS has become an important body in Union external relations, especially when compared to the sporadic meetings of the old PoCo and its lack of real visibility in Brussels. The fact that the COPS is now a standing body was initially thought to have the potential for tensions with COREPER. The COPS representatives are in some cases, as observed above, of junior status to COREPER II. They will though inevitably become the focal point of CFSP and the nature of their mandate requires that COPS members to have access to all relevant information, initiatives and proposals relating to a given crisis. So far, there is nothing to indicate any serious tension between the two institutions. Indeed, the somewhat limited circles in this field tend to generate a more club-like atmosphere. However, there may be concerns that focus in the committee's relations with other significant actors.

In practice the most important relationship of the COPS is that with the High Representative for CFSP and Secretary-General of the Council (HR/SG) and, in the event of the constitutional treaty being adopted, the Union Minister for Foreign Affairs. The relationship with the HR/SG also involves the Policy Planning and Early Warning Unit (Policy Unit), created by a declaration attached to the Amsterdam Treaty. The Policy Unit delivers papers outlining policy options to the HR/SG but also shares them with the COPS. The unit is divided into seven task-forces addressing both thematic and geographic issues.⁷⁸

The Policy Unit, and thus a significant part of CFSP's conflict prevention effort, is dependent upon the willingness of Member States to share timely information with it. This willingness is partly conditioned by practical aspects (such as language and the limited resources and often time to translate documents, which makes English and French information more valued), but also by the composition of the Unit which consists of seconded national diplomats, and to whom the information may be disseminated. The information given to the Unit may be used to brief the HR/SG, less so the Council Secretariat and, on occasion, the COPS.⁷⁹ The quality of the Policy Unit's briefings has produced mixed comment, described as exhibiting 'great variation' in terms of quality,⁸⁰ but also as producing 'many well thought out and structured papers'.⁸¹ Friction between the Policy Unit and the Council Secretariat is evident and, according to one observer, friction was to be expected since the Policy Unit was 'set up to circumvent the Secretariat's CFSP Directorate' and, by implication, to strengthen the HR/SG's position.⁸²

A complementary role to that of the Policy Unit is played by the Situation Centre (SITCEN) where information gathering is conducted from open sources as well as COREU telegrams, which are then forwarded to the relevant bodies. The SITCEN, which uniquely in the EU is a joint civilian-military body, monitors the international situation twenty-four hours a day and prepares analyses and options for the COPS as well as the EUMC. The Policy Unit is represented at COPS meetings in the initial exchange

78. These are: ESDP; The Western Balkans; The Situation Centre/Crisis Cell; Russia, Ukraine, Transatlantic, Baltics and Asia; Mediterranean/Barcelona process, Middle East and Africa; Horizontal questions and Latin America; Administration and Security. The precise allocation of duties amongst the twenty-five or so seconded officials varies according to priorities at any given time.

79. See Florian Güssen, 'Of Swiss Army Knives and Diplomacy. A Review of the Union's Diplomatic Capabilities', *Jean Monnet Working Papers in Comparative and International Politics* No. 33, University of Catania, April 2001, at <http://www.fscpo.it/EuroMed/jmwp33.htm>.

80. *Ibid.* Loc cit.

81. Gisela Müller-Brandeck-Boczuët, 'The New CFSP and ESDP Decision-Making System of the European Union', *European Foreign Affairs Review*, No.7, 2002, pp. 273.

82. *Ibid.* Loc cit.

where, if relevant, the Unit's view on potential crises is discussed. The 'early warning' function of the Policy Unit therefore contributes to the COPS and the HR/SG alike.

The relationship between the COPS and the HR/SG is more complicated. The Nice Treaty makes provision, in time of crisis, for the SG/HR to chair the COPS but otherwise the chairing functions fall to the Presidency. The rotating Presidency system introduces problems of its own regarding consistency for the COPS and indeed in other areas of external relations. The possibility of a permanent chair for the COPS may alleviate some of the consistency related concerns but, given the hectic schedule of the HR/SG and his frequent absences from Brussels, the likelihood of it being him has to be questioned.⁸³ The Nice provisions for the HR/SG permitting him to chair the COPS also have to be questioned on the simple grounds of logic that a crisis scenario, perhaps more than others, is likely to involve the HR/SG in extensive shuttle diplomacy.

A second issue, of more real concern, relates to the level at which defence ministries might be involved. Traditionally national foreign ministries have seen themselves as *primus inter pares* and it is easy to imagine that formal involvement of defence ministers and ministries may be regarded as intrusive by the foreign ministries. The need for a political dialogue at defence minister level has already been demonstrated in a number of informal meetings. As the need becomes more apparent, so too will be the need for national foreign ministries to review their control over ministries of defence in the Brussels structures. At the level of the Permanent Representations in Brussels the military advisers will assist the military representative (MILREP) sitting on the EUMC, as well as the COPS Ambassador. This triangular relationship is important since it acclimatises the COPS Ambassador to the nuances of military crisis management, whilst assisting the MILREP, who may have primarily had NATO experience, to adjust to EU working methods and practices.

More generally COPS' relations with the military crisis management bodies appears less than clear. The EUMC, comprising the Chiefs of Defence Staff (CHODS) of the Member States or their deputies, is the senior military body in the EU. Although the treaty and the joint actions establishing the respective bodies are clear that the COPS exercises 'strategic and political' control, the seniority of the CHODS in their respective national administrations raises the question of the extent to which they favour direct contacts with their governments over discussions with the COPS. The EUMC will, at the COPS's request, give military advice on any potential or actual military ramifications of a given crisis. However, the legal status of the advice is of indeterminate status and is therefore best considered as primarily political in nature and may also serve as a first sign that a Member State has differences over the wisdom of applying military options. The latter may be especially important if there is perceived to be an ambiguous legal mandate for military crisis management, such as the absence of a clear UN Security Council mandate.

One of the undoubted benefits of the new crisis management structures is that it has 'Europeanised' the political-military dialogue which, to varying degrees amongst the Member States, had been a national preserve. The acclimatisation to Brussels between the capitals and the Brussels based bodies has been rapid – and of necessity, given the demands being made upon the EU for a variety of civilian, police and military crisis management tasks. There seems to be little sign of the demand abating and, if anything, the political-military dialogue will become more important as the EU assumes responsibility for more ambitious crisis management tasks, such as the EU follow-on to NATO's SFOR in Bosnia Herzegovina (*Operation Althea*).

Change and adaptation is evident not only within Brussels but between the crisis management bodies in Brussels and the national capitals, with a far greater flow of information between the respective locations. In this regard the role of the European Correspondents has become more important since they provide the primarily liaison between the COPS and the national ministries. The flow of information is very much two way, with advice and instructions being sent to the Permanent Representations, but also extensive de-briefing for the national administrations. It is also worth noting that the exchange of information occurs at different levels but it is ultimately between the political directors of the respective Foreign Ministries and the COPS Ambassadors; since the COPS can meet in rather the 'old' PoCo format (i.e. political directors) and now the 'deputy' level (the COPS Ambassadors) there is a vested interest in a regular exchange of information and making sure that the COPS remains an effective actor.

83. For instance, the EU Military Committee Working Group has a permanent elected chair, currently Major General Bernd S. Lubenik.

The relationship between the Political Directors and the COPS gives rise to the issue of balance between dependence on the national capitals and some degree of autonomy. This is naturally a delicate balance and will vary from one Member State to another. The exercise of too much control by the Political Directors will naturally stymie the ability of COPS to reach consensus, while the emergence of the COPS as an influential actor in its own right may be resisted in some quarters. The complex relations between the national capitals and COPS leads in some cases to wider margins of manoeuvre than others, but the need for consensus will tend to reflect whatever constraints exist. There may also be some internal reasons within the Permanent Representations to make sure that the 'junior' COPS Ambassador remains in that status compared to the Permanent Representatives who generally enjoy more influence and margin of manoeuvre. The presence of national diplomats in the Policy Unit has had a similar effect of increasing the visibility and importance of CFSP in national ministries and the career profiles of diplomats. With the growth of ESDP the apparent impermeability of Foreign Ministries in the defence and security areas has also been gradually eroded as the Member States become more involved with European-level diplomacy and practice, albeit in an intergovernmental framework.

It is also essential that as COPS evolves in its crisis management role, so too must its relations (and those of other new institutions) with the Commission. The key to effective crisis management rests upon the coordination of the Commission's crisis prevention capabilities with CFSP's evolving crisis management competences. The crisis management operations of 2003-4 have illustrated that most crises in which the EU may play a role are likely to be multidimensional, quite possibly involving civilian, police and military aspects. This also gives rise to the problem of where civilian operations become police ones, as well as when police operations become military ones, or vice versa.

The future of the COPS depends very much upon whether the institutional and practical issues outlined above can be effectively addressed. It also depends critically upon COPS finding its institutional voice in the new external relations arrangements that may arise as a result of the adoption of the constitutional treaty.⁸⁴ With this in mind the final section will examine the possible role of the COPS in the context of the constitutional treaty.

84. Even if the constitutional treaty is not adopted, following the referenda processes in 9-10 EU Member States, there remains the possibility of many of the innovations in external relations outlined in the constitutional treaty being adopted by intergovernmental agreement. The decision to create the European Defence Agency by the end of 2004 is one such example.

The Future of the Political and Security Committee

The Convention on the Future of Europe devoted a good deal of energy to discussing ways in which the operation and conduct of EU external relations could be made more effective. Two working groups, on external action and defence respectively, were responsible for the main recommendations in the external relations area. The main changes involve the creation of a Union Minister for Foreign Affairs to be assisted by a European External Action Service, in effect dual-hatting the current HR/SG and the Commissioner for External Relations, the appointment of a President of the European Council (with some external relations competences), the formation of a Foreign Affairs Council, thus splitting the old 'external relations' component from the General Affairs Council, and the adoption of a number of flexibility or cooperation clauses pertaining to crisis management and defence. However, on COPS specifically relatively little changed; given the somewhat ambiguous institutional role of the COPS, this is perhaps a pity. Indeed, far from clarifying the role of the COPS, the constitutional treaty raises fresh questions.

The old stipulations regarding COPS are reproduced almost verbatim in the constitutional treaty, including those pertaining to relations between the COPS and COREPER.⁸⁵ The COPS is mentioned four times in the constitution and the only significant new responsibilities for the COPS relate to the implementation of the Solidarity Clause which is activated if a signatory is 'victim to a terrorist attack or a natural or man-made disaster' where other Member States 'shall assist it at the request of its political authorities'.⁸⁶ In this case the 'Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy' and a 'Standing Committee on internal security which shall, if necessary, issue joint opinions'.⁸⁷ This raises a number of issues, including the composition of the Standing Committee on internal security and the consultation mechanisms that might apply, as well as the areas of competence covered by 'internal security' and those that may fall within the external areas. The possibility of issuing joint opinions is a somewhat surprising innovation and one that may appear to dilute the COPS's role as the 'linchpin' of EU crisis management.

The Dutch Presidency, in the latter half of 2004, advocated that in advance of the ratification of the constitutional treaty, preparation should proceed for the establishment of the standing committee. Although it may have been assumed that this is a reference to the Article 36 Committee in the JHA area (created by the European Council in Rhodes in December 1998), the committee apparently goes beyond this since the Presidency proposes that until the committee is constituted, that there should be six-monthly meetings of the chairs of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), Article 36 Committee and representatives of the Commission, Europol, the European Border Agency (yet to be formally set up), the Police Chiefs' Task Force (which has no legal status), the Counter-Terrorism Group and a working group on "internal crisis management" to be established.⁸⁸ Presumably, a

85. *Treaty establishing a Constitution for Europe*, CIG87/04, Brussels, 6 August 2004. Under the constitutional treaty Article 25 TEU appears as Article III-307 (1) and Article 207 TEC as Article III-344.

86. CIG 87/04, Article I-43 and III-329. Following the Madrid bombings of 11 March 2004, the Solidarity Clause was effectively implemented by the European Council in, *Declaration on Combating Terrorism*, Brussels, 25 March 2004, at http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/79637.pdf.

87. Article III-326 (2). The standing committee on internal security is referred to in Article III-261 where mention is made that, 'A standing committee shall be set up within the Council to ensure that operational cooperation on internal security is promoted and strengthened within the Union'.

88. Council of the European Union, *Internal Security Committee*, 12688/04, 22 September 2004.

range of follow-on measures are foreseeable including the creation of a central coordinating ‘ministry’ on internal EU security issues as well as the possible appointment of a ‘minister’ in this area.

The creation of an Internal Security Committee has many attractions, not the least of which is coordination and the efficient use of existing resources. The precise delineation of areas of internal and external security will presumably demand close coordination between the responsible bodies since many areas, such as terrorism, the struggle against WMD proliferation or organized crime, will have many shared dimensions.

A further area of ambiguity is the role of the European External Action Service (EEAS) which shall assist the UMFA.⁸⁹ The precise composition of the EEAS is unclear, beyond the stipulation that it shall be constituted from ‘relevant departments’ of the Commission and the Council Secretariat, as well as national diplomats seconded from the Member States. The emergence of a putative European *corps diplomatique* is a potentially far-reaching and positive development; however setting up the Service will be tricky and will demand cooperation amongst institutions that have proven turf conscious in the past. As with other external relations bodies, the exact relationship of the EEAS to the COPS is unclear. In part this is due to the UMFA himself whose exact mandate has to be spelled out, especially with regard to his new Commission duties. Several scenarios may be possible.

One scenario is that the COPS may be less relevant in the new structures. This might come about as a result of the appointment of the UMFA, who chairs the Foreign Affairs Committee which, in turn, is outside the rotating Presidency that applies to other Council formats. This raises the possibility that the Foreign Ministers, relieved of some of the burdens of horizontal affairs under the old General Affairs and External Relations Council, may have more time to involve themselves in EU external relations. The presence of a direct European counterpart ‘minister’ may also encourage this process. As a result, the dialogue may centre more around the Foreign Affairs Council and COREPER rather than the COPS. The COPS role in crisis management would presumably remain important, but the presence of the Commission in the EEAS may lead to a more prominent role at the expense of the COPS, especially as budgetary questions will inevitably move to the fore as the EU undertakes more ambitious and possibly long-term missions. As indicated above, the possibility of other senior bodies emerging in other areas of security may also challenge the role of the COPS as the ‘linchpin of crisis management’.

The second scenario is that the COPS will find its niche in the new institutions and thrive. Contrary to the arguments above, the considerable burdens and pressures that will fall on the shoulders of the UMFA and, in all likelihood, a rather modest EEAS will actually increase the importance of the COPS. In this scenario COPS, which is used to acting collegially and looking for consensus, may actually prove of considerable value to the UMFA who may not wish to crowd his agenda with items that are unlikely to have a reasonable chance of support amongst the Member States. It is also unclear whether the division of the old General Affairs and External Relations Council into the General Affairs Council and the Foreign Affairs Council will actually diminish the burden on the Foreign Minister in all cases since their presence in the General Affairs Council may be required.⁹⁰ The possibility of an enhanced Commission role need not be a challenge to the COPS either, especially given the role played by the Commission representative in the COPS thus far. In all likelihood the Commission role will remain contextual, in the sense that they will inject Community perspectives into the COPS’s deliberations. Similarly, the emergence of other security-related bodies, such as a Standing Committee on internal security, may also prove of benefit to the COPS as a means of enhancing dialogue and perhaps even to burden share.

The presence in the constitutional treaty of a variety of different forms of cooperation may imply that the COPS will have to meet in different formats.⁹¹ For instance, in the case of permanent structured cooperation the constitutional treaty is clear that, ‘Only members of the Council representing the partic-

89. CIG 87/04, Article III-296 (3).

90. This is essentially a decision determined by the individual Member States. In some instances it may be more appropriate for the country in question to be represented by the Europe Minister in the General Affairs Council, while in others it may be the Foreign Minister or even another minister.

91. The Council may ‘entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union’s values and serve its interests’ (Article I-41 (5)). Those Member States ‘whose military capabilities fulfil higher criteria’ and which have made commitments to one another with a view to ‘the most demanding missions’ shall establish permanent structured cooperation (Article I-41(6)). Finally, enhanced cooperation is possible between Member States who wish to establish it (Article I-43, III-419 (2) and III-420 (2)).

ipating Member States shall take part in the vote' *in the Council*, but this then leaves the question of how any relevant COPS role should be undertaken. Presumably, the specification regarding the vote would not apply to COPS or other deliberations, as indeed is the case already in other areas of crisis management.

A number of suggestions for reforming decision-making in external relations have also surfaced from the academic community, again with potential knock-on effects for COPS. One intriguing suggestion is that the EU could consider some form of Security Council which would give the Commission, France, Germany and the United Kingdom permanent seats.⁹² The presence of the Commission is essential, given the close linkage between various forms of aid or economic assistance programmes and the crisis management elements, in addressing many crises. A number of smaller countries would then rotate (with total membership of no more than ten). Naturally the period of membership for rotation, and how rotation would work, would be the subject of careful negotiation (presumably balancing larger with small state interests, north-south/west-east interests and other factors).

The Security Council would be a 'steering board' between the Council and the Union Minister for Foreign Affairs and would assist in consensus-building within the EU, execute guidelines and implement decisions. Decisions would still have to be made at twenty-five, for this is essential for legitimacy, but the Security Council would provide a centralised location for consensus building and oversight as well as providing a bridging role. The probability of a decision being knocked down at twenty-five, if there is known support from the Security Council, would be lessened when compared to the current system. The benefit of such a council is that it would harness the *directoire*, it would allow all to play a role and be stakeholders and encourage all parties to work within the established structures instead of working outside

The obvious objection to the scheme is that it formalises a differentiation between members which some, especially the newer members, may object to on the grounds that it enshrines dominance in foreign and security policy. From this perspective it would be a bitter historical injustice if the UN Charter imposed a Security Council with five permanent members following a major war, while the collapse of the Cold War bilateral international system without war led to another form of superiority. Aside from potentially uncomfortable historical resonance, the Council may also be attacked on the grounds that it still does not address the fundamental difficulty of how to make decisions at twenty-five. It could also be argued that the existing decision-making structures aim to foster consensus and that, even with some form of Security Council, there are few formal mechanisms to encourage the "Big Three" to work within the CFSP structures, just as there are no formal mechanisms to force a larger member state to assume the considerable obligations assumed under a lead nation operation like *Artemis*.

The extent to which any of the new institutions will thrive, or adaptations work, depends very much upon the emergence of a European security culture in Brussels and, just as importantly, in the national capitals. The COPS will in this regard be a critical test of the extent to which there is interest in fostering a European security culture. The future influence of the COPS depends in part upon the ability of the committee, along with the EUMC, to establish closer relations with their NATO counterparts and to develop criteria for complementarities, as well as agreement on when autonomous action may be appropriate. It may also depend upon the adoption of a more creative approach to the interminable NATO-EU duplication debate since it is apparent that there is a legitimate need for the duplication of some assets. The COPS could steer the debate into an examination of *necessary* duplication.

In time, COPS may also need decision-making powers that are comparable to those of the North Atlantic Council, NATO's senior body in its civilian administration. The evolution of COPS may also be facilitated by the creation of a new variant of the Council meeting as EU Defence Ministers and not only as Foreign Ministers in the Foreign Affairs Council format.

92. See Hans-Christian Hagman, 'European Crisis Management and Defence: The Search for Capabilities', *Adelphi Paper* 353, (International Institute for Strategic Studies), pp. 80-100, and Steven Everts and Antonio Missiroli, 'To claim a global role, the EU needs its own security council', *International Herald Tribune*, 10 March 2004.

Conclusions

This study has attempted to show the evolution of the PoCo into its current form, COPS, as well as to consider the challenges that may lie ahead for the committee. At the outset it was mentioned that the aspiration was that this may also contribute to the generally under-researched area of higher committees in the EU.

It is easy to dismiss the PoCo as somewhat ineffectual. Its relatively infrequent meetings and difficult relations with COREPER often result in it being portrayed as not only somewhat ineffectual but problematic. Yet, this study has attempted to show that the main contribution of PoCo lies in the very fact of its existence and its periodic meetings. The practice of senior Foreign Ministry officials meeting together to discuss common concerns was to slowly develop into a collegial exchange and, more importantly, contributed to the development of a European reflex in European external relations. Even if the superficial impression is that the committee reinforced the intergovernmental identity of CFSP, its role was more that of safeguarding common interests through the committee's ability to deliver opinions to the Council, to monitor the international situation and the implementation of agreed policies.

The rapid development of CFSP and ESDP led to the development of COPS – a more visible and influential body than the PoCo, but one that is nonetheless built upon its experiences. The more recent advent of crisis management responsibilities has made the PSC an even more influential body. There are though a number of challenges that remain. The collegial nature of COPS meetings was already stretched at fifteen, with ten additional members (and more on the horizon) adaptations have been necessary. The increased demands being made upon the national COPS representatives has heightened the importance of effective delegation, assistance from the Secretariat and the Nicolaidis group. There would appear to be the need for further discrimination regarding what should occupy the individual COPS representatives' time.

The relations between COPS and other significant external relations actors, such as COREPER, have generally been exaggerated. But, this does not mean that such concerns should be totally dismissed, particularly as the newer Member States learn the complex workings of EU external relations. A number of fresh challenges await COPS (and other institutions) as a result of the treaty establishing a constitution for Europe. Amongst the issues that may have to be faced, in the event of the constitution being adopted or aspects thereof by consensus, will be the relations between COPS and the Union Minister for Foreign Affairs, those between COPS the European External Action Service as well as those between COPS and the standing committee on internal security.

Finally, the crisis management aspects have placed the committee as the 'linchpin' of the Union's efforts in this area. The demands made upon the EU in this relatively new area for the Union are likely to increase, particularly after the acclaim surrounding the first (modest) operations. This will again heighten the importance of the role of COPS. As the EU mulls over the lessons from the first few crisis management operations, based on the conclusions drawn by COPS, it can only be hoped that the committee can contribute to a decrease in the still worrying gap between rhetoric and resources; their role as national representatives, but operating in a European environment, gives them an influential position, both at present and into the future.