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From Amsterdam to Kosovo: Lessons for the future of CFSP*

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Executive Summary

Although the full effects of the Kosovo imbroglio will not be evident for some time to come and the Amsterdam Treaty has only just entered into effect, there is nevertheless a need to focus upon the extent to which the treaty's provisions might help the EU and other associated organisations address future crises appropriately. The areas in which the Amsterdam Treaty's provisions may prove to be inadequate, and there would appear to be many, also suggest the need to move beyond the largely paper security structures in Europe. Kosovo will have one of two effects; either it will rejuvenate the Common Foreign and Security Policy (CFSP) and give practical effect to a common defence policy and common defence, or it will leave the security of the region largely in the hands of the US with all of the benefits and risks that this applies. The former will involve a change in approach to CFSP and a willingness to invest in appropriate military assets to address the causes and effects of primarily intra-state conflict. The latter will continue the patterns established during the cold war whereby the (west) Europeans rely heavily upon the US for initiative, leadership, and key military hardware. Kosovo marks a watershed in the sense that its effects may well make or break the CFSP.

Kosovo and the challenge to CFSP

The problems facing the Common Foreign and Security Policy (CFSP) are part of a wider international challenge facing all security-oriented organisations. These changes are best reflected in the fact that in 1991 all the 30 major conflicts that were being waged were all intra-state conflicts with the exception of the Gulf War. By 1997 there were 25 major armed conflicts throughout the world.¹ Again, all but one of the conflicts was internal (the exception being the dispute between India and Pakistan) and concerned the struggle for control over the government or the territory of a state and often both.² Intra-state conflict or "wars of the third kind"³ pose a fundamental challenge to global security. In designing responses a delicate balance must be reached between the primary elements which give the international system structure, namely sovereignty and statehood, as well as the moral and legal obligation to observe and uphold human rights and fundamental dignities. Although the question of whether to intervene in a nominally sovereign state on humanitarian grounds is a theme that was not new with Kosovo, the key issues have been put into

stark relief by events in Kosovo. As Dominique Moisi observed, Serbia and Kosovo are a "microcosm of our post-cold war world" and thus "the events taking place there reflected the changing clout of the various international actors, the rules of engagement in a global age, and offer a preview of what modern warfare might become."⁴

With the lessons from Bosnia fresh in mind, the pre-Amsterdam summit IGC reflected the desire to enhance CFSP but divisions prevailed and the basic character of CFSP changed little from the Maastricht Treaty. But unlike Bosnia, which confronted a number of organisations (NATO, OSCE and the WEU) with a crisis while they were in the midst of making the transition from cold war organisations into effective post-cold war actors, Kosovo had been a crisis in the making for a long time. Ironically, the slide to chaos was aided and abetted by the settlement reached in Bosnia.

Background to the Kosovo Crisis

Kosovo is intimately connected in the Serb mind with the cradle of Serbian culture and to an immensely long history of settlement in the minds of the Albanians. The tales spun around the defeat of Prince Lazar, a legendary Serb figure, by the Turks at Kosovo Polje in 1389 and the subsequent five hundred years of Turkish repression is central to Serb legends. The Albanian claim to Kosovo is based on their descent from the Illyrians who were believed to occupy the Balkans before the Romans and 1,000 years prior to the Slavs. The vying histories and myths have not only fuelled the current crisis but will also pose a formidable challenge to any post-crisis settlement.

The first close contacts were established under Ottoman domination when ethnic Albanians settled en masse in Kosovo. This coincided with the Serb exodus which increased after a failed uprising in 1689. The ethnic Albanians who settled in Kosovo were distinguished from other Balkan inhabitants due to the fact that by the 18th century most had converted to Islam. The success and prominence of the Albanian inhabitants was thus linked to the process of Islamisation, as were relations with the Slav neighbours. By the 19th century however the main distinctions between the Albanians and Serbs centred on contrasting political aspiration; the Serbs desired statehood while the Albanians identified with the Ottoman Empire. In 1878 prominent Albanian leaders established the Albanian League in Prizren (Kosovo) with the objective of unifying all Albanian peoples in an autonomous province with in

* *Un bref résumé de cet article en français figure à la fin.*

the Ottoman Empire.

Kosovo, according to Serb history, was liberated from Turkish rule in the First Balkan War of 1912. In 1918 Kosovo became part of Yugoslavia if only by virtue of Serbia's reconquest of the territory in 1912.

The Serb army (with its Montenegrin ally) then attempted to consolidate their hold on Kosovo by expelling Turks, Muslims and Albanians. Following Austria's insistence, Serbia and Montenegro surrendered part of their territory to the new state of Albania. The interwar rivalries were only a symptom of the deep Serb enmity, as Aleksa Djilas points out, rooted in "centuries of discrimination against the Serbian Orthodox Church and oppression of Serb peasants by Muslim Albanian lords and their followers."⁵

Greater Albania was established in 1941-44 with Axis support whereby Kosovo was annexed to rump Albania. Many Albanians gave support to the Axis forces while most Serbs joined the Chetnik groups. With the expulsion from Yugoslavia of German forces at the end of World War II, fighting immediately erupted between Albanian and Yugoslav forces for the control of Kosovo. Mass protests followed periodically with more overt demands for self-rule appearing in 1968 but it was not until 1974 that the new Yugoslav constitution granted Kosovo autonomy as a "constituent element of the federation." Under Tito, Kosovo officially remained a province of Serbia. Albanians in Kosovo were however dissatisfied with being only a "nationality" by which they were accorded only autonomy and not the status of a republic within the Yugoslav federation (as say applied to Croats and Serbs). Tito held together the loose polity called Yugoslavia but after his death in 1980 students in Kosovo began to call for independence. Serbs however also had reason for concern since under Tito around 20 percent of Serbs in Serbia fell outside Belgrade's jurisdiction (namely, those living in Kosovo and Vojvodina). After major Albanian riots martial law was imposed in 1981. The Albanian Communist Party branded the rioters counter revolutionaries while the Serb Communist Party preferred to portray the insurrection as an ethnic threat.

With Slobodan Milošević's accession to power in 1987, the deliberate dismantling of the fragile consensual political structures of the Tito years began. Misha Glenny noted that under Tito "the system could only function with two absolute political taboos: overt nationalism and the active participation of the masses in politics."⁶ Milošević was to upset both at the 1987 Central Committee plenum held, by no coincidence, at Kosovo Polje.⁷ A clash of Serb demonstrators with the (largely Albanian) police outside the plenum led Milošević to state that, "No one should beat you." The Kosovo Serb leader, Miroslav Soljević (who was in fact from Niš) observed that "This sentence enthroned him as a Tsar."⁸ In March 1989, largely at the behest of the agitated Serbs in Kosovo, Milošević established direct rule over Kosovo and, in the process, stripped the province of its autonomy. The imposition of martial law resulted in

many Albanians being pushed out of the police, education and other public positions as a matter of federal policy. In reaction, Albanian MP's in the provincial parliament declared Kosovo to be an independent entity within Yugoslavia in July 1990. Harassment and discrimination was mutual between the Kosovo Albanian and Serb communities and between 1966 and 1989 around 130,000 Serbs left the province.⁹

The dissolution of the Federal Republic in 1991 with Croatia and Slovenia's declarations of independence led the Democratic League of Kosova (LDK) to elect its own parliament in May 1992 and to establish a Republic with Ibrahim Rugova as president. "Independence" however meant the creation by the LDK of a parallel Albanian government, education and health systems accompanied by calls for the restoration of Kosovo's autonomy. Rugova stressed unprincipled non-violent resistance in the pursuit of the LDK's goals. His stance was not however aimed at establishing a dialogue with his adversaries but in soliciting the support of NATO for the plight of the Albanian Kosovars in the hope that this would lead to military intervention and support for Kosovo's independence.

The recognition of rump Yugoslavia by a number of European countries and the notable omission of Kosovo from the Badinter Commission's findings (which recognised self-determination of federal units but not of the communities within them), led to the impression that a double standard was being applied – one for Bosnia and another for Kosovo. Efforts to monitor concerns about human rights in Kosovo, Sanjak and Vojvodina were launched in September 1992 when the OSCE dispatched three monitoring missions. The monitoring missions, along with those of the EC, were portrayed as interference in the internal affairs of the state by Milošević but accepted by the federal Presidency of Milan Panić. However, Panić's departure from office concluded the OSCE presence in June 1993, one month after the first armed attack against Serb police by the UÇK (*Ushtria Çlirimtare e Kosoves* or Kosovo Liberation Army).¹⁰

Rugova insisted that any negotiations on Kosovo's future should be carried out on "neutral soil" and in the presence of international mediators. This had the distinct attraction from the Kosovo Albanian perspective of internationalising the dispute while the Serbs saw this as an unwelcome avenue. However, the patience of some of the more militant Albanians ran out as a result of the 1995 Dayton Peace Accords, which ended the war in Bosnia but at cost to Kosovo which was scarcely mentioned; nor was Milošević required to address the deteriorating human rights situation in Kosovo. The main western actors excluded Kosovo on the grounds that they wished to "avoid conflict with the Serbian government, an important player in the signature and implementation of peace agreements in Bosnia, which could hamper political and economic reform and the current process of democratization."¹¹ Even seasoned observers, like David Owen, did not apparently think of Kosovo as the touchpaper of future conflict. He

commented after Dayton that "... as 1996 started at least the wars of 1991-95 were over, and there was a prospect of peace for the years ahead."¹²

In post-Dayton Kosovo Rugova's support weakened with the emergence of the anticommunist, Adem Demaçi of the Committee for the Defence of Human Rights and Freedom and more ominously, the full emergence in February 1996 of the UÇK as a potentially significant actor. The UÇK's funding base improved with a three percent levy on all earnings abroad which were diverted to the Homeland Calling Fund.¹³ However, the number of Kosovo Albanians working in other parts of Europe began to decrease post-Dayton as a series of repatriation agreements were signed between Belgrade and Germany, Sweden and Switzerland, amongst others. The near collapse of Albania in 1997 boosted Kosovo's bid for independence through more violent means and moved it further away from Rugova's nominally peaceable methods. As Chris Hedges has commented, "A huge number of disenchanted and angry youth who saw no benefits from Rugova's rule and who, unlike their parents, did not speak Serbo-Croatian, began giving up on multiethnicity."¹⁴ The UÇK, which had hitherto been a shadowy and not especially well organised or equipped organisation, now had the means to provide for an armed struggle with an estimated 30,000 automatic weapons finding their way into Kosovo at bargain prices. On 20 November 1997 Belgrade rejected demands from France and Germany to negotiate a special statute for Kosovo. Washington ratcheted up the pressure on 9 December 1997 to prolong the sanctions against Yugoslavia by a year. Between February 26 and 1 March 1998 attacks on Serb paramilitary targets saw, in response, destructive and indiscriminate attacks on suspected UÇK strongholds in the (central) Drenica region. By June several thousand refugees had taken to the hills in search of safety.

The rapidly deteriorating situation in Kosovo continued to be subordinated to the wider US and EU objectives in the region that were focussed on ensuring Milošević's support for the ouster of the Radovan Karadžić's hard-line leadership in Republika Srpska. In return for Milošević's support a number of diplomatic concessions were made including the provision for direct charter flights to the US by Yugoslavia's national airline, JAT, and the establishment of a consulate by the Federal Republic of Yugoslavia in the US. During a visit to Belgrade in February 1998 the US Special Representative, Robert Gelbard, pronounced that "[The UÇK] is without any question a terrorist group. I refuse to accept any kind of excuses."¹⁵ Having unambiguously branded the UÇK as "terrorists" (and bearing in mind the US's own tough and uncompromising stance on the issue) the pace of Serb attacks on alleged UÇK strongholds was stepped up. Both the US and the EU showed their complete incapacity for any type of conflict prevention, preferring instead reactive conflict management as matters deteriorated. The only serious effort in this regard was the work of the Sant'Egidio

Order to reach an education agreement for a revived school system that would build confidence in Kosovo.

Two factors eventually prompted a response by the "west," led by Richard Holbrooke negotiating on behalf of the American Secretary of State. First, the ever prying lenses of the television cameras and photojournalists transmitted images and reports of the increasingly desperate conditions facing the Albanian Kosovo population in the face of increasing Serb strikes against anything that was allegedly a UÇK target and severe weather. By March 1998 US Secretary of State, Madeleine Albright, was urging action against the regime in Belgrade based on concerns about the human rights situation but also the potential for regional stability.¹⁷ Second, Kosovo was not alone in having a sizeable Albanian majority. The spread of conflict to adjacent Macedonia, which is around 23 percent Albanian, was a clear possibility – especially since UNPREDEP's mandate was to expire in the not too distant future.¹⁸ A push for a greater Albania could also additionally pull in other surrounding countries and thus unravel the precarious peace secured by the Dayton accords.

Diplomatic efforts to resolve the growing crisis were centred on the reconvened Contact Group that had addressed the Bosnian crisis. The six-nation (France, Germany, Italy, Russia, the UK and the US) group condemned both the "use of excessive force" by the Serb paramilitary forces as well as "terrorist actions by the Kosovo Liberation Army."¹⁹ UN Security Resolution 1160 of 31 March 1998 contained much the same wording but additionally called for a ban on the sale of all arms and related *matériel* to the Federal Republic of Yugoslavia (including Kosovo) and threatened "consideration of further measures" if the resolution was met with non-compliance.²⁰ The EU (British) Presidency expressed its "deep concern" at the violent incidents in Kosovo in early March and called as a matter of urgency for "the authorities in Belgrade and the leaders of the Kosovar Albanian community to resolve the situation peacefully through a full and constructive dialogue."²¹

Security Council Resolution 1160 was reinforced in September by a further resolution, 1199, which contained a more specific list of demands. These included the cessation of all action by the security forces affecting the civilian population; the withdrawal of security units used for civilian repression; continuous and effective international monitoring by the European Community Monitoring Mission (ECMM) and, in co-operation with the UNHCR and ICRC, to facilitate the unimpeded return of refugees and displaced persons.²² Resolution 1199 was followed a day later by the issuance of a NATO ACTWARN.²³ On 24 October Security Council Resolution 1203 affirmed that "the unresolved situation in Kosovo, Federal Republic of Yugoslavia, constitutes a continuing threat to the peace and security of the region." Acting under Chapter VII of the UN Charter, the Security Council demanded that the FRY comply fully with the resolutions 1160 and 1199.²⁴ These

resolutions would later form part of the controversial legal basis for the NATO air strikes against Serb forces in Kosovo.

In May 1998 the North Atlantic Council described the situation in Kosovo as “unacceptable.” In June the foreign ministers of the EU, along with the US, imposed a ban on new investment in Serbia and froze all Serb foreign assets. Under international pressure the first ever Milošević-Rugova meeting was held on 15 May to discuss the province’s future. By this time however both parties were locked into a spiral of violence. In July a Kosovo Diplomatic Observer Mission, under the Contact Group, the OSCE, and the EU, was given prime responsibility for monitoring human rights in the province. The International Criminal Tribunal for Former Yugoslavia was also given full authority to investigate and prosecute violations in Kosovo.

Aside from diplomatic efforts and vague consideration of “further action,” it is not clear what the US or its European partners could do at this juncture. The threat of military action was however indicated on 15 June when NATO mounted a short-notice air exercise, *Determined Falcon*.²⁵ William Cohen, US Secretary of Defense, asserted that this proved that NATO was “united in its commitment to seek a ceasefire ... and demonstrated its capacity to rapidly mobilise some very significant lethal capacity.” Seemingly unperturbed by the pressure, Serb forces launched a series of large offensives against UÇK strongholds and some 200,000 Albanians were dislodged from villages and towns in central and south-west Kosovo.²⁷ Further consideration of military intervention was contentious, at best. Armed intervention, even for humanitarian goals, ran the risk of being portrayed as aiding “terrorists” engaged in an armed struggle within a sovereign state. Russia, as a member of the Contact Group, was opposed to any consideration of military intervention from the outset. Washington was however able to gain sufficient consensus amongst the NATO allies to threaten Milošević with airstrikes in the event of continued non-compliance with Security Council Resolution 1199. Privately, Denmark, Germany, Greece, Italy and Spain all expressed reservations about whether the resolutions constituted a legal mandate for airstrikes. Unity amongst the NATO allies was therefore built around the expectation that Milošević would back down and that the use of force would not be necessary.

On 14 October Milošević, under the threat of imminent NATO air strikes, agreed to a settlement with Holbrooke. The number of Serb troops and “police” would be reduced to a specified level and the OSCE would provide 2,000 unarmed personnel to verify compliance with the terms of the agreement. The threat of air strikes was only alleviated on 27 October after the Serb forces were reduced to a broadly acceptable level (although behind schedule).²⁸ During the eight months between the beginning of the Serb offensive and the Holbrooke-Milošević agreement, some 750 Kosovo Albanians died and around 250,000 were left homeless.

As the OSCE Kosovo Verification Mission assumed its duties a NATO extraction force arrived in Macedonia with a mandate to protect the OSCE mission should it be threatened and, if need be, to provide safe armed escort for the verifiers out of Kosovo.

In the interim between the October 1998 agreement and the two sets of negotiations at Rambouillet commencing in February 1999, the US Ambassador to Macedonia Christopher Hill, unsuccessfully attempted to negotiate a settlement between the Kosovo Albanians and Belgrade. Holbrooke, having threatened NATO airstrikes in October 1998, forewarned of their use again in the event of no agreement. Milošević decided to resist the threat however and refused the Rambouillet terms. NATO, now forced to make good on its often-postponed threats, began its first air strikes on 24 March. For NATO members the humanitarian crisis in Kosovo had become a matter of the credibility of the Alliance. In an indirect manner, since most NATO members are EU members, the fate of Kosovo was also linked to the future of CFSP. A hugely successful outcome, which seems unlikely, will dampen any need for the strengthening or reform of the second pillar. An unsuccessful or ambiguous outcome (which seems most likely) might create pressure for reform of the CFSP in order to align the EU’s economic importance and influence with that in regional security and defence. It may, alternatively, condemn it to insignificance.

Implications for the CFSP

There are some parallels between the situation that prevailed in Bosnia from 1991 onwards and with those in Kosovo. In the first parallel, diplomacy was deemed to have been largely unsuccessful unless backed by military assets and this dramatically reduced the effectiveness of the EU member states bargaining power. Moreover, in both cases the US was the only power who had the panoply of diplomatic tools to make a real difference. In both instances those responding to the crisis were highly risk adverse which led to heavy reliance on air strikes as a means of bringing the parties to (or back to) the negotiating table. Both crises also threatened to ignite a wider regional struggle. The two crises are also linked, by default, in the failure of the 1995 Dayton Accords to make any provision for Kosovo which, in turn, opened the door for the armed struggle that followed.

As in Bosnia, the role of the EU in the Kosovo crisis was rather minor. A Community Monitoring Mission was established (ECMM), which is currently under Ambassador Horst Hoftoff, and Wolfgang Petritsch was appointed EU Special Envoy. Additionally, since 1996 twenty-two declarations, decisions or Joint Actions have been passed within the CFSP framework relating to Kosovo. The EU took an early lead in applying economic sanctions against Serb assets overseas as well as inbound investment. An embargo on the export of arms to the former Yugoslavia was confirmed on 19 March 1998 as was the moratorium on government-

financed export credit support for trade and investment in Serbia.²⁹ The EU has, on a number of occasions, made clear its terms and conditions for the resumption of normal economic and political relations between Belgrade and the EU capitals.³⁰ In October, the EU adopted a “comprehensive approach” to Kosovo in which the EU pledged its full support for the OSCE and the Kosovo Verification Mission (KVM) and offered, amongst other things, to increase the ECMM contributions to the KVM. In spite of this however it was clear that the EU’s envisaged role was conflict prevention since confidence building, civil society building, and community support for the Education Agreement were specifically mentioned.³¹ The EU additionally called upon the WEU’s Satellite Centre at Torrejon, Spain, to “provide relevant information.”³²

In spite of the fact that the EU Heads of State and Government stressed “the necessity of an active role for the European Union in overcoming the crisis” the envisaged role appears to emphasise *post-conflict* settlement.³³ More specifically the EU leaders agreed upon the main elements of an interim arrangement for Kosovo, to be established directly after the end of conflict. This would include:

- The establishment of an international interim administration which the EU could take over;
- The creation of a police force that reflects the composition of the population of Kosovo;
- The holding of free and fair elections;
- And deployment of international military forces that will guarantee protection for the whole population of Kosovo.

In addition the EU announced EUR 250 million of additional aid for direct humanitarian support and offset support for those hosting the refugees.³⁴ The post-conflict agenda appears to build upon the EU-WEU experience in Bosnia and co-ordination between the two will be assisted by the same country holding simultaneously the Presidencies of the EU and the WEU for the first six months of every year. No matter how well equipped the EU may be to assume the tasks outlined, the fundamental questions remain of how one gets to the post-conflict stage and whether the EU is equipped to assist in this regard?

It is difficult to ascertain what impact, if any, the EU had or might yet have in the Kosovo crisis. The emerging Anglo-French leadership in European defence may warrant grounds for cautious optimism as might the modest contributions to *Operation Allied Force* by Germany.³⁵ It is however painfully apparent that it is completely beyond the EU’s capabilities to mount military operations of the size and nature witnessed from March onwards without substantial US assistance. Arguably, Washington’s political leadership may have enhanced the image of EU coherence (or at least the European members of NATO) when in fact a good deal less would have been realised if the European allies had been left to their own devices. Jörg Monar noted that the

difficulties associated with getting fifteen members to arrive “at substantial and timely decisions within the intergovernmental framework of the “old” Title V of the [Maastricht Treaty] have been notorious.”³⁶ Even relatively minor issues, such as the debate about whether to deny JAT landing rights, became immensely controversial.

On 15-16 June 1998, the EU at the Cardiff Summit took an agreement in principle, to ban all flights from and to the Federal Republic of Yugoslavia. Subsequently a common position on this was adopted at a General Affairs Council meeting on 29 June. The agreed procedures were not however enforced until 7 September due to political resistance from Greece (with its pro-Yugoslav sympathies) and Britain (who claimed legal complications). The latter in particular came under severe fire for claiming that it was obliged to give a year’s notice under the terms and conditions of the existing bilateral agreement. The JAT dispute illustrates not only the difficulties of reaching consensus but in implementing positions once adopted.

The difficulties associated with agreeing upon a course of action amongst the fifteen EU members are well known. Although the Amsterdam Treaty was not in force at the commencement of *Operation Allied Force*, it is worth pondering whether the modifications to the CFSP introduced by the treaty will improve the EU’s effectiveness in Kosovo-type scenarios.

Enhancing decision making?

In spite of the emphasis in the Amsterdam Treaty upon the security of *the Union* (as opposed to its Member States), the essential tools for accomplishing this remains resolutely intergovernmental. The possibility of one Member State effectively blocking the CFSP had been recognised by the 1996 IGC. Thus, the introduction of modified voting rules and the so-called “constructive abstention” practice was designed to stop such logjams.³⁷ Under the new procedures any member of the Council may qualify its abstention with a formal declaration. They shall then be obliged to refrain from any action likely to conflict with that of the Union and to respect the Union’s position.

The abstention mechanism may seem like a welcome development especially given the known differences on defence questions within the Union held by, for example, the neutral or non-aligned members (Austria, Finland, Ireland and Sweden) or the special position of Denmark on defence issues. There are however potential pitfalls. For example, the mechanism for abstention, which involves a formal declaration, poses an awkward dilemma for those who may wish to support a given initiative in the face of declared objections. Abstention also makes a mockery of the “spirit of loyalty and mutual solidarity” which is supposed to pervade CFSP.³⁸ Abstention may also provide a conduit for avoidance of financial obligations.

The question of qualified majority voting (QMV) was one of the most sensitive issues debated at the 1996

IGC since it went right to the question of how supranational or intergovernmental the CFSP should be. The existing stipulations on QMV, laid out in Article J.13 of the Maastricht Treaty, left it to the Council “when adopting a joint action and at any stage in its development” to define “those matters on which decisions are to be taken by qualified majority vote.” The Amsterdam treaty generally upholds the unanimity principle but specifies that the Council shall act by QMV when:

- Adopting joint actions, common positions or taking any other decisions on the basis of a common strategy;
- Adopting any decision implementing a joint action or a common position;
- QMV shall not apply to decisions having military or defence implications.

However, if a member declares that “for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority,” a vote shall not be taken.³⁹ The Council may, in this event, decide (by qualified majority) that the matter be referred to the European Council who shall decide on the matter unanimously, thus negating much of the point of the modification.

The reference to *common strategy* was a further innovation of the Amsterdam Treaty. Article 13(2) gives the European Council the power to decide on common strategies that set out the “objectives, duration and the means to be made available by the Union and the Member States.” The introduction of common strategies in the Amsterdam Treaty appears to largely replace what had hitherto been joint actions under the Maastricht proceedings. Since common strategies are apparently so comprehensive in their scope, there is apparently little left to be voted upon.⁴⁰

Overall, the decision-making mechanisms introduced by the Amsterdam Treaty goes some way towards the development of majority-based decisions for the first time in the CFSP. Yet the abstention mechanism also strengthens the hand of those exercising the option and might even encourage national-interest driven foreign and security policy as opposed to the “mutual solidarity” sought by the treaty. In practice it seems unlikely that there will not be at least one EU member with a vested or particular interest at stake (as in Greece’s case with Kosovo).

Aside from decision-making modifications, the Amsterdam Treaty also saw the introduction of a number of new institutional structures which could perhaps help with future crises. The suggested structures are however modest and it is unclear whether they will significantly alter the ability of the CFSP to address Kosovo-type crises (and these, it has been argued, promise to be the norm rather than the exception).

Structures to cope with future crises

The crisis in Kosovo emphasised the role of Javier Solana, NATO’s Secretary General, as well as that of SACEUR, General Wesley Clark, while Kofi Anan is the well-known face of the UN. Except for those who follow security events with reasonable attention, the WEU Secretary-General, José Cutileiro, may be less familiar. But who is the public face of CFSP? Kissinger’s famous rhetorical question of to whom he should call when he wanted to talk to Europe, led to President Chirac’s August 1995 advocacy of the need for a Secretary-General (soon dubbed *Monsieur PESC* after the French abbreviation for CFSP) with broad representational and implementing tasks. This was soon watered down, mainly by Britain. What eventually emerged in the Amsterdam Treaty was the new post of High Representative.⁴¹

i) The High Representative: CFSP’s face?

Although the identity of the appointee and the precise functions of the office have yet to emerge with clarity, it nevertheless marks a significant step forward from the prevailing system of trying to make foreign policy by monthly meetings of the national foreign policy personnel.⁴² However, the High Representative will clearly not be a European Minister of Foreign Affairs and it seems most unlikely, given the disparate approaches to foreign and security policy amongst the fifteen members, that any such office will be created in the near future. The relationship between the High Representative and the Presidency is also ambiguous. The High Representative, who is also the Secretary-General of the Council, shall “assist” the Presidency “in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.”⁴³ But, the Presidency “represents” the Union in matters concerning the CFSP, and the Presidency is responsible for the implementation of decisions taken under the CFSP. Much will therefore depend upon how the rotating Presidency interprets the extent of the High Representative’s ability to “assist.”

It is difficult to imagine the High Representative having significant sway in one of the Presidencies of the major members or amongst one of the neutral or non-aligned members (or Denmark) where special considerations apply. There is the potential nevertheless for the High Representative to make a very valuable contribution by providing some continuity to the CFSP and, through the Policy Planning and Early Warning Unit (PPEWU), which shall reside under the High Representative, to make a contribution to a more proactive CFSP.

In light of the Bosnian and Kosovo crises, there are two arguments in favour of the High Representative assuming a fairly broad role with appropriate powers of initiative and response delegated to the office. First, the

Presidency suffers from the inevitable problem of inconsistency based upon the office's rotation every six months (even the Troika mechanism does not overcome this). The High Representative, if appointed for a reasonable period of time, would at least offer the advantage of permitting initiatives to be seen through and allow third party actors to identify with the key CFSP actors for longer than a six month period. Second, the current system of making foreign policy at monthly meetings inevitably makes for a reactive agenda. The constant presence of a High Representative, backed by the PPEWU, could make for a more proactive CFSP. There is the risk though that the High Representative's attempts make a coherent position out of the fractious contributions by the Member States might make for an embarrassing lowest common denominator that says more about the EU's lack of a single voice in CFSP issues than its strengths. It is also unclear whether Washington would prefer to address a High Representative representing the EU when their traditional approach has relied heavily upon individual contacts.

ii) The Policy Planning and Early Warning Unit – from reactive to proactive CFSP?

The need for greater long-term strategies was one of the few points of agreement in the 1996 IGC. Accordingly the outline for a Policy Planning and Early Warning Unit (PPEWU) was included in a declaration attached to the Final Act.⁴⁴ The unit is to be comprised of personnel drawn from the General Secretariat, the Member States, the Commission and the WEU. The responsibilities of the new unit should include:

- Monitoring and analysing developments in areas relevant to the CFSP;
- Providing assessment of the Union's foreign and security policy interests and identifying areas where the CFSP should focus in future;
- Providing timely assessments and early warning of events or situations which may have significant repercussions for the Union's CFSP, including potential political crises; and
- Producing, at the request of either the Council or the Presidency or on its own initiative, argued policy papers to be presented under the responsibility of the Presidency as a contribution to policy formulation in the Council, and which may contain analyses, recommendations and strategies for the CFSP.

The precise composition of the unit remains unclear following the rejection of the proposals forwarded by Jürgen Trunpf, Secretary General of the Council of Ministers. According to one report, "Paris wanted the unit to go considerably further than Trunpf's paper indicated, while other countries claimed it went too far."⁴⁵ Most members would prefer that the PPEWU be a separate unit within the Directorate-General of the Council Secretariat responsible for external relations (thus separate but integrated within the Directorate-General). A minority though, alongside the Commission,

would prefer the PPEWU to be autonomous within the General Secretariat, under the direct line and management of the High Representative.⁴⁶ Although the respective powers of the High Representative, the PPEWU, the Council and the Presidency are all defined in the Amsterdam Treaty, the relations between the constituents remain unclear. The advent of the High Representative and PPEWU could significantly enhance the CFSP's conflict prevention abilities. Parties are more likely to listen to an appointed representative of the EU who is in office for more than six months. The PPEWU, although it promises to be small, is similarly important since conflict prevention rests upon the ability to identify potential trouble spots before they erupt.

The PPEWU could also work closely with monitoring missions which in the past have proved their value in a quiet manner. For instance, the Bosnia ECMM was highly responsive to suggestions from policy makers regarding on the ground feasibility of various options. In conjunction with other observer missions, such as those mounted by the OSCE or the UN, early warning and prevention missions, if appropriately structured, "may go a long way towards overcoming the natural inertia of the international system in responding to incipient violent conflict."⁴⁷ An effective High Representative would hopefully exploit not only the treaty-based enhancements but also other solutions and mechanisms such a monitoring missions.

The above provisions of the Amsterdam Treaty, alongside the revised budgeting rules, represent slight modifications to the Maastricht Treaty in the CFSP area. The effectiveness of these modifications depends very much upon the willingness of the Member States to use the new structures and machinery. However, with Kosovo in mind, those issues relating to the development of the CFSP's defence aspects continue to represent the weakest area of the CFSP and one in which the EU remains largely reliant on its transatlantic partner. If anything, the Amsterdam Treaty has reinforced this tendency.

Providing for Europe's military requirements: is there a need for an autonomous capability?

The crisis in Kosovo demonstrated that Milošević understands the language of diplomacy backed by force. Pre-Amsterdam CFSP certainly lacked the structures and the will to combine diplomacy with the threat or use of credible force. One of the most contentious areas in the EU's 1996 IGC was the issue of the extent to which military means (through the WEU and indirectly NATO) should be fully integrated into the second pillar. The Benelux countries, France, Germany, Italy and Spain were broadly in favour of the WEU's full integration into the EU. Others, most notably Britain, remained staunchly opposed on the grounds that this might dilute the role of NATO while the neutral and non-aligned countries based their opposition on obvious political and constitutional objections. Although there was some progress in defining the WEU's association with the

EU, the overarching question of whether the EU members are willing and able to provide for their own security and defence remained unanswered.

The Amsterdam Treaty continues to reflect the traditional Atlanticist versus Europeanist strains dating back to the ill-fated European Defence Community of the 1950s. Article 17(1) of the treaty states that the WEU is an “integral part of the development of the Union providing the Union with access to an operational capability notably in the context of paragraph 2.” The paragraph referred to shall include “humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking” – these are often called Petersberg Tasks after the WEU Council’s 1992 meeting. The terms “peacekeeping” and “peacemaking” are however subject to many different interpretations and there is no guidance in the treaty, or associated declarations, as to their substance. This may give rise to some important issues, such as whether this includes or excludes “peace enforcement” or other more heavily armed forms of peacekeeping.⁴⁸ The paragraph also formed the basis for an informal division of military tasks between the WEU, with prime responsibility for Petersberg-type tasks, and NATO handling the more muscular aspects such as peace enforcement.

Since the WEU’s *acquis* was not fully integrated into the EU, a number of potentially divisive questions remain regarding the implementation of the Petersberg Tasks. Under the Amsterdam Treaty “all Member States of the Union shall be entitled” to participate in Petersberg Tasks. The Council, in agreement with the WEU, shall adopt “the necessary practical arrangements to allow all Member States contributing to the tasks in question to participate fully and on an equal footing in planning and decision-making in the WEU.” There are, for a start, only ten WEU members while there are fifteen EU members. The five who remain outside the WEU (Austria, Denmark, Finland, Ireland, and Sweden) would presumably not cause any significant problems as long as the operations were clearly presented under the Petersberg banner. It is however worth noting that the WEU, in spite of the Petersberg Tasks, is by treaty a collective defence organisation. More stubborn problems are likely to be encountered if “members” means not only full members but all forms of WEU membership. If for instance Associate Members are entitled to “participate fully and on an equal footing” then the Czech Republic, Hungary, Iceland, Norway, Portugal and Turkey have the right to do so. The failure of the IGC to fully integrate the WEU into the EU also opens up a number of other problems such as how the WEU will modify its internal procedures. There are also confidentiality and security issues to be considered. Furthermore, since the WEU remains an autonomous organisation and it is therefore not reliant upon the CFSP for a mandate to act, there may well be arguments for maintaining the *status quo*.

The WEU assumed added importance in the

Amsterdam Treaty since reference was made to the WEU’s ability to provide the EU with access to an “operational capability.” It was recognised in the interim between the 1991 and 1996 IGCs that there were certain situations where the US would simply not wish to participate in military operations.⁵⁰ The North Atlantic Council developed a design for a nominally Europe-only capability at meetings in Brussels and Berlin in 1994 and 1996 respectively. The provision of “separable but not separate” forces was designed to allow the EU to “avail itself” of the WEU which, under the Amsterdam Treaty, was thus endowed with access to an operational capability. The “operational capability” though rests upon the release of NATO assets to the WEU. However, there are few NATO assets *per se* and they include only a number of commands, communications facilities, and AWACS aircraft – accounting only for around 13,000 personnel. Paradoxically, at the heart of the “Europe only” options the WEU would be reliant upon the US for the provision of certain key assets, such as real-time intelligence, electronic jamming or heavy airlift, to mount a “Europe-only” operation.⁵¹

The WEU, by itself, remains inadequate as a serious military organisation capable of addressing all but the smallest crises. Even the relatively small crisis such as that in 1997 in Albania following the collapse of a government-backed pyramid investment scheme, which in many ways was tailor made to demonstrate the WEU’s new-found political and military capabilities, was a missed opportunity. There have been attempts to develop indigenous European crisis management capabilities, collectively termed Forces Answerable to the WEU (FAWEU), but most of these are “earmarked” military forces that have not actually trained together other than in a limited number of crisis management exercises (CRISEX). The Strasbourg-based Eurocorps is perhaps the notable exception but even here questions have to be raised about the command, intelligence and logistical resources.

In spite of the advances made in the Amsterdam Treaty in defence, the EU fails to be a serious security or defence actor. It is all too apparent that responsibilities in these areas are assumed by NATO and, within the Alliance, by the US. To some, what emerged from the Maastricht and Amsterdam treaties is nothing less than a political construct that actually, through its vague provisions, merely serves the political expediency of the major players and does nothing to actually create a workable European Security and Defence Identity. Philip Gordon dubbed this the “convenient myth” of European security:

France needs to claim a greater role for Europe as political cover to come back into the Alliance; Germany needs to show progress toward European political unification to reassure its elites and to convince its public to accept monetary union; Britain wants to show a strong role for the WEU to forestall calls to give the EU a defense role; and the U.S.

administration needs to be able to claim to Congress and the public that the Europeans are now prepared to shoulder more of the defence burden of transatlantic defense.⁵²

Political expediency does not necessarily make for military solutions. Kosovo has made it all too evident that the European Emperor has very few clothes.

If it ain't broke, don't fix it?

To some, the logical conclusions from Bosnia and perhaps in time to come Kosovo, might be "if it ain't broke, don't fix it." After all, if there is broad recognition of common transatlantic interests and especially those of the US in Europe's security, continued reliance upon US diplomatic and military backing for Kosovo-type scenarios might seem to be the logical course. However, this assumes continued convergence between EU interests and those of the US. It also assumes that the goal of European integration should remain essentially incomplete without one of its (if not *the*) main components. Neither assumption is wholly sustainable.

EU interests have diverged from those of the US on a number of different issues, ranging from specific trade issues to the efficacy of sanctions. There have also been a number of significant differences over the use of military force in Iraq and Libya (where Britain was the only notable backer), the arms embargo in Bosnia, and the use of prolonged air strikes in relation to Kosovo. It should also be noted that the EU's reliance upon the US for initiative condemns the EU to crisis management, which it has been argued, is an area of weakness for the CFSP. In both Bosnia and Kosovo US intervention came late and, once there, it has swamped all other efforts. Moreover, it is unreasonable to expect the US to see a vital national interest wherever an EU member state happens to see one. Interests have diverged and will continue to do so in the future although there will be common ties as well. Transatlantic relations may also be compounded by the EU's frustration at having to stand on the sidelines "allowing the United States to take priority in what is the European security space."⁵³

Throughout the history of European Political Cooperation and its successor, CFSP, there has been implicit and occasionally explicit recognition that European integration will remain incomplete without a security and defence angle. The "Vienna Strategy for Europe," approved by the Council in December 1998, recognised that there is a need to restore the equilibrium to the development of the EU as an economic entity and the Union as a political entity.⁵⁴ Germany, currently holding the EU Presidency, has promised a report to be presented at the Cologne summit on 3-4 June on paths towards a common defence policy. An increased emphasis on the international dimensions of the EU's activities, including CFSP, will not only give much needed balance to its persona but also benefit the Union more generally since the economic aspects of its activities often cannot be separated from the political or security ramifications.

There is an additional reason to question the desirability of the *status quo*. The undoubted military superiority of the US, which serves to emphasise the inadequate nature of most of the EU members' military establishments, has distracted attention from the questionable results of US leadership. Military prowess and the willingness to use it is only useful if it makes a positive contribution to regional or international stability. In this regard the US record is mixed: Haiti remains in a terrible state, Somalia is still crippled by factions and Iraq as belligerent and resistant as ever. Other trouble spots, such as the Great Lakes Region of Africa, Liberia or Sierra Leone, did not merit decisive US attention. Perhaps the uneasy peace in Bosnia is an exception. Kosovo remains in the balance.

The issue of leadership is not merely one that applies to the US administration but also to the American public and whether they are willing to enable their leaders to defend principles and its self-proclaimed status as "greatest nation on earth."⁵⁵ Although there are other hesitant allies in NATO, the preponderance of US force in operations in Kosovo and Yugoslavia means that the American perspective is more important than the rest. This may well prove to be an inadequate way of securing Europe's future stability for two related reasons.

First, reliance upon the US and NATO may well condemn the EU to further crisis management and not move the emphasis to crisis prevention, for which the EU is better suited. Crisis *management* will continue to play to US diplomacy and military strength while crisis *prevention* would capitalise on the EU's greatest asset, which is the promise of future membership or association. Diplomacy and mediation by the EU member states is further hampered by the fact that the US is, as obvious as it sounds, *the US*, complete with all of its historical baggage, national pride and even superiority. The US, in some cases, may not be the best country to head delicate mediatory efforts.

Second, the US is not a good team player. It is a leader. Substantial differences in approach to fundamental issues in European security between the US and the EU (more often than not with Britain siding with the US) cast into doubt the extent to which Alliance aims are really shared. US leadership and forceful diplomacy does have the benefit of engaging at least the key European players but often at the cost of alienating some smaller and potentially important partners. NATO should not be a vehicle for US diplomacy and national interests but should reflect the interests of the nineteen members. However, not all NATO members are EU members and, since NATO's recent expansion, the discrepancy of six members between NATO and the EU have become more noticeable and problematic, as indeed has the difference of five members between the EU and WEU. The damaged credibility of NATO and in particular the lack of resolve and will amongst its members to match aims with risks, should at least dispel the impression that NATO is a panacea for the EU's security.

Although not all challenges will demand a military response, some will. Kosovo has also illustrated that effective diplomacy will sometimes rely on the backing of a visible and effective deterrent. The need for an autonomous European common defence policy and capability has become apparent, first with the crisis in Bosnia, next in Albania and now in Kosovo. Even arch Atlanticists, like Britain, would appear to be shifting towards this realisation.

A Sea Change in Europe's defence and security?

There have been suggestions in the press that the beginning of a fundamental shift in European defence is underway and the Kosovo crisis may well increase the momentum for change.⁵⁶ The key evidence for this is that Britain, a staunch supporter of NATO and the transatlantic component of CFSP, has modified its position on European defence in what could amount to a sea change. The public unveiling of Britain's initiative on European defence was made at the EU Pörschach summit on 24-25 October 1998, held under the auspices of the Austrian Presidency. In an interview prior to the summit Blair made it clear that Britain was willing to drop its longstanding objection to the EU having a defence capability but that he was not talking of a European army. He also noted that, "Nothing must happen that in any way impinges on the effectiveness of NATO."⁵⁷ The Pörschach summit, ostensibly called to discuss "real problems," included Blair's outline of a number of defence "options" for the EU:⁵⁸

- The strengthening of the European security and defence identity within NATO;
- The dissolution of the WEU and its integration into the EU; and
- The establishment of modern and flexible European forces.

Although Blair's outline lacked details it marked a significant reversal from Britain's traditional resistance to EU responsibility in security and defence affairs. Not long after, the Austrian Defence Minister, Werner Fasslabend, called an informal summit of the fifteen EU defence ministers on 4 November 1998 in Vienna to discuss prospects for European defence after the entry into force of the Amsterdam Treaty. At the summit George Robertson, the British Defence Secretary, noted that Europe had reached a "defining moment" for defence policy and that Bosnia and Kosovo had raised the question of "when we press the button for action, is it connected to a system and a capability that can deliver?"⁵⁹ He emphasised the need for "armed forces that are deployable and sustainable, that are modern, powerful and flexible, that are mobile, survivable and are highly capable." The institutional options were not "about removing defence from the control of national governments," or about creating a "standing European army," nor should they undermine or duplicate NATO.⁶⁰ However, the question of the merger of the WEU into the EU raised, according to Robertson, "a number of

difficulties." His preferred solution was to explore other options such as "merging some elements of the WEU into the EU and associating other elements more closely with NATO, or perhaps creating a more distinct European dimension within NATO."⁶¹

As a result of a subsequent meeting between President Chirac and Prime Minister Blair in St.Malo, a joint Franco-British declaration was issued on European defence.⁶² The declaration called for the Amsterdam Treaty to be made "a reality" which, amongst other factors, would involve endowing the Union with "the capacity for autonomous action, backed by credible military forces, the means to decide to use them and a readiness to do so."⁶³ The declaration's main impact was to call for a far more autonomous European military capability than had hitherto been enunciated:

In order for the European Union to take decisions and approve military action where the Alliance as a whole is not engaged, the Union must be given appropriate structures and a capacity for analysis of situations, sources of intelligence and a capability for relevant strategic planning, without unnecessary duplication, taking account of the existing assets of the WEU and the evolution of its relations with the EU. In this regard, the European Union will also need to have recourse to suitable military means (European capabilities pre-designated within NATO's European pillar or multinational European means outside the NATO framework).⁶⁴

The St.Malo declaration received much positive comment but there remains a compelling need to absorb the lessons of Kosovo in order to give substance to the declaration. Indeed, the self-congratulatory mood of the EU as it ushered in Monetary Union on 1 January 1999 stood in marked contrast to its weakness to decisively influence events in Kosovo.

It is though possible that the EU's relative impotence in Kosovo may lead to action to create a meaningful and operative CFSP. Indeed, several calls along these lines have already been made such as Emma Bonino's suggestion that the European Council could provide a mandate to the newly appointed *Monsieur* (or *Madame*) *PESC* and to the president of the European Commission to oversee a replay of the Delors committee on Emu. A similar idea was expressed by Romano Prodi, the incoming President of the Commission, in a speech to the European Parliament on 4 May when he spoke of the new design for the institutions which will be needed to "exploit to the full concerted efforts in the field of defence, possibly based on the gradual and progressive model which has already been used for monetary union. A common defence of the European Union will be a basic condition for maintaining peace and stability ... Europe must be able to do its share."⁶⁵ Prodi saw it as a "logical next step" in creating a common defence policy for the EU *after* the merging of national defence industries. Failure to do so, he argued, would leave the

Union “marginalised in the new world history.”⁶⁶

The degree of autonomy that is desirable from existing structures for any enhancement of the CFSP, including the defence dimensions, has to be addressed on two levels. The first is the political level where fundamental national differences of outlook should be addressed, as should transatlantic differences (France bears special responsibility in this regard). The best designs in the world will not work unless there is a European identity in security and defence matters where challenges and responses are seen as a matter of *common concern* and not of selective interest. Perhaps the inability of the EU, or even the European Security and Defence Identity within NATO, to decisively influence the passage of events in Kosovo will shame the EU into such common purpose.

The second level is the more practical. The St.Malo declaration is clear about the dangers of duplication and any modifications should ensure that the organisations have *guaranteed access to assets as may be required*. The question of how significant or hypothetical the US’s “physical veto” (through denial of access to key assets that the EU members do not possess) is must therefore be faced head on. It is difficult to believe that the US would assume the expense of research and development of weapons systems only to guarantee its European allies automatic access. If there is the possibility of veto or at least political rancour from Congress, the development or acquisition of the requisite systems for European usage makes increasing sense.

In this regard the British proposals for a new fourth pillar, dedicated to defence, have some attraction since it is defence, as opposed to the more general foreign or security aspects of the CFSP, that has generated most disagreement within the Community and now Union. Much will depend on how “defence” and “security” are defined since defence, of the cold war variant, is of questionable relevance in a Union where none are seriously challenged by external aggression. Perhaps a constructive way of thinking about a restructured pillar design is for the second pillar to be accorded prime responsibility for the less controversial conflict prevention and traditional peacekeeping aspects. The new fourth pillar, incorporating the WEU with Article V of the Modified Brussels Treaty, would be dedicated to conflict management including peace-enforcement (with NATO’s active involvement).

Prodi’s observation that a merger of European defence industries is an essential underpinning for an effective CFSP is valid but one that carries dangers. The failure of the *Horizon* frigate project after three years of negotiations provides a pessimistic portent of things to come, especially since this follows hot on the heels of the controversial acquisition by BAe of GEC’s Marconi defence interests which allegedly set back the prospects for a European Aerospace Industry. The EU is therefore faced with two choices: either seek economies of scale through co-development within Europe or through transatlantic fora or; second, rely increasingly on the US

for the next generation of hi-tech weapons.⁶⁷

Both courses have their dangers. The development of a European armaments industry may further decrease the US’s willingness to involve itself in European security interests that are difficult to defend at home. The antagonistic atmosphere that exists in certain areas of US-EU trade would be carried directly into security and defence relations if the impression is given that America’s European allies are only willing to buy home-developed armaments and thus exclude the highly efficient and competitive US manufacturers. Second, reliance upon the US’s current technological lead in advanced weaponry tends to exaggerate the utility and effectiveness of high-tech weapons as well as underestimate the technological sophistication of the European defence industries. Technology is only useful when applied to a specific application. Much of the vaunted technological lead of the US stems from the development of last-generation *cold war* systems. How necessary or relevant are B-2 bombers or the F-117 “Stealth” fighters for intra-state conflicts and conflict prevention?

A good starting point would be the loosening and ideally severing of government control over defence industries in the EU countries. The prospect of a merger between the guided missile divisions of BAe, Lagardère and Finmeccanica, would do much to restore optimism that a European defence industry might one day emerge. The importance attached to the potential for a European defence industry should not be underestimated since, as EMU showed us, commitment tends to follow the purse.

NATO’s failure in Kosovo?

The historical debates about whether or not to create a European security and defence entity were framed in the knowledge that, whatever their outcome, NATO (especially the US) would provide for their essential security. The cold war debates on European security and defences were therefore somewhat academic. They also supposed that NATO was the superior Alliance and, at the end of the cold war, the victorious alliance. It was also untested.

With the launch of *Operation Allied Force* Kosovo became a symbol for the struggle between realism and morality.⁶⁸ NATO’s intervention in Kosovo has the potential to redefine many aspects of our current understanding of sovereignty, statehood, war (the word though is studiously avoided in connection with Kosovo) and peacekeeping in all of its manifestations. But, as Daniel Goldhagen observed, all of these principles come secondary to a fundamental one, “the right not to be murdered.”⁶⁹ Somewhere along the line the airstrikes lost sight of this fundamental point. Instead NATO concentrated on showing a united face but this did not disguise the lack of strategy. In one of the frequent NATO press briefings, Air Commodore Wilby stated that “There never has been a timeline to this operation, and I think that it has been one of those campaigns that has been a very dynamic campaign.”⁷⁰

If assessed on the political goals established by NATO itself – which were firstly, to stop the killing in Kosovo and the brutal destruction of human lives and properties; second, to put an end to the appalling humanitarian situation unfolding in Kosovo and to create conditions for the refugees to be able to return; and third, to create the conditions for a political solution to the crisis based on the Rambouillet agreement – the performance of the Alliance has thus far been sorely lacking.⁷¹ NATO did not stop the killing in Kosovo (a report by Médecins Sans Frontières estimated that 13 percent of the 15-55 year old Albanian Kosovars are missing based on a detailed study of the refugees from Roseje)⁷² nor did it stop the destruction of properties. The lack of ground intervention meant that NATO could not address the appalling humanitarian situation in Kosovo until the refugees fled to surrounding countries and, even then, this proved problematic for the international agencies involved. Whether anyone or anything can create the conditions for the return of around one million refugees remains to be seen.

On the occasion of his retirement as Chairman of NATO's Military Committee on 5 May 1999, General Klaus Naumann looked back on over forty days of air strikes and concluded that, "Quite frankly and honestly we did not succeed in our initial attempt to coerce Milošević through airstrikes to accept our demands, nor did we succeed in preventing the FRY pursuing a campaign of ethnic separation and expression."⁷³ The excessive faith in what air strikes can achieve and open disagreements on the wisdom of deploying forces on the ground in Kosovo may provoke a critical look at NATO and the security and defence requirements of its member states.

It would though be premature to label NATO as a failure. It is nevertheless a bruised and battered organisation whose member's ability and will to address the intricacies of intra-state conflict management has to be challenged. Kosovo should also prompt a long hard look within the EU at the wisdom of continued reliance upon the US. The lessons arising from Kosovo for NATO may well emphasise those areas where CFSP could perhaps offer a more coherent and constructive role. For instance, the effects of Kosovo may illustrate the need for greater attention to conflict prevention and to the need construct a common defence and security policy upon a sound common foreign policy. Such a common foreign policy should recognise that in most instances the EU and the US will share common interests but this should not imply an obligation for the US to lead or for the European allies to follow.

Conclusions

The results of the crisis in Kosovo will mark a turning point for CFSP. It cannot stay static since this would condemn it to virtual irrelevance. The crisis could therefore prompt the EU member states to build an effective and autonomous security and defence capability based on the humiliation of Kosovo and the enormous

costs associated with the resettlement or absorption of refugees and reconstruction in Yugoslavia, not to mention a multi-year post-conflict military presence. Or, an admittedly more fashionable view is that the convenient myth of European security, built around ineffective European paper structures and a reduced but still hegemonic US role, will prevail.

Muddling through, of the type that prevailed in the Gulf War of 1990-91, Albania, Bosnia and Kosovo, is unacceptable for a number of reasons. First, the uncoordinated and *ad hoc* responses to successive post-cold war crises in Europe demonstrate the limits of reliance upon coalitions of the willing. It is clear as a result of Kosovo that not only must the regional organisations be given a clear mandate backed by the political will of the organisations' members, but that regional consensus must be backed by clear mandates under public international law. Second, reliance upon *ad hoc* arrangements inevitably puts the emphasis upon conflict management whereby addressing the crisis often only happens at a very late stage and normally only after armed conflict is well established. Conflict prevention, linked a range of economic, political and military options, is a far more purposive and humane way to address intra-state crises. Third, reliance upon American military muscle and superiority also implies reliance upon US diplomacy and goals when the long-term effects of US-baked intervention have yet to prove any tangible benefits to European or international security (with the sole possible exception of Bosnia). It is equally presumptive on the part of the European allies to assume that the US will be there to indefinitely bale out its allies.

If there is a positive outcome from the Kosovo catastrophe it will be that, out of humiliation and perhaps even some guilt, the EU is forced to make a real commitment to the security and defence of the member states and their neighbours. Romano Prodi would appear to be pushing the EU firmly in this direction. Although it will be an uphill struggle that will involve genuine political commitment and considerable resources, the emphasis should be upon the construction of a credible EU conflict prevention capability. This not only plays to the strengths of the EU but allows the full range of preventative measures to be employed, of which the use of force is the last. NATO tends to be more useful for crisis management.

It is all too easy to see Kosovo as the latest in a line of dismal attempts to co-ordinate EU positions on questions of security and defence. It is also tempting to conclude that the CFSP cannot overcome the contradictory stances of its fifteen members. The same was thought at one time of progress towards monetary union. The tragedy of Kosovo is that the common denominator that should have appealed to all EU members alike was the need to immediately alleviate humanitarian suffering at the expense of national positions. The utility of the CFSP has therefore to be measured against the extent to which it provides the EU

with a tool to uphold the values and objectives contained in the Amsterdam Treaty's provisions on a CFSP. No amount of institutional modification or any number of intergovernmental conferences will help if these underlying values and objectives are not shared. Kosovo will serve as a reminder of what they are. As the EU faces the costs of assimilating or repatriating refugees, those of reconstruction in Yugoslavia, and policing any eventual settlement, the economic and political costs of creating a genuine CFSP may seem rather affordable.

RÉSUMÉ

Bien qu'il semble qu'il faille attendre encore longtemps pour ressentir les pleins effets de l'imbroglia qui se déroule au Kosovo et même si le Traité d'Amsterdam vient à peine d'entrer en vigueur, il est cependant nécessaire de se concentrer sur la contribution que les dispositions du traité pourraient apporter à l'UE et à d'autres organisations associées pour faire face de manière appropriée à de futures crises.

Les domaines dans lesquels les dispositions du Traité d'Amsterdam risquent de s'avérer inadéquates – et il semble qu'ils soient nombreux – suggèrent aussi le besoin d'aller plus loin que les structures de sécurité en Europe qui sont pour le moment largement confinées à de simples documents. Le Kosovo produira l'un des deux effets suivants: soit il va rajeunir la Politique étrangère et de sécurité commune (PESC) et conférer un effet pratique à une politique de défense commune et à une défense commune, soit il laissera la sécurité de la région largement entre les mains des USA, avec tous les avantages et les risques que cela comporte.

La première option impliquera un changement de l'approche de la PESC et une volonté d'investir dans un dispositif militaire approprié, qui permette de s'attaquer aux causes et aux effets de conflits de nature essentiellement interétatique. La deuxième option, quant à elle, poursuivra les modèles établis durant la guerre froide, dans lesquels les Européens (occidentaux) dépendent largement des USA pour l'initiative, le leadership et l'armement. Le Kosovo marque un tournant, dans la mesure où ses effets peuvent contribuer à faire de la PESC une réalité ou risquent de la faire capoter définitivement.

NOTES

- ¹ *SIPRI Yearbook 1992: Armaments, Disarmament and International Security*, p.417 and *SIPRI Yearbook 1998: Armaments, Disarmament and International Security*, (Oxford: Oxford University Press), p.17.
- ² The conflict between Eritrea and Ethiopia would now have to be added to the list of exceptions, but the general trend remains unchanged.
- ³ See Kalevi J. Holsti, *The State, War, and the State of War*, (Cambridge: Cambridge University Press, 1997).
- ⁴ Dominique Moisi, "Personal View," *Financial Times*, 29 March 1999.
- ⁵ Aleska Djilas, "Imagining Kosovo," *Foreign Affairs*, Vol.77 (5), Sept/Oct. 1998, p.127.
- ⁶ Misha Glenny, *The Fall of Yugoslavia: The Third Balkan War*, (New York: Penguin Books, 1994), p.32.
- ⁷ Laura Silber and Allan Little, *The Death of Yugoslavia*, (London: Penguin/BBC Books, 1995), p.36.
- ⁸ Tim Judah, *The Serbs: History, Myth and the Destruction of Yugoslavia*, (New Haven: Yale University Press, 1997), p.2.
- ⁹ Chris Hedges, "Kosovo's Next Masters," *Foreign Affairs*, May/June 1999, Vol. 78(3), p.38.
- ¹⁰ There is disagreement about exactly when the UÇK first appeared and it is evident that for some time before their "public" emergence into the media spotlight, violence had been perceived as the only alternative to Rugova's non-violent stance.
- ¹¹ Dutch Ambassador visits Pristina, explains EU policy, SWB EE/2942, 11 June 1997, quoted in Sophia Clément, "Conflict Prevention in the Balkans: Case Studies of Kosovo and the FYR of Macedonia," *Chaillot Papers* (30), December 1997, (Paris: WEU ISS) p.43.
- ¹² David Owen, p.373.
- ¹³ Although most Kosovo Albanian ex-pats hold lower income jobs the diaspora of some 600,000 ethnic Albanians in Europe and about half that number in North America, represents a sizeable amount of money.
- ¹⁴ Chris Hedges, *Foreign Affairs*, May/June 1999, p.31
- ¹⁵ *Ibid.* p.37.
- ¹⁶ Press Conference, Special Representative Richard S. Glebard, Belgrade, 23 February 1998 at http://www.state.gov/www/policy_remarks/1998/980223_gelbard_belgrade.html.
- ¹⁷ S.Erlanger, "Albright Tours Europe to Whip Up Resolve to Punish Yugoslavians," *New York Times*, 9 march 1998.
- ¹⁸ UNPREDEP was established in November 1992 following an appeal from the President of the Republic of Macedonia to the UN Secretary General based on his "concern for the possible impact to the country from hostilities all over the former Yugoslavia."
- ¹⁹ Statement on Kosovo, London Contact Group Meeting, 9 March 1998, at http://secretary.state.gov/www/travels/980309_kosovo.html.
- ²⁰ S/RES/1160, 31 March 1998.
- ²¹ *Declaration by the Presidency on behalf of the European Union concerning the upsurge of violence in Kosovo*, 3 March 1998.
- ²² S/RES/1199, 23 September 1998.
- ²³ An ACTWARD increases the level of readiness and allows for the identification of assets to be used for any ensuing operations.
- ²⁴ S/RES/1203, 24 October 1998.
- ²⁵ *Determined Falcon* was assembled at four-days notice and involved 85 aircraft from 13 air forces.
- ²⁶ Alexander Nicoll, "NATO Breaks its chains," *Financial Times*, 18 June 1998, p.14.

- ²⁷ Figures from *Le Monde*, 31 March 1999.
- ²⁸ For details see James Gow, *The International Spectator*, Vol. XXXIII (4), October-December 1998, p.21.
- ²⁹ *Common Position defined by the Council on the basis of Article J.2 of the Treaty on European Union on restrictive measures against the Federal Republic of Yugoslavia*, 19 March 1998. The earlier common position referred to is 96/184/CFSP.
- ³⁰ The most recent being the *Chairman's Summary of the Deliberations on Kosovo at the Informal Meeting of the Heads of State and Government of the European Union*, Brussels, 14 April 1999, in which Heads of State and Government supported the initiative of the UN Secretary-General of 9 April 1999 which summarises the demands of the international community.
- ³¹ CFSP 128/98, *Declaration by the European Union on a comprehensive approach to Kosovo*, 27 October 1998.
- ³² *Council Decision adopted on the basis of Article J.4(2) of the Treaty on European Union, on the monitoring of the situation in Kosovo*, 13 November 1998.
- ³³ *Ibid.* Para. 6.
- ³⁴ *Statement by the EU Presidency following the meeting between the EU Foreign Ministers, the EU Commission, ECHO and the Foreign Ministers of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Hungary, Slovenia and Turkey and the UNHCR, the CSCE CiO, NATO, the Council of Europe, the WEU, the IBRD, the EBRD and the EIB, Luxembourg*, 8 April 1999.
- ³⁵ Germany contributes 10 Tornado ECR/RECCE aircraft to Operation Allied Force which is about a third of the contributions made by France and the UK (30 and 27 respectively) and less than that made by the Netherlands (16). The US dominated the contributions with 142 aircraft, prior to the discussion of reinforcements which may see an additional 300 aircraft of all types deployed. See <http://www.isn.ethz.ch/iiss/info/htm> and http://www.bundeswehr.de/kosovo/9903_004.htm.
- ³⁶ Jörg Monar, "The European Union's Foreign Affairs System after the Treaty of Amsterdam: A 'Strengthened Capacity for External Action'?", *European Foreign Affairs Review*, 2 (1997), p.413.
- ³⁷ CTEU, Article 23.
- ³⁸ *Ibid.* Article 11(2).
- ³⁹ *Ibid.* Loc cit.
- ⁴⁰ A similar point is made in relation to the decision-making mechanisms for Petersberg operations in Fabrizio Pagani, "A New Gear in the CFSP Machinery: Integration of the Petersberg Tasks in the Treaty on European Union," *European Journal of International Law*, Vol.9, No.4, pp.737-750.
- ⁴¹ CTEU, Article 18. Para. 2.
- ⁴² The identity is meant to be unveiled in June 1999 at the Koln Summit. Hubert Vedrine, the current French Foreign Minister, is tipped to be the first High Representative.
- ⁴³ CTEU, Article 26.
- ⁴⁴ *Treaty of Amsterdam*, Declarations adopted by the Conference, Declaration 6 on the establishment of a policy planning and early warning unit, 2 October 1997.
- ⁴⁵ Mark Turner, "CFSP Gets New Marching Orders," *European Voice*, 5-11 February 1998, p.6.
- ⁴⁶ Details in *Agence Europe*, No. 7257, 6/7 July 1998, p.4.
- ⁴⁷ Major D.M. Last, "Early Warning and Prevention of Violent Conflict: The Role of Multi-Functional Observer Missions." Paper presented at the ISA Convention, Washington DC, February 1999, p.20.
- ⁴⁸ These issues are explored in greater detail in Fabrizio Pagani, "A New Gear in the CFSP Machinery: Integration of the Petersberg Tasks in the Treaty on European Union," *European Journal of International Law*, Vol. 9(4), pp.737-750.
- ⁴⁹ CTEU, Article 17. Para.3.
- ⁵⁰ This was codified most explicitly in Presidential Decision Directive 25 of May 1994 which stipulated a long checklist of condition for US involvement in multilateral military operations.
- ⁵¹ Kori Schake, Amaya Bloch-Lainé and Charles Grant, "Building a European Defence Capability," *Survival*, Vol. 41(1), Spring 1999, p.31.
- ⁵² Philip H. Gordon, "Does the WEU Have a Role?," *The Washington Quarterly*, Vol. 20 (1), Winter 1997, p.131.
- ⁵³ Sophia Clément, "Conflict Prevention in the Balkans: Case Studies of Kosovo and the FYR of Macedonia," *Chaillot Papers* (30), December 1997, (Paris: WEU ISS) p.58.
- ⁵⁴ Vienna European Council Summit, Presidency Conclusions, 11 December 1998, at <http://ue.eu.int/newsroom/main>.
- ⁵⁵ Stephen Fidler, "Reluctant Warrior has his own conflicts to resolve," *Financial Times*, 5 May 1999, p.1.
- ⁵⁶ Pascal Boniface for instance attributes the Europeans easy absorption into Operation Allied Force to the St. Malo meeting while Armand de Decker, President of the WEU's Defence Committee, argued that "what has happened in Kosovo will permit us to speed up the construction of a European defence policy." See Thomas Sancton, "A New Line of Defense," *Time*, 12 April 1999, pp.42-45.
- ⁵⁷ *The Times*, 21 October 1998, p.1.
- ⁵⁸ *Agence Europe*, 26-27 October 1998, p.5.
- ⁵⁹ *Agence Europe*, 5 November 1998, p.3.
- ⁶⁰ *Ibid.* loc cit.
- ⁶¹ *Ibid.* loc cit.
- ⁶² Franco-British summit – *Joint Declaration on European Defence*, 4 December 1998, at <http://www.ambafrance.org.uk>.
- ⁶³ *Ibid.*, Para.2.
- ⁶⁴ *Ibid.*, Para.3.
- ⁶⁵ Speech by Mr. Romano Prodi to the European Parliament, Strasbourg 4 May 1999, at <http://europa.eu.int/comm/commissioners/prodi/speeches/0450599>.
- ⁶⁶ Peter Norman and Andrew Parker, "Common EU army the 'logical next step,'" *Financial Times*, 10 May 1999, p.2.
- ⁶⁷ Alexander Nicoll, "National Differences Scupper Frigate Project," *Financial Times*, 28 April 1999, p.1.
- ⁶⁸ See Pascal Boniface, "Le réalisme et la morale," *Le Monde*, 3 Avril 1999.
- ⁶⁹ Daniel Goldhagen, "German Lessons," *The Guardian G2*, 29 April 1999, p.2.
- ⁷⁰ Press Conference, 5 April 1999. Full text available from natodoc@HQ.NATO.INT.
- ⁷¹ Goals outlined by the Secretary General and SACEUR, Press Conference, 1 April 1999. Text as above.
- ⁷² Transcript of a Press Conference given by Jamie Shea and General Guiseppe Marani, 30 April 1999. Text as note 65.
- ⁷³ Transcript of a Press Conference given by General Klaus Naumann, Brussels, 4 May 1999. □

European Union Enlargement: Prospects and Potential Pitfalls Along the Way*

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Enlarging the European Union (EU) is a multi-faceted process, marked by the milestones of the application for membership by a state, issuance of the opinion of the European Commission on that application, a decision by the Council on whether or not to open accession negotiations, conducting those negotiations, and ultimately the entry of the state into the Union. While these are impressive tasks in any situation, the magnitude of the current challenge is reflected in the fact that thirteen states have applications for EU membership pending.¹ The size of this group of applicant states has intensified the debate over how to enlarge, and what level of preparedness is required before a state can join the EU.

This article will focus on how this challenge is being met. The enlargement process has moved forward to the stage of negotiations. The results of the negotiation exercise are reflective of the issues and challenges of enlargement in the broader sense. The influence of factors, such as the division of the applicant states into two groups, and the follow-up to the *Agenda 2000* process (including the Commission's progress reports on the applicant states and the status of internal EU reform), will also be addressed.

Establishing the current framework

In July 1997 the Commission issued the communication, *Agenda 2000*, containing its opinion on the applications for membership of the ten Central and Eastern European countries (CEECs), its assessment of the likely impact of enlargement on the European Union, and its recommendations for European Union reform. *Agenda 2000* established the basic framework for all subsequent discussions, preparations and pre-accession activities, both within the European Union, and within the applicant states themselves.

With regard to the membership applications, the Commission recommended that negotiations be begun with five of the CEECs – the Czech Republic, Estonia, Hungary, Poland, and Slovenia. The European Council, meeting in Luxembourg on 12 and 13 December 1997, while basically accepting the Commission's recommendations, established the framework for negotiations in a slightly different way. It decided to launch the "accession process" with all ten CEECs, plus Cyprus, which had previously been promised negotiations within six months after the conclusion of the 1996-1997 Intergovernmental Conference (IGC). However, the European Council also decided to convene bilateral intergovernmental conferences – the formal means to undertake accession negotiations – with the five recommended states plus

Cyprus. This group has sometimes been referred to as the 5-plus-1, or as dubbed by Commissioner Hans van den Broek, responsible for relations with the CEECs, the "ins".

In order to reinforce the pre-accession process, the Commission also proposed the establishment of bilateral Accession Partnerships (APs), which would replace the multilateral structured dialogue previously conducted with the applicant states.² The Luxembourg European Council committed itself to adoption of such APs, which were approved on 25 March 1998. They identify short and medium term objectives, and contain the provisions for cooperation between the EU and the applicant states, designed to facilitate the pre-accession preparation of the applicant states.

The APs call on each of the applicant states to develop a National Programme for the Adoption of the Acquis (NPAA). By May 1998, all ten Central and Eastern European applicant states had submitted their NPAA's to the Commission services. These national plans detail timetables for implementation of the pre-accession programmes. From the European Union's side, the Accession Partnerships are not only the framework in which to measure the progress of the applicant states; continued release of EU assistance funds is now contingent on meeting the AP/NPAA time-tables.

The "accession process"

The accession process as agreed to in Luxembourg was officially launched on 30 March 1998, with a meeting of EU foreign ministers and their counterparts from the ten CEECs and Cyprus. However, as reflective of the division between the applicant states, accession negotiations officially began with only the 5-plus-1 the next day, with the first inter-ministerial meeting, at the level of foreign ministers.

Technically, accession negotiations are conducted by means of such intergovernmental conferences, held between the EU Member States and the individual applicant states. In reality the Commission is very much involved. The first phase of negotiations involves screening – analytical consideration of the *acquis communautaire* to determine the compatibility of national legislation of the applicant states with the obligations of EC law. An Enlargement Task Force, headed by Klaus van der Pas, was established within the European Commission to deal with screening with the "ins", or first wave countries.³ Screening with the second wave countries (the "pre-ins") has been handled differently, being undertaken within DG1A, the directorate-general on external relations, under the direction of Deputy Director General François Lamoureux.⁴

* *Un bref résumé de cet article en français figure à la fin.*

Screening with the CEECs-plus-1 commenced on 3 April, with a general information and introduction meeting.⁵ Screening for the first group of countries has been undertaken bilaterally, while the first phase of the screening for the second wave countries has been undertaken multilaterally, largely in the form of receiving an overview of the *acquis* presented by DG 1A. Although the screening of the two groups has been handled differently, the analysis in each chapter is being undertaken based on the same questionnaires, and often in cooperation with the same persons within the Commission. However, a significant difference between the two groups is that while screening with the first wave countries have been followed by the development of EU position papers in the areas covered, as formal negotiations with the second group have not commenced, this is not the case there.

The screening exercise seeks to answer two basic questions:

- (1) does the applicant state accept the *acquis* in the area being screened?
- (2) does the applicant state have the legislation and institutions in place to implement it?

Between April and October 1998, 13 chapters of the *acquis* were screened with the first wave countries, in preparation for the first substantive negotiating sessions. This included consideration of the difficult areas of agriculture and customs cooperation.⁶ These two areas are reflective of the types of challenge negotiations on adaptation to the *acquis* involve. Not only is agriculture a particularly difficult area for screening, involving hundreds of very specialised and complicated texts, conclusion of the screening must wait until the conclusion of the Member States' discussion of *Agenda 2000* reforms in this area. It is expected that discussions with the applicant states in the area of agriculture will take until late June 1999. In the area of customs the *acquis* itself is relatively limited, in comparison to many other chapters, although the operational and institutional aspects of the obligations are huge. Much effort is needed to bring human resources, modernisation/computerisation, and other aspects of the customs services up to EU standards, and this is where both preparation for membership, as well as negotiations, will need to focus.

Multilateral screening with the second group was completed for all chapters of the *acquis* by the end of February 1999. Bilateral screening, looking in more detail at the individual national situations, commenced on 1 March.⁷

It is expected that the bilateral screening process with both groups will be completed by late July 1999, with the exception of the area of agriculture.⁸ In assessing the progress and conclusions of screening, both Klaus van der Pas and François Lamoureux indicated that acceptance of the EU *acquis* is generally not a major problem, but implementing it is likely to be. After the completion of the screening of 20 chapters with the pre-ins in November 1998, van der Pas felt that this view "is increasingly being confirmed", while Lamoureux concluded that the difference between the two groups with regard to adoption of the *acquis* "is not very great".⁹

For the first wave countries the screening is being

followed up with negotiations. The Commission has prepared draft EU negotiating positions of the chapters considered, based on the position papers submitted to it by the applicant states. The positions on both sides reflect the conclusions drawn as a result of the screening.

The chapters being considered are divided into three categories:

- *chapters for which both sides consider that no problems exist.* These are then considered provisionally concluded, with the understanding that, based on the evolving nature of the *acquis* itself, all chapters must be looked at again, before conclusion of the Treaty of Accession.
- *chapters which the candidate states do not yet apply, but which they consider they will be able to apply by the time of accession.* This has been calculated on a date of 1 January 2003 for all applicants but Hungary, which is basing its calculation on an accession date of 1 January 2002.¹⁰
- *chapters for which applicant states have requested transition periods.* These will be the only chapters where any real negotiations will be necessary, with the discussions focusing on derogations in time.

On 29 October 1998, the first session involving substantive bilateral talks, or negotiations, with the countries of the first wave began. The Committee of Permanent Representatives (COREPER) and the Ambassadors of the Fifteen met individually with the chief negotiators of the 5 + 1 to exchange negotiating positions on the first seven chapters to be considered.¹¹ Substantive accession negotiations, conducted at ministerial level, were opened with these states on 10 November 1998. Agreement was basically reached on four of the chapters, based on the position papers submitted. The only issues where questions were raised were with regard to telecommunications, audiovisual policy and industrial policy, based on the derogations requested by the applicant states. Negotiations were considered tentatively concluded with regard to research, education, and small and medium-sized enterprises.

In preparation for the next round of negotiations, to take place on 22 June in Brussels, where it is hoped that official agreement on all seven chapters can be achieved, the German presidency conducted negotiating sessions at delegate level (Permanent Representatives and the head negotiators of the six) on 19 April and 19 May 1999.¹² A Council enlargement working group has been meeting twice weekly throughout the first half of the year to prepare for the meeting in June and, based on the reports submitted by the Commission Enlargement Task Force, it has been elaborating EU negotiating positions.¹³ In addition to conclusion of negotiations on the first seven chapters of the *acquis*, negotiations in eight additional areas are planned to begin in June.¹⁴ Thus, negotiations on approximately one-half of the chapters of the *acquis* would have commenced or been tentatively concluded.

By the end of January 1999 the six had presented their negotiating positions on the next eight chapters to be considered. While no transition periods were requested for many of the chapters, a number of non-surprising requests *were* received. For example, the Czech Republic

has asked to be able to maintain its customs union with Slovakia. Estonia wants to be allowed to maintain free trade agreements with Latvia, Lithuania and the Ukraine, as well as to maintain existing bilateral fisheries agreements. Slovenia requested a 10-year period in which to maintain free trade agreements with Bosnia, Croatia, and Macedonia. The Czech Republic and Poland asked for flexibility with regard to state aid.¹⁵

The Commission's Regular Reports

In parallel with the evaluation going on based on the results of the screening, assessment of the progress made by the applicant states has been detailed in the Regular Reports of the Commission, issued on 4 November 1998.¹⁶ These progress reports (called for in *Agenda 2000*), while basically proposing the maintenance of the *status quo* of the Commission's original proposal, indicated that certain states – Latvia most notably, but also Slovakia and Lithuania – should possibly be reconsidered for inclusion in the group of first wave countries. The Commission felt that Latvia might be ready to be included in the first wave by the end of 1999, and Lithuania and Slovakia might be ready to join the group not long thereafter. Of equal concern to some of the first wave applicant states (most notably Slovenia and the Czech Republic) was the fact that the Commission was fairly critical with regard to their pace of reform, pointing to what it considered to be a decided slow down in their preparations for EU membership.

These reports formed the basis for the deliberations of the Vienna European Council, in December 1998, as to how to proceed with relations with the applicant states. While the Member States chose at that time to not make any adjustments in how the accession process has been proceeding, indications have been made that the groupings of states might, in fact, be reconsidered at the Helsinki Summit in December 1999. Sweden, Finland, and Denmark expressed their support for “more positive and more encouraging” treatment of Latvia and Lithuania. The opinion was also voiced that Slovakia should be rewarded as a result of the elections held in September 1998, allowing it to shed its distinction as the only applicant state considered not to be in compliance with the political component of the Copenhagen Criteria. However, the reaction of the Member States has been quite mixed. For example, while France voiced concerns that Bulgaria and Romania should not become even more isolated from the other applicant states, it submitted, together with Germany, a letter signed by German Chancellor Gerhard Schröder and French President Jacques Chirac, opposing taking a decision in Vienna to extend negotiations to countries other than those with whom negotiations had already begun. Their concern was linked to the desire to pursue internal reforms before expanding enlargement efforts.¹⁷

As with the screening, the Vienna Council noted that the differences between states in the two groups, reflected in the Commission's Regular Reports, had narrowed, although certain areas – state aid control, environment, nuclear safety, and justice and home affairs – needed particular attention by all the candidates.¹⁸ The Commission's second Regular Reports, to be released in

October 1999, will form the basis for the discussions at the Helsinki summit in December 1999 on whether to extend negotiations to countries currently in the second wave or not. The development of these reports will be done in parallel with preparation of updated Accession Partnerships (to be issued in November 1999). François Lamoureux predicted that short-term priorities identified in these APs for the year 2000 would include potentially problematic areas such as those identified by the Vienna Council, as well as audiovisual policy, the adoption of certain internal market rules, and for some countries fisheries.¹⁹ How successfully applicant states achieve AP objectives may very well have more immediate influence on considerations of their candidacy than the more technical, and less public, accession negotiations.

Agenda 2000 reforms and other influences

The issue of EU reform is integrally linked to the process of accession. Not only are reforms considered essential before enlargement can take place, conclusive negotiations cannot take place until it is clear what the status of EU policies will be. This is especially true in the areas most affected by proposed *Agenda 2000* reforms: agriculture, structural funds, and financing. At the summit in Berlin on 26 March 1999, EU heads of state and government agreed on a package of reform in these areas.²⁰ The reforms agreed to, however, do not meet the level of reform proposed by the Commission in *Agenda 2000*, thus calling into question the continued validity of the Commission's assessment of the impact of enlargement.

The question of institutional reform is also crucial for determining when the applicant states are likely to be able to join the EU. In the IGC that led to the Amsterdam Treaty, reform that would, in theory, allow the Union to expand up to 20 members was agreed: in other words, the Union could take in up to five new members.²¹ With six countries in the first wave there were already questions raised whether enlargement could proceed without more specific institutional reform. The equation was further complicated by the fact that in October 1998, after new elections, Malta decided to reactivate its membership application, which had been frozen following a general election in October 1996 which brought to power a party that opposed EU membership. On 22 March 1999 the General Affairs Council decided screening should begin with Malta as soon as possible, initially with the “pre-ins”. Once the Member States formally decide to open negotiations with Malta, possibly at the European Summit in Helsinki in December 1999, it might (re)join the first wave.²²

Despite such causes for concern, Member State support for enlargement is reflected by the agreements in the area of the budget for the period of 2000–2006. While most of the *Agenda 2000* reforms proposed by the Commission have been watered down by the Member States when they were finally able to come to agreement on them, one of the surprising areas which has remained largely unaltered is with regard to allocations for additional pre-accession assistance. The Commission has proposed a EUR 520 million special pre-accession instrument for agriculture and rural development (SAPARD), to be managed by DG VI (agricultural policy). In addition, it proposed allocating

EUR 1.04 billion annually to pre-accession instrument for structural policies (ISPA), modeled on the EU's Cohesion Fund, and therefore to be used for support of transport and environment projects. This is to be managed by DG XVI (regional policy). Finally, EUR 1.56 billion is to be made available, on an annual basis, under Phare 2000. Despite the budgetary debates which have raged in most other areas, the Member States have agreed to "ring fence" these funds, protecting them from being cut, or distributed elsewhere.

Finally, the Union does not consider enlargement on a vacuum. Not only do internal reform issues influence the process, developments on national, European, and international levels often do so as well. The situation in former Yugoslavia is one example. The fighting in Kosovo, and the mass exodus of ethnic Albanians from that province, has caused the Union to reconsider its relations with Albania and Macedonia. Officials in both states have indicated their desire to conclude association agreements with the EU as a step towards membership, even indicating that expedited procedures should be applied. While this is not (yet) being actively pursued, moves have been made to introduce enhanced preferential trade provisions in the cooperation agreements that exist with these countries.²³ Hesitancy to bring these states into the group of formal applicants is based, in part, on concern about the reaction of the existing applicants, especially the second-wave countries who fear that such a move would further delay their accession.

Conclusions

In looking at the process of enlargement as it is unfolding, the prospects and potential pitfalls display themselves in a number of ways. Two significant conclusions have arisen from the screening and negotiations currently being undertaken by the EU and applicant states. On the one hand, all applicant states appear to be moving more quickly than expected towards adoption of national legislation compatible with the *acquis communautaire*. Thus, they can be expected to have the bulk of the required legislative base, on paper, at the time of accession. On the other hand, general administrative and institutional implementation deficits with regard to the capacity to enforce the *acquis*, are also being identified in all these states. These problems range from a lack of qualified personnel, through the need to establish institutional actors in certain areas, to administrative inability to oversee implementation, either as a result of insufficient human or insufficient financial resources. Areas of particular concern continue to include the need to control state aid, environment, nuclear safety, and justice and home affairs. The framework for pre-accession cooperation established within the Accession Partnerships will increasingly need to be adjusted to more effectively target activities and aid to meet the challenges identified.

Problems are likely to arise not only from the situations existing within the applicant states, but also within the Union itself. The need to make institutional adjustments in order to take in additional members is growing with the prospects of expansion of the group of first wave countries. There is also the need to make policy adjustments that would allow new members to participate in EU policy

areas. In *Agenda 2000* the Commission laid out a plan for enlargement which would have resulted in enlargement with minimal disruptions and costs. While some agreement on reform in the key areas of agriculture, structural policy, and the budget were reached in Berlin, the failure to agree on reforms to the extent proposed means enlargement will be potentially more problematic than envisioned in the Commission's blueprint. With or without reform, it is anticipated that the negotiations will have to cover a phasing-in of the participation of the new entrants in certain sensitive areas such as free movement of persons and the Common Agricultural Policy because of concerns on the part of existing Member States. Postponement of the application of the *acquis*, whether due to the new entrants' inability to apply it, or the existing Member States' unwillingness to have it applied, can lead to a fragmentation within the Union which would tend to run counter to the goals of European integration.

In addition to these considerations, an interesting debate in the enlargement process has been with regard to the composition, or even existence, of the two groups of applicant states. Ever since the Commission proposed, and the Council agreed to, the splitting of the candidates into the categories of "in" and "pre-ins", debate has continued, and even intensified, as to whether or not such a division should exist. Some of the warnings about the danger of this split have proven themselves to be true. Foreign direct investment has tended to favour the first wave countries, further disadvantaging the countries of the second wave. In addition, a certain demoralisation in the second wave countries can be noted. On the other hand, in the way that "number two tries harder", some second wave countries have made invigorated reform efforts in an attempt to show that they were incorrectly assessed in 1997 and that their status should be reconsidered in 1999. This, in combination with the indication the Commission gave in its Regular Reports, that some of the first wave countries might be slackening their adjustment efforts, reinforces the question of whether the best way forward continues to be by means of two distinct groups.

How enlargement proceeds will be determined by the resolution of these issues presented, as well as considerations of the political developments in the region, and the need to take national situations into account, such as existing trade links and the economic situation in the applicant states. From the Union's side, consideration of how successful the Finnish presidency will be, in the second half of 1999, at achieving agreement on institutional reform will also have a significant influence.

Taking all of this into account, the Commission's next Regular Reports, to be issued in October 1999, and the Helsinki summit in December, will set the stage for what really will be the agenda in the year 2000.

RÉSUMÉ

L'élargissement de l'Union européenne est un processus à facettes multiples, impliquant non seulement les pays candidats, mais aussi l'Union européenne et ses Etats membres, dans un exercice complexe fait d'ajustements et d'évaluations. Le nombre de pays candidats (13) vient

encore compliquer le processus dans le cas présent. Le suivi de l'Agenda 2000, contenant les avis de la Commission sur les candidatures d'adhésion, ainsi que ses propositions de réforme de l'UE, a posé le cadre du débat. L'examen analytique de l'acquis communautaire avec les pays candidats a montré que l'application de l'acquis communautaire posera probablement des problèmes beaucoup plus sérieux que son adoption. Les résultats de l'examen analytique et le rapport périodique de la Commission indiquent que la distinction entre les pays avec lesquels les négociations ont déjà été entamées (les "ins") et les autres candidats (les "pre-ins") s'est atténuée dans le courant de l'année dernière. En effet, certains pays dits de la première vague ont accusé un certain retard dans leur processus de transition, tandis que plusieurs pays de la deuxième vague ont remédié aux problèmes soulignés dans l'avis initial. Le deuxième rapport régulier et les nouveaux Partenariats pour l'adhésion (qui fixent un certain nombre d'objectifs à court et à moyen terme pour les pays candidats), qui seront publiés en octobre et en novembre 1999, poseront le cadre requis pour une nouvelle évaluation de la position des pays candidats. Entre-temps, l'accord sur les réformes internes obtenu à Berlin en mars 1999, s'il traite de questions telles que la politique agricole, les fonds structurels et le budget, semble cependant ne pas avoir réalisé de réelle percée pour faciliter l'élargissement. Le besoin de réaliser la réforme institutionnelle est encore plus immédiat si l'on tient compte de l'augmentation éventuelle du nombre de pays qui participeront à la première vague. Les décisions qui seront prises au Sommet d'Helsinki en décembre 1999, qui est appelé à se pencher sur tous ces points, définiront les paramètres du calendrier de l'élargissement en l'an 2000 et au-delà.

NOTES

- ¹ The applicant states are Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey.
- ² The structured dialogue has continued, in fact, in many areas, via what has come to be called "pre-accession ministerial meetings". Justice and home affairs ministers have adopted a Pre-Accession Pact on Organised Crime, while environment ministers have discussed issues including compliance with the *acquis communautaire*, nuclear safety, and reduction of "greenhouse gases". *Uniting Europe*, No. 10, 8 June 1998, p. 5 and No. 17, 27 July 1998, p. 5.
- ³ The first Task Force meeting with the first wave applicant states took place on 2 April 1998.
- ⁴ The second wave countries are Bulgaria, Latvia, Lithuania, Romania and Slovakia.
- ⁵ Screening covers all 31 chapters of the *acquis communautaire*. These are free movement of goods, free movement of persons, freedom to provide services, free movement of capital, company law, competition policy, agriculture, fisheries, transport policy, taxation, economic and monetary union, statistics, social policy and employment, energy, industrial policy, small and medium-sized enterprises, science and research, education and training, telecommunications and information technologies, culture and audiovisual policy, regional policy and coordination of structural instruments, environment, consumer and health protection, cooperation in justice and home affairs (JHA), customs union, external relations, common foreign and security policy (CFSP), financial auditing, financial and budgetary provisions, institutions, and "other".

- ⁶ These thirteen chapters were research, education, SMEs, telecommunications, industrial policy, culture and audiovisual policy, CFSP, company law, consumer protection, fisheries, statistics, FM goods, and external relations.
- ⁷ *Bulletin Quotidien Europe*, No. 7415, Monday/Tuesday, 1 & 2 March 1999, p. 11.
- ⁸ "Bilateral screening with five 'second wave' candidate CEECs to be finished in July except agriculture", *Uniting Europe*, No. 43, 8 March 1999, p.3.
- ⁹ "CEECs face problems with implementing EU *acquis* as screening progresses", *Uniting Europe*, No. 32, 7 December 1998, p.1. "Differences between first and second group of candidates in adoption of EU *acquis* are minimal, Commission says", *Uniting Europe*, No. 37, 25 January 1999, p. 4.
- ¹⁰ No date has been set for accession. The date of 2003 has been used as a reference date on the basis of the Commission's estimations. Hungary believes it will be ready, and therefore should accede, a year earlier.
- ¹¹ These are the first seven areas listed in endnote 6. The EU negotiating positions on the individual chapters are "defined" at this ambassadorial level, based on the draft positions presented by the Commission. The positions are then formally approved by the General Affairs Council before the commencement of negotiations at the ministerial level.
- ¹² At the meeting on 19 April the delegates addressed the issues of industrial policy, telecommunication (both unresolved in November), statistics, consumer and health protection, fisheries, and company law. Discussions in the first three areas were concluded at the meeting on 19 May, after Swedish opposition was dropped on some aspects of telecommunications. *Financial Times*, 20 May 1999 and *Agence Europe*, No. 7466, Mon.-Tues., 17-18 May 1999, p.9.
- ¹³ "EU Member States back Presidency work programme on enlargement", *Uniting Europe*, No. 38, 1 February 1999, p.1.
- ¹⁴ These are the last six chapters listed in endnote 5 plus competition policy and customs union. The four areas which were not concluded at the first ministerial meeting in November (telecommunications, culture/audio visual policy, industrial policy and Common Foreign and Security Policy (CFSP)) will also be addressed.
- ¹⁵ Other derogations requested were much narrower in scope. For example, the Czech Republic wanted to be able to maintain its ban on phthalates in toys, Estonia wanted limited concessions in the area of trademark law, and Hungary, Poland and Slovenia all asked for derogations in time with regard to legislation on pharmaceuticals. "Candidates unveil negotiating positions on eight more chapters on EU *acquis*", *Uniting Europe*, No. 39, 8 February 1999, p. 2
- ¹⁶ http://europa.eu.int/comm/dg1a/enlarge/report_11_98_en/index.htm.
- ¹⁷ "EU opposes broadening of negotiations and setting of dates for starting talks with Latvia, Slovakia, and Lithuania", *Uniting Europe*, No. 33, 14 December 1998, p. 3.
- ¹⁸ *Ibid.*, p. 2.
- ¹⁹ "Differences between first and second group of candidates in adoption of EU *acquis* are minimal, Commission says", *Uniting Europe*, No. 37, 25 January 1999, p. 3
- ²⁰ Full text of conclusions of the Berlin informal summit reprinted in *Uniting Europe*, No. 47, 5/4/99, pp. 7-12.
- ²¹ It is interesting to note that in the budgetary agreements reached in Berlin, in March 1999, the financial framework for the years 2000-2006 contemplates an EU of 21 members, or six new Member States.
- ²² Malta had, along with Cyprus, been promised the commencement of accession negotiations within six months after the conclusion of the 1996-1997 intergovernmental conference (IGC). "Malta to join first six candidates in EU accession talks", *Uniting Europe*, No. 41, 22 February 1999, p.1. "Malta to join screening with 'pre-in' candidates", *Uniting Europe*, No. 46, 29 March 1999, p.4.
- ²³ "EU to develop ties with Albania, Macedonia", RFE/RL Newswire, 23 April 1999. □

La Fonction publique dans l'Europe des Quinze: Réalités et Perspectives*

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I. Introduction

Dans la première partie de cet article, je me fonderai essentiellement sur les travaux réalisés à l'Institut Européen d'Administration Publique, à Maastricht, en 1995, et qui conduisirent à la publication en 1996, en anglais d'abord, puis en français et en allemand, de l'ouvrage: "Les Fonctions publiques dans l'Europe des Quinze", rédigé avec mes collaborateurs Christoph Demmke et Astrid Auer¹.

A. La Fonction publique dans le contexte du Secteur public

Il est sans doute souhaitable de circonscrire d'abord le périmètre du champ de la Fonction publique que nous avons étudié. Il ne s'agit pas en effet de toute la Fonction publique – qui comprendrait à la fois l'administration centrale de l'Etat, celle des régions, provinces et communes, et pour la France, par exemple, la Fonction publique hospitalière en sus. De même, les agents publics (dans certains pays appelés aussi fonctionnaires) des entreprises publiques, qui jouissent souvent d'un "statut" proche de celui des fonctionnaires de l'Etat, ne sont pas retenus dans le cadre de notre étude.

Le tableau 1 (à la fin de cet article) présente l'ensemble du secteur public. Il couvre la Fonction publique centrale et l'administration décentralisée, le secteur public non-marchand (personnel public enseignant, hospitalier, etc.) et le secteur public marchand (personnel des entreprises publiques).

Nos investigations se limitent à la seule administration centrale ou fédérale des Etats membres de l'Union européenne.

L'étude des effectifs de l'administration publique dans les Etats membres de l'Union européenne² révèle un effectif total, pour la fonction publique administrative et le secteur public non-marchand, de près de 23 millions d'agents; la Fonction publique administrative seule n'en compte que 11,5 dont l'administration locale représente encore la moitié. La Fonction publique administrative centrale et régionale des pays fédéraux ou semi-fédéraux compte ainsi environ 5 millions d'agents.

B. Fonction publique et Union européenne: la Fonction publique, une prérogative nationale

Rappelons-nous que l'Union européenne n'a aucune compétence formelle en matière de fonction publique des Etats membres. La seule référence explicite à "l'administration publique" dans les Traités est celle de l'article 39 (Traité d'Amsterdam) qui établit le principe de la liberté de circulation des travailleurs et stipule en son paragraphe 4 que "les dispositions du présent article ne sont pas applicables aux emplois dans l'administration publique".

Ce principe fondamental étant établi, il est donc clair que l'organisation et les règles de fonctionnement des Fonctions publiques des Etats membres sont de la compétence exclusive de ceux-ci. Le principe de *subsidiarité* est donc d'application.

En matière de libre circulation des agents publics, la Cour de justice des Communautés européennes a nettement établi que l'exception définie par l'article 39.4 ne pouvait vider de son contenu l'objectif même du Traité en la matière qui est bien de faciliter la libre circulation et non de la restreindre. Dès lors, l'interprétation de cette disposition doit être limitative. Ne sont exclus du principe de base de libre circulation que les agents des administrations publiques titulaires d'emplois "qui comportent une participation, directe ou indirecte, à l'exercice de la puissance publique et aux fonctions qui ont pour objet la sauvegarde des intérêts généraux de l'Etat ou des autres collectivités publiques".³

Par le biais de cette politique de libre circulation, comme par celui des politiques d'égalité des chances et d'égalité de traitement entre hommes et femmes, l'Union européenne s'introduit donc indirectement au coeur des politiques de gestion du personnel des fonctions publiques. Cela a conduit en effet à faire sauter un principe auquel tous les Etats recouraient traditionnellement, à savoir celui de réserver l'accès à la Fonction publique aux seuls nationaux. Aujourd'hui cette ouverture des emplois publics – sauf l'exception limitée décrite ci-dessus – est pratiquement réalisée dans tous les Etats membres de l'Union. Elle ouvre *de facto* environ 90% des emplois publics à tous les ressortissants de l'Union européenne.

La libre circulation ne pouvant se limiter au seul accès initial en début de carrière des fonctionnaires, mais devant permettre également la mobilité européenne en cours de carrière, d'autres éléments sont appelés à évoluer. En particulier les dispositions relatives à la sécurité sociale des travailleurs migrants devront prochainement, *mutatis mutandis*, s'appliquer aussi aux fonctionnaires.

En l'absence de tout Conseil des ministres de la Fonction publique de l'Union européenne, une coopération informelle s'est cependant établie depuis de nombreuses années. Ainsi six conférences informelles des ministres en charge de la Fonction publique ont eu lieu depuis 1988 et trente-deux réunions semestrielles des Directeurs généraux de la Fonction publique ont été organisées à ce jour. La 33ème rencontre aura lieu à Helsinki, siège de la Présidence de l'Union au second semestre 1999, les 3 et 4 novembre prochain.

Au cours de ces rencontres, des échanges d'expériences menées en matière de gestion des administrations publiques portent notamment sur les réformes administratives, les processus de modernisation, les initiatives prises en matière de gestion du personnel, de dialogue social, de développements en politique de qualité, en politique de

* A summary in English of this article can be found at the end.

décentralisation ou de déconcentration, ou en *'New Public Management'*...

II. De quelques définitions

A. Statut ou réglementation des conditions d'emploi dans la Fonction publique

Certains pays parlent du "statut" des fonctionnaires ou des agents de l'Etat, d'autres parlent tout simplement de conditions d'emploi, ou de droit du travail appliqué au personnel des organisations publiques. Le plus souvent, les règles définissant les conditions d'emploi relèvent du droit public et dérogent souvent aux règles d'application pour les travailleurs du secteur privé.

B. Fonction publique statutaire et non statutaire

On parle de "Fonction publique statutaire" lorsque les normes juridiques établissent un droit du travail distinguant nettement les conditions d'emploi en Fonction publique de celles qui régissent le droit commun du travail. C'est le cas en France, en Belgique, en Allemagne, en Espagne, au Portugal et en Grèce.

On ne fait pas référence au terme de statut lorsque la règle de droit de la Fonction publique établit que le droit commun du travail s'applique, éventuellement à quelques exceptions près, aux agents de l'Etat ou fonctionnaires. C'est le cas en Suède et en Finlande, au Danemark, aux Pays-Bas et, depuis quelques années, en Italie.

Enfin, de nombreux Etats emploient à la fois du personnel statutaire – auquel l'appellation "*fonctionnaires*" est alors souvent réservée – et du personnel non statutaire ou contractuel.

C. Système de carrière et système d'emploi

La comparaison des conditions d'emploi dans les Fonctions publiques des Etats membres de l'Union européenne fait apparaître deux systèmes bien distincts d'organisation: le système de la carrière (en anglais, *career system*) et le système de l'emploi (*position system*). Les principales caractéristiques des deux systèmes sont reprises dans le tableau 2 à la fin de cet article.

III. Evolutions significatives observées

A. Recrutement

Le recrutement s'opère généralement par emploi dans les Fonctions publiques d'emploi. Les opérations sont alors très décentralisées, par ministère ou "agence", voire par administration ou service. Les administrations recourent dans ces cas à toutes les techniques de sélection qu'utilisent les employeurs du secteur privé: tests de toutes natures, entretiens, mises en situation, voire services spécialisés d'agences de recrutement ou de chasseurs de têtes.

L'on notera cependant que le Royaume-Uni a développé, à côté du recrutement décentralisé pour le personnel de niveau moyen et inférieur, des filières centralisées de recrutement de personnel supérieur à fort potentiel. Dans ces filières dénommées *Fast Stream* et *European Fast Stream*, les "concours" comportent des tests, des épreuves pendant deux jours dans un centre d'évaluation et un entretien approfondi avec des hauts fonctionnaires. Ces opérations sont très rigoureuses et sélectives: en 1996, 7000 candidat(e)s ont concouru pour quelque 130 emplois de la filière *Fast Stream*. Ces recrutements sont suivis

d'une politique intensive de formation et de mobilité dans des postes variés auprès de fonctionnaires expérimentés; cette méthode permet ainsi l'accès rapide, avant l'âge de 30 ans, à des postes de responsabilité dans l'administration publique britannique.

Dans les systèmes de carrière, le recrutement est toujours organisé principalement par voie de concours. Dans ce cas cependant, l'on observe une nette évolution vers des recrutements diversifiés par concours très spécifiques pour des postes (caractérisés par des grades spécifiques) dont les fonctions ont été analysées et ont permis d'établir des "profils de fonctions ou de compétences" et de mettre au point des techniques de sélection *ad hoc*. La tendance est donc de passer de plus en plus des recrutements généralistes traditionnels vers des recrutements plus spécialisés.

Par ailleurs, la "gestion prévisionnelle des emplois" a fait également son entrée dans les services de gestion de personnel de plusieurs pays, dont la France. Par ces méthodes nouvelles de gestion, l'on tente de prévoir non seulement les besoins quantitatifs de personnel à terme dans les organisations, mais aussi les besoins qualitatifs de compétences et d'expertise en intégrant dans la réflexion prospective des éléments tels que les évolutions institutionnelles des structures administratives, technologiques et professionnelles des emplois nouveaux.

B. Accès à la F.P. par les ressortissants de l'Union européenne

Sous la pression de la jurisprudence active de la Cour de justice des Communautés européennes (voir ci-dessus), les Etats membres ont adapté leur législation pour ouvrir leur Fonction publique aux ressortissants de l'Union européenne, à l'exception des emplois réservés (exception de l'article 39.4) selon le principe défini par la Cour. L'application concrète de ce principe (emplois "*qui comportent une participation, directe ou indirecte, à l'exercice de la puissance publique et aux fonctions qui ont pour objet la sauvegarde des intérêts généraux de l'Etat ou des autres collectivités publiques*") continue cependant à poser problème avec des interprétations très variables. Néanmoins, quelque 80 à 90% des emplois sont dorénavant ouverts. Le problème est donc juridiquement résolu pour l'accès en début de carrière, c'est-à-dire au recrutement initial. Le problème de l'accès en cours de carrière reste entier. Sur la base des travaux des Ministres et des Directeurs généraux de la Fonction publique, des avancées significatives se profilent cependant. Ainsi, sur proposition de la France, un système de mobilité en cours de carrière par voie de détachements de longue durée (3 à 5 ans) se met progressivement en place pour permettre à des fonctionnaires déjà expérimentés d'un pays d'entrer par détachement dans la fonction publique d'un autre Etat membre et, éventuellement, après une expérience dans ce pays, de participer à des épreuves de nouveaux recrutements (système d'emploi) ou à des examens de promotion interne (système de carrière) permettant ainsi au fonctionnaire qui le souhaite et satisfait aux conditions voulues de s'intégrer définitivement dans la Fonction publique du pays d'accueil. La France a déjà adapté sa réglementation pour permettre ces détachements de ses fonctionnaires dans d'autres pays et de fonctionnaires des pays de l'UE dans la Fonction publique française.

C. Systèmes de promotion

Dans le système de la carrière, les procédures de promotion sont généralement très formalisées, encadrées par des règles très élaborées: de l'appel aux candidatures aux décisions finales par l'autorité ayant pouvoir de nomination, en passant par des conditions de participation fondées sur l'ancienneté ou l'évaluation.

Dans le système de l'emploi, la promotion n'existe pas formellement. Elle s'opère en fait par la procédure d'un nouveau recrutement pour un emploi déterminé et tous les membres du personnel répondant, ou estimant répondre, au profil de poste annoncé (spécialisation, expérience professionnelle, qualités personnelles, etc.) sont libres de poser leur candidature. Ces emplois de qualification intermédiaire ou supérieure (ou emplois "de promotion") peuvent être attribués soit à des candidats issus de l'administration considérée, soit ouverts à toute l'administration publique, ou encore ouverts aussi à des candidats non fonctionnaires. L'on peut souvent entrer dans l'administration publique dans ce système à tout niveau de responsabilité. Ainsi le Royaume-Uni a-t-il recruté récemment des Directeurs généraux, voire des *Permanent Secretary*, en faisant appel à l'extérieur de la Fonction publique.

Il faut encore mentionner ici l'importance du facteur politique dans l'attribution des postes les plus élevés des administrations. Si ce facteur est de faible importance au Royaume-Uni, en Irlande et aux Pays-Bas, il est particulièrement important en Espagne, en Grèce et en Allemagne, pays dans lesquels les postes supérieurs de l'administration sont dits postes politiques et où leurs titulaires sont changés lorsque des changements gouvernementaux interviennent.

D. Mobilité

Ce facteur ne permet plus de différencier entre le système de la carrière et le système de l'emploi. C'est le facteur qui obtient le score le plus ouvert dans l'ensemble de l'Union, ce qui signifie que des dispositions favorisant la mobilité sont prises quasiment partout.

E. Formation obligatoire comme condition de promotion

Cette disposition est mise en oeuvre au Danemark, en Allemagne, en Espagne et en Italie. L'administration fédérale de la Belgique s'engage sur cette voie avec son projet de "maîtrise en administration publique" qui constituera une condition d'accès aux postes de fonctionnaires généraux, c'est-à-dire aux trois rangs supérieurs de la carrière. Notons en passant que cette évolution renforcera encore le système de la carrière, mais qu'elle pourrait constituer un progrès dans le sens de la dépolitisation des nominations à ces rangs, en limitant en tout cas le libre choix de l'autorité politique au seul vivier des titulaires de cette maîtrise.

F. Politique de rémunération

La tendance en ce domaine est de développer le salaire ou des éléments de la rémunération à la performance des agents, en particulier des cadres, et de progresser ainsi vers l'individualisation de la rémunération. Cette évolution a été analysée en détails par l'OCDE dans son étude: "La rémunération liée à la performance pour les cadres du secteur public" publiée cette année.

G. Retraite des fonctionnaires

Tous les pays industrialisés sont confrontés au double problème de la démographie et des progrès de la santé publique qui font croître le nombre et le poids des pensions à charge du trésor public. Ces facteurs, combinés aux contraintes de la gestion des finances publiques, conduisent inévitablement à repenser la gestion globale des retraites, en particulier de celles des agents des administrations publiques.

Les évolutions en cours s'orientent soit vers le développement de fonds de pension (retraites par capitalisation), soit vers la remise en cause de certains avantages traditionnellement liés aux pensions publiques (base de calcul de la retraite, niveau des retraites, âge de la retraite), soit au développement de retraites fondées sur une double base: budget et fonds de pension. Les Pays-Bas, l'Italie, l'Irlande et la Suède sont les pays ayant accompli les pas les plus importants en direction de la gestion des retraites publiques par fonds de pension.⁴

H. Conclusion relative à ces évolutions

Ces évolutions confirment l'observation que faisait dès 1993 l'expert français du droit administratif qu'est Guy Braibant:

"il ne faut pas exagérer les différences entre ces deux conceptions (carrière et emploi) qui ont tendance à se rapprocher. La notion d'emploi se développe dans les systèmes de carrière et, parallèlement, dans les systèmes d'emploi, apparaissent des filières qui ressemblent à des carrières."⁵

IV. De quelques problèmes cruciaux pour aujourd'hui et pour demain

A. Gestion des carrières dans la Fonction publique

1. Pourquoi gérer les carrières?

La complexité croissante des tâches et de la gestion administratives liées tant à l'internationalisation et à la décentralisation des politiques qu'aux attentes et exigences des utilisateurs des services administratifs, ainsi qu'un contexte budgétaire serré pour une saine gestion des finances publiques, constituent un environnement difficile pour la gestion publique. Celle-ci est dès lors contrainte à mettre en oeuvre une gestion performante de ses ressources humaines, signifiant à la fois une politique d'économie des ressources humaines et de valorisation maximale de celles-ci. C'est dans ce cadre que l'on peut décliner les objectifs de la gestion des carrières:

- Obtenir au niveau de l'organisation les bénéfices de l'investissement consenti en ressources humaines;
- Assurer la continuité des fonctions nécessaires au bon fonctionnement des organisations publiques;
- Maintenir un équilibre satisfaisant de la pyramide des âges des personnels;
- Favoriser l'engagement et la motivation du personnel;
- Répondre au besoin d'estime, d'appartenance et d'actualisation (cf. la célèbre pyramide des besoins de Maslow).

2. Apport de la formation

L'une des voies privilégiées pour valoriser les ressources humaines des administrations qui s'impose aujourd'hui est

celle de la formation. On peut distinguer quatre domaines distincts dans une politique dynamique de formation des fonctionnaires:

a) Formation professionnelle:

Ce domaine vise à équiper les agents d'un savoir-faire adapté aux opérations dont ils ont la charge dans l'organisation. Cette formation est souvent spécialisée dans le cadre du métier exercé: formation fiscale, comptable, juridique, aux réglementations gérées par les services, etc. Elle peut être plus générale, visant à faire acquérir des outils de travail tels que l'utilisation d'instruments informatiques, ou encore à faire adopter des comportements idoines aux agents, tels que le sens de l'accueil ou l'aptitude à la négociation.

b) Formation managériale:

Ce domaine s'adresse à tous les membres du personnel investis de fonctions de direction, depuis la gestion d'une petite équipe jusqu'à la direction générale ou stratégique des organisations. Ce domaine s'est fortement développé depuis les années quatre-vingt pour passer d'une administration traditionnelle où les spécialités techniques (juridiques, économiques, agricoles, médicales, des ingénieurs, etc.) avaient la prééminence par rapport aux capacités de gestion. La complexification des politiques et le caractère de plus en plus mouvant, voire turbulent, de l'environnement socio-économico-politique, ont imposé l'expertise gestionnaire ou *managériale* comme un domaine d'excellence particulier. De nombreuses initiatives de formation se sont dès lors développées en ce domaine.⁶

c) Mobilité et développement:

La formation par la mobilité est un troisième domaine de valorisation des ressources humaines. Il permet à des agents d'acquérir des connaissances et aptitudes nouvelles et diversifiées par le contact direct avec des situations réelles vécues dans d'autres administrations, voire dans d'autres organisations ou entreprises du secteur public ou du secteur privé. Nous avons cité déjà le cas du *Fast Stream* britannique qui prépare de jeunes recrues à fort potentiel par cette méthode pour un accès rapide aux postes de responsabilité. En matière européenne, on peut citer également les programmes de mobilité tels que KAROLUS dans le cadre du marché unique, ou ODYSSEE dans le cadre de la coopération en matière d'asile, d'immigration ou de contrôle des frontières.

d) Développement personnel:

Ce domaine est celui de l'investissement fondamental en formation, indépendamment de la fonction actuelle ou de la préparation immédiate à une fonction supérieure. Il s'agit en réalité de permettre aux membres du personnel de développer au maximum leurs capacités et leur potentiel d'évolution. Il faut pouvoir en cette matière, éviter l'écueil de la "formation-loisir" sans refuser l'investissement potentiellement utile à l'organisation. Cet objectif peut être atteint notamment par un échange régulier entre les membres du personnel et des spécialistes de la gestion des ressources humaines en '*counselling*' ou conseil en développement de carrière.

3. Importance de l'évaluation

L'évaluation du personnel s'est affirmée comme un domaine important mais aussi éminemment sensible dans la gestion des carrières administratives.

a) L'évaluation, instrument de GRH

L'évaluation est un instrument au service de l'organisation en ce qu'elle permet de jouer un rôle de pilotage de multiples opérations de gestion de personnel: rôle dans la politique de rémunération; instrument de dépistage des besoins individuels de formation; instrument d'orientation des affectations du personnel et des promotions; instrument enfin au service d'une gestion prévisionnelle des emplois.

b) Effet de rétroaction

L'évaluation est aussi au service de l'agent lui-même par cet effet de rétroaction résultant du retour d'image ou d'appréciation reçu par l'individu de la part de son environnement. Cet effet de rétroaction lui permet de s'apprécier plus justement et d'adopter des attitudes ou démarches d'évolution positive.

c) Evaluation du potentiel

La dimension prospective de l'évaluation s'affirme également lorsqu'elle porte non seulement sur les performances du passé, mais tente un effort d'introspection sur l'individu et confronte ses aspirations aux besoins actuels et futurs de l'organisation. Le repérage des personnalités à haut potentiel est l'un des objectifs d'une telle démarche.

d) Entretiens d'évaluation, de fonctionnement ou appréciation à 360°

L'évaluation visant à accorder une note d'appréciation et même parfois des sanctions négatives dans les cas de performances insuffisantes est aujourd'hui en perte de vitesse, sinon en voie de disparition dans les organisations les plus performantes⁷. Il est en effet constaté que de telles procédures d'évaluation induisent quasi systématiquement la crainte des agents et, en cas de sanction négative, ont un effet de démotivation. Au contraire toute la démarche devrait être exigeante, mais mobilisatrice. Dès lors les entretiens d'évaluation, plus souvent remplacés par des entretiens dits de fonctionnement, au cours desquels les agents et leurs responsables immédiats font un tour d'horizon des points forts et des points faibles de leurs relations, mais aussi de l'environnement de travail en vue de l'optimiser. Dans certains cas, l'on met aussi en place les "appréciations à 360°" constituées par une enquête relative à un membre du personnel auprès de ses supérieurs, collègues et subordonnés et dont les résultats sont destinés exclusivement à l'intéressé lui-même et non au service du personnel. Cette technique mise sur l'effet de rétroaction déjà mentionné et sur la capacité autonome des personnes d'en tirer des leçons positives qui ne peuvent que renforcer la mobilisation et donc les performances des agents.

4. De la carrière des fonctionnaires dirigeants

En plus de l'émergence des capacités de gestion comme compétence-clé des cadres dirigeants, déjà mentionnée, les tendances dominantes en cette matière sont l'importance accordée à la mobilité des postes de direction et le recours de plus en plus fréquent à la technique des affectations à durée limitée ou "mandats". L'on associe souvent à ceux-

ci la fixation d'un cahier de charges ou d'objectifs, ou encore de résultats à atteindre au cours de la période d'affectation. Les durées les plus fréquentes sont de l'ordre de cinq ou six ans. Y recourent déjà des pays comme la Suède, l'Irlande, le Royaume-Uni pour les *Chief Executives* des agences, ou encore l'Autriche.

B. De la relation entre l'Administration et le Politique

1. Une administration au service des projets politiques des élus

La subordination de l'administration au pouvoir politique constitue, dans un système de gouvernement démocratique, une règle incontournable. Ce principe fondamental est à la source des règles traditionnelles de la loyauté du fonctionnaire à l'égard des autorités politiques et de sa neutralité politique dans l'exercice de ses fonctions, même si l'exercice propre de sa liberté politique et d'opinion est total en tant que citoyen.

Néanmoins la mise en oeuvre de ce principe a soulevé et soulève toujours de nombreuses difficultés dans la pratique. Où tracer la limite entre la loyauté et la soumission, entre la neutralité et l'indispensable capacité d'initiative des fonctionnaires et, en particulier, des cadres qui coopèrent à la préparation des politiques voire à leur évaluation?

L'équilibre entre la définition des choix fondamentaux qui appartiennent à l'autorité politique, et la concrétisation de ces orientations dans des politiques concrètes et des décisions ponctuelles dans le cadre d'affaires ou de dossiers administratifs individuels, constitue toujours un équilibre précaire.

2. Les Cabinets ministériels: une "administration-bis"?

Des pays comme la France, la Belgique ou l'Espagne connaissent des structures intermédiaires entre le pouvoir politique et l'administration proprement dite: ce sont les cabinets ministériels. Ceux-ci constituent un carrefour incontournable entre les Ministres et l'Administration. Ils ont tendance à ne pas limiter leur rôle à la définition des politiques et à l'évaluation des résultats de la gestion de celles-ci par l'administration. Ils tendent, au contraire, à intervenir dans la supervision de l'administration courante, par "l'évocation" de dossiers individuels, voire par "l'administration directe" conduisant les membres des cabinets ministériels à "se substituer aux directions et services administratifs pour traiter directement des dossiers".⁸

3. Rôle du politique: conception et orientation des politiques

Une division optimale des tâches entre le Politique et l'Administration devrait conduire le premier à se concentrer sur son éminente fonction de conception, d'orientation et d'évaluation des impacts de ses politiques et à permettre à la seconde, équipée des instruments, pouvoirs et compétences *ad hoc*, de gérer les politiques, de prendre les décisions individuelles dans le respect des règles et objectifs arrêtés par le Politique et de gérer les bases de données nécessaires à une évaluation scientifique et efficace des performances et impacts des politiques mises en oeuvre.

Il est intéressant d'observer dans ce contexte les pratiques des gouvernements et administrations du Royaume-Uni, de l'Irlande et des Pays-Bas où le pouvoir politique dispose de cabinets ou de secrétariats privés des Ministres extrêmement

réduits – aux Pays-Bas, les Ministres disposent de secrétariats composés de une à trois personnes pour préparer leurs activités extérieures. Une pratique de dialogue direct s'établit ainsi entre les Ministres et les hauts fonctionnaires qui réfléchissent ensemble aux voies les plus rationnelles de mener les politiques voulues par le pouvoir politique, sans l'écran intermédiaire de cabinets ministériels. En Suède, l'administration ministérielle elle-même est réduite aux seules fonctions de préparation de la législation et à la gestion des contrats de gestion avec les "agences d'exécution" qui portent l'entière responsabilité de l'application des politiques. Ainsi le Directeur général de ces agences est seul habilité à prendre les décisions dans les dossiers individuels; le Ministre ne dispose même pas du pouvoir d'évocation de ces dossiers. Mais la législation définit les normes d'exécution et les contrats de gestion définissent les objectifs à atteindre et les méthodes et modalités d'évaluation périodique de la gestion par les Directeurs généraux.

Il faudrait pouvoir encore développer deux thèmes dont l'importance "pour aujourd'hui et pour demain" n'échappe pas aux observateurs attentifs de la gestion publique. Je les cite ici pour mémoire. Ils justifieraient à eux seuls de longues réflexions et propositions. Il s'agit des relations entre les autorités publiques et les organisations représentatives des fonctionnaires⁹, d'une part, et de la contribution des Fonctions publiques des Etats à la crise structurelle de l'emploi et du chômage, d'autre part.

V. Conclusion

L'administration publique demeurant domaine de souveraineté des Etats membres de l'Union européenne n'est cependant pas à l'abri de l'intégration européenne. Elle en constitue même l'une des structures essentielles. C'est en effet l'administration des Etats qui participe à la préparation des politiques européennes, notamment dans les comités d'experts organisés par la Commission européenne dans sa fonction d'initiateur législatif, ou dans les groupes de travail du Conseil; et plus encore dans la mise en oeuvre des politiques européennes dans laquelle tout l'appareil administratif des Etats membres est mobilisé, du niveau central au niveau local, de l'administration exécutive à l'appareil judiciaire.

L'absence de règle européenne normative en matière d'organisation de l'administration publique n'empêche pas cependant des rapprochements de perspectives et de pratiques en matière de management public. Le survol de ces pratiques proposé ci-dessus et portant surtout sur les pratiques de gestion des ressources humaines, témoigne de ces rapprochements, même si l'on ne peut parler encore de convergence administrative au sein de l'Union européenne.

Les travaux réguliers des Ministres et des Directeurs généraux de la Fonction publique indiquent que ce mouvement de rapprochement s'amplifiera encore dans les années qui viennent.

Summary

In the context of the realisation of the free movement of persons, the civil services are in the Europe of fifteen under increasing pressure to open up. For instance, about 90% of the positions are now open to all nationals from the EU Member States, while nationality is now only a requirement for those posts which require direct or indirect involvement

in the exercise of official authority. Another common trend in civil services is that career as well as position systems are going through a process of continuous change as regards recruitment procedures, training policies, payment policies, pension policies, etc. The result is that both systems are becoming more similar. Generally speaking, as far as the future development of the civil services in the EU is concerned, they have to operate in an increasingly difficult environment on account of new challenges such as internationalisation, tightening budgets, greater demands made by users, etc.. In the future this will particularly require optimal organisation and upgrading of human resources, primarily through a timely tailored and effective training policy.

NOTES

- ¹ Une réédition largement revue et mise à jour de cet ouvrage est actuellement en préparation.
² Robert Polet et Koen Nomden, 'Public Employment in the Public Administrations of the EU Member States', IEAP, Déc. 1996, 96 pp.
³ C.J.C.E., 17 déc. 1980 et 26 mai 1982 (Commission c/ Belgique),

- 149/79, Rec. 1980, p. 3881 et Rec. 1982, p. 1845.
⁴ Réforme des régimes de retraite des fonctionnaires dans les Etats membres de l'Union européenne, étude réalisée par l'IEAP à la demande du gouvernement du Grand-Duché de Luxembourg, 01/1998.
⁵ Guy Braibant, "Existe-t-il un système européen de fonction publique?" in Revue française d'administration publique, n°68, oct.-déc. 1993, pp. 611-618.
⁶ Voir notamment: Robert Polet, *Etude comparative de la formation à la gestion et de la sélection des cadres dirigeants dans l'administration publique des Etats membres de l'Union européenne*, IEAP, Maastricht, 1995, 90 pp.
⁷ Voir par exemple: Gilbert B. Siegel et Ed. Seidler, *Towards a Public Service blend of Human Resource Management and TQM'I*, in International Journal of Public Administration, 19 (10), 1781-1810 (1996).
⁸ Extrait de la réponse française à une enquête sur les relations entre autorités politiques et autorités administratives, menée par l'IEAP pour la 27ème conférence informelle des Directeurs généraux de la Fonction publique tenue à Dublin, en novembre 1996.
⁹ Ce thème fut précisément l'objet principal de la 32ème réunion des Directeurs généraux de la Fonction publique, tenue à Munich les 20 et 21 mai 1999. Une Conférence européenne sur ce même thème sera organisée par la Présidence finlandaise le 2 novembre prochain, à la veille de la 33ème réunion des Directeurs généraux. □

Tableau 1: Secteur public

| ETAT | + Régions, Länder, Communautés (autonomes) | = F.P. Administrative centrale et régionale |
|---|---|---|
| + Adm. décentr. idem | + Administration intermédiaire: provinces, comtés, départements... + Administration locale, municipale | F.P. Administrative |
| + Services publics non administratifs (Santé, éducation...) | | Service public non marchand |
| + Entreprises publiques | | Service public marchand |

Tableau 2

| Système de la Carrière | Système de l'Emploi |
|---|---|
| Entrée dans un cadre organique ou corps hiérarchisé d'emplois Catégories homogènes d'emplois (grades) | Définition des emplois (conditions et caractéristiques fonctionnelles) |
| Recrutement à la base (emploi inférieur du corps ou de la catégorie d'emploi considéré) | Recrutement à des emplois ou fonctions spécifiques sur la base de profils de compétences, ouvert à tous candidats appropriés, tant de l'intérieur que de l'extérieur de la F.P. Entrée possible à tous niveaux |
| Carrière faite d'une succession de postes par promotion d'un grade donné à un grade supérieur | Carrière faite d'une succession d'emplois ("promotion" = "recrutement" à un emploi supérieur) |
| Conditions de promotion (accès aux grades supérieurs) juridiquement préétablies | Pas de conditions générales préétablies pour l'accès aux emplois |
| Le système est fermé à l'entrée de candidats externes en cours de carrière | Système ouvert à l'entrée en cours de carrière |



ANNOUNCEMENTS / ANNONCES

Conference

Keep Ahead with European Information

Maastricht, 22 and 23 November 1999

This annual conference is, for the second time, being organised by the European Institute of Public Administration (EIPA) in collaboration with the European Information Association (EIA).

The conference will focus on new and important issues, products and services of interest to those who work with European information. The conference is aimed at experienced professionals who work in the field of information. It will bring together officials working in the European Union and other European organisations, professionals involved in the dissemination of EU information as well as those from related organisations, and people with an interest in the issues under discussion.

The working language of the conference will be English.

For more information and registration form, please contact:

Ms Joyce Groneschild, Programme Organisation, EIPA

P.O. Box 1229, NL – 6201 BE Maastricht

Tel: +31 43-3296 357; Fax: +31 43-3296 296; E-mail: j.groneschild@eipa-nl.com

The full programme and registration form will be available soon on the EIPA web site at: <http://www.eipa.nl>

Conference

Agricultural Trade and the Next WTO Round

Maastricht, 3-5 November 1999

The European Institute of Public Administration is organising a European Conference on Agricultural Trade and the Next WTO Round, to be held on 3-5 November 1999 in Maastricht, the Netherlands.

The objective of the conference is to address some of the major issues concerning agricultural trade which are to be discussed during the next round of negotiations on agriculture at the World Trade Organization following the ministerial conference in Seattle at the end of this year. The intention is to combine academic analysis with practical expertise in order to highlight some of the main problems that will arise during the round and, as far as possible, to make recommendations for viable negotiation positions aimed at a successful conclusion of the agriculture round.

The target audience of the conference is policy makers, senior officials at national and regional levels of governments, academics, representatives of agriculture, business and trade associations and other experts.

The working language for the workshops will be English.

A registration form can be found enclosed with this edition of EIPASCOPE.

For further information, please contact:

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EIPA web site: <http://eipa.nl>

Seminar on:

The US Governmental System and EU-US Relations

Washington DC, 20-24 September 1999

From 20 to 24 September 1999, the European Institute of Public Administration (EIPA), Maastricht (NL), in cooperation with the Brookings Institution, Washington DC (USA), will be organizing its annual seminar on the US Governmental System and EU-US Relations. The seminar is scheduled to take place at the Brookings Institution in Washington DC.

The seminar aims to provide participants with a better understanding of the basic institutions of American government at the federal level: Congress, the Presidency and the executive branch, and the Judiciary. Having laid the foundations for an understanding of the American political machinery, the programme will then concentrate on major issues in relations between the United States and the European Union.

The speakers will include senior government officials, prominent academics, experts from the business community and faculty members from the Brookings Institution.

The seminar is sponsored by the European Commission, Brussels.

The target group of the seminar includes policy-makers and officials from the EU Member States and the EU Institutions.

For practical information on this seminar, please contact:

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EIPA website: <http://www.eipa.nl>

NEW!!! Pilot Project

Unity and Diversity: Walking the Tight Rope

Coping with the Demands of Intercultural Cooperation within the
Public Administrations in the European Union

Maastricht, 13-16 December 1999

This seminar is designed for civil servants in the Member States and accession countries involved in EU policy making, implementation and enforcement, as well as civil servants in the EU institutions.

The participants will be given the opportunity to identify cultural “specificities”, or culturally specific characteristics, which influence the behaviour of cultural groups and which, in turn, have concrete effects upon the results of any tasks entrusted to them. In this seminar, tasks which are associated with public administration will be examined, such as analysing information, policy analysis, consensus building, policy making, decision making, implementation and enforcement, as well as making judgements and compromises, including balancing interests and making trade offs.

This seminar aims to present the problems which can be identified in order to raise awareness of them. Solutions to these problems and/or methods provided to obtain such solutions will also be proposed. In addition, attention will be paid to the fact that the cultural diversity in the EU should be celebrated and that it strengthens the EU internally as well as externally in its role as a global player.

The seminar will be conducted in English.

For further information, please contact:

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EIPA web site: <http://eipa.nl>

EIPA Staff News

* Newcomers at EIPA

Bruno della Gala (I) joined EIPA on 1 April 1999 as Lecturer.

Patrick Doelle (F/D), joined EIPA on 1 April 1999 as Research Assistant.

Visitors to EIPA

Visite à l'IEAP de S.E. Monsieur Bernard de Montferrand, Ambassadeur de France aux Pays-Bas, et de Monsieur Dominique Pladys, Attaché pour la Science et la Technologie auprès de l'Ambassade de France aux Pays-Bas, Maastricht, le 26 avril 1999. A cette occasion, Monsieur l'Ambassadeur fit un exposé sur "Les relations franco-néerlandaises au service de l'Europe".



S.E. Monsieur Bernard de Montferrand, Ambassadeur de France aux Pays-Bas, et Mme Isabel Corte-Real, Directeur général de l'IEAP

Visite à l'IEAP du Professeur Stelios Perrakis, Secrétaire général des Affaires européennes, Ministère des Affaires étrangères, République hellénique, le 18 mai 1999. A cette occasion, le Professeur Perrakis fit un exposé sur "La Grèce et l'Europe".



Professeur Stelios Perrakis, Secrétaire général des Affaires européennes, Ministère des Affaires étrangères, République hellénique, et Mme Isabel Corte-Real, Directeur général de l'IEAP

Research, Studies and Publications on EU Enlargement and Related Issues

The European Institute of Public Administration has been extensively involved in training activities for senior and middle-ranking civil servants from the countries that are candidates for EU membership. These training activities have typically taken the form of seminars, workshops and study visits. Their purpose is to provide detailed information on the EU, its institutions and their decision-making procedures, analyse the *acquis communautaire* and examine the methods and the problems involved in complying with the obligations of EU membership.

A less visible, but no less important, activity of EIPA in relation to the process of enlargement is the research that has been conducted on issues such as the preparation for accession to the Union and the problems of adjusting national institutions and policies. Some of this research has been undertaken at the request of either the European Commission or the governments of the candidate countries.

Please contact EIPA for any further information on the research projects and the reports and publications listed below.

Current research on enlargement

Capacity Building for Membership: The pre-accession and the post-accession processes are analysed using public management concepts. The experience and practices of the EU Member States are used as points of reference and guidelines for the candidate countries. The study has four components:

- a general study on the impact on administrative structures and processes;
- a study on managing the structural funds;
- a study on the implementation of EU environmental policy;
- a study on the administration of the common agricultural policy.

EIPA reports and publications

New Training Mechanisms in Public Administration in Estonia, (Y. Venna and I. Higgins), EIPA, 1994.

Property Rights and Privatisation in the Transition to a Market Economy, (R. Daviddi), EIPA, 1995.

The Agenda of the European Union, (P. Nicolaides, E. Best, K. Gretschnann and S. Vanhoonacker), EIPA for the World Bank, February 1996.

The Process of Enlargement of the European Union, (P. Nicolaides and S. Raja Boean), *Eipascope*, October 1996.

An Assessment of the Approximation Process in Poland: The Importance of Coordination and Enforcement, (A. Beetsma, P. Nicolaides and A. Turk), EIPA for the European Commission, March 1997.

Establishing a Professional Civil Service in Poland (Y. Venna, ed.), EIPA, 1997.

Strategy Options for Public Administration Reform in Central and Eastern Europe: An Assessment of the Current Situation and Recommendations for further PHARE Strategy (J-J. Hesse, Y. Venna and T. Verheijen), EIPA, 1997.

Assessment of EU Information Needs and Flows at the Ministry of Social Affairs, Estonia, (Y. Venna), EIPA, 1997.

A Guide to the Enlargement of the European Union: Determinants, Process, Timing, Negotiations, (P. Nicolaides and S. Raja Boean), EIPA, February 1997, revised edition August 1997.

First Offshore Study: Complying with the EU Rules on Taxation, (P. Nicolaides and S. Raja Boean), EIPA for the Government of Cyprus, July 1997.

Free Trade Agreements and Customs Unions, (M. Hosli and A. Saether, eds.), EIPA for the TACIS Programme of the European Union, June 1997.

Agenda 2000, (M. Soveroski, ed.), EIPA, October 1997.

The Black Sea Economic Cooperation Process, (I. Hartwig), *Eipascope*, March 1997.

Negotiating Effectively for Accession to the European Union: Realistic Expectations, Feasible Targets, Credible Arguments, (P. Nicolaides), *Eipascope*, March 1998

European Dimension of the Reform of Public Administration: The Implications of the EU Membership for the Czech Republic, (M. Kelly, Y. Venna and D. von Bethlenfalvy), EIPA, 1998.

Outlines for a Human Resources Development Strategy in the Central Administration of the Czech Republic, (Y. Venna, J. Corkery, D. von Bethlenfalvy and J. Kourilová), EIPA, 1998.

An Institution's Capacity to Act, (M. Hosli), EIPA, May

1998.

Agenda 2000: A Blueprint for Successful EU Enlargement?, (M. Soveroski), *Eipascope*, March 1998.

Agenda 2000: Reforming the Common Agricultural Policy Further, (P. Pezaros), *Eipascope*, March 1998.

Second Offshore Study: Tax Harmonisation and Negotiating Strategy, (P. Nicolaides and S. Raja Boean with T. Daniels and H. Maks), EIPA for the Government of Cyprus, September 1998.

EU Structural Funds and the Cohesion Fund, (F. Bollen, I. Hartwig and P. Nicolaides), EIPA for the Government of Cyprus, December 1998.

The Economics of Enlarging the European Union: Policy Reform v Transfers, (P. Nicolaides), House of Europe Lecture, November 1998; published in *Intereconomics*, January 1999.

The Boundaries of the Negotiating Power of the Candidates for Membership of the EU: Some Theoretical Considerations, (P. Nicolaides), *Eipascope*, November 1998.

Reform of EU Structural Funds, (F. Bollen), *Eipascope*, March 1999.

Forthcoming

European Union Enlargement: Prospects and Potential Pitfalls, (M. Soveroski), *Eipascope*, 1999.

A Guide to the Enlargement of the European Union (II): A Review of the Process, the Negotiations, Policy Reforms and Enforcement Capacity, Revised and Extended Edition, (P. Nicolaides, S. Raja Boean, F. Bollen and P. Pezaros), EIPA, 1999.

Reform of EU Structural Funds and Enlargement, (F. Bollen, I. Hartwig and P. Nicolaides), EIPA, 1999.

Entwicklung institutionalisierter Kooperation: Europapolitik Rumäniens zwischen EU-Beitritt und Mitgliedschaft in der Schwarzmeerkoooperation, (I. Hartwig), PhD-thesis, 1999.

Non-EIPA publications by EIPA staff

Die Kooperation Zwischen dem Europäischen Parlament und den Parlamenten Osteuropas, (I. Hartwig), in Maurer/Thiele: *Legitimationsprobleme und Demokratisierung der Europäischen Union*, February 1996.

Die Schwarzmeerwirtschaftskooperation: Strukturen Regionaler Zusammenarbeit in Südosteuropa, (I. Hartwig), *Integration*, no. 1/1996

Der Umbau des Sozialen Sicherungsnetzes in Rumänien,

(I. Hartwig), *Osteuropa*, no. 1/1996

Harmonisation with the European Union: An Analysis of the Concept and Its Implications, (P. Nicolaides), *Journal of Business and Society*, 1996.

EC Competition Rules for Economies in Transition, (P. Nicolaides and J. Mathis), paper presented at a conference on Economies in Transition, Freiberg, 5-7 July, 1996, published in *Rules of Competition and East-West Integration*, (M. Fritsch and H. Hansen, eds.), Kluwer Publishers, October 1997.

EC Competition Rules for the Associated Countries of Central and Eastern Europe: How to Ensure Effective Enforcement (P. Nicolaides and J. Mathis), *Aussenwirtschaft*, 1996.

The European Policy of Romania after the Cold War, (I. Hartwig), TKI Working Papers on European Integration and Regime Formation, Centre for East-West Research, South Jutland University Centre, September 1997.

European Community Environmental Policy and Enlargement, (M. Soveroski), in *Grensoverschrijdende Aspecten van het Milieurecht*, (M. Faure and K. Deketelaere, eds.), Antwerpen, Intersentia, 1998.

Complying with the Acquis in Maritime Transport, (P. Nicolaides), Cyprus Shipping Council, 1998.

Die Osterweiterung als Herausforderung an die künftige Strukturpolitik, (I. Hartwig), in *Agenda 2000: Eine Gute Grundlage für die Reform der EU-Strukturpolitik*, (H-J. Axt, ed.), Duisburg, February 1999.

Reform of the Common Agricultural Policy and Enlargement, (P. Pezaros), in Greek, National School of Public Administration, April 1999.

Uitdagingen voor het Europese Cohesiebeleid, *Openbaar Bestuur*, (F. Bollen), in Dutch, May 1999.

Forthcoming

Enlarging the European Union: Is Agenda 2000 a Guiding Star for the New Millennium?, (M. Soveroski), in *Enlargement of the European Union*, (P. Coffey, ed.), Kluwer, 1999.

European Community Enlargement and Environmental Policy: The Impact of Growing Diversity, (M. Soveroski), in *Environmental Policy in a Europe of Variable Geometry: The Challenge of the Next Enlargement*, (K. Holzinger and P. Knoepfel, eds.), Basel: Helbig & Lichtenhahn, 1999.

Romania and the Black Sea Economic Cooperation: Leaning towards the East or the West? (I. Hartwig), in proceedings of a conference on Romania's European Integration Process, Macmillan Press, September 1999. □

Recent and Forthcoming EIPA Publications

The Intermediate Level of Government in European States: Complexity versus Democracy?

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Understanding State Aid Policy in the European Community: Perspectives on Rules and Practice

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Internal Management of External Relations: The Europeanization of an Economic Affairs Ministry

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This research was carried out under the authority of The Office for the Senior Public Service in the Netherlands
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