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The Future of ESDP in the Wake of the Negative Referenda

Ulrich Petersohn / Sibylle Lang

The failure of the referenda on the European Constitutional Treaty (ECT) in France and the Netherlands has shown that the political aims of the European heads of state and government do not tally with the desires of the electorate. This has uncovered a crisis in European integration: it currently does not seem possible to proceed with integration in the way envisaged by political decision-makers. The rejection of the ECT could also have an impact on policy areas which citizens want to see become more integrated. This applies to a certain extent to the European Security and Defence Policy (ESDP), which has enjoyed a very high level of citizen approval since it was introduced in the late 1990s. Is the acceptance of the ECT an essential prerequisite for the further development of the ESDP? What impact might the crisis in European integration have on the ESDP?

A look at the Treaty establishing a Constitution for Europe shows that the ESDP still remains tied to intergovernmental working methods. There are no plans to introduce qualified majority voting; decisions will continue to be taken unanimously (Art. I-41 [4] ECT).

Innovations in the Constitutional Treaty in the area of ESDP

The ECT is innovative on several points:

Firstly, the ECT introduces permanent structured cooperation as an instrument which makes cooperation more flexible when developing military capabilities (Art. I-41[6] and Art. III-312). The former

Article stipulates that “Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area” will be given the opportunity to forge ahead quicker with a coordinated development of capabilities and to enhance cooperation in the field of armaments.

Secondly, in close connection with structured cooperation, provision has been made in the ECT in Art. I-41[3] and Art. III-311 for the standards-governed establishment of a European Defence Agency (EDA). This Agency’s tasks include contributing to the evaluation and determination of military capabilities in the Member States, working towards the harmonisation

of military capabilities and supporting joint efforts in the area of armaments.

Thirdly, the ECT updates the Petersberg tasks and thus makes allowance for new challenges in international and European security. On the one hand, these tasks are further specified: joint disarmament operations, military advice and assistance tasks, conflict prevention and post-conflict stabilisation; and on the other hand, it is made clear that all the Petersberg tasks can also contribute to the fight against terrorism (Art. III-309[1]).

Fourthly, a solidarity clause has been introduced in Art. I-43 and Art. III-329 ECT. According to this clause, the Union shall mobilise all the instruments at its disposal if one of its Member States is the object of a terrorist attack or the victim of a natural or man-made disaster and shall request help from its political institutions. The military instruments of the assisting Member States are also expressly included.

Fifthly, a mutual assistance clause has been drawn up in the ECT for the first time (Art. I-41[7]). According to this clause, the EU Member States also undertake to provide military support if necessary if a Member State is the victim of armed aggression on its territory. Reference to the “progressive framing of a common Union defence policy” which will ultimately lead “to a common defence, when the European Council, acting unanimously, so decides” (Art. I-41[2] ECT) has also been made clearer.

In addition, some of the reforms of the Common Foreign and Security Policy contained in the ECT aim to strengthen the coherence, continuity, visibility and effectiveness of European conflict prevention and European crisis management and thereby boost the ESDP’s capacity for action, too. These reforms include the creation of the position for an EU Foreign Minister, the election of a President of the European Council for two years and the introduction of a team Presidency in the Council of Ministers.

The most important innovations in the ECT as regards ESDP point towards the

continuation of intergovernmental regulation in this policy area. The flexibility instruments introduced do not affect decision-making but instead aim for an improvement in military capabilities and a higher level of efficiency when applying the ESDP. The instruments are available to all Member States to prevent the formation of a permanent core group. The solidarity clause and the updating of the Petersberg tasks prove that Europe has become aware of its responsibility in dealing with new challenges in the area of security policy. Art. I-41 [2] and the introduction to the mutual assistance clause also confirm that the objective of common defence will be pursued. All in all, the provisions in the ECT lay the foundations which the EU and its Member States can use to adapt their tasks and capabilities to the current security requirements. Moreover, these provisions make it easier to take joint action in the event of a crisis.

Progress for the ESDP even in the absence of an ECT?

The innovations in the ECT should not be seen as a prerequisite for further development of the ESDP. Rather, they should be seen as the result of an ongoing process that was merely picked up on and explicitly outlined in the Convention. It is on the basis of political will, such as that expressed by the heads of state and government in their agreement on the ECT text in June 2004, that the ESDP was and will continue to be developed even in the absence of an ECT. It is possible to build on the structures for early warning, analysis, decision-making and planning (such as the Political and Security Committee, Military Committee, Military Staff, committee for civilian aspects of crisis management, joint storage depot) that had already been established before the referenda took place. The EDA has already been set up—on the basis of the Treaty of Nice and in anticipation of the provisions in the ECT—and has started work. Moreover, the alignment of military

intervention capacities and the development of capabilities provided for in the ECT, were actively pursued during the adoption and partial implementation of the Headline Goal 2010 and, in particular, with the introduction of 'battle groups.' In a bid to improve planning, management and coordination capabilities, a civilian/military cell was also set up and liaison elements between the European Union Military Staff and SHAPE were established.

In addition, the scope of the ESDP has been specified and extended in accordance with the ECT in the meantime through the European Security Strategy (ESS) adopted by heads of state and government in December 2003.

Furthermore, following the terrorist attacks on Madrid, the solidarity clause contained in the ECT was already anticipated in the joint declaration by the European Council on 25 March 2004. The Member States and accession countries undertook to apply the "political commitment [...] in the spirit of the solidarity clause," outlined in what was, at that time, Article 42 of the draft ECT, with immediate effect.

Whilst it appears that the practical development of the ESDP will be barely affected by the failure of the ECT, adoption of the ECT would nonetheless represent a qualitative step forwards as to the overall level of codification of the ESDP. However, there is still the possibility that the core elements of the ECT innovations could be included in an amending treaty to the Treaty of Nice or as a minor amendment to the treaty, which goes hand in hand with every accession treaty.

Possible impact of the crisis in European integration on the ESDP project

It seems unlikely that the current crisis in European integration would result in either the renationalisation of policies or a standstill in foreign, security and defence policy. Following experiences in the Balkans and

the terror attacks in New York, Washington, Madrid and London, Europeans are aware that the (new) challenges facing security policy cannot be overcome alone. Coordinated action within the framework of the EU reduces costs and risks, spreads the burden and gives Member States more influence on the international stage. In addition, long-term negotiation processes and cooperation generally give rise to a keen interest in joint progress amongst decision-makers so that the years of investment in financial, staff and administrative resources finally pay off.

It is just as unlikely that the shock following the failed referenda will result in a more dynamic ESDP heading towards complete integration. Despite agreement on the ESS, differences of opinion between the Member States on risk assessment, priorities for security policy and choice of means cannot be ruled out. Moreover, there are differences within Europe as regards the desired extent of autonomy accorded to ESDP vis-à-vis NATO and the USA and as regards the final authority held by the EU. Nor is there any common consensus on the project for a common defence within the framework of the ESDP. For the neutral Member States—Finland, Sweden, Ireland (and to a lesser extent, Austria)—this issue is a problematic one. The project cannot count on approval from the 'Atlantic camp' in the EU or the USA either, as those want to avoid the decoupling of EU security measures from NATO structures. National reservations on renouncing all national sovereignty in this area mean that the ESDP will not be communitised by all Member States in the foreseeable future.

Further development of the ESDP, which will therefore inevitably remain within the intergovernmental area of competence, requires more flexibility given the differing views within Europe and the difficulties with cooperation. This flexibility is essential to guarantee and boost the effectiveness of the ESDP and strengthen the ESDP development process. Against this backdrop, the creation of a largely closed core security

and defence policy group within the EU would not be able to be used as a flexibility instrument in the medium-term. Discussions during the European Convention revealed concerns held by smaller and neutral Member States, as well as the then accession countries, that they would be excluded. As a result, it was not possible to introduce provisions during the Convention and at the intergovernmental conference that would have promoted the development of a core group of countries (for example, closer cooperation in defence matters).

The trend points much more in the direction of an 'open gravitational area.' Common basic principles were found in the ECT to foster its development—although only to a limited extent—for example, permanent structured cooperation). In this framework, the ESDP will only cover a specific list of tasks in the medium-term (the Petersberg tasks and the military aspects of the international fight against terrorism). However, it will not provide for a collective defence as under Article 5 of the NATO Treaty. In the named areas, the ESDP, serving as an 'open gravitational area,' will offer Member States flexible 'opt-in' and 'opt-out' alternatives. Individual Member States will therefore have the opportunity to join different groups, for example to develop specific capabilities or to undertake a mission. Each Member State can decide on a case-to-case basis whether or not and to what extent it wishes to participate. An opt-out from a Member State does not prevent the EU from taking action, but rather means that ESDP activities are more probable and will be more effective. In the medium-term, however, these options will remain restricted to the development of capabilities and to undertaking missions (but could possibly be extended within these fields). The introduction of more flexible options into the decision-making process, on the other hand, remains highly unlikely due to concerns from some Member States' about being excluded.

Conclusions

The failure of the referenda on the ECT does not have any direct impact on the continued development of specific institutions and capabilities in the area of the ESDP or on its potential for action. Nor does the current crisis in European integration appear to have any serious impact on the ESDP, either positively as a catalyst for the integration process, or negatively as a trigger for a move towards the renationalisation of policies or a standstill. The question of whether progress is made in defining and implementing the ESDP depends primarily on the following factors: the occurrence of international crises and acute threats; future developments in US security policy and the role of NATO; the interests of the most powerful Member States; and the political will of EU governments to develop the EU's capacity to take action in the area of crisis management.

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