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Security in a wider Europe –
reply to the annual report of the Council

REPORT

submitted on behalf of the Political Committee
by Mr Antretter, Rapporteur

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*Security in a wider Europe –
reply to the annual report of the Council*

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¹ Adopted in Committee by 16 votes to 1 with 1 abstention.

² *Members of the Committee:* Mr Baumel (Chairman); MM Urbain, Blaauw (Vice-Chairmen), MM Antretter, de Assis, Bianchi, Brancati (Alternate: Mrs Pozza Tasca), Mr Bühler, Sir Sydney Chapman (Alternate: Hancock), Mr Cusimano (Alternate: Gnaga), Mr Dias, Mrs Dumont, MM Ehrmann, Evangelisti, Eyskens, Mrs Fischer, Mr Forni, Lord Grenfell (Alternate: Vis), Mr Irmer, Lord Kirkhill, MM Liapis, van der Linden, Van der Maelen, Marshall, Martínez, Martínez Casañ (Alternate: Arnau Navarro), MM Puche Rodríguez, Recoder, Rippinger, Roseta, Skoularikis, Vrettos, Woltjer, Wray, Yamgnane, Zierer, N. (Alternate: Mrs Squarcialupi).
N.B. *The names of those taking part in the vote are printed in italics.*

Draft Recommendation

on security in a wider Europe – reply to the annual report of the Council

The Assembly,

- (i) Welcoming the fact that in its Erfurt Declaration the Council of WEU expressed the resolve to take up the challenges arising out of the implementation of the Treaty of Amsterdam and the decisions taken by NATO in Berlin and Madrid;
- (ii) Strongly regretting, however, that the Council of WEU did not submit the second part of its 43rd annual report to the Assembly in time, yet again failing to comply with its obligations under Article IX of the modified Brussels Treaty;
- (iii) Deeply concerned about the continuing tense situation in Kosovo and the major difficulties encountered in trying to reach a solution satisfactory to all the parties involved before these problems pose a genuine threat to the security and stability of the neighbouring states of FYROM and Albania, as well as to the Balkan region as a whole,
- (iv) Stressing therefore the importance of reaching agreement rapidly within the WEU Council on drawing up a procedure facilitating consensus-building and the emergence of a decision to act in response to a specific crisis, within the framework of the relevant provisions of the modified Brussels Treaty, as agreed in Erfurt;
- (v) Considering that Europe is more likely to react swiftly to crisis situations if decisions taken by the European Union to avail itself in such cases of WEU are based from the outset on relevant preliminary work and proposals by WEU;
- (vi) Noting that at least one WEU member state – Germany – is of the opinion that the amendment to the Treaty on European Union adopted in Amsterdam entails a consequent amendment to the modified Brussels Treaty, which was approved by its national parliament when it ratified Article 17 of the Treaty on European Union, whereas the Council of WEU, in its reply to Recommendation 618, explicitly stated that the development of relations with the European Union did not call for a revision of the modified Brussels Treaty,
- (vii) Drawing attention therefore to the danger of national parliaments adopting diverging interpretations of the legal consequences of the ratification of Article 17 of the Treaty on European Union,
- (viii) Hoping that the intention announced by the European Union in the Amsterdam Treaty of developing closer institutional relations with WEU will lead to enhanced participation of all WEU nations and organs in the activities of the CFSP,
- (ix) Stressing the need to define more clearly than has hitherto been the case the nature, framework and objectives of a European security and defence identity and the countries that are to participate in it,
- (x) Concerned that the Council's approach, which consists in founding the arrangements for enhanced participation by the associate members, observers and associate partners on individual decisions, about which the Assembly in some cases is not informed, will lead to considerable legal uncertainty, with the risk that the rights of the parliamentary delegations of these states in the Assembly will no longer be in line with those enjoyed by their representatives in the Council;
- (xi) Stressing, therefore, that all efforts designed to secure the enhanced participation of these countries in the activities of WEU can only be supported by the Assembly if such participation is founded on clear international legal agreements which are subject to parliamentary scrutiny;

(xii) Considering that the enlargement principles set down by WEU member states in their Declaration of December 1991 have been overtaken by events and are urgently in need of revision if WEU is to make a constructive contribution to building a wider security and defence Europe,

RECOMMENDS THAT THE COUNCIL

1. Inform the Assembly of the legal consequences that the entry into force of the provisions of the Amsterdam Treaty has for the modified Brussels Treaty, so that this may be taken into account during the ratification procedure in the member states;
2. Take the necessary steps without delay to ensure that those provisions of the modified Brussels Treaty that may be affected by the amendments to the Treaty on European Union are revised accordingly;
3. Rapidly check whether any provisions of the modified Brussels Treaty need to be amended as a result of the creation of military structures within WEU;
4. Inform the Assembly of any progress made towards improving the procedure for taking decisions in crisis situations;
5. Clarify whether any differences exist, and if so identify them, between the project of a European security and defence identity (ESDI) on the one hand and the CFSP, or the common defence policy as jointly defined by WEU and the EU, on the other;
6. Make WEU's enlargement policy sufficiently flexible so that:
 - (a) all states with which the European Union has started accession negotiations and which have signed accession protocols with the Atlantic Alliance are invited to accede to the modified Brussels Treaty in conditions to be agreed in accordance with the provisions of Article XI of the said Treaty;
 - (b) the minimum prerequisite for the accession of European NATO member states to the modified Brussels Treaty is acceptance of their participation in the CFSP;
7. Accordingly take steps vis-à-vis the EU, within the framework of the arrangements on enhanced cooperation between the EU and WEU to be agreed on the basis of the Amsterdam Treaty, to secure the participation of those WEU associate members and associate partners who so desire in the activities of the CFSP in so far as these concern WEU;
8. Invite those associate members of WEU who so desire to accede to the modified Brussels Treaty, provided that the conditions set out in paragraphs 6(b) and 7 are fulfilled;
9. Ensure that cooperation with all WEU nations which are unable or unwilling to accede to the modified Brussels Treaty in the foreseeable future is founded on a legally clear international agreement of association, to be subject to parliamentary scrutiny, that will render the current distinctions between associate members, observers and associate partners superfluous;
10. Convey to the Assembly the document approved in Erfurt on the practical arrangements for the participation of associate partner states in Petersberg operations.
11. Ensure that in the future the annual report of the Council is always submitted on time to the Assembly and that it contains information about the activities of the European Union in the field of the CFSP.

Explanatory Memorandum

(submitted by Mr Antretter, Rapporteur)

I. Introduction

1. 1997 was the year of important decisions for the future of Europe's security. The Amsterdam Treaty provided the European Union with additional possibilities and instruments for drawing closer to its objective of framing a genuine common foreign and security policy (CFSP). The Treaty made clear that the project of a common defence within the European Union, and therefore of the possible integration of WEU in the EU, cannot be achieved for the moment. The prospect of these goals being attained in the future depends on a political decision of the European Council that is unlikely to be taken in the foreseeable future because of the continuing differences of opinion on the subject.
2. This means that WEU will continue to be the sole European defence organisation and the only European organisation capable of planning and conducting military operations for crisis-management purposes. The Amsterdam Treaty expressly recognised WEU's important role in this respect and gave the European Union competence to avail itself of WEU to that end where necessary and to set its general political guidelines in such cases. The objective of building up WEU in stages as the EU's defence component is to be pursued through a series of concrete measures designed to strengthen institutional relations and practical cooperation between WEU and the European Union.
3. The EU summit meeting held on 12-13 December 1997 paved the way for the first round of negotiations on EU enlargement to take in countries to the east and south. The European Union's partnership agreement with Russia also entered into force in December. The NATO countries reached agreement that the European security and defence identity should be built within the Atlantic Alliance and recognised that WEU is an essential part of the ESDI.
4. At the NATO summit meeting in Madrid the ministers decided to invite three central European states – the Czech Republic, Hungary and Poland – to accede to the Washington Treaty in the first wave of enlargement while making it quite clear that membership of the Alliance remained open to other countries at a later date. A Founding Act was signed on relations between NATO and Russia. At the same time, NATO and Ukraine agreed on a mutual cooperation and partnership charter. The North Atlantic Cooperation Council was superseded by the Euro-Atlantic Partnership Council and the Partnership for Peace programme was enhanced and extended. Finally, in a bilateral context, the United States and the Baltic countries concluded a Charter of Partnership on 16 January 1998.
5. The WEU countries have drawn the necessary conclusions from the decisions taken by the European Union in Amsterdam and by NATO in Berlin, Sintra and Madrid. In the WEU Declaration of 22 July 1997 attached to the Final Act of the intergovernmental conference and in the Erfurt Declaration of 18 November 1997, the WEU Council of Ministers attempted to define a new role for WEU. It has also drawn up a comprehensive programme of work covering closer cooperation in the future between WEU and both the European Union and NATO, WEU's operational development, armaments cooperation, relations with third countries such as Russia, Ukraine and the Mediterranean states, and other security-related issues. Among other things, the WEU Council has taken a series of decisions on how to improve the involvement of the associate member, observer and associate partner countries in the Organisation's activities.
6. In view of all these developments, WEU is now supposed to be an organisation with a clearly defined role. The Amsterdam and Madrid decisions put an end to the debate that had been going on for years about its future as an institution¹.
7. However it would appear to be just as difficult as in the past to persuade the public at large of the relevance of WEU's role and its

¹ WEU Secretary-General Cutleiro addressing the 50th session of the Institute for Advanced National Defence Studies, Brussels, on 21 January 1998.

contribution to maintaining peace and stability in a wider Europe. Fifty years on from the signature of the Brussels Treaty, whose modified version created WEU 43 years ago, there are still differences of opinion and a lack of information about the Organisation's value and purpose. The day after the Erfurt Declaration was adopted, an article appeared in a German newspaper² containing the following comment:

"The British, French and Germans do not have the same view of what WEU should become and disagree as to whether it should be the "military wing" of the European Union, a "bridge" between the EU and NATO or merely a forum in which the European countries of NATO can reach agreement. WEU's extended membership makes it politically unmanageable and the absence of any military infrastructure renders it unsuitable as an instrument for security ..."

8 Your Rapporteur does not endorse this blanket criticism. Rather, he shares the view the German Foreign Minister, Mr Kinkel, expressed in his address to the Assembly of WEU on 1 December 1997 when he said that it was to be hoped that WEU would have very few occasions when it would have to prove its suitability as an instrument for European crisis management. The crucial issue is whether the countries concerned can generate the common political will in a crisis that will enable them to have recourse to WEU for the purpose of managing it. Because of the interlocking nature of the relations that now exist between the European Union, WEU and NATO, the requisite common will must be present in all three organisations if WEU is to be asked to intervene.

9 Irrespective of WEU's successful participation in monitoring the embargo imposed in the Adriatic and on the Danube and its police mission in Mostar, there are a number of other examples that show how difficult it is within WEU to secure agreement on political action. One can mention the beginnings of the conflict in former Yugoslavia, the question of a peacekeeping force in the African Great Lakes region or the crisis in Albania where WEU's contribution is limited to

a remit for the multinational advisory police element (MAPE). It is also pertinent to ask whether WEU actually tried to address the issue of adopting a common European stance on the latest Iraqi crisis, and finally, whether the only action WEU can take on the situation in Kosovo is a short statement by its Secretary-General.

10. Furthermore, greater use of WEU than in the past should also be made in other problem areas concerning wider European security. It has correctly been said that WEU's present family of 28 countries is the precursor of tomorrow's Europe. The first objective of this report is to point to the European security issues that are still outstanding and that more than ever before the European governments need to address by having recourse to the possibilities offered by WEU. In this context reference can be made to work on the European security and defence identity (ESDI) and the unsolved problem of how to ensure that the enlargement strategies of the European Union and NATO are congruent.

11. In preparing this report the Rapporteur held consultations with representatives of the governments, parliaments and political parties of a number of WEU nations, including Greece, Turkey, Poland, Slovakia and Austria, who provided extremely useful input and suggestions for the final version of the document. The Rapporteur has made every effort to take on board the wealth of comments made by members who attended the meeting of the Political Committee in Washington on 24 March 1998, at which the initial working paper was discussed at length.

II. The new dimension of the modified Brussels Treaty

12. In assessing WEU's future contribution to security in a wider Europe, three factors should be taken into consideration: in his address to the WEU Assembly on 1 December 1997, the then Chairman-in-Office of the Council referred to WEU as a "multi-purpose instrument". This is indeed an appropriate term that corresponds to the extensive responsibilities conferred upon WEU by the modified Brussels Treaty. In this context it is gratifying that the WEU ministers agreed in the Erfurt Declaration that although the political circumstances have dramatically changed since the Treaty was signed, it continues to

² *Frankfurter Allgemeine Zeitung*, 19 November 1997

form a valuable part of the European security architecture

13. In the light of the new definition of WEU's role vis-à-vis the European Union and NATO, the future application of the modified Brussels Treaty even takes on a new dimension that must be examined more closely. It is also of particular significance that in Erfurt the ministers tasked the Permanent Council to reflect on procedures within WEU facilitating consensus-building and, where appropriate, the emergence of a decision to act in response to a specific crisis, within the framework of the relevant provisions of the modified Brussels Treaty.

14. As far as the Assembly is aware, this is the first time in the history of WEU that the Permanent Council has been given a task of this sort. It shows that there is clearly a readiness to make greater use of the WEU decision-taking mechanism in the future. If that were to prove to be the case, it must be seen as a very positive development superseding the prevailing widely-held view that WEU is a forum in which matters can be discussed but not decided.

15. It is to be hoped that the process of reaching agreement on the arrangements for facilitating consensus-building will not be hampered by frustrating disputes. France is known to have proposed that the principle of constructive abstention introduced into the Amsterdam Treaty also be applied within WEU. The German view is that this is unnecessary because in WEU a country that is actively involved in a decision to conduct a Petersberg mission is not obliged to participate in its implementation.

16. It is particularly urgent to reach swift agreement on facilitating consensus-building in view of the fact that under Article VIII 3, the modified Brussels Treaty is the only treaty to contain a provision making it mandatory for the Council to hold consultations in crisis situations. Neither Article J 6 of the Amsterdam Treaty nor Article 4³ of the North Atlantic Treaty have anything comparable. However, Article VIII 3 of the modified Brussels Treaty has the drawback of only requiring the Council to be convened in the event of a peace-threatening situation if this is requested by one of the High Con-

tracting Parties. Thus the difficulty is not only to reach a consensus, but also to convene the Council in the first place to consult on a crisis situation. Moreover, our experience thus far is that in practice member states hardly ever avail themselves of the possibility of convening the Council in accordance with Article VIII 3.

17. The fact that the Permanent Council holds regular meetings at ambassadorial level is not a solution, for the decision to convene the Council pursuant to Article VIII 3 is generally a political one that many states are reluctant to take. This can be explained in a number of cases quite simply by the fact that the relevant ministries and policy-makers are not sufficiently well acquainted with the provisions of the modified Brussels Treaty. However, there are many other reasons. It takes not only a special political commitment but also a readiness to engage in consultations to avail oneself of Article VIII 3. If a state does not consider its own interests to be particularly affected, then it has no reason to take the initiative. If, on the contrary, its own vital interests are indeed at stake, then it may not be prepared to engage in consultations and to share the decisions with others.

18. The Permanent Council's mandate should therefore be extended to cover the question of how, more generally speaking, the practical application of Article VIII 3 can be facilitated. One solution would be to extend the right of initiative to the WEU Secretary-General and the Assembly. However, since this is unrealistic, given the reluctance of member governments to consider amending the Treaty, an effort should first be made to improve procedures without amending the Treaty. This will depend on strengthening the specifically political responsibility of the country holding the Presidency at any time, and on enhancing its awareness of that responsibility.

19. We have seen time and again how hard it is for Europe to respond swiftly to actual crisis situations. This is due not only to difficulties in reaching a consensus on the issue itself, but also to diverging views as to whether the crisis should be handled first and foremost by the EU, WEU, NATO, the OSCE, United Nations or an *ad hoc* coalition. In the field of WEU-EU relations there is widespread support for the view that the major difficulties could have been overcome if it had been possible at Amsterdam to integrate WEU in

³ See appendix for the precise wording of these articles

the EU. It is felt, however, that as long as the responsibility for political and economic crisis management lies with the EU, while that for military crisis management lies with WEU, it will remain difficult to reach a consensus on recourse to military means in case of need⁴

20 Whether the main problem is indeed the lack of a single organisational framework for crisis management is a moot point. Up until now there has been a lot of talk of action by interlocking and complementary institutions. However it is not only the institutions that are important, but also the treaties on which they are founded. Hence more attention should be paid in the future to applying the relevant treaties in such a way as to ensure that they are indeed complementary to each other. The Treaty on European Union, for instance, allocates certain functions and tasks to WEU as an organisation, without establishing any link at all with the modified Brussels Treaty. Yet if WEU is indeed a "multi-purpose instrument", then this is precisely because the modified Brussels Treaty is a "multi-purpose treaty", which strives both for European integration and transatlantic cooperation within NATO. Since neither the European Union nor NATO have anything equivalent to Article VIII.3 to refer to, WEU member states should, in the earliest possible stages of an emerging crisis, convene the Council of WEU for consultations pursuant to Article VIII.3, in order to provide both the European Union and NATO with their assessment of the situation, their conclusions and, where appropriate, their proposals for decisions.

21 Any decision of the European Union to avail itself of WEU in pursuance of Article J.7 of the Amsterdam Treaty should, as far as possible, be based on appropriate preparations by WEU itself. This is in keeping with the provision that WEU should not only implement, but also *elaborate* decisions and actions of the European Union which have defence implications. This is why it is also important to ensure from the outset that WEU should, in the framework of the CFSP, make substantial contributions to the work of the Policy Planning and Early Warning Unit that was created in Amsterdam. However, the activities of this unit cannot replace political consultations in

the framework of Article VIII.3 of the modified Brussels Treaty.

22 When defining the *modus operandi* for linking the decision-taking processes of both organisations in crisis-management operations for which the EU avails itself of WEU, it should be established even more clearly that the Council of WEU may itself take the initiative of submitting its analysis of the situation to the European Union in order to prepare and facilitate decision-taking within the European Union during an emerging crisis.

23 The new nature of WEU-NATO cooperation adds yet another dimension to the application of the modified Brussels Treaty. Notwithstanding NATO's successful peace mission to former Yugoslavia, there is no guarantee that NATO will always be available as a tool for crisis management, especially since this is not provided for by the Washington Treaty. In the event of a crisis situation which has to be managed without the active participation of the North American ally, Europe should have the means of autonomous crisis management, having recourse where necessary to NATO's military capability for operations conducted under WEU's political control and strategic direction.

24 Finally, WEU could take an autonomous decision on the planning and implementation of a Petersberg mission, possibly without having recourse to NATO assets and capabilities, but calling on the forces answerable to WEU (FAWEU) and their headquarters. Moreover the flexibility of the modified Brussels Treaty is sufficient to allow all other types of operation, such as those planned and implemented by one or several framework nations, which the WEU Council would support without necessarily taking on the politico-military direction and control of the operation. Thus there are a multitude of reasons for steadfastly supporting the intention announced by the WEU ministers in their Erfurt Declaration of improving consensus-building and decision-taking processes in the framework of the modified Brussels Treaty.

III. The role of WEU as a precursor of an enlarged European security and defence union

25 In Erfurt all 28 nations reaffirmed their commitment to creating a common European security area free of dividing lines, in which all

⁴ The view expressed by the German Foreign Affairs Minister, Mr Kinkel, in his address to the WEU Assembly on 1 December 1997.

states are partners in security. From the German version of the Erfurt Declaration it would seem that 22 of its 59 paragraphs were adopted at 28, 27 at 18, 8 at 13 and that only 2 were adopted at 10, in other words, by the signatories of the modified Brussels Treaty. A noteworthy fact is that the paragraphs on the continued significance of the Treaty and on the need to improve the decision-taking procedure were adopted at 18, in other words, with the participation of the associate member and observer states. Moreover it would appear that a draft of the annual report that Article IX of the modified Brussels Treaty requires the Council to submit to the Assembly is sent systematically to all 28 WEU states for comment, before the final version goes to the Assembly.

26 The Western European Armaments Organisation (WEAO) was created pursuant to Article VIII.2 of the modified Brussels Treaty as a subsidiary body of the WEU Council, despite the fact that three of its members have neither signed nor ratified the Treaty itself nor the Agreement of 11 May 1955 on the status of WEU. The defence ministers of the 13 members of the Western European Armaments Group (WEAG), meeting in Erfurt, agreed modalities for the participation in all WEAG meetings of interested WEU observer countries which are not members of WEAG. For the associate partners they drew up arrangements allowing WEAG Panels and their sub-groups to examine whether, for each item on the agenda, participation could be opened to them. Where appropriate, associate partners may be invited to participate in NAD and ministerial meetings. The Transatlantic Forum, involving the ten WEU members and three associate members, is considered to be a Council working group and observer states are also entitled to participate in its activities. The Chair of the Transatlantic Forum does not coincide with the Presidency of the WEU Council.

27. All these examples show that the overwhelming majority of WEU's activities can be conducted in a wide variety of organisational frameworks, only a very few of which are covered by the modified Brussels Treaty. Efforts to involve associate members, observers and associate partners in WEU's activities are most certainly to be welcomed. However, the more this is done outside the framework provided by the Treaty, the more the legitimacy of that Treaty is

likely to be called into question. This also applies to the relationship between the Council and the Assembly, for Article IX of the modified Brussels Treaty is only applicable to the ten full member states of WEU. This was why, in its Recommendation 618⁵, the Assembly called on the Council to create a sound legal basis for participation in the Organisation's activities by all those WEU states which are unwilling or unable to accede to the modified Brussels Treaty. In its reply, the Council merely referred to its Declarations of 22 July and 18 November 1997 (Erfurt).

28 In its Declaration of 22 July 1997, the Council went no further than to announce that it would examine the modalities required to allow associate member, observer and associate partner states to participate more closely in the various activities of WEU. In Erfurt, the Ministers confirmed the immediate application on a provisional basis of the arrangements contained in Article J 7.3. of the Amsterdam Treaty allowing WEU observer states to participate on an equal footing in Petersberg tasks for which the EU avails itself of the WEU. In answer to a question he put to the Chairman-in-Office on 1 December 1997 about whether these arrangements were to be submitted to the national parliaments for approval, your Rapporteur received the following answer

"The answer to the question of whether this decision will be submitted to national parliaments depends on the constitutional provisions at national level. According to the German interpretation, an amendment to the EU Treaty would bring about a consequent alteration to the WEU Treaty. As you know, the relevant provision of Article 17⁶ has been submitted for approval to the German Parliament in the framework of the ratification procedure for the results of Amsterdam. We therefore do not consider – and I repeat that this is the German legal interpretation – that it is necessary for the Bundestag to adopt a decision on the WEU Treaty"

29 A similar position was defended under the German interpretation of international law in

⁵ Unanimously adopted by the Standing Committee on 16 October 1997 (see Assembly Document 1581).

⁶ Corresponding to Article J 7 of the Amsterdam Treaty

connection with the signing of the Maastricht Treaty. According, for example, to the German international law professor Frowein⁷, the institutional link between the EU and WEU arising out of Article J 4 of the Maastricht Treaty is "an extremely unusual case", in that it was introduced without any formal amendment to the founding Treaty of WEU. One must nevertheless assume a consequent amendment to that Treaty, he argues, because to the extent that all WEU member states are also members of the EU, the conclusion of the Maastricht Treaty must be seen as amending the modified Brussels Treaty. It cannot, on the grounds that Parliament must approve amendments to treaties, be claimed that this amendment gives rise to constitutional problems in member states, because the Maastricht arrangements were ratified by the parliamentary assemblies of those states. By giving their approval, he says, parliaments by implication accepted an amendment to the modified Brussels Treaty, making WEU an integral part of the development of the European Union.

30 If it is assumed that this, or something like it, is the legal interpretation put forward by a number of other WEU states as well, then in the course of their ratification procedures care should at least be taken to establish that the parliaments concerned are indeed aware that their ratification of the Amsterdam Treaty (like that of the Maastricht Treaty before it) entails simultaneous approval of an amendment to the modified Brussels Treaty. Whether this is indeed the prevailing view in all the parliaments is, to say the least, questionable. According, at any rate, to the views expressed to your Rapporteur by the Greek Foreign Affairs Minister, Mr Pangalos, the Amsterdam Treaty does not imply an amendment to the modified Brussels Treaty but merely lays down political guidelines.

31. If the Amsterdam Treaty does indeed entail a consequent amendment to the modified Brussels Treaty, then logically this amendment should be expressed in that Treaty. Yet in its Reply to Recommendation 618, the Council explicitly confirmed that developments in WEU's relations with the European Union (and NATO)

did not call for any changes to the modified Brussels Treaty. This problem should be borne in mind in connection with the ratification procedures in the national parliaments and discussed with the governments of member states. Furthermore, in its reply to Recommendation 618, the Council refers to paragraph 29 of the Erfurt Declaration, concerning improved arrangements for the participation of associate members and observers in all Petersberg operations undertaken by WEU, and tasks the Permanent Council to pursue its examination of possibilities for maximum participation in its activities by associate members and observer states in accordance with their status, in particular in the fields of armaments, space and military studies.

32 It appears from this that there is no intention of establishing cooperation on a legally sound basis above and beyond the internal and informal arrangements within WEU. These arrangements, which do not entail changes of status, have not been subjected to parliamentary scrutiny. They are based on decisions taken by the Council on 18 November 1997 of which the Assembly was only informed in January 1998⁸ as a result of a point raised by your Rapporteur during the plenary session in December 1997. These decisions in many cases supersede previous statements and decisions by the Council with respect to the role of associate member and observer states. Moreover they may have repercussions for the role of the parliamentary representatives and delegations of these countries to the WEU Assembly. Yet a closer study of this question is hampered by the fact that the Assembly is not familiar with all the documents to which the Council refers.

33. Thus there is a danger of the basis for cooperation between WEU full members on the one hand, and the associate members, observers and associate partners, on the other hand, becoming increasingly complex and less transparent. Moreover there is a danger of divergence between the rules and regulations that apply to the Assembly and the Council respectively. If we wish to ensure that WEU is capable of action while allowing for maximum participation by all 28 WEU states, then we must reflect upon new solutions in order to simplify the legal situation and bring about greater efficiency and transpar-

⁷ See Christian Tomuschat, *Rechtsprobleme einer europäischen Sicherheits- und Verteidigungspolitik*, (The legal problems of a European security and defence policy), Heidelberg 1997, p. 13 ff.

⁸ Document A/WEU/DG[98] 3, 8 January 1998.

ency. It is proposed to address these issues in the remainder of this report

34. Yet even in those areas involving an application of the Treaty itself, it is not always easy for the Assembly to fulfil its tasks. In their Erfurt Declaration, Ministers "noted the decision of the Permanent Council to abolish the Agency for the Control of Armaments. They further noted that, with this decision, Protocol No. IV of the modified Brussels Treaty has ceased to have practical effect". The Secretary-General of WEU informed the Assembly of the Permanent Council's decision in a letter dated 12 November 1997⁹, which states that the ACA was created by the WEU Council as its first subsidiary body pursuant to Article VIII of the modified Brussels Treaty on 7 May 1955, one day after entry into force of the Paris Agreements. In order to give the Assembly an opportunity to assess the repercussions of the decision to abolish the ACA, the President of the Assembly asked to receive the text of the decision of 7 May 1955. The Council refused on the grounds that the minutes of the relevant Council meeting were secret and that it was not sure that the declassification of this document would be agreed to.

35. The Assembly can only regret that the Council, even after 43 years of reporting on arms control questions, has so little trust in the Assembly in this key area of the latter's activities pursuant to Article IX of the modified Brussels Treaty that it feels unable to keep it fully informed. Moreover, following the Council's decision of 11 April 1995 to end the activities of the Agency for the Control of Armaments as of 31 October of the same year, it is unclear why a further decision officially abolishing it was deemed necessary, if it was not also the intention to amend the Treaty accordingly and to declare Protocol No. IV null and void. The entry into force of the Chemical Weapons Treaty is not enough to explain this, since the ACA was also responsible for controlling the production of biological and nuclear weapons.

36. What is the meaning of the statement that due to the Council's decision, Protocol No. IV "ceases to have practical effect"? Without being familiar with the decision of 7 May 1955, it is

⁹ Document A/WEU/DG[97] 30 revised, 25 November 1997.

impossible to judge whether this was really the decision that constituted the ACA. Indeed, the text of Protocol No. IV would seem to suggest that it was not, since it reads that the signatories of the modified Brussels Treaty "... agreed, in accordance with Article IV of the protocol modifying and completing the Treaty, to establish an Agency for the Control of Armaments". This would seem to indicate that the founding act for the ACA was not the Council decision of 7 May 1955, but Protocol No. IV itself, in which case the ACA could only be abolished by revoking that protocol. The procedure used by the Council to adjust to the new situation, which was to take decisions that in effect cancel parts of the Treaty and its protocols without subjecting those decisions to parliamentary scrutiny, only aggravates the legal uncertainty which already exists with regard to the continued validity of the Treaty as a whole. It therefore contradicts the statement by the ministers of the WEU member states in the Erfurt Declaration asserting that the modified Brussels Treaty continues to form a valuable part of the European security architecture.

37. Since WEU will continue to exist for some time to come as an organisation in its own right with newly defined responsibilities, the Council will have no choice but to adapt the Treaty itself to the new situation. This is mainly because of the revised version of the Treaty on European Union which puts relations between WEU and the EU on a new footing, but also because of the new form of cooperation between WEU and NATO. Should the Council fail to do so, this will only aggravate the legal grey areas at a time when WEU needs to have a clear legal basis in order to live up to its future tasks.

1. Enhanced cooperation between WEU and the EU and its implications

38. According to Article 17 (Article J.7 of the Amsterdam Treaty) of the consolidated version of the Treaty on European Union, WEU is an integral part of the European Union's development. WEU supports the European Union in framing the defence policy aspects of the CFSP and is considered by some people to be the "S" in CFSP¹⁰. The European Union is therefore calling for closer institutional links with WEU, with

¹⁰ Foreign Minister Kinkel addressing the WEU Assembly on 1 December 1997.

a view to the possible integration of WEU in the European Union, should this be decided by the European Council. In calling for closer institutional ties with WEU, the EU has entered into specific commitments with regard to WEU, the consequences of which call for closer examination. It is important to take due account of the fact that there are currently 28 WEU nations and that this family of states is the precursor of the "great EU of the future"¹¹.

39. The development of closer institutional links concerns all WEU bodies including the Assembly. Furthermore, to make sense in both political and practical terms, this process must not be confined to the ten full member states but should also include relations between the EU and those nations of the "WEU family" which are not yet members of the European Union. This is true for the three associate members and the ten associate partners of WEU. The latter are all aspiring members of the European Union, while Turkey is the only WEU associate member to have applied for EU membership.

40. So far the EU has invited only five WEU associate partner states to start accession talks¹². Given the complexity of this issue, the accession procedure will probably take a long time. In the meantime, however, and in the light of the Amsterdam Treaty commitment to closer institutional ties with WEU, the EU should look for ways of bringing closer those WEU states which cannot officially become members of the EU in the foreseeable future.

41. In this respect it is particularly important to consider how to involve them more closely than before in CFSP activities. This applies both to the associate members and associate partners of WEU. A first step by the EU towards fostering closer institutional relations with WEU could therefore be to involve these states in the activities of the second pillar of the EU. In Recommendation 625¹³, the Assembly called on the Council to take the necessary initiatives vis-à-vis

the EU with regard to the associate partner states. The Council responded to this recommendation much more quickly than is its wont, replying that it is not up to WEU to decide in any way on European Union modalities pertaining to CFSP issues. But this was not the point of the Assembly's request. If WEU is indeed the "S" in CFSP, if the EU is to foster closer institutional links with WEU and arrangements for enhanced cooperation between the two Organisations are to be worked out pursuant to the protocol to Article 17 of the Treaty on European Union (Article J.7 of the Amsterdam Treaty), then WEU is entitled to approach the EU with a request for involving its associate members and associate partners more closely than before in CFSP activities.

42. This also arises out of the WEU Declaration of 22 July 1997, in which member countries state their intention to immediately examine a set of measures for enhancing cooperation between WEU and the EU, in particular

- arrangements for improving the coordination of the consultation and decision-making processes of the respective organisations, in particular in crisis situations;
- holding of joint meetings of the relevant bodies of the two organisations.

During the corresponding negotiations with the EU, particular attention is to be paid to involving the associate member and associate partner states.

43. The European Commission explicitly confirmed in its *Agenda 2000* that the ten associate partners of WEU which, together with Cyprus, have been accepted by the EU as candidates for accession, fulfil all the criteria for full participation in the activities of the CFSP. Although Turkey, as an associate member of WEU, has been a candidate for EU membership for much longer than these eleven states, the EU Commission treated it differently from the others and did not examine the question of its possible participation in CFSP activities. The European Union did not invite Turkey to participate in accession talks and did not accept it among the states being considered as candidates for a second round of accession negotiations¹⁴.

¹¹ *Ibid.*

¹² The Czech Republic, Estonia, Hungary, Poland and Slovenia.

¹³ Adopted on 4 December 1997 on the basis of Mr Martínez-Casañ's report on the consequences of the Madrid NATO summit for the development of WEU's relations with central and eastern European countries and Russia (Assembly Document 1585).

¹⁴ Bulgaria, Latvia, Lithuania, Romania and Slovakia.

44. The different treatment meted out to Turkey at the European Council in Luxembourg on 12 and 13 December 1997, which decided it was eligible not for an "accession strategy", but for a "European strategy" and gave it no prospect of any timeframe for eventual accession, was, as we know, a source of major disappointment and bitterness. Some Turkish representatives consulted by the Rapporteur went to far as to remark ironically that it would certainly have been easier for Turkey to accede to the EU had it been a former Warsaw Pact member, rather than a member of NATO. It is not the aim of this report to raise once again the issue of Turkey's membership of the EU. It may well be that the political and economic conditions for starting accession talks are not currently met. Moreover, Turkey itself is fully aware of its shortcomings in this respect. As regards the involvement of Turkey, and indeed that of any other WEU associate members who so wish, in the enhanced cooperation between the EU and WEU, there is no doubt in your Rapporteur's mind that Turkey, as a member of NATO, associate member of WEU, a country that has been associated with the European Community since 1963 and that is bound to the EU by a customs union, fulfils the conditions for participation in the CFSP.

45. The decision approved in Erfurt to harmonise the sequence of the WEU and EU Presidencies must also be seen in the light of the commitment entrenched in the Amsterdam Treaty to fostering closer institutional ties with WEU. If the aim is indeed, as stated by the Ministers in Erfurt, to achieve greater synergy between the work of the two organisations, then this commitment on the part of the EU provides the WEU bodies with more solid grounds on which to call for reciprocity in their relations with the EU. This not only means making it easier for EU bodies to avail themselves of the capabilities of the different WEU bodies, but also the reverse. Unfortunately this point is not put across sufficiently clearly in paragraph 7 of the Declaration of 22 July 1997.

46. The harmonised sequence of the WEU and EU Presidencies with a view to creating closer institutional ties between the two organisations also has repercussions for the activities of the WEU Assembly. The annual report by the Council will in the future also have to cover the European Union's activities in the field of the

CFSP, as well as the progress achieved in the field of practical cooperation between the two organisations. Moreover, the Assembly and its committees should be regularly informed by the relevant EU bodies, and in particular the CFSP Secretary-General, about their activities, and be given opportunities to exchange views with them. Finally, the new quality of EU-WEU relations will surely also have an impact on the WEU Assembly's future relationship with the European Parliament. Thus it is questionable whether the European Parliament's refusal to allow members of the WEU Assembly to take the floor during plenary sessions of the European Parliament at which security issues are being discussed is compatible with Article 17 1.2 (Article J 7 of the Amsterdam Treaty) of the consolidated version of the Treaty on European Union.

47. On 16 March 1998, new impetus was given to the relations between the WEU Assembly and the European Parliament, when a number of members of the Assembly's Political Committee attended a meeting in Brussels following an invitation from the European Parliament's Sub-Committee on Security and Disarmament to hold joint discussions on the report by Mr Leo Tindemans on "the gradual establishment of a common defence policy for the European Union". These very detailed and useful discussions, which were also attended by the President of the WEU Assembly, also provided an opportunity to broach outstanding issues pertaining to WEU Assembly/European Parliament relations in general. While so far there has been no convergence between the two assemblies on the fundamental issues, particularly as regards reciprocity in their relations, there is general agreement between the two that it is useful to pursue their informal dialogue. However it would also be desirable for the European Parliament's Committee on Foreign Affairs, Security and Defence Policy to decide to occasionally invite members of the WEU Assembly's Political Committee for an exchange of views. This would be in line with Mr Tindemans's proposal to develop the working relations between the two parliamentary assemblies.

48. To the extent that it refers to relations with the European Union, the Erfurt Declaration raises a whole series of other questions. The Assembly, for example, is not informed of the nature of the "substantial progress achieved in the short time span since Amsterdam in translat-

ing the reinforced institutional links between the European Union and WEU into a practical reality" that is welcomed in the Erfurt Declaration. The Assembly noted with interest the information the Council provided in June 1997 on the activities of the WEU-EU *ad hoc* group on defining a common defence policy. It wishes to be kept abreast of progress in this area and would particularly like to be informed of the exact nature of WEU's participation in this ongoing discussion with the EU.

49 The Assembly takes a special interest in information regarding the status of preparations for the creation of a Policy Planning and Early Warning Unit in the EU. If, as announced in the WEU Declaration of 22 July 1997, this unit is to have the possibility of availing itself of WEU's Planning Cell, Situation Centre and Satellite Centre, then it is important to ensure from the outset that WEU enjoys high-level representation in this unit. Given the nature of the latter's activities, it would be appropriate to transfer the responsibility for directing it to the Secretary-General of WEU who should at the same time be the CFSP Secretary-General. This would effectively bring about the convergence between the different "working cultures" of the two organisations, on which, according to the Erfurt Declaration, their day-to-day cooperation depends.

2. WEU-NATO relations and the operational development of WEU

50 The focal point of future WEU-NATO cooperation will continue to be the creation of a genuine European security and defence identity (ESDI) within NATO. Given that this entails adapting military structures and, in particular, creating European command arrangements within the NATO command structures, the creation of the ESDI will remain uncertain as long as France has not taken a final decision about rejoining NATO's military structures.

51 Even if WEU is genuinely recognised as being an essential element of the development of the ESDI within NATO, it is still difficult to define that identity. According to the Erfurt Declaration, the aim of the ESDI is to enable all European Alliance partners to assume greater responsibility for their security and defence. In the NATO Foreign Ministers' communiqué of June 1996, the aim is described in somewhat different

terms as being to "enable all European Allies to make a more coherent and effective contribution to the missions and activities of the Alliance as an expression of our shared responsibilities, to act themselves as required and to strengthen the transatlantic partnership".

52. According to both of these definitions, only NATO's European members, namely, the ten full members and three associate members of WEU plus Denmark as a NATO member and WEU observer, are involved in the ESDI. However, in their December 1991 Declaration, WEU member states saw the development of the ESDI in more general terms, a position which they reaffirmed in their Declaration of 22 July 1997 on the Treaty of Amsterdam. In the view of the WEU Secretariat-General, the development of the ESDI is to be a three-dimensional process which takes place within NATO, the European Union, through the CFSP, and WEU, which will play a key role in turning it into a workable concept¹⁵. Since WEU, wherever possible, works at 28, and since the Amsterdam Treaty, under certain conditions, puts non-NATO WEU observer states on an equal footing with WEU full members for Petersberg missions, there is a whole range of problems arising for the development of new forms of cooperation between WEU and NATO which are vital for bringing about the ESDI. The other essential issues, apart from the problem of command structures, concern the terms on which NATO assets and capabilities are to be made available for WEU-led operations.

53 It is reported that work is currently under way on arrangements governing the release, transfer and return of NATO assets. While a majority of the European members of the Alliance would like to see this settled by means of a binding framework agreement, the United States has so far refused to let any automatic mechanism govern recourse to its national assets. It is particularly important in this respect to define a consultation mechanism between WEU and NATO for WEU-led operations having recourse to NATO assets and capabilities. An illustrative model along the lines of that which was outlined for WEU and the EU was adopted in Erfurt in order to link WEU and NATO processes for

¹⁵ This was the view expressed by the Deputy Secretary-General in an address to the Norwegian Atlantic Committee on 29 January 1998.

taking decisions and reaching agreement in crisis-management operations, but it has yet to be worked out jointly with NATO

54. Although, or perhaps precisely because, there is no mention of the CJTF concept in the Erfurt Declaration, it is important to recall that this concept is of vital importance for carrying out WEU-led operations using NATO assets. According to our information, the CJTF concept is currently in its military implementation phase. It is a military command model developed within NATO and which expressly provides for the possibility of its use by WEU. According to information given to the Committee by the NATO Secretariat-General in Brussels on 17 September 1997, the CJTF could be deployed under the political control and strategic direction of the WEU Council, under the command of the Deputy (European) SACEUR, or else under a regional command. CJTF exercises started in the autumn of 1997 with the participation of officers from the WEU Planning Cell.

55. Another important problem is the involvement of WEU in the NATO defence planning process. The Erfurt Declaration refers to a discussion paper that WEU submitted on this topic to NATO. A particular problem which remains to be solved is the participation of non-NATO WEU observer states. Furthermore, the responsibilities of the new WEU Military Committee have yet to be clarified with regard to WEU's contribution to the NATO defence planning process. The more the associate partner states are involved in Petersberg missions, in accordance with the intention stated in the Erfurt Declaration, the greater the impact on WEU-NATO working relations.

56. WEU's relations with NATO and its efforts to create independent military structures for its operational development are also increasingly affected by the lack of a clear legal basis for its activities. Article IV.2 of the modified Brussels Treaty¹⁶ has been overtaken by events and must be adapted to the new situation¹⁷.

¹⁶ Article IV.2 of the modified Brussels Treaty reads: "Recognising the undesirability of duplicating the military staffs of NATO, the Council and its Agency will rely on the appropriate military authorities of NATO for information and advice on military matters"

¹⁷ Recommendation 620 of December 1997

3. *Outstanding enlargement issues*

57. WEU at 28 has already made a highly significant contribution to the security of Europe by being a forerunner of the security and defence Europe that will exist in a few years' time. However, the EU and NATO have so far adopted different approaches to enlargement. If WEU is to continue playing a pivotal role between these two organisations, it must pay more attention to enlargement issues than has hitherto been the case. The Erfurt Declaration does not delve into these questions, although it is recognised that WEU has an important role to play in bringing central and eastern European states closer to European and transatlantic security structures¹⁸. In this Declaration, Ministers welcomed the enhancement of the associate partners' participation in various WEU bodies, in particular those related to crisis management. Furthermore they endorsed a document on the practical arrangements for participation by associate partners in Petersberg missions. This document, which has not yet been conveyed to the Assembly, defines among other things the rules governing the involvement of the associate partners in operational planning, military command structures and politico-military control. Ministers also drew up arrangements for the participation of observer and associate partner states in armaments cooperation activities.

58. None of these arrangements entails changes of status, but their repercussions are difficult to evaluate due to a lack of information. Given the different course taken by the EU and NATO enlargement processes, the Assembly has already recommended several times that WEU should reexamine its enlargement strategy and in particular its Declaration of December 1991¹⁹ and define a new concept. However, in its reply to Recommendation 618, the Council reaffirmed that it did not consider a change of approach ex-

¹⁸ Speech by German Minister of State Hoyer on 9 January 1998

¹⁹ The Declaration reads as follows: "States which are members of the European Union are invited to accede to WEU on conditions to be agreed in accordance with Article XI of the modified Brussels Treaty, or to become observers if they so wish. Simultaneously, other European member states of NATO are invited to become associate members of WEU in a way which will give them the possibility to participate fully in the activities of WEU"

pedient, since the approach being taken was in keeping with WEU's role as a pivot between the European Union and NATO

59 However, the situation has changed since the Amsterdam Treaty. Three of the ten associate partner states (the Czech Republic, Hungary and Poland) have signed accession protocols with NATO. Thus their full membership of the Alliance is now contingent only upon the ratification procedures in the relevant parliaments. These three states (together with Cyprus, Estonia and Slovenia) have also been invited to start accession talks with the European Union. Hence the principle of their membership of both NATO and the EU has been agreed, although it will be some time yet before the negotiations with the European Union are concluded

60. This was why, in Recommendation 625, the Assembly urged the Council to invite the Czech Republic, Hungary and Poland to accede to the modified Brussels Treaty in accordance with Article XI, as soon as they had been invited by the European Union to start accession talks. In its reply to this Recommendation, the Council once again confirmed the full validity of its Declaration of December 1991. At the same time it assured the Assembly that it attached a high political priority to enhancing associate partner participation in various WEU bodies and referred to the practical arrangements approved by Ministers at Erfurt for the participation of these states in Petersberg missions. However the Assembly has not been informed of the content of those practical arrangements. At the December 1997 plenary session of the WEU Assembly, in response to a question from your Rapporteur concerning the possibilities of accession by associate partner states to the modified Brussels Treaty, the then Chairman-in-Office confirmed that the associate partner status was created with a view to the full membership of central and eastern European countries in the EU and NATO. In their Maastricht Declaration, however, the WEU member states asserted that membership of the EU was a prior condition for full membership of WEU.

61. This would mean that accession by the associate partner states to WEU would depend on the outcome of lengthy negotiations between these countries and the European Union, in which the key issues have nothing to do with European

security questions. It should be remembered that WEU already played the role of precursor with its Kirchberg Declaration, when it granted associate partner status to the nine members of the then Forum for Consultation, although not all of them had signed a Europe Agreement with the European Union. Now that the NATO and EU enlargement processes have taken concrete shape, it is incomprehensible that the WEU Council should continue to stick to the letter of its 1991 Declaration. In so doing, it is strewing obstacles in the path of the task which the Council itself set for WEU, namely to bring these states closer to the Euro-Atlantic structures.

62. If WEU is indeed a precursor of the "great EU", then it could start accession negotiations at least with the three states which have already been invited to accede both to the EU and NATO. This would at least be in keeping with the spirit of the 1991 Declaration. However, a question which needs to be examined is whether the new situation that has emerged since Amsterdam, Berlin and Madrid might not provide WEU with the opportunity of seeking new approaches to the enlargement issue which could establish the hitherto missing conceptual link between the EU and NATO enlargement policies.

63. Should this prove to be the case, there has to be a fundamental change in the mind-set of the governments constituting the WEU Council. In Recommendation 625, the Assembly submitted a whole set of proposals with the objective, in the framework of efforts to bring central and eastern European states closer to the Euro-Atlantic structures, of making the EU, NATO and WEU enlargement policies more congruent. One can therefore only note with astonishment that the Council sees fit in its reply to that Recommendation to make it quite clear that it does not consider itself the appropriate body to answer questions pertaining to EU or NATO enlargement.

64. Of course, it is up to the European Union and NATO themselves to settle the enlargement problems arising out of the specific nature of those organisations. However WEU is an integral part of the EU's development, as well as an essential element of the development of a European security and defence identity within the Atlantic Alliance. What should WEU's important role in bringing the central and eastern European states closer to the Euro-Atlantic structures con-

sist of? Should it be confined to the possibility granted to associate partner states of participating in WEU Council meetings and to improving the conditions for their involvement in WEU activities? According to the Council's reply to Recommendation 625, this is an important step towards making WEU a genuine framework for dialogue and cooperation among Europeans on European security and defence issues in the broad sense of the term.

65. It is however not enough, if at the same time it is claimed that WEU is the precursor of the "great EU" of the future and that the Council of WEU was created in order to secure peace and security, promote European unity and give impetus to the process of European integration. To attain such objectives requires a great deal more thought to be given than has hitherto been the case to a new enlargement strategy for WEU, to replace the concept of December 1991 which has been overtaken by events.

66. So far, WEU, for good reasons, has not adopted the approach to the central and eastern European states followed by the EU and NATO, which was to select specific groups of countries for a first round of accession talks. All associate partner states are given equal treatment within WEU. Meanwhile, there is a growing awareness within the European Union of how difficult it is to differentiate without discriminating in the enlargement process. This is why the EU has adopted various supporting measures to take account of the interests of those aspiring members which have not yet been invited to start accession talks.

67. Thus it is intended, in parallel to the accession talks, to speed up preparations for negotiations with Bulgaria, Latvia, Lithuania, Romania and Slovakia. Moreover, at its meeting on 12 and 13 December 1997, the European Council agreed an enhanced pre-accession strategy with a view to putting all aspiring members from central and eastern Europe in a position to become members of the European Union in the longer term.

68. The decision by the European Council to hold a joint meeting on 30 March 1998 between the foreign affairs ministers of the EU and those of all ten central and eastern European candidates and Cyprus set the accession process in motion. Furthermore, a first European Confer-

ence had been held on 12 March in London which brought together the member states of the European Union and "the European states aspiring to accede to it and sharing its values and internal and external objectives". Turkey was also invited but declined to attend in protest against the separate treatment given it in connection with the enlargement process. In the future, this Conference is to be held once a year at the level of heads of state and of government and once a year at that of foreign affairs ministers.

69. The European Commission considers that all ten central and eastern European candidates for the EU fulfil the conditions for full participation in the activities of the CFSP. This means that *all* the associate partners of WEU have tangible prospects of European Union membership and that the only remaining uncertainty is the date. However, the question of whether and when these states may participate fully in a European security community such as WEU cannot be made contingent upon whether and when they fulfil all the criteria for the first pillar of the European Union. In any case, it is difficult to understand why it is not possible, in all areas affecting security which do not concern the application of Article V, for WEU associate partner states to be treated as though they were already members of the European Union.

70. The situation in the case of NATO is somewhat different. NATO has so far signed only three accession protocols with WEU associate partner states. It is generally expected that the ratification procedure for the accession of these states will be completed in time for the 50th anniversary of the North Atlantic Treaty in 1999. However, it is highly questionable whether and when the other WEU associate partners will be invited to join NATO and whether, if at all, a second or third wave of enlargement will take place, despite NATO's assurances that the first round will not be the last. There will in any case be strong differentiation within NATO. The United States and the European members of NATO are still considerably at variance on NATO enlargement. Moreover there are marked differences of opinion on the matter between the US Administration and Congress, in which the Senate plays the decisive role. The issue of further enlargement is to be discussed at the next NATO summit meeting in 1999. Romania and Slovenia, whose accession to NATO was

particularly advocated by France and Italy at the Madrid summit, hope to be included in the second round of accession talks. However it is difficult to foresee how the American position will develop between now and the next NATO summit. It was interesting, during the Political Committee's visit to the United States at the end of March 1998, to note the particular importance attached by the National Security Council to Bulgaria and FYROM, along with Slovenia and Romania, whereas no mention was made of Slovakia. A particularly thorny issue concerns security in the Baltic states, which, having for centuries belonged to the Tsarist empire and then, from 1939 to 1991, to the Soviet Union, are viewed by Russia as part of its own sphere of influence. Here again it is difficult to predict how the US stance will evolve. However, precisely in this respect, it clearly emerged during the Political Committee's talks in Washington that extensive regional cooperation involving the Scandinavian countries and Russia was considered to be particularly important for fostering security. More generally, as regards the process of further NATO enlargement, there is some interesting information from Austrian sources to the effect that the United States has expressed the wish that the next round of enlargement discussions should be led by Austria.

71 NATO's enlargement policy vis-à-vis the central and eastern European states which are associate partners of WEU has repercussions which are at least as far-reaching for WEU's own enlargement policy as they are for that of the EU. There are a number of reasons for this. The first is that allies have agreed to create a European security and defence identity *within* NATO, of which WEU is to be an essential element. This means that WEU will be even more closely interlocked with NATO and will almost take on the character of a "NATO sub-set". A second reason, which is closely tied in with the first, is the fact that nobody is willing to call into question the basic decision that the military guarantee for the mutual assistance clause in Article V of the modified Brussels Treaty should be provided by NATO, although this clause is only binding for WEU member states.

72. This close link between WEU and NATO means that WEU can only accept as full members those states which are, or will soon become, signatories of the North Atlantic Treaty. This

makes it difficult for WEU to avoid differentiation in its future policy with regard to accession candidates, despite the commitment reaffirmed by Ministers in Erfurt to the creation of a common European security area in which there are no dividing lines.

73 NATO's responsibility for collective defence, which was also indirectly confirmed by the Treaty of Amsterdam, means that full membership of NATO is an essential prerequisite for full membership of WEU, a fact which does not emerge from the WEU Declaration of December 1991. This in itself should suffice to encourage the WEU Council to review the contents of that Declaration. However there is a more general question arising in this connection, which is whether, with the entry into force of the Treaty of Amsterdam, the Declaration is still valid at all.

74 In Recommendation 611²⁰ the Assembly made a number of proposals to the Council, which the latter did not endorse, for revising its enlargement policy. A widely held view is that WEU cannot simply be a consolation prize for those countries which are refused entry into NATO. But this is not the real issue. The whole process of opening up the Euro-Atlantic structures is a dynamic one in which WEU is much too timidly involved. The task of exporting stability and security is not only the responsibility of NATO and the European Union. WEU should consider more closely the contribution it can make to promoting and facilitating this process and to preventing a security vacuum from setting in in particularly sensitive regions.

75. The different enlargement policies of NATO and the EU have created the following situation: none of the Baltic states has been invited to join NATO. However, one might well have expected an explicit reference at the Madrid summit to the Baltic state which has made great progress towards fulfilling the criteria for accession to NATO, namely Lithuania. The EU on the other hand has selected one of them – Estonia – to start accession talks. This unequal treatment cannot help but have an impact on the solidarity of the Baltic states which we know it is the aim of Russian policy to thwart. It emerged clearly

²⁰ Adopted on 3 June 1997 on the basis of the report submitted by Mr Urbain on behalf of the Political Committee (Assembly Document 1565).

once again from a German-Russian seminar held in December 1997, that the Baltic states' interests in NATO membership cannot be reconciled with those of Russia. An enlargement of NATO to include Estonia, Latvia and Lithuania, but also Finland, would be perceived by Russia as a security threat²¹. A generally recognised basic freedom is that of choosing one's alliances, but Russia is not prepared to grant that freedom to the Baltic states. On the other hand, both NATO and the Baltic states have hitherto rejected all Russian proposals for a common security guarantee for the Baltic region with Russian participation, in the nature of a condominium. Thus the problem of the security of the Baltic states remains unsolved. It could even be aggravated in a way which would be even more detrimental to their interests, if the "Union" between Russia and Belarus were to lead to the military control of Belarus by Moscow. However, the Charter of Partnership signed between the United States and the Baltic states on 16 January 1998 provides them with important psychological support. One should not underestimate the political importance of the fact that, in signing this Charter, the United States was demonstrating its fundamental interest in the independence, sovereignty, territorial integrity and security of these three states and its support for their efforts to achieve NATO membership, even though this agreement does not contain any formal security guarantees. It would in any event seem that this Charter is viewed in a most positive fashion by the Baltic states themselves, although they would also like to see a stronger commitment in this respect on the part of the Europeans²².

76. As regards the other associate partners of WEU, the security situation of Bulgaria and Slovakia is of particular interest. Neither of these countries has been explicitly mentioned by NATO in connection with their possible accession, whereas Romania and Slovenia have at least been named as possible candidates in 1999. The major political changes in Bulgaria that followed in the wake of the April 1997 elections have considerably improved Bulgaria's chances of accession to NATO. The same is true of this

country's prospects for EU membership, although it is still only at the beginning of its efforts to overcome its grave economic crisis.

77. Slovakia's situation is somewhat different. This country's democratic deficit in a number of areas draws particular criticism from the West. Although it is among the states foreseen for participation in the second round of EU accession talks, it is no longer mentioned in connection with NATO enlargement. The excesses of the internal political power struggle between former President Kovac and Prime Minister Meciar, the latter's style of government together with a whole series of constitutional irregularities, in connection for example with the referendum on NATO membership, the rights of the opposition parties and the division of power between the executive and legislature have, without a doubt, contributed to the West's largely negative picture of Slovakia. This was why it was important to your Rapporteur, during his visit to Slovakia, to hold detailed talks with representatives of the Slovak Government, Parliament and political parties, during which these problems were openly discussed.

78. One sometimes has the impression, as far as Slovakia is concerned, that the West tends to look at its very real deficiencies through a magnifying glass, whereas it is more prepared in the case of other countries to turn a blind eye. Scant credit is given to Slovakia for its astonishing success in stabilising and developing its economy in spite of the extremely difficult circumstances in which it started out. Its armed forces are a major stabilising factor and are highly respected, including by NATO. The Rapporteur gained the impression that Slovakia's efforts, after centuries of foreign domination, to preserve its own identity, are not viewed very favourably in some circles, particularly in the United States, not least because Slovakia, unlike other former communist states, endeavours to limit the flow of foreign capital into the country. Nonetheless, all the political authorities with whom your Rapporteur held discussions left no doubt at all in his mind that there is a clear majority in Slovakia in favour of joining the Euro-Atlantic structures.

79. For some of WEU's associate partner states it is particularly important from the point of view of their internal political situation that they should receive clearer signals that they are

²¹ Article by Lothar Rühl in the *Neue Zürcher Zeitung*, 13 December 1997.

²² Interview with the Estonian President published on 11 February 1998 in the *Neue Zürcher Zeitung*.

not going to be excluded from membership of the Euro-Atlantic structures to which they aspire. In this respect, WEU should offer all associate partner states more than just practical arrangements for enhancing their participation in Petersberg missions. One should remember that the associate partner status that WEU Ministers granted to central and eastern European states in May 1994 was linked with certain well-defined objectives:

“WEU is launching this major political initiative in the context of the developing links between these States and European institutions, notably through Europe Agreements. This will constitute a concrete contribution by WEU towards preparing these States for their integration and eventual accession to the European Union, opening up in turn the perspective of membership of WEU²³”.

80 The European Council decided to launch the accession process with all ten associate partner states simultaneously on 30 March 1998, at a meeting with the foreign affairs ministers of the states concerned. Initially, concrete negotiations will be confined to the Czech Republic, Estonia, Hungary, Poland and Slovenia, but in parallel preparations will be speeded up for the negotiations with the five remaining states. The objective of associate partner status as pursued by the WEU Council, namely to prepare the states concerned for European Union membership, is thus attained. WEU should draw the logical conclusions and fully involve all associate partners in those of its activities not falling under the mutual assistance clause.

81. However, this must be done in a legally binding fashion. This does not rule out the possibility, similar to what was done in Kirchberg, of negotiating arrangements enabling the new status to have immediate effect on a provisional basis, although formally it would only enter into force once the state concerned had effectively joined the European Union. At the same time negotiations could start with the Czech Republic, Hungary and Poland on their accession to the modified Brussels Treaty, since they will be

joining not only the EU but also, at the latest in 1999, NATO.

82 Such a procedure, however, also requires new, legally binding arrangements to be drawn up with regard to the status of the present associate member and observer states of WEU. The Amsterdam Treaty gave the latter the right to participate fully and on an equal footing in WEU planning and decision-taking for operations conducted by WEU at the request of the European Union. These arrangements, which already apply on a provisional basis, give observer states the same rights as full members in one of the key areas of WEU activity. In this new legal situation, the difference between their rights and those of the associate member countries is scarcely perceptible.

83 In their Declaration of 22 July 1997, WEU Ministers recalled that associate members are entitled to participate, on an equal footing with full members, in operations to which they contribute, as well as in the relevant exercises and planning. But what is meant by “contribute”? According to the arrangement adopted on 25 November 1992²⁴ in Rome, it means making military forces available. But does this arrangement apply to operations for which the EU avails itself of WEU? If it does, how can the EU Council’s general competence to set guidelines apply to associate members of WEU which are not members of the European Union?

84. What is the difference between the rights enjoyed by observer states with regard to the decision-taking process for operations carried out by WEU at the behest of the EU, and those which are referred to in Section C 14 of the Declaration of 22 July? The differences between the rights of associate members, observers and associate partners are beginning to become so blurred that one wonders whether it really makes sense any more for them to belong to three different categories. One possible solution for the future would be to divide states participating in WEU activities into two categories. The first would be for full member states which are signatories of the modified Brussels Treaty and its protocols. WEU should establish the following minimum criteria for states to qualify to be invited to accede to the modified Brussels Treaty:

²³ Kirchberg Declaration of 9 May 1994 (Assembly Document 1422).

²⁴ Assembly Document 1351.

(a) All states with which the European Union has started accession negotiations and which have signed accession protocols with the Atlantic Alliance, would be invited to accede to WEU on terms to be agreed in accordance with Article IX of the modified Brussels Treaty. The states concerned at present are the Czech Republic, Hungary and Poland.

(b) The minimum prerequisite for accession by European NATO states to the WEU Treaty should be their admission to the second pillar of the European Union. In the framework of the arrangements to be worked out between WEU and the European Union for enhanced cooperation between the two organisations, in application of Article 17 of the TEU (Article J 7 of the Amsterdam Treaty), WEU member states should make special representations to the European Union to ensure that those WEU associate members which so wish are granted extensive rights to participate in the CFSP. Once these conditions have been met, in agreement with the European Union, all European member states of NATO which up until now have been associate members in WEU could also be invited to accede to WEU under conditions to be worked out in accordance with Article XI of the modified Brussels Treaty. The states concerned in this case are Iceland, Norway and Turkey.

(c) Of the five observer states in WEU, Denmark, as a member both of NATO and the EU, is the only one which already fulfils the conditions for acceding to the modified Brussels Treaty. Whether Denmark submits such a request to WEU will, however, depend on the direction taken by internal political discussions in the country. Once they comply with the abovementioned criteria, the states named in paragraphs (a) to (c) could join the first category of full WEU members.

85 In some WEU observer states that have a tradition of neutrality, a lively internal debate is under way on security and defence policy and, more specifically, on the possibility of giving up neutrality in favour of possible accession in due course to NATO and/or WEU. Austria is among

the countries in which the debate is particularly vigorous. Your Rapporteur had an opportunity on 16 April 1998 to talk with leading members of the Austrian Government, Parliament and political parties. On the same day the Austrian Parliament held an emergency debate on Austria's future security policy.

86 Although the governing coalition has so far been unable to agree on the content of a report to be submitted to Parliament, setting out security and defence policy options, all the representatives your Rapporteur talked to made it clear that Austrians are of the unanimous view that only they themselves can settle the issue of changing the country's policy of neutrality. Regarding the question of Austria's possible accession to NATO and/or WEU, some interesting shades of opinion emerged from all the Rapporteur's discussions with political party representatives. The FPÖ seems to be the only party which unreservedly supports NATO membership, whereas it is critical of the European Union and of the idea of a merger between the EU and WEU. Rather, it sees WEU membership as following on from NATO membership.

87 Most of the other parties favour an approach that begins with Europe. In the ÖVP, for example, Austria's medium-term membership of WEU is seen as a stepping-stone to its long-term membership of NATO. In the SPÖ, there is a preference for close cooperation with NATO rather than membership. WEU's integration in the EU is favoured and there is a view that accession to WEU could be considered if the political decisions were taken by the European Union or on the basis of a mandate from the United Nations. It might agree to a mutual assistance clause in the EU Treaty, if the mutual assistance obligation pertained not to individual states but to the territory of the European Union. The only party to advocate Austria's accession to WEU without joining NATO is the Liberal Forum. Unfortunately your Rapporteur was unable to talk with members of the Green Party, but it would appear to be the only one to reject both NATO and WEU membership.

88 It is useful to bear in mind, in order to understand the internal political debate in Austria, that in the coalition agreement between the governing parties, full membership of WEU figures among the security policy options but not mem-

bership of NATO. Your Rapporteur was informed during his visit to Austria that, among other things, the North Atlantic Assembly has proposed to the delegations of Austria, Finland and Sweden that they convert their observer status into one of associate membership. The Austrian Parliament has not yet reached a decision on this proposal.

89. The internal political debate in Austria shows that while the close link between the EU and WEU poses a problem for some accession candidates, as we have seen earlier on in the case of Turkey, certain potential candidates for WEU membership, such as Austria, have more of a problem with the close linkage between WEU and NATO, which has led to NATO membership becoming a tacit condition for accession to WEU. In his report on the eastern dimension of European security²⁵, your Rapporteur has already discussed the issues that arise if enlargement of the Euro-Atlantic structures is seen as a dynamic process in which WEU membership is allowed to precede NATO membership in cases where the principle of joining NATO is not called into question. There are certainly risks attached to a more flexible enlargement policy of this kind on the part of WEU. One should, however, check on a case-by-case basis whether or not the advantages outweigh the risks.

90. The remaining EU states that have chosen observer status in WEU and which do not wish to join the Atlantic Alliance, have had their status and rights in WEU enhanced to such a degree through Article 17 of the TEU (Article J 7 of the Amsterdam Treaty) and through the WEU decisions of 22 July and 18 November 1997, that the term "observer" is no longer an appropriate designation. In the interests of legal certainty, WEU should see to it that these enhanced participation possibilities for observer states, which up until now have to some extent been based on decisions by the Council that could not be subjected to parliamentary scrutiny, are given a legal basis that is as extensive as possible and which should include the possibility of accession to the Agreement of 11 May 1955 on the status of WEU, the text of which would need to be amended accordingly. Another possibility would be to conclude a new Agreement. The Assembly, however, should

carry out its own study to see whether the new arrangements governing the rights of observer states affect the status of their parliamentary delegations in the WEU Assembly.

91. A similar arrangement should be negotiated with the remaining seven associate partner states of WEU, particularly in view of the fact that the principle of their accession to the European Union has already been agreed and that the European Commission has attested that they fulfil the conditions for participation in the CFSP. If such a concept were to be adopted, there would in the future be only two categories of WEU states: full members and associate members. Countries with a tradition of neutrality should, however, be free to formally maintain their "observer" status for as long as they may wish to do so for internal political reasons.

IV. Supporting measures required to strengthen stability and security in a wider Europe

92. The enhancement of the status of associate partner states proposed in this report still does not mean any security guarantee for the countries concerned. WEU cannot offer such a guarantee to non-NATO member states, as long as the practical implementation of Article V of the modified Brussels Treaty remains a matter for NATO. Hence, in order to further increase security and stability in central and eastern Europe, a whole series of supporting measures are necessary. One such measure is the promotion of regional cooperation, particularly in the Baltic Sea area, involving Denmark, Finland and Sweden, and cooperation within the framework of the Council of the Baltic Sea States with the participation of Russia. Other examples of regional cooperation are the Baltic Council and, to the north, the Barents Sea Cooperation Council, in the centre, the Central European Free Trade Area, the Central European Initiative and cooperation among the Visegrad states and to the south, the Black Sea Economic Cooperation. Finally, the significance of the various forms of bilateral cooperation should not be underestimated.

93. A further important measure is to step up political dialogue and practical cooperation with the Russian Federation. Indeed, this question is addressed specifically in the report submitted by

²⁵ Assembly Document 1542, 4 November 1996

our colleague Mr Martínez. In parallel, relations with Ukraine must be developed and considerably more attention should be paid than has been the case in the past to developments in Belarus.

94. Finally, we should not forget the need to further strengthen cooperation with the OSCE. The Erfurt Declaration devotes only one relatively short paragraph to the role of the OSCE and WEU should give more practical effect to the intention stated there of supporting the OSCE in its crisis-management tasks. This organisation can play an important role in creating a pan-European security model, if there is agreement on the fact that it can be complementary to such collective defence organisations as NATO and WEU in contributing to strengthening security in Europe. However, a hierarchical ranking of these organisations beneath the OSCE, as advocated by countries like Russia, is not acceptable. Cooperation among all OSCE members in a climate of trust could be considerably strengthened if the OSCE were to devote itself primarily to all activities concerning early warning, crisis prevention and conflict settlement. Nevertheless, one must bear in mind that all aspects of pan-European cooperation which are not directly related to security are already covered today by the Council of Europe.

V. Conclusions

95. In spite of all the resistance, the years of difficulties in getting off the ground and after having been written off time and again, WEU is now on the way to becoming an important player

and a factor to be reckoned with in the field of crisis management and defence. For the moment however, what is still lacking on the part of many European politicians and decision-makers is the confidence in this Organisation that would enable it to be granted greater responsibilities in crisis situations. In some cases they also lack the political will to avail themselves of WEU.

96. It would, however, be irresponsible to claim that WEU can only become credible by proving its operational capability in a real crisis situation. It does not require a crisis to establish credibility. The real test case is for a wider Europe to be united in its security and defence policy in a climate of peace. This goal has not yet been reached, but WEU at 28, the precursor of a wider security and defence Europe, has taken up the challenge and is well on the way to meeting it. The numerous difficulties that lie before it given the many disparities that still exist between the situations of the 28 WEU nations have been set out once again in this report.

97. It contains an assessment of the situation and proposes a number of suggestions which it is hoped will make a constructive contribution to ensuring that the efforts under way to achieve greater homogeneity among the 28 WEU nations, with a view to building a united security and defence Europe, and at the same time to make WEU a credible tool for crisis management, are crowned with success. The political conditions for achieving such a goal are currently very favourable and action should therefore be taken without delay.

APPENDIX

*Extracts from the modified Brussels Treaty,
the Amsterdam Treaty and the North Atlantic Treaty*

Article VIII.3 of the modified Brussels Treaty


At the request of any of the High Contracting Parties the Council shall be immediately convened in order to permit Them to consult with regard to any situation which may constitute a threat to peace, in whatever area this threat should arise, or a danger to economic stability

Article J.6 of the Amsterdam Treaty

Member states shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action.

Article 4 of the North Atlantic Treaty

The Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened.

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