



Assembly of Western European Union

DOCUMENT 1564

9 May 1997

FORTY-THIRD SESSION

Maastricht II: the WEU Assembly's proposals for
European cooperation on security and defence –
reply to the annual report of the Council

REPORT

submitted on behalf of the Political Committee
by Mr Antretter, Rapporteur, and Mrs Squarcialupi, co-Rapporteur

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for European cooperation on security and defence –
reply to the annual report of the Council*

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² *Members of the Committee* Mr Baumel (Chairman); MM *Urban, Blaauw* (Vice-Chairmen); MM *Antretter, de Assis, Bianchi, Sir Andrew Bowden, Mr Brancati* (Alternate: *Mrs Squarcialupi*), MM *Bratina, Brunetti, Buhler, Cusimano, Dias, Sir Anthony Durant, Mr Eyskens, Mrs Fischer, Mr Irmer, Sir Russell Johnston, Mr Kaspereit, Lord Kirkhill, MM Liapis, van der Linden, de Lipkowski, Van der Maelen* (Alternate: *Staes*), MM *Martinez, Martinez Casañ, Puche Rodriguez, Recoder* (Alternate: *Robles Fraga*), MM *Rippinger, Roseta, Seiflinger, Skoularikis, Sir Keith Speed, MM Vinçon, Vrettos, Woltjer, Zierer*

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Draft Recommendation

*on Maastricht II: the WEU Assembly's proposals for
European cooperation on security and defence –
reply to the annual report of the Council*

The Assembly,

- (i) Deeply disappointed that it recently proved impossible for the European Union to implement, in the framework of the CFSP, a common policy in the context of the Albanian crisis so as to give WEU a mandate in pursuance of Article J 4.2 of the Treaty on European Union for the purpose of finding ways of bringing the crisis to an end;
- (ii) Equally disappointed that in the Albanian crisis the WEU Council did not avail itself of the crisis-management means at its disposal by virtue of the modified Brussels Treaty and its Petersberg Declaration and merely responded belatedly and inadequately to the Albanian request for assistance.
- (iii) Expressing its gratitude to and solidarity with Italy, France, Spain and Greece as WEU members, Turkey as an associate member, Denmark as a member of NATO, Austria as a WEU observer country, Romania as a WEU associate partner country and all the other states which, under Italy's leadership, have sent troops to Albania to supervise the humanitarian relief operation, while at the same time regretting that WEU member states did not participate in this operation in greater number;
- (iv) Taking the view nevertheless that far more strenuous efforts are required in order to restore order in Albania, take possession of all weapons stolen from storage depots and prevent the unstable situation in the country from posing a threat to the entire neighbouring region.
- (v) Strongly regretting that it has not received the necessary information on the stage reached in negotiations at the intergovernmental conference on the future relationship between WEU and the European Union, whereas representatives of the European Parliament are regularly informed by the Presidency of the European Union and also receive information about WEU's activities from the WEU Secretariat-General.
- (vi) Noting that the intergovernmental conference is discussing WEU's future role and that five member states of the Union that are not members of WEU have full voting rights at the conference,
- (vii) Disappointed that the draft Treaty revision outlines issued to date do not really provide any satisfactory response to the genuinely fundamental political issues concerning Europe's future role on the world stage for the purpose of guaranteeing international peace and security, but are confined to purely institutional and procedural aspects;
- (viii) Convinced that no decision can be taken on whether the tasks inherent in a common European defence can be progressively transferred to the European Union until.
- (a) it becomes clear that such a move is compatible with the decisions taken in Berlin to develop the European security and defence identity within the Atlantic Alliance through the intermediary of WEU,
- (b) there is a clear and coherent perception of the purpose of transforming the European Union to include, *inter alia*, a real defence community with all the consequences that entails for the transatlantic relationship, the admission of new members, the participation of member states with a neutral tradition, relations with Russia and the form of parliamentary control;
- (c) it has been fully established that the basis for conferring responsibility upon the European Union for all matters concerning external security – as provided for by the Maastricht Treaty –

must be the mutual assistance obligation contained in Article V of the modified Brussels Treaty, which must become an essential provision of the Treaty on European Union;

(ix) Taking the view that the plan submitted by six EU member states for the gradual integration of WEU in the European Union has the merit of referring to a possible timeframe and that even though it fixes ambiguous objectives, the proposal it contains for a white paper outlining a common defence policy concept is one way, among others, of drawing closer to the goal of a common European defence in which all member states of the Union would take part;

(x) Convinced that until all the member states of the European Union have subscribed the modified Brussels Treaty and until WEU associate members have participatory rights in CFSP discussions, giving the European Council competence to set general guidelines for WEU or conferring upon the Council of the European Union, by virtue of Article J 4 2 of the Treaty on European Union, the right to monitor the activities of WEU will not be conducive to the establishment of a genuine European common defence ;

(xi) Stressing on the contrary that for as long as this situation persists, WEU must preserve its full capability to act and take decisions in all the areas of responsibility conferred upon it by the modified Brussels Treaty, at the same time ensuring that, in serious situations, it is not beset by indecision, as proved the case in the Albanian crisis;

(xii) Desirous that the current procedure whereby the Union requests WEU on a case-by-case basis to elaborate and implement decisions and actions of the Union in the field of defence be replaced by a general provision in the Treaty to the effect that the Union entrusts WEU with the task of taking the relevant decisions on behalf of the European Union and implementing them,

(xiii) Hoping that a reference to Petersberg tasks and possibly to armaments policy in the Treaty on European Union will not lead to an undesirable fragmentation of areas of competence but will serve to confirm WEU's responsibilities in this regard and will encourage WEU observer states to revise their policy;

(xiv) Convinced that for as long as countries continue to take decisions in an individual capacity on the deployment of their armed forces, parliamentary monitoring of European security and defence activities must remain a matter for an assembly composed of delegations of national parliaments,

(xv) Deploring the fact that the WEU Council has not prepared a revised version of its November 1995 contribution to the intergovernmental conference and that by not conveying the second part of its 42nd annual report to the Assembly on time, it has yet again failed to fulfil its obligations under Article IX of the modified Brussels Treaty,

(xvi) Eager to make a positive contribution to the intergovernmental conference on the revision of the Treaty on European Union,

RECOMMENDS THAT THE COUNCIL

1 Convey, via the Presidency of the European Union, the following proposals to the participants in the intergovernmental conference:

(a) Article J 4 1 of the Treaty on European Union should read:

“The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy in the perspective of a common defence.”

and should be supplemented by the following

“Full application of the modified Brussels Treaty by 10 of the 15 European Union member states that belong to WEU shall constitute an important means to that end ”

(b) Subparagraph 1 of Article J 4.2 should read.

“The Western European Union together with all its institutions is therefore an integral part of the development of the European Union and the Union shall accordingly foster closer institutional and working relations with it. The Member States of the EU and the WEU have made it their aim to enable all WEU associate member, associate partner and observer countries to participate progressively in all aspects of a common European defence. They will work actively in the European Union and the WEU to achieve that aim which should make progressive integration between the WEU and the Union possible. This can be achieved in several phases which shall be defined in greater detail in a separate document, to be drafted jointly by the WEU and the European Union.”

Subparagraph 2 of Article J.4.2 should read:

“The competent bodies of the WEU and the European Union shall begin the relevant negotiations to this end upon signature of the revised Treaty on European Union. They shall in particular establish both the procedure to be followed for the phases leading to integration and a timeframe for achieving that aim. The European Council shall take the necessary decisions on the basis of reports submitted by the WEU and the European Union.”

(c) Article J.4.3 should read

“Until the objectives laid down in paragraph 2 have been achieved, the Union confers upon the Western European Union (WEU), in pursuance of this Treaty, the task of taking decisions with defence implications on behalf of the Union and of elaborating and implementing actions resulting from them. In particular these shall include permanent observation of crisis situations, Petersberg tasks (humanitarian tasks, rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking) and the elaboration of a common armaments policy.”

(d) Article J.4.4 should read:

“Where the WEU acts in pursuance of Article J 4.3, it shall, in agreement with the institutions of the European Union, take care to ensure that all WEU associate member, associate partner and observer states participate fully, within the limits of their status in the WEU, in the WEU planning and decision-making procedure.

The WEU Council shall take action within the meaning of the preceding paragraphs in response to a request from any WEU member, associate member, associate partner or observer state, or to an initiative of the WEU Secretary-General.”

(e) Article J.4.5 should read

“The provisions of this Treaty concerning constructive abstention shall be applied by analogy to decisions taken by the WEU within the meaning of this Article. The WEU will verify whether the provisions of the modified Brussels Treaty need to be adapted as a result. At the request of a member state, the decision of the WEU Council shall be taken at head of state or government level.”

(f) Current Article J.4.3 is to be deleted.

(g) Articles J 4.4 and J 4.5 are to remain unchanged and are to be renumbered J.4.6 and J.4.7.

(h) Current Article J 4.6 is to be deleted.

2. Draw up, in conjunction with the competent institutions of the European Union, a document on the progressive integration of the WEU associate member, associate partner and observer states in a common security and defence system under the auspices of the European Union; this document should comprise the following components.

(a) the elaboration of a white paper outlining a common defence policy concept in pursuit of the common security interests of all 28 WEU countries;

(b) a gradual upgrading of the status of the WEU associate member, associate partner and observer countries,

(c) the progressive participation of the WEU associate members and associate partners in the work of the CFSP in the framework of the European Union;

(d) an assessment, in agreement with NATO, of the implications for implementation of the CJTF concept of institutional convergence between WEU and the EU,

(e) the participation of the WEU Secretary-General in all meetings of the Council of Ministers of the Union and of the European Council at which matters concerning the CFSP are discussed;

(f) clarification of the issues concerning the future form of parliamentary control over European defence through a democratic European supervisory body composed of national parliamentarians, in which representatives of the Assembly of WEU would participate.

(g) a decision on the components of the modified Brussels Treaty which, in addition to the mutual assistance clause contained in Article V and the clause on cooperation with NATO contained in Article IV, should be incorporated in the Treaty on European Union,

(h) identification of those states that are able and willing to accede to a Treaty on European Union enhanced by the essential components of the modified Brussels Treaty and of those that the European Union is prepared to admit,

3 Strengthen the WEU Planning Cell by giving it a political dimension and propose to the European Union that the Cell should be assigned the tasks of the envisaged policy planning and early warning capability under the CFSP or, failing this, ensure that WEU too can submit proposals concerning the work of the CFSP planning unit,

4 Make sure that the incorporation of a flexibility clause on closer cooperation among a group of states serves the purpose of a common European defence, accommodating as many European states as possible that wish to be part of it,

5 Report to the Assembly on developments in the Council's relations with the United Nations and the OSCE and make strong representations to both those organisations pointing out that they may have recourse to WEU in crisis situations for the purpose of conducting operations in accordance with a mandate issued by either,

6. Ensure that in future it conveys its annual report to the Assembly on time.

Explanatory Memorandum

(submitted by Mr Antretter, Rapporteur and Mrs Squarcialupi, co-Rapporteur)

I. Introduction

1 In the opinion of the French Foreign Minister, Hervé de Charette, 1997 is a year of crucial decisions¹. This is the year in which the governments of the member states of the Atlantic Alliance and the European Union have set themselves the objective of arriving at agreement on far-reaching reforms in Euro-Atlantic cooperation on security and making considerable qualitative progress towards European political integration. The success or failure of these endeavours may be of decisive significance for the future of European security and for international relations far into the 21st century.

2. The intergovernmental conference on the revision of the Treaty on European Union is supposed to reach agreement on a comprehensive reform of the Treaty in time for the European Council's ministerial summit meeting in Amsterdam on 16 and 17 June 1997. One of the most difficult subjects concerns revising the conditions for the common foreign and security policy (CFSP) which, in accordance with the wishes of the majority of member states, should pave the way for a common European defence policy with the objective of achieving a common defence. The draft revised Treaty outline issued by the Netherlands Presidency of the European Union on 20 March 1997 therefore contains a clause in which the gradual integration of WEU in the European Union is set forth as an objective under the Treaty. To that end, Belgium, France, Germany, Italy, Luxembourg and Spain submitted a three-phase plan to the intergovernmental conference at the end of March².

3. The goal of bringing a European defence policy under the aegis of the European Union in the medium to long term must, among other things, be aligned with the objective of the NATO member states as declared by the minis-

terial meeting of the North Atlantic Council on 3 June 1996 to develop the European security and defence identity *within the Atlantic Alliance*. It is particularly significant that the corresponding NATO communiqué describes WEU's role in this context as follows:

“Taking full advantage of the approved CJTF concept, this identity will be grounded on sound military principles and supported by appropriate military planning and permit the creation of militarily coherent and effective forces capable of operating under the political control and strategic direction of the WEU.”

4. This leads one to ask whether NATO, the European Union and their member governments have not manoeuvred themselves into a conflict of aims regarding their ideas about WEU's future role as, according to the Franco-German proposals conveyed in writing to the Irish Presidency of the European Union on 9 December 1996 by the President of France and the Chancellor of the Federal Republic of Germany, the European Council should be given overall competence to set guidelines for WEU. The tenor of these proposals is reflected in each of the outlines for a draft revision of the Treaty issued by the Irish and Netherlands Presidencies, and they also feature in the abovementioned plan to integrate WEU in the European Union in phases.

5. The significance of the subordination of WEU to the European Council's competence to define guidelines becomes clear when one considers that the European Council includes five member states with full voting rights, none of which is a signatory of the modified Brussels Treaty (namely, Austria, Denmark, Finland, Ireland and Sweden) and four of which (Austria, Finland, Ireland and Sweden) are not members of NATO. The plan to subordinate WEU also poses the problem of relations with the three NATO member states that do not belong to the European Union but are associate members of WEU, the countries in question being Iceland, Norway and Turkey.

¹ See the Minister's address of 22 January 1997 to journalists accredited to WEU.

² For full text see appendix.

6 An even more important consideration is how to muster common political will among the European countries with regard to a common foreign, security and defence policy. The attempt to compensate for the absence of common political will solely by making changes in institutional structures, for instance by bringing in qualified majority voting, creating new analysis and planning units, appointing a "Mr CFSP", merging institutions or subordinating one organisation to another, could easily misfire.

7 In practical politics, it continues to be extremely difficult to define common aims and decide on joint action. A recent example of this was the European Union's inability to agree on a common policy regarding China. Neither was it able to request WEU to intervene in the Albanian crisis. But even the WEU Council itself failed to respond to the appeal for help from the Albanian Government and to Recommendation 609 on the situation in Albania which was adopted by the Assembly's Standing Committee. Difficulties of this nature have repeatedly led to a situation in which political action is often taken outside the institutional framework of the international organisations responsible for dealing with problems that fall within their specific remit. There are a number of examples of this such as the attempts to send an multinational protection force to Albania under Italian leadership, the Bosnia Contact Group³, the negotiations conducted with Turkey by the foreign ministers of five EU member states⁴ (with no involvement of the Presidency of the EU Council or the European Commission), or the French proposal to hold talks with Russia over planned NATO enlargement in a conference of five powers.

8 All this shows how difficult it is to reconcile the institutional framework with the realities of political will and power politics at all times. Further problems arise because the member states are at various stages in their readiness to move ahead with European integration in all

³ Its members are representatives of the United States, Russia, the United Kingdom, France and Germany.

⁴ The foreign ministers of France, Germany, the United Kingdom, Spain and Italy – see the *Frankfurter Allgemeine Zeitung*, 6 February 1997.

areas at the same speed and to the same degree. Having recognised this, the participants in the intergovernmental conference are trying to solve the problem by including a "flexibility clause" in the Treaty on European Union. Its purpose is to make it possible for a group of European Union member states to move ahead with political integration in specific areas more quickly than the other member countries without the latter being able to block this although they can at any time decide to join this form of closer cooperation. Although a number of points still remain to be clarified as regards how such a flexibility clause will work, the majority of member states take the view that closer cooperation within the institutional framework of the European Union should become a reality.

9 While institutions are no substitute for political will, the way in which the architecture of the European organisations responsible for a common foreign, security and defence policy is structured is nevertheless important in order to ensure that joint political decisions are implemented as smoothly as possible. It is therefore essential to simplify and improve the relevant procedures and this should be a major objective of the intergovernmental conference. It is the Rapporteurs' intention to make a contribution to this objective by submitting specific proposals.

10 The smooth running of the European institutions is an essential prerequisite for the European Union's expansion to the east and the south. Accession negotiations with applicant countries are due to start six months after the close of the intergovernmental conference.

II. A review of attempts to date to cover all aspects of the common foreign and security policy in a revised Treaty on European Union

1. Redefining the purpose, tasks and functions of the CFSP

11 The member countries of the European Union, WEU and the Atlantic Alliance are broadly in agreement in their assessment of the current security situation. There is scarcely any difference of opinion among them about the fact that Europe's external security today and for the foreseeable future is less threatened by the danger of an attack on the territorial integrity of any one member state than by various other forms of crisis situation which, with the exception of the Balkan conflict, arise in the majority of cases in

regions outside Europe. Alongside political crisis management, such conflicts may require the deployment of military means for humanitarian and rescue tasks and peacekeeping tasks but also for tasks of combat forces in crisis management and for peacemaking on the basis of a mandate from the United Nations.

12. New forms of threats to external security such as those inherent in organised international crime, various types of cross-border terrorism, the illegal proliferation of weapons of mass destruction, the migration of large groups of people, environmental disasters and the phenomenon of religious issues finding expression in violence, call for fresh thinking on how they can be tackled. They could result in the disappearance of the rigid division of tasks under the second pillar (common foreign and security policy) and the third pillar (cooperation on justice and internal affairs).

13. This does not mean that the need to be able to defend the integrity of the member states of the Alliance effectively in the future has now lost all its relevance. Everyone agrees that because of the risks that still remain, a sufficient military capability has to be preserved so that the mutual assistance clauses in the Washington and modified Brussels Treaties remain viable.

14. What is new however is the idea that a guarantee of the territorial integrity of the European Union as well should also be firmly entrenched in the revised Treaty. This is currently the subject of negotiation at the intergovernmental conference. According to the draft Treaty changes proposed by the Netherlands Presidency on 20 March 1997, a new version of Article J would read:

“The Union and its Member States shall define and implement a common foreign and security policy, covering all areas of foreign and security policy, the objectives of which shall be

- to safeguard the common values, fundamental interests, independence *and integrity* of the Union *in conformity with the principles of the United Nations Charter,⁵ ...”.*

⁵ The proposed amendments are shown in italics.

15. Some member states go even further and are in favour of the concept of the inviolability of the European Union's external borders being established in the Treaty. Greece in particular is pushing for this. But in view of the continuing dispute between Greece and Turkey and of the plan to admit Cyprus to the Union, it is doubtful whether it would be wise, not to say feasible, to go further than the wording proposed by the Netherlands Presidency. The wording of the paragraph in question will have repercussions not only for the EU's future relations with Turkey but also for its opening towards central and eastern Europe and its relations with Russia.

16. This issue is closely linked to proposals to include a political solidarity clause in the Treaty. Under the Netherlands' draft revision of the Treaty, the new Article J would contain the following provision:

“The member states shall work together to enhance and develop their mutual political solidarity.”

17. Furthermore, in a joint letter to the Irish Presidency of 9 December 1996, the German Chancellor and French President said that “the EU member states have a commitment to act in concert and to demonstrate political solidarity in implementing European actions, and thus also to renounce all counterproductive action”.

18. There is no doubt that the difficulties involved in elaborating a common foreign and security policy have not diminished since the entry into force of the Maastricht Treaty. What can be done to engender common political will in Europe with regard to foreign and security policy? So far the answers given in response to this highly charged political question have been almost exclusively of an institutional and procedural nature. For instance, in a speech on 17 February 1997, Werner Hoyer, Minister of State at the German Ministry of Foreign Affairs and the Federal Republic's representative at the intergovernmental conference, described Germany's goals in this connection as follows:

“We want to free the common foreign and security policy from the straitjacket of the unanimity requirement. We also want to give it a face and a voice by appointing a CFSP Secretary-General who would be answerable to the Council and who could

prepare Council decisions more effectively and make them more transparent. In addition there should be an independent operational working unit for foreign policy.”⁶

19 In their joint letter of 9 December 1996 to the Irish Presidency, the French President and the German Chancellor set forth the Franco-German position and called for:

“1. The establishment in Brussels of a permanent joint working unit (Analysis and Planning Unit) as part of the Council Secretariat, consisting of staff from the Member States, the Commission, WEU and the Secretariat. It should play a central role in preparing and implementing Council and Political Committee decisions, and should present these bodies with, in particular, analyses, recommendations and strategies in order to provide a common basis for the consultations of the foreign ministers...”

They further suggested that.

“2 Measures should also be taken to loosen the consensus principle. We should therefore make greater use of majority voting on the CFSP too, this should become the rule for implementation decisions in particular. The European Council, which represents the Union’s supreme political will, should, however, continue with the principle of consensus voting. This also applies to Council policy decisions and to security and defence in general.

.....

Decision-making could also be further eased if we basically agreed that in the CFSP an ‘abstention’ will not stand in the way of a decision even in cases where unanimity remains obligatory. Each member state could, by means of this ‘constructive abstention’, express its reservations towards certain decisions without hindering joint European action.

⁶ Speech to the European Forum in Petersberg, Bonn – “Towards a security and defence policy for the European Union”

3. Moreover, we require greater continuity, as well as a ‘face’ and ‘voice’ for the CFSP. Our partners in the world often wonder who their foreign policy ‘counterpart’ in the European Union is. We therefore propose that the member state governments agree to entrust with this task a person with the necessary political qualification. This person would be responsible to the Council and would report to it at regular intervals and, on request, also to the European Council.

He or she would support the Council on all CFSP matters [and] head the Analysis and Planning Unit.

....

In our view we should look at two different options

- to either create a specific post whose occupant would carry out his or her functions in close coordination with the Secretary-General of the Council,
- or to charge that person with heading the General Secretariat. In this case we would have to redefine the Secretary-General status and function and transfer his or her typical tasks to a Deputy Secretary-General.

..

So as to guarantee the coherence of foreign policy as a whole, the Commission shall be fully involved in CFSP elaboration and implementation.....”

20. Elaborating on the Irish Presidency’s draft proposals of 5 December 1996, the Netherlands Presidency endeavours to give substance to some of the ideas that were put forward, on which there are still differences of opinion, in new Articles J 7, J 12 and J.14 and in a Declaration on the Final Act of the Conference. The proposed wording for this Declaration reads:

“1 A policy planning and early warning capability shall be established in the General Secretariat of the Council under the responsibility of its Secretary-General. Appropriate cooperation shall be established with the Commission in order to en-

sure full coherence with the Union's external economic and development policies.

2. The tasks of the policy planning and early warning capability should include the following:

(a) monitoring and analysing developments in areas relevant to the CFSP;

(b) providing assessments of the Union's foreign and security policy interests and identifying areas where the CFSP could focus in future;

(c) providing timely assessments and early warning of events or situations which may have significant repercussions for the Union's foreign and security policy, including potential political crises;

(d) producing on request of either the Council or the Presidency or on its own initiative, argued policy options papers, to be presented under the responsibility of the Presidency as a contribution to policy formulation in the Council, and which may contain analyses, recommendations and strategies for the CFSP

3. The policy planning capability shall consist of personnel drawn from the General Secretariat, the Member States, the Commission and the WEU

4. Any Member State or the Commission may make suggestions to the planning capability for work to be undertaken.

5. Member States and the Commission will assist the policy planning process by providing, to the fullest extent possible, relevant information, including confidential information "

21. It is also proposed that, in a separate declaration, WEU should express its readiness to convey to the policy planning capability any information it requires for its work.

22. There would not really be any reason for the WEU Assembly to comment on the appropriateness of this new institution were it not for the fact that its tasks will overlap, at least in part, with those of the WEU Planning Cell and the recently established Situation Centre. In addition, it is intended that WEU will take part in the

work of the new policy planning capability as members of its own staff will be seconded to it

23. The necessary staff are to be taken from the General Secretariat of the Council, the member states, the European Commission and WEU. The various hierarchical relations among the staff of such a complicated unit raise doubts as to whether it will be able to operate efficiently. As the example of the WEU Planning Cell shows, experts cannot take any action unless they receive the necessary political instructions. In the case of the proposed new policy planning capability, any instructions – assuming they are issued – would come from the General Secretariat of the Council, the capital cities, the European Commission and WEU, making it most unlikely that their content will be consistent.

24. In order to avoid duplicate structures and give a wider interpretation to the remit contained in the Maastricht Treaty, according to which WEU is to elaborate and implement decisions and actions of the Union which have defence implications, things could be simplified by reassigning the tasks envisaged for the new policy planning capability to the WEU Planning Cell, which would be given a political dimension for this purpose. However, if the governments decide to go along with the Franco-German proposal regarding the composition and tasks of any new policy planning unit, it would at least have to be established that not only the member states and the European Commission – as envisaged so far – but WEU as well will be able to submit proposals to the unit in question and provide it with support during the planning process.

25. As regards the decision-making mechanism, the Netherlands Presidency has made a point of incorporating the Franco-German proposals for increased use of majority voting and recourse to the option of constructive abstention in a new Article J.12 which reads:

"1. Decisions under this Title shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall

not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 148(2) of the TEC, the decision shall not be adopted

2. All decisions taken in the framework of a common strategy, including decisions to issue declarations or undertake demarches, shall be adopted by the Council acting by a qualified majority

Decisions implementing common positions or joint actions shall also be adopted by the Council acting by qualified majority.

The votes of the members of the Council shall be weighted in accordance with Article 148(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members

This paragraph shall not apply to decisions having military or defence implications ...”

26. These provisions would be of particular significance for WEU if the IGC were to agree to give the European Council overall competence to set guidelines for WEU. The problem of the specific impact this would have on the role of the five EU member states that do not belong to WEU is discussed in the next section

27 Under the terms of new Articles J 7 and J.14, the status of the Secretary-General of the Council but also of the Commission will be enhanced so as to give the CFSP a face and voice vis-à-vis the outside world. Provision is also made for the Council to appoint a special representative with a mandate for particular policy issues whenever it deems it necessary. All these various proposals show that there is still no uniform line on these matters at the intergovernmental conference

28. The question of whether and to what extent WEU should become involved in the debate

on the appointment of a person who would coordinate CFSP activities and give them the necessary impetus should be discussed by the Assembly since the outcome of this debate will have considerable repercussions for the future working relationship between WEU and the European Union

29 The tasks to be carried out by the person referred to above could be assigned to the Secretary-General of WEU, who would thus acquire an enhanced political status enabling him to make an effective contribution to better coordination between the institutions of the European Union and WEU. This would also avoid the need for new staffing and administrative structures. The question of whether one person uniting the jobs of Secretary-General of WEU and a “Mr CFSP” should be pursued as a political goal depends of course on the form of future relations between WEU, the European Union and NATO

2. The plan for the phased integration of WEU in the European Union

30 In view of the obligations into which the WEU member countries entered when they signed the modified Brussels Treaty, the central one being a common defence, and the fact that 11 member states of the European Union also belong to the Atlantic Alliance, consideration must once again be given to the question of why it should prove so difficult to incorporate the concept of a common defence in the Treaty on European Union when this was possible in the framework of NATO and WEU

31 There are several reasons:

- the first is that five EU member states have difficulty in accepting the idea of a common defence regardless of how it would be organised,
- second, some countries, in particular the United Kingdom and Denmark, do not want the European Union to take on responsibility for defence,
- third, 11 EU member states have decided with others in NATO that the European security and defence identity should be developed within the Atlantic Alliance,
- fourth, three European member states of NATO do not belong to the European Union;

- fifth, there are still no clear and uniform ideas about the final objective of European integration, which also includes security and defence;
- sixth, the consequences – for the Atlantic Alliance, relations with Russia. EU plans to take in new members and relations with those European NATO states that (still) do not belong to the EU – of transforming the Union into a defence community have not yet been examined and explained.

32 Regardless of these outstanding problems, a group of countries led by France and Germany wants the intergovernmental conference to produce a revised Treaty establishing specific milestones in a step-by-step process leading to full integration of WEU in the European Union, at the end of which the Union is to be responsible for all aspects of a common security and defence.

33. Elaborating on one of the Irish Presidency's draft Treaty proposals of 5 December 1996, the Netherlands Presidency put forward the following amended version of the first two paragraphs of current Article J.4 on 20 March 1997.

"1 The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive [word deleted] framing of a common defence policy [supported by a common armaments policy], in the perspective of [words deleted] a common defence.

Questions referred to in this article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.

2. The Western European Union (WEU) is an integral part of the development of the Union with the objective of gradual integration of the WEU into the Union. The Union shall accordingly foster closer institutional relations with it.

The Union will avail itself of [word deleted] the WEU [words deleted] to elaborate and implement decisions and actions of

the Union which have defence implications."

34 However, in a letter of 21 March to the Netherlands Presidency of the European Union, the German Foreign Minister proposed the following text which went considerably further and had been agreed by Belgium, France, Germany, Italy, Luxembourg and Spain:

"1 The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy in the perspective of a common defence.

The common defence policy shall include the framing of principles, aims and means in the defence field.

The Petersberg tasks (humanitarian tasks, rescue tasks, peacekeeping tasks, tasks of combat forces in crisis management, including peacemaking) shall be the first expression of a common security and defence policy. Armaments policy shall be an integral part of the common defence policy.

2 The Western European Union (WEU) is an integral part of the development of the European Union and Member States have therefore made it their aim to integrate the WEU progressively into the European Union. They will work actively in the Union and the WEU to achieve that aim. Integration shall be achieved in several stages which shall be defined in greater detail in a Protocol appended to this Treaty. The first stage shall commence with the entry into force of this Treaty; the transition to the further stages shall be determined by Decision of the Council, meeting at Head of State and Government level.

The Union will avail itself of the WEU to elaborate and implement decisions and actions of the Union which have defence implications.

The competence of the European Council to establish guidelines in accordance with Article J 1(b) shall also obtain in respect of the WEU.

The Council shall, on the basis of general guidelines laid down by the European Council, ensure uniform and consistent action on the part of the Union and of the WEU and shall in agreement with the WEU adopt the necessary practical arrangements.”

35. In addition, the same countries submitted to the IGC a separate document containing four articles setting out three phases for the integration of WEU in the European Union⁷ During the third and last phase

“the integration process shall be completed by

- transferring the competences of the institutions and bodies of the WEU to the relevant institutions of the EU and incorporating other remaining WEU structures into the EU,
- incorporating the assistance guarantee laid down in Article V of the modified Brussels Treaty into the Treaty on European Union or an additional protocol to the Treaty which should contain the appropriate institutional mechanisms for the cooperation of participating member states on issues of territorial defence making use of the politico-military structures of the EU. In the process, the right of each member state of the Union not to participate in an assistance mechanism shall be respected. At the same time, a drifting apart of the defence commitments in the EU and NATO, which would weaken the transatlantic security link, must be avoided,
- all Contracting Parties terminating the modified Brussels Treaty on the day the assistance mechanism contained in the Treaty on European Union or an additional protocol to this Treaty enters into force for them;
- intensifying direct relations between the Union and NATO in order to further develop the cooperation previously ex-

isting between the WEU and the Alliance.”

36. The first phase would begin upon entry into force of the revised Treaty, with each phase lasting about three years. When analysing the revised wording proposed for Article J 4 and the associated phased integration plan, the first question that comes to mind is why its initiators are making this proposal with so little time to go before the scheduled completion of the intergovernmental conference given that it is bound to meet with outright opposition from the United Kingdom and that Denmark, Finland, Ireland and Sweden have expressed reservations about it. Nevertheless, there are reports that four countries – Austria, Greece, the Netherlands and Portugal – have come down in favour of this proposal from the group of Six.

37. Furthermore, the objectives of this initiative are not clear from the wording of the proposed text. The reference to specific areas in which a defence policy would be implemented and the proposal to include a reference to a common armaments policy in Article J 4 would suggest that the proponents’ main concern is to set up a common defence in the framework of the European Union.

38. However, it is common knowledge that 11 EU member states were party to the NATO decision taken in Berlin to build the European security and defence identity within the Alliance. Therefore, in order to prevent a conflict between these two different objectives, arrangements will have to be made to enable the three NATO countries that are not EU members and are currently WEU associate members – Iceland, Norway and Turkey – to participate fully in a common defence. In this connection, Article 2 of the phased integration plan merely states, that “procedures shall be developed which will ensure that the participatory rights of the associate members . . . of WEU are fully taken into account” but does not explain what form these procedures will take.

39. Even more important however is the problem of how to guarantee the participation of Denmark and the four states with a tradition of neutrality in a common defence within the European Union. The phased integration plan proposes that during the third phase the mutual assistance clause contained in Article V of the

⁷ For full text see appendix

modified Brussels Treaty should be incorporated in the Treaty on European Union or an additional protocol to the Treaty. It even goes on to state that the right of each member state of the Union *not* to participate in an assistance mechanism is to be respected.

40. This means that the mutual assistance obligation, which is the mainstay of a common defence, would merely be optional in the European Union. If this is intended to take account of the specific problems of Denmark and of Austria, Finland, Ireland and Sweden, it leads one to ask what purpose would be served by transferring the mutual assistance clause from WEU to the EU. The sole effect of an optional mutual assistance clause would be to weaken the idea of a common European defence because, as the right not to participate in a common defence would be expressly guaranteed, countries other than those mentioned above might also latch on to the idea of rejecting the clause in question.

41. The authors of the phased integration plan themselves recognise the need to avoid any drifting apart of the defence commitments in the European Union and NATO, which would weaken the transatlantic security link. Yet this is precisely what would happen if the mutual assistance clause was optional. This problem concerns not only the five EU member states that do not belong to WEU but also affects those benefiting from the enlargement of the Union towards central and eastern Europe. To avoid any difficulties arising with Russia, the European Union might be tempted to allow certain central and eastern European countries to join the EU without their having to subscribe to the mutual assistance obligation. This would result in the European Union consisting of countries with different categories of membership and would frustrate the goal of a common European defence.

42. If the purpose behind the phased integration plan is to create a common European defence, the mutual assistance clause contained in Article V of the modified Brussels Treaty must be incorporated in the Treaty on European Union and be binding on *all* member states. Moreover, the EU should make it clear at this stage that the readiness of an applicant state to become a full member of WEU is one of the conditions for entry to the European Union.

43. It is of course wholly conceivable that a common defence could be left to NATO and a hard core of EU member states, provided one accepts that this will give rise to zones of varying degrees of security within the European Union. It is hardly likely, however, that this is what the authors of the phased integration plan intend should happen.

44. The Rapporteurs are in favour of making every effort to promote a common European defence and strengthen the transatlantic partnership. They take the view that in striving to attain this goal, it is important to create the proper conditions as soon as possible so as to motivate all the EU member states to take part unreservedly in a common defence policy and a common defence. The question that has to be asked is whether the Treaty proposals submitted so far at the intergovernmental conference are moving in the right direction for drawing closer to the ultimate goal.

45. In the Irish Presidency's draft proposals, the following wording was proposed for Article J 4 1

“The common foreign and security policy shall include all questions relating to the security of the Union, including the *progressive* framing of a common defence policy *in the perspective of a common defence*”

46. This wording was taken over by the Netherlands Presidency and by the six countries that produced the phased integration plan. Those countries also want a second subparagraph included reading:

“The common defence policy shall include the framing of principles, aims and means in the defence field”.

47. In addition to the Petersberg tasks, they also propose that the Treaty on European Union should include armaments policy, which they describe as “an integral part of the common defence policy”. The scope of a proposal such as this becomes clear in connection with the revised wording of Article J.4 3 which is intended to enable all the EU member states to participate fully in the elaboration and implementation of decisions and actions of the Union referred to in Article J.4.1. This would give the five WEU observer states – Austria, Denmark, Finland,

Ireland and Sweden – a legitimate right, subject to certain conditions, to be fully involved in discussions within Western European Union, with all that implies. Granting these countries this right in specific areas of such importance is liable to go so far towards accommodating their vital interests that it would hardly give them any political reason to participate in even the central feature of a common defence based on a mutual assistance clause. It is therefore very doubtful that such an arrangement would advance the cause of a common European defence.

48 The revised wording of Article J 4.2, which deals with the future relationship between WEU and the European Union, merely corroborates this view. The version proposed by the Irish Presidency begins as follows.

“The Western European Union (WEU) is an integral part of the development of the Union and the Union shall accordingly foster closer institutional relations with it.”

49 For a number of reasons, this form of wording is a clear improvement on the text in force: there is a direct link between the first half of the sentence and the preamble and Article VIII 1 of the modified Brussels Treaty. The second half places the institutions of the European Union under an obligation to cooperate with WEU institutions, something which has hitherto not been established by treaty. To ensure that these provisions apply to *all* WEU institutions, including the WEU Assembly, a proposal could be made to reword this paragraph as follows

“The Western European Union (WEU) *together with all its institutions* is an integral part of the development of the European Union.”

50 However, the wording proposed for this paragraph in the amended version submitted by Belgium, France, Germany, Italy, Luxembourg and Spain reads

“The Western European Union (WEU) is an integral part of the development of the European Union and the Member States have therefore made it their aim to integrate the WEU progressively into the European Union. They will work actively in the Union and the WEU to achieve that

aim. Integration shall be achieved in several stages which shall be defined in greater detail in a Protocol appended to this Treaty. The first stage shall commence with the entry into force of this Treaty, the transition to the further stages shall be determined by Decision of the Council meeting at Head of State and Government level.”

51 This phased integration plan has to be considered in the overall context of the revised wording proposed for the second subparagraph of Article J 4.2. The Irish and Netherlands Presidencies have put forward the following text for the sentence:

“The Union will avail itself of the WEU to elaborate and implement decisions and actions of the Union which have defence implications.”

The proponents of the phased integration plan add the following

“The competence of the European Council to establish guidelines in accordance with Article J.1(b) shall also obtain in respect of the WEU.

The Council shall, on the basis of general guidelines laid down by the European Council, ensure uniform and consistent action on the part of the Union and of the WEU and shall in agreement with the WEU adopt the necessary practical arrangements.”

52 On the face of it, it would appear that the intention behind the replacement of “the Union requests the Western European Union” by “the Union will avail itself of the WEU” is to give WEU more political freedom of action vis-à-vis the European Union. But this is deceptive.

53 The draft revision maintains the principle already enshrined in the Treaty in force of not giving WEU a general mandate but merely having recourse to it in specific cases. However, the fact that since the entry into force of the Maastricht Treaty the European Union has only once requested WEU to elaborate and implement an action of the Union with defence implications shows how difficult it is to reach agreement within the European Union when it comes to giving WEU a specific mandate. The case in

point concerned a peace mission to Africa to settle the crisis in the Great Lakes region⁸

54 Even in the throes of the Albanian crisis, no mandate from the European Union was given to WEU requesting it to work out ways of solving the crisis, which posed a threat to the entire region⁹. As the crisis in the Great Lakes region showed, difficulties also arise within WEU itself when it comes to responding to a request from the European Union and agreeing on a joint plan of action. Problems of this nature are liable seriously to undermine the credibility of WEU as a force for crisis management.

55. The fact that the French Presidency of the WEU Council held a joint seminar with the European Union on 17 April 1997 at which experts studied the practical implementation of Article J 4 2 of the Treaty on European Union is therefore a positive development. The findings of the seminar, about which the Assembly has no official information, are to be discussed at the meeting of the WEU Council of Ministers on 12 and 13 May 1997 in Paris. The Ministers would also do well to use that occasion to discuss whether the procedure followed to date of recourse being had to WEU on a case-by-case basis should not be complemented by giving WEU a right to take initiatives that would be clearly written into the Treaty. Information that has however filtered through about the results of the seminar gives little cause to hope that coordination between WEU and the EU in this field will be any easier in the future.

56. According to the proposal submitted by the group of countries advocating the progressive integration of WEU in the European Union, the European Council's competence to set guidelines should also apply to WEU. Furthermore, on the basis of such guidelines, the European Council would ensure uniform and consistent action on the part of the Union and of WEU. This would pose a considerable problem because five countries¹⁰ would thus acquire a right to issue instructions to WEU without their having to sub-

scribe the modified Brussels Treaty and without being under any obligation to take part unreservedly in all aspects of a common defence. On account of the continuing application in this area of the principle of unanimity, they would be able to block or delay any decision in the European Council.

57 It has however been proposed that the option of "constructive abstention" in a vote would operate in such cases. Under this procedure, every member state would have the possibility of expressing its reservations about a specific decision in a formal declaration but would not be able to prevent the majority from taking a decision. The proposal is that in the Treaty, a new Article J.12 would specify that when a member state avails itself of the option of constructive abstention, it will not be obliged to apply the decision but will accept that the decision commits the Union. In a spirit of mutual solidarity, the member state concerned is to refrain from any action likely to conflict with or impede Union action based on that decision and the other member states are to respect its position. However, the Netherlands draft revision of the Treaty proposes that if members of the Council qualifying their abstention in this way represent more than one third of the votes, the decision cannot be adopted. It is not clear whether the provisions of this new Article on the option of constructive abstention are also to apply to the European Council.

58. Even if that were the case, the procedure is still a very complicated one that does not simplify the decision-making process. But the biggest drawback in the concept as planned is that it is exclusively for the state concerned to decide whether or not it avails itself of the option of constructive abstention. As a full member of the Council, it can use every means at its disposal to influence negotiations on the decision to be taken and the content of that decision. By resorting to such means, it can delay the decision-making process for some considerable time without actually having to give expression to its reservations through constructive abstention when it comes to a vote. If the state does not wish to accept that a decision is to be binding on the European Union, it is free to prevent that happening by voting against it.

59. It can be inferred from the above that establishing the principle of the European Council

⁸ The European Union's mandate to WEU to set up a police force for the town of Mostar was issued *before* the Maastricht Treaty entered into force.

⁹ *Atlantic News*, 28 March 1997

¹⁰ Austria, Denmark, Finland, Ireland and Sweden

having competence to set guidelines in WEU's area of responsibility is tantamount to making too great a concession to the five EU countries that have observer status in that Organisation. As it is, it is very difficult for decisions to be taken because agreement cannot be reached in the European Union early enough and WEU does not take any initiatives because it does not receive a remit from the Union. The proposed new arrangements will do nothing to improve the situation.

60. In all this, no thought has yet been given to how the European Council's competence to set guidelines that apply to WEU can be reconciled with the fact that WEU's activities are based on an independent treaty or to whether such competence is compatible with the decisions taken by NATO in Berlin in June 1996. This is of particular relevance to NATO making assets available for missions conducted under the direction of WEU in accordance with the CJTF concept. The European members of NATO that do not belong to the European Union – Iceland, Norway and Turkey – naturally have full participation and decision-making rights in this context even if they do not take part in any WEU missions. In contrast, the European Council's authority cannot extend to those countries even though they are associate members of WEU.

61. Speaking at the Wilton Park Conference on 13 February 1997, the British Permanent Representative to NATO and to WEU explained the reasons behind the decisions taken by NATO in Berlin as follows:

“The understanding behind last June's Berlin communiqué is that NATO will be willing and able to release services and assets to the WEU provided it is autonomous, with its full members also members of NATO. This political fact has implications for the European Union and therefore the defence part of the intergovernmental conference. The European Union stands to gain enormously if it can ask the WEU to take on an operation in the confidence that the WEU will be able to acquire from NATO the headquarters and assets to take that on with the best prospects of success. But the EU would lose this benefit if it subordinated the WEU. NATO would not be willing to entrust its assets to the EU (where non-allies could block or influence

decisions on a military operation and allies like Turkey and Norway would have less say) or to a WEU which was merely an agency of the EU.”

62. All this is very much to the fore in the minds of the authors of the phased integration plan because they clearly state in Article 2 of their proposal to the IGC that as from the first phase of integration, the European Council will politically monitor the implementation of decisions and actions of the Union with defence implications as elaborated by WEU. If this arrangement were to be adopted, the EU Council of Ministers – in which member states that do not belong to WEU have the same full voting rights as the others – would be given political control over key areas of WEU activities. If that were the case, there would no longer be any real need for the WEU Council to meet at the political level, thus depriving the WEU Assembly of an executive body over whose activities it is supposed to exercise political control.

3. The inclusion of Petersberg tasks in the Treaty on European Union and the ensuing consequences

63. The subordination of WEU to the European Council's competence to set guidelines is also intended to ensure among other things that the five EU member states that are not members of WEU but are willing to play a full part in Petersberg missions maintain their rights of consultation and codecision in this area. Until now these countries have had no such rights in WEU's internal decision-making process even though they are prepared to contribute combat forces to peacekeeping missions.

64. The WEU Council has been discussing all these problems for some time but no satisfactory solutions have yet been found. In their Madrid Declaration of 14 November 1995, the WEU ministers “agreed that the possibility exists for the participation of WEU observers in the new tasks defined at Petersberg and that this is an important contribution to the operational development of WEU. Ministers tasked the Permanent Council to consider how best WEU observer countries could have the option of participating in such operations on a case-by-case basis”.

65. In their Birmingham Declaration of 7 May 1996, the WEU Council of Ministers returned to this subject.

“Recognising the traditionally active role played by the observer countries in the field of UN peacekeeping and the contribution that the observers could bring to WEU operations in the Petersberg framework, Ministers recalled the terms of the Madrid mandate and welcomed the decisions adopted by the Permanent Council enabling the observers to participate more fully in Petersberg tasks and clarifying the practice and procedures applying to observers”

66. The Council informed the Assembly of this in the first part of its 42nd annual report¹¹.

“In Madrid, Ministers had tasked the Permanent Council to consider how WEU observer countries could best participate, on a case-by-case basis, in the new tasks defined at Petersberg. On 6 May, the Permanent Council agreed on modalities which would allow for observer participation in Petersberg tasks on a case-by-case basis. On 21 May, it further agreed to request the Planning Cell to take forward work on the identification of forces from observer countries suitable for Petersberg missions. A joint Swedish/Finnish memorandum on participation of WEU observers in WEU operations upon request by the EU, was presented and discussed at the Birmingham Ministerial Council.”

No details were made available to the Assembly about the content of the Permanent Council's decisions or the outcome of discussions on the so-called Swedish/Finnish initiative

67. At the WEU Council of Ministers meeting in Ostend on 19 November 1996, the ministers welcomed:

“the Presidency's initiative on the question of the participation of the European allies in WEU operations using NATO assets and capabilities, as well as in the planning and preparation of such operations, and urged the Permanent Council to find a solution by December on this basis.”

68. However, it is not only the WEU observer countries but the associate member and associate

partner countries as well that are concerned by participation in Petersberg tasks. In this particular connection it is worth noting that the possibility of Turkey being involved in the decision-making process was initially rejected by Greece. But in April 1997 the French Presidency of WEU succeeded in securing the agreement of all WEU member countries on a compromise proposal it had put forward enabling states such as Denmark, Iceland, Norway and Turkey to participate fully in WEU's decision-making and planning process for operations using NATO assets. However, this arrangement will not apply to operations planned and implemented by WEU acting in an autonomous capacity. Furthermore, it is still not clear how Austria, Finland, Ireland and Sweden and the associate partner countries are to be treated in this connection.

69. It would appear that a solution acceptable to the five observer countries enabling them to participate in such missions has still not been found in WEU. Attempts are now being made to solve the problem in the intergovernmental conference through a proposal to include Petersberg tasks in the Treaty on European Union. The Irish Presidency's draft revision proposes an amended form of wording for Article J 4 2 under which WEU observer countries contributing to those tasks will be allowed to participate fully and equally in planning and decision-taking in WEU “in so far as these relate to the commitment and deployment of [each] member state's national contribution”. In contrast, the Netherlands Presidency and the proponents of the phased integration plan want this restriction dropped altogether.

70. The countries that submitted the phased integration plan therefore propose the following text for Article J.4.3:

“When the Union has recourse to the WEU to elaborate and implement decisions of the Union on the tasks referred to in paragraph 1, the Council shall, in agreement with the institutions of the WEU, take particular care to ensure that all Member States of the Union may participate fully in the WEU in the elaboration and implementation of the decisions and actions of the Union referred to in 1.”

71. This concept, which has Germany's support in particular and which was the objective of

¹¹ Assembly document 1549 of 18 November 1996.

a Swedish/Finnish initiative, seems to stand a good chance of being incorporated in the Treaty even though differences of opinion still exist among the observer countries over the exact nature of the tasks in question in which they wish to participate

72 A number of considerations have to be taken into account when assessing this initiative. There is no doubt that a situation in which the states concerned have the possibility of contributing combat forces for a WEU peace mission but cannot participate in the corresponding planning and decision-making process is unsatisfactory. This was the view expressed for instance by the Austrian Foreign Minister, Wolfgang Schussel, on 17 February 1997 in an address to a gathering in Petersberg near Bonn when he criticised the fact that as things stand, Norway and Turkey – as NATO members – would play a full part in the entire decision-making process for a WEU peace mission even though hardly any of their own troops would be involved, whereas countries such as Austria, Sweden and Finland would be very largely excluded from deployment and preparation plans even if they had been party to the decision in the European Union to undertake the mission and wished their own troops to be part of it.

73 It should also be borne in mind that all WEU associate partner countries wishing to participate in Petersberg tasks are in a similarly unsatisfactory situation. However, in contrast to countries such as Austria, Finland, Ireland and Sweden, almost all these associate partners hope to become full members of NATO and WEU as soon as possible. At the gathering in Petersberg, the Austrian Foreign Minister acknowledged this and told his audience that, given the circumstances, many Austrians were asking whether Austria's status as a WEU observer could still be beneficial to the country

74 One of the issues involved is whether it is the task of the European institutions to accommodate the states concerned as far as is possible and guarantee their rights of codecision without their having to change the principles of their security and defence policies, or whether the institutions should do everything in their power to persuade those states that they must be prepared to take on responsibilities for *all* aspects of a common security and defence policy.

75 It all depends on what Europe wants to achieve with the intergovernmental conference. There are qualitative differences between crisis-management issues and pure defence issues. But the distinction is really a theoretical one because crisis situations that may result in Petersberg-type tasks or operations along the lines of IFOR or SFOR can at any time easily turn into defence operations. If we want to encourage the five observer countries to drop their resistance to a full European commitment to all aspects of security and defence, the plan to include Petersberg tasks in the Treaty on European Union is hardly the right way of going about it

76 But if it is primarily a question of accommodating those countries so as to arrive at an institutional rapprochement between the European Union and WEU, the arrangement currently taking shape in the intergovernmental conference is an attractive one

77. There is however no doubt that if this is to be the chosen course of action, a whole series of stumbling-blocks and obstacles lie ahead. The decision-making process for Petersberg tasks will become even more complex because in future it will involve the three different organisations with the competence to take decisions on them, namely, the European Union, WEU and NATO. The five WEU observer countries would have codecision rights in the area covered by Article VIII.3 of the modified Brussels Treaty without having subscribed the Treaty itself. This would not be the first time a treaty change has been made surreptitiously, without parliamentary ratification. The process of coordination between NATO and WEU is difficult enough as it is but it would become even more complicated if a number of states that do not belong to either organisation had full voting rights in the planning and decision-making process for Petersberg tasks. In that event the implementation of the CJTF concept would also have to be revised in part

78. All these difficulties have prevented a satisfactory solution being found in the discussions being conducted in WEU with a view to improving arrangements for the participation of the observer countries in Petersberg tasks, within the limits of their status. There is no doubt that these discussions are difficult. Because it is not in possession of more detailed information, the

Assembly is unable to judge whether the absence of a satisfactory solution might also be due to the fact that the EU capitals have perhaps not been exercising enough political pressure in the negotiations going on in the Permanent Council

79. The idea of the European Union simply dictating that WEU should change the status it accords to the five observer countries is not the solution either. Yet the content of the amendments being proposed for Article J 4 to enable those countries to participate in Petersberg tasks amounts to nothing less

80. Since WEU is an integral part of the development of the European Union, there is no point in encumbering the Treaty on European Union with details of the WEU decision-making process for Petersberg tasks. It should in fact be the prerogative of WEU to negotiate such matters because laying down the relevant arrangements in the TEU would merely mean passing the problems one organisation has been unable to solve on to two different organisations. The IGC participant states have yet to divulge what they intend to tell the national parliaments and the public at large by way of offering a plausible explanation of the political and practical advantages to be gained from these changes

81. While the principal weakness of the phased integration plan as a whole lies in its almost exclusively institutional approach, it also fails to set any clear political objectives. If the intention behind it is to draw closer in practical terms to the objective of establishing a common security and defence identity, then this is all to the good. But in order to achieve that objective, account must be taken in the first instance of the varying interests involved and consideration must be given to the matter of how all the European members of NATO and the European Union can, in so far as is possible, participate without restriction in all aspects of a security and defence system. From this point of view it is encouraging that in Article 2 of the phased integration plan its authors propose that during the first phase a white paper should be drawn up, within the framework of the CFSP, in cooperation with WEU and based on the work already carried out by it, outlining a common defence policy concept in pursuit of common security interests.

82. For as long as there remain some EU member states that cannot or do not want to par-

ticipate in all aspects of a common defence, the European Union cannot take the place of WEU. It is for this reason that in future the European Union should only admit new members prepared to become full members of WEU and able to fulfil the necessary conditions

4. The option of closer cooperation on the basis of a flexibility clause

83. The Netherlands Presidency described this problematic issue in the following terms

“As the Dublin II Outline stressed, the issue of what has come to be called “flexibility” or “closer cooperation” – that is the possibility for a limited number of member states to cooperate more closely in specific areas using the institutional framework of the Union – is one of the most important issues being examined by the Conference. The Conference outcome in this regard will be significant for the future development of the Union.”

(a) The Franco-German proposal of 17 October 1996

84. The Franco-German considerations play an important role here by proposing the inclusion in the Treaty of a general clause or several clauses on closer cooperation, thereby making it possible for those member states that so wish to move ahead with the process of European integration faster than the others. This should enable the states concerned to cooperate more closely while remaining within the single institutional framework of the European Union. These matters are being discussed in the intergovernmental conference in the context of “flexibility”.

85. These considerations, whose fundamental significance for the future development of the Union was given special emphasis by the Irish Presidency, could also lead to practical progress in the development of a common security and defence policy, without threatening the overall cohesion of the European construction process. In this connection it should be remembered that the Maastricht Treaty currently in force already contains flexibility clauses in paragraphs 4 and 5 of Article J.4.

“4. The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and de-

fence policy of certain Member States and shall respect the obligations of certain Member States under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework

5 The provisions of this Article shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the WEU and the Atlantic Alliance, provided such cooperation does not run counter to or impede that provided for in this Title ”

86 On 17 October 1996, the French and German Foreign Ministers submitted a joint contribution to discussion of the issue of flexibility in the IGC. Among other things, it includes a proposal for a closer cooperation clause specific to the CFSP containing the following elements:

“1 Areas of application

(a) Closer cooperation could apply in areas covered by the CFSP, and particularly in the framing of a common defence policy as provided for in Article J 4 of the TEU and the common defence also envisaged in that Article, in line with our common objectives for the WEU and with cooperation on armaments. It is precisely on account of their future prospects that these areas lend themselves to closer cooperation which will intensify the construction of Europe.

(b) Closer cooperation could also take other forms, of which details will be given later

The possibility of closer cooperation in accordance with Article J 4 5 of the TEU is unaffected

2. Right of initiative regarding closer cooperation

Closer cooperation would be initiated in accordance with Article J 8 3 of the TEU¹².

¹² This Article reads: “Any Member State or the Commission may refer to the Council any question relating to the common foreign and security policy and may submit proposals to the Council ”

3 Practical implementation

A minimum number of Member States would have to be set for the implementation of closer cooperation

4 Decision-making

The decision-making procedures applicable to the CFSP would apply to closer cooperation. Approval would be by qualified majority ”

87 Following the French and German Foreign Ministers’ confirmation of their initiative at a joint press conference in January 1997, the discussion in the IGC has become more intensive. Its outcome is likely to be of particular significance for WEU

88. One of the many contentious points to be clarified is the extremely important question of whether closer cooperation among a given group of states in a specific area should take place solely within the institutional framework of the European Union or whether it could also take place outside it. Whereas a majority of countries led by France and Germany firmly support the first option, others such as the United Kingdom and Denmark believe it can also take place outside the EU, for instance in the framework of WEU or among the signatories of the Schengen Agreement¹³

89. There are also differences of opinion over whether the flexibility option should be used as often as possible (France and Germany’s position) or whether it should be the exception to the rule. One group of states, which includes the Benelux countries, has pointed out that it must not be allowed to jeopardise the overall cohesion of the European Union

(b) The Italian proposal of 14 January 1997

90. According to Italy’s proposal, the aim of the rules on closer cooperation, especially with enlargement in mind, is to enable integration to develop in accordance with the objectives and rules of the Treaty where circumstances do not permit all member states to proceed in step. A basic premise underlying the proposal is that enhanced cooperation should not impair the Union’s common policies or their development,

¹³ See the *Neue Zürcher Zeitung*, 21 January 1997

or result in EU member states which do not join in from the outset being sidelined. Closer or enhanced cooperation should be the exception and not the rule. It should not be used by a minority to forge ahead while the rest look on, rather, it should be the means for avoiding a minority stopping differentiated initiatives from proceeding in a restricted framework with the agreement of the majority.

91. The Italians consider, however, that enhanced cooperation in the fields of security and defence seems to be justified given the objective differences in member states' situations in this respect. It would therefore be conceivable that strengthening the security of the Union and its member states, an objective of the common foreign and security policy under Article J 1 2, could be pursued to varying degrees. They also note that membership of WEU which, under the terms of Article J 4 2, "is an integral part of the development of the Union", is a distinctive feature, on which some member states would be able legitimately to build enhanced security and defence cooperation in the Union framework.

92. The Italian Government therefore proposed the addition of a new Article C(a) in the Treaty on European Union

"Where one of the objectives of the Union cannot be pursued through measures applicable to all Member States, no provision of this Treaty or of the Treaties establishing the European Community shall prevent that objective being pursued by a limited number of Member States within the single institutional framework of the Union."

93. Furthermore, Italy considers that Article J.4 of the Treaty on European Union should be supplemented by a new article J.4(a) reading

"1. The provisions of Article J 4 shall not prevent member states being authorised to develop, through the institutions, procedures and mechanisms of this Treaty, closer collaboration in the area of security and defence – including cooperation on armaments – based on their common membership of the WEU. Such collaboration must comply with the objectives of this Title, the guidelines laid down by the Council of Europe and the decisions

already adopted in the framework of the common foreign and security policy.

The authorisation provided for in this paragraph shall be granted by the Council, acting by a qualified majority at the request of the member states concerned, which must in any event include the member states of the Union which are also members of the WEU

2. The measures adopted by the Council in the context of the cooperation referred to in this Article shall apply only to the participating states. They shall be adopted in accordance with the procedures laid down in this Title for the areas they refer to, with the following exceptions:

(a) the Council's qualified majority shall consist of the votes of two-thirds of the participating states, calculated in accordance with Article 148 (2) of the TEC.

(b) unanimity shall comprise only the participating states

3. Expenditure for the measures adopted by the Council under this Article, except for the administrative costs, shall be borne by the participating states.

4. The non-participating states shall refrain from any action which runs counter to, or which might adversely affect, the measures adopted by the Council under this Article.

5. Any non-participating state may, at any time, declare that it wishes to join in the initiatives taken pursuant to this Article; it shall undertake to assume all the obligations which result from the measures already adopted for their implementation. The Council will act by a qualified majority on such a request."

94. Fundamental differences of opinion continue to exist over whether the decision on closer cooperation should be taken unanimously (the British view), by a qualified majority (the position of France, Germany and a number of other states) or only by those states wishing to take part in such cooperation

*(c) The proposals submitted by the Netherlands
Presidency of the European Union
on 20 March 1997*

95. On the basis of discussions in the inter-governmental conference, the Netherlands Presidency proposed that the option of closer cooperation between member states prepared to move ahead in that direction should be addressed by incorporating a general clause and a number of specific clauses in the Treaty. The general clause would read as follows

“Article (1)

1 Member States which intend to establish closer cooperation between them may make use of the institutions, procedures and mechanisms laid down by the Treaties provided that the cooperation:

(a) is aimed at enhancing European integration and at protecting and serving the interests of the Union;

(b) respects the principles of the Treaties and is consistent with their objectives;

(c) is only used as a last resort, where objectives could not be attained by applying the relevant procedures laid down in the Treaties;

(d) concerns at least a majority of Member States,

(e) safeguards the single institutional framework of the Union,

(f) respects the “*acquis communautaire*” and all the measures adopted under the other provisions of the Treaties,

(g) does not prejudice the interests of those Member States which do not participate therein;

(h) allows them to become parties to the cooperation at any time, provided that they comply with the decisions already taken within this framework,

(i) complies with the specific additional criteria laid down in Article 5(a) of the TEC and Articles J 12 and K 7 of this Treaty respectively, depending on the area concerned and is authorised by the Council in accordance with the procedures laid down therein.

2 Member States shall apply, to the extent that they are concerned, the acts and decisions adopted for the implementation of the cooperation in which they participate. Member States not participating in such cooperation shall not impede the implementation thereof by the participating Member States

Article (2)

1 For the purposes of the adoption of the acts and decisions necessary for the implementation of the cooperation referred to in Article (1), the relevant institutional provisions of the Treaties shall apply. However, while all members of the Council shall be able to take part in the deliberations, only those representing participating Member States shall take part in the adoption of decisions; the qualified majority shall be defined as two-thirds of the votes of the Council members concerned weighted in accordance with Article 148(2) of the TEC; unanimity shall be constituted by only those Council members concerned.

2 Expenditure resulting from implementation of the cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States.”

96. In the opinion of the Netherlands Presidency there are a number of possibilities for dealing with the issue of closer cooperation in the field of the CFSP such as (a) constructive abstention, which has already been discussed, (b) detailing from the outset the specific areas in which flexibility should be an option, for example in relation to the mutual assistance obligation or cooperation on armaments, or (c) conferring specific tasks on one or more member states within the framework of a joint action. The Netherlands Presidency also wonders whether, given that provisions on closer cooperation in defence already exist in the Treaty (Article J.6 5), there is any requirement for further clauses on flexibility in the CFSP.

97. With this reservation, the Netherlands Presidency proposes the following text for Article J.12 on closer cooperation in the CFSP:

"1. Member States which intend to establish closer cooperation between themselves may be authorised, subject to Articles (1) and (2), to make use of the institutions, procedures and mechanisms laid down by the Treaties provided that the cooperation proposed

(a) respects the powers of the European Communities, as well as the objectives set for the CFSP by this Title and the guidelines and strategies defined by the European Council,

(b) aims to promote the identity of the Union and does not impair its effectiveness as a cohesive force in international relations

2. The authorisation referred to in paragraph 1 shall be the subject of a unanimous Council decision taken at the request of the Member States concerned and after inviting the Commission to present remarks as appropriate. The Council may accompany this authorisation with specific conditions

3. Admission of non-participating Member States (p.m.).

4. The provisions of Articles J to J.11 shall apply to the closer cooperation provided for in this Article, save as otherwise provided in this Article or in Articles (1) and (2)."

98. In contrast to the Franco-German and Italian proposals, the Netherlands draft revision suggests that authorisation for closer cooperation should be the subject of a unanimous decision.

99. Given that WEU is an integral part of the development of the European Union, it should use the opportunity of the current debate to put forward proposals on the issue of flexibility. WEU – in which 28 countries are involved in one way or another – is already a practical example of flexible cooperation. It should insist that the European Union should give more support than it has done in the past to the idea that closer cooperation among the 10 member states that have signed the modified Brussels Treaty can be further enhanced within WEU

100. In this respect too, everything depends on the goals to be pursued by introducing flexibility clauses that would apply in the field of security

and defence. Such a move could have a positive effect if it.

- serves the purpose of drawing closer to a genuine common European defence in which all the European members of NATO and, at a later stage, the WEU associate partners could participate, and
- makes it easier for all the EU member states that have hitherto not been involved in the core of the European defence system to become part of it.

101. With a view to achieving the first of these objectives and as an important means of enhancing cooperation still further through the revised TEU, even more emphasis than at present should be placed on the provisions established in Article J.4.5 of the existing TEU for closer cooperation in the framework of WEU, including the possibility of WEU member countries taking their own decisions, in pursuance of the provisions of the modified Brussels Treaty. In this respect the Italian proposal for a flexibility clause is on the right course. The second objective could be promoted through a revised WEU enlargement policy geared to encouraging all the EU member states to accede to the modified Brussels Treaty.

5. Democratic control in security and defence matters

102. The intergovernmental conference is also tackling the problem of better democratic control of the EU's executive body and, in addition to examining the issue of increased powers for the European Parliament, is discussing how the national parliaments can be more closely involved in the EU decision-making process

103. The Irish Presidency proposed that the role of the national parliaments in the European Union be spelt out in a new protocol to be annexed to the revised Treaty on European Union. Among other things, the protocol would formally recognise the activities of the Conference of European Affairs Committees (COSAC), whose remit is to examine European Union issues, and give it the possibility of having a say in the EU's legislative procedure subject to certain conditions. According to the draft proposals circulated, this would not extend to the area of application of Title V (the CFSP).

104. There should of course be no attempt to extend the Conference's area of competence to this field given that it falls within the area of responsibility of the WEU Assembly. However, it should be borne in mind that at the end of 1995, the Parliamentary Reflection Group studying issues for discussion at the intergovernmental conference looked into the question of how democratic control at the European level might also be improved for the CFSP in the future. In this connection, it is worth recalling paragraph 11 of Recommendation 606 of 2 December 1996 in which the Assembly recommended that the Council.

“Ask that the body of the Treaty which is to be drafted by the IGC include the principle to which the Parliamentary Reflection Group on the 1996 intergovernmental conference referred to in Athens on 4 December 1995, according to which the WEU Assembly would be invited to contribute to the work of the Conference of European Affairs Committees when matters concerning European security were under discussion.”

It will indeed be necessary in the future to pay ever closer attention to the problem of greater collective involvement of the national parliaments in the control of European security and defence policy as it moves into the sphere of competence of the European Union.

105. However, the phased plan for the integration of WEU in the European Union, submitted by Belgium, France, Germany, Italy, Luxembourg and Spain, gives no indication whatsoever of the problems their proposals raise for parliamentary bodies with a controlling function. The only veiled reference to this appears in Article 3 which states that during the second phase “links shall be established between the relevant institutions of the EU and WEU in order to make possible the transfer of competences envisaged for Phase 3”.

106. According to Article 4 of the phased integration plan, the integration process will be completed during the third phase by “transferring the competences of the institutions and bodies of the WEU to the relevant institutions of the EU and incorporating other remaining WEU structures into the EU”. It is not clear which WEU structures would fall into which of these two

categories. The WEU Assembly should make it absolutely clear at this stage that for as long as decisions on defence matters continue to be taken by consensus on an intergovernmental basis, democratic parliamentary control over a common European defence must not be handed over to the European Parliament but to a parliamentary body composed of parliamentarians from the member states, as is the present case in the Assembly of WEU. Further developments in European integration in the field of security and defence will determine what criteria should be used for reviewing the composition of such a body in order to improve its democratic legitimacy, the representative weight it carries and its powers of control.

III. The elaboration of proposals from the WEU Assembly for the revision of Title V of the Treaty on European Union

107. In its comments on its draft Treaty revision proposals of 5 December 1996, the Irish Presidency said that future relations between WEU and the European Union were one of the most sensitive issues under consideration at the intergovernmental conference.

108. At the European Forum gathering on 17 February 1997 in Bonn, Werner Hoyer, Minister of State at the German Ministry of Foreign Affairs, said that Europeans urgently needed to show a greater community spirit. The intergovernmental conference could, and had to, do no more and no less than establish the contractual basis for the revised Treaty and its institutional framework. Political will was necessary to build on it and make good use of it. These comments point to the basic dilemma facing the states participating in the intergovernmental conference. Views differ as to how to generate the necessary community spirit. Some people, such as Mr Schussel, the Austrian Foreign Minister, as he showed when addressing the European Forum, are convinced that joint operational decision-making structures and procedures can make a very valuable contribution to the shaping of common interests. But it is not enough for the necessary political will to manifest itself merely for the purpose of implementing treaties that have already been concluded. Common political will is essential during the treaty negotiations themselves and without it, the member states will

be unable to agree on the institutional framework that is needed. This objective can only be achieved through political persuasion.

109. The dilemma resides among other things in the fact that there is still no agreement on what the objectives should be. In WEU and its Assembly, there needs to be a broad measure of agreement that the prime objective should be to make real progress on the elaboration of a common European security and defence policy. In contrast, it would appear that the main shortcoming in the opinion of the institutions of the European Union and the majority of its member states lies in the fact that until now the Union has had no proper security and defence dimension and that the EU and NATO have no direct relations.

110. The European Union consistently gives the impression that it accords a higher priority to these institutional problems than to the actual issues themselves. This accounts for the ambivalent attitude of many of its representatives towards WEU. There is a contradiction in constantly maintaining that WEU, and especially its operational capability, must be strengthened while at the same time stressing that "WEU cannot be allowed to continue to exist indefinitely as an independent organisation outside the European Union"¹⁴. Of course WEU is not an end in itself and it has never considered itself as such. But this is also true of other international organisations. Since the European Union has admitted a number of member states that either do not want defence to be part of the Union or do not wish to belong to a proper defence alliance, it can neither take over the work of WEU nor make the Organisation an integral part of its institutional framework. This situation will persist for some time to come whether one likes it or not.

111. In the meantime, to prevent the efforts being made to improve the European security and defence dimension reaching a standstill, there is no alternative other than to further strengthen WEU, but this task must not be undertaken half-heartedly. In drawing up its proposals, the Assembly should be guided by these considerations. If the European Union is intent upon paving the way for a proper European security and defence union, it must do everything it can to

ensure that all the European member countries of NATO, and in particular Denmark, Iceland, Norway and Turkey, can play a full part in it and that countries with a neutral tradition, such as Austria, Finland, Ireland and Sweden, do not stand aloof from it. Article O of the Treaty on European Union, which sets forth the conditions for accession, should make clear among other things that only those applicant countries prepared to participate in a common defence without reservation can be admitted as EU members.

112. The logical conclusion in this process would be for the Treaty on European Union to incorporate not only Article V of the modified Brussels Treaty but also its preamble which expresses the WEU member states' resolve, in accordance with the Charter of the United Nations, to afford assistance to each other in maintaining international peace and security and in resisting any policy of aggression.

113. It is clear that the present situation does not meet the conditions that would be necessary before all the EU member states were in a position to subscribe a preamble of this type. This is not due so much to the fact that the European Union, WEU and NATO are made up of different members as to the inexistence of the joint political will that is needed if the European Union is to become a military power in the real sense. No research or studies have yet been carried out to explore in depth either the advantages and disadvantages of such a transformation or what its consequences would be. Until this fundamental question has been fully clarified, the step-by-step institutional rapprochement between WEU and the European Union can only go forward very gradually.

114. In the meantime the European Union should stop trying to poach specific areas of responsibility from WEU as this defies the logic of Europe's security and defence policy. In addition to the fact that such attempts weaken the political and military role of WEU which, by virtue of the decisions taken by NATO in Berlin, was only recently given a new dimension, there is nothing to suggest that transferring specific areas of the security and defence policy to the European Union would make it any easier for Europeans to take more action in this area.

¹⁴Werner Hoyer on 17 February 1997 in Bonn.

115 In fact it is only to be expected that the lack of homogeneity among the EU member states would make it even more difficult for agreement on decisions with military or defence implications to be reached in the European Union than in WEU

116. The revised version of Title V of the Treaty on European Union should therefore make Article J 4 2 as amended by the Irish Presidency the leitmotif for relations between the Union and WEU. It states that the Union will avail itself of WEU to elaborate and implement decisions and actions of the Union which have defence implications.

117. This would mean that until such time as the European Union, WEU and the European part of NATO are composed of the same members and until all the member states agree on the purpose of transforming the European Union into a European security and defence community, WEU will in general act on behalf of the European Union in all security and defence matters. On the basis of this arrangement, the provisions described below could be proposed for incorporation in the revised Treaty:

118. Article J 1 should include a reference to the fact that the objective of strengthening the security of the Union and its member states in the longer term presupposes the inclusion of a mutual assistance clause

119 Taking the Irish Presidency's proposal as a basis, Article J 4.1 should read.

“The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy in the perspective of a common defence”

and should be supplemented by the following

“Full application of the modified Brussels Treaty by 10 of the 15 European Union member states that belong to WEU shall constitute an important means to that end.”

120 There are no practical or political advantages to be gained by transferring Petersberg tasks to and/or including armaments policy in the European Union's area of responsibility. However, a specific reference to these tasks could be included in the description of the relationship

between the Union and WEU. Article J 4 2 should accordingly be amended to read.

“The Western European Union together with all its institutions is therefore an integral part of the development of the European Union and the Union shall accordingly foster closer institutional and working relations with it. The Member States of the EU and the WEU have made it their aim to enable all WEU associate member, associate partner and observer countries to participate progressively in all aspects of a common European defence. They will work actively in the European Union and the WEU to achieve that aim which should make progressive integration between the WEU and the Union possible. This can be achieved in several phases which shall be defined in greater detail in a separate document, to be drafted jointly by the WEU and the European Union”

Owing to the sensitive nature of these problems, it would be advisable to abandon any notion of the Treaty having as an appendix a protocol to be drafted on this subject since this might prevent the intergovernmental conference from being concluded in time for the summit meeting scheduled to take place in Amsterdam. However the following provision could be included in the Treaty:

“The competent bodies of the WEU and the European Union shall begin the relevant negotiations to this end upon signature of the revised Treaty on European Union. They shall in particular establish both the procedure to be followed for the phases leading to integration and a time-frame for achieving that aim. The European Council shall take the necessary decisions on the basis of reports submitted by the WEU and the European Union”

121 Article J.4.3 should read.

“Until the objectives laid down in paragraph 2 have been achieved, the Union confers upon the Western European Union (WEU), in pursuance of this Treaty, the task of taking decisions with defence implications on behalf of the Union and of elaborating and implementing actions resulting from them. In particular these

shall include permanent observation of crisis situations, Petersberg tasks (humanitarian tasks, rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking) and the elaboration of a common armaments policy.”

122. Article J.4.4 should read:

“Wherever the WEU acts in pursuance of Article J.4.3, it shall, in agreement with the institutions of the European Union, take care to ensure that all WEU associate member, associate partner and observer states participate fully, within the limits of their status in the WEU, in the WEU planning and decision-making procedure.

The WEU Council shall take action within the meaning of the preceding paragraphs in response to a request from any WEU member, associate member, associate partner or observer state, or to an initiative of the WEU Secretary-General.”

123. Article J.4.5 should read:

“The provisions of this Treaty concerning constructive abstention shall be applied by analogy to decisions taken by the WEU within the meaning of this Article. The WEU will verify whether the provisions of the modified Brussels Treaty need to be adapted as a result. At the request of a member state, the decision of the WEU Council shall be taken at head of state or government level.”

The current Article J.4.3 would be deleted; Articles J.4.4 and J.4.5 would remain unchanged and would be renumbered J.4.6 and J.4.7, the current Article J.4.6 would be deleted

124. In conjunction with the competent institutions of the European Union, it is suggested that a document could be drawn up on the progressive integration of the WEU associate member, associate partner and observer states in a common security and defence system under the auspices of the European Union; this document should comprise the following components:

(a) the elaboration of a white paper outlining a common defence policy concept in pursuit of the common security interests of all 28 WEU countries;

(b) a gradual upgrading of the status of the WEU associate member, associate partner and observer countries,

(c) the progressive participation of the WEU associate members and associate partners in the work of the CFSP in the framework of the European Union,

(d) an assessment, in agreement with NATO, of the implications for implementation of the CJTF concept of institutional convergence between WEU and the EU;

(e) the participation of the WEU Secretary-General in all meetings of the Council of Ministers of the Union and of the European Council at which matters concerning the CFSP are discussed;

(f) clarification of the issues concerning the future form of parliamentary control over European defence through a democratic European supervisory body composed of national parliamentarians, in which representatives of the Assembly of WEU would participate,

(g) a decision on the components of the modified Brussels Treaty which, in addition to the mutual assistance clause contained in Article V and the clause on cooperation with NATO contained in Article IV, should be incorporated in the Treaty on European Union;

(h) identification of those states that are able and willing to accede to a Treaty on European Union enhanced by the essential components of the modified Brussels Treaty and of those that the European Union is prepared to admit

125. The current version of Article J.4.5 of the TEU has recently taken on increased significance. It implies that WEU must, on the basis of the modified Brussels Treaty, remain in a position to take its own decisions on the implementation of Petersberg missions using military means and on other matters that fall within its area of competence. It is encouraging that the WEU

Secretary-General has publicly referred to this requirement on a number of recent occasions¹⁵.

126. Unfortunately, however, it has been shown in practice that the governments of the WEU member states are increasingly lacking in the political will needed to exploit the possibilities offered by the modified Brussels Treaty in crisis situations. Indeed, there appears to be a widespread feeling that, as France's Permanent Representative to WEU recently said, organisations such as WEU have no independent political role to play and are merely a vehicle for implementing political decisions taken elsewhere¹⁶. This attitude was also apparent in what the French Foreign Minister, Hervé de Charette, said to members of the Assembly's Presidential Committee on 14 April.

127. This may well be one of the reasons why no government of a WEU member state was prepared, at least initially, to take an initiative, in pursuance of Article VIII.3 of the modified Brussels Treaty, to draw up a plan within WEU for settling the Albanian crisis. All that was done was that on 14 March 1997, the Permanent Council of WEU issued a statement in which, among other things, it expressed disquiet about developments in Albania and gave its full support to the action being taken by the OSCE and the European Union in this connection.

128. It was not until 9 April that the Permanent Council of WEU reached agreement on the following procedure.

“The Council agreed to task the PMG to examine how WEU's experience in the Mostar police operation could be usefully applied to the rapid assembly of a multinational police advisory element (with an initial strength of up to 20 officers) of the Advisory Mission to Albania, without prejudice to how such an element might be organised, also taking into consideration the information gathered by the Planning Cell during its participation in the recent Advance Team Mission to Albania. The

¹⁵For example at the press conference he gave on 25 March 1997 and in an address on 4 April 1997 to the European People's Party group in the European Parliament.

¹⁶*Defense News*, 7-13 April 1997

Council will examine the report of the PMG on 15 April 1997, also in the light of developments in the EU and OSCE ”

129. On 22 April the Permanent Council of WEU at last decided to send a fact-finding group to Albania¹⁷ to work in cooperation with the Albanian authorities and the international protection force. According to press reports, its prime task is to establish what action the advisory mission planned by the WEU Council should take. Police officers are to be part of that mission, their job being to help the Albanians rebuild and train a police force.

130. Given that the President of Albania requested WEU on 13 March to send in armed forces to restore order in the country and that on 16 March the Speaker of the Albanian Parliament specifically said in a letter to the President of the Assembly that he would welcome intervention by WEU in particular to help the Albanian authorities restore order and recover all the weapons stolen from army depots, it is incomprehensible that it was not possible for action of this sort to be taken under WEU's control.

131. It is all the more astonishing in view of the fact that Italy, France, Spain and Greece as full members of WEU, together with Turkey, an associate member, and a number of associate partner and observer countries such as Romania, Bulgaria, Austria and Denmark were prepared to take part in a mission in Albania under a mandate from the United Nations. Furthermore, as the French Presidency of WEU pointed out, the Satellite Centre in Torrejón had done some excellent intelligence work.

132. While the WEU Secretary-General said that WEU was ready to intervene but had not been requested to do so by the European Union, the French Foreign Minister clearly stated that WEU's operational capability was not yet advanced enough and, even more surprisingly, that the current wording of the Treaty on European Union did not permit the EU to give WEU a mandate in cases such as that of Albania. In response to the comment that WEU could also act independently by virtue of the modified Brussels Treaty, the Minister replied that France had in fact proposed preparing for action by WEU but

¹⁷dpa 22 April 1997.

that a number of member states were opposed to this.

133. Not having recourse to Article VIII.3 of the modified Brussels Treaty in the Albanian crisis is all the more regrettable given that its application in previous crisis situations, such as the Gulf War and the conflict in the Balkans, proved that it was possible for the WEU member states, or a group of them, to take joint action on the basis of a treaty provision with a general scope without it being necessary to draw up specific arrangements for constructive abstention.

134. For as long as uncertainty remains over the application of Article J.4.2 of the Treaty on European Union, more frequent recourse must be had in practice to the option of autonomous action by WEU. This not only requires political will on the part of the member states but also means that WEU must make clear to the United Nations and the OSCE that they can give WEU a direct mandate to act in crisis situations.

135. Application of the modified Brussels Treaty and the possibility it provides for WEU to take autonomous decisions is a specific example of how the principle of flexibility and closer cooperation can be put into practice without the need for authorisation from the EU institutions. In such a case the question of whether such authorisation should be given unanimously or by a qualified majority vote does not therefore arise. In situations with sensitive political implications, it is always possible for the WEU Council to take the necessary decisions at the level of heads of state or government.

136. In this context a distinction has to be drawn between two different forms of closer cooperation the first, as described above, stems directly from the application of the modified Brussels Treaty while the second comes under the CFSP and involves the bodies, procedures and machinery for which provision is made in the Treaty on European Union. A whole series of procedures have been proposed in this connection: some advocate that requests for closer cooperation should be made by each member state or by the European Commission (the Franco-German proposal), by EU member states that are also members of WEU (the Italian proposal) or by a majority of the member states in consultation with the European Commission (the Netherlands Presidency's proposal).

137. Whichever proposal the intergovernmental conference may agree on, it should be established that the right for WEU, represented by its presidency or its Secretary-General, to make such a request will be laid down in a provision of the Treaty on European Union on closer cooperation.

IV. The activities of the WEU Council

138. Once again, it is not really possible to comment on the activities of the Council given that the second half of its 42nd annual report, covering the period to December 1996, was not conveyed to the Assembly on time. The Assembly has been obliged to record on numerous occasions that the Council is clearly taking its obligation to provide information under Article IX of the modified Brussels Treaty less and less seriously. It is now high time the Council provided the Assembly with a plausible explanation as to why it is not possible for it to forward its annual report on time. It would appear that it has been the practice for some time that the countries taking part in WEU's work as associate members, observers and associate partners should also have an opportunity to provide inputs to be used for the Council's report but this should not result in the Assembly receiving the information late. The obligation to provide information is restricted now as before to the ten states that are full members of WEU.

139. Irrespective of the confidential nature of the information the French Presidency provided in late January and mid-April to the Presidential Committee on the one hand and the Political and Defence Committees on the other, it cannot be a substitute for the official report of the Council.

140. No information at all is available about whether and to what extent WEU is involved at the intergovernmental conference in the discussions on subjects concerned with the Organisation's future role in relationship to the European Union. There are only a few vague indications as to WEU's relations with NATO and the possibility of it taking part in the Alliance's CJTF planning process. A similar situation also exists in respect of the agreement that has now apparently been reached in WEU for giving all its associate members the possibility of being involved in the WEU planning process for the preparation of WEU operations conducted in accordance with the CJTF concept.

141 What is the situation regarding the planned "pilot nation" concept according to which a member state would be given the task of mounting a military operation under WEU's control and why was this concept not put into practice in the Albanian crisis?

142 What progress has been made in the work being done to assess the risks and challenges for European security in the 21st century in the perspective of the enlargement of the Atlantic Alliance and the European Union?

143. According to various press reports¹⁸ WEU is currently negotiating security agreements with a number of observer and associate partner countries in order to settle with them the problem of exchanging confidential documents. This is of vital importance with a view to those countries taking part in Petersberg tasks under the direction of WEU and with the assistance of NATO structures. Up till now it would appear that the United States has always preferred such action to be decided in the framework of WEU and not by the fifteen European Union member states. It is also reported that the Americans will refuse to convey confidential documents to WEU until they are certain that they will not be passed on to the neutral members of the European Union. On the other hand, it is being said that NATO itself is also in the process of concluding security agreements in the framework of a reinforced Partnership for Peace with countries participating in the PfP programme. The Assembly has no detailed information whatsoever about any of these subjects.

144. What progress has been made on the further development and activities of the Planning Cell and Situation Centre? What are the results of the work done by the Planning Cell and the Permanent Council on WEU's role in peacekeeping operations within the framework of Petersberg tasks?

145 What has been achieved as regards coordination between the Planning Cell and the activities of the Satellite Centre and the elaboration of a concept for using the Centre?

146 What improvements have been made in working relations between WEU and the United

Nations and what conclusions were reached at the Conference of the United Nations with regional organisations, held from 14 to 16 February 1996, which the WEU Secretary-General attended? How have working relations between WEU and the OSCE developed?

147 What part does WEU intend to play in the Euro-Mediterranean dialogue that has been re-launched by the European Union?

148 In what specific areas has there been practical progress in cooperation between WEU, the Russian Federation and Ukraine? With reference to the Assembly's proposals in Recommendation 608, what tangible measures are to be taken to improve the status of the associate partner countries in WEU?

149 Has any real progress been made on armaments cooperation and do any further plans exist for the WEU Institute for Security Studies?

150. The Council has still not replied to Assembly Recommendations 601, 605, 606 and 608. Its delay in doing so makes it difficult to maintain and develop a permanent and meaningful dialogue between the Assembly and the Council.

V. Conclusions

151 With only a few months left before the intergovernmental conference on the revision of the Treaty on European Union is due to end, this report will be the last opportunity for the Assembly of WEU to make known its views and put forward its proposals. As it would appear that the Council is not making any preparations to go further than its contribution to the intergovernmental conference of the European Union, which it submitted to the EU on 14 November 1995, in an attempt to have WEU's position discussed in the negotiations in the light of the latest progress made by the IGC, the Assembly's views will in all likelihood represent the only WEU position that will officially be made public before the IGC ends this year.

152. It is quite clear that fundamental differences of opinion continue to exist between the governments of the member states represented in the WEU Council. Neither is there a unanimous position in the Assembly. But there should be no differences of opinion on the following fundamental issue:

¹⁸ Agence France Presse, 27 March 1997

Europe must have a credible standing in security and defence matters. This applies primarily to crisis management and military intervention to that end. Until now Europe has either failed politically and militarily in this area or has done no more than help to implement decisions taken by the United States.

153. WEU is still necessary in order for this credibility to become a reality because its member states are the only countries to have committed themselves without reservation to assuming joint responsibility for the consequences of a common security and defence policy that covers more than just the management of crises. As yet nobody knows whether it will also be possible for such a comprehensive commitment to be made one day in the European Union as well. Your Rapporteurs hope that those EU member states still reluctant to enter into all the obligations a common defence requires will gradually overcome their misgivings. They also hope that the European partners in NATO will be able to play a substantial part in the common defence identity.

154. Lastly, the question of how the central European countries can be brought into the whole process remains to be clarified. Until all these problems have been solved, there can be no real integration between WEU and the European

Union. The submission of a phased plan for such integration would therefore seem to be premature and it should not be carried out unless it can be formulated in such a way as to avoid any watering down of the mutual assistance obligation and any sidelining of a substantial number of states.

155. Similarly, the drafting of detailed provisions in an attempt to lay down the conditions and arrangements whereby a country could have recourse to the option of constructive abstention, would force it to take action it would not necessarily wish to take on an issue on which it had doubts, thereby producing precisely the opposite effect of the purpose flexibility is intended to serve. This is a clear example where treaty wording is not a reflection of political will but actually sets out to impose political will where it does not in fact exist.

156. If it is agreed that recourse must continue to be had to WEU at least for a transitional period, WEU must have the possibility, and put it into practice, of taking its own political decisions on the basis of the modified Brussels Treaty while remaining ready to take action in crisis situations on behalf of the European Union. Temporarily preserving WEU's autonomy in this way will also be extremely important in the process of the Atlantic and European institutions opening to countries in the east and south.

APPENDIX

Proposed amendments to Article J.4 of the TEU

*Letter from Mr Kinkel, Federal Minister for Foreign Affairs of Germany,
to Mr van Mierlo, Minister for Foreign Affairs of the Kingdom of the Netherlands*

21 March 1997

As already announced by the French Minister with responsibility for European Affairs, Mr Barnier, and Minister of State Hoyer at the meeting of the EU Governmental Conference on 10 March 1997, Belgium, France, Italy, Luxembourg, Spain and Germany have produced a document to be appended to the Treaty on European Union which, subject to legal review, could take the form of a Protocol to Article J 4 2. This document, and the proposed amendments to Article J.4.2, as proposed by the French representative on 10 March 1997, constitute a joint proposal by the six states on the security and defence aspects of the Treaty on European Union. I have been requested to forward these proposals to the Netherlands Presidency on behalf of all six states involved and should be grateful if the texts could be officially passed on to the other partners in advance of the Foreign Ministers' meeting in Rome on 25 March.

Klaus KINKEL

Article J.4 of the Treaty on European Union

Article J.4.1:

Proposed Presidency text

The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy in the perspective of a common defence.

Proposed amendments by Belgium, Germany, Spain, France, Italy and Luxembourg

The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy in the perspective of a common defence.

The common defence policy shall include the framing of principles, aims and means in the defence field.

Proposed Presidency text

Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.

Proposed amendments by Belgium, Germany, Spain, France, Italy and Luxembourg

The Petersberg tasks (humanitarian tasks, rescue tasks, peacekeeping tasks, tasks of combat forces in crisis management, including peacemaking) shall be the first expression of a common security and defence policy. Armaments policy shall be an integral part of the common defence policy.

Article J.4.2:

Proposed Presidency text

The Western European Union (WEU) is an integral part of the development of the European Union and the Union shall accordingly foster closer institutional relations with it.

Proposed amendments by Belgium, Germany, Spain, France, Italy and Luxembourg

The Western European Union (WEU) is an integral part of the development of the European Union and the Member States have therefore made it their aim to integrate the WEU progressively into the European Union. They will work actively in the Union and the WEU to achieve that aim. Integration shall be achieved in several stages which shall be defined in greater detail in a Protocol appended to this Treaty. The first stage shall commence with the entry into force of this Treaty; the transition to the further stages shall be determined by Decision of the Council, meeting at Head of State and Government level.

Proposed Presidency text

The Union will avail itself of the WEU to elaborate and implement decisions and actions of the Union which have defence implications

Proposed amendments by Belgium, Germany, Spain, France, Italy and Luxembourg

The Union will avail itself of the WEU to elaborate and implement decisions and actions of the Union which have defence implications. The competence of the European Council to establish guidelines in accordance with Article J 1b shall also obtain in respect of the WEU.

The Council shall, on the basis of general guidelines laid down by the European Council, ensure uniform and consistent action on the part of the Union and of the WEU and shall in agreement with the WEU adopt the necessary practical arrangements.

Article J.4.3:*Proposed Presidency text*

When the Union has recourse to the WEU to elaborate and implement decisions of the Union on the tasks referred to in paragraph 1, all Member States of the Union shall be entitled to participate fully in the tasks in question.

The Council shall, in agreement with the institutions of the WEU, adopt the necessary practical arrangements.

These arrangements shall allow all Member States contributing to the tasks in question to participate fully and equally in planning and decision-making in the WEU insofar as these relate to the commitment and deployment of that Member State's national contribution.

Decisions having defence implications dealt with under this paragraph shall be taken without prejudice to the policies and obligations referred to in paragraph 5.

Proposed amendments by Belgium, Germany, Spain, France, Italy and Luxembourg

When the Union has recourse to the WEU to elaborate and implement decisions of the Union on the tasks referred to in paragraph 1, the Council shall, in agreement with the institutions of the WEU, take particular care to ensure that all Member States of the Union may participate fully in the WEU in the elaboration and implementation of the decisions and actions of the Union referred to in 1.

Delete the remainder of the proposed Presidency text.

Article J.4.4:*Proposed Presidency text*

The Council shall act unanimously when dealing with issues under this Article having military or defence implications.

J 4 3 deleted

J.4 4 unchanged, as new J 4 5

J 4 5 unchanged, as new J.4 6

J.4 6 deleted

Proposed amendments by Belgium, Germany, Spain, France, Italy and Luxembourg

Arrangement in the overall context of the CFSP decision-taking procedure.

Document on Article J.4 to the Treaty on European Union

The High Contracting Parties,

desiring to specify in greater detail the phases for the integration of the Western European Union into the European Union referred to in paragraph 2 of Article J.4 of the Treaty on European Union,

have agreed upon the following provisions, which shall be annexed to the Treaty on European Union:

Article 1

The integration of the Western European Union (WEU) into the European Union shall be gradually implemented during a transition period of approximately ... years. This transition period shall consist of three phases. Each phase shall involve a whole range of measures which must be implemented before transition to the next phase.

Transition to the next phase shall depend on the Council¹ stating in a report that the measures laid down for the previous phase have essentially been implemented. On this basis, the Council, meeting at the level of the Heads of State or Government, shall decide upon the transition to the next phase².

Phase 1 shall begin upon entry into force of the Treaty on ... The report referred to in paragraph 2 above shall be submitted to the Council, meeting at the level of the Heads of State or Government, after ... years. If the Council decides to make the transition to the next phase, it shall at the same time set the date for the presentation of a report on the implementation of the measures envisaged for the phase in question. If no decision is reached on transition to the next phase, a new report shall be submitted annually to the Council, meeting at the level of the Heads of State and Government.

Article 2

During the first phase, while maintaining the institutional independence of the WEU and within the policy guidelines set by the European Council, the foundations of a common European defence policy as part of the Union's Common Foreign and Security Policy shall be laid and the structures, rules and procedures of both organisations harmonised. In particular, during this phase.

- the practical arrangements for cooperation between the WEU and the Union envisaged in paragraph 2 of Article J.4 shall be elaborated with a view to linking the consultation- and decision-making processes of the WEU and the Union in crisis situations;
- the WEU shall be ready to elaborate and implement decisions and actions having defence implications for which the EU has recourse to the WEU. The Council will politically monitor the implementation;
- procedures shall be developed which will ensure that the participatory rights of the Associate Members and Associate Partners of the WEU are fully taken into account when transferring decision-making powers from the WEU to the Union,
- the sequence of presidencies of the WEU and the Union shall be harmonised as much as possible;

¹ This statement should be made by the Council meeting at the level of the foreign and the defence ministers

² The principle of flexibility may be applied.

- arrangements for closer cooperation of the work of the staff of the WEU Secretariat and the Secretariat of the Council of the Union shall be set up (including possibilities for exchange and secondment of personnel),
- specific steps shall be taken to prepare a double-hatting of the post of Secretary-General of the Secretariat of the Union with the Secretariat of the WEU;
- administrative rules and practices of the Union and the WEU shall be harmonised;
- a white paper shall be drawn up within the framework of the Union's Common Foreign and Security Policy in cooperation with and based on the work already carried out in the WEU, outlining a common defence policy concept in pursuit of the Union's common security interests;
- joint policies shall be elaborated in areas where the know-how and options for action of both organisations can complement each other in a meaningful way (including armament policy);
- agreement shall be reached among EU, WEU and NATO on how the institutional and operational relations are to be developed reflecting the need for full transparency and, as necessary, joint consultations on how to address contingencies

Article 3

During the second phase, the WEU shall remain responsible for the implementation of military actions of the Union in the field of crisis management, whereas the Union shall assume the decision-making power, binding also on the WEU, to initiate the action. The Union will monitor its implementation from the political point of view and may modify the mandate and/or terminate the action in accordance with developments and in close coordination with the WEU. During this phase in particular,


- the Secretariat of the WEU shall be incorporated into the Secretariat of the Council of the Union,
- arrangements shall be developed to allow for the direct use of the WEU Planning Cell, the Situation Centre and the Satellite Centre by the EU,
- links shall be established between the relevant institutions of the EU and the WEU in order to make possible the transfer of competences envisaged for Phase 3;
- direct links shall be established between the EU and the politico-military structures of the WEU,
- the decision-making power, which shall also be binding upon the WEU, to initiate the military actions referred to in sentence 1 above, shall be assumed by the Council of the Union³;
- the procedures developed in Phase 1 for linking the WEU Associate Members and Associate Partners to the EU decision-making process will fully apply;
- cooperation between the Union and NATO shall be intensified in line with the state of cooperation between the WEU and NATO.

³ The decisions shall be taken by the Council meeting in the composition of the foreign and the defence ministers.

Article 4

During the third phase, the integration process shall be completed by

- transferring the competences of the institutions and bodies of the WEU to the relevant institutions of the EU and incorporating other remaining WEU structures into the EU.
- incorporating the assistance guarantee laid down in Article V of the modified Brussels Treaty into the Treaty on European Union or an additional protocol to the Treaty which should contain the appropriate institutional mechanisms for the cooperation of participating Member States on issues of territorial defence making use of the politico-military structures of the EU. In the process, the right of each Member State of the Union not to participate in an assistance mechanism shall be respected. At the same time, a drifting apart of the defence commitments in the EU and NATO, which would weaken the transatlantic security link, must be avoided.
- all Contracting Parties terminating the modified Brussels Treaty on the day the assistance mechanism contained in the Treaty on European Union or an additional protocol to this Treaty enters into force for them;
- intensifying direct relations between the Union and NATO in order to develop further the co-operation previously existing between the WEU and the Alliance.

IMPRIMERIE  ALENÇONNAISE
Rue Édouard-Belin : 2^e trimestre 1997
N° d'ordre : 40068

PRINTED IN FRANCE