
A New Gear in the CFSP Machinery: Integration of the Petersberg Tasks in the Treaty on European Union

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Abstract

Article J.7 of the Amsterdam Treaty, which amends the Treaty on European Union, establishes that the Western European Union shall provide the European Union with access to an operational capability for 'humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peacemaking'. Making reference to the 1992 WEU Petersberg Declaration, these tasks are commonly known as Petersberg operations. This provision constitutes the integration of a part of the 'WEU acquis' into the framework of the European Union, even though there is no institutional integration between the two organizations or legal interweave between their constituent treaties. The decision-making mechanism for Petersberg operations must be considered in relation to the new CFSP set of acts and involves considerable interplay between the European Council, the Council and WEU Council of Ministers. Several problems might arise from the different voting systems of these institutions and a specific question is posed by the more restricted composition of the WEU with respect to the EU, namely the five EU Member States which are not fully-fledged WEU members. The development of an EU crisis management capability could have a number of positive consequences, both on an inter-European level and externally.

1 The Notion of Petersberg Operations

In the early 1990s the tasks of conflict management and peace-keeping, which once appeared to belong exclusively to the United Nations, became an area of growing interest for regional security organizations. This trend derived from both a stronger demand for mechanisms of crisis prevention and management and from the will to revitalize these organizations in the post-Cold War security environment.

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In June 1992, NATO Foreign Ministers, at the Ministerial Meeting of the North Atlantic Council in Oslo, announced the Organization's willingness to support peace-keeping activities.¹ In July 1992, the Helsinki Document provided the framework for the commitment of the Conference on Security and Cooperation in Europe (CSCE) to peace-keeping.²

During the same period, the Member States of the European Communities initiated a process of establishing more appropriate instruments for cooperation in foreign and defence policy. In February 1992, the Treaty on European Union (TEU) was concluded and its Title V on Common Foreign and Security Policy (CFSP) suggested a stronger role for the European Union (EU) in international security matters. Under Article J.4 of the Treaty, the Western European Union (WEU), described as 'an integral part of the development of the Union', was called on 'to elaborate and implement decisions and actions of the Union which have defence implications'.³

In June 1992, WEU Foreign and Defence Ministers met in Bonn to develop the role of WEU as the defence component of the EU, to strengthen its operational capacity and to define the relations between the WEU and non-member states. In the final document, the Petersberg Declaration,⁴ the Council of Ministers agreed to expand WEU functions in order to include the planning and execution of a range of peace-related operations. Part II, para. 4 of the Declaration, entitled 'On Strengthening WEU's Operational Role', announced:

Apart from contributing to the common defence in accordance with Article 5 of the Washington Treaty and Article V of the modified Brussels Treaty respectively, military units of WEU Member States, acting under the authority of WEU, could be employed for:

- Humanitarian and rescue tasks;
- Peace-keeping tasks;
- Tasks of combat forces in crisis management, including peacemaking.

These tasks have since become known as Petersberg operations or tasks.⁵ The Declaration concisely defined the legal framework and procedures for their implementation. It stated that decisions to carry out WEU operations would be taken by the WEU Council of Ministers in accordance with the provisions of the United Nations Charter.

In the following years, the performance of the WEU in framing and implementing Petersberg tasks has been judged disappointing. Its activities have been limited to civilian police exercises, such as the missions to the city of Mostar within the European

¹ 'Final Communiqué of the Ministerial Meeting of the North Atlantic Council', Oslo, 4 June 1992.

² The Declaration and Decisions of the Helsinki Summit, 10 July 1992, are reproduced in 31 *ILM* (1992) 1385.

³ On the security and defence implications of the Treaty on the European Union see Morgan, 'How Common Will Foreign and Security Policies Be?', in R. Dehousse (ed.), *Europe after Maastricht. An Ever Closer Union?* (1994) 189, at 192; J. Cloos, G. Reinesch, D. Vignes and J. Weyland, *Le Traité de Maastricht. Genèse, analyse, commentaires* (1994) 468, 481.

⁴ WEU Council of Ministers, 'Petersberg Declaration', Bonn, 19 June 1992.

⁵ Vierucci, 'The Role of Western European Union (WEU) in the Maintenance of International Peace and Security', 2 *International Peacekeeping* (1995) (London) 309; Jørgensen, 'Western Europe and the Petersberg Tasks', in K. E. Jørgensen (ed.), *European Approaches to Crisis Management* (1997).

Union Administration of Mostar,⁶ and to Albania as the Multinational Advisory Police Element.⁷ The functioning and results of the CFSP have similarly been the subject of considerable criticism and have largely been considered ineffective. Particularly unsatisfactory has been the implementation of Article J.4 TEU.⁸

2 Integration of the Petersberg Operations in the Amsterdam Treaty

As provided by the Maastricht Treaty, an Intergovernmental Conference (IGC) began in 1996 with the mandate to review the TEU and with the specific task of revising the provisions on defence.⁹ The Conference concluded with the signing of the Amsterdam Treaty on 2 October 1997.¹⁰ This Treaty amended the TEU in various areas and introduced important, though not dramatic, changes in the CFSP;¹¹ a significant set of provisions was elaborated, particularly in the area of security and defence.

In the Reflection Group's debate on the framing of a common defence policy and the merging of the WEU into the EU,¹² discussions had already been held on the idea of giving the EU the competence to decide on Petersberg tasks.¹³ Although in the

⁶ Pagani, 'L'Administration de Mostar par l'Union Européenne', 42 *Annuaire français de droit international* (1996) 234, at 249; see also Assembly of the Western European Union, *WEU Police Forces — Reply to the Annual Report of the Council*, Report submitted on behalf of the Defence Committee by Mr Giannattasio, Rapporteur, 13 May 1998, Part II.

⁷ *Ibid.*, Part III.

⁸ See, e.g., European Commission, *Report on the Operation of Treaty on European Union*, 10 May 1995.

⁹ See Art. J.4.6 Maastricht Treaty.

¹⁰ The Treaty is in the process of being ratified by the Member States. For a review, see 'Treaty of Amsterdam: Neither a Bang nor a Whimper' (Editorial Comment), 34 *CMLR* (1997) 776; Barents, 'Some Observations on the Amsterdam Treaty', 4 *Maastricht Journal of European and Comparative Law* (1997) 332; F. Dehousse, 'Le Traité d'Amsterdam, reflet de la nouvelle Europe', 33 *Cahiers de droit européen* (1997) 265.

¹¹ Nuttall, 'The CFSP Provisions of the Amsterdam Treaty. An Exercise of Collusive Ambiguity', *CFSP — Forum* (3/1997) 1; Monar, 'The European Union's Foreign Affairs System after the Treaty of Amsterdam: A "Strengthened Capacity for External Action"?' 2 *European Foreign Affairs Review* (1997) 413; Des Nerviens, 'Les relations extérieures', 33 *Revue trimestrielle de droit européen* (1997) 801, at 805; A. Duff (ed.), *The Treaty of Amsterdam* (1997), at 124.

¹² On the debate within the IGC on the CFSP, see *Security of the Union — The Intergovernmental Conference of the European Union (Federal Trust Papers, No. 4, 1995)*; van Eekelen, 'The Common Foreign and Security Policy', in J. A. Winter, D. M. Curtin, A. E. Kellermann and B. de Witte (eds), *Reforming the Treaty on European Union — The Legal Debate* (1996) 323; see also related comments by Burghardt and Stekmann, in *ibid.*, at 332, 344; D. McGoldrick, *International Relations Law of the European Union* (1997), at 160; van Ham, 'The EU and WEU: From Cooperation to Common Defence?', in G. Edwards and A. Pijpers (eds), *The Politics of European Treaty Reform. The 1996 Intergovernmental Conference and Beyond* (1997).

¹³ See 'A Strategy for Europe. Final Report of the Chairman of the Reflection Group on the 1996 Intergovernmental Conference', 5 December 1995.

framework of different approaches, this idea received the support of most states¹⁴ and institutions¹⁵ and was welcomed by the European Council in Turin which opened the IGC.¹⁶

During the IGC three options were discussed regarding the relations between the EU and WEU:¹⁷ first, maintaining the separation between the WEU and the EU without any significant changes in their relationship;¹⁸ second, gradually merging the two organizations;¹⁹ third, integrating a part of the WEU functions into the Treaty.

This last option, which emerged as an acceptable compromise and did indeed prevail, led to the insertion of Petersberg tasks in the TEU. It also resulted in the TEU provision foreseeing 'the possibility of the integration of the WEU into the Union, should the European Council so decide' (Article J.7.1). Within this perspective, the decision to integrate the Petersberg tasks into the TEU encountered no opposition and materialized in the combined provisions of paragraphs 1 and 2 of Article J.7 of the Amsterdam Treaty.²⁰ Paragraph 1 states:

The Western European Union (WEU) is an integral part of the development of the Union providing the Union with access to an operational capability notably in the context of paragraph 2 ...

And paragraph 2 states:

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

These provisions represent a very interesting development, one which certainly stimulates debate. Notably, these provisions constitute the first codification of the notion of peace-keeping and peace-related operations in the constituent treaty of an

¹⁴ See 'Orientations sur la PESC — Séminaire franco-allemand des ministères des Affaires étrangères à Fribourg', 27 February 1996; 'Mémorandum Benelux en vue de la CIG', 7 March 1996; 'Position of the Italian Government on the IGC for the Revision of the Treaties', 18 March 1996; 'Regierungskonferenz Österreichische Grundsatzpositionen', 26 March 1996; and particularly 'The IGC and the Security and Defence Dimension — Toward an Enhanced EU Role in Crisis Management. Memorandum of Finland and Sweden', 25 April 1996. The relevant parts of these documents are reproduced in *Politique de défense commune et défense commune: l'article J.4 du Traité. Positions des Etats membres sur les thèmes à l'ordre du jour de la Conférence Intergouvernementale 1996* (Fiches multilingues réalisées par la Task Force CIG, Commission Européenne) April 1996. See also the documentation in European Parliament-Intergovernmental Conference Task, *White Paper on the 1996 Intergovernmental Conference*, Vol. II, *Summary of Positions of the Member States of the European Union with a View to the 1996 Intergovernmental Conference*, January 1996.

¹⁵ Commission Opinion, 'Reinforcing Political Union and Preparing for Enlargement', 28 February 1996.

¹⁶ Turin European Council, 29 March 1996, 'Presidency Conclusions', Doc. SN 100/1/96.

¹⁷ For a thorough review of the different positions on this point, see van Ham, *supra* note 12. See also WEU Council of Ministers, 'WEU Contribution to the European Union Intergovernmental Conference of 1996', Madrid, 14 November 1995.

¹⁸ This option was strongly supported by the UK.

¹⁹ Many countries — France, Germany, Italy, Spain — as well as the Commission and the Parliament promoted the integration of the two organizations.

²⁰ See Lenzi, 'European Security after Amsterdam', *CFSP — Forum* (3/1997) 5; Grassi, 'L'introduzione delle operazioni di peace-keeping nel Trattato di Amsterdam. Profili giuridici ed implicazioni politiche', 53 *La Comunità internazionale* (1998) 295.

international organization. No other treaty of such legal and political importance makes reference to this type of activity. There is no mention of peace-keeping in the United Nations Charter; NATO and WEU involvement in such tasks has been ensured without a formal revision of their constituent instruments; and CSCE/OSCE documents on peace-keeping do not hold the legal status of a treaty.²¹

The terms employed in Article J.7.1 might raise several problems of interpretation. The notions of 'peace-keeping' and 'peacemaking', in particular, have assumed a variety of legal and political meanings and these will need to be reconciled with their codification in a legal text. The absence of a WEU practice or of a well-developed doctrine in these operations does not facilitate their clarification.²² However, whatever interpretation is given to these terms, the action of the European Union under Article J.7 will come up against two limitations: on one side, the exclusion of measures of peace enforcement from the list and, on the other, the constraints which international law provides for in the use of force in peace operations.

Peace enforcement operations were expressly ruled out from the list of tasks enumerated in Article J.7.2. One might wonder whether their exclusion will inhibit the EU from any UN Charter Chapter VII operations.²³ Such interpretation would strongly inhibit the EU capacity for conflict management. Future practice will prove the import and feasibility of this limitation in the range of EU intervention tools, given the blurred distinction between peace-keeping and peace enforcement that has characterized certain recent peace operations.

The second limitation comes from general international law. Any EU action will be regulated by the principles which discipline military intervention and the use of force in international relations. This limit was recognized during the negotiations and was expressly restated among the general principles governing the CFSP. Article J.1.1 TEU, which modifies former Article J.1.2 Maastricht Treaty, states:

The Union 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 preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders.

There does not appear to be any geographical limitation constraining the EU in the conduct of Petersberg operations.²⁴ Neither the EU nor the WEU has in their constituent treaties the restrictions that other regional organizations face.

²¹ See M. Bothe, N. Ronzitti and A. Rosas (eds), *The OSCE and the Maintenance of Peace and Security. Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes* (1997).

²² Reference to NATO documents is possible, see e.g., NATO, 'BI-MNC Directive for NATO Doctrine for Peace Support Operations', 11 December 1995.

²³ This exclusion was decided late in the IGC; see European Parliament — Committee on Foreign Affairs, Security and Defence Policy (drafted by Mr Thomas Spencer), 'Opinion for the Committee on Institutional Affairs on the Treaty of Amsterdam Chapter III Provisions on Common Foreign and Security Policy (CFSP)', 29 October 1997, PE 224.338/DEF.

²⁴ See e.g. W. Kühne, G. Lenzi and A. Vasconcelos, *WEU's Role in Crisis Management and Conflict Resolution in Sub-Saharan Africa (Chaillot Paper, No. 22, 1995)*; Vierucci, *supra* note 5, at 319.

With regard to the CFSP machinery and its development, these provisions represent an important achievement and are considered to be one of the very few points of significant progress on security and defence of the Amsterdam Treaty.²⁵ They constitute the integration of a part of the 'WEU *acquis*' into the framework of the European Union, although a parallelism between these provisions and those clauses of the Amsterdam Treaty which codify the 'Schengen *acquis*'²⁶ would be inappropriate. In the case of the 'WEU *acquis*' there is no institutional integration between the two organizations or any legal interweaving of their constituent treaties — Article J.7 will work exclusively as an operational bridge between the CFSP and WEU decision-making procedures. Furthermore, the integration into the TEU of the 'WEU *acquis*' on conflict management clearly demonstrates the will to exclude from the TEU the collective security guarantee provided by Article V of the modified Brussels Treaty. The IGC clearly failed to bring into the EU the 'hard security' aspect of the 'WEU *acquis*'.

3 An Educated Guess: The Implementation Mechanisms

An analysis of the mechanisms in the new CFSP institutional framework for the implementation of Petersberg Tasks shows their considerable complexity, which could prompt numerous operative difficulties.²⁷

A separation must be maintained between the decision-making and operational levels. Some important innovations in the Amsterdam Treaty provide a set of procedures for the EU to implement its CFSP (Article J.2). 'Common strategies' and 'joint actions' are the most likely procedures to gain importance for Petersberg operations. The decision to use WEU forces for Petersberg tasks, given its political importance and the sensitive nature of decisions concerning the use of military force, will presumably require a decision of the European Council as the highest political forum of the EU. Such decisions will take the form of a 'common strategy', which, according to Article J.3.2, will set out the objectives of the operation, its duration and the means to be made available by the Union and its Member States.

The legal value of common strategies will certainly raise several questions under EU law. The Treaty is not clear on the legal effect of common strategies. While it does state that 'the European Council shall decide on common strategies' (Article J.3.2), the Treaty does not provide, as it does for joint actions (Article J.4.3), that they commit

²⁵ See Commission Européenne — Task force 'Conférence Intergouvernementale', 'Note d'analyse sur le Traité d'Amsterdam', 7 July 1997, para. 12; Parlement Européen — Groupe de travail du Secrétariat Général, Task force 'Conférence Intergouvernementale', 'Note sur les priorités du Parlement en relation avec la CIG et avec le nouveau Traité d'Amsterdam: rapport et première évaluation des résultats', 15 July 1997, para. 3.2.

²⁶ For the codification of the Schengen *acquis* see 'The Treaty of Amsterdam: Neither a Bang nor a Whimper', *supra* note 10, at 768; Louis, 'Le Traité d'Amsterdam. Une occasion perdue?', *Revue du marché unique européen* (1997) 5, at 9.

²⁷ For a scenario in which these mechanisms are applied to a post-SFOR II operation in Bosnia, see European Parliament, *supra* note 23.

Member States. Attributing a binding legal value to common strategies would also appear to contravene the well-established principle within the EU system that the European Council does not hold a formal decision-making power.²⁸ By the same token, to consider common strategies of the European Council exclusively as a general political guideline would seem to contradict Article J.3.2 and to assimilate them somewhat flatly with the 'principles of and general guidelines for the common foreign and security policy', which the European Council might define according to Article J.3.1. A possible interpretation would thus be to give binding effect for common strategies exclusively to the Council. The common strategies would therefore have no external legal relevance and their obligatory nature would be limited, within the CFSP system, to committing the Council to implement them. For example, once the European Council had decided on a Petersberg task, the Council would be bound to implement it through joint actions or other appropriate decisions. This interpretation is confirmed by Article J.3.3, which states that the Council shall implement common strategies, in particular by adopting joint actions and common positions.

The practical relevance of this interpretation could be questioned, given the almost identical composition of the two organs.²⁹ However, further analysis shows that the difference in the functions and decision-making mechanisms of the European Council and the Council could confer a certain importance to the binding nature of common strategies. Common strategies, being the outcome of the consensus practice of the European Union, could certainly draft sensitive decisions in highly ambiguous terms, leaving implementation choices to the Council. In this sense, the unanimity requirement in the Council might lead to an impasse in the CFSP decision-making process. This deadlock would be overcome by the binding nature of common strategies, as it would necessarily force the Council to reach an agreement to implement the decision taken by the European Council.

Qualified majority voting is not an option for the Council in the adoption of joint actions or any further decisions relating to the implementation of common strategies for a Petersberg task. This voting procedure does indeed apply for joint actions adopted on the basis of a common strategy, but not for those which have military or defence implications (Article J.13.2). However, in order to render the unanimity voting procedure more flexible, Article J.13.1 provides the possibility of recourse to 'qualified (or constructive) abstention'. The qualified abstention of states will not impede the adoption of a joint action, except in the event that they represent more than one third of the votes weighted according to Article 148.2 of the Treaty establishing the

²⁸ For a thorough analysis of the problem, see Glaesner, 'The European Council', in D. Curtin and T. Heukels (eds), *Institutional Dynamics of European Integration. Essays in Honour of Henry G. Schermers*, vol. II (1994) 101, at 111, and Constantinesco, 'Conseil Européen', *Répertoire de Droit Communautaire — Dalloz*, Tome I (1992). This general principle seems confirmed by the reformulated Art. F.1 TEU. The delicate decision on the application of the enforcement mechanism in the event of a serious and persistent breach of fundamental rights in a Member State is entrusted not to the European Council, but to the Council, meeting as the Heads of State or Government. See Barents, *supra* note 10, at 335.

²⁹ One difference is that the President of the Commission participates in the meetings of the European Council, while there are no Commission representatives in the Council.

European Community. This mechanism thus allows the adoption of decisions on Petersberg operations even in the case of qualified abstention by all the five Member States which are not WEU members.

It is worth noting that, in the case of decisions regarding a Petersberg task, the objection or refusal of a Member State to participate in the operation does not necessarily imply its recourse to qualified abstention. Reluctance by some states to provide troops or equipment for a certain operation could be accommodated by simply leaving those states outside the operational duties of the mission. Recourse by a Member State to a qualified abstention thus assumes the significance of a more general and political uneasiness towards that mission.

Following the adoption of a common strategy and of the implementing joint actions, a corresponding decision must be taken by the WEU Council of Ministers. This decision will serve as the channel for the EU decision to enter the WEU system. The Amsterdam Treaty does not merge the decision-making procedures of the two organizations. From a legal point of view their link remains tied to a set of provisions which were adopted separately in the legal framework of the two organizations. Article J.7.3 of the Amsterdam Treaty, which states that 'the Union will avail itself of the WEU to elaborate and implement decisions and actions of the Union which have defence implications' was formally accepted by the WEU Council of Ministers in a Declaration annexed to the Amsterdam Treaty.³⁰ In this Declaration the WEU Council of Ministers expressly notes:

When the Union shall avail itself of WEU, WEU will elaborate and implement decisions and actions of the EU which have defence implications (A.5).³¹

Given the different voting procedures in the WEU Council of Ministers and in the Council, the need for decisions to be taken by both bodies could create a procedural problem. The WEU Council of Ministers' rigid voting procedure of unanimity could prompt a state which does not want to support a particular operation to oppose it in the Council, rather than resorting to qualified abstention.³² Procedures for facilitating this process, which could include the holding of joint meetings, are currently under examination and will be included in future arrangements between the two organizations.³³ A Protocol annexed to the TEU notes that these arrangements for enhanced cooperation will be drawn up within a year of the entry into force of the Amsterdam Treaty.³⁴

³⁰ WEU Council of Ministers, 'Declaration of the WEU on the Role of Western European Union and its Relations with the European Union and with the Atlantic Alliance', Amsterdam, 22 July 1997.

³¹ The proposal to conclude a legally binding treaty between the two organizations has not been accepted.

³² The idea of introducing the principle of constructive abstention in the WEU Council of Ministers circulated in a French proposal. In the Erfurt meeting, the WEU Council of Ministers tasked the Permanent Council to study measures of consensus-building and decision-making; see WEU Ministerial Council, 'Erfurt Declaration', Erfurt, 18 November 1997, para. 5.

³³ A flow chart was prepared by the two organizations on their interaction in decisions in conflict management and it was tested in a simulated exercise in June 1998.

³⁴ Protocol on Art. J.7 of the Treaty on European Union. A practical model for linking the decision-making processes of both organizations in crisis management operations has been drafted, see WEU Ministerial Council, 'Rhodes Declaration', Rhodes, 12 May 1998.

It is worth mentioning the issue of whether, after Amsterdam, the WEU retains its independent decision-making competence to run Petersberg operations in the absence of an EU mandate. From a legal point of view, the Amsterdam Treaty does not modify the WEU's competence and there are no doubts that the WEU continues to hold all its prerogatives on the basis of its constituting treaty and subsequent practice. In addition, positions taken by different WEU organs confirm its political will to maintain this independence.³⁵

This decision-making machinery, which is already quite complex, might be further complicated by a preliminary intervention of the Security Council of the United Nations. An appropriate mandate for an operation by the Security Council could prove to be legally necessary or politically opportune. In such a case, the position of the European Union will be represented by its members in the Security Council, and particularly by its permanent members, as stated in Article J.9.2.³⁶

With regard to the operational conduct of Petersberg tasks, their military dimension will rely on the WEU procedures and structures and, most likely, on the arrangements set up with NATO.³⁷ However, whatever military formula will be decided upon, the political control of such operations will remain with the Council which, through the WEU Council of Ministers, will be responsible for setting, modifying and terminating the mandate.

Article J.8 TEU states that the EU Presidency is responsible for the implementation of CFSP common measures. Thus, it is the Presidency that will decide on the daily political conduct of an operation as well as the monitoring of its development. The Presidency, under authorization of the Council, could also be called upon to negotiate any agreement relating to its operation, after which the Council would undertake to conclude it (Article J.14).³⁸ Harmonization of the sequencing of WEU and EU presidencies, which has already been approved by the WEU Council of Ministers,³⁹ would appear to be an inevitable step towards guaranteeing unity in the political direction of an operation.

In this context, the role to be played by the newly created High Representative for the CFSP (Article J.8.3) as well as, ultimately, an *ad hoc* appointed Special Representative with an operation-related mandate (Article J.8.4) has not yet been

³⁵ See e.g. *ibid.*, at para. 2. For a review of all these positions, see Assembly of the Western European Union, 'WEU after Amsterdam: The European Security and Defence Identity and the Application of Article V of Modified Brussels Treaty. Reply to the Annual Report of the Council', Report submitted on behalf of the Political Committee by Mr Vrettos, Rapporteur, 19 November 1997, Part 2.

³⁶ Art. J.9.2 states: 'Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union ...'.

³⁷ For these aspects see De Spiegeleire, 'From Mutually Assured Debilitation to Flexible Response: A New Menu of Options for European Crisis Management' and Wilson, 'WEU Operational Capability — Delusion or Reality?' — in WEU Institute for Security Studies (forthcoming).

³⁸ These agreements could include both political settlements and operational arrangements, such as the Status of Forces Agreements. On the EU treaty-making capacity and its difficulties, see Neuwahl, 'A Partner with a Troubled Personality: EU Treaty-Making in Matters of CFSP and JHA after Amsterdam', 3 *European Foreign Affairs Review* (1998) 177.

³⁹ WEU Ministerial Council, *supra* note 32, at para. 10.

clarified. It may eventuate that the Special Representative has the strongest political and diplomatic clout in the development of an operation. The Special Representative could assume the title and function of Head of Mission, which in UN peace-keeping are usually assigned to the Special Representative of the UN Secretary-General. The chain of command and link with the military structure in the field, and especially with the military Operational Commander, a figure that is likely to be nominated by the WEU Ministerial Council, will need to be thoroughly elaborated. Furthermore, it is not clear at this stage what role the Commission, the only EU institution which previously enjoyed operational capacity, will assume.

In the planning of its conflict management policy as well as in its response to specific crises, the CFSP will also benefit from the assessments and recommendations of the Policy Planning and Early Warning Unit (PPEWU), which was established by the Amsterdam Treaty through an annexed declaration.⁴⁰ Mechanisms to ensure liaison division, liaison and day-to-day cooperation between the PPEWU and the WEU Planning Cell are already under examination.⁴¹

In the final score, future practice will define the interplay between the various bodies involved in the operational planning and development of Petersberg operations.

With regard to financing, in conformity with Article J.18 TEU, expenditures arising from operations having military or defence implications are not charged to the budget of the European Communities. They are assigned to the Member States in accordance with a gross national product-based scale, unless the Council acting unanimously decides otherwise. On the basis of a distinction which will not always be easy to apply, it is understood that expenses relating to political activities of the EU in prevention of conflicts/peace and security processes will remain within the budget of the European Communities.⁴²

A state which has resorted to a qualified abstention under Article J.13.1 will not be obliged to contribute to the financing of an operation. One may wonder whether expenses for the military part of a mission should be allocated within the EU or the WEU framework.

⁴⁰ See Schmalz, 'Setting up the Policy Planning and Early Warning Unit — A Thorny Path from Idea to Realization', and the Annex Report of the Secretary-General of the Council to the Council, *CFSP — Forum* (4/1997) 1; Lodge and Flynn, 'The CFSP after Amsterdam: The Policy Planning and Early Warning Unit', 14 *International Relations* (1998) 7.

⁴¹ See 'Declaration on Enhanced Co-operation between the European Union and the Western European Union', which is annexed to the Amsterdam Treaty and also WEU Ministerial Council, *supra* note 32, at para. 8. See also Lodge and Flynn, *supra* note 40, at 17; Dolan, *The European Union's Common Foreign and Security Policy: The Planning Dimension*, (ISIS Briefing Paper, No. 14, 1997) 10.

⁴² 'Prevention of conflicts/peace and security processes' is one of the budgetary lines foreseen for the articulation of the CFSP budget chapter as provided by the Inter-Institutional Agreement between the European Parliament, the Council and the European Commission on Provisions Regarding Financing of the Common Foreign and Security Policy, which was finalized in Amsterdam at the conclusion of the Amsterdam Treaty.

4 The Participation of Non-WEU Member States

In the implementation of Petersberg operations, a specific problem is posed by the more restricted composition of the WEU with respect to the EU. Notably, five EU Member States — Austria, Denmark, Finland, Ireland and Sweden — are not fully-fledged members of the WEU.⁴³

The Amsterdam Treaty ensures the participation of all EU Member States in Petersberg operations decided by the Union. Article J.7.3 states:

When the Union avails itself of the WEU to elaborate and implement decisions of the Union on the tasks referred in paragraph 2 all Member States of the Union shall be entitled to participate fully in the tasks in question.

Although the five mentioned states already form part of the WEU system in that they have observer status,⁴⁴ EU decisions to implement Petersberg tasks will imply their integral participation in the WEU decision-making process. In this regard, the second provision of Article J.7.3 determines:

The Council, in agreement with the institutions of the WEU, shall adopt the necessary practical arrangements to allow all Member States contributing to the tasks in question to participate fully and on equal footing in planning and decision-taking in the WEU.

These provisions of the Amsterdam Treaty were immediately welcomed by the WEU Council of Ministers in an annexed Declaration to the Treaty, which echoes the wording of Article J.7.3:

WEU will develop the role of the Observers in WEU in line with provisions contained in Article J.7.3 and will adopt the necessary practical arrangements to all Member States of the EU contributing to the tasks undertaken by WEU at the request of the EU to participate fully and on equal footing in planning and decision-taking in the WEU.⁴⁵

The practical arrangements referred to here have already been developed. Indeed, the WEU Council of Ministers decided to apply them on a provisional basis before the entry into force of the Amsterdam Treaty in relation to operations under Article J.4 of the Maastricht Treaty.⁴⁶

WEU and NATO are also discussing possible practical arrangements which would allow the participation of WEU Observers, which are not NATO members, in

⁴³ In the IGC several proposals were also advanced for the introduction of clauses of political or financial solidarity for those countries whose participation in military operations abroad is barred for legal or policy reasons, but they were not accepted in the final version of the Treaty: see the Franco-German Document, 'Orientations sur la PESC', *supra* note 14.

⁴⁴ Observer status was expressly created for those Member States of the European Union which were not members of WEU by a WEU Council of Ministers Declaration annexed to the Maastricht Treaty. Rights and duties of the observer states were set out in the Part 3 of the Petersberg Declaration ('On the Relations between WEU and the Other European Member States of the European Union or the Atlantic Alliance'). The case of the involvement of these states in WEU activities upon the request of the European Union was already foreseen in that document: 'Member States of the European Union, which have accepted the invitation to become observers ... will have the same rights and responsibilities as the full members for functions transferred to WEU from other fora and institutions to which they already belong.'

⁴⁵ WEU Ministerial Council, *supra* note 30, at para. 6.

⁴⁶ WEU Ministerial Council, *supra* note 32, at para. 9.

operations in which the WEU makes use of NATO assets and capabilities, for instance the Combined Joint Task Forces model.⁴⁷

Finally, it should be recalled that, through a Protocol annexed to the Amsterdam Treaty, a general opting-out clause was granted to Denmark for decisions and actions of the Union having defence implications.⁴⁸

5 Significance of an EU Crisis Management Capability

Various profiles emerge in an assessment of the impact that the integration of the Petersberg operations into the TEU will have on the CFSP and on the EU role in the international community.

Firstly, as far as CFSP functioning is concerned, Article J.7.2 does not represent a radical innovation. Under Article J.4.2 of the Maastricht Treaty, the EU was already able to request the WEU to implement its decisions on crisis management.⁴⁹ However, for the first time a specific policy has been codified within the second pillar. This codification did not by any means assimilate the policy of crisis management into an exclusive EU competence, but determined the EU's commitment at the highest possible level. From a practical point of view, it stimulated the creation or the adjustment of the complex mechanisms necessary for its implementation. The reformed CFSP set of acts, procedures and organs, together with the progressive development of the operational role of the WEU, constitute the institutional framework for the conduct of Petersberg operations. Particularly with regard to the WEU, the Amsterdam Treaty has generated, even prior to its entry into force, the effect of accelerating the process of setting up an adequate European mechanism for crisis management. Various difficulties still seem to weaken this machinery, for example the complexity of the institutional interplay between and within the EU and WEU, thereby raising some perplexities regarding effectiveness and timing. Nevertheless, at this stage any future inaction by the EU can no longer be attributed to an inadequate institutional and operational machinery, but exclusively to the lack of political will of the European states.⁵⁰

Secondly, with regard to the EU's standing in the international community, the integration of the Petersberg tasks into the TEU signifies some important developments. Article J.4.2 strongly enhances EU visibility in crisis management with respect to the European security organizations and, particularly, the United Nations. In this regard, the question arises whether the EU has become a 'regional agency' under Chapter VIII of the UN Charter. In the light of the Amsterdam Treaty there can no longer be any doubts. Through its activities of peace-keeping and peacemaking, the

⁴⁷ See Assembly of the Western European Union, *supra* note 35, at 2.1 and WEU Ministerial Council, *supra* note 34, at para. 14.

⁴⁸ Protocol on the Position of Denmark.

⁴⁹ According to a certain opinion the EU actually resorted to Art. J.4.2 in the case of Mostar, see Willaert and Marqués-Ruiz, 'Vers une politique étrangère et de sécurité commune: état des lieux', *Revue du Marché unique européen* (1995) 35, at 67. See also Pagani, *supra* note 6, at 251.

⁵⁰ See e.g. the Declaration of the WEU Secretary General at the WEU Parliamentary Assembly, 18 May 1998, in *Atlantic News* (No. 3011, 20 May 1998) 3.

EU is engaged in the maintenance of international peace and security. Its commitment to the principles of the United Nations Charter is stated twice in the CFSP objectives (Article J.1.1). Even if one refers to the now largely superseded debate⁵¹ on the definition of 'regional arrangements or agencies' under UN Charter Chapter VIII⁵² and shares the more restrictive doctrinal interpretations, it cannot be denied that the EU now pertains to this category.

Thirdly, the EU's assumption of responsibility for conflict management could constitute an important contribution, and thus make a significant impact, in the area. The fact that the WEU has a credible military capacity for intervention in crisis management will place the EU in a unique position in the international community and in relation to other security organizations. The EU will have a twofold comparative advantage: on the one hand, it will dispose of an across the board civilian-military intervention capacity and, on the other hand, it will be possible to guarantee a continuum in crisis management — from early warning and humanitarian intervention through post-conflict reconstruction and extending to economic development aid.

In crisis management operations, the availability of qualified civilian resources is becoming as important as the presence of effective military capacity. Peace-, democracy- and capacity-building programmes, such as election monitoring and human rights assistance, are considered crucial for the success of any post-conflict settlement. In this regard the EU, particularly through the Commission, has gained experience and may have the means to mobilize the human and financial resources required in order to effectively confront complex crises. Assuming responsibility for the military aspects of conflict management as well will make it possible for the EU to gather the various forms of international intervention under a single umbrella, a development which will prove immensely beneficial in terms of unity, continuity of action and effectiveness.

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⁵¹ See Gioia, 'The United Nations and Regional Organizations in the Maintenance of Peace and Security', in Bothe, Ronzitti, and Rosas (eds), *supra* note 21, at 204.

⁵² See Hummer and Schweitzer, 'Article 52', in B. Simma (ed.), *The Charter of the United Nations. A Commentary* (1994) 679, at 691.