

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

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Abstract

Art. 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, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking'. Making reference to 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 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 it 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 several positive consequences, both on an inter - European level and externally.

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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.

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 ⁽¹⁾, the Council of Ministers agreed to expand WEU functions in order to include the planning and the 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 ⁽²⁾.

In the following years, the performance of WEU in framing and implementing Petersberg tasks has been judged disappointing. Its activities have been limited to civilian police tasks, like the missions in the city of Mostar within the European Union Administration of Mostar ⁽³⁾, and in Albania as Multinational Advisory Police Element ⁽⁴⁾.

The functioning and the results of the CFSP have been likewise largely criticized and considered ineffective. Particularly unsatisfactory has been the implementation of art. J.4 TEU ⁽⁵⁾.

2. Integration of the Petersberg Operations into the Amsterdam Treaty

During the IGC three options were discussed regarding the relations between the EU and WEU ⁽⁶⁾: first, maintaining the separation between the WEU and the EU without any significant changes in their relationship ⁽⁷⁾; the second, gradually merging the two organizations ⁽⁸⁾; third, integrating a part of the WEU functions into the Treaty.

¹) WEU Council of Ministers, *Petersberg Declaration*, Bonn, 19 June 1992.

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

³) Pagani, "L'Administration de Mostar par l'Union Européenne", 42 *Annuaire français de droit international* (1996) 234 at 249; see also See 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.

⁴) *Ibid.*, Part III.

⁵) See, for example, European Commission, *Report on the Operation of Treaty on European Union*, 10 May 1995. The effective operation of Article J.4 started just during the Italian Presidency in late 1998.

⁶) 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.

⁷) This option was strongly supported by the UK.

⁸) Many countries, France, Germany, Italy, Spain, and the Commission and the Parliament promoted the integration of the two organizations.

This last option, which emerged as an acceptable compromise and did indeed prevail, led to the insertion of the Petersberg tasks into the TEU. It has also resulted in the TEU provision foreseeing "the possibility of the integration of the WEU into the Union, should the European Council so decide" (art. J.7.1). Within this perspective, the decision of integrating Petersberg into the TEU faced no opposition and materialized in the combined provisions of paragraph 1 and 2 of art. J.7 of the Amsterdam Treaty ⁹⁾. 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.

Notably these provisions constitute the first codification of the notion of peace - keeping and peace related operations in the constituent treaty of an international organization. No other treaty of such a legal and political relevance refers to it: There is no mention to peace - keeping in the United Nations Charter; NATO and WEU engagement in these 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 ¹⁰⁾.

The terms employed in art. 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. However the action of the European Union under Article J.7 will come up against a clear limitation: the exclusion from the list of measures of peace - enforcement.

Peace - enforcement operations were expressly ruled out from the list of tasks enumerated in art. J.7.2. One might wonder whether their exclusion will inhibit the EU from any UN Charter Chapter VII operations ¹¹⁾. Such interpretation will strongly inhibit the EU capacity of conflict management. The future practice will prove the import and feasibility of this limitation in the range of EU intervention tools of intervention, given the blurred the distinction between peace - keeping and peace - enforcement that has characterized certain recent peace operations.

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 ¹²⁾. They constitute the integration of a part of the "WEU acquis" into the framework of the European Union. However there is no institutional integration between the two organizations or any legal interweaving of their constituent

⁹⁾ 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* (forthcoming 1998).

¹⁰⁾ 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).

¹¹⁾ This exclusion has been decided late in the IGC, see European Parliament - Committee on Foreign Affairs, Security and Defence Policy. Draftsman: 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.

¹²⁾ See Commission Européenne - Task force "Conference Intergouvernementale", *Note d'analyse sur le Traité d'Amsterdam*, 7 July 1997, par. 12; Parlement Européen - Groupe de travail du Secrétariat Général. Task force "Conference 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, par. 3.2.

treaties - Art. 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 Art. 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 (¹³).

Some important innovations in the Amsterdam Treaty provide a set of procedures for the EU to implement its CFSP (art. 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 art. 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.

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 Art. J.3.3 which states that the Council shall implement common strategies, in particular by adopting joint actions and common positions.

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 on a Petersberg task. This voting procedure does indeed apply for joint actions adopted on the basis of a common strategy, but for those which have military or defence implications (art. J.13.2). However, in order to render the unanimity voting procedure more flexible, Art. J.13.1 provides the possibility of recourse to "qualified (or constructive) abstention". The qualified abstention of several 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 Art. 148.2 of the Treaty establishing the 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.

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 particular provisions which were adopted separately in the legal framework of the two organizations. Art. 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 (¹⁴). In this Declaration the WEU Council of Ministers expressly notes:

¹³) For a scenario in which these mechanisms are applied to a post - SFOR II operation in Bosnia, see European Parliament, *supra* note 23.

¹⁴) 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.

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) ⁽¹⁵⁾.

Given the different voting procedures in the WEU Council of Ministers and in the Council, the need for decision 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 ⁽¹⁶⁾. Procedures for facilitating this process, which could include the holding of joint meetings, are currently under examination and will be included in the future arrangements between the two organizations ⁽¹⁷⁾. A Protocol annexed to TEU notes that these arrangements for enhanced cooperation will be drawn up within a year of the entry into force of the Amsterdam Treaty ⁽¹⁸⁾.

It is worth mentioning the issue whether, after Amsterdam, WEU retains its independent decision - making competence to run Petersberg operations in 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 instituting treaty and subsequent practice. In addition, positions taken by different WEU organs confirm its political will to maintain this independence ⁽¹⁹⁾.

With regard to the operational conduct of these operations, their military dimension will rely on the WEU procedures and structures, and, most likely, on the arrangements set up with NATO ⁽²⁰⁾. 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 of setting, modifying and terminating the mandate.

Art. J.8 TUE states that the EU Presidency is responsible for the implementation of the 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 (Art. J.14) ⁽²¹⁾. Harmonization of the sequencing of WEU and EU presidencies, which has already been approved by the WEU Council

¹⁵) The proposal of concluding a legally binding treaty between the two organizations has not been accepted.

¹⁶) The idea of introducing in the WEU Council of Ministers the principle of constructive abstention 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, par. 5.

¹⁷) A flow - chart has been prepared by the two organizations on their interaction in decisions in conflict management and it has been tested in a simulated exercise in June 1998.

¹⁸) Protocol on Art. J.7 of the Treaty on European Union. A practical model for linking the decision - making process of both Organizations in crisis management operations has been drafted, see WEU Ministerial Council, *Rhodes Declaration*, Rhodes, 12 May 1998.

¹⁹) See for example WEU Ministerial Council, *Rhodes Declaration*, 12 May 1998 (par. 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.

²⁰) 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 forthcoming publication of the WEU Institute for Security Studies, Paris.

²¹) These agreements could include both political settlements and operational arrangements, as 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.

of Ministers ⁽²²⁾, 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 (art. J.8.3), as well as, ultimately, an *ad hoc* appointed Special Representative with an operation - related mandate (art. J.8.4) has not yet been clarified.

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 ⁽²³⁾.

With regard to the financing, in conformity with art. J.18, expenditures arising from operations having military or defense 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 the 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 ⁽²⁴⁾.

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

4. The Participation of non - WEU Member States

In the implementation of the Petersberg operations, a specific problem is posed by the more restricted composition of 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 ⁽²⁵⁾.

The Amsterdam Treaty ensures the participation of all the EU Member States in Petersberg operations decided by the EU. Art. 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.

²²⁾ WEU Ministerial Council, *Erfurt Declaration*, Erfurt, 18 November 1997, par. 10.

²³⁾ 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.

²⁴⁾ "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 has been finalized in Amsterdam at the conclusion of the Amsterdam Treaty.

²⁵⁾ In the IGC several proposals were also advanced to introduce 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 - Séminaire franco - allemand des ministères des Affaires étrangères à Fribourg*, 27 February 1996, *supra* note 14.

Although the five mentioned States already form part of the WEU system with the status of observers (²⁶), the EU decision of implementing a Petersberg task will imply their integral participation in the decision - making process of the WEU. In this regard the second provision of art. 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.

The Council implemented this provision through the Decision of 10 May 1999 concerning the practical arrangements for the participation of all Member States in tasks pursuant to Article 17(2) of the Treaty on European Union for which the Union avails itself of the WEU (²⁷).

These provisions of the Amsterdam Treaty were immediately welcomed by the WEU Council of Ministers in an annexed Declaration, which echoes the wording of art. 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 (²⁸).

The practical arrangements which are referred to by the WEU Council of Ministers 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 art. J.4 of the Maastricht Treaty (²⁹).

WEU and NATO are also discussing possible practical arrangements which would allow the participation of WEU Observer, which are not NATO members, in operations in which the WEU makes use of NATO assets and capabilities, for instance the Combined Joint Task Forces model (³⁰).

Finally, it must 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 which have defence implications (³¹).

²⁶) The observer status was expressly created for the 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 in the 3rd Part 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 under the request of the European Union was here already foreseen:

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.

²⁷) *Official Journal of European Communities*, L 123, 13 May 1999, 14 -17.

²⁸) WEU Ministerial Council, *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, par. 6.

²⁹) WEU Ministerial Council, *Erfurt Declaration*, Erfurt, 18 November 1997, par. 9.

³⁰) See Assembly of the Western European Union, *WEU after Amsterdam: The European Security and Defence Identity and the Application of Article V of the Modified Brussels Treaty - Reply to the Annual Report of the Council*, Report submitted on behalf of the Political Committee by Mr Vrettos, Rapporteur (II.1), and WEU Ministerial Council, *Rhodes Declaration*, Rhodes, 12 May 1998, par. 14.

³¹) Protocol on the Position of Denmark.

5. The Significance of a EU Crisis Management Capability

Various profiles arise in the 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 the CFSP functioning is concerned, art. J.7.2 does not represent a radical innovation. Under art. J.4.2 of the Maastricht Treaty, the EU was already able to request the WEU to implement its decisions on crisis management ⁽³²⁾.

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 the EU commitment. From a practical point of view, it stimulated the creation or the adjustment of the complex mechanisms which are 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 the Petersberg operations. Particularly with regard to the WEU, the Amsterdam Treaty has generated, before 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 ⁽³³⁾.

Secondly, 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 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 the conflict management as well will make it possible for the EU to gather the various forms of the international intervention under a single umbrella, a development which will prove immensely beneficial in terms of unity, continuity of action and effectiveness.

³²) 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.

³³) See for example the declaration of the WEU Secretary General at the WEU Parliamentary Assembly, 18 May 1998, in *Atlantic News* (No 3011, 20 May 1998) 3.