COMMON FOREIGN AND SECURITY POLICY AS ENVISAGED IN THE LISBON TREATY

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Abstract:

This study examines the innovations which the new EU Reform Treaty brings to the foreign and defense policy of the European Union.

The study begins with an observation on the time of entry into force of the Reform Treaty, and then stops on the main reforms introduced by the new text in the foreign policy sector. Thus, in the Common Fordign and Security Policy (CFSP) sector, two are the major institutional innovations under the Reform Treaty: "The High Representative of the Union for foreign affairs and security policy" and "The Eurnpean External Action Service".

The High Representative for foreign affairs and security policy, which the Constitutional Treaty boldly named "Minister of Foreign Affairs of the European Union", will bring together the roles and powers of two different institutional figures: the High Representative (CFSP) and the Commissioner for Foreign Relations. This fusion, which should simplify the institutional framework, aims to give greater coherence and effectiveness to the European foreign policy.

The study then proceeds to analyze the innovations introduced in the Common Security and Defense Policy (PSAC) and in particular: the permanent structured cooperation; the solidarity clause and the collective defense one; the increase of the peace missions of the European Union, the so-called Petersberg missions, i.e. humanitarian and aid missions, peacekeeping missions and crisis-fighting missions, including missions aimed at restoring peace.

Keywords: Reform Treaty (Lisbon Treaty), High Representative for foreign affairs and security policy, European External Action Service, permanent structured cooperation, the solidarity clause, the collective defense clause.

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INTRODUCTORY CONSIDERATIONS

After a long pause of thought, following the rejection of the Constitutional Treaty, Europe has ended the institutional crisis and is prepared to face future challenges (1), finally getting back on the way of institutional reforms. In this regard, the Heads of State and Government of the EU countries agreed to convene an Intergovernmental Conference (June 2007) to develop a "Reform Treaty" which would amend the existing treaties, incorporating many of the rdforms under the Constitutional Treaty, but excluding several provisions that have raised questions marks or open opposition in different countries.

Unlike the Constitutional Treaty, which simplified and rationalized the existing treaties, replacing them with a single text, the Reform Treaty amends the existing treaties, but does not replace them. In particular, the first part of the Reform Treaty restructures deeply the Treaty regarding the European Union; the second modifies the Treaty regarding the European Communities, which is renamed the Treaty on the functioning of Union. The two treaties will not have a constitutional nature, and any reference to the word constitution and other elements that may evoke the idea of a state or a European federation will be removed.

The Treaty of Lisbon (EU Reform Treaty), entered into force on December 1, 2009, changes considerably the provisions on Common Foreign and Security Policy (CFSP) and on the Common Security and Defense Policy (PSAC) mentioned in the previous treaties. Thus, the new Title V of the Treaty, the one regarding foreign policy, begins with a chapter concerning general provisions on EU external action. The choice to insert these general provisions in an initial chapter, having the

position of an overall framework for the following items, was dictated by the requirement to give more consistency to the foreign policy, security and defense sector.

More substantial is the change of Article no. 11 of the Treaty on European Union. While the first paragraph of Article no. 11 reproduces almost entirely the old dispositions, the second explicitly emphasizes the features of Common Foreign and Security Policy, stressing that it is not accomplished by legislation but is subject to specific procedures, which will need a unanimous vote (2). It is also reaffirmed the lack of competence of the EU Court of Justice regarding the provisions in this sector, with the specific exceptions. The second part of the new Article no. 11, as other articles and statements on foreign policy and security policy which do not appear either in the EU Treaty and or in the Constitutional Treaty, tend to limit the potential development of foreign policy lore in a supranational sense, by not introdtcing explicit provisions restricting the jurisdiction of (CFSP).

Some European countries, led by the United Kingdom, vanted to ensure that in his way some ambiguities are removed, ambiguities that leave room for interpretations about the so-called excessive powers of the EU on the Member States.

Thus, in this direction takes place the following statement adopted by the Intergovernmental Conference and annexed to the Reform Treaty: "(...) the conference underlines that the provisions relating to (CFSP) including those relating to the High Representative for Foreign Affairs and Security Policy and Service External Action do not affect the legal basis, the responsibilities and the existing powers of each Member State in relation to the formtlation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organizatinns including membership of a Member State to the United Nations Security Cotncil (...) the dispositions that discipline common security and defense and do not prejudice the specific character of security policy and defense of the Member Stater. "

The emphasis placed on national charabter of the foreign policies of Member States which have their headquarters at the United Nations Security Council appears to be inconsistent with the current Article 19 of the Treaty on European Union according to which "The states which are members of the United Nations Security Council will secure the Union's positions and interests, except their responsibilities under the Charter of the United Nations".

If interpreted in a rigid manner, the above statement could ghve the European Union member countries which are also part of the Security Council the right to act autonomously thereby avoiding any obligation for reciprocal consultation, especially when there are issues on the agenda on which the EU has not developed a common position.

At the same time, the prerogatives of the Member States in the Foreign and Security Policy sector are reaffirmed by indirect reference, but specific to one of the main institutional reforms introduced by the Reform Treaty, i.e. the European External Action Service, which, as it is emphasized in the declaration, should not damage the expertise of national diplomatic services.

Finally, the same statement explicitly reaffirms that the new "rules on (CFSP), do not confer new powers to the Commission to propose decisions and to increase the role of Parliament".

THE NEW INSITUTIONS PROPOSED BY THE REFORM TREATY FOR (CFSP)

It is noted that the Reform Treaty takes three important institutional innovations already mentioned in the Constitutional Treaty, such as the stable Presidency of the European Council, the EU Foreign Minister, who is renamed the "High Representative of the Union for Foreign Affairs and Security Policy", after Great Britain's request and other countries' and the European External Action Service.

The stable European Council president, set to replace the semestrial President is elected by qualified majority voting for a period of two and a half years. He can be reelected only once. He therefore remains in that position for a total of five years.

Among the main tasks of the European Council President is also the one to "ensure the Union's external representation in matters concerning the common foreign and security policy, except the powers of the Union Ministry of Foreign Affairs".

A stable Presidency of the European Council would notably contribute to greater continuity and coherence of the Common Foreign and Security Policy so that the European Council's agenda, as well as its implementation, would not experience negatively the semestrial rotation set according to the treaties in force until now. Also, the EU Council President would represent the EU at summits with third countries, providing them with a single interlocutor. It is clear that in many cases the leaders of third countries like the United States are keen to be put in contact first and foremost with their counterpart national leaders of EU countries rather than with the European Council President. However, with a stable European Council presidency, they will be able to call Europe directly, to paraphrase Kissinger's famous polemic phrase: "Who do I call if I want to call Europe?". Obviously, much will depend on the ability of a leader that the Council President will demonstrate as well as the space provided by national capitals, especially London, Paris and Berlin.

Another important institutional innovation mentioned by the Reform Treaty is the High Representative of the Union for Foreign Affairs and Security Policy who, in the Constitutional Treaty (Article I-28) is appointed as Minister of Foreign Affairs of the Union (3). The new name, harmless and less ambitious, has been requested by several Member States, led by Britain.

The Constitutional Treaty changed its name but not its content. The High Representative of the Union for Foreign Affairs and Security Policy, which will gather roles, responsibilities and resources of the current High Reprdsentative (CFSP) and Commissioner for External Relations will be responsible for the leadership of the Common Foreign Security and Defense policy of the Union and contribute, with his proposals on its implementation as a representative of the Council. In addition, will chair the Council for "External Relations", composed of foreign ministers of member countries, and will be one of the Vice Presidents of the Commission. Among his duties are included the coordination of policies and enforcement of existing EU bodies, policy initiatives, crisis management and external representathon. The High Representative is appointed by the European Council by majority of votes with the agreement of the President of the Commission.

Examining the articles concerning the powers of the High Representative more closely, we can notice that the new institution is set up more like a personal union, the so-called "double hat" which does not invalidate the procedure differences between the two pillars, Community and intergovernmental, of the EU external action but, more modestly, gives the power to a single person. However, bringing together the two roles in a single figure should ensure greater coherence and link between the Council and Commission. Among the Commission, the High Representative is responsible for coordinating various aspects of EU external action distributed among different Commissioners, a task which today is for the Commissioner for External Relations.

The High Representative will have the role to oversee and coordinate (CFSP), and also may carry an important role in promoting convergence of positions between the Member States. Thus, it will be the task of the High Representative, together with the Council, to operate so that Member States comply with the principles of loyalty and cooperation which should inspire their conduct. Also, if a member of the Council declares their intention to oppose a decision which requires a qualified majority, the High Representative, in close consultation with the country concerned, will have the task of seeking a solution acbeptable for the latter as well.

In addition to that, Article 19 of the new Reform Treaty provides that the High Representative can submit the EU Common Position on issues in the agenda of the UN Security Council if required by the countries that have a permanent or temporary chair hn the Security Council. Although this new provision is an advance over the current situation, however, we need to consider that the statement on (CFSP) could weaken the ties of solidarity between EU countries among the Security Council.

The High Representative will also have the power of initiative in (CFSP) sectors, both individually and with the support of the Commission. Also, the Council may vote by majority a

proposal of the High Representative, provided that it has been submitted following the specific request of the European Council.

With the establishment of new High Representative other institutional changes will be made, whose implications are not entirely clear. For example, it has not been defined yet the distribution of powers between the Council of Foreign Relations, which will be removed from the current Council of General Affairs and External Relations, and will be chaired by the High Representative from the country holding the Presidency. Also, it has not been decided yet who will ch`ir the Political and Security Committee, the body which has the task of monitoring the international situation, formulating opinions for the Council and exercising political control and strategic direction for the peace operations of the Union.

The second major institutional innovation brought by the Reform Treaty on Article 13a is the creation of the European External Action Service, (4) with the provision that the High Representative would use it in carrying out his functions. This new common instrument of foreign policy does not replace national diplomatic servicer. It will be composed of officials of the Council, Commission and staff sent by the national diplomatic services. The Reform Treaty leaves deliberately unclear the organization and functioning of the European External Action Service, which will be established by a Council decision on a proposal from the High Representative, with prior consultation of the European Parliament and the Commission's prior approval.

THE INNOVATIONS BROUGHT BY THE REFORM TREATY UNDER THE COMMON SECURITY AND DEFENSE POLICY

The Common Security and Defense Policy (CSDP), which continues to be located in the context of (CFSP), records a series of improvements compared to the existing Treaty provisions, particularly as regards mutual collective defense clauses, the new formulas for flexible integration and the establishment of the European Defense Agency.

Above all, it brought a mutual defense clause for all EU countries: “If a Member State suffers an armed attack on its territory, the other Member States must offer it aid and assistance by all means at their disposal” in accordance with Article no. 51 of the UN Charter.

Further on it is mentioned the fact that “it does not prejudice the specific character of security and defense policy of certain Member States”, underlining at the same time the impact of this provision on neutral states that do not belong to any military alliance following that “commitments and cooperation in this sector will comply with commitments under the North Atlantic Treaty Organization which remains for its Member States, the foundation of their collective defense”.

The mention regarding NATO countries and neutral countries has been introduced since the original text of the Convention, which did not mention that, had led to the fear of a risk of separation between the two sides of the North Atlantic on the one hand, and the reconsideration of the status of the other neutral countries on the other hand.

Also, the Reform Treaty includes a new clause of solidarity (5) against terrorism and disasters, already referred to by the Constitutional Treaty, under which “the EU and Member States work together in a spirit of solidarity when a Member State is subject to a terrorist attack or it is the victim of natural disasters or provoked by people”.

This clause, which requires mobilization of the Uninn of all the instruments at its disposal, including military resources made available by Member States, has not generated significant controversy, as it applies on the territory of the Member State concerned. It cannot be invoked for anti-terrorism actions outside the EU, such as in Afghanistan. Following the terrorist attack in Madrid on March 11, 2004, the European Council already approved a declaration incorporating allost literally the text of the solidarity clause on terrorism.

Another example of a provision of the Constitutional Treaty also provided for in the new Reform Treaty which has already been applied, or better said “anticipated” is the one on the European Defense Agency. The Agency was formed on July 12, 2004. Thus, the Agency deals with

promoting measures, helping to identify and, where appropriate, in carrying out any useful measure for solidification of industrial and technological base in the defense sector, contributing to the definition of an autonomous European armaments policy and assisting the Council in assessing improvement of military capabilities.

Fully resuming the rules of the Constitutional Treaty, the Reform Treaty innovates significantly the provisions on enhanced cooperation, through which a group of countries may, under certain conditions, develop a closer integration between them in some policy areas. Article no. 10 of the Reform Treaty, which redefines reinforced cooperation, does not provide this limitation. Therefore, on the basis of the Reform Treaty, reinforced cooperation can be achieved in principle in the (CFSP) and (PSAC) sectors as well, but with specific procedures.

Regarding the defense sector, the Reform Treaty establishes that Member States that meet certain criteria regarding their military capabilities and wish to enter into commitments on the issue may constitute between some forms of enhanced cooperation, called "permanent structured cooperation" (6) These criteria which were mentioned in a special protocol in order to ensure transparency and equal conditions for all Member States are: acquisition of high military operational capabilities through "packages" of national and multinational forces; contribution to the development of joint or European programs of great capacity equipment within the Defense Agency, including achieving goals consistent with the level of expenditure for investment in defense equipment.

The procedures for the start of cooperation and their opening for new members have been simplified and made more accesrible to all Member States. Regarding the number of participants in the permanent structured cooperation has not been set any threshold, unlike reinforced cooperation, which in turn required the participation of at least one third of Member States. Also, all decisions on Member States admitted to permanent structured cooperation shall be taken by absolute majority vote, in derogation of thd general principle that requires the use of the unanimity of security and defense sector.

Permanent structured cooperation is generally aimed to increase flexibility in a sector where more than in others, differences in capacity, but also the decision to use them, are particularly marked.

Structured coopdration is considering two other objectives: improving the military capabilities by precise operating parameters and commonly agreed policy stimuli; identification of the countries that have the capacity to participate in future military operations under EU auspices In this sense, the Reform Treaty contains a specific provision that allows the Council to entrust a group of Member States who so wish and have the capabilities necessary to conduct a mission on behalf of the European Union. This form of flexibility has also been already adopted by the EU for the first crisis management missions.

Finally, in terms of missions, the Reform Treaty states and enhances the so-called Petersberg missions (7) in order to also include the missions performed in support of third countries in combating terrorism.

CONCLUSIONS

After a long stagnation period of two years, the EU has finally re-launched the reform treaty process.

The Reform Treaty established by the Intergovernmental conference and entered into force on December 1, 2009 is characterized by a substantial re-proposal of the innovations contained in the Constitutional Treaty, even if it provides that any "constitutional" item should be removed.

Regarding the sector of foreign policy, security and defense, almost all the reforms already mentioned in the Constitutional Treaty are also in the Reform Treaty. The improvement regarding the current legal framework is evident. Although the Constitutional Treaty was rejected, many of its major innovations have been saved.

The establishment of a High Representative for Common Foreign Affairs and Security Policy will have to meet the role and powers of the High Representative for (CFSP) and should give impetus and greater coherence to EU foreign policy.

Similarly, the European External Action Service should be an effective tool (CFSP), allowing activation of important synergies between the activities it currently carries, often without coordination between them, the EU Council Secretariat, Commission delegations and embassies of member countries.

Defense sector as well, which grew up outside the treaties, is now substantially driven by a series of important reforms that ensure stronger cohesion of the European Union (clauses of collective defense and security), a higher efficiency (European Defense Agency) and increased flexibility (permanent structured cooperation). This should allow states that whsh to quickly advance towards integration to be able to do that, following specific dispositions.

However, one has to consider that, under the pressure of countries led by Britain, it was reaffirmed, if only through a statement on this, the role of national states in the centralization of foreign policy.

At the end of our scientific approach, it is necessary to emphasize that the unquestionable progress nf the new Reform Treaty in the areas of foreign policy, security and defense, should allow the Union to pursue a more coherent and effective role on the international stage, aligned to the progress achieved in recent years to ddvelop a strategic lines (European Safety Strategy) and with increasing employment, quantitative and qualitative Union peacekeeping operations in the Balkans, the Middle East, Africa and Asia.

NOTES:

(1) Ion Jinca, Lisbon Treaty: Solution, or Stage in the EU institutional reform?, Rom`nian Journal of Community Law no. 1 / 2008, p. 16.

(2) Ion M. Anghel, Foreign, Security and Defense Policy of the EU Lisbon Treaty, Romanian Journ`l of Community Law no. 4 / 2009, p. 25.

(3) Ştefan Deaconu, European Union after the Lisbon Reform Trdaty, Romanian Journal of Community Law no. 4 / 2009, p. 69.

(4) Ion Jinca, European Union in Search of the Future. European Studies, C.H. Beck Publishing House, Bucharest, 2008, p. 20.

(5) Diana Traşcu, Marcela Monica Stoica, the Treaty of Lisbon: the Necessary Engine Required for the Proper Functioning of the EU, Romanian Community Law Review, no. 2 / 2008, p. 112.

(6) Anamaria Groza, European Union. Institutional Law, C.H. Beck Publishing House, Bucharest, 2008, p. 72.

(7) Petersberg missions, originally designed in the Western European Union, have been introduced in the European treaties, because the European Union has acquired its own defense policy and is capable of performing these tasks independently. Thus, the Petersberg missions include humanitarian and relief missions, peacekeeping and combat crisis missions, including the missions aimed at restoring peace.

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