



What is in the Draft Constitutional Treaty and what are the implications?

The main parts of the Draft Constitutional Treaty which reflect the militarization of the EU are to be found in the following Articles which are reproduced here in full (there are a number of other articles relating to the Common Foreign Security Policy which can be found in Part III of the Draft Constitutional Treaty):

Article 40: Specific provisions for implementing the common security and defence policy (*emphasis in italics: QCEA*)

1. The common security and defence policy shall be an integral part of the common foreign and security policy. *It shall provide the Union with an operational capacity drawing on assets civil and military.* The Union may use them on *missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter.* The performance of these tasks shall be undertaken using capabilities provided by the Member States.
2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

3. *Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council of Ministers.* Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. A European Armaments, Research and Military Capabilities Agency shall be established to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council of Ministers in evaluating the improvement of military capabilities.

4. *European decisions* on the implementation of the common security and defence policy, including those initiating a mission as referred to in this Article, *shall be adopted by the Council of Ministers acting unanimously* on a proposal from the Union Minister for Foreign Affairs or from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.
5. The Council of Ministers may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by Article III-211.
6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish structured cooperation within the Union framework. Such cooperation shall be governed by the provisions of Article III-213.

7. Until such time as the European Council has acted in accordance with paragraph 2 of this Article, closer cooperation shall be established, in the Union framework, as regards mutual defence. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military or other, in accordance with Article 51 of the United Nations Charter. In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article III-214.
8. *The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy, and shall be kept informed of how it evolves.*

Article III-205

1. The Union Minister for Foreign Affairs shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy, including the common security and defence policy, *and shall ensure that the views of the European Parliament are duly taken into consideration.* The European Parliament shall be kept regularly informed by the Union Minister for Foreign Affairs of the development of the common foreign and security policy, including the common security and defence policy. Special representatives may be involved in briefing the European Parliament.
2. *The European Parliament may ask questions of the Council of Ministers and of the Union Minister for Foreign Affairs or make recommendations to them. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.*

Article III-210

1. The tasks referred to in Article I-40(1), in the course of which the Union may use civilian and military means, *shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.*
2. *The Council of Ministers, acting unanimously, shall adopt European decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation.* The Union Minister for Foreign Affairs, acting under the authority of the Council of Ministers and in close and constant contact with the Political and Security Committee, *shall ensure coordination of the civilian and military aspects of such tasks.*

Article III-211

1. Within the framework of the European decisions adopted in accordance with Article III-210, *the Council of Ministers may entrust the implementation of a task to a group of Member States* having the necessary capability and the desire to undertake the task. Those Member States in association with the Union Minister for Foreign Affairs shall agree between themselves on the management of the task.
2. The Council of Ministers shall be regularly informed by the Member States participating in the task of its progress. Should the completion of the task involve major new consequences or require amendment of the objective, scope and conditions for implementation adopted by the Council of Ministers under Article III-210, the Member States participating shall refer the matter to the Council of Ministers forthwith. In such cases, the Council of Ministers shall adopt the necessary European decisions.

Article III-282

The Court of Justice shall not have jurisdiction with respect to Articles I-39 and I-40 and the provisions of Chapter II of Title V of Part III concerning the common foreign and security policy.

The implications

Although there are several cursory references to the civilian and military capabilities in these Articles, the thrust of all of them is to ensure that the European Union enhances its military capabilities and that the focus of the Common Foreign and Security Policy and the European Security and Defence Policy is firmly focused on the military.

This is why the Draft Constitutional Treaty does propose a European Armaments, Research and Military Capabilities Agency (which has already been agreed even though the rest of the Treaty has not) and does not propose a similar agency which would focus on civilian capabilities. This despite the fact that many of the specific operational activities listed in Article III - 210 (*joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation*) are clearly civilian tasks where military intervention is likely to contribute to long term problems rather than to resolve them.

The implications of the decision making powers embedded in these articles are also worthy of note:

Issue	Comment
The integration of these Articles into the Treaty makes military (and to the extent that it is referred to civilian) intervention in conflict situations outside the Member States an EU competence	This may not be something that citizens are aware of. It means that Member States (and in particular Member States' Parliaments have a lesser role to play in such decisions.
The EU Foreign Minister (together with the Commission) or Member States can initiate interventions	This is another clear indication that the competence for such matters is shifting towards the EU.
The EU Foreign Minister has to consult the EP and to report to them.	The EP does not have power of co-decision in these matters; i.e. the elected representatives of the citizens of Europe are merely consulted.
The European Court of Justice has no jurisdiction over matters relating to Common Foreign Security and European Security and Defence Policies	There is no recourse to the European Court of Justice in instances where the EU has exceeded its powers in these matters.
There is reference to the principles of the Charter of the UN in the context of decisions to be made about intervention.	It does not state clearly that the EU would intervene only with a UN Security Council mandate; on the contrary, Article III 210 leaves it to the Council of Ministers to make decisions about interventions. That conflicts with international law.