



Parliamentary Update 3 – 9 June 2008

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Following the meetings of the Committee on Foreign Affairs (AFET) on 3 June and the Subcommittee on Security and Defence (SEDE) on 9 June, this month's 'Parliamentary Update' includes coverage of the recent AFET delegation visit to Afghanistan, an opinion on the Parliament's new role and responsibilities implementing the Treaty of Lisbon, a report on space and security, debate on public contracts in the fields of defence and security and transfers of defence-related products and an exchange of views between the Commission and the Committee on the Dublin Conference on Cluster Munitions and between the SEDE Subcommittee and Zorica Bukinac Cimperšek, President of the Working Group on Conventional Arms Exports (COARM).

AFET Delegation Visit to Afghanistan

In the AFET Committee on 3 June, MEP Philippe Morillon (ALDE) – Vice-Chairman of the Delegation for relations with Afghanistan – delivered his report on the recent AFET delegation visit to Afghanistan between 26 April – 1 May 2008.

On security, Morillon stated that while the Taliban were still organizing attacks around the country – including the assassination attempt on President Hamid Karzai's life on 27 April 2008 – he was impressed by the 'solidarity' between Western and Afghan forces. Morillon pointed-out that while there was a long way to go, it might now be possible for Western forces to hand-over more responsibility to Afghan forces, which would free-up Western forces to police the country's porous borders.

Regarding reconstruction, Morillon stated that redevelopment plans had so far resulted in some very concrete results. This he stated could be partly blamed on the lack of coordination between government authorities and the failure of the government to define key priorities or a 'masterplan' for future development. Morillon then suggested that agriculture be made a priority in any reconstruction plan, particularly as the harvesting of the poppy crop was still a major international issue. In this sense, he stated that he had heard some farmers were paid a sum of US\$800 000 by international donors to grow potatoes and wheat instead of poppies, and suggested that this could be a plan to replicate across Afghanistan.

Finally, Morillon turned to the issued of good governance and placed particular emphasis on the state of the Afghan parliament. In this regard, Morillon notioned that it was a shame that President Karzai had no obvious opponent for the 2009 elections, and that it only a candidate of Pashtun ethnicity – which represent a sizeable but not dominant proportion of Afghan society – was ever likely to lead in the future. He continued by suggesting that if the Afghan parliament is to work effectively it might be a good idea to reduce the number of parties to approximately ten, as opposed to the hundred parties that are currently represented.

Stabilization of Afghanistan: Challenges for the EU and the International Community

In the same session, MEP Andre Brie (GUE/NGL) delivered his report on the ‘Stabilization of Afghanistan: Challenges for the European Union (EU) and the International Community’. Brie commenced by stating that what is now needed is frankness vis-à-vis Western policies in Afghanistan. He called on foreign powers in Afghanistan to stop using the country as a ‘playground’ for their own political battles, and instead focus on some of the major problems presently facing the country.

Brie went on to state that most Afghans had high-hopes for the future but remarked that a greater effort was needed to afford protection to women against violence (who in some cases were burned as ‘punishment’ by their husbands) and emphasize the importance of getting more girls into education. Brie also remarked that there appeared to be an independent media who are allowed to work relatively freely, but condemned the arrest of journalist Sayed Parwez Kambakhsh - now on death-row for downloading documents relating to women and Islam. He concluded by saying that Afghans should be given more responsibility and ownership for the development of their own country.

In the debate that followed, MEP Katrin Saks (PES) suggested that no amount of road or schools, as welcome as they are, is going to solve the bigger problem of instability in the country. Saks stated that the Taliban are still perpetrating frequent attacks all over the country and are working hard to recruit members of Afghanistan’s security services – where they pay members of the police up to US\$150 compared to a government wage of US\$50. She also stated that rather than dealing with issues such as traffic and crime the Afghan police have to deal with non-police issues such as armed conflict.

Commenting on Morillon’s assessment, Saks then pointed-out that the judicial system needed immediate attention after claiming that 10% of judges are illiterate and the legal system dates back to ‘Soviet times’. She continued by saying that the Afghan Parliament is still an establishment for individuals rather than parties and it holds no control over the government. On the issue of agriculture, Saks stated that it made better sense for the international community to focus on the issue of drug-trafficking rather than on the annihilation of the poppy crop, as it represented a major part of Afghanistan’s economy.

In concluding remarks, MEP Ana-Marie Gomes (PES) stated that after the AFET delegation visit she had come back with an entirely different point of view of Afghanistan. She notioned that Afghanistan is going to need many years to develop as it is presently stuck in the ‘middle-ages’. Gomes proceeded by suggesting that the international community now needed to re-focus its efforts from the ‘war on terror’ to the security of civilians, and that any new plan for the country be a political rather than military one. She concurred with the views of Morillon and Saks and stated that the judiciary is completely neglected, but also stated that local NGOs with good knowledge of the country – not foreign but Afghani – be brought into the development and reconstruction phase.

Parliament’s New Role and Responsibilities Implementing the Treaty of Lisbon

On 3 June, President of the AFET committee MEP Jacek Saryusz-Wolski (EPP-ED) unveiled his draft opinion on the European Parliament’s (EP) role and responsibilities implementing the Lisbon Treaty. Saryusz-Wolski opened by remarking that the guiding principle of the opinion was the added functionality of the EP in foreign affairs.

Saryusz-Wolski went on to state that the aim of the opinion was to have a maximalistic approach - within the legal confines of the Lisbon Treaty (if ratified) - to the EP’s scope in the Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP). He went on to suggest that the EP would work with the new High Representative of the Union’s Foreign and Security

Policy in his or her role as a Vice-President of the Commission and not as a member of the Council¹, which should in theory give the EP more control over the CFSP and ESDP.

MEP Karl Von Wogau (EPP-ED) – Chairman of the SEDE subcommittee – commenced the debate by suggesting that if the EP is truly to be effective in the CFSP it needs to be much quicker in providing EP Resolutions² on planned ESDP missions. If, as Von Wogau continued, the EP could not provide Resolutions on foreign affairs matters in a timely fashion then it would be impossible for the EU to know what the EP is thinking. On this same point, he also suggested that there should be a much better communications channel between the EP, the Commission and the Council on external relations issues.

Gomes also commented on Saryusz-Wolski's opinion by agreeing with Von Wogau that the EP had to increase its scrutiny of the ESDP through timely resolutions. She also went on to suggest that as part of the EP's scrutiny of the ESDP, Von Wogau, as Chairman of the SEDE Subcommittee, should be allowed to be part of regular European Defence Agency (EDA) steering board meetings, as it is essential that the EP have a presence in the EDA beyond that of an observer as is presently the case.

Space and Security

In the same session, Von Wogau commented on his draft report on the 'Contribution of Space-Supported Systems to ESDP' by stating that the EU has a problem in the field of space and security. He claimed that it is obvious that satellites are required for navigation purposes but they are needed even more urgently in the field of ESDP missions, especially in places where the geography is testing and sometimes treacherous. He continued saying that soldiers undertaking ESDP missions need the correct intelligence support to conduct operations successfully, and above all else, safely.

Von Wogau highlighted that of the satellite systems currently in operation in the EU including Helios (France) and TerraSAR-X (Germany) none had been made available for autonomous use for ESDP operations. He went on to state that while he welcomed the adoption of the 'European Space Policy'³ and its legal basis under the Lisbon Treaty, more could be done to develop the EU Satellite Centre (EUSC)⁴ to make use of its full potential. Von Wogau concluded by urging member states to pool and exchange intelligence where necessary in order to limit costs and provide for European-wide security.

MEP Metin Kazak (ALDE) welcomed Von Wogau's remarks and re-affirmed the need to harmonize efforts in space policy for its operational benefits and added value to citizens. There is an urgent need to harmonize the EU's space policy as soon as possible otherwise we risk the lives of soldiers and undermine the EU's credibility in the field. Kazak notioned further that a common position should be adopted by the EP as a precondition for further efforts on space related matters.

In contrast this, MEP Tobias Pflueger (GUE/NGL) took exception to the emphasis placed on the military aspect of space satellites and suggested that any space 'deployment' be used for purely civilian purposes such as Global Position System (GPS) units. Pflueger maintained that he thought the militarization of space was something the EP should work against not towards, and warned that the

¹ If ratified the Lisbon Treaty will merge the European Commissioner for External Relations and the High Representative for the CFSP into a single High Representative of the Union's Foreign and Security Policy, who will head the European Council's Foreign Affairs Council and serve as a Vice-President of the Commission.

² The EP can pass resolutions with a vote in plenary – with or without debate - that are tabled by Members and by the parliamentary committees. After voting, the resolution is adopted and published and forwarded to relevant parties.

³ The European Space Policy aims to attain independent and autonomous space systems for the European Union and it has been specifically mentioned in the Treaty of Lisbon under Article 189. See: <http://register.consilium.europa.eu/pdf/en/08/st06/st06655.en08.pdf>.

⁴ The European Union Satellite Centre is located in Torrejón de Ardoz near Madrid, Spain and is so far the only autonomous satellite system for the CFSP and ESDP.

legal basis for the utilization of satellite systems such as Galileo for ESDP missions (or any military operations) was not explicitly mentioned in the Treaty of Lisbon.

Concluding, Morillon responded in criticism of Pflueger's objections by saying that the EU should not become hypocrites on the space issue. Morillon saw no sense in the EU relying on other countries for satellite imagery and intelligence, and that it made sound strategic sense to be able to provide one's own intelligence capabilities. He ended by welcoming Von Wogau's draft report and calling for research and development of space related issues to be made an absolute priority in the AFET Committee and SEDE Subcommittee.

Public Contracts in the Fields of Defence-Related Products

In the SEDE Subcommittee on 9 June, Gomes began her presentation on the particular issue of public contracts in the fields of defence-related products. She explained that the SEDE Subcommittee backs the proposal of a joint EP and Council directive on the 'coordination of procedures for the award of certain public works contracts, public supply contracts and public service contracts in the fields of defence and security' – 'the defence procurement directive'⁵.

Gomes continued by stating that the text would create a harmonized European market of defence products, which would offer better defence equipment and greater cost effectiveness in the defence field. Von Wogau - Chairman of the SEDE Subcommittee - stated that thanks to this new directive member states would only be able to apply Article 296 of the Treaty of Amsterdam⁶ in extraordinary circumstances, and that in the main, they could no longer restrain competition in defence procurement. This he stated was a positive step-forward.

There were, however, several points on which certain members of the Subcommittee disagreed with the Commission's draft Directive. Firstly, the Commission's proposal only liberalized those arms, munitions and/or war materials on the 'Council 1958 List'⁷, which has never been formally published nor updated since its adoption fifty years ago, and is sure to include outdated military equipment. A Commission representative recognized that there were problems drawing on the 1958 list, but stated that the outdated nature of the list allowed member states to apply Article 296 in a restricted manner – i.e. they would not be able to apply it on new defence equipment.

A number of members of the Subcommittee agreed that the list was totally outdated. MEP Glyn Ford (PES) pointed out, as did MEP Mihael Brejc (EPP-ED) and Gomes, that use of the list would mean that all new kinds of defence-related products produced after 1958 (such as satellites) would surely not be covered by the directive and so, liberalization of defence procurements would be highly limited. Hence the Subcommittee is in favor of basing the Directive on the list established by the EU Code of Conduct on arms exports, ten years ago.

Then, the Subcommittee recognized the necessity to protect information in such a sensitive field, as it recognized the need for transparency in the relations between contractors (especially to fight against corruption). Hence, von Wogau, Gomes and Ford insisted on the fact that the second amendment

⁵ Please note that while this is a joint EP and Council proposed Directive, the task of drafting and presentation has been delegated to the Commission.

See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0766:FIN:EN:HTML>

⁶ Article 296 of the Treaty of Amsterdam was initially laid-down in Article 223 (1.b) of the Treaty of Rome (1958) and stipulated that any member state could take measures to protect their market relating to arms, munitions and war material.

⁷ This list accompanied Article 223 (1.b) of the Treaty of Rome and stipulated the different types of defence equipment which could be protected from competition.

proposed by the Subcommittee (on the creation, by the Commission, of an EU security of information system, to smooth exchange of information between contractors) is quite relevant.

The Commission answered that it agreed on the amendment but that it needed more time after the publication of the Directive to implement such a mechanism. MEP Evgeni Kirilov (PES) specified that such a transparency would also be good for EU member states in so far as it could be used as a tool to put pressure on tariffs.

Transfers of Defence-Related Products

MEP Angelika Beer (Greens/EFA) presented a draft opinion on a proposed Directive to simplify terms and conditions of transfers of defence-related products within the Community⁸.

Beer observed that such a proposal is fundamentally sound in so far as it would smooth exports of defence products within the EU, and (combined with the future directive on public contracts in the fields of defence and security) participate in the strengthening of the technological and industrial basis of the European Defence.⁹ Furthermore, the Commission's proposal mentions that States are still allowed to restrain exports in regard to the risks for preservation of human rights, peace, security and stability created by a transfer.

However, despite the Subcommittee appreciating the simplification of rules, there remain concerns about the exportations of defense-related products towards fragile or third states in conflict. Beer also noted that the EU Code of Conduct on Arms Exports¹⁰ does provide a first barrier in preventing exports of weapons or war material to states in conflict. However, the Code of Conduct is not legally binding and the Commission controls its application only on the basis of reports established by states. Hence, Beer pleaded in favor of the creation of a body in charge of export control to third states. Furthermore, her draft opinion states that it is in the interests of the EU to keep records of sales as long as possible (5 years versus the 3 years proposed by the Commission). To enhance traceability, the draft opinion calls for the creation of a list of persons in charge of arms transfers and the end user of the arms. Moreover, the duration of licenses to export (given by governments) should be shortened (from 5 to 3 years). Finally, the draft opinion insists on the need for the directive to underline a strict forbidding of re-exportation of material if the state to have first exported a weapon, then opposes the re-exportation of the weapon by the recipient state.

In response the Commission argued that all measures aiming strengthen the control of exports might not be accepted by member states, especially when France is to take the EU Presidency and has backed the proposed Directive but vetoed any proposal to make the Code of Conduct legally binding. Hence, Gomes is opposed to the creation of an agency to control exports of defence related products, such as the one that Beer put forward, as it would involve another bureaucratic structure and hence increase the reluctance of states to back the proposed Directive. MEP Hannes Swoboda (PES) agreed with Gomes and said that the EU had to find a compromise between the demands for traceability and the smoothing of defence product exportations.

Chairman of the Subcommittee von Wogau concluded by remarking that the European Community is an economic community, so it has to facilitate exports, but is also a community of peace and thus there

⁸The Commission's draft of this directive can be found on the following webpage:
http://ec.europa.eu/enterprise/regulation/inst_sp/docs/consult_transfer/Defense_Directive_Proposal_EN.pdf

⁹ See EP Update on EDTIB in ESR no. 36, November 2007 and ESR no. 37 March 2008.

¹⁰ The EU Code of Conduct on arms export can be found on the following webpage:
http://ec.europa.eu/external_relations/cfsp/sanctions/codeofconduct.pdf

was a need to take into account amendments aiming to strengthen control on exports towards third States.

Exchange of views between the Commission and the Committee on the Dublin Conference on Cluster Munitions

The representation of the Commission opened the exchange of views on the Dublin Conference on clusters munitions by announcing that on the 30th of May 2008, over 100 countries had adopted the Cluster Munitions Convention. This conference agreed on a final convention forbidding the use, production and transfer of cluster munitions. Furthermore, the Convention involves obligations for States to destroy their stocks of cluster munitions, launch mine clearance actions and prevention campaigns among civilians.

The Commission deplored the absence at the conference of the most important producers and users of this kind of munitions (i.e. China, India, Pakistan, Russia, the US) and pointed out that, due to its special legal status, the European Union did not directly participate in the conference. However, the EU was present as an observer and is pleased by the adoption of the Convention and the Commission has backed several projects in countries affected by cluster munitions.

When asked by MEP Helmut Kuhne (PES) about the member states' positions vis-à-vis the conference, the Commission replied that there was a fracture on the issue. Indeed, Ireland and Austria played a key role in the promotion of Convention. However, other countries (such as Greece and Romania) argued that the Convention should be debated and elaborated by national experts in the Oslo process and not in the over-politicized UN framework. Notwithstanding, the Commission could not speak for the Council and was unable to give official member states' positions¹¹.

Exchange of views with Mrs. Zorica Bukinac Cimperšek, President of the COARM

On the occasion of the 10th anniversary of the EU Code of Conduct on Arms Exports, Mrs. Zorica Bukinac Cimperšek exchanged views with the Subcommittee on the application of the Code of Conduct.

The COARM is the EU working group on conventional arms and over the ten last years, it has had an important history covering enlargement, expansion of information sharing and the problem of a legally binding Code of Conduct. Indeed, to some NGOs, the Code does not help as it remains in the realm of 'soft' law; on the other hand, firms claim that member states interpret this code too rigidly. However, there are some positive elements in so far as the Code has involved greater transparency and information sharing in the arms transfer field.

Cimperšek presented the main achievements of COARM under the Slovenian EU Presidency. She specified that COARM organized several seminars and official meetings with government representatives or NGOs, mainly to discuss the issues of arms export controls and refusal of arms exportation licenses. The regular meetings with representatives from EU member states particularly dealt with the implementation of a common position on exportation control. Cimperšek also noted that COARM wished to be involved in the debate vis-à-vis the proposed Directive on public contracts of defence-related products.

¹¹ According to *Cluster Munition Coalition*, so far 22 member states of the EU have adopted the convention: www.stopclustermunitions.org/the-solution/the-treaty/?id=84

The COARM also backed the universal project of an Arms Trade Treaty through the organization of the Ljubljana meeting on the 23 January (with representatives from the Industry, national experts and members of the SIPRI) on the role of the European Parliament on arms exports control transparency. This meeting also encouraged Western Balkan states to create their own reports on arms trade and thus participate in the development of good state practices.

However, Cimperšek deplored the fact that there was too little support for making the EU Code of Conduct legally binding, but it does not mean that the COARM should cease to promote it.

MEP Raul Romeva i Rueda (Greens/EFA) was satisfied with the previous and ongoing work. However, he stressed the importance of solving the technical gaps existing in the field of arms export controls between old and new member states. He also hoped that the Slovenian efforts to make the Code of Conduct legally binding will be continued by the next EU presidencies.

Romeva underlined a range of problems related to the Code of Conduct. The Code suffers from a too wide margin of interpretation, which enabled some member states to export arms towards Myanmar, Saudi Arabia or even Sudan. To strengthen the precision of the Code, a list of states that could potentially be under arms embargo should be established. Cimperšek responded that a list of states in conflict or 'fragile' states was established but that it was not yet approved.

Rueda believes that the scope of the Code should be widened so it also encompasses private military and security companies (PMSCs) and use of products intended for purposes of torture. The president of COARM declared that instruments of torture have already been targeted by EU laws and she asserted that the debate is clearly open on the issue of PMSC.

Rueda also asked how states were applying the Common Position on Arms Brokering¹², which could eventually allow an arms exporter to avoid EU legislation and control, once the arms had reached the international market. On this point, Cimperšek said that member states have established reporting on arms brokering but even though five states do not have national legal mechanisms to hence effect this common position, this does not mean that mechanisms do not exist to control such a practice.

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¹² The EU Common Position on Arms Brokering can be found on the following webpage: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:156:0079:0080:EN:PDF>