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A European Security Council

Added Value for EU Foreign and Security Policy?

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A European Security Council (ESC) would – so the German government has suggested – make the European Union (EU) better prepared for making decisions about international politics and thus better able to act. It believes that if the EU and its member states do not manage to take and implement coherent decisions more quickly, their ability to (further) enforce European rules and strengthen multilateral formats will be weakened. The EU-27’s diplomatic, financial and military resources should therefore be supplemented by a format for more effective intergovernmental cooperation. However, this idea can only take shape if the German government can demonstrate the added value of such a body, and if it shows more willingness itself to shape foreign policy within the EU framework.

The EU has a rather bad reputation as a foreign and security policy actor. Europe’s immediate political environment is changing rapidly, yet the EU’s (still) 28 members are failing to formulate rapidly and coherently common responses to the countless foreign policy upheavals confronting them. Even when they do make decisions, they lack the political will and often the material capacity to implement them. Aside from a few exceptions, such as the sanctions imposed on Russia following its annexation of Crimea, the EU states have not managed to act effectively.

To counter this deficiency, Chancellor Angela Merkel, in her speech to the European Parliament on 13 November 2018, once again proposed creating a European Security Council. This would consist of parts of the EU membership, according to

a principle of rotation, and coordinate closely with the High Representative of the Union for Foreign Affairs and Security Policy and the European members of the United Nations Security Council (UNSC). In the early summer of 2018, Germany, together with France, had already advocated a European debate on “new formats”, “such as an EU Security Council, and possibilities for closer coordination within the EU and in external forums”.

At first glance, the thrust of this initiative is surprising. There is no institutional deficit in the EU’s Common Foreign and Security Policy (CFSP). On the contrary, the EU shapes its external relations, both strategically and operationally, with the help of a multitude of bodies. The few German statements on the ESC therefore give the impression that a task has yet to be found



for it. In fact, pursuing the idea only makes sense if two questions can be answered unambiguously:

- a. What deficits in EU foreign and security policy could a European Security Council eliminate?
- b. What added value is it meant to bring to the EU's institutional structure, and what objectives could it help the EU and its member states to achieve better?

An Answer to the Shortcomings of EU Foreign Policy?

The reasons for the EU's inadequate external actions are well known. First, the road to decision-making in the EU is too long. The greatest obstacle here is the requirement for unanimity among member states. The diverse, often geographically driven interests, as well as the different choices in foreign policy means, prevent EU states from pursuing a foreign policy that is more than an expression of the lowest common denominator. Even the High Representative can do little to influence this. Today, however, this approach is clearly no longer sufficient in terms of shaping the EU's neighbourhood as a force for order, and countering the crises and conflicts that are impacting on it. It is no surprise therefore that the EU is largely absent as a collective actor concerning diplomatic efforts to contain the war in Syria. In Ukraine, the EU states let the OSCE take precedence in conflict management. The military fight against international terrorism is led by the United States. Only NATO and some EU states, but not the entire EU, have joined the US international alliance against "Islamic State". Moreover, since the US is withdrawing from multilateral formats and related international frameworks, the EU and its member states are faced with the question of how to give more weight to their own position.

Second, the EU lacks an executive force with the power to implement decisions that have been taken. The long road to decision-making corresponds to a frequent reluc-

tance on the part of EU member states to implement decisions, most conspicuously in security and defence policy. A striking example of the EU's lack of executive power is its battlegroups: they are not deployed because it is precisely the states that currently lead such a group which block its use.

Integration Policy: Added Value through the ESC?

An ESC would also have to be integrated into the EU's institutional structure. Here, Germany needs to provide an answer to the following question: how can this new body speed up decision-making and strengthen the EU's foreign policy capacity? Four formats with different political ambitions are conceivable:

a) The ESC along with the European Council: in this version, the body could serve to make the foreign and security policy conclusions of the European Council more visible, to both the international community and EU citizens. As the Assembly of Heads of State and Government, the European Council is the main decision-making body in the EU. It meets to define strategic interests and objectives, including for the EU's Common Foreign and Security Policy. However, foreign and security policy issues have so far tended to play a secondary role in European Council meetings. A Security Council organised as an informal body in the margins of European Council meetings could remedy this. Its members would have the task of putting foreign and security policy issues on the Council's agenda and drawing up opinions and recommendations on strategic issues in cooperation with the High Representative. The ESC could thus help to raise awareness of foreign and security policy decisions.

On the other hand, the EU would not benefit from an ESC that comprises all 27 member states. This would create more institutional complexity, but little political added value. ESC decisions would at best

have a politically binding effect. It would not speed up decision-making or increase the EU's capacity to act.

b) The ESC as an ad hoc body of 27

foreign ministers: A variant of the first model would be the ESC as an ad hoc body. The European Council would essentially instruct the Council of Foreign Ministers to constitute itself with all 27 members, if necessary on a case-by-case basis, at the invitation of the High Representative. The focus here would be less on strategically developing the CFSP; rather, the ESC would act as an emergency response mechanism. Due to the binding effect of existing documents and policies, the ESC would not need to redefine the EU's attitude towards a specific crisis. It would only have to prioritise EU policies and seek to implement them with the help of the European External Action Service (EEAS). Its actions would essentially be limited in time and tied to the mandate of the European Council. Using this model, decision-making could be accelerated. However, it is uncertain whether this would also make the EU more capable of action.

c) The ESC as an intergovernmental leadership group:

A third possibility would be to design the body as a Contact Group or Group of Friends. The Security Council would then channel a trend in the CFSP, namely to advance European foreign policy both within and outside the EU through coalitions of the willing. Member states frequently already take this route to respond more flexibly to international policy crises that are crucial to them. Coalitions of the willing have become a respected practice within European foreign policy. The High Representative tolerates these groups of states as long as their actions serve the Treaty objectives, and she herself and the other member states are kept informed. A Security Council could legitimise this way of proceeding, and would be a response to those calling for political leadership in foreign and security policy. Like NATO's Quad – an informal group

consisting of the US, France, the United Kingdom and Germany – a European Security Council of a few member states who are willing and able to contribute could make quick decisions that are binding for its members. Other member states could adopt these decisions without, however, having the right to modify them. A body constructed in this way could form the core of an ambitious, more flexible EU foreign policy. In contrast to the two variants outlined above, this tailoring of the ESC would meet the objective of making the EU's external action more "flexible". Nevertheless, it is questionable whether it could facilitate "closer coordination within the EU and in external forums", which is demanded by Germany and France.

d) The ESC as a supranational governance

body: theoretically, the ESC could also be conceived as a supranational governance body. As such, it would be the supreme decision-making and governing body within EU foreign policy. As many EU states as possible should delegate to its members the right to take decisions on international policy issues on their behalf. This model of ESC would be the expression and result of far-reaching communitarisation, since national competences in foreign and security policy would be transferred to the ESC. Its policy remit could include the three CFSP instruments: the *common position*, the *joint action* and the *common strategy*. Up till now, these have had to be adopted unanimously in most cases. It is expected that such an ESC would enable the EU to act more far-reachingly and rapidly, provided that interests and positions converge. In this scenario, the High Representative could (analogously to the United Nations) assume the role of Secretary-General. The EEAS would then act as the General Secretariat and thus meet as far as possible the tasks it has been set by the Treaty. Even though the debate on strategic autonomy for Europe in accordance with the EU's global strategy is currently gaining momentum, it seems uncertain whether it will be able to initiate reforms. National forces of inertia dominate

many member states, making Treaty changes seem unrealistic. This model will therefore not be feasible in the foreseeable future.

However, even with more modest integration ambitions, it will be difficult to use an ESC to remedy the shortcomings of EU external relations and promote integration in this policy area. It would need to be clarified whether and how the ESC could be integrated into the EU's institutional structure, who wants and should belong to it, what it should be responsible for, and how it should take its decisions.

Position vis-à-vis the EU's Institutional Structure

A look at the existing institutional structure of the CFSP underlines that the ESC would intensify a key problem in the EU's external action, especially in the first scenario. There is already a plenitude of bodies that shape EU external relations from both a strategic and an operational perspective. A European Security Council without executive powers risks duplicating these structures.

In the institutional structure of EU external relations, the ESC would probably stand alongside the Political and Security Committee (PSC). In accordance with Article 38 of the Treaty on European Union, the PSC normally meets twice a week to prepare decisions on CFSP issues and to oversee the conduct of operations under the Common Security and Defence Policy (CSDP). Since all EU members are represented in the CFSP, the PSC would be maintained and be complemented by the ESC – which would, however, not be part of the CFSP structures. One problem with this constellation is that the ESC would further advance and “formalise” the already discernible tendency towards informalising decision-making structures in foreign and security policy. Thus constructed, the ESC would potentially have further negative consequences: diffusing responsibilities, creating more institutional blockades and perpetuating the already pressing issue of coherence in EU

external relations. Establishing a new centre of gravity for foreign policy outside EU institutions also raises the question of the tasks that the High Representative and the EEAS created by the Lisbon Treaty would perform within this framework.

However, the Lisbon Treaty does not provide for a European Security Council. Under current legal conditions, the ESC would therefore inevitably have to be located outside the institutional framework of the EU's external relations. In essence, the body recommended by Germany and France could only be embedded in the EU system by means of a treaty revision.

Membership

The establishment of a European Security Council is likely to be particularly difficult for the smaller EU member states. This would be the case if the PSC, in which they have a seat and vote, were devalued in favour of the new body, in which, depending on the representation and rotation procedures chosen, they may not be represented. The question of ESC membership must therefore be clarified upfront so as to avoid deepening the fault lines within the EU.

The United Nations could provide a point of reference for representation in a future ESC. Of its 193 member states, 15 are represented on the Security Council, including the five permanent members: the United Kingdom, France, Russia, China and the US. The non-permanent members are elected by the UN General Assembly from among the UN member states for a term of two years, on a regional basis. Three seats are allocated to African countries, two each to Asian, Latin American and Western European countries and one to Eastern European countries.

In terms of figures, there is one seat on the UN Security Council per 12.86 member states. With a future EU of 27 member states, the ESC would consist of just one to three members by analogy. For purposes of representation, this is not plausible. Nevertheless, it is advisable to keep the number

of members manageable (probably between six and nine), to apply a regional key, and to set a time limit on activities within the EU Security Council. The EU would have to accept, however, that if it renounced permanent members, there would as a result be phases in the rotation during which the Security Council consists exclusively of smaller EU states. How this might affect its legitimacy inside and outside the EU, and what effects it might have on its executive competence, cannot be anticipated. Thus, the idea of a Directorate looks more attractive in terms of its capacity to act and enforce agreements. Medium-sized and smaller member states would be grouped around this Directorate, and would be represented in the ESC by rotation. However, many member states may not agree that Germany and France should be given such a prominent position. There is therefore a risk that many member states would reject the ESC.

Voting Procedure: Right of Veto – Unanimity – Majority Decisions?

As in the United Nations Security Council, the voting procedure in the ESC would be crucial. As the victors of the Second World War (or their successors), the five permanent members of the UN Security Council have a right of veto and thus special powers. Each of these States can prevent a decision by the Security Council. Through this privilege, the UN Charter takes into account the real balance of power in international politics, despite the legal equality of all members in the General Assembly. It thus gives major powers a special responsibility. In return, the major powers give political weight to the actions of the United Nations.

Similar considerations are likely to underpin the reflections on the ESC voting procedure. It cannot be based on a unanimity requirement, precisely because the application of this principle by the EU in the CFSP area limits Europe's capacity to act. Instead, variants of majority decision-making procedures will have to be used,

with quorums if need be. Increasing the ESC's political weight will mean granting preferential status to those European states whose ambitions and resources make them particularly responsible for Europe's ability to act in foreign policy. They could be privileged either by a permanent non-rotating seat or by a veto position when voting. Such a practice, however, would clash with the wish to provide the most extensive representation possible of Europe's states, and carries the risk of leading to a two (or more) speed European foreign policy. European foreign policy would thus become more exclusive or "French", through both financial contributions and participation in operations. When the Permanent Structured Cooperation (PESCO) was being developed, France already pleaded for an ambitious implementation of cooperation and demanded more commitment to common defence from its EU partners. However, whether Paris would be prepared to Europeanise its own seat on the UN Security Council in the medium term remains to be seen. The pressure would certainly increase with an ESC.

Europe's Role on the UN Security Council

The ESC has a further purpose: in the long term, so the Chancellor's statements suggest, the European Security Council is to strengthen Europe's role on the UN Security Council. She has proposed, for example, that the non-permanent seats of EU members be developed into European seats. Since the Maastricht Treaty entered into force, the EU as such has been able to act at the international level and express its views on conflicts, human rights or other issues. However, it remains to be seen how far this "Europeanisation" can and will go: coordinating respective national positions on the UN Security Council with those of the European partners should be a matter of course in coherent external action and is already being practised. However, as the EU is not a full member of the UN, it would not be pos-

sible to establish non-permanent European seats (in the sense of EU seats) within the framework of the existing procedure. The EU has had “extended observer status” in the United Nations General Assembly since May 2011, but it does not have the right to vote. In other words, this is where the German initiative will reach its legal limits.

Finally, another political caveat must be added: the idea of an EU seat on the UN Security Council would be meaningful and reasonable above all as a permanent seat to replace the UK and French seats. It could significantly increase the EU’s influence in international politics and underline Europe’s will to shape its external relations independently of others. Regardless of political resistance from Paris and London, however, an EU seat would only be conceivable as part of the comprehensive reform of the UN Security Council that has been pursued for some 25 years. As part of this reform, other regional organisations should also be given a seat on the Security Council.

German Foreign Minister Maas last spoke in favour of reforming the UN Security Council in his speech to the UN General Assembly in September 2018. The Council, he pointed out, had hardly changed since 1945, even though the world’s population had tripled and the number of UN members almost quadrupled: “We should stop beating around the bush and finally start real negotiations on Security Council reform, as the vast majority of the member states has wanted for a long time”. Since the early 1990s, reform has been discussed again and again. The G4 countries Brazil, Germany, India and Japan, for example, have suggested increasing the number of both permanent and temporary seats.

Relationship with the UN Security Council

Even though the ESC seems to be conceived ostensibly as an instrument of the CFSP, the (perhaps unintentional) name analogy to the United Nations Security Council suggests that the ESC would have similar struc-

tures, tasks and instruments as well as a connection to the UN body. This raises a question that must be answered if a European Security Council is established: what is its relationship to the United Nations Security Council?

According to Article 24 of the UN Charter, its Security Council bears primary responsibility for maintaining international peace and security. Its area of activity is therefore not geographically restricted. Although Article 52ff of the Charter provides for “regional arrangements or agencies” which may implement regional measures for the maintenance of international peace and security, these are subject to the principles and structures of the UN Charter and are thus not autonomous, let alone competing, organisations. Even if a European Security Council restricted its activities to Europe, this requirement would not be removed. Consequently, this new body could not claim any independent legitimacy beyond the decision-making of the UN Security Council. This also applies to the Franco-German agreement, whose aim is to strengthen Europe’s role in the world, i.e. to have an impact beyond Europe in terms of security policy.

The relationship between the two Security Councils could be even more difficult when it comes to authorising peacekeeping, which is the domain of the UN Security Council: if the latter detects a threat to international security, a breach of peace or an act of aggression, it has a whole range of possible responses at its disposal.

It is unlikely that the UN Security Council would delegate these tasks concerning the European continent or European neighbourhood to the envisaged European Security Council, as this would considerably weaken its key position in the UN system and in international politics as a whole. Moreover, all five permanent members regard this exposed institutional role as an expression of their special power status in international politics. They will not want to abandon it, as can be seen from the fruitless debates on reforming the UN Security Council to date. Depending on the form

that the crisis management takes, Europe's security action in this policy area would therefore have to be authorised by the UN Security Council. This in turn would give the three Security Council members, the USA, China and Russia, an explicit veto position on European foreign and security policy issues. It is highly doubtful that this is what the Franco-German proposal intends.

Even if European policy were to accept this form of political subordination, experience has shown that such an institutional dualism would require lengthy negotiations. In this respect, the German side would have to specify what is meant by "increased capacity to act" and "faster action". Both terms suggest that the European Security Council should be more than a loose multi-lateral consultation forum, and that it should have executive powers. However, its decisions would not be binding on the UN Security Council. Not only would the latter's legal primacy thus be unchallenged, any kind of imperative mandate of the European Security Council vis-à-vis the two European members of the UN Security Council would also not be politically enforceable.

Conclusions

The German proposal to create a European Security Council has so far remained vague, and little has been set out in detail. Such a project is controversial among EU members. The German idea can only be successfully implemented if EU member states' gain in capacity for decision-making and action compensates for their loss of sovereignty in foreign and security policy. However, in view of the rather unenthusiastic attitude towards integration by many member states, it is obvious that any ESC project should not be conceived as a quantum leap in integration policy. At best, the German proposal can therefore aim to establish a

foreign and security policy leadership group. If this group was removed from the EU framework, it would additionally be possible to benefit from the contributions and skills of the UK or Norway, for example. Nevertheless, such an approach risks weakening the CFSP/CSDP. For this reason, the German Government should consider whether its plan to extend majority voting in EU foreign policy is not in fact better suited to increasing the EU's capacity to make decisions than establishing an ESC.

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