

Robert Schuman Centre

Paradoxes of European Foreign Policy  
Identifying Institutional Paradoxes  
of CFSP

REINHARDT RUMMEL  
and  
JÖRG WIEDEMANN

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**ROBERT SCHUMAN CENTRE**

**Paradoxes of European Foreign Policy  
Identifying Institutional Paradoxes of CFSP**

**REINHARDT RUMMEL  
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**BADIA FIESOLANA, SAN DOMENICO (FI)**

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From the European Union's beginning all the way up to the decisions of the Amsterdam Intergovernmental Conference, the process of European integration has been shaped by two competing schools of thought, one aiming at the creation of a communitarian union and the other at establishing close intergovernmental cooperation between states. Most of today's achievements in European integration are based on a compromise between, or a parallel use of, these two competing concepts. The dichotomy is clearly reflected in the Union's institutional development and present set-up concerning external relations. Whenever one school was successful in institutionalising new policies, the ideas of the other school were also included. The procedure seems to have led to ineffectiveness - sometimes even to complete standstill. Thus, the combination of the two concepts in one structure is contradictory rather than complementary.

Although many in Europe had hoped for a change after Amsterdam, the basic paradox continues. There are more contradictions - some of which have been reinforced by the decisions of June 1997, others mollified, but by no means abolished. And why should they be? Has not the Union become closer in the last forty years? It seems that paradox is the secret recipe for success. Take Common Foreign and Security Policy (CFSP): if one digs deeper into its structure and functioning, it is neither *common*, nor *foreign*, nor dealing with *security*, nor can be called a *policy*. Yet, most observers and policy makers use the acronym CFSP like a magic formula: it is enough to invoke the name and the EU instantly turns into a major actor - if not a superpower - in world affairs. The paradox is that the mantra effect is even stronger outside Europe than inside. Perceptions are very important in international relations. The EU seems to profit from this fact.

While the EU claims to conduct a common foreign and security policy, it largely lacks the means and capability needed to make decisions and implement them. Theoretically, CFSP can draw support from other EU policies (economic external relations, development policy, humanitarian policy) or from the Western European Union and its connections with NATO. In practice, however, the link with instruments outside of CFSP is not developed to the degree that it would be available whenever needed. Likewise, the EU has not developed a sufficient level of solidarity among its Member States in matters of foreign and security policy. There is also little hope that this will ever change and yet, the show goes on. The Amsterdam reform conference solemnly declared to produce 'deepening' as a precondition for 'widening.' It failed at 'deepening' during the June 21 meeting, nevertheless on July 17 the Plan 2000 was launched the widening of the Union.

## Identifying Institutional Paradoxes of the CFSP

In the first section of this article, we will consider the institutional inconsistencies and contradictions inherent in CFSP and in the larger institutional context within which it operates. In section two, we want to highlight several reasons for these institutional paradoxes, for example the concept of unity: Should unity evolve automatically, or is there a need for coercion? To answer this question we will take a closer look at the aim of CFSP, as viewed from the perspective of the Member States. We will find that the CFSP is viewed as an instrument for achieving national foreign policy goals, which arise from individual Member States' national interests. What is problematic in this context is the fact that national interests and national foreign policy goals are often divergent. Clearly, diverging interests are not a sound basis for unity.

### The EU's foreign policy structure: institutional rigidity or wrong track?

Amsterdam has been another round of trying to fine-tune the operational procedures and the institutional structures of CFSP with the desperate goal of overcoming, or rather transcending, some of its absurdities. Procedural and institutional improvements matter, but they are only marginal efforts as long as the central issue of modernising the content and substance of EU foreign and security policy is not taken up and resolved. Contrary to traditional foreign and defence policy, in the future almost all sectors of public life will have external implications. Therefore, the issues on the external policy agenda will be characterised by these interrelating and overlapping sectors. The present compartmentalised structure of the EU's external relations seems to rigidly ignore the nature of today's international world. Can the EU afford this institutional rigidity or has it chosen the wrong track?

### CFSP in the pillar system

The Treaty of the European Union (TEU) stipulates that CFSP is to include 'all areas of foreign and security policy.'<sup>1</sup> The notion of *all areas* certainly comprises major components of the EU's common trade policy, its development policy, its non-proliferation policy, and its humanitarian policies. The definition of CFSP's potential sphere of activity is further extended by Art. J. 4 I TEU, which states that 'all questions related to the security of the European Union' are included in CFSP. If the final aim is to develop a CFSP addressing all questions of foreign and security policy, the current division of labour and power sharing structures within the Union seem inadequate.<sup>2</sup> In a future-oriented foreign and security policy, all external components of the first and the



third pillar should be merged into deliberations and decisions within CFSP. There is one provision in the Treaty of Amsterdam which may be interpreted as a step towards modernisation: the strategic questions clause in J.3 (formerly J.8 (1) and (2), first subparagraph) provides heads of state and governments with the theoretical option of broadening the thematic scope of CFSP action.

Nevertheless, the authority of the CFSP foreign ministers remains limited. Despite the fact that they are the masters of the General Council, they still lack the power and the assertiveness to direct their First and Third Pillar counterparts, not to mention WEU defence ministers and the 'European section' of NATO. The consistency of CFSP depends on the institutional links between three structures: CFSP, other EU policies, and the military policies of WEU and NATO. Certainly, the goal cannot be to have the EU foreign ministers dictate policies to their counterparts in the trade and defence departments, but they ought to adopt a comprehensive approach and orchestrate various concerns and instruments in the EU's external relations. But the institutional set-up is not very favourable in this regard - neither in the European Commission, the European Parliament, nor in the Council itself - and Amsterdam did not bring much change in this regard.

### **The Commission vs the Council - a problem of initiative**

Ever since Maastricht the Commission has had the right to make foreign policy initiatives within CFSP, but has been hesitant to do so unless the policies are based only on Pillar I instruments. The Commission also has refrained from using the full extent of its competence in Pillar II, fearing that intergovernmental policy directed by Pillar II might contaminate the communitarian Pillar I. This hesitation was evident in the EU's policy on Rwanda in 1994, when a CFSP common position initiated the (obligatory) action of the European Commission.<sup>3</sup> Likewise, the general decisions on imposing economic sanctions in the cases of the Federal Republic of Yugoslavia, Haiti, and Libya were made within CFSP while the Commission then had to initiate the implementation process by proposing concrete sanctions to the Council.

A series of similar procedures contributed to in-fighting over institutional matters.<sup>4</sup> If the power to decide on communitarian action originates increasingly from deliberations within CFSP, then the function of originally communitarian instruments and actors, such as the Commission and the Parliament, would be gradually reduced to the execution of CFSP policies. The Commission itself could help re-governmentalise the communitarian Pillar I, if it would make full use of its powers in CFSP. Amsterdam has not provided any relief from this

dilemma. Instead, since the heads of state and government could not agree on reducing the number of commissioners, the Commission continues to divide the competence for foreign and security policy between five Commissioners, thus undermining its own stance within the institutional texture of the EU.

### **The European Parliament vs the Council - The budget question**

If the 'common' in CFSP is to be taken seriously, then all actors should be adequately involved in the policy-making process. One of the most striking paradoxes of CFSP has been the arrangement of its budget. One might assume that EU common action is financed by the EU and, in turn, the availability of EU financial assets should commit Member States to common action. This, however, has not been the case. As the TEU describes, EU funding is a possibility, not a prerequisite, for CFSP action. The incompatibility of aims and powers has created a paradoxical situation under the Maastricht treaty. This has been partly remedied at Amsterdam through an informal understanding between the Council, the Commission, and the Parliament, which at least raises the level of transparency on budgetary matters.

While the European Parliament has the power to control the budget (and thereby gain some influence over Community policy), this power does not apply to CFSP. Article 199 TEC states that there are financial assets for CFSP, but it does not stipulate where these assets are to be posted or how much is available. In the past this has led to the use of assets reserved for other purposes. Because CFSP is a reactive policy, it is impossible to propose a CFSP policy agenda and budget for the coming year. This poses a constant problem for allocating sufficient funds to cover CFSP expenses.

Art. 199 TEC contributes to this uncertainty, because it makes a distinction between the administrative and operative costs of CFSP. Administrative costs of CFSP are automatically covered by the Community budget, whereas whether or not to cover operative costs is decided by a unanimous vote in the Council. However, in the absence of a clear definition of 'administrative expenditures' it is left to the Council to decide this matter too, thus giving it the power to circumvent the Community's budgetary decision-making procedure. Moreover, because the Council and the EP had previously agreed not to examine each other's expenditures, the EP's actual power is somewhat limited also in those cases where the normal budget decision making applies. Thus, CFSP is linked to the Community's budget, but not necessarily to the Community's budgetary decision-making procedures.

## **The Council's foreign policy making**

Who is administratively preparing the Council's decisions, and who is advising it on questions of substance? The Maastricht Treaty states that the division of labour between the Political Committee and COREPER is subject to future discussion.<sup>5</sup> It thereby left a very important aspect of CFSP decision making unsettled. The TEU itself suggests that labour is divided between administrative and political work. Art. J. 8 (5) TEU (Art. J.15/Amsterdam) assigned an advisory and controlling function to the Political Committee, indicating that advising the Council on political issues is the main task of the Political Committee. The same article states that Art. 151 TEC is not affected by this provision. This implies that COREPER was meant to extend its preparatory work for the Council to the sphere of CFSP. The provision may seem logical, but in fact it is problematic.

Although COREPER's work was intended to be primarily administrative, much of it actually represents policy shaping, since it prepares Council decisions by reaching consensus between representatives of national foreign ministries and the Commission beforehand. If agreement is reached in COREPER on any given topic, it is no longer subject to Council debate. In effect, this gives COREPER a policy coordination task under Community rules of procedure, including the settling of political issues prior to debate in the Council. The arrangement established by the TEU thus creates competition between both committees, which in turn leads to further complication of CFSP decision making. It also creates competition between different sections of the Member States' foreign ministries, because the Political Directors are represented in the Political Committee, while the Member States 'EU ambassadors' are represented in COREPER.

### **CFSP's inter-organisational links: WEU, NATO, UN**

In order to be effective and credible, CFSP needs more than the backing of other EU policies. Although certain EU policies employ political and economic instruments in solving external problems, the EU lacks the authority and adequate instruments to implement them. Whenever the EU decides to act in these necessary authority and instruments, like the WEU, NATO, and UN, becomes important. Viewed in the context of the paradoxical set-up of intra-institutional links, the external inter-institutional links are even more confusing.

Looking at its history, it is hard to find any significant WEU operation. This was particularly astonishing in view of the Yugoslav Crisis. Initially, the

US considered this crisis to be a European affair and was not willing to intervene. Since this meant that NATO was stepping aside, it would have been the perfect scenario for using the WEU structure.<sup>6</sup> Despite the availability of the WEU, Britain and France did not assign WEU to command their troops sent to the former Yugoslavia. Like other EU Member States', these troops were conducting operations under the auspices of the UN. This was a result of the Europeans not being unified on the aims of intervention. The Yugoslav crisis demonstrated that CFSP does not have a military arm.

Although CFSP is meant to address all EU security issues, it is designed to address the political issues only. Since the defence ministers did not participate fully in the Maastricht negotiations, the CFSP itself lacks an operational level. This is due to the fact that EPC was given the task of organising European positions and actions in other organisations and institutions. But the aim of CFSP differs fundamentally from that of EPC. CFSP is supposed to be an active EU foreign policy by initiating and determining external action from within the EU framework, eventually leading to the formation of a European defence identity. Analysing CFSP actions of the past, one can easily come to the conclusion that CFSP in practice essentially is not about planning concrete policy measures, but about reacting to crises. For this purpose, the institutional set-up is entirely insufficient.

One major reason for this insufficiency is the lack of a powerful instrument, a 'military arm' of the EU. The EU is not a military organisation and has no troops assigned to it.<sup>7</sup> As a consequence, in order to conduct (military operations or) operations with military assistance, the EU must request assistance from outside its own framework. One possible candidate is the WEU. But the WEU has not been used for such purposes in the past, as was pointed out above. There are two main aspects to be considered when investigating why this has been the case; one relates to the criterion of efficiency, the other to the criterion of commitment.

To understand why the criterion of efficiency is important, one must look at the implications of military action. In order to conduct a successful operation, one needs sufficient numbers of troops, the ability to transport them to the mission area, and reliable intelligence information. Although not lacking in troops, Europe lacks transport capabilities and intelligence information. It also essentially needs a unified command, which the WEU cannot provide. In NATO all these insufficiencies are counter-balanced by the integration of American armed forces and American military hardware. Another aspect deserves attention in this context. As was seen during the second Gulf War, in order to accomplish one's goals, it helps to be decisive. American decisiveness,

expressed in the will to use force when it is deemed necessary and in the ability to determine the objectives of military action, also accounts for the credibility of American action. In military terms, the decisiveness of American politicians in using military force when it is deemed necessary adds an additional deterrence value to the already well-trained and well-equipped American troops. This aspect seems to pose a major problem for the Europeans. The Yugoslav Crisis demonstrated that Europeans experience difficulties in using military force and to agree on the objectives of a military intervention. Since the Europeans could not agree on the objectives of a military intervention, their potential force could not be used as a deterrent. By contrast, when acting within the NATO framework, European NATO members can count on the assistance of American hardware and, perhaps more importantly, on the political backing of the United States. This makes their own action more credible. In this sense, not even the WEU is able to conduct the limited tasks assigned to it in the Petersburg declaration, without NATO assistance.

The criterion of commitment is important as well, since it may give an account for the backing that Member States actually carrying out the operation will receive. To full WEU Member States, it is unacceptable to give non-full members a say in the decision-making process, because their commitment levels are mirrored by their WEU status. The problems of insufficient linkage between EU and WEU would not occur if there were coherence in the membership policies of all EU Member States. For example, if all Member States were full WEU members as well, the problem of command would not be as pressing as it is today. Likewise, were Sweden, Finland, Austria, and Ireland to become NATO members, there would at least be a real EU group that could speak with one voice.

Under the present conditions the reluctance to ask for WEU assistance is natural. Any attempt to change the current inter-institutional setting by producing some kind of command authority of CFSP over WEU assets, without solving the problem of coherence of membership, is bound to fail. In light of this statement, the assumption that CFSP will benefit from the concept of 'Combined Joint Task Forces' (CJTF) allowing WEU to use NATO structures, may be misleading. Although the concept could turn out to be an effective method for conducting military operations in a European framework, it is not necessarily relevant in a CFSP context. Even if CFSP requests WEU action, there would be no implementation unless the WEU and NATO decided to cooperate. Furthermore, since CJTF does not establish CFSP command authority over WEU troops, the aim, intensity, and duration of WEU operations would be determined outside the EU framework. Thus, the CJTF might eventually bring the WEU closer to NATO than to the EU.

Organisations that are capable of implementing EU decisions or requests (NATO and WEU) can only act in accordance with international law. This means that, in case of an emergency, any action taken by NATO or the WEU on behalf of the EU must conform the policy of the UN Security Council (UNSC). This principle also applies to the imposition of EU economic sanctions. The EU's CFSP is weakened, since it does not have a direct say in UNSC decisions, it does not have legal personality, and, is therefore not considered to be subject to international law.<sup>8</sup> To overcome this legal inconvenience, those EU Member States that are also permanent UNSC members are obliged to promote the 'interests of the Union' and common positions, whenever acting within the UNSC.<sup>9</sup> However influential this provision may appear, it is nothing more than a declaration of the fact that the UNSC permanent members, Great Britain and France, are also members of the EU. There are no implications, since real problems cannot arise in practice. This is due to the fact that a common position within CFSP can only be reached if all Member States agree. If they agree, it is unnecessary for Great Britain and France to oppose the position within the UNSC. If, however, GB and France take a different position from that of all other EU Member States, no common position within CFSP has been reached. The 1995 French nuclear testing program provides for a good example. When France ran its nuclear testing program in late 1995, there was no common position on this issue within CFSP. The Council could not decide whether to call upon the European Atomic Community (EAC) for action. Also, while some EU Member States supported a resolution in the General Assembly urging France to stop the testing, Great Britain took France's side while other Member States refrained from voting. Even if all other EU Member States would have supported UNSC action against the testing, France and Great Britain (being both permanent UNSC members and in agreement on the subject) would have been able to prevent any binding UN decision contrary to their own interests.

In addition, the EU's internal multiple foreign policy system further complicates matters since it predominates in all EU relations with the UN. However, this paradoxical institutional set-up is necessary since the EU itself can not act within UN bodies, while the Community can. When trying to develop a consistent common policy, the external competences of the EU Council and the European Commission do not coincide with their competences in CFSP decision making. By contrast, the Council and the Commission are only entitled to express their own views within some international organisations, like the UN and the WTO, if they do so as the EC's representatives.<sup>10</sup> Since there is no direct institutional link between the Community's external relations and the Union's CFSP, the outcome of the dual policy process is uncertain.<sup>11</sup>

## The CFSP concept: Dead end or freeway to an ever stronger Union?

The Member States in 1991/92 all accepted the metamorphosis of the European Community. They thereby accepted the transformation of European Political Cooperation (EPC) into CFSP. However, the performance of CFSP in the past suggests that the question regarding the purpose of CFSP has not been clarified. The ultimate aim of CFSP must be to take action. Nevertheless, in CFSP the requirement of unanimity and the principle of solidarity contradict each other. More importantly, this constellation leads to passivity because it might prohibit actions in an EU context. Neither the majority nor the minority can use CFSP if there is no common position.

Since each Member State has the right to veto common positions or common actions, any Member State can determine whether or not the others are going to have a common policy within the CFSP sphere of action. This is essentially due to the institutional set-up of CFSP, which leads to permanent confrontation rather than unity. Unlike the EC's communitarian policy process, the EU's CFSP process is not evolutionary by nature. Once the EC has made full use of its 'exclusive competences',<sup>12</sup> the Member States lack the legal authority to act in the same policy area. Thus, whenever follow-up decisions need to be taken in the same specific policy area, it can only be taken at the Community level. The Member States, having agreed to transfer competences from the national level to the community level, accept this logic of consistency in Community action within the transferred policy areas.

This is not the case with CFSP. The absence of a permanent and clear-cut division of labour between the EU and its Member States, complete with a clear definition of specific policy areas and reserved for an exclusive and consistent common policy, is obvious. Therefore, every follow-up action is subject to another debate about its necessity because the Member States have the option of taking a national decision. In every decision-making process the fundamentally different positions of the integrationists and the intergovernmentalists clash, opening old wounds. For example, the provision for the operational costs of CFSP is designed to give non-integrationist Member States the opportunity to be obstructive. If community funding of common actions is not possible, the other Member States will have to provide the funding themselves, and apart from being generally opposed to additional expenditures during economic downturns, the active Member States will also face the technical problem of burden-sharing between themselves. Furthermore, whenever the Council decides to draw on Community resources, it re-opens the debate about the EP's role in CFSP.<sup>13</sup> This in turn may lead to the Council's reluctance to use community assets.

As demonstrated by the lifting of economic sanctions against South Africa and Haiti, the intergovernmentalists have a strong instrument for preventing the majority from acting against intergovernmentalists' interests. Contrary to its intention and meaning, CFSP joint actions can be used to prevent action, rather than initiating it. When institutionalising EU's use of economic sanctions, the competence for initial decision making was given to the EU Council (CFSP), since it corresponded with EPC practice. Article 228a TEC explicitly empowers the EC Council to take immediate action on economic sanctions whenever the EU Council has decided in favour of a joint action or a common position within the framework of CFSP. It thereby establishes a Community competence to impose sanctions, based on Art. 113 TEC. However, Art. 228a TEC implies that Community Council powers are subordinated in relation to the EU Council powers, vested in the CFSP framework. Since the initial decision to impose economic sanctions has to be taken within the CFSP structure by a unanimous vote, any single Member State can prevent such a decision. Furthermore, the Commission is not necessarily involved in the shaping of the initial CFSP decision but must act within the EC framework.

In the absence of a permanent settlement of institutional provisions, policy makers have institutional objectives per se.<sup>14</sup> This may lead to entirely paradoxical situations. '[Policy makers] may accept particular policy outcomes because of their institutional consequences and may even reject policy outcomes that favour their substantive policy interests because they do not wish to accept the institutional implications.'<sup>15</sup> This situation suggests that the Member States are simply not interested in conducting a Common Foreign and Security Policy. But is this really the case?

### **National interests and CFSP**

All Member States view CFSP as a potentially useful instrument for achieving their national foreign policy goals.<sup>16</sup> To some Member States CFSP seems to be the only suitable approach toward having a global foreign policy, while to others, depending on the issue, it is merely an optional approach. Thus, while some Member States may press for EU action, others may try to prevent it. The following lines might highlight what accounts for these different approaches.

From the individual Member States' perspective, EU decision making is national foreign policy making in itself. The Member States' (foreign) ministers meet in the ultimate decision-making authority of the EU: the Council. Here they discuss and they may decide on political issues on the basis of national interests. Since EU policy must pay attention to its own interests, the outcome of the policy process is irrelevant to these ministers if their own nation's



interests are not respected sufficiently. And since they have other options, they do not need the EU framework to take action. The fact that Member States' national interests are often divergent has far-reaching implications. An anecdote of the 1994 accession negotiations may be useful to illustrate the argument.

From an EU-centric view point (the so-called Brussels's view point), the 1995 enlargement was beneficial per se, because it would improve the economic situation of the Union as a whole. Although important economic issues had been settled quite satisfactorily before, in the 1992 treaty, establishing the European Economic Area (EEA), enlargement was thought to be even better for the Union: The EU would improve its position in world (economic) politics because its weight automatically increases with every new Member State, for example in GATT/WTO. In the case of Norway, entry would have contributed to an improvement of the EU's supply situation (energy; food) and it would have given the EU a stronger stand in the so-called world-wide consumer/producer dialogue on energy-related questions. However, from the individual Member States' perspective, this assessment only partly reflected the heart of the matter. Giving full access to the common market to formerly excluded companies (and in some areas also to states) meant that competition would increase, posing a problem for those Member States whose industries were not very competitive. Thus, Member States negatively affected by the entry of new members were particularly interested in preventing the EU from making concessions. During the 1994 negotiations in-fighting between Spain and Norway on the issue of fishing rights was pronounced. These arguments were transferred to the EU level when Germany pressed Spain to concede to Norwegian conditions for entry. This in turn led to a mini-crisis in Franco-German relations, since the French became concerned about German 'power politics.'<sup>17</sup> The dispute was settled by giving Spain better access to EU territorial waters and allowing it to enter the common fisheries' policy regime earlier than originally intended.

What is most important in this context is the observation that Member States accept the Union's interests only when they do not affect their national interests. Seen from this angle, the Union's foreign policy is the result of a careful balance of the interests between all Member States. Taking the argument to the limit, one can even say that every successful decision made by the EU and the EC is based on such a balance of interests.

This balance of interests is essential, because it creates unity by paying attention to the needs of individual Member States. Furthermore, it is a prerequisite for the solidarity principle. All Member States should show solidarity towards each other. However, in practice, this principle is called upon

only in situations where an individual Member State's interests clash with the interests of the Union as a whole. The 'balance' principle legitimises the evocation of the 'solidarity' principle, because all Member States received concrete benefits when the initial decision was made. If a Member State has accepted the initial decision because it was beneficial, it has no right to question it at a later stage. As we will describe in the following section, the TEU in its CFSP title explicitly calls for solidarity, but it does not allow for an adequate balance of interests.

### **Formalised solidarity - unity by force?**

In its statement concerning the voting principles of CFSP decision making (Maastricht final act), the conference of the representatives of the Member States' governments concluded that in cases where unanimity is required, individual Member States should refrain from dissenting if there is a qualified majority in favour of a common action. The contradictory wording - separating unanimity in vote from consent on an issue - points to what seems to be the key problem with CFSP: Unity. In the TEU, unity is imposed on the Member States by obligating them to act for the sake of action.

In this context, the solidarity principle of CFSP is entirely ineffective, because it produces a stand-still in 'policy-production.' On the one hand, it seeks to oblige the single Member States to respect the interests of the majority outside CFSP.<sup>18</sup> On the other, it provides the single Member States with the opportunity to block any majority action within CFSP.<sup>19</sup> This means that any single Member States can determine what is to be 'the common positions or the interest of the union.'

However, the solidarity principle of the TEU is also problematic for the minority. There are reasons for some Member States to be more reluctant to communitarise CFSP than others. These reasons are found in the difference of single-state policies. If all governments would have the same opinions on all policy issues, there would be no debate about majority voting. Since this is not the case, the provision of unanimous voting is necessity for those Member States that fall into the minority in their policy approach. There are some issues that simply cannot be addressed by the EU, because they are regarded as national issues. In such cases no Member State would ever accept an EU policy contrary to its own aims. The 1995 French nuclear testing program must be seen in this context. Applied to more pro-active EU ventures, the reason for the limited success of EU foreign policy might just be the differing interests of EU Member States. For example, the EU's approach to the Middle East is hampered by different interests of its Member States. The value-oriented approach of the

Nordic EU members does not necessarily coincide with the economic and political interests of Mediterranean France. It must be accepted that some issues remain outside the range of EU/CFSP action, although they essentially shape the Union's image in world politics.

## **Conclusion**

Since CFSP lacks a clear-cut decision-making authority, it cannot enforce its decisions either through the other pillars or through the Member States. And since the EU lacks legal personality, it has to rely on different actors to implement its decisions. These institutional deficiencies led to an ineffective foreign policy and sometimes even to total passivity. As long as the institutional arrangements remain unsettled, any political issue will automatically be viewed as a means for bargaining over institutional arrangements.

The establishment of a functioning decision-making structure within CFSP, therefore, was the main issue in the debate about the EU's future engagement in world politics. The current structure is ineffective, because it gives every Member State the opportunity to block a decision reached by the rest of the Member States. The use of majority voting instead of unanimity in the decision-making structure, however, is not the cure. This becomes clear when one looks at the capacity of EU Member States. Not all Member States have the capacity to implement a common decision. Thus, giving Member States that are unable to contribute substantially to common actions themselves a say in the decisions on common action is controversial and leads to reluctance towards CFSP from those Member States that bear all the costs. However, a Common Decision would be of very little practical use if the only Member States that could implement it were to refrain from action. This may also explain why the linkage between the Union and those organisations capable of implementing the EU's decisions is insufficient. Since not all EU Member States are full WEU or NATO members, they themselves do not show the same level of commitment as full members of all three organisations.

Reluctance of the EU to act within CFSP also arises from the way CFSP defines solidarity between the Member States. During the 1994 enlargement negotiations, for example, Spain expected solidarity from its EU partners on the fishing issue, while Germany pressed for solidarity on the overall issue of enlargement. By contrast, in 1995, when Canada accused a Spanish trawler of illegal fishing activities, Spain was backed by its EU partners. When France ran its nuclear testing program in 1995, it expected solidarity from its EU partners. Instead, its partners put pressure on France. These incidents show that solidarity

depends on the interests at stake. If the national interests of all Member States can be met sufficiently, solidarity on that issue will automatically appear because there also is unity. If not, a lack of solidarity is inevitable.

The only way to improve this situation is to define the issues that can be resolved by the Union as a whole. To achieve this, a binding, concrete, and specific agenda for CFSP action finally must be shaped. The first step would be to establish a centre for assessing Member States' positions on all the issues facing the EU in the near future. This would imply that the EU also finds a way to reach a balance of interests on all specific issues. The next step would be to pre-plan common action regarding these issues. It should be left to the Member States to determine which organisational framework they want to use for the implementation of a common decision. A balance of interests must be reached here as well. If every Member State is satisfied with the outcome, the final step would be a formal 'communitarisation' precluding unilateral Member State action, in contrast with common action. Thus, to make the EU's CFSP work, it is essential to focus on substance first. Only then will the Member States be determined to agree upon the procedural aspects. If influence could be more carefully balanced with commitment and capabilities of each Member State, CFSP might just turn out to be beneficial for all Member States. The EU may then be more inclined to put CFSP to work.

## Notes:

<sup>1</sup> See Art. J. 1 I TEU.

<sup>2</sup> For example, in today's world, development policy must be regarded as an essential part of foreign policy. Furthermore, the case of Algeria proves that deficiencies in the development of third world states may even have a direct impact on EU security. The Maastricht Conference in 1992 paid attention to this fact and dedicated a whole title in the EU's treaty framework to development. However, development policy was not included in the Treaty of the European Union (TEU) itself as an objective of common interest. Instead, the legal basis for a 'common development policy' can be found in Title XVII (Art. 130u-y) of the Treaty of the European Community (TEC). What should actually be called the EU's development policy is described here as the EC's 'development cooperation.' This set up reflects the differing integration objectives of the EU Member States. On the one hand, decisions regarding 'development cooperation' can be made by a qualified majority - thus, the 'willing' can act. On the other hand, 'development cooperation' is restricted in its contents, as it is merely 'complementary' to the development policies of the Member States. Hence, individual Member States cannot be forced to change their own policies.

<sup>3</sup> See Horst-Günter Krenzler and Henning C. Schneider, 'The Question of Consistency,' in *Foreign Policy of the European Union. From EPC to CFSP and Beyond*, eds. Elfriede Regelsberger, Philippe de Schoutheete de Tervarent, and Wolfgang Wessels (Boulder and London: Lynne Rienner Publishers, 1997): 145.

<sup>4</sup> See Elfriede Regelsberger and Wolfgang Wessels, 'The CFSP Institutions and Procedures: A Third Way for the Second Pillar,' *European Foreign Affairs Review* 1:1 (1996): 40.

<sup>5</sup> See the Declaration regarding practical details of CFSP in the Maastricht Conference's final act.

<sup>6</sup> The WEU was declared the military arm of CFSP and the 'bridge' between the EU and NATO. One was also thinking of the WEU as having a kind of deputy role, in case NATO itself was not willing to act. This is reflected in the Combined Joint Task Forces (CJTF) concept, which allows for the use of NATO structures by the WEU.

<sup>7</sup> Theoretically, this could be changed by transforming Pillar II into a regional defence organisation with additional tasks and assigning Member States' troops to it. The WEU would become an integrated part of CFSP and WEU action would be under CFSP command. This would give the EU command authority vis à vis its Member States and would lead to the creation of strictly European defence forces. However, the problem military integration poses is evident in the reluctance of WEU Member States to integrate their organisation into the EU structure. This situation is not likely to change.

<sup>8</sup> In its 'Addendum to the Dublin II general outline for a draft revision of the Treaties,' the Dutch presidency included the proposal for a draft version of a 'New Article A in the TEU.' This new article states that '[t]he Union shall replace and succeeds to the European Community, the European Coal and Steel Community and the European Atomic Energy Community,' and that '[t]he Union shall have legal personality.' Moreover, '[i]n international

relations, the Union shall enjoy legal capacity to the extent necessary for the exercise of its functions and the fulfilment of its purposes.' While giving legal personality to the EU would ensure that the Union can implement some of its own (CFSP) decisions, merging the existing legal personalities of the three Communities and that of the Union into a single legal entity could ensure consistency in the Union's foreign policy. See 'Addendum to the Dublin II general outline for a draft revision of the Treaties,' CONF/2500/96 ADD. 1 (March 20 1997).

<sup>9</sup> See Art. J.5 IV TEU.

<sup>10</sup> Due to the 'exclusive' competence of the EC in the area of trade and tariffs, the Member States themselves can not act on their own. This has led to the working arrangement between the Council (and thus the Member States) and the Commission regarding trade policy. The Council gives a mandate to the Commission to negotiate trade agreements with third countries, and within international organisations, but the Council itself has the decision-making authority. Within GATT and now the WTO, however, the EC may not ratify the agreements. This has to be done by the Member States at the national level.

<sup>11</sup> For example, while the decision to contribute to the Korean Peninsula Energy Development Organization (KEDO) was taken by a common position under CFSP, the Community was to finance the contribution, and the EACommunity was to become a member of KEDO. This division of labour seems to make sense, because it reflects the respective competences of the actors involved. Nevertheless, if the EAC becomes a member of KEDO, it will be difficult to monitor the process through the CFSP structure.

<sup>12</sup> The EC possesses 'exclusive' competences vis à vis its Member States in the area of Common trade and tariffs. Its mere existence prohibits any unilateral Member State action. The EU possesses 'competing' competences as well, which constitute the most common form of legal relationship between the EC and its Member States. In this case, the Member States can act unilaterally as long as the EC has not made use of its own competence. Note, however, that they may not act in contradiction to already established EC policies.

<sup>13</sup> See Elfriede Regelsberger and Wolfgang Wessels, op. cit., p. 41.

<sup>14</sup> See Helen Wallace, 'The Institutions of the EU: Experience and Experiments,' in *Policy-making in the European Union*, eds. Helen Wallace and William Wallace (Oxford: Oxford University Press, 1996): 38.

<sup>15</sup> *idem*. One should carefully avoid generalising this thesis, because it seems unlikely that Member States will act in this way, if crucial policy interests are at stake.

<sup>16</sup> See Elfriede Regelsberger, 'The Institutional Set-up and Functioning of EPC/CFSP,' in *Foreign Policy of the European Union. From EPC to CFSP and Beyond*, eds. Elfriede Regelsberger, Philippe de Schoutheete de Tervarent, and Wolfgang Wessels (Boulder and London: Lynne Rienner Publishers, 1997): 74. Christopher Hill points out, in his contribution to this volume, that most Member States even have the option of instrumentalising other organisations. Once they have decided to act on an issue, like the integration of Eastern European states, they can choose the institutional framework.

<sup>17</sup> The dispute was settled in Ioannina, where Spain obtained better access to British territorial waters and was allowed to enter the common fisheries policy regime earlier than originally intended.

<sup>18</sup> For example, Art. J. 5 IV TEU obliges those Member States, who are also permanent members of the UN Security Council, to promote the interests of the EU within the UNSC. Also, Art. J. 1 IV TEU demands that Member States refrain from taking unilateral action which is designed to contradict the Union's interests.

<sup>19</sup> This is due to the rule of unanimity-decisions on common positions and common actions, expressed in Art. J. 8 II TEU.







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