

**THE UNIVERSITY OF HULL**

*The European Union's Common Foreign and  
Security Policy:  
Much Ado About Nothing?*

Doctor of Philosophy

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by

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# Contents

*Abbreviations*

iii

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<b>1</b>	<b>The European Union's Common Foreign and Security Policy: The Theoretical Conundrum</b>	<b>1</b>
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---

1.1	Introduction	1
1.2	Theoretical explanations and their shortcomings	5
1.3	The capability-expectations gap	47

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<b>2</b>	<b>The road to Maastricht: Negotiating the EU's Common Foreign and Security Policy</b>	<b>68</b>
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2.1	European Political Cooperation: A brief history of CFSP's predecessor	68
2.2	The end of the Cold War	87
2.3	Towards a Common Foreign and Security Policy	100
2.4	The Luxembourg Draft Treaty	119
2.5	The Dutch Draft Treaty	132

---

<b>3</b>	<b>CFSP and the Treaty on European Union</b>	<b>146</b>
----------	--	------------

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3.1	Consistency	146
3.2	Common positions and joint actions	150
3.3	Security and Defence Policy	158
3.4	The Commission	162
3.5	The European Parliament	165
3.6	Committee of Permanent Representatives and the Political Committee	167
3.7	Financing	170
3.8	The "capability-expectations gap" in the light of TEU	174
3.9	High-level Group of Experts	187
3.10	Bertelsmann Stiftung's Report	197

<b>4</b>	<b>The European Community's Foreign Policy and the Yugoslav Conflict: The hour of Europe</b>	<b>206</b>
4.1	The historical background of the war in former Yugoslavia	206
4.2	The development of EC-Yugoslav relations	217
4.3	The break-up of the war in former Yugoslavia	227
4.4	The recognition of Croatia and Slovenia	243
4.5	A critical review of the European Community's capability-expectations gap	265
<b>5</b>	<b>From Cooperation to Joint Action: 1992-1995</b>	<b>286</b>
5.1	The Vance-Owen Peace Plan	286
5.2	From a "Union of Three Republics" to the Dayton Agreement	313
5.3	From Political Cooperation to Joint Action: Bridging the capability-expectations gap?	340
<b>6</b>	<b>From Amsterdam to Nice</b>	<b>362</b>
6.1	The Reflection Group	362
6.2	National Positions	371
6.3	Positions of EU institutions and of the Western European Union	382
6.4	The Treaty of Amsterdam and CFSP	397
6.5	Implications of the Treaty of Amsterdam for the "capability-expectations gap" and recent developments	414
<b>7</b>	<b>Conclusions</b>	<b>430</b>
	<i>Appendices</i>	441
	<i>Bibliography</i>	483

# Abbreviations

ASEAN	Association of South East Asian Nations
CCC	Capabilities Commitment Conference
CDP	Common Defence Policy
CDU	Christian Democratic Union
CESDP	Common European Security and Defence Policy
CFSP	Common Foreign and Security Policy
CJTF	Combined Joint Task Forces
CMEA	Council for Mutual Economic Assistance
COREPER	Committee of Permanent Representatives
COREU	Correspondence Européenne
CSCE	Conference on Security and Cooperation in Europe
CSU	Christian Social Union
DG	Directorate-General
EC	European Community
ECHO	European Community Humanitarian Office
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
ECT	European Community Treaties
ECU	European Currency Unit
EDC	European Defence Community
EEC	European Economic Community
EFTA	European Free Trade Association
EIB	European Investment Bank
EMU	Economic and Monetary Union
EP	European Parliament
EPC	European Political Cooperation
ESDI	European Security and Defence Identity
EU	European Union
EUA	European Units of Account
EUAM	European Union Administration of Mostar
FRY	Federal Republic of Yugoslavia
FYROM	Former Yugoslav Republic of Macedonia
HDZ	Croatian Democratic Union
ICFY	International Conference on the Former Yugoslavia
IGC	Intergovernmental Conference
iMB	interim Military Body
IMF	International Monetary Fund
iPSC	interim Political and Security Committee
JNA	Yugoslav People's Army
KEDO	Korean Energy Development Organisation
LCY	League of Yugoslav Communists



<b>MC</b>	<b>Military Committee</b>
<b>MoU</b>	<b>Memorandum of Understanding</b>
<b>MS</b>	<b>Military Staff</b>
<b>NATO</b>	<b>North Atlantic Treaty Organisation</b>
<b>OSCE</b>	<b>Organisation for Security and Cooperation in Europe</b>
<b>PSC</b>	<b>Political and Security Committee</b>
<b>RRF</b>	<b>Rapid Reaction Force</b>
<b>SEA</b>	<b>Single European Act</b>
<b>SFRY</b>	<b>Socialist Federal Republic of Yugoslavia</b>
<b>TEU</b>	<b>Treaty on European Union</b>
<b>UK</b>	<b>United Kingdom</b>
<b>UN</b>	<b>United Nations</b>
<b>UNPROFOR</b>	<b>United Nations Protection Force</b>
<b>UPFM</b>	<b>Unified Police Force of Mostar</b>
<b>USA</b>	<b>United States of America</b>
<b>USSR</b>	<b>Union of Soviet Socialist Republics</b>
<b>VOPP</b>	<b>Vance Owen Peace Plan</b>
<b>WEAG</b>	<b>Western European Armaments Group</b>
<b>WEU</b>	<b>Western European Union</b>

# **1 The European Union's Common Foreign and Security Policy: The Theoretical Conundrum**

## ***1.1 Introduction***

Few subjects have attracted so much scholarly attention, yet remained so impervious to the development of theory, as has the European Union's (EU) Common Foreign and Security Policy (CFSP). The literature on this subject is characterised by a diverse collection of theoretical attempts not befitting to elucidate CFSP in its entirety. Joseph Weiler and Wolfgang Wessels, two prominent European Political Cooperation (EPC) and CFSP analysts, having taken cognizance of the patent inability of the connoisseurs to produce a cogent single theory, noted their failure: "not the real or alleged failure of EPC but that of the academic community unable either to relate EPC into any meaningful system theory, integration theory or international relations theory let alone create a new EPC general theory".<sup>1</sup>

This debacle can be attributed to an intrinsic deficiency of the "international relations theory" edifice to foster a single

coherent theory for explaining foreign policy actions which rebounds on CFSP:

Most foreign policy theories or concepts are formed with the nation-state in mind. Joint foreign policy behavior of a group of states is so unorthodox in international relations that it defies traditional political science theory. Most conceptual frameworks explain why action eludes – rather than captures – groups of states. As political scientists cannot agree on foreign policy theory at the state level, it would be too optimistic to expect consensus on a theory of European foreign policy.<sup>2</sup>

Furthermore, it is possible to argue that the experience of EPC/CFSP over the last thirty years or so has been so unique that it is probably impossible to formulate one theory to explain its performance. As it stands, there is virtually no consensus as to how we might explain the processes and the outcomes of EPC/CFSP. This tack may be disappointing given the importance scholars attach to the development and refinement of theory. However, in Roy Ginsberg's view:

The extent to which theoretical concepts have failed us depends on one's expectations. If a theory of EFP [European Foreign Policy] is expected, there will be disappointment. If one views EFP solely through the lenses of a neofunctionalist or realist intergovernmentalist, little will be learned. Given how multidimensional EFP is, it may never lend itself to a general theory. If,

however, a pretheoretical perspective is taken, then the field of inquiry looks quite different: there is incremental learning.<sup>3</sup>

The present study does not pretend to offer a grand theory of the EU's Common Foreign and Security Policy; nor was it intended to advance some new theoretical approach to the study of European statecraft. Instead the intention is to reflect upon Christopher Hill's "capability-expectations gap" concept to assess CFSP.<sup>4</sup> In conformity with Hill's argument:

...although the intention is to show how we might think accurately about Europe's international capability – that is to "conceptualise" it – this does not mean that the more ambitious undertaking of providing a theory which might explain and predict Europe's behaviour is being undertaken...the whole enterprise is essentially pre-theoretical in the sense that it fashions certain general ideas and arguments which might be useful in the construction of a wider theory, without attempting the systematic linking together characteristic of theory proper.<sup>5</sup>

The example of the war in former Yugoslavia offers empirical evidence to evaluate Hill's conceptualisation. The case study chosen is both interesting and relevant here. First, it is controversial. It certainly divided member states and caused much debate about how effective the EC/EU contribution was in helping to contain and resolve the set of interrelated conflicts in former Yugoslavia. From the outbreak of hostilities in the summer of 1991 the European Union's policy in former

Yugoslavia was characterised by an ambition to fill two different roles: a peace broker and also a more interventionist role. The study analyses the difficulties involved in combining these roles and the discrepancy between EU ambitions and the political skills and means available. Second, the case study not only spans historic changes in former Yugoslavia but also in the EC/EU. The context against which this case study occurred was the transition from EPC to CFSP. It is a topic that straddles the EPC-CFSP divide, testing Hill's thesis and providing irrefutable evidence that the gap between the ambition of the vocabulary and the reality of practical policy is in dire need of being bridged.

But first we will reflect briefly on the main schools of thought about the Community/Union and their attempts to establish a conceptual framework for interpreting Community and Union foreign policy. The study is not designed to test, clarify or criticise the theories in any systematic way. Substantial literature already exists which performs these tasks. Instead, in the short overview that follows, we will focus on the question of what the most prominent scholars of each approach say about the phenomenon of EPC/CFSP without, however, encouraging the reader to accept the assumptions of any single theory as it is presented here. Rather the aim is to encourage the reader to examine his own assumptions in order to understand how his own views of EPC/CFSP are shaped by them.

## **1.2 Theoretical explanations and their shortcomings**

**Realism:** The essence of Realist theory is the notion that the nation states are military rational actors, which often have conflicting national objectives, some of which may lead to war. International organisations, like the EU, are believed to be particularly lacking in their ability to “substitute the nation state”. Thus, the decision to create a “European system with real powers will not increase the capacity of Europe to act and react but will weaken the only real actor – the nation state...leading to a collapse of society”.<sup>6</sup> But despite this basic assumption, Realists do not rule out the willingness of states to transfer their national sovereignty to supranational organisations based on a complex set of bargaining relationships and strategies in which states and their ruling authorities will seek to maximise the benefits and limit the costs of their loss of freedom of action. However, they draw attention to the nation state’s capacity of effectively “dissolving” international cooperation that does not countenance its survival and the maintenance of its position of power.

Writing in the mid-1970s, Hedley Bull took issue with those who predicted the state system’s demise due to the tendency of some states to seek to integrate themselves in larger units.<sup>7</sup> Such people, says Bull, rely on the argument that although the member states of the European Economic Community (EEC) have not ceased to claim or to possess territorial sovereignty,

their steady movement toward integration might lead to the loss of their sovereignty. Bull denies that the process of integration tends to the formation and development of a single European state "whose tendency to engage in "power politics" (in the sense of the pursuit of power as an end and not merely as a means) had been emasculated".<sup>8</sup> He further argues that this European super-state would be simply a nation state "writ large". He also maintains that although we cannot ignore the possibility that the decision to proceed with integration might result in the creation of a European state, it seems more likely to end up with an entity whose sovereignty is shared between national governments and the organs of the Community.<sup>9</sup>

In a later article, Bull argues that "Europe" is not an actor in international affairs and "does not seem likely to become one" unless the nations of "Western Europe can develop some appropriate form of political and strategic unity" and "acquire a greater element of self-sufficiency in providing for their defence".<sup>10</sup> However, in his view even if "there were a supranational authority in Western Europe, this would be a source of weakness in defence policy rather than of strength; it is the nation-states of Europe...their capacity to inspire loyalty and to make war that are the sources of its power".<sup>11</sup>

According to a major exponent of Realism, John Mearsheimer, the end of the Cold War will undermine the prospects for cooperation between the European states. For him the "Long Peace" after World War II arose for three principal reasons:

the bipolarity of the distribution of power on the Continent, the rough equality in military power between those two polar states, and the appearance of nuclear weapons, which vastly expanded the violence of war, making deterrence far more robust.<sup>12</sup>

Mearsheimer argues that bipolarism is able to respond better than multipolarism to the continuum of peace, crisis and war. Bipolarism's structure, consisting of two major powers, allows it to closely accompany the range and intensity of conflict and to inflict and control violence. In keeping with Kenneth Waltz's approach to international relations who refined and reinvigorated classical Realism by drawing heavily upon the structure of the international system as a variable conditioning or circumscribing political behaviour,<sup>13</sup> Mearsheimer suggests that a bipolar system is more peaceful for three main reasons:

First, the number of conflict dyads is fewer, leaving fewer possibilities for war. Second, deterrence is easier, because imbalances of power are fewer and more easily averted. Third, the prospects for deterrence are greater because miscalculations of relative power and of opponent's resolve are fewer and less likely.<sup>14</sup>

In this respect, Mearsheimer, in discussing the *raison d' être* for the formation of the EEC, contends that it was facilitated by the bipolar Cold War world order.<sup>15</sup> The demise of the Cold War order will increase the chances that war and major crises will occur in Europe and undermine the prospects for achieving and



sustaining cooperation between the European states. As the system moves away from bipolarity toward multipolarity, the number of dyadic relationships should be expected to increase. Because of the multiplication of the number of bilateral interactions in comparison with the more simple interaction pattern in a bipolar world, and the additional patterns of potential conflict, there is a greater possibility that this new order will be susceptible to continual instability.

Genuine peace or a world where states do not compete for power is not likely "mainly because [cooperation] is constrained by the dominating logic of security competition, which no amount of cooperation can eliminate".<sup>16</sup> In these circumstances, institutions do not provide the key to overcoming that problem. As Mearsheimer puts it "institutions have minimal influence on state behavior, and this hold little promise for promoting stability in the post-Cold War world".<sup>17</sup> He continues: "...institutions are basically a reflection of the distribution of power in the world. They are based on the self-interested calculations of the great powers, and they have no independent effect on state behavior. Realists therefore, believe that institutions are not an important cause of peace. They matter only on the margins".<sup>18</sup> For Mearsheimer, institutions "do not have significant independent effects on state behavior".<sup>19</sup> Nevertheless, "states do cooperate in a realist world" but this cooperation is always limited by the relative-gains considerations and concern about cheating.<sup>20</sup> In this world of constant competition institutions "largely mirror the

distribution of power in the system. In short, the balance of power is the independent variable that explains war; institutions are merely an intervening variable in the process".<sup>21</sup> Thus, Mearsheimer concludes that "there are good reasons for looking with scepticism upon the claim that peace can be maintained in a multipolar Europe on the basis of a more powerful EC".<sup>22</sup>

Whereas neorealists contend that strict limits are placed on cooperative behaviour under multipolar anarchy and view international institutions as mechanisms to distribute power that do not fundamentally change either interest or capability,<sup>23</sup> institutionalists in contrast argue that "state actions depend to a considerable degree on prevailing institutional arrangements".<sup>24</sup> International institutions facilitate "policy coordination among powerful states and reduce the likelihood of mutually harmful competition among them for spheres of influence; they therefore serve these states' interests".<sup>25</sup> It can be seen that this is by no means a simple-minded Realist approach of the kind articulated by Mearsheimer, who predicted that West European states will begin "viewing each other with greater fear and suspicion, as they did for centuries before the onset of the Cold War", and to worry "about the imbalances in gains as well as the loss of autonomy that results from cooperation".<sup>26</sup> Here, the principal focus is not on the structure of the international system, or on the interactions between domestic politics and international relations; rather it is on international political processes.<sup>27</sup> A central assumption of the institutionalist approach is that:

despite the lack of common government in international politics, sustained cooperation is possible under some fairly well defined conditions. These conditions include the existence of mutual interests that make joint (Pareto-improving) gains from cooperation possible; long-term relationships among a relatively small number of actors; and the practice of reciprocity according to agreed-upon standards of appropriate behavior. Such cooperation is not the antithesis of conflict but constitutes a process for the management of conflict. International institutions can facilitate such a process of cooperation by providing opportunities for negotiations, reducing uncertainty about others' policies, and by affecting leaders' expectations about the future.<sup>28</sup>

Thus, according to Robert Keohane and Joseph Nye, international institutions can affect the strategies states choose and the decisions they make.

Drawing upon Realist theory Alfred Pijpers concluded that the European Community (EC) and its member states form part of an international system whose lineament, its distinctive misruling, is caused by the dearth of a central authority capable of repairing the astringent fissures in the international society's building caused by severe violations of the international order. As a result the components of the international system tend to provide for their own unilateral security while the potential for conflict is high. Thus, Pijpers asserts that "European foreign policy has pre-eminently been developed in an era in which new

power centres came into being outside Europe, which reinforced rather than mitigated the anarchical structure in large parts of the world".<sup>29</sup>

Even though this disordered ambience of world politics seems conducive to expediting the exigency for an autonomous European defence it is this same predisposition towards anarchy which restrains member states from developing a common security policy. This absence emanates from a concern on the part of the participants in EPC for the countenance of the balance of power. This however, in Pijpers words:

is not to suggest that maintaining the balance of power is the only concern of EPC; it is claimed however, that the peculiar structure and policies of EPC are basically induced by the idea and mechanisms of the balance of power. The lack of European unity, therefore, does not result from an absence of "political will", but on the contrary from a deliberate (if not always explicit or unambiguous) individual and collective willingness of virtually all the Western European countries not to upset substantially the current transatlantic security structure.<sup>30</sup>

Building on another ramification of the Realist paradigm, the predominance of states in international politics, Pijpers argues that despite an incremental nurturing of attempts for integration in the EC in the field of foreign policy, member states remained inexorably aloof choosing instead to retain their preponderant position in "high" politics. As Douglas Hurd

notes, European Political Cooperation is predominantly “an exercise in co-operation or co-ordination but not a common foreign policy. The traditional instruments of foreign policy – from embassies to gunboats – remain in the hands of the member states”.<sup>31</sup> Pertinently, in respect of the resolute refusal of the member states to cede their privilege to make decisions on foreign policy issues, Pijpers spurns the idea that “the major institutional and policy dimensions of EPC are the result of uncontrolled bureaucratic compromise in a complex network of transnational forces”. Instead he argues that “the major policies and institutions of Europe’s would-be foreign policy are the reflection of deliberate national preferences of the participating member states all taken and decided upon at the central level”.<sup>32</sup> This curtailed European foreign policy, with the limited institutional and policy prerogatives, has been shaped distinctly from either intra-European factors or extraneous European influences.<sup>33</sup>

Although Pijpers avows that the Realist model falls short of providing adequate answers for all aspects of political cooperation, he nevertheless advocates its utility as a starting point for any nascent theory of European foreign policy:

The great advantage of using the Realist paradigm is that as a consequence EPC becomes more explicitly embedded in the theory and history of modern International Relations. By conceiving EPC as a significant, be it subtle, mechanism for maintaining the European (and East-West) power equilibrium, interesting links are forged

between contemporary political co-operation, the history of the European state system and the balance of power. In this way, the traditional paradigm demonstrates that EPC is a less unique phenomenon than some integration theorists prefer to believe.<sup>34</sup>

There are two main criticisms of Realism. First, its perception of change as the result of the rise and decline of states' relative power (defined in strictly military terms) conditioned by the nature of the overall distribution of material capabilities is oversimplistic and does not correspond to the nature of European partnership. Second, its view of states as unitary, rational actors "comes into question...The fact of the matter is that state authorities in the European arena are now more various than at any time since the mid nineteenth century, and thus that the possibility of their being able to form a tacit consensus and to contain the variations between them are small if those possibilities are seen to rest on a *conventional* notion of statehood".<sup>35</sup> Structural Realists expect "cooperation most often when defection can be effectively sanctioned, the net benefits of agreement are evenly distributed, and sovereignty is not threatened".<sup>36</sup> However, basic to contemporary European politics, is the need for governments to rely on whatever cooperative activities or arrangements they can generate in order to ensure survival and enhance security. In such an environment, based as it is on the principle of transnational interdependence, traditional states, under the impact of the revolutionary expansion of the physical possibilities for interaction, "pool" their sovereignty. Consequently, as the

argument goes, there is an increase in the ratio of interdependent relationships, national self-preoccupation is becoming less intensive and extensive and national sovereignty is eroded. Thus, the attempt "to apply IR orthodoxy to the EU...obscures the ways in which supranational pressures may alter state interests, or even bind states into cooperative relationships and outcomes over which they have little control".<sup>37</sup> In sum, the Realist conception of the state is inadequate to explain why and how the EU's member states, impelled by strong pressures generated by high levels of interdependence, cooperate not merely sporadically, but regularly and intensively to develop a common foreign and security policy.

*Functionalism:* The functional view that, as the modern world becomes more interdependent, the nation states are less capable of preserving peace or of solving transnational technical problems confronting humankind reached its culmination in the writings of David Mitrany who achieved prominence in the years between the two World Wars, as well as in the generation following World War II.

Mitrany has seen in the establishment of functional agencies consisting of technical experts rather than political elites the key to coping with the transnational nature of international problems. As the technical problems become more immense, the greater will be the kinds and quantity of functional organisations required by the society. If demands are not met, the development of new capabilities will be sought, and if these

cannot be attained within the nation's boundaries, lateral pressures will be created to attain them through functional organisations. The transference of functions to these organisations is supposed to have ominous implications for the conventional wisdom concerning state sovereignty: "States would thus be emptied of the political power and identity which had led to conflict, and instead of its being recreated at a higher level, the very idea of political division – defined, it seems, as ideological and territorial – would be replaced with a technical association: an international civil service providing for the needs of the world's people".<sup>38</sup>

At the core of Mitrany's theory is the doctrine of "ramification": he was confident that the relatively widespread satisfaction with the collaboration in one technical field would mobilise collaboration in another. Subsequently, Mitrany viewed functional activity as a means to "reorient international activity and contribute to world peace. Eventually such collaboration would encroach upon, and even absorb, the political sector".<sup>39</sup> According to Paul Taylor and A. J. R. Groom, functionalism "begins by questioning the assumption that the state is irreducible and that the interests of governments prevail, and proceeds to the active consideration of schemes for cooperation; it is peace-oriented and seeks to avoid a win-lose stalemate framework".<sup>40</sup>

The functional tradition has furnished an abundant basis for the formation of what is termed neofunctionalism. Although



many scholars past and present have shaped the development of neofunctional theory, the writings of Ernst B. Haas have had a major and indeed a unique impact on neofunctional theory. In Haas's conceptualisation, the extent to which "political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre, whose institutions possess or demand jurisdiction over the pre-existing national states",<sup>41</sup> depends upon cost-benefit calculations. In contrast to Mitrany, Haas assumes that "power and welfare are far from separable". In his view:

...commitment to welfare activities arises only within the confines of purely political decisions, which are made largely on the basis of power consideration. Specific functional contexts cannot be separated from general concerns. Overall economic decisions must be made before any one functional sector can be expected to show the kind of integrative evolution that the Functionalist describes...The distinction between the political and the technical, between the politician and the expert, simply does not hold because issues were made technical by a prior political decision.<sup>42</sup>

Neofunctionalists have explained that integration is attributable in large measure to mainly pragmatic rather than altruistic reasons. To the extent that the anticipated benefits exceed the costs, governmental and non-governmental elites are likely to undertake attempts to align with "similarly minded elites across national frontiers".<sup>43</sup> According to Haas: "integrative lessons learned in one functional context will be applied in others, thus

eventually supplanting international politics".<sup>44</sup> Moreover, as a result, there is a marked tendency for the "gradual politicization of the actors' purposes which were initially considered "technical" or "noncontroversial"". <sup>45</sup>

Crucial to neofunctionalist theory is the concept of spillover. Philippe Schmitter/ defines this mechanism as "the process whereby members of an integration scheme – agreed on some collective goals for a variety of motives but unequally satisfied with their attainment of these goals – attempt to resolve their dissatisfaction either by resorting to collaboration in another, related sector (expanding the scope of the mutual commitment) or by intensifying their commitment to the original sector (increasing the level of mutual commitment) or both".<sup>46</sup>

The propensity of elites to seek to extend the number and variety of policies subject to collective deliberation is said to enhance the possibilities for combining sacrifices and benefits in intersectorial "logrolls". According to Schmitter, political elites usually make trade-offs among various objectives. They do not attempt to achieve one goal at the sacrifice of all others, but instead engage in an approach designed to attain various combinations of desired results. As the number of sectors potentially involved grows, there eventually comes a point at which "logrolling" or "package-dealing" permits intergovernmental bargains in which concessions are exchanged across several policy areas.<sup>47</sup> Haas holds that there are three types of compromise, "each indicative of a certain measure of

integration”: accommodation on the basis of the minimum common denominator, typical of classic diplomatic negotiations; accommodation by “splitting the difference”, prevalent in the negotiations of international economic organisations; and accommodation on the basis of deliberately or inadvertently upgrading the common interests of the parties. In this last mode of accommodation, the outcome involves a redefining of the conflict which “almost invariably implies the expansion of the mandate or task of an international or national governmental agency”.<sup>48</sup> In Schmitter’s perspective, once agreement is reached and made operative on a policy or set of policies, externalisation is a likely outcome. Externalisation explains why non-members press the EC to act as a unit; what effect this outside charge has on the EC; and the outcomes of EC actions that are executed in response to outside pressure.<sup>49</sup> In the process of externalisation, Schmitter suggested, “members will have to rely increasingly on the new central institutions to do it”.<sup>50</sup> These institutions perform more than a classic mediatory function:

They sustain or expand the political system by providing regular information, by forcing members to re-examine their interests and priorities, by supporting and developing a regular international bureaucratic and political elite, by socializing participants to new norms and loyalties, and by providing an ever-present arena for conflict-resolution.<sup>51</sup>

The integration experience of Western Europe in the 1960s led Haas to concede that his optimism regarding the “automaticity” of spillover was unwarranted.<sup>52</sup> Haas suggested instead as potentially more fruitful than the concept of incrementalism a “fragmented issue linkage” one which is said to occur “when older objectives are questioned, when new objectives clamor for satisfaction, and when the rationality accepted as adequate in the past ceases to be a legitimate guide to future action”.<sup>53</sup> Other contemporary neofunctional analysis has as its focus “intergovernmental bargains”. According to Keohane and Stanley Hoffmann, “the expansion of Community tasks depends ultimately on the bargains between major governments; but that after such a bargain has been made, Community tasks can be further expanded as a result of linkages among sectors, as envisaged in the theory. However, such an expansion is by no means automatic; there are limits on spillover”.<sup>54</sup> For example, they note that some glaring failures of spillover were evident during the 1980s in the field of defence policy: “And even in a period of expanding political cooperation, the common function under the Single Act (unlike foreign economic policy under the Treaty of Rome) leads to pooled powers rather than to power for a central authority distinct from the states”.<sup>55</sup> But it could be plausibly argued that “the Community’s external relations could be highly political (indicating spillover between “high” and “low” politics), or that the EC and CFSP could collaborate (spillover leading to increased involvement of EC “supranational” actors in CFSP, as the EC’s instruments are used to back up CFSP decisions)”.<sup>56</sup> However, the absence of pan-European interest

groups favourable to the construction of a common foreign policy thwarts the ambitions of those, like the European Commission, who sought to devise strategies and projects to include foreign and defence policy as part of the process of integration, to mobilise support for their initiatives and to persuade governments to take action.<sup>57</sup> Although Martin Holland argued that “the case for the re-evaluation of neofunctionalism with respect to foreign policy is strong”,<sup>58</sup> Jürg Martin Gabriel, drawing upon the work of Mitrany, Haas, and Keohane and Hoffmann, found that there was only a modest degree of integration in military matters. According to Gabriel, in the case of economic integration there was a strong supranational foundation which was enhanced by several important intergovernmental bargains. In marked contrast, security integration had no such foundation because “CFSP, in general, lacks supranationality”, from which Gabriel concludes that:

security integration, by following well-known functionalist avenues, will not produce a European federal state or, as some would like to see, a United States of Europe. Security integration, is much more likely to result in an unorthodox institutional setup typical of pragmatic incrementalism and exhibiting the usual neglect for questions of political legitimacy and of democratic accountability.<sup>59</sup>

Although neofunctionalism has become one of the major approaches to the study of European politics, it has also been the object of major criticism. Generally speaking, those who

favour a neofunctionalist approach concern themselves with the critical matter of process; that is, with focusing specifically upon the interrelatedness of socio-economic and cultural factors in influencing political change. Neofunctionalism also furnished a basis for conceptualising more fully particular institutional outcomes and displayed a consistent preference for dissociating itself from a polemic against the "iniquities" of nation statehood.<sup>60</sup> The basic idea, of course, was to turn increasingly toward a regional rather than global perspective and to rely on empiricism. Yet, neofunctionalism remains inadequate in several respects.

First, there is a fundamental contradiction between its conviction that there would be a logical, linear progress from "negative" through "positive" economic integration and on to "political union" (both in the sense of democratically controlled European government and in the sense of military and foreign policy integration), and its reliance on the voluntary actions of a given set of national decision makers to bring about the required shifts of political expectations and loyalties.<sup>61</sup> Second, its intellectual scope is too narrow. It has not probed "sufficiently into the domestic or international political and economic processes that appear to have shaped the pace of integration".<sup>62</sup> Because of its focus on supranational pressures, neofunctionalism is said to have ignored interstate bargains. The work of Andrew Moravcsik is particularly important here. In a "blistering intergovernmentalist counter-attack against the echoes of neofunctionalism",<sup>63</sup> Moravcsik has set forth an

“intergovernmental institutionalist” perspective as a foundation for any general explanation of European integration. His account of the origins of the Single European Act (SEA) challenges the “prominent view that institutional reform resulted from an elite alliance between EC officials and pan-European business interest groups”.<sup>64</sup> Rather, he argues, “EC reform rested on interstate bargains between Britain, France and Germany”.<sup>65</sup> Moravcsik is convinced that the SEA was not the result of European institutional momentum, transnational business interest group activity, or of international political leadership.<sup>66</sup> Instead, he suggests that the success of the 1992 initiative might best be understood in terms of the three main aspects of intergovernmental institutionalism: intergovernmentalism, lowest-common-denominator bargaining and the protection of sovereignty. His conclusion is that “the primary source of integration lies in the interests of the states themselves and the relative power each bring to Brussels”.<sup>67</sup> His “intergovernmental institutionalism” explanation is consistent with what Keohane has described as the “modified structural realism” view of regime change. Intergovernmental institutionalism alone is not enough, however. Moravcsik combines it with domestic politics. In his view, it is essential to engage in “further research into the international implications of European domestic politics”.<sup>68</sup> Thus, in his “liberal intergovernmentalist” model he sought to combine “two types of general international relations theory often seen as contradictory: a liberal theory of national preference formation

and an intergovernmentalist analysis of interstate bargaining and institutional creation".<sup>69</sup>

A third problem, according to Hoffmann, is that neofunctionalist theorists have "overlooked the differential impact, on the various nations, of external countries" and "underestimated the ability of the actors, especially the major ones, to stop or to slow down the building of a central political system and the ability of national bureaucracies to resist the transfer of power to the new central one (the power of inertia)".<sup>70</sup> Hoffmann contends that neofunctionalism, because it confuses "low level cooperation pursued for limited purposes, and the more intrusive transactions impinging on national sovereignty in those critical areas of "high" politics", does not construe the "real dynamics that underpin the international process".<sup>71</sup>

For Hoffmann, "while transnational cooperation and the sharing of functions might well occur in those "low" policy or functional issue areas which did not challenge to any great extent fundamental national interests, the scope for such integration in the more sensitive areas of "high" politics remained slight".<sup>72</sup> At the same time, Hoffmann faults neofunctionalism for having presumably uncovered an inevitable, irreversible functional momentum which threatened the survival of nation state by subsuming it within a new supranational political entity. Instead, he remained convinced of the obstinacy of the nation state:



Thus the nation-state survives, preserved by the formidable autonomy of politics, as manifested in the resilience of political systems, the interaction between separate states and a single international system, the role of leaders who believe both in the primacy of "high" politics over the kind of managerial politics susceptible to functionalism, and in the primacy of the nation, struggling in the world of today, over any new form, whose painful establishment might require one's lasting withdrawal from the pressing and exalting daily contest.<sup>73</sup>

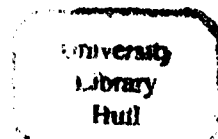
Sixteen years later, in an 1982 article, Hoffmann insisted that the evolution of the Community did not imply the replacement of the nation state as an indispensable form of political, economic and social organisation:

Indeed, the relations between the Community and its members are not a zero sum game; the Community helps preserve the nation-states far more than it forces them to wither away, and in recent years both the Community and its members have been battered by the economic storms...The most striking reality is not the frequent and well-noted impotence of the so-called sovereign state. It is its survival, despite the turmoil.<sup>74</sup>

Stated differently, the development of the European Community was closely correlated with the rescue of the nation state rather than with its demise. As Alan Milward suggested:

...the evolution of the European Community since 1945 has been an integral part of the reassertion of the nation-state as an organizational concept. The argument goes, however, beyond this, because the historical evidence points to the further conclusion that without the process of integration the west European nation-state might well not have retained the allegiance and support of its citizens in the way that it has. The European Community has been its buttress, an indispensable part of the nation-state's post-war construction. Without it, the nation-state could not have offered to its citizens the same measure of security and prosperity which it has provided and which has justified its survival. After 1945 the European nation-state rescued itself from collapse, created a new political consensus as the basis of its legitimacy, and through changes in its response to its citizens which meant a sweeping extension of its functions and ambitions reasserted itself as the fundamental unit of political organization. The European Community only evolved as an aspect of that national reassertion and without it the reassertion might well have proved impossible. To supersede the nation-state would be to destroy the Community. To put a finite limit to the process of integration would be to weaken the nation-state, to limit its scope and to curb its power.<sup>75</sup>

Hoffmann's views have encountered several criticisms, including an effort to draw from the statecentric system of the past a series of political concepts for the study of current international politics. In this respect, Hoffmann, and his supporters, is faulted for having ignored the fact that modern states operate in a fundamentally different universe, global in scope and



containing an unprecedented number of state and nonstate actors, than that specified in his crude account of international relations. The principal motivation for political behaviour in the contemporary global international system encompasses the efforts of national units to pursue limited national objectives which are, however, subjects to a variety of inputs from their environment. What is more, Hoffmann's predictive statement that "national governments could not be expected to concede a role for international institutions or to countenance intervention from other governments in matters of "high" politics"<sup>76</sup> in the case of the EU is proven wrong as the following chapters in this thesis will demonstrate.

Finally, the statecentric paradigm was criticised for giving excessive emphasis to the narrowly governmental dimension of policy making and for allegedly having overlooked domestic politics. Simon Bulmer has criticised political scientists for their profound negligence of domestic politics when studying European Community policy making.<sup>77</sup> Bulmer is concerned with challenging Hoffmann's statecentric formulation by developing propositions based upon domestic politics. His approach includes five assumptions: the national polity is the basic unit in the European Community; each national polity has a different set of social and economic conditions that shapes its national interests and policy content; European policy only represents one facet of a national policy's activity; national governments hold a key position at the junction of national politics and Community politics; and the concept of

policy style is a useful tool for analysing the relationships between governmental and other domestic political forces *vis-à-vis* European policy.<sup>78</sup> In Bulmer's conceptualisation, each national domestic political context becomes a potential conditioner of the "outputs" of the EC's decision making system. Although in terms of the domestic politics model EC foreign policy activity is not a likely result, as the participation process it poses requires "a national majority on the utility of working with EC partners and bodies, which is very difficult to reach; inevitable domestic concessions; and loss of sovereign authority to outsiders"<sup>79</sup> and despite the fact that "public opinion within the member states is sadly ill-informed about and remote from EPC",<sup>80</sup> in the contemporary era when the boundaries between domestic and international policy appear even more indeterminate, the existence of several domestic environments is said to dictate the content or expression of the EU's foreign policy. As Hill points out in his comparative study of European national foreign policies, the member states use the EPC as a "cover for national positions which otherwise would take some explaining away, either at home or abroad".<sup>81</sup> Similarly, William Wallace has noted that "Political Cooperation also serves an extremely useful function as an alibi for inaction, a means of deflecting external pressure, and a cover for shifts in national policy".<sup>82</sup>

Thus, despite its deficiencies – it does not pay sufficient attention to the profusion of links between the Community and the national political and economic systems, on the one hand,

and the growth of cross-national networks among the member states, on the other; and it does not capture the intermingling and intermeshing of the national and Community levels of the policy process and the extent to which European issues have been absorbed as part and parcel of public policy making<sup>83</sup> – the domestic politics approach exercises an appeal as a vehicle for illustrating the difficulty in developing a communitarian foreign policy basis with more deeply held bonds of solidarity and loyalty than required by the self-interested nation state.

*World systems analysis:* In order to decipher European Political Cooperation Stephen George resorts to a world systems perspective. The thrust of this approach can be resolved into five basic compounds: postulating at the level of the world system rather than at the level of the nation state or the region is a prerequisite for probing into political phenomena; despite the multiplicity of states the world system is a single capitalist one; the world system can be delineated by reference to three geographically discrete economic areas characterized by economic discrepancies between them: the core areas, the periphery and the semi-periphery; in the event of hostilities between the core areas, enmities pervade the system; and certain functions have to be performed if the system is not to be handicapped: regulation of the international monetary system; the maintenance of a liberal trading environment, especially by resisting protectionist responses to the uneven development of the world system; and the ensurance of political and social stability.<sup>84</sup>

According to this perspective all the major breakthroughs in West European integration can be understood as a sinew for rehabilitating Europe's core status within the capitalist system which it had waived as a result of World War II. Europe's endeavour for deposing the United States as the hegemon of the world system was fortified by the emergence of the European Communities which accelerated the "process of recovering core status by providing favourable conditions for multinational investment, so bringing jobs and prosperity back to Western Europe; by encouraging the emergence of European multinationals that had cultural reasons for situating their headquarters and research facilities in Europe; by providing the conditions in which research and development funds were available from profits; but also by an injection of public funding into the process, through Euratom, and through EEC industrial research programmes".<sup>85</sup>

In this battle for upgrading Europe from its pariah status, the Genscher/Colombo Plan, the Eureka initiative and the 1992 project can be purported as <sup>a</sup>/<sub>f</sub> means of consolidating its position in the new phase of capitalist expansion in an equal level with USA and Japan, as well as of deterring it from relapsing into a semi-peripheral status within the capitalist world economy.

Thus, the world system can be depicted as an economic battlefield encompassing distinct blocs with irreconcilable interests. This struggle for economic domination dictates that

all decisions adopted in the field of foreign policy must be driven by the unwillingness of each block to yield to pressures from its opponents and the aspiration of each and every block to retain its core status within the single capitalist world system. The desire of the EC to remain a major player in this economic contest calls for the moulding of a coordinated foreign policy posture.

Hence, in George's words, "a world systems perspective raises questions that go beyond EPC narrowly defined. It is a perspective that, in keeping with its origins within a Marxian tradition of discourse, sees political phenomena as ultimately determined by economic developments. As such it highlights even more than other perspectives the artificial nature of the separation between EPC and other aspects of the external relations (or indeed the internal affairs) of the Community".<sup>86</sup> From this perspective "states are epiphenomena of the world system, without autonomy and without the capacity to act independently. Change at the state level does not in principle affect the operation of the world system, since states are constrained by their positions in the system".<sup>87</sup> This analysis provides useful insights into the "constraints which structural factors impose upon the roles and policy options available to the EU",<sup>88</sup> but gives no explanation for those occasions "when the state or some other actor does not behave in accordance with the dictates of the system".<sup>89</sup> This focus offers a somewhat impoverished view of divisions between EU member states on questions ranging from enlargement to the East to the vexed

question of defence. As George Modelski argues, systems theory, whether the system is conceived on global or regional terms, has been "devoid of significant insights in international relations. System is a concept of high generality and what is true of all systems, while relevant to world politics, is usually not specific enough to add greatly to our appreciation of that narrowly circumscribed field...the usefulness of a specific systems approach to international relations may now be approaching its end, despite the fact that the influence expected by it will undoubtedly prove to have been a lasting one".<sup>90</sup>

*Two-tier analysis:* Bulmer's interpretation of Europe's foreign policy behaviour is based upon the conceptualisation of EPC's character as federal in nature. Instead of confining himself to an inapt idea of federalism which regards EPC as an impediment towards the construction of a federal Europe, Bulmer rather chooses to identify EPC as part of a two-tiered political system comprising EPC, the EC and the twelve member states: "By placing EPC in a two-tier context, it is possible to proceed to use a two-tier bargaining approach to understanding its dynamics. Most of the bargaining in EPC is a lower tier phenomenon between the national governments of the member states...But because the subject matter is foreign policy, the collective identity of the Twelve cannot be ignored".<sup>91</sup>

Without completely renouncing federal theory Bulmer builds upon a diptych of approaches, cooperative federalism and behavioural theory respectively, to show that "the connection



between EPC and federalism is made via the EC". In this context EPC, is subsumed under a larger identity: "EPC plus the EC". The fact that the Community relies on its cooperation with the member states, to carry out its functions, means that the Twelve represent a weak federation. Cooperative federalism to which Bulmer refers is disposed to regard the regional process as "primarily one of the coexistence...within a hybrid policy system of common procedures and institutions, of two entirely distinct policy styles...It also expresses the mixed policy dynamics underway in a regional process where there is continuing animus over the direction of international change, rather any certainty over its eventual outcome. Above all this concept captures the intrinsic ambiguities of the two level political game under conditions of interdependence".<sup>92</sup> In Bulmer's analysis, the two-tier bargaining concept includes an attempt to explore the "dynamics of national foreign policy-making (in particular of domestic politics) as well as those at the level of EPC itself".<sup>93</sup>

According to Bulmer EPC's success depends on a coalescence of the convergent attitudes of the Twelve. This correlates with four dynamics identified with behavioural theory which are an alternative or a complementary approach to that of cooperative federalism:

- *The identification of a common European interest through integrative bargaining.* To focus on integrative bargaining is to assume that the member states are engaged in a variable-sum

game. To the extent that they can benefit through a united front to the cost of smaller and less effective units (whether states or transnational actors) in international relations member states pass on to non-members the specific costs of such bargaining. An increasingly outward-looking EPC is a congruous vehicle for accentuating the effectiveness of integrative bargaining. However, despite initiatives to enhance EPC's special weight on the outside world i.e. the Venice Declaration or the employment of negative or positive economic measures as means of boosting EPC's declaratory diplomacy, Political Cooperation is enfeebled by the absence of a defence/military capacity. Even though, as Bulmer notes, "the whole objective of EPC activity can be characterized as integrative bargaining" this should not undervalue EPC's advances namely a *communauté d' information*, a *communauté de vues* and a *communauté d' action*.

- *A minimalisation of the costs to individual member governments as identified in distributive bargaining.* The notion of distributive bargaining is employed by Bulmer to portray those issues of EPC that generate friction between member governments. As he states "the fundamental tension in EPC is between homogeneity and heterogeneity in foreign policy interests". The equivocal commitment of member states to subordinate their national interests to a "European interest" and to act in concert in the field of foreign policy is honoured as long as it promotes their own individual interests. According to David Allen, the "states have joined the Community not to give up their sovereignty but

to protect it".<sup>94</sup> In order to discern the different components of distributive bargaining two variables seem of significance. In Bulmer's formulation they relate, firstly, to national "costs" concerning the principles/procedures of EPC and secondly to the national divergences on the substance of policy.

- *Adequate procedural arrangements and negotiating "atmosphere" (attitudinal structuring)*. Attitudinal structuring refers to the correlation between behaviour patterns in negotiating forums and an armoury of devices for facilitating the prevalence of a climate of confidence or otherwise. In the case of EPC informality as it is expressed for example in the Gynnich-type meetings furnishes an abundant basis for an explanation of the pragmatic development of EPC.

- *Support or at least acquiescence on the part of public, party political, and interest group opinion in the twelve member states (intraorganisational behaviour)*. The thrust of intraorganisational bargaining is its assumption that domestic politics merit serious consideration when an appraisal of national government's positions in EPC is undertaken.

Criticism accompanies two-tier analysis. While acknowledging the influence of interstate bargains, Smith, for example, suggested that it is important to focus, not simply on the actions of governments constrained at home by domestic societal pressures, but also on the institutional structures, historical context and the cumulative impact on policy

making.<sup>95</sup> In the EPC/CFSP case national decision makers influence the policy making process and try to shape the institutions of policy making to their benefit. Domestic actors do not engage in political activity and there is often a considerable lack of public knowledge or interest both over policy content and policy processes. Thus, Smith, has argued that European foreign policy has not been “used as a forum for making side payments, threatening sanctions against each other, or linking issues into package deals that occurred in other EC policy sectors or during IGCs”.<sup>96</sup> Although decisions are taken in intergovernmental institutions, national governments are not able to influence EPC/CFSP to the extent suggested by two-tier analysis. According to Ginsberg, European foreign policy administrative structures develop in a way to limit the abilities of heads of governments to maintain tight control over decision processes within the CFSP system. For Ginsberg:

EFP outcomes are based less on ad hoc policy discussions than on socializing of lower level administrative officials in the member governments and their permanent representations to the EU in Brussels. By empowering and involving domestic bureaucrats in the EFP process, EPC/CFSP helps create loyalties among national foreign policy-makers.<sup>97</sup>

*Regime theory:* John Ruggie, has defined an international regime as “a set of mutual expectations, rules and regulations, plans, organizational energies and financial commitments, which have been accepted by a group of states”.<sup>98</sup> According to yet another

writer, Stephen Krasner, regimes are “sets of implicit or explicit principles, norms, rules and decision making procedures around which actors' expectations converge...”.<sup>99</sup>

Proponents of regime theory draw a distinction between formal and informal regimes. Legislation by international organisations contributes to the formation of the former. Such regimes usually encompass governing councils and bureaucratic structures. A consensus of objectives and mutual interests among participants, resulting in *ad hoc* arrangements, on the other hand, trigger the development of informal regimes.<sup>100</sup> At the same time, regime theorists cite as the source of regime-building potential a conception of common interest in which collaboration constitutes an optional strategy for participants. Collaboration is characterised by a set of agreed rules designed to evoke reciprocal gestures of cooperation and deter certain actions. Others, however, such as Haas, have held that the existence of regimes has not been due to common interest. Instead, they have explained that existence is attributable in large measure to “common aversion”. In such regimes, “the actors do not agree on a jointly preferred outcome, but they do agree on the outcome all wish to avoid; such regimes merely require policy coordination, not collaboration”.<sup>101</sup>

Regimes are also said to be dependent upon the existence of an agreement or contract among the participants. In other writings, students of regime theory tend to regard regime-building either as an evolutionary process or as a concomitant

of a dramatic unilateral action by one party that is accepted by others. Another variant of regime theory postulates regime-building as a function of voluntary collaboration or cooperation.<sup>102</sup> Oran Young distinguishes between negotiated regimes characterised by explicit consent on the part of the participants and imposed regimes that are “deliberately established by dominant actors who succeed in getting others to conform to the requirements of those orders through some combination of cohesion, cooperation, and the manipulation of incentives”.<sup>103</sup>

Keohane has noted that the decision for the establishment of a regime is determined by the will of a dominant power. He developed a regime concept in relation to hegemonic stability, cooperation and collaboration. In an analysis of the world political economy of the two generations after World War II, he defined hegemony as “possession of a preponderance of material resources – raw materials, sources of capital, control over markets, and a competitively advantageous position in the production of goods in great demand”.<sup>104</sup> Keohane traced the formation and structure of a number of international regimes in the decades after World War II to the leadership of the United States. Keohane sought answers to the following questions: What happens to such regimes when a hegemonic power loses its preponderant position? How and why do regimes that were formed as part of a relationship between a dominant power and lesser units endure after the hegemonic power has ceased to play a determinant role? In Keohane’s view, the answer lies in the

fact that regimes are more easily preserved than created. In his words: "Cooperation is possible after hegemony not only because shared interests can lead to the creation of regimes, but also because the conditions for maintaining existing regimes are less demanding than those required for creating them".<sup>105</sup> In such a conception, it is not the presence of a hegemon that is important but rather the existence of perceived interests that are common or complementary in nature. As the hegemonic power's position is diminished, an intensification of interactions among at least a few of the units of the regime may serve as a replacement or supplement leading to posthegemonic cooperation. Regime-building requires then, the ability of the constituent units to deal on even terms, the attainment of agreement by means of compromises, where any side can make concessions while leaving the substance of its interests intact, or else the participant making the greater concessions receives side-payments. National interest is enunciated by regime theorists as a form of bargaining, a benefit-cost process, reflecting the compliance with or the disregard for the provisions, rules and procedures set forth in a given international regime. Thus, shared interests give shape to international regimes. An increase in the incentives to cooperate contributes to the perpetuation of international regimes.<sup>106</sup>

According to Keohane, the international regime concept can act as a kind of "lens" through which we can both describe and account for an intensification of frictions and an intensification

of cooperation or integration over a period of time. Regime theorists view such relationships as longer-term patterns of behaviour rather than as isolated actors or events. For Keohane: "By investigating the evolution of the norms and rules of a regime over time, we can use the concept of international regime both to explore continuity and to investigate change...".<sup>107</sup>

Central to regime theory is the concept of interdependence which means that "governments attempting to achieve economic and political objectives (domestically and internationally) have to give more attention to the activities and objectives of other agents: other governments; international organizations; transnational companies; banks; finance houses; and the behaviour of individuals aggregated through markets".<sup>108</sup>

According to Alan Russell:

Economic interdependence as part of the process of globalization has given rise to a much greater complexity of linkage between societies, affecting all aspects of life, including ideology, culture, entertainment, environment, technology, wealth creation and distribution, and implicit in all of this is a growing interdependence in security questions (themselves defined more broadly than in the past). In this context politics is also becoming more transnational or globalized.<sup>109</sup>

Interdependence was a focal point for political scientists interested in analysing "the conjuncture of economic conditions in Western Europe which gave rise to the EC initiatives; to the



economic and political consequences of policy collaboration; to indicate the limits of regional cooperation; and as a justification for maintaining the EC in spite of disagreements amongst its member states about its ultimate political purpose".<sup>110</sup> Keohane and Nye argue that interdependence always carries with it costs, "since interdependence restricts autonomy, but it is impossible to specify *a priori* whether the benefits of a relationship will exceed the costs. This will depend on the values of the actors as well as on the nature of the relationship".<sup>111</sup> From a foreign policy standpoint, interdependence connotes the ability of one government to benefit from interaction while preserving its autonomy.<sup>112</sup> As the degree of interdependence grows, the likelihood of utilising existing regimes or creating new ones increases.

According to interdependence theorists, statecentricity in contemporary international relations is being eroded by the internationalisation of production, the global integration of financial markets, and the diminution of national control. Modern technology empowers nonstate or substate actors to evade state efforts to control the flow of goods, people, money, and information across territorial boundaries. Systems of transactions rarely have coterminous boundaries with each other or with state administrative boundaries. As the range of global issues is expanding, interdependence is reducing states' ability to manage. Mutual vulnerabilities reduce states' autonomy by curtailing their control of their own fates. Thus, interdependence and the interpenetration of domestic and

international politics, the mobility and globalization of capital and information, and the rising influence of transnational social movements and organisations are among the factors that contribute to the erosion of state control over economic policy, transborder flows, and so on. In these circumstances, the Realist formulation that the traditional interests of states are also their unchanging interests and that the determination of what those interests are also changes little if at all over time is inadequate. The centrality of the state system thus tends to be circumvented and possibly subverted. But this by no means indicates that the state is obsolete. Nor it suggests that global management by functional institutions is probable. Governments remain important actors, but so do actors from the subnational, transnational and supranational arenas. Therefore, it would be premature to abandon the focus of the Realists' arguments about the essential prerequisites of international politics, just as it would be inadequate to disregard the ways that international agencies, institutions and policy networks promote international change and cooperation.

*Consociational theory:* In need of an explanation of EPC's stability contrary to "increased centrifugal forces", Weller and Wessels resorted to consociational theory.<sup>113</sup>

Arend Lijphart, in his pioneering and comprehensive survey of consociationalism, set forth four features of consociation. First, he suggested that "there must be a number of groups which are in some sense insulated from each other, in that their interests

and associations are more inwardly directed than overlapping with those of members of other groups in the same state: there are relatively few cross-cutting cleavages, and authority within that state is segmented in relation to such groups".<sup>114</sup> Second, Lijphart posited that the state is dominated by a "cartel of elites". This concept, central to Lijphart's consociationalism, gives continuity and stability to the seemingly diverse rights and interests of the widely separated sections of society: "the political elites of the various segments are each involved in some way on a continuous basis in the process of decision-making and decisions are the product of agreements and coalitions among the members of that cartel. There is no exclusion from decision-making, as, for instance, in the event of defeat in an election, which would be the case with a majority system".<sup>115</sup> Third, Lijphart stated that "all the political elites must have the right of veto over decisions of which they disapproved". Fourth, and finally, Lijphart argued that there must be a "law of proportionality". By Lijphart's definition, proportionality means "that the various segments of the population must have proportional representation among the major institutions, the bureaucracy, legal systems, and so on, of the state".<sup>116</sup>

In Lijphart's model the primary objective of the leaders of the rival subcultures is to preserve the general system "whilst at the same time seeking to protect and further the interests of the groups which they represent".<sup>117</sup> In this respect, elites within their own respective units must be able to rely on a "high degree

of homogeneity, and be capable of backing this up on occasion with techniques for the maintenance of internal discipline".<sup>118</sup>

Weillers and Wessels draw an analogy between certain profoundly divided (segmented) democratic states which due to a reconciliation between the "political elites which control/lead the fragmented social segments" succeed in maintaining stability and the strong affinity between the Twelve's "foreign policy elites". The latter by virtue of various devices for facilitating elite bargaining such as consensus or package deals foster a sense of unity among the members of the Community in spite of their conflicting interests.

Even though Weiler and Wessels admit that the affiliation of the consociational model with European Political Cooperation is inchoate, requiring quite a lot of refinement before it could be put into practice, they proceed by highlighting a semblance of the two frameworks. Thus, the basic requirements for success according to consociational theory<sup>119</sup> – the ability of the elites to accommodate the divergent interests and demands of the subcultures; the ability of elites to transcend cleavages and to join in a common effort with the elites of rival subcultures; the joint responsibility of the elites to preserve the system and to work towards the "improvement of its cohesion, functionality and stability"; and the realization by the elites of the hazards associated with political fragmentation – find their "functional equivalent" in EPC in a "loyalty towards a common yet unclear vision called European Union". Moreover, the length of time a

consociational democracy has been in operation; the existence of external threats to the polity; the existence of a multiple balance of power, and a relatively low total load on the decision-making apparatus, are all features which will be conducive to the success of consociationalism.

In conclusion, Weiler and Wessels suggest that consociational theory "clearly gives one explanation to a phenomenon, EPC, which...theoretically could not exist". But if the consociational theory is to be taken seriously then the two authors claim it could offer some prescriptive elements as well. In particular it would seem that EPC should resist two perennial calls: "The call for expansion and the call for democratization. The call for expansion must be resisted because high load activity will burden the consensus mechanism. Democratization, through the European Parliament, could, if indeed EPC is essentially consociational, be dangerous since it would destroy the delicate pattern of elite negotiation and compromise".<sup>120</sup>

It is appropriate to be sceptical about the applicability of the consociational model to the EU's CFSP. Hill argued that an explanation of EPC based on the notion of a small group of elites – not democratically accountable – operating in secret might have some validity but he was cautious about ascribing causality to it since it does not take into account the great variety of factors that affect the course of international relations and modify action-reaction processes.<sup>121</sup> This, of course, is a shortcoming not only of consociationalism, but of all single-

factor explanations. Pijpers has pointed out in a somewhat similar vein that consociationalism explains only one aspect of EPC: its institutional and policy stability. Thus, according to Pijpers, one can say that cooperation among the foreign policy elites concerns exclusively aspects of certain international issues that do not keep the member states apart and that the EU cannot be a suitable testing ground for the consociational model because it does not represent a system with deep cleavages.<sup>122</sup>

Summing up the value of theoretical constructs for the explanation of foreign and security policy at the Union level, there is no single theory capable of explaining adequately the critical dynamics of the EPC/CFSP process. CFSP is now widely recognised as a hybrid rather than a singular process; a composite of opposing tendencies rather than one driven by a unicausal dynamic. It is an endemically complex process which harbours mixed motives and conflicting expectations, a process in other words which “defies immediate categorisation, involving as it does elements of integration, intergovernmentalism, transnationalism and bureaucratic politics all operating within a framework that encompasses both international organisations and nation-states struggling to attain or maintain an independent identity in an interdependent world”.<sup>123</sup>

With this in mind, this study proceeds to use the “capability-expectations gap” idea to measure change in European foreign policy. The “capability-expectations gap” is a pretheoretical

devis<sup>e</sup> and hardly amounts to a theory in its own right. It is one of those useful analogies which abound in political science, capable of yielding insights but too generalised and descriptive to furnish those deeper insights which merit the status of a fully fledged theory. The “capability-expectations gap” has the merit of “enabling us to compare the size of the gap at different points of time...And in principle this is something that could be continually monitored, just as capabilities are regularly assessed in the foreign policy analysis of states”.<sup>124</sup> As it stands however, in the literature, the “capability-expectations gap” idea achieves little on its own account. Rather its usefulness depends on it being operationalised and adapted to fit altogether more rigorous theoretical constructions of the CFSP process.

Hill has once remarked that “what you see may well depend on where you sit, but which seats give the best view in the house?”.<sup>125</sup> Because there are several alternatives, and sometimes incompatible, ways of organising theoretical inquiry about CFSP, the challenge of capturing CFSP’s problems cannot be reduced to any one simple yet compelling account. Each paradigmatic effort to do so has ultimately been abandoned as developments in the EU’s foreign and security policy field eroded its continuing relevance. Although every generation has brought a new fad or two to theoretical inquiry, few have been able to provide lasting answers. Although grand theories usually do not look very grand with the passage of time, they often regain their attractiveness when transformations make them useful once again for interpreting CFSP.

In conclusion, the field of inquiry “continues to be at the pretheoretical stage. Theorists are developing new and reworking old explanatory concepts not yet linked in any meaningful way to a larger or even middle range theory” of CFSP.<sup>126</sup> The works of Hill and in particular his notion of the “capability-expectations gap” enables theorists to examine CFSP “without reference to the cramping debate of an earlier generation”.<sup>127</sup>

### ***1.3 The capability-expectations gap***

In his 1993 study of Europe's international role, Hill wrote that:

...dramas over the Gulf, the Uruguay Round and Yugoslavia seem to show that the Community [sic] is not an effective international actor, in terms both of its capacity to produce collective decisions and its impact on events.<sup>128</sup>

His central argument is that the European Union's capabilities have been talked up to the point where a significant capability-expectations gap exists and that this is already presenting the EU with difficult choices and experiences that are the more painful for not being fully comprehended.<sup>129</sup> If the gap is to be closed and “a dangerous tension relieved in European foreign policy”, then Hill suggests that “either capabilities will have to be increased or expectations decreased”.<sup>130</sup> In his formulation:



capabilities...means cohesiveness, resources and operational capacity...Lowering expectations means both lowering one's own ambitions in foreign policy and communicating the fact to outsiders, so that the limits of European actorness and intentions are clearly visible.<sup>131</sup>

What he calls capabilities of the Union correspond to conventional instruments of foreign policy – the use and threat of force, diplomacy, economic carrots and sticks, cultural influence – but also the underlying resources of population, wealth, technology, human capital and political stability, together with cohesiveness, or the capacity to reach a collective decision and to adhere to it.<sup>132</sup> Expectations, on the other hand can be multifarious: political pressures to grant membership of the EU to supplicant states, or to provide “solutions” to the problems of third countries; pressures for economic assistance, in the form of aid, trade preferences or even access to the Single Market; intellectual expectations that the EU can resolve the problem of the nation state, provide a new framework for European order or an alternative identity for the non-American West.<sup>133</sup> As Carolyn Rhodes stressed:

External perceptions about the EU's presence and capability in international affairs are important indicators of how well intentions have been translated into observable actions. Paying attention to how the European Union is viewed abroad helps us to evaluate whether gaps between expectations and realities have affected the “reach” of EU

influence. While perceptions of other actors in the international system may not always constitute an accurate measure of EU activity, they do provide insights into how the EU is judged as an international actor.<sup>134</sup>

Given these definitions, the gulf between expectations and reality “was seen as the significant difference which had come about between the myriad hopes for and demands of the EU as an international actor, and its relatively limited ability to deliver”.<sup>135</sup> Thus Hill attempted “to sketch a more realistic picture of what the Community [sic] does in the world than that presented either by its more enthusiastic supporters or by the *demandeurs* beyond its borders”.<sup>136</sup> In particular, he has identified both a number of functions the EC and the EU have played in the international system up to the 1990s and a number of potential future roles. Hill listed four functions that the EC has effectively performed under the EPC procedure: firstly, it has contributed to the stabilization of Western Europe; secondly, as the largest global trader, the EC was instrumental in managing world trade; thirdly, through the Lomé system, the Mediterranean preferences and its agreements with the Association of South East Asian Nations (ASEAN) and the Contadora countries, the EC became the principal interlocutor between the developed and the developing world; and finally, it offered a second and increasingly distinctive western voice in international diplomacy.<sup>137</sup>

From this position of increased “salience in the system”, Hill suggested six new ways in which a “more self-confident and maturing EC should seem capable of extending its global activity”. First, the European Union is regarded as the most likely candidate for replacing the Soviet Union in the global balance of power. Second, the EU has the capacity to act as a regional pacifier and as a magnet and a model for the countries of Eastern Europe. Third, the Union exhibits the potential to interfere, on occasions by military force but more often with economic and political instruments, in states or regions where instability seems likely to threaten European interests and/or the peaceful evolution of the international community of states. Fourth, to complement such a coercive role the EU could assume a greater responsibility as a mediator of conflicts. Fifth, the Union has the opportunity to make renewed efforts – political and financial – to assist with the relief of poverty and to prevent North-South relations degenerating into mutual hostility or disregard. Finally, the European Union possesses the capacity to become a joint supervisor of the world economy together with Japan and the USA through increasing dominance in the International Monetary Fund (IMF), the G-7 and the World Bank.<sup>138</sup>

Hill's original argument was conceptual more than theoretical and had no pretensions to comprehensiveness. It was based on two concepts: actorness and presence.

According to Gunnar Sjöstedt, an international actor can be said to be an entity which is discernible from its external environment and has a minimal degree of internal cohesion.<sup>139</sup> If these conditions are fulfilled the entity under study has autonomy necessary for it to be considered an international actor. However, autonomy is a necessary, but not a sufficient, condition for actorhood. If the EC, or in principle any other entity belonging to the international system, is to be considered a full fledged actor, it has, according to Sjöstedt, to be in possession of seven structural prerequisites: a community of interests; a decision making system; a system for crisis management; a system for the management of interdependence; a system of implementation; external representation and external channels of communication; and community resources and mobilisation system.<sup>140</sup>

Following along the path marked out by Sjöstedt, Charlotte Bretherton and John Vogler held that:

The attribution of actorhood does more than simply designate the units of a system. It implies an entity that exhibits a degree of autonomy from its external environment, and indeed from its internal constituents, and which is capable of volition or purpose. Hence a minimal behavioural definition of an actor would be an entity that is capable of formulating purposes and making decisions, and thus engaging in some form of purposive action.<sup>141</sup>

Using other indicators of EU's actorness – shared commitment to a set of overarching values and principles; the ability to identify policy priorities and to formulate coherent policies; the ability effectively to negotiate with other actors in the international system; the availability of, and capacity to utilise, policy instruments; and domestic legitimation of decision processes, and priorities, relating to external policy – Bretherton and Vogler concluded that the EU is a “global actor of some significance”.<sup>142</sup>

Other scholars have suggested different indicators of evaluating EU actor capacity. Joseph Jupille and James Caporaso, for example, posit four components of actor capacity: recognition (understood as acceptance of and interaction with the entity under examination by others); authority (the legal competence to act); autonomy (institutional distinctiveness and independence from other actors); and cohesion (the degree to which an entity is able to formulate and articulate internally consistent policy preferences).<sup>143</sup> Another study, discussed Western Europe's international behaviour in relation to the notion of assertiveness. According to Reinhardt Rummel, assertiveness means one or several of the following ways of behaviour: to develop more of a common West European viewpoint and position; to adapt effectively to new internal or external challenges; to take care of West Europe's problems without relying on the help of others; to resist domination by others, especially the superpowers, and to oppose other international actors' views, if necessary; to take on new

responsibilities beyond West Europe; and to increase West Europe's influence on international events.<sup>144</sup>

Although the theorists examined in this section have suggested a series of indicators for assessing EU's actorness, the theory is not sufficiently advanced that there exists either a commonly accepted definition of EU's actorness or general agreement on the relevant indicators of actorness. In the early 1970s François Duchêne suggested that the Community is a "civilian power". Although he did not argue that Europe would turn into a pacifist actor in international relations, he was fascinated by the possibility of EC becoming "the first major area of the Old World where the age-old process of war and indirect violence could be translated into something more in tune with the twentieth century's notion of civilised politics".<sup>145</sup> In his view, the Community's "interest as a civilian group of countries long on economic power and relatively short on armed force is as far as possible to domesticate relations between states, including those of its own members and those with states outside its frontiers".<sup>146</sup> Hanns Mauz defined civilian power as involving the acceptance of the necessity of cooperation with others in the pursuit of international objectives; the concentration of non-military, primarily economic, means to secure national goals, with military power left as a residual instrument serving essentially to safeguard other means of international interaction; and a willingness to develop supranational structures to address critical issues of international management.<sup>147</sup> At the same time, Hill distinguished between

three possible models of the Community's international behaviour: the power bloc, the civilian power model and the European foreign policy as a flop. According to Hill, the civilian power model "comes closest...to rendering the truth about the EC and its international possibilities. Clearly the concept is inadequate...in the assumptions it makes about the changing nature of influence in international relations...Yet it is worth attempting to rehabilitate...It allows that the Community, and the kind of international relations which it conducts, is essentially *sui generis*, an unprecedented development in world history which must not be cramped by forcing it into inappropriate conceptual models derived from the study of nation-states".<sup>148</sup>

Civilian power is discounted by the Realists. Bull argues that the idea that "Western European nations constitute a "security community" or area of peace is mere wishful thinking, if it means that war between them could not happen again, and not simply that it has not happened in recent decades and would not make sense".<sup>149</sup> For Bull, the power of influence exerted by the EC and other civilian actors was conditioned upon a strategic environment provided by the military power of the superpowers.<sup>150</sup> And Pijpers points clearly to the "limits of a civilian power in a rather uncivilian world".<sup>151</sup>

For Hill and Wallace true actorhood requires "not only a clear identity and a self-contained decision-making system, but also the practical capabilities to effect policy".<sup>152</sup> Some writers

attribute the Union's global importance to its economic prowess. Thus, for Christopher Piening the EU "may not be a superpower (a term that implies the possession of great military power as well as economic strength), but it is certainly a global power".<sup>153</sup> Others, however, have argued that ultimately "defence is the key to the development of the Community's place in the world".<sup>154</sup> In his 1982 examination of the capacity of the Communities to behave in international society as an actor, Taylor found that "Europe is capable of producing occasional examples of actor-behaviour. But, it seems unlikely that these will become typical, incremental and exclusive, in the manner which might be expected of a common foreign policy. Rather they have been the product of a diverse, decentralised entity, occasionally capable of achieving sufficient internal coordination and harmonisation, as to project an image of unity".<sup>155</sup> Rhodes, though, warns that member state reluctance to permit the EU to take responsibility for a wide range of external roles will impede the development of a truly cohesive, strategically guided EU foreign policy.<sup>156</sup> However, the unmistakable fact is that even though the EU falls short of anyone's criteria for effective international actorness, the member states have established a collective presence in international relations.

The concept of presence, taken from Allen and Michael Smith, accepts the reality of a cohesive European impact on international relations despite the messy way in which it is produced.<sup>157</sup> Allen and Smith construe Europe's foreign policy



in a sense that transcends traditional insights into Western Europe's role as an actor in world politics. Rather than being preoccupied with a mundane conception of Western Europe as a "fully-fledged state-like actor" or a "purely dependent phenomenon" they prefer to concentrate on Western Europe's multi-faceted active or less active role in international economic, political and military interplays.<sup>158</sup> In this setting European foreign policy, instead of being the pith of the process, is treated as just one of the diverse elements which demarcate Europe's posture in the international realm.

The focal point of their analysis is the notion of "presence". They define presence as a "feature or a quality of arenas, of issue areas or of networks of activity" which:

operates to influence the actions and expectations of participants. It can be associated with tangible institutions or groupings but it can also be expressed in essentially intangible ways which are none the less powerful. A particular presence, then is defined by a combination of factors: credentials and legitimacy, the capacity to act and mobilise resources, the place it occupies in the perceptions and expectations of policy makers.<sup>159</sup>

According to Allen and Smith "presence" fluctuates between two dimensions: the tangible/intangible dimension and the positive/negative dimension. From their intermingling derive four broad forms of presence: the initiator, which provides a positive stimulus to certain courses of action, and is often

associated with specific institutions or organisations; the shaper, which has a more intangible manifestation, and it operates subtly to mould the actions of participants in a given arena; the filter, which is also intangible but it operates to exclude certain possibilities and to constrain expectations; and the barrier, which constitutes a tangible but negative set of forces, which provides disincentives to actions and may impose costs or punishments on actors who operate in defiance of it.<sup>160</sup>

For Allen and Smith, the EU's presence in the international scene is significant. Although it possesses relatively few of the credentials of a unified international actor, it has considerable structure, salience and legitimacy in the process of international politics.<sup>161</sup> As they pointed out, the most tangible West European presence is to be found in the economic sphere, but the effect of this presence is far from universally positive. In the political sphere, the EU is viewed as a "shaper" or "filter", moulding the perceptions both of West European policymakers and of others, shaping collective action, and filtering out certain options. This is mainly an intangible process, but the two authors discerned significant moves toward tangible impacts through the development of EPC and other mechanisms and through the clear convergence of national foreign policy positions. Finally, in the military sphere the presence of Western Europe is intangible but powerful.<sup>162</sup>

From this base, Allen and Smith engaged in what they termed as analysis of "making one's presence felt". What they called

“making one’s presence felt” corresponds to a “concern with the more tangible aspects of presence”.<sup>163</sup> Their conceptualisation included the mechanisms and procedures through which a shared perception of the need for action is translated into action and interaction. In their view, presence is related both to the capacity to act and to the notion of “taking responsibility”. The EU’s capacity to act consists of three sets of factors: learning capacity, carrying capacity and mobilisation capacity. According to Allen and Smith, a given international actor should be able to “absorb and adapt to information received, it should be able to cope with the task of generating decisions, and it should be able to mobilize appropriate resources for the task(s) in hand. Each of these activities is given more importance by the incidence of rapid change, but rapid change in itself makes them more difficult to perform”.<sup>164</sup> “Taking responsibility” implies something proactive, involving some kind of collective will.<sup>165</sup>

In taking responsibility and making its presence felt in the European security order, the EU can be either a barrier, acting to establish, maintain, and if necessary enhance the boundaries between itself and the broader security order; a facilitator, establishing rules, norms, and procedures enabling change to be accommodated and channelled in the broader order; or a manager, exercising leverage to supply both channels and desired outcomes, managing both the agenda and the process.<sup>166</sup> For Allen and Smith, the further one “moves away from the military end of the security spectrum, and the more one approaches security issues from an economic, social, and

political perspective, the more the EU is in a position both to make its presence felt and to take responsibility".<sup>167</sup> This line of argument, they suggest, leads to a more sanguine view of the EU's presence. Thus, according to Smith, there is no doubt that:

the EC and now the EU have long-established and material foundations for their presence and impact in the international arena. These foundations are the reflection of the economic and political weight of the EU, of its institutional capacity and of the ways in which it has enlarged its tasks and roles in the changing world arena. But they are not monolithic, nor do they suppress the claims or the prerogatives of the member states. Indeed, as the EU has entered new areas of activity, it has occasionally seemed to reach the limits of its capacity to lay claim to the new territory on which it finds itself.<sup>168</sup>

Although the EU-as-actor or presence approach has been criticised for having given insufficient emphasis to the policy process itself and for its assumption that the Union can be appropriately analysed and evaluated as a single actor,<sup>169</sup> by focusing on the concepts of "presence" and "actorness" we steer away from the debate over whether the EU is a superpower and we avoid analysing CFSP in terms of sovereignty and supranationalism "which might lead us to suppose that there was in fact no European foreign policy when common sense and the experience of other states tell us precisely the opposite".<sup>170</sup>

The present study proceeds to assess CFSP by drawing up a balance sheet of both capabilities and expectations. Comparison with the former practice of EPC and the extent to which the transition from EPC to CFSP raised expectations of the EU that it simply was incapable of fulfilling provides the underlying theme for comparative analysis.

To that end, the study continues (Chapter 2) by placing the debate on the development of a CFSP in an historical context and by focusing on the impact that the end of the Cold War had on the European Community and the context within which the foreign and security policy provisions of the Maastricht Treaty were negotiated. In the third Chapter attention is paid to the contents, the methods and objectives of CFSP as laid out in the Treaty on European Union.

Chapters 4 and 5 take an inside look at the war in former Yugoslavia and the EU's response to it. Using the experience of the European Union in former Yugoslavia as a case study we show how separate interests, inappropriate tools and uncoordinated action by constituent parts of the organisation impeded effective action. The main concern here is not to give a precise chronological survey of the war, but to consider the underlying trends and key events which have shaped the formation of the EU's policy. The study continues (Chapter 6) by applying the lessons from the Yugoslav experience to the debate which surrounded the review of the Maastricht Treaty and concludes with an evaluation of the present situation on

the basis of the provisions adopted in Amsterdam and recent developments.

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<sup>2</sup> Roy H. Ginsberg, *Foreign Policy Actions of the European Community: the politics of scale* (Boulder: Lynne Rienner, 1989), 9.

<sup>3</sup> Roy H. Ginsberg, "Conceptualizing the European Union as an International Actor: Narrowing the Theoretical Capability-Expectations Gap", *Journal of Common Market Studies* **37**, 3 (1999), 450.

<sup>4</sup> Christopher Hill, "The Capability-Expectations Gap, or Conceptualizing Europe's International Role", *Journal of Common Market Studies* **31**, 3 (1993), 305-328.

<sup>5</sup> *Ibid.*, 306.

<sup>6</sup> Weiler and Wessels, *op. cit.*, 238.

<sup>7</sup> Hedley Bull, *The Anarchical Society. A Study of Order in World Politics* (Houndmills, Basingstoke: Macmillan, 1977), 264.

<sup>8</sup> *Ibid.*, 265.

<sup>9</sup> *Ibid.*, 266.

<sup>10</sup> Hedley Bull, "Civilian Power Europe: A Contradiction in Terms?", *Journal of Common Market Studies* **XXI**, 1&2 (1982), 151-152 & 163.

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<sup>12</sup> John J. Mearsheimer, "Back to the Future. Instability in Europe After the Cold War", *International Security* **15**, 1 (1990), 11.

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<sup>16</sup> John J. Mearsheimer, "The False Promise of International Institutions", *International Security* **19**, 3 (1994-95), 9.

<sup>17</sup> *Ibid.*, 7.

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<sup>22</sup> Mearsheimer, *Back to the Future*, 48.

<sup>23</sup> James A. Caporaso, "Has Europe Changed? Neorealism, Institutions, and Domestic Politics in the New Europe" in Robert J. Jackson, ed., *Europe in Transition. The management of security after the Cold War* (London: Adamantine Press Ltd, 1992), 22.

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## **2 The road to Maastricht: Negotiating the EU's Common Foreign and Security Policy**

### ***2.1 European Political Cooperation: A brief history of CFSP's predecessor<sup>1</sup>***

The treatment of foreign policy in the original European Economic Community Treaty is easy to describe: it is non-existent. Until the Single European Act was introduced foreign and security policy matters remained outside the Community framework and in the hands of the governments of the member states.

Being economic-oriented the Treaty of Rome did not provide for any supranational institutions to deal with substantial issues of "high politics" traditionally considered as the domain of the sovereign nation-state. However, the multitude of commercial and cooperation agreements concluded during the first decade of the Community's existence generated to a large extent demands and expectations of the third countries which viewed the European Community as a major international economic and political actor. One factor, therefore, for the introduction of some kind of cooperation in the field of foreign policy was the need for the Community to rectify its image in the outside world

as a unified force and to respond to third parties' needs for a "political" European Community.

Moreover, external imperatives such as the transatlantic relationship, relations with the Soviet Union and Eastern Europe and instabilities in the volatile Middle East necessitated an independent and coordinated European voice to sustain and promote European interests in the world.

Another factor which contributed to the development of political cooperation was West Germany's favourable predisposition towards it. Germans regarded political unity as a means of rehabilitating their battered image in the world and as a vehicle for achieving their foreign policy priorities namely security and economic reconstruction.

The first endeavour to tackle the question of a common foreign policy was made in the 1950s with the failed attempt to form a European Defence Community (EDC) and a concomitant European Political Community.<sup>2</sup> Had it not been for the French Parliament, the process of usurping the pre-eminence of national issues on the core issue of foreign policy would have made a quantum leap towards this direction.

On 23 November 1959 a meeting of the Foreign Ministers of the six member states contemplated the question of foreign policy coordination, concurring "to meet regularly...at three-monthly

intervals".<sup>3</sup> Three such pertinent meetings were held during the course of 1960.

At the very first summit meeting in Paris on 10-11 February 1961 a commitment "to seek the methods by which closer political co-operation could be organised" was undertaken, so that "Europe's actions will carry more weight in the world".<sup>4</sup>

It was the Bonn *communiqué* of 18 July 1961 which provided a further stimulus when the Heads of State or Government decided:

To hold at regular intervals, meetings whose aim will be to compare their views, to concert their policies and to reach common positions in order to further the political union of Europe, thereby strengthening the Atlantic alliance. The necessary political measures will be taken to prepare these meetings. In addition, the continuation of active co-operation among the Foreign Ministers will contribute to the continuity of the action undertaken in common...<sup>5</sup>

A cautious approach was taken by the European Movement, composed of voluntary organizations from all the non-Communist European countries, in its meeting in Munich, on June 6-7 1962. In the Memorandum, adopted by an overwhelming majority, the Congress of the European Movement "urged the creation of Community powers in the spheres of diplomacy and defence" set down in a new treaty. However, the Congress was keen enough to emasculate its own proposals by

suggesting that this new treaty “should not be allowed to infringe on the spheres of operation of the existing Treaties or on that of NATO, which was termed essential for the wider defence of the West”.<sup>6</sup>

The 1960s also witnessed the demise of the ambitious French ideas put forward by Charles de Gaulle in the shape of the Fouchet Plan for the creation of a “union of states”.<sup>7</sup> It was reproached by the other founding members of the Community because of their anxiety “that it would weaken the Rome treaty and whatever political objectives it implied, to the advantage of the national capitals, especially Paris”.<sup>8</sup>

The whole issue of creating a common foreign policy gathered momentum with the Hague summit of 1-2 December 1969. Paragraph 3 of the final *communiqué* encapsulated the ambitions of the participants:

...Entry upon the final stage of the Common Market not only means confirming the irreversible nature of the work accomplished by the Communities, but also means paving the way for a United Europe capable of assuming its responsibilities in the world of tomorrow and of making a contribution commensurate with its traditions and its mission.

The Foreign Ministers were “instructed to study the best way of achieving progress in the matter of political unification within



the context of enlargement” and “to make proposals before the end of July 1970”.<sup>9</sup>

Pursuant to the spirit of the Hague summit, the Foreign Ministers of the six member states adopted on 27 October 1970 in a meeting in Luxembourg, a “Report on the problems of Political Unification”.<sup>10</sup> The Luxembourg Report constituted the starting point in the emanation of the fledgling EPC. It was the first comprehensive text, after years of wrangling and indecision concerning cooperation in foreign policy, which expressed a concerted view of the Six in the field of international relations.

According to the Luxembourg Report, cooperation on issues of “high politics”, envisaged as a means of achieving progress towards political unification, was to have two objectives:

- to ensure greater mutual understanding with respect to the major issues of international politics, by exchanging information and consulting regularly; and
- to increase [the members'] solidarity by working for a harmonization of views, concentration of attitudes and joint action when it appears feasible and desirable.

A mechanism was 'set up consisting of a bi-annual meeting of the Foreign Ministers; these ministerial meetings were to be preceded by meetings of the Political Committee, which comprised the heads of the political departments convening at

least four times a year. Working parties were entrusted with special tasks and each member state was to appoint an official acting as correspondent of his counterparts in the other countries subsequently known as the Group of Correspondents.

The range of issues which the Six could propose for consultation was broad enough to include any subject which the member states conceived to induce "the development of the Communities" and to "give Europeans a keener awareness of their common responsibility".

There were provisions for informal contacts with the European Parliament (EP) and for consultations with the European Commission as long as there were repercussions for the Community caused by the activities of the Foreign Ministers. With the prospect of enlargement in the not too distant future "the correlation between membership of the European Communities and participation in activities making for progress towards political unification" was succinctly stated. Since it would have been unseemly to bar the potential members of the EC from the Davignon procedure it was agreed to keep them informed "of the progress of the work of the Six, since they will have to be consulted on the objectives and machinery described in the present report and will have to adhere to them when they join the Communities".<sup>11</sup> William Wallace and David Allen reflected on the Davignon Report as follows:

As a procedure, it promised everything or nothing. There was no commitment to agree, but simply to 'consult on all important questions of foreign policy' or on 'any question of their choice' which member states might propose. National governments might thus, in the words of one sceptical observer, 'both have their cake and eat it' – both to pursue common policies and to preserve the freedom to opt out when it suited them. Scepticism, indeed, seemed to be a fairly widespread reaction.<sup>12</sup>

Following the adoption of the Luxembourg Report the Foreign Ministers held their first European Political Cooperation meeting in Munich on 19 November 1970. In a statement to the press after the meeting, its chairman, the German Foreign Minister Walter Scheel, reiterated "the importance of the decisions taken by the Ministers to set up consultative machinery which would enable the six Governments to increase their political cooperation and harmonize their points of view on international policy matters". Two topics were on the ministerial agenda: the situation in the Middle East and the possible holding of a European security conference.<sup>13</sup>

A second meeting was convened on 13-14 May 1971 in Paris with Maurice Schuman, the French Foreign Minister in the chair. The meeting's focus was again on the Middle East and the proposed conference on European security. The congruity of views among the Foreign Ministers was echoed in a statement made by Schuman after the conclusion of the meeting where he argued that Political Cooperation had "made a good start. Far

from splitting, we have on the contrary, considerably narrowed the gap between our points of view".<sup>14</sup>

In accordance with the Luxembourg Report a third meeting was summoned in Rome on 5 November 1971 under the chairmanship this time of the Italian Foreign Minister, Aldo Moro. The discussion centred on "the improvement of the political cooperation mechanism already in existence; the strengthening of the Community, economic and monetary union; the Community's place in the world, and the political problems associated with it".<sup>15</sup>

During the summit of the Heads of State or Government in Paris in 19-20 October 1972 a call for revamping the Davignon mechanism was made. In this respect it was "agreed that consultation would be intensified at all levels and that the Foreign Ministers would henceforth meet four times instead of twice a year". The crux of the Declaration adopted in Paris was that political cooperation between the foreign ministers was to be strengthened with the aim not just to consult on current issues but "as far as possible to work out joint medium and long-term positions bearing in mind the implications and effects in the field of international policy of Community policies in preparation".<sup>16</sup>

Pertinent to the Luxembourg Report's provision for a second report to be submitted two years after the introduction of the Davignon procedure, and following a decision taken in the Paris

summit for such a report to be prepared by the end of June 1973, a "Second Report on European Political Cooperation on Foreign Policy" was compiled by the Foreign Ministers and was formally adopted by the Heads of State or Government at their Copenhagen meeting on 10-11 September 1973.

The Copenhagen Report praised the "flexibility and effectiveness" of EPC which led to a conflation of the divergent views of the Nine in the field of foreign policy "so as to make common political action possible". This conformance of opinions had also led to the "reflex of coordination among the Member states" with the result of Europe "becoming a real force in international relations".

In order for the Community "to make its voice heard in world affairs and to affirm its own views in international relations; to establish its position in the world as a distinct entity; and to make an original contribution to the international equilibrium" a number of refinements was suggested.

Thus, the Foreign Ministers were to meet four times a year instead of two, while cooperation among the embassies of the nine member states in each other's capitals as well as in third countries and international organizations was codified. More significantly, a communication system was to be established (the COREU system) providing direct links between the departments of foreign ministries. The Report also recognised

the extortionate administrative burden imposed on the Presidency.

Two other points were further elaborated. First, the affinity between the member states on all foreign policy issues was to be invigorated by the observance of two criteria spelled out in paragraph 11 of the Report:

- the purpose of the consultation is to seek common policies on practical problems; and
- the subjects dealt with must concern European interests whether in Europe itself or elsewhere where the adoption of a common position is necessary or desirable.

Each state had to abstain from taking any action without consulting first the other member states. Second, the Report outlined more clearly the relationship between EPC and EC. Hence, while it reaffirmed the intergovernmental character of EPC it recognised the need for the Commission to make known its views "should the work of the Ministers affect the activities of the European Communities". Finally, the Report introduced a new procedure concerning EPC's contacts with the European Parliament with the task of upgrading them, namely a prior notification to the Political Commission of the EP of the main subjects for discussion.<sup>17</sup> In the words of Panayiotis Ifestos:

...the Copenhagen Report brought about only marginal changes, it formalised the intergovernmental practices developed during the

preceding years, and made it clear that European cooperation in the area of "high politics" – though relevant – is distinct and different from the process established by the treaties of Rome.<sup>18</sup>

On 14 December 1973 the "Declaration on European Identity" was approved by the Heads of State or Government during their meeting in Copenhagen which sought to enunciate their position in world affairs. It was recognised that due to the complexity of the international problems it was imperative for the Community to "speak increasingly with a single voice if it wants to make itself heard and play its proper role in the world". Therefore, the nine member states were impelled to "define common positions in the sphere of foreign policy".<sup>19</sup>

At the Paris summit of 9-10 December 1974 the Heads of State or Government agreed to meet three times a year and asserted "their determination gradually to adopt common positions and coordinate their diplomatic action in all areas of international affairs which affect the interests of the European Communities".<sup>20</sup> In pursuing a decision taken at the same meeting, the Belgian Prime Minister, Leo Tindemans, drew up a "Report on European Union". The Tindemans Report which was submitted in December 1975, attempted to corroborate the vision of European Union by moving into gear the prospect of a common foreign policy. After taking into consideration the various reports by the Community institutions on European Union and the views expressed by prominent figures in the EC, Tindemans concluded that the linchpin of a common external

policy "lies in the obligation to reach a common point of view". On this point "the European Council has a vital role to play in stating general policy guidelines based on a global political analysis, without which there can be no common policy". He proposed further "to put an end to the distinction which still exists today between ministerial meetings which deal with political cooperation and those which deal with the subjects covered by the Treaties".<sup>21</sup>

The ponderous performance of EPC in the Afghanistan crisis acted as an incentive for the launching of an initiative by Lord Carrington for its redemption. In a speech to the Ubersee Club in Hamburg on November 17, 1980, the British Foreign Secretary espoused three proposals: any three countries should be able to call an emergency meeting of Foreign Ministers at 48 hours' notice; a permanent small secretariat of experienced officials seconded from the ten chancelleries should service EPC by providing papers, liaison and administrative memory; and a greater and more overt political commitment to EPC should be made by the member states.<sup>22</sup> These suggestions induced the Foreign Ministers to embody in the "Report on European Political Cooperation" "certain practical measures" for the amelioration of EPC.<sup>23</sup>

While the London Report duly recognised that EPC "has developed to become a central element in the foreign policies of all Member States" depicted in the fact that the Community was "increasingly seen by third countries as a coherent force in



international relations”, it also underlined the main deficiency of the system, namely that the ten member states instead of shaping events, merely reacted to them. This undermined the international position of the member states depriving them “from playing a role in the world appropriate to their combined influence”.

The Foreign Ministers paid tribute to “the flexible and pragmatic approach” of EPC which enabled them to discuss “certain important foreign policy questions bearing on the political aspects of security” and emphasised the members’ commitment to consult each other “before adopting final positions or launching national initiatives on all important questions of foreign policy which are of concern to the Ten as a whole”. Moreover, they proclaimed their intention to move beyond the point of merely adopting common positions to a more ambitious posture of acting jointly in all foreign policy issues.

The main provisions of the London Report can be summarised as follows:<sup>24</sup>

- a willingness to ease the workload of the ministerial meetings by including “only items of major importance”;
- a confirmation of the informal character of Gymnich-type meetings reiterating the absence of a formal agenda or of any officials;<sup>25</sup>
- a recognition of the contribution which “confidentiality” makes to the development of a coordinated foreign policy of the Ten;

- a desirability to consolidate EPC by furnishing the Presidency with “a small team of officials seconded from preceding and succeeding presidencies”. It was in the President’s discretion “to delegate certain tasks to his successor” or “to request his predecessor to finish tasks” already under way;
- a firm pledge to “fully associate” the Commission with Political Cooperation “at all levels”; and
- in the event of an international crisis a right was vested in any three member states to call within forty-eight hours a meeting of the Political Committee or if appropriate a ministerial meeting.<sup>26</sup>

One month after the signing of the London Report, on 19 November 1981, an amalgam of German and Italian ideas for the creation of a European Union was presented to the European Parliament in the form of a “European Act”.<sup>27</sup> In order to give substance to the wish for a United Europe the Act suggested that it was essential for the Heads of State or Government to project a common foreign policy and to collaborate in the formation of common European positions in the sphere of security policy so as to “safeguard Europe’s independence, protect its vital interest and strengthen its security”. A plea was included, *inter alia*, for an enhancement of the role of the Presidency in EPC “as regards initiatives” while an “expandable” secretariat of European political cooperation was to be formulated to alleviate the burden imposed on the European Council.<sup>28</sup> Clause 4.1 of Part Two provided for the possibility of setting up a parallel Council of Defence Ministers “if there [was]

a need” to consider common action in matters of security “in more details”.

Ensuing from the Genscher/Colombo proposals the “Solemn Declaration on European Union” was signed by the Heads of State or Government at Stuttgart on 19 June 1983. The Declaration underscored the salience of European Political Cooperation as a stepping-stone for advancing further “towards an ever closer union among the peoples and Member States of the European Community”. Emphasis was put on the consolidation of EPC “through the elaboration and adoption of joint positions and joint action on the basis of intensified consultations, in the area of foreign policy, including the coordination of the positions of Member States on the political and economic aspects of security so as to promote and facilitate the progressive development of such positions and actions in a growing number of foreign policy fields”. As Christopher Hill and Karen Smith noted:

...Stuttgart (1.4.2 and 3.2) expanded the definition to ‘the political and economic aspects of security’. This was part of the slow process of edging the Community towards defence matters and the extension of the common commercial policy to cover the arms trade (still to happen). Even so, both Denmark and Greece entered formal reservations as footnotes, thus initiating the concept of ‘footnote countries’.<sup>29</sup>

A passage was included on "the importance of greater coherence and close coordination between the existing structures of the European Communities and European Political Cooperation at all levels so that comprehensive and consistent action can be taken to achieve European Union" in anticipation of the provisions of the SEA four years later.<sup>30</sup> The Declaration also contained nine specific measures for reinforcing EPC, entailing a commitment to develop and extend the practice "by which the views of the Ten are defined and consolidated in the form of common positions which then constitute a central point of reference for Member States' policies" and an undertaking to define common principles and objectives and to identify common interests "in order to strengthen the possibilities of joint action in the field of foreign policy".<sup>31</sup>

Succeeding the adoption by the European Parliament on 14 February 1984 of the draft Treaty establishing the European Union, which provided for a "progressive transfer of activity from intergovernmentalism to integrated activity",<sup>32</sup> the European Council in Fontainebleau in June 1984, set up an *ad hoc* Committee on Institutional Affairs to make proposals for improving European cooperation on both Community and political cooperation issues.<sup>33</sup> The Committee's Report, which was a mirror-image of the Solemn Declaration, stated that it would behove the European Union to include in its agenda security and defence matters.<sup>34</sup> These suggestions were put under scrutiny at the European Council in Milan on 28-29 June 1985 where a decision was taken to convene an

Intergovernmental Conference from which the Single European Act emerged.

The SEA, which came into force on 1 July 1987 brought "the sphere of foreign policy for the first time within the ambit of the Community Treaties".<sup>35</sup> However, according to Article 31 of the SEA the powers of the European Court of Justice did not apply to Title III of the SEA.

Title III consists of Article 30 which contains the provisions governing the Community's constituent members cooperation in the field of foreign policy. Article 30.1 defines EPC's guiding principle: a commitment by the High Contracting Parties to "endeavour jointly to formulate and implement a European foreign policy". Two points are of significance. First, the reference to the member states as "High Contracting Parties" was an augur that they were still reluctant to renounce their predominant role in issues of "high politics". Second, as Simon Nuttall pointed out:

the strength of the commitment was attenuated by limiting it to endeavour only, not to achievement.<sup>36</sup>

The need for the Twelve prior to the adoption of national positions to "inform and consult", to "take full account of the positions of the other partners" and to give "due consideration to the desirability of adopting and implementing common European positions" was underscored.

Concurrent to the recognition “that closer cooperation on questions of European Security would contribute in an essential way to the development of a European identity in external policy”, acknowledgement was given to the will of the states “to coordinate their positions more closely on the political and economic aspects of security”.

Finally, in terms of the principal features of the machinery of EPC the existing practice was codified with the addition of a Secretariat based in Brussels with the aim of assisting “the Presidency in preparing and implementing the activities of European Political Cooperation and in administrative matters” (Article 30.10).

Generally speaking, EPC was conceived on a pragmatic basis to provide a platform to the member states to pursue common actions at the international level in tandem with their national foreign policies. It was distinct from the formal Community mechanism and its intergovernmental character was highlighted by its distinguishable trait of decision making by consensus as opposed to the *communautaire* method of majority voting. EPC's often belated reaction to events and its overindulgence in declarations was condemned as reflecting the lowest common denominator of European foreign policy cooperation rather than projecting a coherent policy. However, as Juliet Lodge noted:

such criticism overlooks EPC's necessarily extremely limited aims, possibilities and ambiguous legal basis.<sup>37</sup>

Thus, some successes in policy coordination of a routine and largely declaratory nature on several highly complex issues such as the Middle East conflict, the Conference on Security and Cooperation in Europe (CSCE) and Latin America can be claimed. Moreover, the accumulation of a *communauté d'information*, a *communauté de vues* and a *communauté d'action* produced at instances an independent "Europeanised" foreign policy which contributed its part towards the process of European Union.<sup>38</sup> As Stelios Stavridis observed:

EPC has favoured a more intergovernmental confederal form of integration, but...it has not hindered integration as such. After all if the Federalist model is not seen as desirable, there is no need to complain about any lack of progress in that direction. EPC seems to have consolidated the only type of political integration that was really on the cards at the time.<sup>39</sup>

The invasion and annexation of Kuwait by Iraq in August 1990, the collapse of the Soviet Union and the war in Yugoslavia highlighted the shortcomings of EPC and together with an awareness that the EU, in anticipation of its enlargement, had to expand its competence in the foreign and security policy field in order to match progress in other areas of European integration suggested the need to fashion a more efficient common foreign and security policy.

## **2.2 The end of the Cold War**

It is hardly original to note that the great transformations of 1989-90 signalled the end of the Cold War and the beginning of a new era. This oft-quoted statement however, a truism by now, still retains an undiminished value for it is the starting point one has recourse to in order to assess the implications that the end of the Cold War had on the process of deepening the political and security unity of the European Union – which inevitably implied too the parallel development of a common defence policy. However, for one to grasp fully the meaning of that changes and to comprehend their longer-range implications one needs first some sense of the three central features of the Cold War years.

First, in the wake of the Second World War a bipolar world system emerged with the Soviet Union and the USA standing at its two opposite poles. The devastation of continental Europe in 1939-45 and the concurrent decline of the traditional great powers – Great Britain, France, Germany, and Italy – created a power vacuum which was filled by the two new world actors. This development generated an increasingly militarised and ideologically highly polarised struggle between the USA and the USSR which was based on mutual deterrence and it was accompanied by the division of Europe into two antagonistic blocks symbolised by the division of Germany. Second, the East-West split and the balance of power policies that had been



developed to so high a degree during the Cold War compelled the two superpowers as leading members of NATO and the Warsaw Pact respectively to honour their commitments to their "cluster of dependent allies or reluctant satellites".<sup>40</sup> The result, as Adrian Hyde-Price noted, was that "the existence of the broader East-West conflict...and the alliance structures it generated, helped contain – although not to remove – more localised conflicts".<sup>41</sup> Third, was the perceived danger that the world would be left in rubble if the USA and the USSR ever engaged in direct conflict, particularly with nuclear weapons.

In this setting the European Community concentrated on the development of its economic clout and looked to the US for its military security. As David Allen and Michael Smith argued:

the old European order placed significant restrictions on the ability of the EC to play an independent and expansive role in the international system...The Community's previous failure to develop either a common foreign policy or a security identity of its own could be explained by the need to defer to the United States in return for the provision of a security umbrella whilst the Cold War confrontation was also seen as an inhibition on the extension of the EC to include either the neutral states of Western Europe or the states of Eastern Europe.<sup>42</sup>

Since the late 1980s, however, the world fascinated by the disintegration of the Soviet Union and the toppling of the Berlin Wall began to contemplate the alternatives to Cold War. The two rival superpowers, along with their allies, were transformed

almost overnight from enemies into apparent friends. In this “new Europe” that emerged, considerations focused primarily on the promotion of an open international trading system and the improvement of the internal economic and political well-being of individual states. The main role of the European Community in this context was to provide an essential part of the multilateral framework within which the management of the economic and political transition in Eastern Europe could occur. As Allen suggested, before the dramatic changes in the European landscape:

the EC seemed able to allow itself the luxury of a relatively relaxed development, with a gradual consideration of the process of EMU and further institutional reform, and a postponement of further enlargement considerations until after the completion of the 1992 targets. One of the immediate effects of the quickly developing changes was to give much greater urgency to all West European decisions, both unilateral and multilateral.<sup>43</sup>

The generally non-violent transformation of the communist-led states of Central and Eastern Europe into systems where communist governments were quickly replaced under pressure of mass demonstrations did not catch the Community completely unawares. Already by the mid-1980s the EC's commitment to the 1992 programme combined with the Single European Act had given a significant boost to the Community to enhance and extend its authority and add new competences to its agenda. The groundwork for the relationship with the Central and

Eastern European countries was laid in June 1988 with the signing by the Community and the Council for Mutual Economic Assistance (CMEA or Comecon) of the "Joint Declaration on the establishment of official relations" with which the two organisations mutually recognised each other. According to Karel de Gucht and Stephan Keukeleire:

The Joint Declaration and the changing attitude of the Eastern Bloc countries thus resulted in the addition of a completely new dimension to the Community's external relations. The period during which the European Community had found it possible to ignore the East of Europe almost completely, since the predominantly military "relationship" with the Communist countries was primarily a matter for NATO and the USA, had after all come to an end. For the first time it seemed possible to pursue a constructive security policy which was not only geared to providing a defence against the potential threat but also tried to remove this threat.<sup>44</sup>

By April 1989 the EC had decided to strengthen the links with its Central and Eastern neighbours by concluding cooperation agreements with them. Poland and Hungary which were particularly inclined towards democratic reforms and a more market-oriented economic system were provided with economic aid. According to Allen, Jacques Delors, the then President of the European Commission, pushed for an active and coordinated EC policy towards the East "partly because he wanted West German support for EMU and partly because he wanted to advance Commission competence into a new area".<sup>45</sup>

And it was indeed few months later, during a Paris summit of the G7, that Delors's perspicacity was rewarded with the undertaking by the Commission of the responsibility to coordinate Western aid, \$648 million, to Warsaw and Budapest on behalf not only of the European Community but all the G24.<sup>46</sup>

Despite, however, Mikhail Gorbachev's new thinking and his desire to forge a significantly improved relationship with the West Europeans – defined in his “Common European House” in which East and West both had to live under the same roof – not all EC member states were favourably disposed towards moving quickly to formulating a policy of reconciliation with their communist neighbours. Britain, in particular, was suspicious of Gorbachev's intentions taking the line that his overtures were simply a pretext for splitting the Atlantic Alliance and luring the West Europeans away from the United States. In West Germany, however, a different view held sway. For the Germans, improving relations with Central and Eastern Europe was seen as an opportunity to integrate these countries into the West European architecture. As the division between West and East Germany began to unravel, Bonn faced with an influx of refugees from East Germany, found itself in the position:

to respond rapidly, preferably with the support of its EC partners...West Germans did not have the luxury of adopting the preferred British position of “wait and see”. If the West Germans could

not get their partners to act in harmony in response to this new situation then they would have to act alone.<sup>47</sup>

It was in this political context that Chancellor Helmut Kohl announced on 28 November 1989 his "Ten-Point Programme for Overcoming the Division of Germany and Europe". At the centre of the plan was the development of a German confederation based on integration between East and West Germany. Accordingly the plan, emphasised the "necessity of a "contractual community" moving slowly – probably within a ten-year transition period – towards confederal structures as the outcome of a gradual process".<sup>48</sup> The declaration also sought to allay fears within the Community of German domination and exploitation by proclaiming that "the future architecture of Germany must fit into the architecture of Europe as a whole".<sup>49</sup> Although the plan carefully placed German unification in the context of European integration by advocating the further strengthening of the EC so that it could serve as "the foundation for truly comprehensive European union",<sup>50</sup> Germany's partners were perturbed by Kohl's omission to include the standard undertaking of Germany's "unshakeable ties with the west".<sup>51</sup>

Even though Bonn's plan was clearly designed to assuage the fears of other Europeans about a united Germany, France and Britain were displeased by the fact that such a major initiative had been taken without prior consultation.<sup>52</sup> So, as Edward Mortimer argued:

it was natural, even if wounding to German official sensibilities, that some Europeans wondered aloud whether the sudden removal of the physical constraints imposed on German power since 1945 would not lead to a re-emergence of that power, undoubtedly in a less evil form than that of the Third Reich, but in one which would nevertheless make Germany's weaker neighbours feel insecure.<sup>53</sup>

Given the scepticism about Germany's continued commitment to European integration, France sought to firmly integrate Germany into the Community, thus limiting that nation's future independence and dominance. In particular, the goal of monetary union as a means of subsuming German power under the authority of European institutions became "a matter of geopolitical urgency for France".<sup>54</sup>

Nevertheless, major hurdles remained. One of these was posed by Germany's position to seek to delay the starting date of the EMU conference. While Foreign Minister Hans-Dietrich Genscher favoured the establishment of a firm timetable for Economic and Monetary Union, which he viewed as necessary for keeping intact the Franco-German partnership and realising the broader goal of Political Union, German monetary and financial authorities were more ambivalent about the idea of EMU. Any precipitous moves towards monetary union, they believed, would only lead to the loss of the D-mark, a symbol of national power as well as sovereignty, and to a "downgrading of the role and independence of the Bundesbank which was

regarded as the country's bastion against any return of the inflation which in the past had brought the Nazis to power".<sup>55</sup> At the same time, within the governing coalition parties there was concern that "government support for EMU might be politically unwise since it would play into the hands of emerging right-wing parties by giving them further ammunition for their claims that the Kohl government was not assertive enough of German national interests".<sup>56</sup> In addition, the Kohl government made accomplishments on Political Union and a stronger European Parliament a precondition for Germany's agreement to EMU.<sup>57</sup> As a result of these and other statements by German authorities, a growing uncertainty surfaced among many Europeans about Germany's loyalty to the Community.

In contrast to France, Britain's response to the challenge of German unification was to strongly oppose any further EC drive towards closer economic and political integration out of fear of losing influence over decisions in a Community in which the centre of political gravity was shifting towards a united Germany. Instead the British government advocated the enlargement of the EC and its transformation into a looser confederation of sovereign and independent nation-states as the best way to retain some influence and control over a powerful and assertive Germany.

Confronted with the prospect of West Germany dismantling gradually its links to the Community and fearful that plans for further integration and, in particular, monetary union would be

sidetracked or delayed, Delors, in a speech to the College of Europe in Bruges in October 1989, urged "Community members to rally quickly behind a program of economic and monetary union". If they failed to do so "rapidly evolving bilateral links between member states and Eastern bloc nations could fracture the Community".<sup>58</sup> It was an implicit reference to his concern about the need to remind West Germany of its fundamental interest in strengthening its links to the EC. According to Delors the Community "would break apart or see its momentum halted if its twelve members were unable to close ranks in support of East bloc reform and a solution to the division of Germany".<sup>59</sup> His vision of Europe was that of a new Europe that would extend well beyond EC borders to embrace Central and Eastern European countries as well as the Western nations of the European Free Trade Association (EFTA). As he put it:

I believe not in *the* future, but in *one* future for all of Europe [emphasis added]...History will not wait. A quantum leap is necessary for both our conception of the Community and our actions toward the outside world.<sup>60</sup>

Thus Delors saw events in Central and Eastern Europe as requiring the EC to get on with its goals of integration, especially by establishing an IGC which would amend the Community's founding treaty to include the concept of EMU complemented by another IGC on Political Union involving a common foreign and security policy and reform of the EC institutions to make them more efficient and democratic. This



had to be accompanied by a rapid endorsement of the Social Charter and a strong common declaration regarding reform in Central and Eastern Europe.

The discussions of the European Council meeting in Strasbourg in December 1989 placed greater emphasis than before on the pace of EC integration as well as on the timing of the IGC on EMU and came to be seen as a test of Germany's commitment to European integration. Seeking to preserve European unity and erase many of the doubts about the extent of Germany's support for monetary union, Bonn bowed to the wishes of its EC partners and accepted the French demand to set firm dates for EMU. As Chancellor Kohl stressed, agreement to further integration and, in particular, EMU was the price Germany had to pay for Europe's acceptance of unification.<sup>61</sup> The final *communiqué* issued at the end of the meeting set December 1990 as the date for the IGC on EMU.<sup>62</sup> Amid rapid change in Europe the Twelve called for the "creation of a European development bank to aid reforming East bloc nations", and expressed a wish for German reunification to "come about by peaceful and democratic means, respecting all treaties and agreements as well as the numerous principles on dialogue set out in the Helsinki Final Act. It must also be embedded within the framework of European integration".<sup>63</sup> In the words of Michael Baun:

Bonn considered this endorsement vital for domestic political reasons since it would help offset claims that the Kohl government was getting little in return for agreeing to talks on monetary union.<sup>64</sup>

At the conclusion of the meeting Kohl noted that Europe had “moved a sizeable step forward toward integration”.<sup>65</sup>

However, the rush towards an economically unified Europe and the excitement over communism's collapse obscured the new dilemmas posed for the West by the rapidly changing environment to which the Community had to react. What no one had anticipated was that the end of the Cold War did not remove all sources of conflict in the continent. Rather it had changed their nature and character from a purely politico-military one to a socio-economic. This transformation was dramatically elucidated by Delors in his Alastair Buchan Memorial Lecture delivered on 7 March 1991 to the International Institute for Strategic Studies in London:

All around us, naked ambition, lust for power, national uprisings and underdevelopment are combining to create potentially dangerous situations, containing the seeds of destabilization and conflict, aggravated by the proliferation of weapons of mass destruction.<sup>66</sup>

That general portrayal of the post-Cold War era can be amplified by a long list of specific problems such as ethnic and nationalist conflicts, the proliferation of nuclear and chemical weapons, economic, social, financial and environmental problems,

immigration and international terrorism. As Curt Gasteyer argued:

These challenges have little to do with traditional political or military adversity and more with fundamental changes in society, in particular, its different expectations and higher vulnerability. As such they are more difficult to conceptualize, let alone deal with. Mankind has been trained for centuries to deal mostly with clear-cut military threats and aggression, with roughly measurable military balances and fairly well established strategies. It has little experience when it comes to dealing adequately with minority claims or civil strife. And it has practically no experience of, or the means to cope with, such challenges as weapons proliferation, mass emigration, or the protection of hundreds of thousands of refugees in a distant land.<sup>67</sup>

Therefore, the end of the competition between East and West for global domination did not inevitably imply "a reduction in the need for effective security systems and instruments, even if the type of system required may have changed".<sup>68</sup>

In order to respond to events in Central and Eastern Europe and aware of their foreign policy limitations evident in the 1990-1 Gulf war,<sup>69</sup> the majority of the Twelve member states, apart from Britain, decided to accelerate the pace not only of economic integration but also of political and eventually military integration. As Delors opined:

If the Community is to contribute to the new world order, it must accept that this presupposes participation, where necessary, in forces which are given the task of ensuring respect for international law, when all other attempts to create a basis of understanding and co-operation between nations have failed. It has to be admitted that wars happen, despite our best endeavours.<sup>70</sup>

For some member states, however, another reason for consolidating the EC in the political and foreign spheres was even more decisive: a wish to bind a united Germany more tightly to a Community foreign policy stance. This wish emanated from a fear that Germany's preoccupation with successful unification and its commercial expansion into Central and Eastern Europe would slow down the process of political integration. Bonn also wanted to advance such an objective in order to allay any concerns among its neighbours about the foreign policy of a larger unified Germany.<sup>71</sup> In addition, a peripheral issue until communism crumbled in the East, the debate between "deepening and widening", generated controversy within the Community and triggered increasing demands for a common foreign and security policy. A primary reason for this controversy was the fear expressed by the majority of member states that it would be more difficult to enhance the Community's competence and authority in the security and defence realm when the anticipated widening of the Community in the form of accessions by EFTA states occurred in the mid-1990s. In response, some EC leaders began to urge an acceleration of EC integration as a precondition for further

enlargement. This was necessary, they argued, to provide the Community with the institutional capacity it needed to deal with the challenges in Central and Eastern Europe and to prevent the emergence of a "dubious" EC in security and defence terms when several neutral countries acceded to the Community.<sup>72</sup> Finally, a further incentive which made the prospect of an increased European self-reliance in defence and security affairs so compelling was the suspicion of a reduced American military presence in Europe.

Thus it was decided to convene in December 1991 a second IGC on Political Union to work in parallel with the conference on EMU. This takes us to the issue of the various institutional and national positions on Political Union that were put forward during the negotiations leading up to the Treaty on European Union and, in particular, the provisions on CFSP which were at the centre of the debate. After a close examination of the 1990-91 documents, the actual course of the negotiations is analysed.

### ***2.3 Towards a Common Foreign and Security Policy***

On the eve of the Strasbourg summit the European Parliament, which has a history of acting as a catalyst for further integration and institutional improvements, commenced to prepare resolutions on ways to deepen European integration. In November 1989 it charged its Committee on Institutional Affairs

with preparing specific proposals on Political Union. This it did in three stages known as the "Martin Reports" – named after their rapporteur, David Martin, British Labour MEP. The first, interim report, the "Martin I Report" of 14 March 1990 called for the agenda of the IGC to be "enlarged beyond economic and monetary union" and suggested that it was "increasingly necessary rapidly to transform the European Community into a European union of federal type". Firmly stressing the transformation of the political scene in Europe the EP recommended that the Community "speed up its institutional development and the construction of the European Union" and emphasised the need for "the full integration of EPC into the Community framework including the granting to the Commission of powers akin to those it possesses in other areas of Community policy in view of ultimately achieving common foreign and security policies in the service of peace".<sup>73</sup> Within days of the adoption of the "Martin I Report", on 21 March 1990, the Italian parliament had adopted three resolutions explicitly supporting the EP's resolution and agreeing to host with the European Parliament the "assizes" of national parliaments and the EP in November 1990.<sup>74</sup>

Four months later, on 11 July, the EP in its "Resolution on the Intergovernmental Conference in the context of Parliament's strategy for European Union", the "Martin II Report", called for the abolition of the "artificial" distinction "between external economic relations handled by the Community institutions with the Commission acting as the Community's external

representative, and political cooperation handled by EPC with the EPC President acting as external representative” in order to “assure unity and coherence in the Community’s international action”. The EP believed that the Council rather than a separate framework of Foreign Ministers should be given the prime responsibility for defining policy. It also favoured granting the Commission the right of initiative in proposing policies to the Council and having a role in representing the Community externally, including appropriate use of its external missions in third countries. The EP supported the absorption of the functions of the EPC Secretariat by the Council and the Commission and promoting democratic control by the Parliament.

With regard to the scope of the Community’s foreign policy the EP felt that it should be extended to “include issues of security, peace and disarmament, with a close coordination of national security policies, and to respect the principle of solidarity and the inviolability of the external borders of Member States”. The EP considered that in all these areas “the Community should aim to have common policies on all matters in which the Member States share essential interests” and that, finally, “membership of international organizations should be adjusted accordingly, with the Community as such seeking membership and representing the Member States in those areas where Community competence has been established”.<sup>75</sup>

On 19 March 1990, Belgium became the first member state to submit a formal proposal for Political Union. In a memorandum sent to the other EC countries, Mark Eyskens, Belgian Foreign Minister, took the view that Political Union, the political structure essential for EMU, remained incomplete in the aftermath of the SEA. Therefore, its development needed to be consolidated by a second IGC on Political Union to ensure that the completion of EMU proceeded in parallel with political integration. The aim was to strengthen the effectiveness of the Community's institutional mechanism, reduce the democratic deficit, codify the subsidiarity principle and increase the impact of the EC's external action. The idea of an IGC on institutional reforms to run in parallel with the one on EMU was also favoured by the Italian government.<sup>76</sup>

The Belgian document strongly supported the notion of a "truly joint foreign policy" and viewed the participation of the Twelve as a "political entity" in discussions seeking solutions to the problems of Central and Eastern Europe as vitally important. The memorandum proposed that the "General Affairs Council should once again become the Community's political decision-making centre" by providing a "common framework" for Community action rather than producing "endless declarations". To this end the Belgian government thought that COREPER and the Political Directors should "together prepare the decisions on which would be based a global approach to the questions arising out of developments in Central and Eastern Europe and that the role of the Commission should be better defined, so as to secure



the desired consistency". The memorandum envisaged a "specialized task force", staffed by diplomats specializing in Eastern European countries seconded by the member states and by Commission officials. This "task force" was to serve as "centre for analysis, study and co-ordination on Eastern Europe to the benefit of both the Council and the Commission". Finally, political cooperation was to encompass all "security issues in the broadest sense".<sup>77</sup>

The Thatcher government excepted, which remained opposed to Political Union in principle and was seeking to preserve national sovereignty, the Belgian memorandum was welcomed by the EC member states. Its endorsement was clearly a result of its extremely cautious approach, especially the proposals concerning Article 30 of the Single European Act. As Sophie Vanhooacker stressed:

Although at first sight this cautious approach [was] disappointing, considering Belgium's federalist tradition, it has to be taken into account that the Memorandum was published before the decision of the Twelve was taken to convene an IGC on Political Union. Rather than presenting a federalist blueprint which certainly would have put off less "integrationist" countries, Belgium, in a first phase, opted to move forward as much as possible within the existing Community and EPC system.<sup>78</sup>

Another key factor in the decision to launch an IGC on Political Union was the convergence of German and French philosophies

and policies around the idea of deepening the Community as the best means of copying with a united Germany. To this end, on 19 April 1990, President Mitterrand and Chancellor Kohl addressed a letter to the Irish Prime Minister, Charles Haughey, in his capacity as President-in-Office of the European Council, in which they stated their declared aim of accelerating “the political construction of the Europe of the Twelve” and expressed their desire to see the European Council initiating “preparations for an intergovernmental conference on political union”. The IGC’s objective would be to “strengthen the democratic legitimation of the union, render its institutions more efficient, ensure unity and coherence of the union’s economic, monetary and political action, and define and implement a common foreign and security policy”.<sup>79</sup>

The joint proposal on Political Union, Mitterrand and Kohl felt, would both confirm Germany’s full involvement in European construction, especially in political unity, and send a message to other EC member states that the Bonn-Paris axis was functioning once again after several months of strained relations.<sup>80</sup> One week later on the occasion of the 55th Franco-German summit, the two leaders reiterated their wish for an additional IGC on Political Union which according to Mitterrand would create a “Community entity” going beyond a “simple trading Community”.<sup>81</sup>

At the Extraordinary Dublin European Council meeting on 28 April, the Heads of State and Government acknowledged the

Franco-German initiative on Political Union and the Belgian *aide-mémotre* on the same subject but refrained from endorsing their suggestion to convene a second IGC due to British and Danish reservations. For many member states, including Italy, Spain, Portugal, Belgium and the Netherlands, Political Union was simply a logical and necessary compliment to EMU. However, for others, chiefly Margaret Thatcher, it was a major step towards a federal Europe. Nevertheless, in the meeting's conclusions, the commitment of the member states to Political Union was confirmed and it was agreed that the Twelve Foreign Ministers would examine and analyse the need for possible Treaty changes "with the aim of strengthening the democratic legitimacy of the union, enabling the Community and its institutions to respond efficiently and effectively to the demands of the new situation, and assuring unity and coherence in the Community's international action".<sup>82</sup>

On 15 May, the Greek government submitted a memorandum to the other member states noting that the EC "constitutes the sole force for stability and prosperity in Europe" and that "it is therefore imperative that its achievements be secured and its weaknesses corrected". The Greek memorandum acknowledged that Political Union "must result from a dynamically evolving process which will develop with increasing speed and widening scope towards the final goal, in harmony with the achievement of the goals of economic and monetary union, a greater degree of internal cohesion within the Community and the development of a common external and defence policy".

The Greek government favoured the incorporation of EPC in the Community process as a way of enabling the EC to play a leading role on the international stage as “a pole of attraction and a stable nucleus for the future architecture of Europe”. The General Affairs Council had to see to it that EPC-EC interaction translated into coordinated Community action. The EPC Secretariat was explicitly called upon to gradually merge with the Council Secretariat. With regard to security, the Greek memorandum called for the abolition of restrictions on the examination of security topics and the formulation of common positions in international fora during discussions on such topics; the definition of the Community's role in the field of defence and security of its territory, with the concept and extent of Community frontiers being defined; and the handling of particular external policy problems faced by member states by means of “common action” – after a decision by the European Council – and the establishment of “Community solidarity” as the basic principle governing the behaviour of the member states when dealing with these problems.<sup>83</sup> According to Arthur den Hartog, this Greek national paper:

...constitutes a unique document in the history of EC-Greek relations in that it heralds a decisive shift in Greek foreign policy *vis-à-vis* the European Community. Formerly a more reluctant member of the EC, Greece ha[d] now joined the group of Member States most in favour of further European integration, leaving behind a minority camp of the United Kingdom and, to some extent, Denmark.<sup>84</sup>

On the basis of a "reflection document", adopted on 11 June in Luxembourg by the Foreign Ministers of the Twelve and submitted to the European Council of Dublin on 25 and 26 June, a decision was taken unanimously to convene on 14 December 1990 a second IGC on Political Union to transform the Community "from an entity mainly based on economic integration and political cooperation into a union of political nature, including a common foreign and security policy". This decision, it appeared, was broadly supported by EC countries, the most vocal dissenter being the United Kingdom. Britain's intransigence on European integration, however, was greeted with considerable derision by other national governments and failed to stop the movement towards Political Union. In the end, Thatcher went along with the decision, taken under Article 236 of the Treaty of Rome "possibly because of the restraining influence of Hurd and John Major, her Chancellor of the Exchequer, and a realization that her obduracy in Dublin had proved politically unpopular at home".<sup>85</sup>

The document that the Foreign Ministers had prepared was devoid of any practical solutions: it merely consisted of a number of questions. However, these questions were an indication of what views were being exchanged at European level. They concerned the integration of economic, political and security aspects of foreign policy; the definition of the security dimension – no mention was made of defence; the strengthening of the Community's diplomatic and political action *vis-à-vis*

third countries, in international organizations and in other multilateral forums; and the evolution of the transfer of competences to the Union, and in particular the definition of priority areas where transfer would take place at an initial stage. On the issue of decision-making the Foreign Ministers contemplated the Commission's role and whether there should be a *sul generis* decision-making method. The "reflection document" also devoted a section to the issue of implementation of the common foreign policy and, in particular, the role of the Presidency, the Secretariat, and the Commission, and the role of national diplomatic services in a strengthened collaboration.<sup>86</sup>

As Philippe de Schoutheete de Tervarent suggested:

Political atmosphere in the Community was under the influence of German reunification and deep changes in Eastern Europe; there seemed to be an evident need for Europe to be more proactive, more operational, in the field of foreign affairs. This idea was gaining support and credibility even in countries, such as Denmark, that were traditionally opposed to initiatives of this kind.<sup>87</sup>

No sooner had the Community and its member states begun to assess the longer term consequences of the transformation in Central and Eastern Europe than they were faced with the Gulf war.<sup>88</sup> The first "post-Cold War" crisis had enormous effects on the Twelve's quest for Political Union. As Panos Tsakaloyannis suggested:

...the political changes in Eastern Europe had made the Twelve aware of the fact that they were now called upon to assume greater political responsibilities on the continent. Yet by the early summer of 1990 it was still unclear how this could be translated into concrete reality. In this respect the Gulf crisis acted as a catalyst, or rather as a *deus-ex-machina*, by giving Political Union a concrete objective around which the whole edifice could be constructed, that is the creation of an EC security pillar...The Gulf crisis also highlighted EPC's marginalization and the fact that real Political Union would be illusory as long as it did not include a security arm to implement the Union's political objectives.<sup>89</sup>

Consequently, in the wake of Iraq's invasion of Kuwait in August 1990, many EC member states vowed to press forward with the formulation of a common European foreign and security policy. France, Spain, Belgium and Luxembourg, among others, belonged in this camp. The strongest statement in this regard came from the Italian government, which in a proposal on 18 September suggested that, in the prospect of a real common foreign policy, it was essential "to extend the competences of the Union to all aspects of security without limitations". Italy, therefore, suggested that the WEU be incorporated into the EC and that the EC should take over the defence policy coordination of the WEU.<sup>90</sup>

This Italian proposal was primarily a response to the recognition that moving towards a Political Union embracing a common foreign and security policy was both necessary and inevitable.

Since defence, however, is a basic function of the state and a key aspect of national sovereignty, the integration of the WEU into the EC meant, in effect, a fairly significant move in the direction of Political Union. This, as it turned out, was too big a step for some to take. Unlike France and Italy, which were keen to seize the opportunity provided by the Gulf war to develop a European defence identity, Britain was anxious to preserve NATO and devise new roles for it, thus maintaining the American connection. London was, therefore, opposed to any European initiatives that could sideline NATO as the institutional framework for European defence or undermine US willingness to remain engaged in Europe.

Thus going into the Political Union conference, national governments were quite divided in their views on foreign and defence policy cooperation. Nevertheless, there was also general support for the idea of making the Community's and EPC's institutions and policy more coherent, more effective and more comprehensive.<sup>91</sup> As Holly Wyatt-Walter put it:

The painstakingly established Community consensus on "defence last" had begun to shift towards the belief that security and possibly defence must once again take center stage in Community affairs. It appeared that the taboo on defence was finally ending, at least in discussions if not yet in policy.<sup>92</sup>

As a result, the special meeting of the European Council in Rome on 27 and 28 October "recorded consensus on the



objective of a common foreign and security policy". The aim of such a policy was to strengthen the identity of the Community and the coherence of its action on the international scene. With a view to increasing the speed and effectiveness of the Community's international action, the European Council stressed the need to review the procedures and mechanisms for preparing, adopting and implementing decisions where foreign policy was concerned. Starting from the premise that no aspect of the Union's external relations would in principle be excluded from the CFSP, the European Council highlighted the importance of going "beyond the present limits in regard to security". In particular, it confirmed the will progressively to define the content and detailed rules for the role of the Union in the security sphere and suggested that due regard had to be paid to the "obligations arising out of the security arrangements to which Member States are party".<sup>93</sup>

On 21 October 1990 the Commission submitted its "Opinion on the proposal for amendment of the Treaty establishing the European Economic Community with a view to political union". The Commission's contribution came in the form of a set of draft treaty articles on foreign and security policy. According to the Opinion, the Commission believed in the "osmosis between economic, social, financial and monetary policy on the one hand and foreign policy on the other". The Commission, it was stressed, would not accept any proposals contrary to the principle of "a single Community with a single institutional structure". This was, in the Commission's view, the only way to

bridge the gap that had “opened up between progress on common policies on the one hand and advances on political cooperation on the other”. On the subject of the common foreign policy the document proposed a new title in the EC treaty on a common external policy covering “common foreign and security policy, external economic policy and development cooperation policy as well as external relations in other areas falling under Union responsibility”.

With a view to improving the effectiveness of the CFSP, the Commission proposed a number of practical improvements. More specifically, in the interests of greater efficiency, the Commission suggested that for matters that were of “vital common interest” – to be decided by the European Council acting unanimously – the Council should act by qualified majority to “formulate the principles of the common policy” and “decide on action to be taken, whether it is to be implemented by the Union or by the Member States”. By that stage, no member state would be forced against its will to undertake all the obligations which a common action entailed; at the same time, however, it would have to refrain from taking any measures that could affect the implementation of Union decisions or impair the Union’s effectiveness as a cohesive force in international relations and in international organizations.

For issues not considered to be of vital common interest “the Member States and the Commission shall coordinate their positions on any external policy issue of general interest within

the Council to ensure that their combined influence is exercised as effectively as possible through concerted deliberation, convergence of positions, and the pursuit of common action". To improve the visibility and continuity of the CFSP, it was proposed that the Commission and the Council Presidency be jointly responsible for external representation, assisted where appropriate by the previous and next member states to hold the Presidency. This way the Troika would become a "quadrige" as the Commission would also be involved.

Finally, the Commission's Opinion raised the question of greater solidarity, especially in the fields of security and defence. In this context, it was proposed that if any of the member states was the object of an armed attack in Europe the other member states would "afford it all the military and other aid and assistance in their power". On the subject of vital common interests in the areas of security and defence, the Commission's opinion was that they should incorporate the control of armaments, disarmament and related questions; security questions related to the CSCE or debated in the United Nations, including peacekeeping operations; economic and technological cooperation in the field of armaments; and coordination of policy on arms exports and non-proliferation.

On defence, the Commission felt that the long-term objective should be to establish "a common European defence in full compliance with commitments entered into in the Atlantic Alliance". The Commission did, however, suggest that member

states which are members of NATO should “express the Union position there when questions declared to be of vital common interest or questions dealt with by the WEU are discussed”. Concerning the WEU, the Commission favoured its gradual integration into the Union pending which it believed that the Council could decide to “refer implementation of the guidelines it has established to the WEU Council”.<sup>94</sup>

On 6 December 1990, President Mitterrand and Chancellor Kohl addressed a letter to the President-in-Office of the European Council, Giulio Andreotti, setting out the priority objectives of their governments for the IGC on Political Union. The two leaders believed that the IGC should define the bases and structures of a Political Union that featured strength and solidarity and was close to the citizen and committed to the direction laid out by its federal nature. Mitterrand and Kohl considered that the Union should have a more visible and more decisive CFSP encompassing all areas and implemented in a way that ensured improved efficiency, continuity, consistency and solidarity in its actions. This required the foreign policies of each member state to be aligned to a significant extent around clear priorities and objectives defined by the European Council.

Both parties also expressed support for the development of the Union into a Union of security and, in the longer term, defence, while still maintaining its transatlantic ties. With this in view, Mitterrand and Kohl stressed the importance of reviewing during the IGC how the “WEU and Political Union might establish a

clear organic relationship and how, therefore, the WEU, with increased operational capacities, might in time become part of Political Union and elaborate, on the latter's behalf, a common security policy". Finally, both leaders felt that in order to enhance the efficiency of the CFSP, the EU's capacity to take decisions and to act had to be strengthened, mainly by making greater use of majority voting in certain sectors.<sup>95</sup>

The Franco-German letter reflected the inherent tensions in Bonn's position: it wanted to cooperate with France in plans for the development of an integrated European pillar, provided, however, that these plans did not undermine the priority of NATO commitments or weaken the US commitment to a common defence in Europe. The letter also confirmed France's wish to reduce the central role of the Atlantic Alliance and the institutionalised US leadership within it and its determination to bring foreign and defence policy into the European Union.<sup>96</sup>

The Rome European Council of 14 and 15 December 1990 established the mandate for the IGC on Political Union and laid down its programme. In their final conclusions, the Heads of State and Government considered that the IGC should, in the light of a working paper drawn up by the Twelve Foreign Ministers in the first week of December<sup>97</sup> and without prejudice to any other matters which might be raised at it, concentrate primarily on the following five areas: democratic legitimacy; common foreign and security policy; European citizenship;

extension and strengthening of Community action; and effectiveness and efficiency of the Union.

Concerning the Union's foreign policy, the European Council considered that it should "aim at maintaining peace and international stability, developing friendly relations with all countries, promoting democracy, the rule of law and respect for human rights, and encouraging the economic development of all nations". The Union's external action had to "bear in mind the special relations of individual Member States", within an institutional framework. The European Council, therefore, proposed that there should be "one decision-making centre, namely the Council"; a "unified Secretariat"; a "reinforced role for the Commission, through a non-exclusive right of initiative"; "adequate procedures for consulting and informing the European Parliament"; and "detailed procedures [for speaking] effectively with one voice on the international stage, in particular in international organizations and *vis-à-vis* third countries".

On the CFSP decision-making process, the European Council wished to see alternatives to the unanimity rule, proposing as formulas "non-participation" or "abstention", and decision-making by qualified majority for the implementation of agreed policies. Finally, with regard to defence and EU-WEU relations, the European Council suggested that a "role for the Union in defence matters should be considered" and proposed addressing "proposals put forward by some Member States on the future of Western European Union".<sup>98</sup> As Wyatt-Walter opined:

These principles, although they demonstrated the widespread commitment of member states to pursue a CFSP, did nothing to resolve the debate about either the role of the WEU or the relationship of the CFSP to the *communautaire* framework of the Treaty of Rome.<sup>99</sup>

In this respect, in December 1990, the EP in its "Resolution on the Intergovernmental Conference in the context of the European Parliament's strategy for European Union", the "Martin III Report", proposed that the "Community's foreign policies in the areas of external trade and monetary policy and in areas where the Community possesses internal responsibilities" be conducted in accordance with Community procedures, and the Community's general foreign and security policy according to different procedures. The "Martin III Report" called for the Council to adopt its decisions by qualified majority and by the same majority to enable member states to derogate from common policies and common actions. It also believed that the conduct of the Community's foreign policy should be assured "as the case may be, by the Council, the Commission and the Member States".<sup>100</sup> In Vanhoonacker's words:

The role of the European Parliament in the IGC on Political Union has been very similar to that during the negotiations leading to the adoption of the Single European Act. The European Parliament gave considerable impetus to the relaunching of the debate on Political Union, and during the IGC, tried to exploit as much as possible the different instruments at its disposal to influence the outcome.

Generally, the resolutions adopted by the federalist-minded European Parliament [were] much more far-reaching than those acceptable to many Member States and this has led to the criticism that the European Parliament's approach [was] "Utopian".<sup>101</sup>

By the end of 1990, therefore, and in response to the collapse of communism in Central and Eastern Europe, German unification and the consequent need to firmly bind a united Germany to European political and security institutions, and the likely reduction of the US security presence and role in Europe, the Community accelerated the process of integration in the foreign and security realm. As de Gucht and Keukeleire wrote:

In contrast to the situation a few months earlier, it was now at least accepted that Political Union would have a "common foreign and security policy", although there was still disagreement on the inclusion of aspects of defence policy.<sup>102</sup>

#### ***2.4 The Luxembourg Draft Treaty***

On 4 February 1991, during the ministerial-level meeting of the IGC on Political Union – the first at this level after the opening meeting on 14 December in Rome – French Foreign Minister Roland Dumas and his German counterpart Hans-Dietrich Genscher presented to their Community partners proposals dealing primarily with the negotiations on the Union's CFSP. In



its first part, on the "General aims and concepts", the Franco-German document stressed that the IGC should, above all, lay the bases for "the mission of the CFSP" to be extended to all areas of external relations including defence. With regard to areas of security policy which would be the subject of a common policy, the Franco-German proposals suggested that they should include tasks and challenges such as disarmament and control of armaments in Europe; security questions, including peacekeeping measures in the context of the UN; nuclear non-proliferation; and economic aspects of security, namely cooperation concerning armaments.

The two Foreign Ministers considered that setting up a common European defence system would not cast doubt upon any NATO commitment and recalled that the "Atlantic Alliance, and notably a permanent US military presence in Europe remained indispensable for European security and stability". However, Europeans had to take on a greater share of responsibility in the tasks of the Alliance. In this context, the two governments felt that the WEU should become "the cooperation channel between Political Union and NATO with a view to ensuring mutual reinforcement of European or trans-Atlantic security structures".

Starting from the premise that the WEU made up an integral part of the European unification process, the Franco-German document affirmed that one of the main purposes of the IGC should be to establish the foundation for its gradual

incorporation into the Union. The document also stressed that priority should be given to the following points with a view to integrating the WEU into the EU: entrusting the WEU with the task of developing the Union's common security policy; maintaining "the obligation of aid and assistance in accordance with the Treaty of Brussels for as long as no other equivalent commitment exist[ed] between Political Union Member States"; continuing the different forms of cooperation which existed within the WEU on security and defence matters; and ensuring that the WEU had/ full operative capabilities for the tasks set out in the "politico-military area as well as in the purely military field".

Regarding the close organizational link between the Union and the WEU and, in particular, decision-making structures, the document proposed that the European Council be granted the necessary competence to draw up general guidelines for European foreign, security and defence policy; that the order and duration of the terms of office for presidents of Political Union and the WEU be harmonized as far as possible; that the dates and places of Political Union Council and the WEU meetings at ministerial level, as well as certain meetings of high-ranking officials be synchronized; that a close organizational link be established between the General Secretariat of the Council and the WEU Secretariat as well as between the EP and the WEU Assembly; and, finally, that WEU administrative divisions be transferred to Brussels. Lastly, the document declared itself in favour of strengthening relations between the WEU and EC

member states which were not members of the WEU and between WEU and the European members of NATO which were not EC members.<sup>103</sup>

In order to meet the challenge of security, the Italian government believed that the Union's main priority had to be the formulation, definition and implementation of a CFSP with the aim of reinforcing the identity and the role of the Union on the international scene. In a document submitted on 6 February 1991, Italy expressed the view that securing a consensus between member states on the priorities and areas of application of the common foreign and security policy, as a kind of foreign policy agenda approved by the European Council, was a prior condition for a genuine Union foreign policy. In addition, the Italian government felt that the Foreign Ministers of the Union could take decisions by qualified majority when implementing the principles and guidelines defined by the European Council, confining the need for unanimity to the definition of these principles and guidelines and to questions where national interests were closely involved, such as security.

With regard to the institutional structure of the CFSP, the Italian government believed that the Commission should be fully associated with its formulation and implementation without having, however, an exclusive right of initiative and that a Secretariat for foreign policy – Political Secretariat – composed of diplomatic staff appointed by the member states and headed by a Deputy Secretary-General for Foreign Policy appointed by the

Council should be set up as part of the General Secretariat of the Council. The Italian government also suggested that the proceedings of COREPER and the Political Committee and its subsidiary bodies be closely coordinated and, where necessary, integrated, and that the EP be closely associated with the formulation and implementation of the CFSP. In order to give the Union a recognizable identity, the Italian government suggested that the Union be represented by the Presidency and the Commission according to the respective sphere of competence or by the Presidency and the Commission jointly and by the Troika where necessary.

The Italian government's statement proposed that the common security policy applied immediately to the following areas of competence: industrial and technological cooperation in the armaments field; the transfer of military technology to third countries, the control of arms exports and non-proliferation issues; arms control, negotiations on arms reduction and confidence-building measures, particularly in the CSCE context; and involvement in and coordination of military initiatives, notably peacekeeping operations, in particular, in the framework of a UN mandate. Finally, the Italian government considered that, as well as enlarging and reinforcing the WEU and gradually integrating it into the Union, the WEU should be merged with the Union, possibly in 1998. To this end, the WEU had to be placed under the authority and the aegis of the European Council.<sup>104</sup>

The Franco-German document and the Italian proposal contrasted sharply with the basic British goal of maintaining the central role of NATO in Europe's defence and of retaining as much national sovereignty and independence as possible in the areas of foreign and security policy. In his Churchill Memorial Lecture, presented in Luxembourg on 19 February 1991, the British Foreign Secretary, Douglas Hurd, stated that there was no need for defence to be included within the CFSP. In his view, European defence, though it had to become increasingly self-sufficient, continued to depend on NATO and the North American role. Instead of supporting the development of a defence arm in the Union, Hurd proposed that the WEU "be developed into a bridge between the Twelve, concentrating on foreign policy, security policy, and NATO concentrating on defence". He also stressed that the links between the WEU and the Union could be strengthened at all levels "from Secretariat to Heads of Government".<sup>105</sup>

For its part, the Commission submitted in March 1991 a "working document" setting out its proposals concerning the Union's Common External Policy which consisted of the Common Foreign and Security Policy, the External Economic Policy and the Development Cooperation Policy, as well as external relations in the other areas where the Union had jurisdiction (Article Y). The first aspect discussed in the working document was the extent to which CFSP was coherent. For the Commission, the priority was to ensure unity of Union action on the international scene. The Commission, therefore, stressed

the need for the Union to add to its powers “elements of external relations not present in the current Treaty”. This common policy was based on the notion of progressiveness and constituted an application of the principle of subsidiarity “leaving Member States full powers in matters which have not been deemed necessary for the Union, subject to recourse to intergovernmental cooperation for questions of general interest”.

For the implementation of the CFSP, the Commission argued that it would be desirable to distinguish between questions considered of vital interest to the Union and the other questions of this area (Article Y 2). In this connection, the Commission’s working document advocated that the European Council, at the initiative of either its Presidency, the Commission or a simple majority of member states, determine, after hearing the EP, questions of vital common interest. In particular, the Commission wanted the new text of the Treaty to make it clear beyond all doubt that for questions declared of vital common interest the Council would act by qualified majority voting to define the principles of the common policy and actions to be conducted whether implemented by the Union or member states (Article Y 3). When determining vital common interests, the Commission believed that the new Treaty should include a specific section intended to strengthen the possibility, in exceptional cases, of the Council authorising a member state to derogate from the obligations flowing from the common action.

On all other issues of foreign policy, the working document proposed that the member states and the Commission “coordinate their efforts within the Council on any question of external policy of general interest in order to ensure that their combined influence is exercised in the most effective manner through consultation, alignment of positions and the carrying-out of common actions” (Article Y 4). With regard to the preparation of Council work and decisions, the document suggested that they were carried out within the General Secretariat of the Council in organized cooperation with the Commission. The document also took the view that COREPER should have “the task of preparing Council work on common foreign and security policy and executing the mandates entrusted with it by the Council for this purpose” (Article Y 6).

On the subject of security, the working document stated that a common security policy and a common European defence should be an integral part of the CFSP. With a view to guaranteeing the territorial integrity of the member states the Commission proposed to include a mutual assistance clause (Article Y 12). The Commission also believed that the Ministers of Foreign Affairs and Defence should hold a joint meeting at least twice yearly in order to develop collaboration between member states in the area of defence (Article Y 14). At all events, the working document favoured the WEU's gradual integration into the Union (Article Y 15).<sup>106</sup>

On 12 April 1991, the Luxembourg Presidency drew up a substantial initial Draft Treaty with a view to achieving Political Union. This was a strategic document, but above all, more than reproducing individual member states' positions, it was based on the prevailing drift that had emerged during the first reading of the contributions from member states and the Commission, explaining and probing into the subject matter in detail and establishing an overall framework for continued negotiations. The Luxembourg "non-paper" began by suggesting the establishment of a Union founded on three pillars: the European Communities, the provisions concerning foreign and security policy and those on cooperation on home affairs and judicial cooperation – the so-called "Greek temple" approach.

On the subject of CFSP, the Draft Treaty stated that its objectives should be to defend the common values, fundamental interests and independence of the Union; to strengthen the security of the Union and its member states in all ways, [including the eventual framing of a common defence policy]; to preserve peace and strengthen international security, in accordance with the principles of the UN Charter; to promote international cooperation; and to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

According to the Luxembourg Presidency, the Union had to pursue its CFSP objectives within a "single institutional framework by establishing systematic cooperation between



Member States in the conduct of policy and by gradually introducing joint action in all areas where the Member States have essential interests in common". In the institutional sphere, the "non-paper" proposed that the European Council should define the principles of, and general guidelines for, the CFSP; in cases requiring a rapid decision, the Presidency, of its own motion or at the request of the Commission or a member state, should convene an extraordinary Council meeting within 48 hours; COREPER should be responsible for preparing Council meetings and carrying out the instructions given to it by the Council; the Commission should be fully associated with CFSP; the EP should be regularly informed by the Presidency and the Commission of the basic choices made in the context of CFSP; and the Presidency should be responsible for the external representation of the Union assisted where appropriate by the Troika and the Commission.

On the question of strengthening the Union's ability to act the Draft Treaty proposed a distinction between cooperation where member states inform and consult one another within the Council on any matter of general interest and define, wherever necessary, common positions on which they base their policies and action (Articles G, H and I); and joint action where, once the Council had decided the subject and defined the general and specific objectives in carrying out such an action, member states would be bound in the conduct of their international activity and would be able to adopt a national position or take national action only after information was submitted to the Council in

good time. In cases of urgent need member states could take the necessary measures which, however, had to be in accordance with the objectives of the joint line of action (Articles J and K).

Finally, the “non-paper” declared that security matters which had defence obligations could (“**may**”) be “wholly or partly implemented in the framework of the Western European Union, insofar as they also fall within that organization’s sphere of competence”. The “eventual framing of a common defence policy” was contained in square brackets, merely noting that the links between the WEU and the EU should be reviewed on the basis of a report submitted to the European Council in 1996.<sup>107</sup>

The responses of national governments to the Draft Treaty varied greatly. Belgium, Germany, Greece, Ireland, Italy, Spain and the Netherlands were not in favour of the “Greek temple” design. Britain, Denmark and Ireland were opposed to the use of any majority voting on foreign policy. France, Germany, Italy, Greece, Spain and Belgium wanted a more definite commitment to an eventual common defence policy and a mandatory 1996 review of the WEU’s links to the Community. Britain, however, together with the Netherlands, Denmark and Portugal, was against any organic link between the WEU and the Community, repeating such by-now-familiar arguments that this would undermine the primary role of NATO and the US commitment to European security.<sup>108</sup> Neutral Ireland wanted no link between the WEU and the Community.<sup>109</sup>

On 21 May 1991, the European Commission submitted a contribution to the IGC suggesting a number of amendments to the structure of the Draft Treaty presented by the Luxembourg Presidency. On the importance of transforming the Community into a European Union, and of developing its political dimension, the Commission paper stressed that the IGC must, above all, "be guided by the basic thinking which has been behind the construction of Europe for 40 years now, namely that all progress made towards economic, monetary, social or political integration should gradually be brought together in a single Community as the precursor of a European Union". In this connection, the Commission felt that the Union should "take the place of the European Communities as established by the Treaties establishing the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community and subsequent treaties and acts modifying or supplementing them; they constitute the original nucleus of the Community edifice and their federal vocation is thus confirmed".

The Commission paper also called for the unified character of the European construction to be reflected in the structure of the Treaty by combining in the introductory articles all the foundations and objectives of the Union, both those already covered by the existing Community, including the single market, and those of Economic and Monetary Union and of the new foreign and security policy; and by placing in the first part of the Treaty both the provisions for the Union institutions and the

concept of Union citizenship, with the rights and obligations pertaining to it.<sup>110</sup> The Commission's document was discussed at the Foreign Ministers informal meeting in Dresden on 2 and 3 June. With the exception of Britain and Denmark, all member states seemed to support the Commission's proposal for a single treaty structure and for the attachment of a preamble to the treaty that explicitly kept open the federal option.<sup>111</sup>

On 20 June 1991, the Luxembourg Presidency presented to the Foreign Affairs Council a revised version of its "Draft Treaty on European Union". Article A of the consolidated Draft Treaty advocated the establishment of a Union "founded on the European Communities supplemented by the policies and cooperations established by this Treaty". The Presidency felt that the Draft Treaty marked a "new stage in a process leading gradually to a Union with a federal goal". It unreservedly favoured the Union to be served by a single institutional framework which should ensure the "consistency and the continuity of the actions carried out in order to reach its objectives while respecting and developing the *acquis communautaire*". It also endorsed incorporation of the objective of implementing a CFSP which should include the eventual framing of a defence policy into the Treaty as one of the Union's aims. As far as the CFSP's decision-making procedure was concerned, the Luxembourg Presidency considered that the detailed arrangements for carrying out joint actions should be adopted by qualified majority. On defence, the Draft Treaty referred to the eventual framing of a defence policy – not

contained in square brackets – and supported the inclusion in the CFSP of all questions related to the security of the Union. Finally, the consolidated Draft Treaty provided for closer cooperation between one or more member states to the extent to which such cooperation did not conflict with, or impede the CFSP.<sup>112</sup>

### ***2.5 The Dutch Draft Treaty***

Despite an understanding at the June meeting that the revised version of Luxembourg's "Draft Treaty on European Union" would form the basis for future negotiations, the Netherlands resolved to introduce a radically different draft on Political Union. Few months after assuming the Presidency, on 23 September 1991, the Dutch government submitted a "Draft Treaty towards European Union" which stated that a central aim of the IGC should be the establishment of a European Community thus marking a "new stage in the process leading gradually to a European Union with a federal goal". The Treaty further stressed the need for the Community to be served by a single institutional framework and affirmed that one of the principal activities of the Community would be a common foreign and security policy. CFSP became Title I of Part Four of the Treaty which also included commercial policy, development cooperation and representation of the Community in external relations as had been suggested by the Commission in March.

Specifically, on the subject of CFSP, the document proposed that the Community should “pursue its common foreign and security objectives by gradually introducing joint action in all areas where the Member States have essential interests in common” whereas for other areas Article 30 of the SEA should continue to apply. As far as the actual decision-making procedures were concerned, the Dutch Presidency maintained the Luxembourg proposals and called for the jurisdiction of the European Court of Justice to be only extended to “the review of the legality of the applications of the procedures for deciding upon the joint action”. Finally, with regard to security matters, the document, in accordance with the Netherlands’ Atlanticist outlook, proposed that the Community’s common security policy should “complement the security policy resulting from the obligations flowing for certain Member States from the Treaties establishing the North Atlantic Treaty Organization and the Western European Union...whilst observing the powers peculiar to each of those organizations”.<sup>113</sup>

While welcomed by the Commission and Belgium, the unified treaty structure – a “tree with branches” – proposed in the Dutch draft was opposed by the member states which were upset by the fact that they had not been consulted beforehand. Britain, Portugal and Denmark refused to endorse the draft treaty, reflecting growing sentiment among EC governments that the treaty involved the surrender of too much national sovereignty and independence. Controversy was further inflamed by the

apparent neglect of defence.<sup>114</sup> As a result, EC Foreign Ministers agreed at a meeting on 30 September – dubbed the “Black Monday” of Dutch diplomacy – to reject the draft treaty and to return to the revised Luxembourg document as a basis for further discussion.

Final agreement on the many issues surrounding CFSP and the role of the WEU was not reached until a flurry of intergovernmental negotiations, in some cases at the very highest levels, took place in the weeks immediately prior to the Maastricht summit. In some instances, compromises were hammered out at the summit itself. The main impetus for agreement was the widely held shared belief, that if the Community did not act now to forge an agreement on CFSP, it would be missing an opportunity that might never come again. Spurred by a commonly felt sense of urgency, Italy and Britain, on the eve of an informal meeting of the Twelve Foreign Ministers in Haarzuilen on 5 and 6 October, issued a “Declaration on European Security and Defence” outlining a conceptual and operational model based on the principle of complementarity between the European identity in the field of security and defence and the Atlantic Alliance.

With a view to enabling Europe to play a fuller role on the international scene and to achieve an effective and credible foreign and security policy, it was proposed that the member states establish a Political Union. This Political Union, according to the declaration, implied the “gradual elaboration

and implementation of a common foreign and security policy and a stronger European defence identity with the longer term perspective of a common defence policy compatible with the common defence policy we already have with all our allies in NATO". In this context, it was proposed that "the WEU be entrusted with the task of developing the European dimension in the field of defence...as the defence component of the Union and as the means to strengthen the European pillar of the Alliance". Both countries expressly supported transferring WEU ministerial organs to Brussels, and considered that the WEU should take into account in its activities the decisions of the European Council in the context of CFSP and positions adopted in the context of the Alliance. Finally, Italy and the UK favoured developing a WEU "European reaction force", whose objective would be to respond flexibly in a range of possible circumstances outside the NATO area thus making a new contribution to the common defence.<sup>115</sup> According to Robert Wester:

If Britain had gone a long way by accepting the idea of a European defence identity, it also made it very clear that qualified majority voting in the foreign policy field was unacceptable and also insisted on the introduction of a safeguard clause allowing a nation to continue to act independently in certain circumstances.<sup>116</sup>

In line with this analysis, Dinan noted :



The initiative reconciled Britain's Atlanticist and Italy's Europeanist positions, contributed to the IGC debate on defense policy, and dispelled the impression that the negotiations pitted Britain against the other eleven on every issue.<sup>117</sup>

In response to the British-Italian ideas on defence, the Foreign Ministers of France, Germany and Spain adopted on 11 October a joint *communiqué* reaffirming their support for a European Union with a federal vocation which should include "all questions relating to security and defence with the long term prospect of a common defence". With specific reference to the decision-making procedures, attempts had to be made to overcome the rigidity inherent in unanimity. Accordingly, consideration had to be given to recourse to "qualified majority voting over the modalities in setting up the common foreign and security policy". France, Germany and Spain also believed that the WEU "which is an integral part of the process leading to European Union, could be given the responsibility of setting up the defence and security policy".<sup>118</sup>

In an attempt to give fresh impetus to the debate on CFSP, a Franco-German initiative on foreign, security and defence policy was made public, on 16 October 1991, in Paris and Bonn simultaneously. This initiative took the form of draft texts consisting of an article on the general objectives of the Treaty; an article on security and defence; a statement on the priority areas of the CFSP; and a statement by the WEU member states on cooperation between the WEU, the Union and the Atlantic

Alliance. In countering the earlier British-Italian declaration on European security and defence, this initiative sought to bolster the Union's capacity to project a common external image enabling it to defend the shared values of all the member states concerning peace, stability and freedom by means of the following principles: firstly, decisions and measures taken by the Union in CFSP could be developed and implemented entirely or in part by the WEU, which is an integral part of the process of European Union; secondly, for some member states of the Union, the obligations arising from the Treaties upon the creation of the WEU and the Atlantic Alliance were not affected by the provisions of this present chapter, nor were the specific points of the defence policy of some of the member states; thirdly, by creating an organic link between the WEU and the Union and transferring the WEU General Secretariat to Brussels; and fourthly, by strengthening Franco-German military units beyond the present brigade which then could serve as the core of a European corps including the forces of other WEU member states and becoming the model for closer military cooperation between the WEU member states.<sup>119</sup> This would-be "Euro-corps" was "a direct challenge to the NATO Rapid Reaction Corps...a symbol, for Paris, of common defence in the making, of European military integration outside the structure of NATO".<sup>120</sup>

It was the NATO Rome summit of 7 and 8 November which finally built the basis for a compromise between the Atlanticists and the Europeanists on a European security and defence

identity. The Alliance's new "Strategic Concept" recognised a European security identity and accepted the enhancement of the role of the WEU, both as a European pillar within NATO and as a component of the EU. As a *quid pro quo*, the Europeans, including the French, conceded NATO's primacy as Western Europe's security institution. Significantly, paragraph 6 of the Rome Declaration stated that the Alliance was:

the essential forum for consultation among its members and the venue for agreement on policies bearing on the security and defence commitments of Allies under the Washington Treaty.<sup>121</sup>

In November 1991, the Dutch Presidency presented a new Draft Treaty based on the guidelines which had emerged during the negotiations. Concerning CFSP, two changes were proposed: the Council should stipulate as a general rule that the detailed arrangements for carrying out joint action should be adopted by a qualified majority; and in cases of imperative need (no "urgent need") arising from changes in the situation, and failing a Council decision, member states could take the necessary measures as a matter of urgency, in accordance with the objectives of the joint action. On the subject of the Union's representation the Commission was to be fully associated and the EP had to be kept regularly informed by the Presidency and the Commission of the basic choices made in the Union's foreign and security policy. In this context, the Presidency had to consult the EP on the main aspects of the CFSP and had to ensure that the views of the EP were duly taken into

consideration. With respect to security, the Dutch Treaty reverted to the Luxembourg proposals.<sup>122</sup>

The text was now close to what would be the final consensus confirming the structure of Political Union that had gradually been taking shape during a year-long series of negotiations. However, the future of the WEU and majority voting on implementing joint actions, continued to be the subject of intense consultations, which resulted in further modifications.<sup>123</sup> On the eve of the Maastricht summit, on 9 and 10 December, an agreement was threatened by the demands of the Commission, Spain, Greece and the UK.<sup>124</sup> In the end, the TEU was made possible by the willingness of other EC member states to keep the British on board by offering a number of concessions over a range of issues, including the deletion of the word "federal" to describe the goal of the Union and social policy. As de Schoutheete de Tervarent put it:

The final result cannot be correctly appreciated if one ignores the fact that one of the principal participants had no objectives and was seeking no results. This was without doubt the principal difficulty in this negotiation which can, in a way, be analysed as a debate between supporters of movement and supporters of the status quo.<sup>125</sup>

The significance of the Treaty, according to Hugh Miall, was:

not that it immediately created a politically integrated Union. It lay in the attempt by member states to respond to the challenges of 1989 and

1990 by committing themselves to additional common goals and policies. Even though much dispute would be possible over what these policies were to be and how they were to be implemented, the principle of developing common stances in economic and monetary policy, foreign and security policy, social policy, cohesion policy and aspects of some home policy implied a considerable extension and strengthening of the EC regime.<sup>126</sup>

The provisions of the TEU on CFSP had “enough in-built ambiguity for not creating watertight definitions of what can and should be done in foreign policy”.<sup>127</sup> It is to these provisions that we now turn. The following chapter begins with a critical analysis of Title V of the TEU and then proceeds to review its record since it came into being following the entry into force of the Maastricht Treaty on 1 November 1993.

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<sup>1</sup> The different stages through which EPC has gone have been described extensively by several authors. See for example Reinhardt Rummel, ed., *Toward Political Union. Planning a Common Foreign and Security Policy in the European Community* (Boulder, Colorado: Westview Press, 1992), David Allen, Reinhardt Rummel and Wolfgang Wessels, eds., *European Political Cooperation: Towards a foreign policy for Western Europe* (London, Boston, Sydney, Wellington, Durban and Toronto: Butterworth Scientific, 1982), David Allen and Alfred Pijpers, eds., *European Foreign Policy-Making and the Arab-Israeli Conflict* (The Hague, Boston and Lancaster: Martinus Nijhoff, 1984), Martin Holland, ed., *The Future of European Political Cooperation. Essays on Theory and Practice* (Hampshire and London: Macmillan, 1991), Simon Duke, *The Elusive Quest for European Security. From EDC to CFSP* (Houndmills: Macmillan, 2000), Christopher Hill, ed., *National Foreign Policies and European Political Cooperation* (London: Royal Institute for International Affairs and George Allen & Unwin, 1983), Panayiotis Ifestos, *European Political Cooperation. Towards a Framework of Supranational Diplomacy?* (Aldershot, Brookfield, Hong Kong, Singapore and Sydney: Avebury, 1987), Simon Nuttall, *European Political Co-operation* (Oxford: Clarendon Press, 1992), Alfred Pijpers, Elfriede Regelsberger and Wolfgang Wessels, eds., *European Political Cooperation in the 1980s. A Common Foreign Policy for Western Europe?* (Dordrecht, Boston and London: Martinus Nijhoff, 1988).

<sup>2</sup> On the history of the European Defence Community, see Major-General Edward Fursdon, *The European Defence Community: A History* (London and Basingstoke: Macmillan, 1980).

<sup>3</sup> *EC Bulletin*, 1/1960, 7.

<sup>4</sup> *EC Bulletin*, 2/1961, 2.

<sup>5</sup> *EC Bulletin*, 6/1961, 6.

<sup>6</sup> *EC Bulletin*, 6/1962, 3.

<sup>7</sup> Named after the French ambassador to Denmark, Christian Fouchet.

<sup>8</sup> Derek Urwin, *The Community of Europe: A history of European Integration since 1945* (London: Longman, 1991), 106. For an account of efforts in 1964 and 1968, see Ifestos, "European Political Cooperation (EPC): Its Evolution from 1970 to 1986, and the Single European Act", *Journal of European Integration* **XI**, 1 (1987), 48.

<sup>9</sup> *EC Bulletin*, 1/1970, 12.

<sup>10</sup> Also known as the Davignon Report by the Belgian Political Director, Viscount Davignon, who presided over the committee of the heads of the political departments of the six foreign ministries which prepared the Report.

<sup>11</sup> *EC Bulletin*, 11/1970, 9-14.

<sup>12</sup> William Wallace and David Allen, "Political Cooperation: Procedure as Substitute for Policy" in Helen Wallace, William Wallace and Carole Webb, eds., *Policy-Making in the European Community* (Chichester, New York, Brisbane, Toronto and Singapore: John Wiley & Sons, 1977), 230.

<sup>13</sup> *EC Bulletin*, 1/1971, 15-17.

<sup>14</sup> *EC Bulletin*, 6/1971, 31-33.

<sup>15</sup> *EC Bulletin*, 12/1971, 23-27.

<sup>16</sup> *EC Bulletin*, 10/1972, 22.

<sup>17</sup> *EC Bulletin*, 9/1973, 12-21.

<sup>18</sup> Ifestos, *European Political Cooperation (EPC): Its Evolution from 1970 to 1986, and the Single European Act*, 52.

<sup>19</sup> *EC Bulletin*, 12/1973, 118-122.

<sup>20</sup> *EC Bulletin*, 12/1974, 7-9.

<sup>21</sup> *EP Working Document 481/75*, 9/1/1976.

<sup>22</sup> Christopher Hill, "Changing Gear in Political Co-operation", *The Political Quarterly* **53** (1982), 50-51.

<sup>23</sup> Adopted by the Foreign Ministers on 13 October 1981 in a political cooperation meeting in London – which is why the Report is also commonly referred to as the London Report.

<sup>24</sup> *EC Bulletin (Supplement)*, 3/1981.

<sup>25</sup> As Simon Nuttall wrote: "The Foreign Ministers also meet informally over the weekend once in each Presidency. These are the so-called "Gymnich-type" meetings, after Schloss Gymnich near Bonn where the first such meeting was held in 1974, but which has since been bought by the Japanese. The meeting always takes place in some quiet spot in the country which holds the Presidency, in an ambience conducive to fireside chats", Nuttall, *op. cit.*, 15.

<sup>26</sup> As William Wallace put it: "...a clear response to the failures of the Afghan crisis, and a small breach in the principle of operating by consensus", William Wallace, "Political Cooperation: Integration Through Intergovernmentalism" in Helen Wallace, William Wallace and Carole Webb, eds., *Policy-Making in the European Community* (Chichester, New York, Brisbane, Toronto and Singapore: John Wiley & Sons, 1983), 2nd ed., 397.

<sup>27</sup> *Alias Genscher/Colombo proposals* by its founding fathers, the Foreign Minister of the Federal Republic of Germany and his opposite number in Italy.

<sup>28</sup> For a detailed account of the Genscher/Colombo proposals see, Pauline Neville-Jones, "The Genscher/Colombo proposals on European Union", *Common Market Law Review* **20** (1983), 657-699.

<sup>29</sup> Christopher Hill and Karen E. Smith, *European Foreign Policy. Key documents* (London and New York: Routledge, 2000), 125.

<sup>30</sup> *Ibid.*

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- 33 Known as the Dooge Committee after its chairman Senator James Dooge of Ireland.
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- 43 David Allen, "West European Responses to Change in the Soviet Union and Eastern Europe" in Rummel, op. cit., 118.
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- 45 David Allen, "The European Community and the new Europe" in Dennis Swan, ed., *The single European market and beyond. A study of the wider implications of the Single European Act* (London and New York: Routledge, 1992), 233.
- 46 *Time*, 9 October 1989.
- 47 Allen, *West European Responses*, 121.
- 48 Eckart Arnold, "German foreign policy and unification", *International Affairs* 67, 3 (1991), 455.
- 49 Michael J. Baun, *An Imperfect Union: The Maastricht Treaty and the New Politics of European Integration* (Boulder, Colorado: Westview Press, 1996), 39.
- 50 *Ibid.*
- 51 Barbara Lippert and Rosalind Stevens-Ströhmman, *German Unification and EC Integration. German and British Perspectives* (London: Pinter for the Royal Institute of International Affairs, 1993), 11.
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- 55 Roy Pryce, "The Treaty Negotiations" in Andrew Duff, John Pinder and Roy Pryce, eds., *Maastricht and Beyond. Building the European Union* (London and New York: Routledge for The Federal Trust, 1994), 37.
- 56 Baun, op. cit., 28.

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58 *Time*, 30 October 1989.

59 *Ibid.*

60 *Time*, 27 November 1989.

61 Baun, *op. cit.*, 37.

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# **3 CFSP and the Treaty on European Union**

The Treaty on European Union (TEU) was signed on 7 February 1992.<sup>1</sup> Title V of the Treaty contained the main provisions governing the CFSP. Article J – *A common foreign and security policy is hereby established* – contrasted markedly with the EPC undertaking to “endeavour jointly to formulate and implement a European foreign policy” (Article 30.1 of the SEA).

Although the CFSP label was “more communautaire-sounding” than EPC,<sup>2</sup> Title V, like Title III of the SEA, remained strictly intergovernmental escaping the ECJ’s control (Article L).<sup>3</sup> An intriguing exception to this general rule was to be found in Article M – over which the Court had jurisdiction – which safeguarded that Title V did not affect the Community Treaties. In other words, the Court had to ensure that action adopted in the framework of CFSP did not impinge upon pillar I of the Maastricht Treaty, i.e. on Community activity. If a case like that emerged this could be taken to the Court.

## **3.1 Consistency**

Article C of the Common Provisions of the TEU requested for consistency in the context of the Union’s “external relations,

security, economic and development policies”.<sup>4</sup> The Council and the Commission had a shared responsibility to ensure such a consistency (horizontal consistency). The TEU also provided for vertical consistency (consistency between the Union and the member states), placing responsibility for ensuring it on the Council. According to Article J.8.2 the Council “shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines adopted by the European Council. It shall ensure the unity, consistency and effectiveness of action by the Union”. In addition, Article J.1.4 required of member states to “refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations”.

Reference to the text of Title III of the SEA shows the many similarities with Title V of the TEU. The preamble of the Single European Act affirmed the need for Europe “to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence”. This should be read in conjunction with Articles 30.5 and 30.2.d of the SEA which stated that “the external policies of the European Community and the policies agreed in European Political Cooperation must be consistent” and “the High Contracting Parties shall endeavour to avoid any action or position which impairs their effectiveness as a cohesive force in international relations or within international organisations” respectively. As Horst-

Günter Krenzler and Henning Schneider pointed out “the Single European Act can therefore be viewed overall...as attested by the many similarities and parallels in the wording as a pioneer of the need for consistency in the context of CFSP”.<sup>5</sup>

Article C refined on Article 30.5 of the SEA by providing for a single institutional framework to serve the EU which would “ensure the consistency and the continuity” of external policies. Although Article C tried to guarantee that the external economic relations of the Union would be consistent with the foreign policies of the member states, the fact remained that the Union continued to have a strongly dualistic system of foreign affairs. In other words, while the increasing need and desire for unified action was voiced in both documents, the TEU and the SEA, by providing for the Council and the Commission, “each with its respective powers”,<sup>6</sup> with simultaneous responsibilities in pillars I and II, the structural duality between the Community's external relations and intergovernmental cooperation between the member states in CFSP was continued.

One pertinent observation is related to the dual responsibility of the Council and the Commission, as it was presented in Article C:

the TEU allowed both institutions legitimately to claim a certain competence over *all* (emphasis added) aspects of the Union's external activities...In other words, despite its mantra-like language about “consistency”, the TEU ensured the emergence in Brussels of two rival

cultures, each with their own institutional base and their own rationale for assuming responsibility for identifying and representing the European interest.<sup>7</sup>

However, it should be noted that Article E confined the power conferred on the Community's institutions to the provisions of Title V by stipulating that their operation was governed by different rules in the Community Treaties on the one hand and the CFSP on the other:

The European Parliament, the Council, the Commission and the Court of Justice shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.

Despite the separation between Community policies and the foreign policy of the Union, formulated within the CFSP, Article 228a of the ECT provided for a link between the EC and the CFSP frameworks by enabling the Community to "interrupt or to reduce in part or completely economic relations with one or more third countries". The application of this Article presupposed a prior corresponding common position or joint action under the CFSP. It was complemented by Article 73g of the ECT which widened the scope of the sanctions mechanism of Article 228a to include "...necessary urgent measures on the movement of capital and on payments, as regards the third

countries concerned".<sup>8</sup> Finally, a further link existed between Article J.6 and Article 8c of the ECT, relating to the diplomatic protection to be afforded to all citizens of the Union in third countries.

### **3.2 Common positions and joint actions**

The objectives of the CFSP were laid down in Article J.1.2. These were:

- to safeguard the common values, fundamental interests and independence of the Union;
- to strengthen the security of the Union and its Member States in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;
- to promote international cooperation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

These objectives were to be realised through "systematic cooperation" (Article J.2) and "joint action" (Article J.3). This distinction was an innovation. As M. R. Eaton observed:

“Although joint action is mentioned in EPC, it is mentioned as an aspect of co-operation rather than a distinct concept”.<sup>9</sup>

Article J.2 constituted basically a continuation of the EPC. However, it modestly enhanced Article 30.2 of the SEA by being couched in a mandatory form. Thus, “Member States *shall* inform and consult one another”, and “whenever it deems it necessary, the Council *shall* define a common position”. Moreover, common positions were not conceived any more as just “a point of reference for the policies of the High Contracting Parties” but rather “Member States shall ensure that their national policies conform to the common positions”. Any common position adopted was to be upheld by member states in international organisations of which they were members and at international conferences at which they participated.

Article J.3 represented a significant and important expansion of the EPC's level of commitment on the part of the member states in certain policy areas. Under Article J.3.1 the Council on the basis of general guidelines from the European Council decides unanimously whether a foreign policy issue should be the subject of joint action, its specific scope, the Union's general and specific objectives in carrying out such action, its duration and its means, procedures and conditions for its implementation. However, it was the following proviso (Article J.3.2) that breached new grounds by providing for the possibility, in theory, of qualified majority voting every time the specific details for implementing joint action had to be taken. In



practice, though, this procedure was never used.<sup>10</sup> Even in the case of the joint action on anti-personnel mines where the possibility of the use of qualified majority voting was foreseen, the implementation was based on consensus.<sup>11</sup> Once a joint action was adopted it committed the member states in the positions they adopted and in the conduct of their activity (Article J.3.4).

According to a Report "on the likely developments of the common foreign and security policy (CFSP) with a view to identifying areas open to joint action *vis-à-vis* particular countries or groups of countries" approved by the Lisbon European Council on 26 June 1992, a joint action should necessarily satisfy the objectives of the Union set out in Article B and, more particularly, in Article J.1.2; take into account the Union's *acquis*; and remain consistent with other actions and positions adopted by the Union.<sup>12</sup> Further specific objectives which had to be taken into account when adopting joint actions were:

- strengthening democratic principles and institutions, and respect for human and minority rights;
- promoting regional political stability and contributing to the creation of political and/or economic frameworks that encourage regional cooperation or moves towards regional or sub-regional integration;
- contributing to the prevention and settlement of conflicts;
- contributing to a more effective international coordination in dealing with emergency situations;

- strengthening existing cooperation in issues of international interest such as the fight against arms proliferation, terrorism and the traffic in illicit drugs; and
- promoting and supporting good government.

In addition, the Report identified areas in which joint actions regarding selected individual countries or groups of countries would appear to be, in a first phase, particularly beneficial for the attainment of the objectives of the Union. These were: Central and Eastern Europe, in particular the Commonwealth of Independent States and the Balkans, the Mediterranean, in particular the Maghreb and the Middle East. The areas mentioned by the Foreign Ministers as a potential field for possible joint actions were far from surprising since geographical proximity, the political and economic stability of a region, and the existence of threats to the security interests of the Union were regarded as determinants of common interests which would lie behind any such actions. Furthermore, matters that were identified as areas for implementation of joint action included all aspects of North-South relations (for example foreign, security, economic and development policies), the continuation of relations with the USA, Japan and Canada and the coordination of action in international organisations or conferences. The specific issues suggested as immediate areas for action within a common foreign and security policy appeared to be driven both by a moderate approach of what CFSP can and cannot achieve and a need to be efficient in order to protect the Union's credibility and legitimacy. In Geoffrey Edwards's words:

“Given the delicacy of the issue in both Denmark and the United Kingdom, the report was perhaps even more tentative than might be considered normal”.<sup>13</sup>

Between 1 November 1993 and 31 December 1997, the EU agreed a number of joint actions including support for the convoying of humanitarian aid to Bosnia-Herzegovina and the EU Administration of Mostar; dispatch of a team of observers for the Russian parliamentary elections; support for the transition towards a democratic and multiracial South Africa; sponsoring of the inaugural conference on the Stability Pact; support for the Middle East peace process; support for the renewal of the Nuclear Non-proliferation Treaty; control of exports of dual-use goods; support for the limitation on production and distribution of anti-personnel land mines; participation in the Korean Energy Development Organisation (KEDO); and appointment of an EU Special Envoy to the Great Lakes region of Africa.

In addition, a number of common positions were adopted in the same period – on former Yugoslavia, Libya, Sudan, Haiti, Rwanda, Ukraine, Burundi, Angola, East Timor, Afghanistan, Iraq, Nigeria, Cuba, Albania, Sierra Leone, Belarus, the regrouping of diplomatic missions, biological weapons, and the prevention of conflicts in Africa – concerning concrete actions but providing also an overall framework for the Union's future relations with specific countries. As such they had repercussions on pillar I, raising more than once, institutional infights which stymied the evolution of CFSP. On 29 October

1994, for example, the Council published one of its first “common positions” under Article J.2 regarding the crisis in Rwanda, containing guidelines relating to aid and economic co-operation. According to a note from the Commission’s legal services the issuing of these guidelines was incompatible with the provisions and intentions of the TEU and compromised the institutional balance. In a reply from the Council’s legal services it was suggested that CFSP cannot be reduced to the field of “pure politics” but it should be able to take global positions setting out a strategy. What the Council could not do, was to set out the details of implementation. However, the Commission rejected being downgraded to a mere executive body of CFSP decisions.<sup>14</sup> As Simon Nuttall wrote:

The dilemma was not resolved until 6 March 1995, and then only partially, when the Council noted an operational guide on common positions. This provided that common positions committed the Union as a whole, and respected the consistency of the Union’s external activities in accordance with Article C of the TEU. They could thus refer to the Union’s external activities as a whole, but must preserve the powers specific to each Institution, including the Commission’s power of initiative.<sup>15</sup>

The introduction of Article J.3 has been characterised as “the most notable shift from a purely intergovernmental form of improved political co-operation to an approach commensurate with an embryonic “communauterized” common foreign policy”.<sup>16</sup> According to Alfred Pijpers, “the joint action

[procedure] may help the member states to get accustomed to the fact that unification, quite logically, in the end means that one has to give up certain national foreign policy traditions".<sup>17</sup>

However, it should be stressed that Article J.3 was not devoid of ambiguous provisions and loopholes. In the first place, the notion of joint action was not elucidated. Even though it was distinct from a "common position" or from an action undertaken by the Community, it was impossible, as Christopher Hill argued, "to sustain the distinction between policy (to be decided by unanimity) and implementation (to be subject to majority voting). A position which states set out as a policy goal in itself has the habit of soon becoming a step towards something else, in an unending chain of indistinguishable ends and means".<sup>18</sup> Similarly, it has been noted that:

The problem, astounding for a legal text, was that no definitions were provided for any of these terms. When it came to implementing the Treaty, this led to interminable discussions about what precisely common positions and joint actions were, and what activities could be assigned to each category. The idea of a joint action as something qualitatively different was lost.<sup>19</sup>

In the second place, the complicated voting procedure could lead up to "either weak CFSP, or a lowest common denominator approach to joint actions. There is a possibility that a bold approach could be deterred, and indeed the adoption of joint action stifled".<sup>20</sup> In that respect Declaration No 27 on voting in

the field of the CFSP could prove more functional than the actual decision making process.<sup>21</sup> Of course, the fact that it was not binding but depended on the political will of the member states to respect it, undermined its effectiveness.

Moreover, the obligation for joint action was enfeebled by Articles J.3.6 and J.3.7. Article J.3.6 enabled member states “in cases of imperative need” to disassociate themselves from the decided position and to adopt unilateral emergency measures. The only qualification was that these measures should have “regard to the general objectives of joint action”. Article J.3.7 provided for appropriate solutions for member states which faced “major difficulties in implementing a joint action”. Again the only condition was that these solutions should “not run counter to the objectives of the joint action or impair its effectiveness. However, they could be tantamount to a derogation.<sup>22</sup> Finally, the implementation of joint action was further weakened by Article J.3.2 which emphatically stated that:

The Council shall when adopting the joint action *and at any stage during its development*, define those matters on which decisions are to be taken by a qualified majority.

Thus, member states retained their veto power, without any time limit, and their prerogative to block any decisions contrary to their national standpoints from being adopted.

### **3.3 Security and Defence Policy**

Article J.4 constituted a major breakthrough in the taboo area of defence by extending Article 30.6 of the SEA to “include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence” (Article J.4.1). The new CFSP provisions called for the Western European Union “which is an integral part of the development of the Union, to elaborate and implement decisions and actions of the Union which have defence implications”. With respect to the inclusion for the first time of a defence dimension, three points have to be made. First, defence issues were not subject to qualified majority voting (Article J.4.3). Second, CFSP had to respect any existing obligations on member states in the NATO framework (Article J.4.4). Third, CFSP could not impede the development of bilateral defence cooperation within the WEU or NATO (Article J.4.5).

According to a “Declaration on Western European Union” attached to the TEU, “WEU will form an integral part of the process of the development of the European Union and will enhance its contribution to solidarity within the Atlantic Alliance”. The WEU, in preparing for its role as “the defence component of the European Union”, undertook to develop a close working relationship with the Union. To facilitate this relationship, a number of practical measures were announced:

- as appropriate, synchronisation of the dates and venues of meetings and harmonisation of working methods;
- establishment of close cooperation between the Council and Secretariat-General of WEU on the one hand, and the Council of the Union and General Secretariat of the Council on the other;
- consideration of the harmonisation of the sequence and duration of the respective Presidencies;
- arranging for appropriate modalities so as to ensure that the Commission of the European Communities is regularly informed and, as appropriate, consulted on WEU activities in accordance with the role of the Commission in the common foreign and security policy as defined in the Treaty on European Union; and
- encouragement of closer cooperation between the Parliamentary Assembly of WEU and the European Parliament.

Moreover, it was decided that the seat of the WEU Council and Secretariat should be transferred to Brussels, while representation on the WEU Council would be such that the Council was able "to exercise its functions continuously in accordance with Article VIII of the modified Brussels Treaty. Member States may draw on a double-hatting formula, to be worked out, consisting of their representatives to the Alliance and to the European Union". The Declaration placed also emphasis on WEU's commitment to develop "as a means to strengthen the European pillar of the Atlantic Alliance" and on its determination to strengthen its operational role by examining and defining appropriate missions, structures and



means, covering in particular: WEU planning cell; closer military cooperation complementary to the Alliance in particular in the fields of logistics, transport, training and strategic surveillance; meetings of WEU Chiefs of Defence Staff; and military units answerable to WEU.

Finally, the Declaration invited EU member states "to accede to WEU...or to become observers if they so wish". Thus, Greece became the tenth member state and Ireland, Austria, Finland and Sweden became observers following their accession to the EU. Denmark also joined the Organisation with observer status. Simultaneously, other European member states of NATO were invited to become associate members of WEU in a way which would enable them to participate fully in the activities of WEU. Iceland, Norway and Turkey became associate members at that time.<sup>23</sup>

Six months after the TEU was signed, WEU member states adopted the Petersberg Declaration, which was considered a first attempt to rethink and reformulate WEU's dual role as the defence component of the European Union and as the European pillar of the Atlantic Alliance. In order to make WEU an effective instrument to cope with the new post-Cold War security challenges, the Petersberg Declaration stated that apart from its traditional collective defence role (Article V of the modified Brussels Treaty), "military units of WEU member states, acting under the authority of WEU, could be employed for humanitarian and rescue tasks; peacekeeping tasks; and tasks

of combat forces in crisis management, including peacemaking".<sup>24</sup>

Although the Petersberg Declaration clearly outlined WEU's role in the new Europe, it was also acknowledged that WEU would remain a "phantom power with a paper army"<sup>25</sup> if its operational capabilities would not be enhanced significantly. Since Petersberg, WEU did take a number of steps towards developing its military capacity, to act upon request from the European Union or to deal independently with crises involving European interests, including those in the wider framework of cooperation with NATO.<sup>26</sup> As a result of the member states agreement to strive for a furtherance of public acceptance and internal cohesion, WEU sent half a dozen naval ships to the Adriatic and conducted a police and customs operation in the Danube to monitor the implementation of UN sanctions and, on the basis of a formal request of the EU, has also sent a group of police experts to Mostar in support of the EU administrator there. In addition, at the NATO Brussels Summit of 10-11 January 1994, the Alliance gave its full support to the development of a European Security and Defence Identity (ESDI), welcomed the enhanced role of WEU and introduced the concept of Combined Joint Task Forces (CJTF) as a means of making collective assets of the Alliance available to its European allies for WEU operations undertaken in pursuit of CFSP.<sup>27</sup> This very arrangement, however, was a "demonstration of the EU's military weakness, and the inability of European states to

afford the military-industrial complex still present in the United States".<sup>28</sup>

### **3.4 The Commission**

The role of the Commission in the foreign and security policy field was not changed substantially by the TEU. According to Article J.9 the Commission shall be "fully associated" with the work carried out in CFSP, and with the tasks of the Presidency when it represents the Union in international organisations and international conferences (Article J.5.3). In addition, the diplomatic and consular missions of the member states and the Commission delegations in third countries and international conferences, and their representations to international organisations "shall cooperate in ensuring that the common positions and common measures adopted by the Council are complied with and implemented" (Article J.6).

By virtue of Article J.8.3 the Commission was also granted a non-exclusive right of initiative. Although it was different in nature from the Commission's exclusive right of initiative in the Community, in formalising it, the Maastricht Treaty provided the Commission "with the opportunity to act in a more structured and consistent way and to make an important contribution to the formation of foreign policy".<sup>29</sup>

In order to be in a position to use its new right effectively and be able to cope with the increasingly demanding tasks incumbent on it, the Commission decided on 6 January 1993 to undertake an internal structural reorganisation. Thus, Hans van den Broek was made responsible for external political relations, enlargement negotiations and the CFSP, while Sir Leon Brittan and Manuel Marin were made responsible for external economic relations with developed and developing countries respectively. The Commission's willingness to make the most of its right of initiative was underpinned by the establishment of a new Directorate-General (DG1A) for external political relations.<sup>30</sup> At the end of 1996 DG1A was responsible for a network of 127 delegations around the world, employing 729 staff in Brussels and 2452 overseas (622 Brussels based and 1830 locally based staff).<sup>31</sup>

However, establishing DG1A as a "stand-alone" Directorate responsible for the Commission's participation in the CFSP, proved to be unsuccessful as it was difficult, if not impossible, to separate the "political" and "economic" aspects of foreign policy.<sup>32</sup> It came as no surprise, therefore, when with the appointment of Jacques Santer as President of the Commission, the decision was taken to further reorganise the external services by creating four Directorate-Generals with mainly geographical responsibilities:

- DG1 (Sir Leon Brittan) became responsible for commercial policy, relations with North America, the Far East, Australia and New Zealand;
- DG1A (Hans van den Broek) became responsible for Europe and the Commonwealth of Independent States, the CFSP and external missions;
- DG1B (Manuel Marin) became responsible for the Southern Mediterranean, Middle East, Latin America, Southeast Asia, and North-South Cooperation; and
- DGVIII (Joao de Deus Pinheiro) became responsible for development cooperation with Africa, the Caribbean and the Pacific, plus the Lomé Convention.

These four Commissioners together with Emma Bonino, responsible *inter alia* for the European Community Humanitarian Office (ECHO), and Yves Thibault de Silguy, whose economic affairs portfolio included some competencies for international economic policy, were invited by Santer to meet regularly under his chairmanship to discuss and coordinate external policy. The regular meetings of this group, which became known as the Relex (for Relations Extérieures) Group of Commissioners:

served a useful coordination function and was supposed to, but rarely did, provide a forum to hold in-depth discussions of issues only of relevance to those dealing with external affairs such as the external service of the Commission, sanctions policy, geo-political implications of enlargement and the external relations aspects of the IGC.<sup>33</sup>

### **3.5 The European Parliament**

The European Parliament was to be consulted “on the main aspects and the basic choices of the common foreign and security policy” and to be kept informed by the Presidency and the Commission of the development of the Union’s foreign and security policy. Article 91 of the EP’s rules of procedure set out Parliament’s rights to be consulted and informed on CFSP matters. Article 91(1) made the Committee on Foreign Affairs, Security and Defence Policy responsible for ensuring that Parliament was consulted in this area and that its opinions were taken into account. This task was carried out when the Council and Commission appeared at the meetings of the Committee (in principle at all meetings); via oral questions in plenary to those institutions; and via the Committee’s dialogue with the Presidency.<sup>34</sup> Nonetheless, as Thomas Grunert opined “consultation is to some extent arbitrary, as the “main aspects” and “basic choices” are not defined. If the consultation mechanism is to be meaningful, it must apply to common positions and joint actions”.<sup>35</sup> The EP could also hold an annual debate on progress in implementing the common foreign and security policy, ask questions of the Council or make recommendations to it (Article J.7).

In October 1993 the Council decided to establish closer relations with the EP in the CFSP area. The following were adopted:

1. In addition to the existing arrangements, the Presidency will attribute the utmost importance to the obligation to inform, in concert with the Commission, and consult Parliament, as provided for in Article J.7. The Presidency and the Commission will acquit themselves of these tasks as regularly as possible and in a manner compatible with the sensitive nature of certain information and discussions. The Presidency will be in constant contact with Parliament in the areas covered by CFSP: by attending, in addition to the two colloqui, whenever this is useful or necessary, the meetings of Parliament's Committee on Foreign Affairs, Security, and Defence Policy; by participating, if need be, in Parliament's debates in plenary session; by continuing the practice of the General-Secretariat of the Council attending the start of each meeting of the Committee on Foreign Affairs, Security, and Defence Policy; and by having recourse to the practice of written information.

2. At each Council meeting, the Presidency will inform the Council of Parliament's reactions, communications, questions, recommendations, or resolutions concerning CFSP.

3. The Presidency will organise consultation of Parliament on the major aspects and fundamental options of CFSP: when there is any organised oral or written information as provided for above; during the annual debate provided for by the Treaty on European Union; and when the European Council approves general guidelines for joint action.<sup>36</sup>

Since neither the "consultation" nor the "recommendations" provided a legal guarantee that Parliament's views were to be taken into consideration, EP's role was very similar to the one it

had in EPC. In other words, its involvement in the CFSP decision-making process was effectively restricted to a simple right to be consulted and informed.<sup>37</sup>

### ***3.6 Committee of Permanent Representatives and the Political Committee***

The Political Committee, without prejudice to Article 151 of the ECT, was to monitor the international situation in the areas covered by the CFSP and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It was also to monitor the implementation of agreed policies, without prejudice to the responsibilities of the Presidency and the Commission (Article J.8.5).

This disposition (Article 151 of the ECT refers to the responsibilities of COREPER) suggested a closer coordination between the Political Committee and COREPER the latter being responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council. Difficulties arose, however, over the body to be responsible for the Political Committee's task of preparing ministers' discussions.<sup>38</sup> The TEU was silent on the point. According to a Declaration annexed to the Maastricht Treaty "on practical arrangements in the field of the Common Foreign and Security Policy" the



division of work between the Political Committee and COREPER was to be examined "at a later stage".

That such an approach would lead to enormous bureaucratic infighting between the Political Directors and COREPER should have been obvious. To underline the point COREPER added a passage to the Report adopted by the Council on 27 October 1993, whereby "the opinions of the Political Committee setting out, *inter alia*, its conclusions or recommendations intended for the Council will appear on the agenda for the Permanent Representatives Committee to ensure that they are forwarded to the Council in good time (pursuant to Article J.8.5). The Permanent Representatives Committee will attach to them comments and recommendations which it deems necessary and (under Article 151 of the EC Treaty) will endeavour, as need be, to reach an agreement at its level to be submitted to the Council for approval".<sup>39</sup>

In the end, a compromise was struck: proposals from the Political Committee concerning the established items of the CFSP agenda and the respective implementation of CFSP policies would be communicated to the Council through COREPER, without the Permanent Representatives normally reviewing them.<sup>40</sup> They could, however, make a "final check on matters submitted to the Council, particularly regarding their institutional, financial and Community aspects" but not "any alterations to the Political Committee's political judgement".<sup>41</sup> This resulted in COREPER acquiring its own group of CFSP

Counsellors responsible for examining horizontal problems concerning CFSP, in particular legal, institutional and financial aspects of CFSP actions, and for coordinating the agendas of COREPER and the Political Committee.<sup>42</sup>

Provision was also made for merging the EPC Secretariat with the General Secretariat of the Council. As Nuttall wrote:

...the decision to merge them was in fact predetermined before the EPC Secretariat was set up, when it was decided that the EPC Secretariat would be housed in the main Council building and would use the infrastructure of the Council Secretariat, and that it would not have its own budget. Once those decisions were taken, the integration of the EPC Secretariat into the Council Secretariat was only a matter of time.<sup>43</sup>

The new CFSP unit, which was intended to be qualitatively different from EPC “took over from most Presidencies the responsibility for drafting agendas, and also provided position papers and other drafts for those Presidencies which felt nervous about doing this unaided”.<sup>44</sup> Although better staffed and with more resources than during the EPC period, the discontinuities caused by the rotation of Presidencies and the Presidencies’ workload put considerable strain on the CFSP Secretariat’s ability to serve as an auxiliary to the Presidency and limited its role.<sup>45</sup>

Furthermore, there was agreement to organise the various Community and EPC Working Groups in the Council structure, according to three categories: those where there was a direct correlation were to be merged; where there was overlap but not complete correspondence, joint meetings were to be organised between the separate groups; and some working groups such as those on drugs and terrorism were to remain separate.<sup>46</sup>

Things, however, did not turn out like TEU signatories envisaged. Instead the fusion trend produced disagreements about “who could or should replace whom, who should be in charge of taking the floor in the name of the national delegation, and which kind of division of labor corresponded best to the matter being treated”.<sup>47</sup> As a consequence, Working Groups that had supposedly merged in effect operated separately in pillar I and pillar II configurations.<sup>48</sup>

### **3.7 Financing**

Articles J.11.2 and 199 ECT were concerned with the financing of the CFSP. According to the former, CFSP’s administrative expenditure was to be financed from the Community’s budget whereas operational expenditure was to be charged either on the Community budget or to the member states in accordance with a scale to be decided. The substance of this provision – a clear distinction with regard to administrative costs and operational

expenditure of the CFSP – was found also in the second paragraph of Article 199 of the ECT which read:

Administrative expenditure occasioned for the institutions by the provisions of the Treaty on European Union relating to common foreign and security policy and to cooperation in the fields of justice and home affairs shall be charged to the budget. The operational expenditure occasioned by the implementation of the said provisions may, under the conditions referred to therein, be charged to the budget.

In the case of “administrative expenditure”, the ordinary budget procedure of Article 203 of the ECT applied according to which the EP exercised supervision powers over Commission expenditure. However, under a gentleman’s agreement, the Parliament refrained from intervening in the case of expenditure of the Council which in the past had been exclusively administrative in nature. Under the same gentleman’s agreement, the Council refrained from examining the European Parliament’s administrative expenditure.<sup>49</sup> As Jörg Monar explained:

...the member states wanted to underline that they regard this type of expenditure as falling under the gentleman’s agreement, whereby the Parliament exempts Council expenditure from normal parliamentary scrutiny during the budgetary procedure.<sup>50</sup>

Operational expenditure could be charged to the EU budget if the Council took a unanimous decision to this effect. This meant in practice that CFSP expenditure would appear in Section III, Part B, Commission (operating appropriations), of the general budget of the EC; that the European Parliament would fully exercise the powers it enjoyed under the ECT; and that the Commission would be responsible for implementing CFSP appropriations in the same way as appropriations under other budget lines.<sup>51</sup> This view was shared by a majority in the Council. However, some member states (including the UK and France) were trying to include operational CFSP expenditure in the Council's administrative budget, Section II, in order to allow the Council to be "responsible for administering this part of CFSP expenditure" and, as a result be able to "decide with more flexibility, and probably also with more speed, on the use of EC funds for CFSP measures".<sup>52</sup> Furthermore, Section II, was governed by the gentleman's agreement.

An example of the manner of conducting CFSP with a clearly defined source of financing was provided by the Council Decision of 6 December 1993 on assistance in preparing for and monitoring the elections in South Africa. In respect of this joint action, the Council decided that the operational expenditure incurred in executing the programme would be charged to the Community budget, while the salaries and travel expenses of the 312 national observers would be financed by their respective governments.<sup>53</sup> Three years after the agreement at Maastricht to establish a CFSP "of the total operational expenditure

allocated to joint actions, roughly three quarters has been charged to the Community budget and one quarter to the Member States".<sup>54</sup>

However, every time a new joint action was decided and defined, the Parliament and the Council were getting engaged in a virtual battle over technical controversies surrounding the financing of CFSP.<sup>55</sup> According to the Commission:

The hybrid structure of the Treaty, with decisions under one pillar requiring funding under another, has introduced an additional source of conflict. The complexity of the present system gives rise to procedural debates instead of debates of substance.<sup>56</sup>

The considerable problems surrounding the financing of CFSP, were partly dealt with by the General Affairs Council interim agreement of 7 March 1994 which stipulated three broad principles: CFSP actions were part of the EU's external action as a whole and comprised of aspects connected with diplomacy, security, economy, trade and development policies. However, where CFSP measures were bolstered by Community measures, a clear distinction was to be maintained to prevent "contamination" of the Community pillar by the intergovernmental pillar; whatever the eventual funding framework, it was to guarantee the rapid mobilisation of necessary resources; and all joint actions agreed to by the Council had to state the financial means through which an action would be implemented.<sup>57</sup> It was not until an

interinstitutional Agreement was concluded in the wake of the Amsterdam Treaty that the confusion over financing was settled.

### **3.8 The “capability-expectations gap” in the light of TEU**

The remaining Articles of Title V endorsed marginal adjustments of the EPC's practice. Maastricht provided for member states which were also members of the United Nations Security Council to “concert and keep the other Member States fully informed”; the permanent members of the Security Council were also to ensure, in the execution of their functions, the “defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter”; the Troika procedure was formally recognised; and, finally, the 48-hour emergency procedure was modified.

The SEA by inserting for the first time a number of foreign and security clauses into the Treaty of Rome, bound member governments to consult their EC partners, to seek a common position and to refrain from undermining that position. Nevertheless, the disjointed response of the member states to the Gulf war demonstrated the paucity of diplomatic and economic instruments available to the EPC. The events of 1990-91 brought with them an acceptance that change was necessary if EU foreign and security policy performance was to improve. Rightly or wrongly, it was felt that the reformulation of EPC

offered a window of opportunity for meeting and resolving the challenges and problems posed by the end of the Cold War. This, in turn, helped to overcome the opposition of vested interests to change and break some, though not all, of the chains of national behavioural patterns. Thus, the creation of CFSP engendered a more dynamic and positive climate in the EU compared to the pessimistic and defensive climate of the late 1980s. For several governments, EPC's declaratory policy was no longer enough; a qualitative leap forward was required.

Much was talked about a single comprehensive European foreign policy. Intensified CFSP/EC interactions derived less from purely domestic considerations of building up the Union as an end in itself, than from the responses Europe had to give following the collapse of communism in the countries of Central and Eastern Europe and the disintegration of the Soviet Union and the shrinking ability of individual member states to shape political outcomes in ways conducive to furthering perceived "national interests" through unilateral national actions. To the extent the Maastricht CFSP system and the external relations of the Community moved closer together a consensus on the need to push ahead with cobbling together a workable mix of the two institutional set-ups emerged. Article C of the Common Provisions of the TEU emphasised therefore that harmonious and cooperative relations between CFSP and Community structures and procedures would permit Europe to assert its identity on the international scene and would help to establish efficient internal structures. The single institutional framework



envisaged, was to ensure greater continuity and consistency of action, and help to strengthen cohesion between CFSP and the external policies of the Community. If there is one important feature whereby TEU's interaction rules differ from preceding ones, it is in the special responsibility for ensuring consistency explicitly entrusted to the Council and to the Commission, each in accordance with its respective powers. While the European Council was to have the role of defining the principles of and general guidelines for CFSP, the Council was to be the sole decision making body. At the same time, COREPER was structurally integrated into second pillar business. According to Fraser Cameron, evidence that the Union has begun to adopt a more comprehensive and coherent approach to foreign policy is "apparent from the way Commission papers have been received in Council. Concerning the development of relations with Central and Eastern Europe, and also with the newly independent states of the former Soviet Union, Mediterranean partners, including Turkey, as well as the United States, Japan, China and Latin America".<sup>58</sup>

Article 30.2 of the SEA assumed that the High Contracting Parties would endeavour jointly to formulate and implement a European foreign policy through coordination, the convergence of their positions and the implementation of joint action. TEU Articles J.2 and J.3, were apparently reflecting this philosophy, although the distinction between joint actions and common positions fostered cooperation among member states on an ever-growing range of foreign policy issues which has enabled an even

greater range of common actions. Within the second pillar, a strategy of limited integration of policies was to be preferred – for the sake of the stability of the overall framework – or, failing that, of keeping member states tied into the common framework. According to this analysis, an over-rigid insistence on respect for the Union orthodoxy would risk encouraging some member states to pursue common ventures outside the single institutional framework (for example, the Contact Group for Bosnia-Herzegovina) and hence reduce the saliency of the Union. The alternatives are not so much between comprehensive and limited integration as between some kind of Union-based flexibility (facilitated by derogations) on the one hand, and activity wholly outside the Union's institutional framework on the other.

With regard to the financing of joint actions, there appeared to be an endemic propensity for the process to divide than to integrate policy makers. The attitudes of the EU states were hesitant, confused and divergent. Member states were notably unenthusiastic to opt for the EC budget which they argued would have accorded a major role to the European Parliament and dwelt on the difficulties which would have to be overcome. Article J.11 expressed traditional caution about any risk of modifying the existing institutional balance, which allows the member states to play their respective parts, without conceding more than necessary to the Community. A generally conservative approach to financing and the wish to safeguard

freedom of action for national policy making militated against a timely reaction to crisis situations.

Concrete improvements to the CFSP's policy making procedures did not realise. There should have been a streamlining, but it did not occur. Consequently, the structures were overburdened. Procedural problems within the Council – the ongoing dispute between the Brussels-based Committee of Permanent Representatives and the national capitals-based Political Committee – and within the Council Secretariat – with mutual suspicion between officials seconded from national foreign ministries and the Secretariat's own officials – undermined the EU's capacity to have a major impact on international issues. Furthermore, despite the Commission's vocation to take an active interest in foreign and security policy matters and play the role of instigator and broker that characterises its contribution to Community decision making, its ability to exercise some form of influence upon CFSP proved to be exceptionally weak. The strength (or rather the absence of strength) of individual personalities had an impact, of course. Thus, although the level of foreign policy activity since Maastricht, measured in terms of meetings, exchanges of information and views through COREU, has “exploded...it remains the case that the policy output of CFSP is not fundamentally different from EPC. Political declarations are still the main vehicle. Joint actions have only exceptionally taken the form of major policy initiatives”.<sup>59</sup> Foreign policy, according to Hill, “may not have been “renationalised” by

Maastricht, but it has certainly not been made any less intergovernmental".<sup>60</sup>

If one considers that the SEA and specifically its Title III has confined EPC to economic and political aspects of security, it becomes clear that the TEU has marked a decisive step toward a closer security relationship among the EU member states and the strengthening of the EU's potential diplomatic and political actions *vis-à-vis* third countries and international organisations as well as in other multilateral fora. The Maastricht compromise between the so-called "Europeanists" and the "Atlanticists" identified the WEU as the "defence component of the European Union and as a means to strengthen the European pillar of the Atlantic Alliance". Article J.4 permitted the EU to request the WEU "which is an integral part of the development of the Union, to elaborate and implement decisions and actions of the Union which have defence implications". This objective was to be facilitated by the collocation of WEU's headquarters in Brussels. Closer cooperation between two or more EU member states on a bilateral basis was authorised, provided such cooperation did not run counter to the provisions regarding the Union's CFSP. Common to both the SEA and the TEU, however, was that they did not venture into the heart of West European defence policy making, which remained basic national and NATO functions.

On the above bases, common defence was excluded from the area of competence of the European Union. A major thrust

behind the TEU's provisions was to convince the EU's member states who cherished antimilitary beliefs that the goals were limited and that they would not distract from the priority of meeting the industrial challenges coming from the United States and the Pacific rim. TEU went a long way to ensure NATO and American readiness to maintain a military presence in Europe. Indeed, one should remember that Article J.4 was the outcome of a merciless watering down process whereby European governments of all opinions had tamed and, in their view, reduced to a set of technical and symbolic decisions, the federalist proposals put forward by the "Europeanists". Editorials referred to the signing of the Treaty on European Union as just another of those face-saving diplomatic gimmicks used to give the appearance of progress.<sup>61</sup> In this sense, Hill argued in 1998 that "so far the only consequence has been the further outrunning of experience by ambition".<sup>62</sup>

As the membership and powers of the EU have grown, so its decision making processes have become more convoluted and the time taken to develop new foreign and security policies and positions has lengthened. This is a blessing in the sense that it allows more interested parties to be involved in the policy development process and so promotes democratic decision making and greater reflection on the potential implications of policy. But it is a curse in that it makes it difficult to respond quickly to worsening international crises. Part of the problem lies in limited resources. Relevant Commission DGs and Council bodies are both understaffed and underbudgeted given

the scope of their responsibilities. The problem is also partly structural. EU decision making procedures have become increasingly complex as the focus of policy making has shifted away from the formal processes outlined in the TEU to informal processes. These have evolved in part to simplify decision making but also in part to ensure as much agreement as possible among interested parties. This is a noble objective, but it has come at the cost of encouraging frequent and often lengthy interactions involving officials from interested DGs, COREPER, the Political Committee, representatives of the member states in Council Working Groups, Parliament and its committees, national bureaucrats, representatives of non-EU governments where necessary and non governmental organisations.

It is true that the decision making procedures under Title V are dominated by the unanimity rule. Although the Treaty gives member states the possibility of deciding by qualified majority voting on measures implementing a joint action (Article J.3.2) this provision was not used. As all the "objectives" listed in Article J.1.2 touch upon core areas of national sovereignty, the maintenance of the unanimity requirement seems understandable. Yet one also has to see that this is clearly one of the major weaknesses of the whole second pillar structure. Here, as well as in other policy areas of the Union, the unanimity requirement regularly leads to agreements at the level of the lowest common denominator. This means that in most cases the process of negotiating a text loses a large part of its

substance and/or that important issues are addressed in the form of legally non-binding texts such as “declarations”. In cases of persistent differences, agreement on a text of major importance may even be endlessly delayed.

Any policy finds its final legitimation in the results it achieves. Since the crisis of ratification of TEU, the Union has been under pressure to justify its policies before its citizens more than ever through concrete results. The second pillar has certainly not passed this test of legitimacy. Its performance has been fragmented and far from meeting the challenges the Union has to face in these areas. Simplistic patterns of explanation, however, such as all its deficits can be traced back to the unanimity requirement of intergovernmental cooperation have to be avoided. The negative factors surrounding the development of foreign and security policy cooperation are manifold. The different national interests and political traditions of the member states in the policy areas of Article J.1, their national sovereignty implications and their prominent place in domestic politics make it more difficult for the member states to agree on substantial measures here than in many other EU policy areas. As Arnhild and David Spence wrote:

If CFSP has proved a disappointment to those who hoped the European Union would now assert its identity on the international scene, one conclusion might sensibly be that one cannot simply decree political will by creating new procedures. The adoption of Treaty

reform may be necessary, but is certainly not a sufficient, condition for improved policy output.<sup>63</sup>

Overall, the Maastricht Treaty has created a new dynamic in EU foreign and security policy. The TEU has made it possible to revive old proposals long blocked and channel them along new and more successful routes. Indeed, relatively few doubts remain about the value of EU activity in the field of foreign and security policy. A joint EU response has advantages over separate national responses because many international issues are transboundary in nature. A consensus exists that suggests that failure to establish an EU linked through a common foreign and security policy would weaken Europe's voice in international affairs and would ensure that the EU will remain a hollow actor without significant international impact. In Maastricht the Europeans decided to solidify new arrangements to make foreign and security policy coordination and cooperation stronger. The TEU strengthened the functioning of CFSP and promoted European foreign and security policy cooperation during a period when transatlantic relations between the collapse of the party dictatorships in Central and Eastern Europe, the fragmentation of the USSR into smaller units, German unification, the Gulf war and the war in former Yugoslavia were tempestuous. TEU helped focus European energies upon the task of speaking with a European voice to the outside world, cultivated a European reflex and encouraged compromises from CFSP members. CFSP was not designed to be a deliberate attempt to weaken US power. Rather, it represented an attempt to denationalise foreign



policies and an effort to distribute global influence commensurate with economic power. Most important, the CFSP was designed in principle to be symmetrical in operation such that adjustment would be spread equally among members. This is an important point that is underemphasised in accounts and understanding of CFSP.

The EU, therefore, with the TEU reinforced CFSP resources, instruments and cohesiveness. But it is equally true that despite the institutional and procedural novelties introduced by Title V of the TEU such as the widened scope and impact of the CFSP; the introduction of joint action; the introduction of the principle of majority voting; the formal right of initiative for the Commission; and the organisational fusion of the EPC infrastructure with that of the EC, a “capability” gap still existed which did translate into a limited European influence on international affairs. According to the Commission the ineffectiveness of the CFSP had to be ascribed not only to the “weaknesses of the Treaty” but also to an “over-restrictive interpretation of its provisions”.<sup>64</sup> In addition, the coexistence of intergovernmental procedures and the continued foreign policy autonomy of the EU member states led to conflicts of interests and aims. Thus, as Hill noted: “The EU continues to impress more in potential than in action”.<sup>65</sup>

Looking at expectations it is worth bearing in mind that in the new circumstances of the end of the Cold War the EU was an “island of peace” for less stable regions in the world. Moreover

because of the manifest power and prosperity of the EU, a growing number of European countries were becoming interested in joining. Thus, the EU member states were under continuous and growing pressure to move towards common policies; this pressure was coming, not just from their new Treaty commitments, but from the interactive nature of foreign policy. The Union's member states were progressively losing their freedom to exercise national foreign policies, because the rest of the world was demanding common EU policies. But the convergence of foreign and security policies was uneven and encountered very painful setbacks. These setbacks which demonstrated the EU's inability to replace the nation states as the motors of action or as the centres of political mediation should have closed the "capability-expectations gap" by bringing expectations back into line with capabilities. And yet, as Hill stated, "structural forces exist which keep expectations up just as they limit the growth of capabilities...The [capability-expectations gap] might have been narrowed from its post-Maastricht extreme, but it has hardly disappeared".<sup>66</sup>

In the end, the most serious weakness of the EU was the mirror image of its greatest strength. Many people in East and West aspired to the establishment of a pan-European structure to concentrate the ending of the Cold War and the division of Europe, and to cement cooperative relations between East and West; and many of them assumed that the EU was ready-made for the task. However, the EU could not perform the role of a free-standing, self-contained system offering adequate security

guarantees for the whole of Europe. It could perform many useful functions but it could not by itself perform an effective conventional security function.<sup>67</sup> For that a high degree of political integration and pooling of national sovereignty according to recognised legal procedures was needed. These and other factors affecting the development of an EU Common Foreign and Security Policy cannot simply be “reformed away”, let alone by an IGC which is burdened by other different tasks. Nevertheless our assessment of the second pillar has shown that cooperation in the fields of foreign and security policy was also affected by a number of clearly identifiable deficits resulting from the TEU provisions. As some writers went on to point out the deficiencies which hindered the EU’s capacity for effective foreign policy making were: reliance on unanimity which reduced the speed of decision making; inadequate financing arrangements; lack of any body responsible for planning and analysis; lack of a defence capability; lack of a legal personality; confusion over and lack of coherence between pillars I and II; ambiguity concerning the respective roles of the Presidency and the Commission; and an insufficient role for the European Parliament.<sup>68</sup>

With these flaws in the TEU’s construction of CFSP in mind, official proposals for improving the CFSP process began to circulate in Brussels, most of which did not require major Treaty changes emanating from the Commission or other influential institutions such as research centres.<sup>69</sup> The remainder of this chapter will focus exclusively on the Reports by the high-level Group of Experts and the Bertelsmann Stiftung which appeared

as the Amsterdam IGC was drawing near. These Reports are of interest for both evaluating the implementation of CFSP and providing recommendations for its reform.

### **3.9 High-level Group of Experts**

On 17 March 1994, a high-level Group of Experts on the Common Foreign and Security Policy was set up at the initiative of the European Commissioner, Hans van den Broek, with a view to identifying the requirements for the creation of a credible CFSP by the year 2000. Its mandate was principally to consider aspects of security in the strict sense and to proceed on the basis of individual written contributions coupled with collective analysis and discussion.<sup>70</sup> Nine months later, on 19 December 1994, at the close of the first part of the Group's work, a Report on "European security policy towards 2000: ways and means to establish genuine credibility" was drawn up concentrating on CFSP's structural deficiencies and considering measures and reforms necessary to rectify them.<sup>71</sup>

The first section of the Report included an analysis of the progress made in the field of European security and defence since the entry into force of the TEU assessing the results achieved and identifying the shortcomings encountered. According to the Report progress was generally being made in setting up systems for information and consultation in the

various specialist Working Groups, COREPER, the Political Directors, the Ministers of Foreign Affairs and Defence, Ambassadors, Chiefs of Staff and the WEU Permanent Planning Cell. Significant progress had also been made in the NATO Brussels Summit in January 1994 which among other things gave European NATO members the green light to use Alliance resources and facilities for their own requirements, via the immediately operational CJTF concept; the readiness to place multinational forces at the disposition of the WEU in liaison with the CJTF; the planned strengthening of *Eurocorps*<sup>72</sup> and other joint military initiatives; and the ruling of the Karlsruhe Constitutional Court allowing German troops to operate outside NATO territory.

However, as regards the way CFSP was prepared and promoted, the Group of Experts believed that “blinkered concentration on hastily conceived “joint actions” on the one hand and sterile bureaucratization on the other, at the expense of soundly-based strategic thinking and systematic attention to the Union’s fundamental common interests” were undermining the Union’s credibility in “the eyes not only of the United States...but of its partners, its potential enemies, and finally its own citizens, who [were] unlikely to go on giving their allegiance to an enterprise which [gave] them no sense of a common destiny or common identity and no clear echo of shared, but increasingly vulnerable, values”. According to the Report, with the possible exception of the Stability Pact, joint actions had quickly turned out to be

poorly planned, hard to implement and disappointing both in scope and in terms of their meagre results.<sup>73</sup>

For the Group of Experts the profound changes which had taken place outside the Union called for responses that would provide the Union with a genuine external identity enabling it to become a world force in international relations while simultaneously allowing it to promote its values, defend its interests and help shape a new world order. In the face of proliferating conflicts and the build up of destabilizing factors in Russia, Ukraine and Central Europe; the rebirth of religious and ethnic nationalism and xenophobic isolationism; the rise of militant Islam and hostile fundamentalism; and the proliferation of weapons of mass destruction and organized crime, it was the Experts' view that mechanisms had to be created to permit an effective European foreign and security policy, including defence and force projection.

In this respect the Report suggested a number of measures which did not involve a formal revision of the TEU. These included firstly, the creation of a central analysis and evaluation capability endowed with the necessary study and information capacity covering all aspects of the CFSP, including military aspects and the external dimensions of terrorism and organized crime. The main task of this body was "not only to carry out ongoing evaluation of risks and threats to the Community's interests and values, but to prepare strategies for response to be discussed by the European Council and the Council". In

addition to this analysis and planning unit, immediate steps had also to be taken to consolidate the operational base of the CFSP (in particular by setting up a Community financing system) and the WEU (permanent committee of Chiefs-of-Staff, satellite programmes, European military air transport command, implementation of CJTFs) and to organize practical synergies between the three Maastricht Treaty pillars in all areas in which economic and security interests overlap and also in respect of the external threats posed by terrorism and organized crime.

The Group of Experts also listed a number of subjects which it felt had to be addressed at the IGC:

- insertion in the Treaty of a clause stipulating as a common objective the creation of a European intervention force (building on *Eurocorps*) with all the requisite components (command structures, intelligence, logistics);
- 15-way agreement in close consultation with the US, on progress towards a collective defence capability (as specified in Article V of the Brussels Treaty), a course that would involve a strong link between membership of the WEU and membership of NATO;
- creation of a central unit with the (non-exclusive) right of initiative to generate policy proposals, in close consultation with the central analysis and evaluation capability. Two institutional options were outlined: introducing and gradually extending joint Commission-WEU-Presidency proposals on a systematic basis; and designating a politician to take responsibility for the CFSP, along the same lines as

the President of the European Commission, endowed with the authority, independence and tenure to do the job;

- revision of the decision-making process, with unanimity ceasing to be required except for the practical organization of military interventions. In all other cases, including the principle of dispatching a European intervention force, qualified majority voting should be adopted, though with a special weighting system that would reflect more accurately the political and military status of the different member states; and
- organization of the Union's presence and representation on the international political stage, in the person of the politician designated in parallel with the President of the European Commission by the European Council and Parliament to run the CFSP analysis and proposal facility.

Following the publication of the first Report, the high-level Group of Experts continued its work on the strength of a new mandate from van den Broek which set two key goals: to verify the soundness of the measures and reforms advocated by the first Report and specify the conditions – political, institutional and technical – for their realisation; and to study how a reformed CFSP could be made truly effective, with firm foundations and constructive links with pillar I of the Maastricht Treaty. In this context a second Report was submitted on 28 November 1995 on “European foreign and security policy in the run-up to the year 2000: ways and means of establishing genuine credibility”.<sup>74</sup>



A challenging issue for the IGC was, in the Group's view, the need to give substance to the CFSP, within the framework of pillar II of the Maastricht Treaty, and to bring consistency to the Union's external action whose imperfections had to be put right. According to the Report this was "a question of survival for the Union...a make or break issue". Any failure by the IGC in this matter was, the Group felt, going to have "grave consequences for the CFSP and the entire European structure". In such a case the only possible way out "would be for those Member States that did wish to take resolute action to form a hard core on foreign, security and defence policy enabling Europe to maintain an international political presence none the less".

To secure a more effective CFSP the Group supported the establishment of a tri-partite (member states, Commission, WEU) central analysis and proposal capacity with a broad mission defined in the Treaty and close links to the Commission and the WEU Secretariat-General. This central capacity was going to be directed by a CFSP High Representative with a non-exclusive right of initiative and appointed in the same manner as the President of the Commission. The central capacity consisting of thirty to fifty officials on secondment from the member states, the WEU and the Council Secretariat, was going to assess the international situation and the Union's security, the Union's external policy and international security in general; draft proposals for presentation to the Council by the High Representative; and granted specific mandates by the Council under European Council guidelines. According to the Experts

there had to be a “personal union” between the functions of the High Representative and that of the WEU Secretary General ensuring suitable interaction between the WEU’s information and analysis capabilities (planning cell and intelligence) and the CFSP’s central analysis and proposal capacity. The Group was also in favour of a functional link-up with the Commission. To this end the European Council had to establish clear rules of procedure ensuring consultation and concerted action; the CFSP High Representative was to be able to attend with a non-voting right the Commission’s deliberations on issues of external relations; and finally, the Commission (or one of its members) was to have access to the central capacity’s analyses on terms guaranteeing the utmost confidentiality. As regards giving the Union a face on the international diplomatic scene the Experts thought that the IGC should endeavour to strengthen the Union’s external representation by assigning this responsibility to the CFSP High Representative in coordination with the Presidency and the Commission.

On the process of adopting decisions the Group supported the view that all CFSP decisions had to be adopted by a qualified majority vote. It also recognised, however, that apart from the special case of military intervention, there were other particular constraints on qualified majority voting in the CFSP, namely: a member state’s vital interests had to be respected; the member states with the greatest military capabilities and special political responsibilities had to see this reflected in the weighting of votes; no member state could be obliged to deploy armed forces

outside its territory against its will; and the Union's collective political backing for any action or programmes had to find material (and notably financial) expression, thus making the CFSP an increasingly "common" policy. The Group accordingly considered that these constraints could be accepted in matters of vital common interest, provided the system for weighting votes was changed and a procedure agreed whereby the Council could collectively recognise a matter as being of vital interest – a reverse Luxembourg compromise. According to the Experts simulations of votes weighted on the basis of specific criteria combining political, economic and military factors had produced results that seemed satisfactory.

The Group of Experts also raised the issue of consistency in the Union's external action as a factor of paramount importance at a time of economic globalization and profound changes in the international political environment. It pointed out that there were two ways of ensuring the overall consistency of the Union's activities: by harmonizing the objectives resulting from the Treaty, which were currently either excessively compartmentalised, as in the case of the CFSP or commercial, environment and development aid policies, or practically non-existent, as in the case of justice and home affairs; and by rationalising a body of procedures that currently ranged from decisions that the Commission could take by itself (e.g. humanitarian aid) to decisions requiring the unanimous approval of the Council, without the Commission having so much as a right of proposal, and all forms in-between (e.g. the

CFSP). Where there was a need to initiate collective action involving instruments from different pillars, the Group believed that the CFSP High Representative and the Commission should present a comprehensive proposal to the Council, which should then decide on the whole package by qualified majority voting. In addition, the Group considered that the Union should have legal personality in order to exercise fully its rights and powers on the international scene and it should be able to manage effectively packages of measures drawn from different pillars, especially in crises.

On the subject of defence and EU-WEU relations, the Report supported the clarification of roles within the triangle formed by the EU, WEU and NATO; the passage of all the Union's member states to a common defence policy; the need to strengthen the WEU's operational capacity; and the preservation in Europe of a competitive and effective industrial, scientific and technological defence base. With respect to the first point the Group felt that the priority for the WEU was to give substance to its military role as a potential source of back-up for CFSP decisions, as a matrix for a (future) collective defence commitment binding the entire Union and as the "European pillar" of the Atlantic Alliance. Any proposal aiming to "divorce" the WEU from the Union was a misreading of the Treaty and had to be dismissed. The Group also opposed the idea of creating a fourth pillar. Furthermore, the Report reflected on the problem of the "congruence" of memberships (EU-WEU-NATO) along with that of convergence between defence doctrines and supported an in-

depth political dialogue at the highest level between the Union and the United States as a means of guiding and adjusting the interface between the institutional frameworks that would one day give birth to a European defence identity. On the question of “neutrality” the Group expressed its “vehement opposition to any long-term survival, within the Union, of neutrality policies and statuses rooted in the past, which no longer had any – or at least no longer the same – geopolitical justification and were incompatible with acceptance of the Community *acquis* and deemed it essential for the IGC to “expressly confirm in the Treaty the ultimate objective of merger between the WEU and the Union and that it also map out the main stages in the process that will culminate in the Union taking on board Article V of the Treaty of Brussels”.

The Report also referred to the progress made in attempts to build up a sizeable European intervention force having either its own command, intelligence and logistics structures or sharing NATO's and it concluded that there could be “no real progress in the matter of the WEU's operational capacities until the political ground rules in terms of the European defence identity and the trans-Atlantic relationship and NATO, notably with regard to the CJTF, have been hammered out. This thorny political operation will not succeed without a genuine EU-US summit”.

The final section of the Report concerned the rationalization and consolidation of an effective and productive scientific,

technological and industrial base to produce armaments for the armed forces of the member states. According to the Group the successful implementation of a common global strategy covering the military, technological and commercial aspects depended “on all the European institutions and organizations concerned firmly committing themselves to a joint “masterplan”, which would among other things set down their respective responsibilities”. The Group suggested that the drafting and application of such a “masterplan” was entrusted to a task force comprising representatives of all concerned and this regardless of the role that the central analysis and proposal capacity could play.

### **3.10 Bertelsmann Stiftung’s Report**

In July 1994, a Working Group was established by the Bertelsmann Stiftung in close cooperation with the Research Group on European Affairs at the University of Munich and the Planning Staff of DG1A in the European Commission, consisting of a core element from all three institutions, enriched by other foreign and security policy experts who were invited to submit papers and participate in meetings. Twelve months later, the Working Group which had a broad mandate to consider the implications of future enlargements for the CFSP submitted an interim Report on “CFSP and the Future of the European Union”.<sup>75</sup>

The Report took the view that the CFSP needed reform if a 25-30 member EU wished to be treated as a credible actor in global diplomacy. According to the Working Group, although there was a strong case for abolishing the pillar structure it was unlikely that such a change would be agreed at the IGC and, therefore, reform proposals had to focus on practical near-term improvements on four counts: conception; decision-making; execution; and representation.

On the subject of CFSP's conceptualisation, the Report stated that the Group believed that an effective CFSP required a European Planning Staff charged with the definition of the essential common interests of the Union, monitoring potential crisis situation, establishing priorities and preparing options for ministers. The Planning Staff which was to be a joint Commission-Council body maintaining close links with the WEU enhanced by officials on detachment from member states and perhaps also academic specialists was to produce an annual report and guidelines for the Union's external relations, subject to the control of the EP and the European Council.

With such a reform of the CFSP, qualified majority voting based on a double majority system – a majority of states and a majority of the population represented by those states – was required for decisions on policy areas not having military implications. In addition, all decisions of foreign and security policy issues had to be taken in such a way as to ensure that a

minority of member states could not prevent the majority from committing itself to joint action and that no country was obliged to take part in joint actions against its will.

With respect to the external representation of the Union, it was the Group's view that the six-monthly rotation system of the Union Presidency had to be replaced either by an elected Presidency with a larger period in office or by a strengthened role for the Commissioner responsible for CFSP. According to the Report the establishment of a "Mr or Ms CFSP" would only create confusion and detract from moves to improve the coherence of the EU's external actions. Finally, on the question of guaranteed funding for the CFSP, the document proposed that the EU budget should set aside appropriations for the CFSP.

The Report then went on to discuss defence policy and a common European defence, declaring itself in favour of bringing defence within the scope of the EU in future. To this end, the Group proposed gradually integrating the WEU into the EU. The Report declared that a European identity in the field of security and defence would strengthen the transatlantic alliance. NATO would remain the indispensable basis of security in Europe, but the Report also proposed a series of basic principles for putting a European defence into action. Firstly, responsibility for collective defence rested with the Atlantic Alliance. Secondly, the WEU would make its own contribution by means of the military measures envisaged in the Petersberg Declaration, where NATO did not wish to act but where the interest of the WEU



required concerted action. As a third principle, the Report affirmed that the policy of enlarging the EU, the WEU and NATO could not be a "one way street" with existing members of WEU and NATO providing security to new members without expecting anything in return. New members had to invest a considerable proportion of their limited defence resources into efforts to shift to NATO-WEU standards.

Finally, the Report advocated increasing the cost-effectiveness of European defence and suggested that the WEU sponsored a series of studies of the practicalities of integration of particular components of defence provision, including details of potential savings and implications for training, infrastructure and equipment. According to the Group, European governments had to accept that in the long run the European defence industry could only compete with American producers, even within Europe itself, by reducing its surplus capacity, consolidating purchases on a European scale and allowing genuine competition for defence orders on a Europe-wide basis. In terms of defence procurements, there were major financial savings to be made as a result of closer integration of defence markets.

In summing up, this chapter has shown the differences between EPC and CFSP and the ambiguities and contradictions of the Maastricht Treaty. It has also provided a platform on which the positions of EU member states and EC-level actors during the 1996 IGC negotiations on CFSP reform, discussed in chapter 6, could be interpreted.

In the following two chapters, the EU's policy towards the former Yugoslavia will be presented within the "capabilities-expectations" framework to draw the contrast between the former EPC process and the expectations and assumptions of CFSP. Did the change from EPC to CFSP prove to be significant? How, if at all, did EU policy towards the conflict in former Yugoslavia change? And did those changes enhance Europe's foreign policy capacity?

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<sup>1</sup> As a result of the lengthy struggle to secure the ratification of the TEU, CFSP did not enter into force until 1 November 1993.

<sup>2</sup> Martin Holland, "Introduction: CFSP...Reinventing the EPC Wheel?" in Martin Holland, ed., *Common Foreign and Security Policy. The Record and Reforms* (London and Washington: Pinter, 1997), 5.

<sup>3</sup> This corresponds to Article 31 of the SEA.

<sup>4</sup> As Christian Tietje argues "even though the English version of the TEU uses the notion "consistency"...a clear reference is made to coherence in the German (Kohärenz), the French (cohérence) and the Italian, Spanish and Portuguese version (coherencia, coerenza, coerência). The Dutch treaty uses the word "samenhangend", similar to the Danish version (sammenhæng); thus both treaties refer also to coherence". For Tietje "one of the first tasks of the Review Conference in 1996 should be to clarify the language of the English version of the treaty...as consistency and coherence are by no means identical concepts; they in fact have very different meanings", Christian Tietje, "The Concept of Coherence in the Treaty on European Union and the Common Foreign and Security Policy", *European Foreign Affairs Review* 2, 2 (1997), 211-233.

<sup>5</sup> Horst-Günter Krenzler and Henning C. Steiner, "The Question of Consistency" in Elfriede Regelsberger, Philippe de Schoutheete de Tervarent and Wolfgang Wessels, eds., *Foreign Policy of the European Union. From EPC to CFSP and Beyond* (Boulder and London: Lynne Rienner, 1997), 134.

<sup>6</sup> In the SEA it is the EPC Presidency and the Commission which are entrusted with the responsibility of keeping the external policy of the EC and the EPC consistent.

<sup>7</sup> David Allen, "'Who speaks for Europe?' The search for an effective and coherent external policy" in John Peterson and Helene Sjørnsen, eds., *A Common Foreign Policy for Europe? Competing visions of the CFSP* (London and New York: Routledge, 1998), 51.

<sup>8</sup> Florika Fink-Hooljer, "The Common Foreign and Security Policy of the European Union", *European Journal of International Law* 5, 2 (1994), 174-176.

<sup>9</sup> M. R. Eaton, "Common Foreign and Security Policy" in David O'Keefe and Patrick M. Twoney, eds., *Legal Issues of the Maastricht Treaty* (Chancery Law, 1994), 217.

<sup>10</sup> Elmar Brok, "A Policy People Can Believe In", *European Brief* 3, 1 (1995), 20.

11 Roy Ginsberg, "The EU's CFSP: the Politics of Procedure" in Holland, op. cit., 21 & 27.

12 EC Bulletin, 6/1992, 18-22.

13 Geoffrey Edwards, "European Political Co-operation", *Yearbook of European Law* 12 (1993), 645.

14 *Agence Europe*, 5/11/1994, No 6351.

15 Simon Nuttall, *European Foreign Policy* (Oxford: Oxford University Press, 2000), 264.

16 Martin Holland, *European Community Integration* (London: Pinter, 1993), 127.

17 Alfred Pijpers, "The Treaty of Maastricht and European Foreign Policy", *Jerusalem Journal of International Relations* 14, 2 (1992), 11.

18 Christopher Hill, "The European Community: towards a common foreign and security policy?", *The World Today* (1991), 191.

19 Nuttall, op. cit., 186.

20 Juliet Lodge, "From Civilian Power to Speaking With a Common Voice: The Transition to a Common Foreign and Security Policy", *Paradigms* 7, 2 (1993), 50.

21 "The Conference agrees that, with regard to Council decisions requiring unanimity, Member States will, to the extent possible, avoid preventing a unanimous decision where a qualified majority exists in favour of that decision."

22 Lodge, op. cit., 51.

23 On 23 March 1999, the WEU Permanent Council took the decision on associate membership for the Czech Republic, Hungary and Poland, following their accession to NATO.

24 *Europe Documents*, No 1787.

25 Title of an article by Ian Mather in the *European*, 26 November-2 December 1993.

26 See Andreas Kintis, "NATO-WEU: an Enduring Relationship", *European Foreign Affairs Review* 3, 4 (1998), 537-562. Peter van Ham, "The EU and WEU: From Cooperation to Common Defence?" in Geoffrey Edwards and Alfred Pijpers, eds., *The Politics of European Treaty Reform. The 1996 Intergovernmental Conference and Beyond* (London and Washington: Pinter, 1997), 306-325 and Peter van Ham, "The Prospects for a European Security and Defence Identity", *European Security* 4, 4 (1995), 523-545.

27 See Charles Barry, "NATO's Combined Joint Task Forces in Theory and Practice", *Survival* 38, 1 (1996), 81-97 and Edward Foster and Gordon Wilson, eds., *CJTF: A Lifeline for a European Defence Policy?* (London: Royal United Service Institute for Defence Studies, Whitehall Paper Series, 1997).

28 Christopher Hill, "Closing the capabilities-expectations gap" in Peterson and Sjurson, op. cit., 25.

29 Simon Nuttall, "The Commission and foreign policy-making" in Geoffrey Edwards and David Spence, eds., *The European Commission* (Essex: Longman Current Affairs, 1994), 297.

30 As Simon Nuttall explains "DG1A was to have a Director General, two Deputy Directors General, and five Directorates. Directorate A is responsible for multilateral political relations, including the United Nations, CSCE and the Council of Europe. It also houses the European Correspondent's unit, although the Correspondent, like in Member States' Foreign Ministries, will be working directly to the Director General/Political Director. Directorate B is responsible for Europe and the CIS, Directorate C for North America, Asia, Australia and New Zealand, Directorate D for Latin

America, Africa, and the Middle East. Directorate E is responsible for the management of the Delegations outside the Community, a unit transferred from the Directorate General for Personnel and Administration (DGIX). Protocol, the Inspectorate of Delegations, and the planning staff previously part of the EPC Directorate in the Secretariat General, all come under the direct authority of the Director General", *Ibid.*, 300-301.

<sup>31</sup> Fraser Cameron, "Building a common foreign policy. Do institutions matter?" in Peterson and Sjørnsen, *op. cit.*, 63.

<sup>32</sup> Allen, *op. cit.*, 52.

<sup>33</sup> Fraser Cameron, *The Foreign and Security Policy of the European Union. Past, Present and Future* (Sheffield: UACES & Sheffield Academic Press, 1999), 40.

<sup>34</sup> Thomas Grunert, "The Association of the European Parliament: No Longer the Underdog in EPC?" in Regelsberger, de Schoutheete de Tervarent and Wessels, *op. cit.*, 118.

<sup>35</sup> *Ibid.*

<sup>36</sup> Quoted in Grunert, *ibid.*, 115.

<sup>37</sup> European Parliament, *Prospects for a Common Foreign and Security Policy – Preliminary Review* (Brussels: Directorate General for Research, 1994), 9.

<sup>38</sup> It was agreed that there would no longer be a distinction between the General Affairs Council and the EPC ministerial meetings.

<sup>39</sup> Quoted in Nuttall, *European Foreign Policy*, 246-247.

<sup>40</sup> Elfriede Regelsberger, "The Institutional Setup and Functioning of EPC/CFSP" in Regelsberger, de Schoutheete de Tervarent and Wessels, *op. cit.*, 76.

<sup>41</sup> Nuttall, *European Foreign Policy*, 247.

<sup>42</sup> The group of CFSP Counsellors was given formal status by a decision of 26 July 1994. Nuttall, *European Foreign Policy*, 248 and Allen, *op. cit.*, 53.

<sup>43</sup> Simon Nuttall, "The Foreign and Security Policy Provisions of the Maastricht Treaty: their potential for the future" in J. Monar, W. Ungerer and W. Wessels, eds., *The Maastricht Treaty on European Union* (Brussels: College of Europe and Institut für Europäische Politik, European Interuniversity Press, 1993), 134.

<sup>44</sup> Nuttall, *European Foreign Policy*, 252.

<sup>45</sup> Regelsberger, *op. cit.*, 79.

<sup>46</sup> Geoffrey Edwards, "Common Foreign and Security Policy", *Yearbook of European Law* 13 (1994), 499. The merger was decided by the European Council on 29 October 1993: "As from the entry into force of the Treaty, all working parties will be Council working parties" quoted in Nuttall, *European Foreign Policy*, 249.

<sup>47</sup> Regelsberger, *op. cit.*, 78-79.

<sup>48</sup> Charlotte Bretherton and John Vogler, *The European Union as a Global Actor* (London and New York: Routledge, 1999), 181.

<sup>49</sup> European Parliament, *Report on the financing of the CFSP PE 209.630* (1994), 17.

<sup>50</sup> Jörg Monar, "The Financial Dimension of the CFSP" in Holland, *Common Foreign and Security Policy. The Record and Reforms*, 37.

<sup>51</sup> European Parliament, *Report on the financing of the CFSP*, 18.

<sup>52</sup> Monar, *The Financial Dimension of the CFSP*, 38.

53 Martin Holland, *European Union Common Foreign Policy. From EPC to CFSP Joint Action and South Africa* (London: St Martin's Press, 1995), 139.

54 European Commission, *Intergovernmental Conference 1996 – Commission Report for the Reflection Group* (Luxembourg: Directorate-General for Information, Communication, Culture and Audiovisual Media, 1995), 65.

55 For an excellent account of the financing of the CFSP joint actions see Monar, "The Financial Dimension of the CFSP", 34-51 and Jörg Monar, "The Finances of the Union's Intergovernmental Pillars: Tortuous Experiments with the Community Budget", *Journal of Common Market Studies* 35, 1 (1997), 57-78.

56 European Commission, op. cit., 65.

57 Quoted in Holland, *European Union Common Foreign Policy. From EPC to CFSP Joint Action and South Africa*, 230.

58 Cameron, *Building a common foreign policy. Do institutions matter?*, 66.

59 Arnhild and David Spence, "The Common Foreign and Security Policy from Maastricht to Amsterdam" in Kjell A. Eliassen, ed., *Foreign and Security Policy in the European Union* (London, Thousand Oaks and New Delhi: SAGE, 1998), 51.

60 Hill, *Closing the capabilities-expectations gap?*, 28.

61 See for example *Economist*, 3 October 1992.

62 Hill, *Closing the capabilities-expectations gap?*, 25.

63 Spence, op. cit., 51.

64 European Commission, op. cit., 7.

65 Hill, *Closing the capabilities-expectations gap?*, 29.

66 Ibid., 29 & 33.

67 Ibid., 34-36.

68 Günter Burghardt, "The Potential and Limits of CFSP: What Comes Next?" in Regelsberger, de Schoutheete de Tervarent and Wessels, op. cit., 321-333, Hans van den Broek, "The Common Foreign and Security Policy in the context of the 1996 Intergovernmental Conference", *Studia Diplomatica* 48, 4 (1995), 31-38 and Elfriede Regelsberger and Wolfgang Wessels, "The CFSP Institutions and Procedures: A Third Way for the Second Pillar", *European Foreign Affairs Review* 1, 1 (1996), 29-54.

69 Michael E. Smith, "What's Wrong with the CFSP? The Politics of Institutional Reform" in Pierre-Henri Laurent and Marc Maresceau, eds., *The State of the European Union, Vol. 4, Deepening and Widening* (Boulder and London: Lynne Rienner, 1998), 159.

70 The Group, whose opinions did not represent the views of the Commission, was presided over by Jean Durieux, former Director General of the European Commission and special advisor to Hans van den Broek, and comprised of other former Director Generals at the Commission, Leslie Fielding and Edmond Wellenstein, the Ambassador of France, Henri Froment-Meurice, François Heisbourg, Vice-President of Matra Defense Espace, Herman Mulder, Executive Vice-President of ABN Amro Bank and professors of universities and research institutes in Oxford, Manchester, Brussels, Leuven, London, Bruges and Ebenhausen.

71 High-level Group of Experts on CFSP, First Report, *European security policy towards 2000: ways and means to establish genuine credibility*, Brussels, 19 December 1994.

72 The French, along with the Germans, in October 1991 proposed upgrading their joint Franco-German brigade to that of a

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*Eurocorps*. In January 1993, the French placed the *Eurocorps* at the disposal of NATO and the WEU if needed in a crisis. The *Eurocorps*, with its 50,000 German, French, Spanish, Luxembourg and Belgian troops headquartered in Strasbourg was made operational on 30 November 1995.

<sup>73</sup> High-level Group of Experts on CFSP, First Report, op. cit., 3-7.

<sup>74</sup> High-level Group of Experts on CFSP, Second Report, *European foreign and security policy in the run-up to the year 2000: ways and means of establishing genuine credibility*, Brussels, 28 November 1995.

<sup>75</sup> Bertelsmann Stiftung, *CFSP and the Future of the European Union*, interim Report, July 1995.

# **4 The European Community's Foreign Policy and the Yugoslav Conflict: The hour of Europe**

As the Cold War drew to a close, it became increasingly clear that a new era of international politics was dawning. The emergent international system featured the disintegration of the Soviet empire, thereby emancipating many peoples from foreign rule; it also signalled the coming of age of the European Community. Being for years under the protective umbrella of one of the two rival superpowers the EC was called at short notice to shoulder a wide range of responsibilities and to perform the role of "a superpower in the making". The system of Common Foreign and Security Policy that was to emerge from the Maastricht summit selected the Yugoslav crisis as one of its first foreign policy tests.

## ***4.1 The historical background of the war in former Yugoslavia***

Yugoslavia, "the land of South Slavs", has always been

treacherous ground. When Emperor Constantine partitioned the Roman Empire in 396 A.D. he was unwittingly drawing the boundaries of the present schism. In the years to come the east part was to be inhabited by the Serbs whereas the Slovenes and Croats settled into the west. This division was corresponding to their divergent cultural backgrounds and particularly their religion: in the northwestern part Latin alphabet and Roman church; in the southeastern half Cyrillic script and Orthodox church. For a period of four to six hundred years both sides were under imperial rule: the Serbs under the domination of the Ottoman empire; their neighbours under the administration of Austria-Hungary.<sup>1</sup>

On 1 December 1918 the "Kingdom of Serbs, Croats and Slovenes" was established incorporating "different, even mutually hostile, components. The economic, cultural and mental differences between the developed people in the North and their "compatriots" in the South have always been greater than those between Norway and Sicily".<sup>2</sup> On 28 June 1921 a Constitution was adopted which "set up a centralised parliamentary government under the Serbian royal house".<sup>3</sup> It was resented by the Croats since it was undermining their authority. The country was predominantly run by the Serbs. With the disillusioned Croats being in a parliamentary minority things became ossified and resorted to tribalism. As a means of railing against the political disparities Croats rallied to form



one large ethnic party. In 1928, the assassination of Stjepan Radic, the leader of the Croat Peasant Party and of two other Croat deputies by a Serb hastened the downfall of the government. On 6 January 1929 King Alexander dissolved the parliament, suspended the Constitution and changed the country's name to Yugoslavia. The situation gradually degenerated into violence and reached its climax with the 1934 assassination by Croat nationalists, known as the Ustashe, of King Alexander during a visit to Marseilles. In April 1941 Yugoslavia was invaded by the Axis. It was captured within a week with the Yugoslav army not in a position to check the enemy's advance.

During the fascist occupation a bloody war of resistance to the Germans combined with a multi-sided civil war was conducted. Ante Pavelic, leader of the Ustashe was given countenance by Hitler to establish an independent Croatian state. The new regime being in effect a Nazi puppet government deemed it expedient to inflict a policy of massacres, conversions and expulsions upon the Serbs in Croatia. The Serb insurgents, known as Chetniks, sought vengeance exacerbating animosity and hatred. However, it was the Serb irregulars under the leadership of Josip Broz Tito which came to prominence after the end of the war. Assisted by the Allies after 1944, he became Prime Minister and abolished the monarchy. On 29 November 1945 the Federal Republic of Yugoslavia was proclaimed.

Tito's Yugoslavia was a reflection of the Soviet Union: a multifarious state united under the Communist Party. His federation has composed of the three constituent nations of its monarchist predecessor with the addition of three more republics and two autonomous provinces within the republic of Serbia: Bosnia-Herzegovina, Montenegro, the Yugoslav republic of Macedonia, Kosovo and Vojvodina. Once in office, Tito adjudged nationalism as being a retrogressive force. Instead he espoused the motto "Brotherhood and Unity" as a basic tenet of his ideology. The crux of his policy was the reassurance to all the components of his federation that the equality of nations would be honoured. In return the republics abdicated their political power to him and his party.

In order to propitiate the other republics Tito proceeded with severing Serbia's territories. Thus, the prewar southern Serbia was converted into the Yugoslav republic of Macedonia, the former Serb Kingdom of Montenegro was granted independence and the two autonomous regions of Kosovo and Vojvodina were established. The 1974 Constitution was a sign of a further shift towards decentralisation:

The autonomous regions, which had become autonomous provinces with increased prerogatives in the 1960s were equated with the republics in all but name, while the domain of the federal government

was reduced to defence, foreign affairs, certain limited prerogatives of economic and financial policy, and the overall maintenance of the constitutional system.<sup>4</sup>

Despite its proclamation of the Yugoslav federation composed of the six republics and the two autonomous Serbian provinces of Kosovo and Vojvodina, the Constitution looked uncannily like a hybrid of a federation and a confederation, since it accorded at the same time sovereign rights to nations and nationalities in their respective and autonomous regions. As Dusko Doder suggested:

it became the departure point for the Bosnian Muslim national assertiveness that in the post-Tito period provoked an adverse reaction among the Bosnian Serbs. Their loss of ethnic domination coupled with political liberalization marked a decline in the Serbs' share of political and economic power in Bosnia-Herzegovina.<sup>5</sup>

Tito's death in 1980 plunged the "second Yugoslavia" into chaos. In the event of the lack of an heir apparent to the party leadership a collective state presidency was established consisting of eight members, each coming from the six republics and two provinces, whose Presidency rotated annually among its members. This collegiate body faced with economic, social and ethnic problems failed dismally to grasp the nettle of these issues and provide for satisfactory and lasting solutions. As a

result its political authority started to wither while nationalism rose into prominence. This was soon evident in Serbia where nationalist feelings found expression in a Memorandum compiled in 1985 by the Serbian Academy of Sciences in Belgrade. The document enumerated the alleged injustices suffered by the Serbs, namely the despotic position of Croatia and Slovenia in the framing of the economic policies of Yugoslavia intent on the subjection of Serbian interests; the anointment of Kosovo and Vojvodina as autonomous provinces with the 1974 Constitution; and the harassment of Serbs in Kosovo and Croatia.<sup>6</sup>

Using the Memorandum as the cornerstone of his policy, Slobodan Milosevic played on the Serbian fears of Kosovo's annexation to Albania to climb the echelons of the Serbian communist party to become its leader in 1987. Kosovo's historic and sentimental significance for both Serbs and Albanians made it always a contentious issue, prone to exploitation. As Hugh Poulton pointed out:

For the Serbs it is the heartland of the medieval Serbian kingdom where many of the greatest monuments of the (Christian) Serbian Orthodox Church are located. For the majority ethnic Albanian population (predominantly Muslim but with some Roman Catholics) it was in Kosovo that the Albanian national revival began with the founding of the League of Prizren in 1878.<sup>7</sup>

When in 1981 local Albanians in Pristina, Kosovo's capital, staged mass demonstrations against the low standards of life and demanded the elevation of their province to the status of a republic, Serbs conceived them as a pretext of seceding from Serbia proper and joining Albania as part of a plan to create a "Greater Albania". The demonstrations, which spread to several towns in Kosovo and flared into violence, were met by a Serbian declaration of a state of emergency together with the despatch to the province of army units.

Intercommunal relations were further aggravated by a steady decline in the number of Serbs living in Kosovo and a corresponding increase in the Albanian population which resulted in a change in the demographic composition of the region. Whereas according to the 1961 census, there were 646,605 Albanians, twenty years later this number was up to 1,226,736. At the same time the Serbs who in 1961 were 227,016 in 1981 had fallen to 204,498.<sup>8</sup> This was owing to Albanian's high birth rate and to a steady flow of Serbs out of the province. The latter according to Serbian claims was due to an Albanian policy of persecution to drive them out of Kosovo.

Unrest exploded anew in 1989 sparked off by amendments to Serbia's Constitution which "gave the Serbian central authorities control over the internal affairs of Kosovo and

Vojvodina in such areas as defence, state security, international relations, justice and planning".<sup>9</sup> The situation deteriorated sharply following the resignation from the Kosovo politburo of Azen Vlasi, an ethnic Albanian and LC (League of Communists) leader, at Serbian insistence. Protests soon escalated into riots. Albanian activists were arrested and despite special measures imposed in February 1990 "to protect the constitutional system, public order and peace"<sup>10</sup> anti-Serbian demonstrations continued unrelentingly. In July 1990 Serbia endorsed a new Constitution which effectively stripped Kosovo and Vojvodina of their autonomous status.

The sensitive issue of Kosovo was manipulated by Milosevic, who instigated also the installation in power in Vojvodina and Montenegro of groups friendly to him, to assert himself as the indisputable guardian of the Serbian interests.<sup>11</sup> It was no surprise therefore, that in the first multiparty elections in Serbia in 1990 his Socialist Party swept into power and he was elected President under the banner of restoring Serbia's pride and predominant position in Yugoslavia. Indeed:

...Milosevic's entire political program has been primarily nationalist in character, promoting conflict rather than reform. This program has four goals: establishing full control in Serbia; reestablishing Serbian control over its autonomous provinces; bringing down the constitution of 1974; and establishing a unified country under Serbia

that would have a semi-free market and a semidemocratic communist party.<sup>12</sup>

Milosevic's ascent into power in Serbia coupled with his firm grip on Montenegro, Kosovo and Vojvodina alarmed the Slovenes. In a controversial move in September 1989 the Slovenian parliament voted to empower itself the right to secede from the country and to impose a state of emergency. Tensions were heightened further in December with an order banning Serbs from rallying in Ljubljana to protest at the maltreatment of their compatriots in Kosovo.

Against this background the 14th extraordinary Congress of the League of Yugoslav Communists (LCY) met in Belgrade on 20 January 1990. Milosevic's hard line on the future design of Yugoslavia produced a heated debate with the Serbs pledging full support for a strong centralised federation and the Slovenes favouring instead a confederation of independent states. Despite a mood of pragmatism to end the Communist Party's monopoly on power, when proposals put forward by the Slovenes "for a still looser and confederal LCY (a "League of Leagues"), endorsement of multiparty elections, and strong commitment to the rule of law and human rights throughout the country" were voted down the Slovene delegation pulled out.<sup>13</sup> This was succeeded by the effective collapse of the Congress and the renouncement by the Slovene League of

Communists in their 11th Congress of their relations with the LCY. As Slovene leader Ciril Ribicic put it: "We are not going to take further part in the agony of the Communist party".<sup>14</sup>

In the course of the months to come Yugoslavia would come closer to the brink of disintegration. In April 1990, multiparty elections were organised in Slovenia.<sup>15</sup> Two parties were mainly in contention. Demos, a coalition of six centre-right parties, and the LCS-Party of Democratic Renewal, the revamped communists. Demos fought the campaign on a pro-independent platform. It advocated a constitutional change to transform Yugoslavia into a confederation of independent states and supported the radical restructure of the existing system under which Yugoslavia's prosperous northern regions economically subsidised an impoverished south. It eventually captured 55 per cent of the vote and forty-seven of the eighty seats in the Slovene Chamber making it the largest party. However, it was the popular leader of LCS, Milan Kucan, who won the presidential elections, conducted separately, taking 58,4 per cent of the vote in the second round. Consistent with its election pledge the Slovene parliament on 2 July 1990 endorsed a declaration pronouncing Slovenia's exclusive right "to place its own laws above those of the SFRY; to monitor and control national defence activities on its soil; to determine its own foreign and external policy; and to create a new Slovenian legal and judiciary system".<sup>16</sup> Despite the immediate dismissal



of the declaration by the federal authorities, Slovenes reinforced in September their main policy objective of independence by calling a referendum. In an unprecedented turnout, almost 90 per cent of the electorate opted to vote for an independent and sovereign Slovenia.

In a parallel development in Croatia in May 1990, Franjo Tudjman's right-wing party, the HDZ (Croatian Democratic Union), repeated Demos performance in Slovenia to score a resounding victory in the first multiparty elections in the republic, to give a further blow to Yugoslavia's chances of surviving. It was a one-sided contest with Tudjman sweeping into power on a wave of anti-Serbian feeling. His unequivocal stance on secession was nothing short of an outcry for full sovereignty: "We'll strive for the sovereignty of the Croatian people and the right to self-determination, including secession".<sup>17</sup>

Its policy patterned upon the Slovene example the Croatian parliament on 25 July 1990 approved wide-ranging constitutional reforms, including a reintroduction of the Croatian flag and the ancient coat of arms.<sup>18</sup> This revived memories of the Ustashe past among the 600,000 Serbian minority in Croatia and incited them to call a referendum on cultural autonomy.<sup>19</sup> Amid attempts by the Croatian government to block the referendum which provoked violent

incidents, this had proceeded with the Serbs voting overwhelmingly in favour of autonomy. Defying further efforts by the Croats to prevent them from seceding, Serbs proclaimed in October 1990 their autonomy.

Therefore, by the end of 1990, with Bosnia-Herzegovina and the Yugoslav republic of Macedonia also under non-communist governments, the battle lines of the war to come were drawn.

#### ***4.2 The development of EC-Yugoslav relations***

Relations between the European Community and the former Yugoslavia date back to the 1960s. Being Community's ninth world customer, it was deemed appropriate by the Council, in its session of 30 July 1968, to proclaim Yugoslavia's importance by designating the Commission as the Community's interlocutor for concluding a non-preferential commercial agreement with Yugoslavia. This decision was preceded by a Commission proposal to the Council on 31 January 1967 to enter into such deliberations which in turn resulted of a series of technical talks held in 1965. At these preliminary contacts the disequilibrium in the trade balance between Yugoslavia and the Community and Yugoslavia's exports of beef and veal emerged as the prevailing issues of the ensuing discussions.

The inauguration of the negotiations for a non-preferential agreement took place in Brussels from 15 to 18 October 1968. J.F. Deniau, member of the Commission, was presiding over the Community's delegation while the Yugoslav dignitaries were led by T. Granfil, member of the Federal Executive Council. During the discussions the two delegations assessed the course of their trade, stated their desire to restore its balance and expressed their willingness to work in tandem to augment economic relations.<sup>20</sup>

As a corollary, subsequent meetings were held between officials from the Community and Yugoslavia throughout 1969 with the aim of exchanging views on the progress of work on raising all the obstacles confronting their trade relations. Following the adoption by the Council on 10-11 November 1969 of "directives on certain qualities of beef and veal, in order to allow the Community delegation to continue current negotiations with Yugoslavia with a view to concluding a trade agreement with that country",<sup>21</sup> a second round of negotiations commenced in mid-December 1969. These proceedings culminated in the signing of a Trade Agreement between the EEC and the Socialist Federal Republic of Yugoslavia (SFRY) on 19 March 1970.

The agreement constituted a landmark in Community's history

since it was the first non-preferential trade agreement which the European Community was contracting with a non-member country and the first on which negotiations were concluded after the entry into force on 1 January 1970 of the Community's common commercial policy. Its significance, however, did not emanate solely from being a presage of other trade agreements to come but it derived mainly from its political and economic ramifications. It was an indication of the "Community's will to consolidate and expand its economic and commercial relations with all countries, irrespective of their political or social systems" and a depiction of "the desire of the Yugoslav government...to strengthen its international economic relations while practising a policy of non-alignment".<sup>22</sup>

According to the provisions of the agreement the "most favoured nation" treatment was bestowed on the contracting parties to apply to each other's imports and exports (Article I). The European Community and Yugoslavia undertook to redeem their obligations by adopting all the necessary measures for obviating all obstacles and for ensuring the unimpeded operation of their mutual trade. As an ancillary, a Joint Committee was formed to observe the unhindered execution of the agreement and to make suggestions for its smooth running. It was to meet once a year or by mutual consent on an extraordinary basis at the request of one of the parties and it

could set up specialised sub-committees to assist in its work (Article VII). The agreement was to run for a period of three years (Article VIII).<sup>23</sup>

Since the agreement's inception successive meetings between representatives from the Community and Yugoslavia took place with the aim of facilitating its proper execution. The Joint Committee assigned to administer the agreement held its first meeting on 7-8 January 1971 in Belgrade followed by a second one on 10-11 April 1972 in Brussels. During these sessions, the Joint Committee reviewed the outlook for trade relations between the two signatories in conformity with the agreement's provisions. By reason of the entry of the prospective new member states in the Community, ways of further consolidating their mutual relations were explored. As a result it was decided on 12 April 1973 to start negotiations for concluding a new agreement on a broader basis. Pending conclusion of the negotiations the Trade Agreement of 19 March 1970 was prolonged<sup>24</sup> until 26 June 1973 when a new EEC-Yugoslavia Trade Agreement was signed.<sup>25</sup>

The new agreement was a mirror image of the Trade Agreement it replaced, with the exception of Article VII which provided for the possibility of economic cooperation in areas of common interest to both parties as a complement to commercial trade. The agreement was to run for a period of five years from the

date of its entry into force (1 September 1973) subject to tacit renewal each year (Article IX). The two contracting parties reasserted their determination to make considerable strides in their economic and trade relations and reiterated their desire to nurture economic cooperation on a reciprocal propitious basis. The accord repeated the resolve of the signatories to cede each other's imports and exports the "most favoured nation" treatment (Article I) and to render one another "the highest degree of liberalization of imports and exports which they apply overall to third countries" (Article III). Article VI finally, confirmed the cardinal importance of the Joint Committee's reconcilable role and recognised its mantle in the unencumbered implementation of the agreement.

Under the impetus of the Trade Agreement, numerous meetings at expert and ministerial level went ahead at a faster pace and two sub-committees on agriculture and industry respectively were set up by the Joint Committee. Following up a visit to Belgrade on 1-2 December 1976 of Max van der Stoll, President of the Council, a Joint Declaration was issued at the end of the talks.<sup>26</sup> The purport of this statement was to further corroborate the resolve of the Community and Yugoslavia to consolidate their ties and widen the cooperation established under the Agreement of 1 September 1973. To this end it defined the fields to which this cooperation would be extended. These included the industrialisation of Yugoslavia, sales

promotion of the products exported by Yugoslavia, cooperation within the transport, fisheries, iron and steel, energy, telecommunications, informatics, the environment and tourism sector and scientific and technological cooperation. This joint *communiqué*, known as the Belgrade Declaration, laid the groundwork for the signing on 2 April 1980 of a Cooperation Agreement between the European Community and Yugoslavia and an Agreement on ECSC products.

Contrast to the preceding trade agreements the Cooperation Agreement was drawn for an unlimited period (Article 60) with the exception of the trade and financial clauses which were to run for a period of five years. It was basically a comprehensive codification of the provisions of the Belgrade Declaration consisting of sixty-three articles and three Protocols: Protocol 1 on the products referred to in Article 15 of the Agreement; Protocol 2 on financial cooperation; and Protocol 3 concerning the definition of the concept of "originating products" and methods of administrative cooperation. The Agreement, signed also by the member states of the Community, was encompassing all aspects of the signatories bilateral links, namely economic, technical and financial cooperation (Articles 2-13) and trade (Articles 14-40). It also included provisions, concerning transport (Article 8), tourism (Article 9), environment (Article 10) and fisheries (Article 11). The Community was to be granted the "most favoured nation"

treatment. As regards financial cooperation the Agreement engaged the contracting parties in a mutual interchange of information and prescribed for a joint analysis of their medium-term economic policies and balance of payment trends. Under a five year-financial protocol the Community undertook to allocate 200 million European Units of Account (EUA) in the form of loans from the European Investment Bank for financing mutually beneficial schemes. The Agreement provided also for the setting up of a Cooperation Council to take over from the Joint Committee and with the aim of supervising the rigorous implementation of the accord and facilitating its smooth functioning.<sup>27</sup>

Pending completion of the procedures for ratifying the Cooperation Agreement, which finally came into force on 1 April 1983, an Interim Agreement on trade and trade cooperation and an Interim Protocol for the advance implementation of financial cooperation were adopted on 1 July 1980.<sup>28</sup>

On the occasion of a visit of a Community delegation to Belgrade on 14-16 December 1983 hopeful signs of a recovery from the asymmetrical development of their bilateral trade were recorded. It was indicated that during the first nine months of 1983 Yugoslavia had achieved a substantial reduction in the trade deficit with the Community. This was attributed to a 23 per cent increase in Community imports from Yugoslavia and a



respective 2 per cent decrease of Community exports in the same period. However, this trend, which continued in 1984, was reversed in 1985 when a further increase in the trade deficit occurred. All in all, during the fifteen years from 1970 to 1985 Yugoslavia's shares in EC imports climbed from 0.9 per cent in 1975 to 1.2 per cent in 1985 while its exports decreased from 2.6 per cent in 1970 to 1.5 per cent in 1985. Accordingly the share of EC in total Yugoslav imports decreased from 47.8 per cent to 30.3 per cent while the share of EC in Yugoslav exports dropped from 40.9 per cent to 24.5 per cent.<sup>29</sup>

Pursuant to the imminent expiry in 1985 of the trade agreement of the 1980 EEC-Yugoslavia Cooperation Agreement and of the five-year financial protocol, negotiations began in 1986 for their renewal. After consultations, to take into account the third enlargement of the Community to incorporate Spain and Portugal, an Additional Protocol establishing new trade arrangements and a second financial protocol setting out the framework of EEC-Yugoslav relations for the next five years were signed on 10 December 1987.<sup>30</sup> Under the second financial protocol the European Investment Bank (EIB) earmarked 550 million ECU the bulk of which was to be channelled into financing transport infrastructure projects of mutual interest and other development projects.<sup>31</sup>

In the following years the habitual exchange of official visits

continued on a regular basis. Although the economic crisis with which the federal authorities were encountered during 1988 coupled with the situation in Kosovo augured ill for the future, an encouraging development in the trade with the EC was noted: for the first time in 1987 and in the first half of 1988 the trade balance was in Yugoslavia's favour.<sup>32</sup>

Faced with an inflation running at an annual level of over 200 per cent, the federal government of Branco Mikulic introduced in May an IMF-sponsored programme for the recovery of Yugoslavia's stagnant economy and amendments to the federal constitution for an economic and financial reform. However, the hostile reaction from the media, the trade unions and the parliaments of the republics meant that the measures were doomed to fail. In December 1988 Mikulic was forced to resign.<sup>33</sup>

In March 1989 a new federal cabinet was appointed with the Croat Ante Markovic at its head. In his inaugural speech he prescribed his therapy for the treatment of the economy's malaise which was based on the "establishment of a capital market". His programme was basically oriented towards the attraction of foreign investments. He also committed himself to continue "with high real interest rates, restrictive monetary policies and the liberalization of prices" and to combat inflation which had climbed to an annual rate of 346 per cent.

Markovic, an astute politician, shrewdly predicted that his policies would result in the closure of enterprises, serving thus "as the basis for all conservative and ultra-conservative forces to rally in a struggle against the new systems".<sup>34</sup>

His prediction was soon to be confirmed. During the election campaigns in Serbia, Croatia and Slovenia, all contestants, each for different reasons, were to blame the economic crisis on the policies of his government. Resisting pressures from the governments of the republics, Markovic went on in November 1990 to declare more extensive privatisation for 1991.<sup>35</sup> In his fight he had the support of the Community which on the occasion of the ninth meeting of the EC-Yugoslavia Cooperation Council adopted a statement backing the economic reform in Yugoslavia. More important though, was the announcement that negotiations for a third financial protocol and an association agreement were to begin, provided the process of democratisation was to continue and respect for human rights was to be ensured.<sup>36</sup> However, the dark clouds of war starting to gather in Yugoslavia were portents of the chaos to come.

### **4.3 The break-up of the war in former Yugoslavia**

1991 began with Yugoslavia sliding towards disintegration following the adoption by the Slovene parliament on 20 February of a resolution on the “disassociation of Slovenia from Yugoslavia”. According to Milan Kucan, Slovenes “proceed from the fact that Yugoslavia has disintegrated politically and economically as a federal state”.<sup>37</sup> The tensions that threatened to tear the country apart took a turn for the worse when the next day the Croatian parliament adopted resolutions calling for the “primacy of Croatia’s constitution and laws over those of the federation”, and “on the procedure for Yugoslavia’s dissolution into sovereign states”.<sup>38</sup> The threat of civil war remained ever present when it was revealed on 8 February 1991 that a mutual defence pact between Croatia and Slovenia had been concluded on 20 January 1991.<sup>39</sup>

Despite the visible disintegration of Yugoslavia, most politicians were predisposed to inaction from the beginning. It did not seem to matter that, only a few months earlier, in November 1990, the Central Intelligence Agency had warned the Bush administration:

The Yugoslav experiment has failed. The country will fall apart. That will probably be accompanied by acts of violence and unrest that

could lead to a civil war.<sup>40</sup>

**As John Newhouse noted:**

...working-level people at State and the Central Intelligence Agency were ringing alarm bells. But they couldn't get the attention of their principals – their “betters”...<sup>41</sup>

**In any case, Western governments remained in thrall to the naive idea that Yugoslavia's political tensions would melt away. As one American diplomat recalled:**

The French were altogether dismissive...The British and the Germans thought we were overreacting. They weren't prepared for what happened. They could not accept that horrors of the sort going on in Somalia and Kurdistan could occur in their own back yard.<sup>42</sup>

**Against this background the EC expressed its desire for the country to remain united. This wish was explicitly articulated by the Italian Foreign Minister, Gianni de Michelis, who warned Slovenia that “if it breaks away, it could expect to wait 50 years before being admitted to the European Community”.<sup>43</sup> Italy firmly supported a unified Yugoslavia for it worried that its expanding economic and commercial activities in southeastern Europe would inevitably suffer from an eruption of violence. In addition, the prospect “of an anarchic collapse of Yugoslavia,**

with the potential to set waves of refugees on the road westward, was certainly not attractive".<sup>44</sup> Thus, Italy could certainly not be indifferent to the conflict in Yugoslavia for it had far-reaching implications. As de Michelis put it:

if you say there is a legitimate right for the Croatians to become independent, it would be difficult tomorrow not to give the same right to Slovakia or to the 2 million or 3 million members of the German-speaking population in Poland.<sup>45</sup>

By mid-May 1991, Croatia seemed closer to full-scale civil conflict following clashes between Croats and Serbs in the self-proclaimed "Serbian Autonomous Region of Krajina".<sup>46</sup> At the peak of the crisis in Croatia, the Twelve Foreign Ministers adopted a statement on Yugoslavia which emphasised the Community's willingness to retain its relationship with "a democratic and *united* [emphasis added by author] Yugoslavia".<sup>47</sup>

The EC was not alone in its determination to preserve the unity and integrity of Yugoslavia. The United States administration, too, was preoccupied with the need to hold Yugoslavia together. In the words of Richard Wagner of the Smithsonian Institute in Washington, DC, George Bush's foreign policy doctrine was that "states should neither be destroyed nor created".<sup>48</sup> On 21 June 1991, James Baker, the US Secretary of State, visited

Yugoslavia where he held a series of talks at the end of which he reiterated US support for Yugoslavia's continued territorial integrity,<sup>49</sup> and stated that the US "would not recognize Slovenia or Croatia as international subjects".<sup>50</sup> However, as Baker conceded, the United States was already defeatist about its ability to prevent the war breaking out:

The question was whether I should go and try and put down a marker, if you will, of what we thought would happen if there was anything other than a peaceful break. We weren't naive but we felt that if we didn't make the effort we would be accused of not even being willing to try. So knowing full well that we had very little chance of succeeding, we went and made the effort.<sup>51</sup>

Baker's visit was followed by a meeting of the EC Foreign Ministers in Luxembourg during which the Presidency "arranged for the Member States to adopt a coherent attitude" on the issue of recognition, "in line with the United States, Austria and Hungary". Moreover, the Foreign Ministers agreed "not to acknowledge a possible unilateral statement of independence by Croatia and Slovenia", as a "unilateral act could not bring any solution" to the Yugoslav crisis. In the same spirit they refused "any contact" with possible secessionists.<sup>52</sup>

These attempts, however, to halt secession were to no avail as on 25 June 1991 both Slovenia and Croatia declared their

independence. As it was expected, the declarations of independence by the two northern Yugoslav republics were met by an emergency session on the same day of the federal parliament in Belgrade during which it called on the JNA (The Yugoslav People's Army) to intervene to "prevent the splitting up of Yugoslavia and changes to its borders".<sup>53</sup> On June 27 1991, the Federal Secretariat for National Defence mobilised 1,990 members of the JNA "charged with the task of taking over all border crossings in Slovenia and protecting the state borders of the SFRY".<sup>54</sup> Any resistance was to "be crushed". During the next four days fighting and air attacks intensified resulting in the death of more than 100 people.<sup>55</sup>

Following a proposal by the Italian Prime Minister Giulio Andreotti, the EC Troika (Poos, de Michelis and van den Broek, as well as Matutes for the European Commission) was ordered to be sent to Yugoslavia "to obtain information without restrictions" on current developments. According to Andreotti:

the EC could not content itself with launching another appeal. The world is full of appeals which are ignored and what is happening "at our doorstep" requires something more than a bureaucratic-diplomatic approach.<sup>56</sup>

European statesmen were not the only ones to construe the Community's prompt dispatch of the Foreign Ministers of



Luxembourg, Italy and the Netherlands as one of extreme ingenuity. Journalists, too, seemed to share the assessment of the Twelve that the decision to send the Troika illustrated "the speed and unity with which as with the Kurdish crisis at Easter the EC is now able to act".<sup>57</sup> For instance, on 28 June 1991, viewers of BBC's *2 Newsnight* were assured of the Community's ability to successfully mediate in Yugoslavia:

It wasn't bad. Only six hours after the start of the summit, the Community had dispatched a diplomatic task-force to try and sort out the problem in the backyard.<sup>58</sup>

As Mark Almond noted: "the press repeated the up-beat briefings about the capacity of the Community to knock heads together in the Balkans".<sup>59</sup> Yet the discussions in Zagreb could scarcely have been expected to head off the war. On the contrary, fighting intensified. In response to the immediate outbreak of hostilities in Slovenia the Community Troika managed to secure a formal and written agreement from the Yugoslav authorities on three conditions set by the EC in order to pursue economic cooperation with Yugoslavia.<sup>60</sup> These were: respect of a cease-fire and the immediate return of JNA to its barracks; a three-month suspension in implementation of Slovenia's and Croatia's declarations of independence; and the election of the Croatian, Stipe Mecić, to the rotating office of President of the Collective State Presidency. The agreement was

hailed by Jacques Poos as a sign of the EC's political coming of age: "This is the hour of Europe, not the hour of the Americans".<sup>61</sup> This view was echoed by de Michelis who stated that "Washington and Moscow had been informed, not consulted, about the mission of the EC Troika of Foreign Ministers".<sup>62</sup> However, the deal quickly fall apart. In a statement issued by Kucan it was stressed that "there would be no reversal of moves already taken toward independence, only a postponement of further steps". As Kucan said: "I can see no democratic way for Slovenia to be a part of Yugoslavia".<sup>63</sup> According to Almond:

Given the "Euro-" rhetoric of various Yugoslav parties over recent months, the Twelve took for granted that its emissaries would be received with respect and their advice heeded with alacrity.<sup>64</sup>

On 30 June 1991, the EC Troika returned to Yugoslavia to try to salvage the peace deal. Jacques Santer wrote to Markovic, Milosevic and Tudjman, stating that unless a cease-fire was implemented and JNA forces returned to their barracks, the EC's aid programme to Yugoslavia would be frozen. At the end of the Troika's second mission, Hans van den Broek stated that:

an important step had been taken towards a negotiated settlement on the Yugoslav crisis...The situation remains fragile and extremely

complicated, but the Troika is at least convinced of having overturned the current situation towards a peaceful settlement.<sup>65</sup>

Furthermore, he suggested, that “the Twelve were ready to send observers to Yugoslavia to control the respect of commitments made towards such a settlement”.<sup>66</sup>

Following a meeting in The Hague on 5 July 1991 the Twelve Foreign Ministers decided to send another Troika to Belgrade with the mission to examine how and when the observers from the Twelve would be able to go to Yugoslavia. At the same time the Twelve decided “upon an embargo on armaments and military equipment applicable to the whole of Yugoslavia” and “to suspend the second and third financial protocols”. They further urged “other countries to follow this example” and they stressed that they “will have to consider again their position in the event of any further breach of the cease-fire, in particular should unilateral military action be taken”.<sup>67</sup> With respect to the possible recognition of Slovenia and Croatia, the majority of the Community’s member states thought it was “premature”. Speaking to the press, Chancellor Kohl propounded the thesis that some EC countries had “considerable problems in separatist ideas in their own countries” and thus, were “more interested in projecting any decisions in Yugoslavia to their situations at home”.<sup>68</sup> However, according to the Danish Foreign Minister, Ellemann-Jensen, a clear message had to be

sent: "If there is repression in the two dissident republics, the Twelve will be forced to recognise them".<sup>69</sup> For the French Foreign Minister Roland Dumas "the need to preserve both the right to self-determination and territorial integrity" was essential. As Dumas stressed "our message is the language of wisdom and moderation".<sup>70</sup>

As a result of the third visit of a Troika mission in Yugoslavia the Brioni Agreement was concluded on 7 July 1991, the principal elements of which mainly concerned Slovenia and only made certain allusions to Croatia<sup>71</sup>. The Agreement stated that "in order to ensure a peaceful settlement" five principles would have to be followed. These were the following:

- it is up to only the peoples of Yugoslavia to decide upon their future;
- a new situation has arisen in Yugoslavia that requires close monitoring and negotiation between different parties;
- negotiations should begin urgently, no later than 1 August 1991, on all aspects of the future of Yugoslavia without preconditions and on the basis of the principles of the Helsinki Final Act and the Paris Charter for a New Europe (in particular respect for human rights, including the right of peoples to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States);
- the Collegiate Presidency must exercise its full capacity and play its

political and constitutional role, notably with regard to the Federal Armed Forces;

- all parties concerned will refrain from any unilateral action, particularly from all acts of violence.

Annex I on "Further modalities in preparation of negotiations" required "the lifting of blockade of JNA units and facilities; the unconditional return of JNA units to their barracks; all roads to be cleared; the return of all facilities and equipment to JNA; and the de-activation of territorial defence units and their return to quarters". These measures would come into effect "no later than 8 July at 24.00 hours". It was also agreed that control of border crossings would be "in the hands of Slovenian police". Annex II on "Guidelines for a monitoring mission in Yugoslavia" stipulated, moreover, that a multinational Monitoring Mission should be sent "as soon as possible" to monitor "the situation in Yugoslavia, in particular by monitoring activities in Slovenia – and possibly also Croatia". The Brioni Agreement was ratified by the Croatian parliament on 9 July 1991, and by the Slovenian parliament on 10 July. The Collective State Presidency also endorsed it at the end of a 14-hour session on 12 July 1991.<sup>72</sup> According to Hans-Dietrich Genscher, Germany's Foreign Minister, the Brioni Agreement was "proof of the European Community's ability to act and its ability to contribute in an operational manner to a solution to the crisis".<sup>73</sup>

During the 82nd EPC ministerial meeting at The Hague on 10 July 1991 the details for the team of observers which was to go to Yugoslavia to monitor the cease-fire were set down. The team consisted of twenty diplomats and military personnel without uniforms. The European Commission was represented by Bertrand Rionst and Vittorio Ghidì.<sup>74</sup> On 29 July 1991, the EC offered to extend the role of the Monitoring Mission to Croatia and to set up joint patrols between the Croatian National Guard and the federal army. The Monitoring Mission was to be substantially strengthened by being brought from 50 to 200 people (with a further 200 carrying out a support role). It was also suggested that the Community was to examine ways in which it could release its financial aid to Yugoslavia on condition that negotiations on the future of the country would begin.<sup>75</sup>

In its attempt to discourage further fighting between Serbs and Croats the EC began also to seek to exert pressure by contemplating the possibility of an armed peacekeeping force be sent to Yugoslavia, an idea strongly opposed by Britain. According to Sonia Lucarelli, Britain's reluctance to become militarily involved in Yugoslavia in 1991 was attributable to a number of reasons: Britain did not feel that it had any serious interests at stake in former Yugoslavia; its experience in foreign intervention made Britain aware of the risks of such an

enterprise; Britain did not want to set a precedent on the basis of which the UN, the OSCE or even the EU could claim the right to mount a peacekeeping operation in Northern Ireland; there was a fear of a “U-turn” in British public opinion; and Britain did not wish to create a precedent as long as CFSP and WEU's role within the European security architecture had not been defined in the negotiations of the TEU.<sup>76</sup>

In this context, the WEU met in London on 7 August 1991 at France's request to consider a possible WEU role in supervising a cease-fire. The political significance of the French demand was stressed by Jonathan Eyal when he wrote:

[The French proposal] could never have worked, for the WEU, then still consisting of a few filing cabinets in London, was unable to provide any of the logistical support and coordination that such a force would have required. However...the crucial problem was to stake out principles. If the EC observers were supported by troops under the flag of the WEU, many of the contentious issues surrounding the conclusion of the Maastricht Treaty would have been settled.<sup>77</sup>

Despite generating some discussion, however, this suggestion received little support at the time as most member states shared the British view which was summed up by Sir Oliver Wright, former British Ambassador to Bonn: “It would be

madness to send unwelcome troops into a dreadful quagmire".<sup>78</sup>

The issue of some form of intervention force was raised again at an extraordinary meeting of the Council of the WEU on 19 September 1991 in The Hague where divergences among WEU countries over whether or not to send European peacekeeping forces were confirmed. The French, Italians and Belgians were in favour of an intervention force. The Portuguese were cautious, as were the Danes. The Germans were reluctant to commit European forces. Germany's policy over the proposed force stemmed from the interpretation of its Constitution which forbade troops operating outside NATO territory. The British continued to voice reservations about this approach arguing that a considerable force of 30,000-50,000 troops was needed and warned of the dangers of being drawn into a war where the fighting men were under no obvious political control. The experience of Northern Ireland was mentioned to demonstrate to its partners that it was far easier to introduce troops than to get them out. As the Foreign Secretary, Douglas Hurd, put it: "I am very anxious to avoid exaggeration about what we can do".<sup>79</sup> A further indication of the divisions was suggested by a statement adopted during a special meeting of the Twelve Foreign Ministers:

It is [our] understanding that no military intervention is



contemplated and that, before a reinforced monitor mission were established, a cease-fire would have to be agreed with a prospect of holding and that all Yugoslav parties would have expressed their agreement.<sup>80</sup>

There was also disagreement over whether the force should be authorised by the CSCE and the UN. Although François Mitterrand and Helmut Kohl could agree on the need to send an intervention force they were divided on the purpose. The Germans were advocating full-scale UN intervention; the French suggested recourse to the UN only as a last resort. As the French President pointed out:

If all efforts should prove to be in vain we would be in an entirely different situation which would justify referral to the Security Council.<sup>81</sup>

Nonetheless, there was a consensus to assign an *ad hoc* working group of senior officials from the WEU's Foreign and Defence Ministries to examine ways of ensuring better protection of Community monitors. These options were discussed at a WEU meeting on 30 September 1991. They were: logistic support for monitors; escort and protection of monitors by armed military forces consisting of 5,000 to 6,000 men; a lightly armed peacekeeping force of between 4,500 and 5,000 of military personnel and 3,000 to 5,000 additional monitors to

police the cease-fire; and finally a fully fledged peacekeeping force of 20,000 to 30,000 personnel.<sup>82</sup> The Council, however, declined to endorse any of them. Instead it affirmed its wish to reinforce EC observer activity. In any case, the prospect of sending an armed peacekeeping force to Yugoslavia was always destined to founder for reality fell far short of ambitions.

A fresh initiative was launched on 27 August 1991 by the Foreign Ministers of the Twelve. In a statement published on the same day the Community after it appealed to Serbia "to lift its objection to the extension of the activities of the monitor mission in Croatia", it stated that as soon as "an agreement on the monitoring of the cease-fire and its maintenance" was concluded a peace conference was to be convened. In the context of this peace conference an arbitration procedure was to be established consisting of two members appointed unanimously by the Federal Presidency and three members appointed by the Community and its member states.<sup>83</sup> It was envisaged that the Arbitration Commission would give its verdict within two months. In addition, it was stated that if no agreement had been achieved on the monitoring of the cease-fire and the convening of the peace conference by 1 September, the Community would "consider additional measures, including international action".<sup>84</sup> At the press conference after the meeting, van den Broek stated that:

the Twelve had tried to go to the limits of their imaginative thinking to endeavour to save the peace in Yugoslavia. Everyone, acknowledged the fact that the negotiations on the future of the country cannot begin as long as the killings continue to constitute a major obstacle to peace. The violence must therefore be brought to a halt, and not merely by oral declarations.<sup>85</sup>

Whereas Tudjman, at the conclusion of a meeting with President Mitterrand accepted the proposals and declared that Croatia had "always supported European intervention to foster peace in Yugoslavia",<sup>86</sup> Slobodan Milosevic refused to give his endorsement to the plan and rejected the EC accusations that Serbia was the aggressor in the conflict.<sup>87</sup> Shortly, however, after the expiration of the deadline dictated by the Twelve all Yugoslav parties signed the agreement, paving thus the way to the convening of a peace conference. Following a meeting in The Hague on 3 September 1991, the Community's Foreign Ministers formally decided to convene a conference on Yugoslavia assuming the chair, a task they had given to Lord Carrington, former British Foreign Secretary and former Secretary General of NATO. On Saturday, 7 September 1991, at 11.00 am, at the Peace Palace in The Hague the International Conference on Yugoslavia opened.<sup>88</sup>

#### **4.4 The recognition of Croatia and Slovenia**

By this time European public opinion was becoming increasingly sympathetic to Croatian self-determination in response to televised pictures from the war in Croatia. As contingents of the JNA destroyed Vukovar and shelled Dubrovnik in autumn of 1991, European support for the preservation of Yugoslavia's territorial integrity rapidly eroded. Public opinion surveys conducted in the EC in September 1991 revealed that Community citizens – by a majority of more than three-to-one – believed that respect for democracy and for each people's right to self-determination including possible independence for certain republics should take priority over the preservation of a unified Yugoslav state. European public opinion was, however, by no means uniform on the issue of the usefulness of EC initiatives in trying to resolve the Yugoslav crisis. Related surveys in October 1991 showed that 42 per cent of EC citizens thought that the initiatives were not useful.<sup>89</sup>

As military strife in Croatia intensified, the EC proposed a plan for the settlement of the Yugoslav crisis on 18 October 1991, at Peace Conference talks in The Hague. In a statement issued jointly for the first time by the Community and its member states, the United States, and the Soviet Union, Washington and Moscow reiterated "their full support for the efforts of the

European Community and its Member States, under mandate by the CSCE, to mediate a peaceful resolution to the Yugoslav crisis", and claimed to be ready "to support restrictive measures applied by the EC to help achieve a successful outcome of the Conference on Yugoslavia". The Twelve, the United States, and the Soviet Union expressed their "distress" at the "terrible violence and loss of life" in Yugoslavia, and stressed that they were "particularly disturbed by reports of continued attacks on civilian targets by elements of the federal armed forces and by both Serbian and Croatian irregular forces". They further reaffirmed their opposition to all change in "established borders, whether internal or external", and insisted on the respect and adherence to the CSCE principles concerning borders, minority rights and political pluralism.<sup>90</sup>

This statement was accompanied by an extremely detailed working document prepared by Lord Carrington on the "Arrangements for a General Settlement to the Yugoslav Crisis" comprising of "comprehensive arrangements including supervisory mechanisms for the protection of human rights and special status for certain groups and areas". The document, which consisted of chapters on human rights and rights of ethnic and national groups, economic relations, foreign affairs and security, and the building of institutions, suggested the "recognition of the independence, within existing borders, unless otherwise agreed, of those Republics wishing it".<sup>91</sup> As

Lord Carrington noted:

It seemed to me that the right way to do it was to allow those who wanted to be independent to be independent, and to associate themselves with a central organization as far as they wanted to. Those who didn't want to be independent, well, they could stay within what had been Yugoslavia. In other words you could do it, so to speak, *à la carte*.<sup>92</sup>

Some energy and effort were directed towards reaching a conciliation with the Serbs. The peace plan guaranteed a wide gamut of individual, cultural and political rights to the Serbs outside Serbia. Serbian nationalist sentiments were also assuaged without doing so at the expense of other groups by agreeing to Milosevic's demands for Serbian national emblems, flags, the right to a second nationality, and an education system which respected "the values and need" of the Serbs in regions of Croatia and Bosnia-Herzegovina which had a majority Serb population. Finally, the plan specified the equality of all communities, further stipulating the guarantee of parliamentary representation to the Serbs and affirming their right to their own administrative structure, including a regional police force, and their own judiciary.<sup>93</sup> Yet, as Christopher Bennett argued:

in spite of the conference's admirable aims, it was fundamentally

flawed, for it lacked military clout and could thus never be anything more than a talking shop...[Lord Carrington] was never provided with the military back-up which might have given the EC Peace Conference the authority to have a real impact.<sup>94</sup>

Of the six republics attending the conference, Serbia was the only one to reject the peace plan. According to Milosevic the proposal put forward by the EC would “not lead to stability and peace but will certainly open the way to renewed instability and tension”.<sup>95</sup> For all his devotion to the Peace Conference, Lord Carrington was angered and shocked by the insincerity of his interlocutors:

Well, I think I found very quickly that you really couldn't rely on a word they said. They were quite prepared to sign any bit of paper you put in front of them without the smallest intention of doing anything about it and, er, *after a couple of times of cease-fire, after a couple of times you got a cease-fire* [emphasis added] and so on you realised that they were completely unreliable people and they were out for their own agenda.<sup>96</sup>

It did not require too much perspicacity to see that Milosevic and Tudjman did not see the peace process as a viable solution. As Laura Silber and Allan Little pointed out:

It had taught Europe a lesson that the peace mediators never once

took on board – that war is sometimes not only a profoundly rational path to take, especially when you know you can win, but is also sometimes the only way to get what you want...The Slovenes had demonstrated that war was not always folly. Belgrade knew this, too, and was to act on it in both Croatia and Bosnia.<sup>97</sup>

In a statement published on 28 October 1991, EC Foreign Ministers set a deadline of 5 November, the date of the next plenary session of the Yugoslav Conference, for Serbia to accept the principles “of no unilateral change of borders, protection of human rights, and rights of ethnic and national groups”. If it did not do so, they threatened to impose “restrictive measures” on Serbia and to proceed “with the cooperative republics to obtain a political solution” – in effect to recognise their independence.<sup>98</sup>

Already the German government backed overwhelmingly by public opinion and the press was eager for recognition of Croatia and Slovenia.<sup>99</sup> When Serbian aggression on Croatia became aggravated in the fall and winter of 1991, German media generally played an active role in stoking and blowing-up anti-Serbian feelings. Typical stories in *Bild* dealt with accusations of Serbian cruelty – Serbs slashing open the stomachs of civilians. The conservative dailies *Die Welt* and *Frankfurter Allgemeine Zeitung* referred to Serbia as the “aggressor” that harboured “the obsession of a master race with



conquests”, and described Serbian troops as non-European “barbarians”.<sup>100</sup> In the months of August, September, October and November of 1991, the media demonization of Serbs was at its peak and editorials and commentaries in the German press favoured the immediate recognition of Croatia and Slovenia. German newspapers pursued the theme of an alleged inherently pro-Serb nature of Western states. A strange passion to discover “nostalgists” or “anti-Germans” seemed also to flourish in certain minds:

In France and Great Britain, parts of the intellectual class are still very attached to the established order of 1919-20, which was above all designed to punish and pin down Germany, Austria and Hungary; the Belgrade state of Greater Serbia was a cornerstone of this system.<sup>101</sup>

*Frankfurter Allgemeine Zeitung's faux pas* in drawing attention to the post-World War I order was typical.<sup>102</sup> Nonetheless, the popular consensus that Milosevic's strategy, and the national passions that were being fanned and exploited in its service could presage threats to the longer-term survival of Croatia and Slovenia if they were not recognised followed elite consensus.<sup>103</sup> As Beverly Crawford argued:

...it was only after political party elites had made their position clear, after Genscher's arguments for recognition within the EPC had

become public, and after early mediation efforts faltered that public opinion began to shift.<sup>104</sup>

This groundswell of opinion in favour of the two republics emanated from a feeling that German unification flowed from the same kind of self-determination that Slovenes and Croats were now attempting to exercise. It was reinforced by historical and cultural links with the Croats, as well as geographical proximity: Croatia has been a favourite place in which to take a holiday for millions of Germans. In addition, Germans were influenced by the presence of several hundred thousand Croats living in Germany.

By the summer of 1991, all German political parties seemed to have moved to the German Greens/Alliance '90 position that the most desirable solution to the crisis in Yugoslavia would be a "confederation of sovereign states based on the principle of self-determination".<sup>105</sup> How the atmosphere illustrated in this position had changed so decisively in few months from a policy of support for multilateral efforts to preserve Yugoslavia to the diplomatic recognition of Croatia and Slovenia is a tale of elite bandwagoning, fear of the effects of party fragmentation, and an entrenched tradition of support for self-determination in Germany's foreign policy culture.<sup>106</sup> It also explains how and why Kohl and Genscher spoiled the comparative advantages derived from earlier experiments and experience with

multilateralism, that should have enabled the European Community to move toward a genuine political union, including common foreign and security policy, faster and with greater success. As William Horsley noted:

There was unanimity in the German body politic, but little foresight. As one FDP member of the Bundestag's foreign affairs committee told me informally, "In a way our politics are *too* [emphasis added] democratic: when all the parties combine to demand a certain policy, ministers have no choice but to go along."<sup>107</sup>

Moreover, Germany felt that international recognition of Croatia's frontiers could deter the Serbian drive for more Croatian territory in defence of Serb minorities.<sup>108</sup> Genscher had a firsthand experience with Serbian aggression when, during his visit to Yugoslavia in early July 1991, he failed to meet with the Slovenian and Croatian leaders in their own capitals as a result of fighting.<sup>109</sup> As he recalled: "It became more and more clear that a further delay of recognition would constitute an encouragement to continue the war".<sup>110</sup> It is possible to speculate, however, that his motives were less flattering. In the months of August and September 1991, political parties and government forums repeatedly and formally agreed, with increasing directness and intensity, for recognition of Croatia and Slovenia. Under these conditions, a rising tide of criticism of Genscher's preference for supporting the EC

attempt to preserve Yugoslavia developed, culminating in August in CDU/CSU (Christian Democratic Union/Christian Social Union) spokesmen calling on Genscher to change EC policy by taking a tougher position on recognition. Opposition politicians were quick to take advantage of the change in public support for the diplomatic recognition of the two republics and charged the government with failing to appreciate the urgency of the matter. The general controversy over this issue contributed to the eventual shift in Kohl and Genscher's opinion. In Wolfgang Krieger's words:

Kohl's conservative-liberal coalition did not wish to appear indecisive, thereby giving political ammunition to the Social Democrats. Above all, it did not wish to sink even further in the esteem of the German public.<sup>111</sup>

It is at this point, however, that Kohl and Genscher's intimation to recognize Slovenia and Croatia ignored an important structural weakness of Germany's diplomatic assertiveness. The German government was deeply reluctant to press forward with a military option as the prevailing interpretation of the German Constitution restricted the deployment of Bundeswehr to defending Germany and the territory of NATO against outside attack and ruled out participation in military operations outside the NATO context. In line with this analysis Marten van Heuven underlined that

**Bonn's pledge to recognise the two Yugoslav republics was:**

...not matched by any credible ability to make German policy stick...The German inability to act militarily...rendered nugatory the effect of diplomatic recognition, for Belgrade knew...that any policy opposed to Serbian expansionism depended ultimately for its enforcement on the ability and willingness of others to use military force. Germany had neither, and thus could be of no help to the EC. Genscher's policy, in sum, was without clothes.<sup>112</sup>

**As early as August, Chancellor Helmut Kohl was outspoken on Serbia's responsibility for the conflict:**

Those responsible – I am speaking here especially of the Serbian side – must know there can be no future economic aid for this country from the European Community if one crushes the right to self-determination with tanks.<sup>113</sup>

At the beginning of September 1991, Hans-Dietrich Genscher declared that: "If the Conference [the International Conference on Yugoslavia] breaks down, Germany would recognize Croatia and Slovenia".<sup>114</sup> Germany's activism, however, to recognise the breakaway republics as independent states was coupled with a clear concern that helps to explain why the German government withheld recognition until 23 December 1991. It seems that Bonn had realised that the Yugoslav crisis had

assumed such serious dimensions that it could occasion unsuccessful talks at Maastricht to achieve monetary union and a common foreign and security policy.<sup>115</sup> Furthermore, opposition from Britain, France, The Netherlands, and the US, inhibited Germany from calling openly for recognition of the two republics. Their view was backed by the UN Secretary-General, Javier Pérez de Cuéllar, who in a letter sent to Hans-Dietrich Genscher warned against any "premature, selective and uncoordinated" recognition,<sup>116</sup> and by Lord Carrington:

I said very strongly that I felt that the timing of this was wrong. I pointed out that early recognition would torpedo the conference. There was no way in which the conference would continue after that. It would make no sense at all...<sup>117</sup>

The main concern was that recognition could incite the Serbs into moving the war to Bosnia-Herzegovina which in turn could result in the conflict spreading to the Yugoslav republic of Macedonia, Kosovo or even Hungary. On this point the British Prime Minister, John Major, on the occasion of a visit to London of his Greek counterpart, Constantinos Mitsotakis, agreed with him on the potential "dangers of such a recognition".<sup>118</sup> Recognition was also fraught with other problems. The Spanish were not alone in fearing that it could encourage other ethnic separatists or restless minorities elsewhere in Europe, notably the Soviet Union.<sup>119</sup> The French

were also reluctant to give up the idea of a single, federal Yugoslavia suspecting that the two independent republics would fall under the sway of Germany and Austria invoking the prospect of an eastward empire building. Moreover, French diplomats were concerned that "Germany's focus of attention shifting east could undermine the Franco-German will and dynamism to deepen the European construction as it was expressed in the Maastricht Treaty".<sup>120</sup>

Although EC leaders strove to maintain the appearance of unity, the strains were scarcely concealed. In a strongly worded statement clearly aimed at Genscher, Hans van den Broek said: "It is easy from behind a desk to recognize Slovenia and Croatia and leave the rest of the work aside".<sup>121</sup> These criticisms were echoed by British diplomats: "In his pursuit of the Nobel Peace Prize, he [Genscher] has been grossly irresponsible".<sup>122</sup> The complexity of the decision which the Twelve had to take regarding the recognition by the Community of the Yugoslav republics was summed up by Belgian Minister, Mark Eyskens:

On the one hand, it would be a bit premature to recognize Slovenia and Croatia at this point in time; but on the other hand, the independence of these Republics is inevitable and constitutes an obligatory passage. It would be unrealistic to consider maintaining Yugoslavia in its current form; even a Slavic commonwealth is unthinkable in this region.<sup>123</sup>

On 8 November 1991, the EC Council of Ministers, at a fringe meeting of the NATO summit in Rome, imposed trade sanctions on Yugoslavia, and proposed a UN Security Council oil embargo. According to a statement the Community decided to take the following measures: immediate suspension of the application of the trade and cooperation agreement with Yugoslavia and a decision to terminate the agreement; restoration of the quantitative limits for textiles; removal of Yugoslavia from the list of beneficiaries of the Generalised System of Preferences; and formal suspension of benefits under the Phare programme. According to Maarten Lak, these measures:

because they involved the abrogation of the contractual or unilateral benefits which Yugoslavia enjoyed when trading with the European Community and clearly had a negative effect upon the country's exports to the EC, they marked the start of a de-recognition of the Federation...<sup>124</sup>

Furthermore, the Community recalled "that the prospect of recognition of the independence of those Republics wishing it, can only be envisaged in the framework of an overall settlement that includes adequate guarantees for the protection of human rights and the rights of national or ethnic groups".<sup>125</sup> According to Hans van den Broek the Twelve had a "unified



position” on this point.<sup>126</sup>

During an extraordinary meeting held on 16 December 1991 the Twelve voted after a ten-hour debate to recognise by 15 January 1992 the Yugoslav republics so wishing with the provision that they met certain conditions. As Hanns Maull wrote:

France and the UK...grudgingly came to accept the necessity of recognition, not least as a *quid pro quo* for Germany's willingness to make major concessions to its newly won sovereignty within the context of the Maastricht Treaty negotiations.<sup>127</sup>

On the other hand:

The Bonn government wanted to demonstrate that Germany could impose its will on its European partners with respect to foreign policy decisions – despite the huge concessions Germany had made at Maastricht.<sup>128</sup>

Not surprisingly in these circumstances a delicate balance prevailed in intra-Community relations. As Lord Carrington recalled:

The interesting thing about that [the decision to recognize Croatia and Slovenia] was that when I asked why, when the German government was pressing for recognition of Croatia and Slovenia, all

the other European Foreign Ministers went along with it when some of them had very considerable hesitations – particularly the French – I think, and I have no proof of this, the reason was that the meeting [to recognize Croatia and Slovenia] took place a fortnight after everybody agreeing to Maastricht Treaty in which they had said that they will have a common foreign and security policy. I think that they probably felt that to have an open split on foreign policy a fortnight after agreeing to have a common foreign policy was a little bit too difficult and the German Foreign Minister being a very decisive and powerful figure, they caved in.<sup>129</sup>

No member state of the EC was willing to undermine a common stance in support of a unified Yugoslavia. The French having just agreed to the Maastricht Treaty quickly pursued an alternative policy of trying to sow divisions and discord within the EC and took pains to portray the viability of an economic and political union. As Pia Christina Wood noted: “The French preferred to accept the EC compromise rather than be accused of breaking rank and destroying EC unity”.<sup>130</sup> John Major also consented to the recognition of the two republics. It seems that this switch in London’s policy with respect to the Yugoslav crisis was not the result of a reassessment of developments in former Yugoslavia but rather of more general strategic considerations. Britain badly needed support for its opt out from the TEU’s social chapter and Germany could provide such support.<sup>131</sup> According to Misha Glenny there were two lines of

**thinking inside the Foreign Office:**

The first, centred on the Embassy in Belgrade, argued flatly against recognition. The second, known as the Brussels lobby, maintained that because Germany had afforded Britain so many concessions at Maastricht then it would be churlish to oppose Germany's main foreign policy concern of the early 1990s, particularly as Britain's interest in Yugoslavia was limited.<sup>132</sup>

**As a senior British diplomat who was at the meeting recalled the Germans:**

...just before and during the meetings on the sixteenth, they said, "We have been helpful to you. We backed John Major when he was in some tight corners...You owe us something."<sup>133</sup>

**According to Douglas Hurd, however, there was no trade-off:**

I think the dates show that there was no such bargain. Because this crucial meeting about the recognition of Croatia and Slovenia came after Maastricht and in Maastricht there was no discussion of Croatia and Slovenia along these lines at all. So, there was no bargain. What is true is that in the meeting of the Council, Genscher did say to me at a certain stage: please remember that a few weeks ago we made life easy for your prime minister or fairly easy. So, he used it as an argument. But not because it had been any bargain. At a certain

stage I telephoned John Major and we agreed that we should accept the compromise on timing and I have established by then that the French were not going to resist it any longer. So, it ended with this compromise.<sup>134</sup>

The EC statement released to the public and the press noted that "The Community and its member states agree to recognise the independence of all the Yugoslav republics fulfilling all the conditions set out below. The implementation of this decision will take place on 15 January 1992". The EC member states also invited "all Yugoslav republics to state by 23 December whether: they wish to be recognised as independent states; they accept the provisions laid down in the Draft Convention – especially those in Chapter II on human rights and rights of national or ethnic groups – under consideration by the Conference on Yugoslavia".<sup>135</sup> The work of drawing up the set of criteria which each republic had to satisfy before was granted EC recognition was entrusted to the Arbitration Commission, organised under the chairmanship of French judge Robert Badinter, which was attached to the EC Conference on Yugoslavia.<sup>136</sup> The conditions included acceptance of the UN Charter, the Final Act of Helsinki and the Charter of Paris commitments on the rule of law, democracy and human rights; guarantees for the rights of ethnic and national minorities; acceptance of the principle of the inviolability of frontiers; honouring disarmament and regional security commitments;

arbitration to resolve questions concerning state succession and regional disputes; and acceptance of the EC's draft Convention on the future of Yugoslavia.<sup>137</sup> A further provision to take into consideration Greek concerns about FYROM (Former Yugoslav Republic of Macedonia) was inserted calling for a "Yugoslav republic to commit itself, prior to recognition, to adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighbouring Community State and that it will conduct no hostile propaganda activities versus a neighbouring Community State, including the use of a denomination which implies territorial claims".<sup>138</sup> The criteria were, in the words of Glenny:

...cobbled together by the French...in the hope that, by applying a normative structure to the process of recognition, the European split over Yugoslavia could be avoided.<sup>139</sup>

Despite, however, strenuous efforts to preserve a common front on this issue, Germany went ahead and recognised Croatia and Slovenia as independent states on 23 December 1991 and announced that it would open diplomatic relations with them on 15 January 1992. Exactly ten days earlier, on 13 December 1991, France and Britain had sought a UN Security Council Resolution aimed at Germany, warning that no country should disturb the political balance in Yugoslavia by taking unilateral action.<sup>140</sup> It was at this juncture that Germany's political

leaders, who had been manoeuvring behind the scenes for multilateral recognition of Croatia and Slovenia, and were threatening to act alone as a negotiating tactic to press their partners, decided to break ranks with their colleagues in the EC and to proceed with the immediate recognition of the sovereignty-seeking Balkan states. Although Britain and France called off the UN Security Council Resolution just before the 16 December 1991 ministerial meeting, Germany announced that it would no longer go along with the prevailing EC consensus and would formally recognise Croatian and Slovenian independence no later than Christmas Day.<sup>141</sup> As Crawford put it:

Kohl and Genscher were squeezed between domestic and international political games. They opted to please domestic elites and betray an EC negotiated agreement...Given the multitude of weak and conflicting norms governing international behavior in this case, given the weakness of the EPC in reducing uncertainty and its inability to impose sanctions for defections, and given Germany's persistent effort to persuade the EPC to accept its position, Genscher believed that the reputational costs of unilateral action would be low.<sup>142</sup>

Yet, as Douglas Hurd opined, even if he and the French Foreign Minister, had won the argument on that occasion, the EC would have had to recognise Slovenia and Croatia few weeks

later:

In my view it was a matter of timing. I have never seen this as a huge turning point. When we had the meeting, the famous meeting in December 1991, Genscher was under huge pressure from his own public opinion to recognise at once. We and the French, we should have preferred to wait and that was the view of Carrington. We made a compromise that we would wait for some weeks. The Germans did not respect that compromise; in effect they recognised at once. But I think it was a matter of weeks. I do not think that anyone could have sensibly have withheld recognition for more than a few weeks longer because in effect Croatia and Slovenia existed. These were realities. So, I never thought this was a huge issue of substance. It was a question of timing. Maybe something would have been gained for waiting a little more but not very much. I think this is a less important discussion.<sup>143</sup>

Fending off criticism for having acted so precipitously on the matter, Genscher would later claim that this “one-time defection did not diminish the larger gain for political cooperation that had been achieved at Maastricht (although [he] would have preferred even tighter political cooperation)”.<sup>144</sup> As he stated in an interview with Crawford:

[The war in Croatia] was not the issue upon which European foreign policy cooperation would be made or broken; our major achievement

was providing the EPC with legal status in the Maastricht Treaty. Besides, Germany always behaved in a cooperative manner with regard to this problem.<sup>145</sup>

For *The Times*, the fact that:

...within days of Maastricht's "joint foreign policy declaration", Chancellor Kohl was boasting of his country's forthcoming recognition of Croatia, a recognition strongly opposed by most other EC nations...showed a Germany careless both of its EC partners and of regional sensitivities.<sup>146</sup>

According to a former German Ambassador to Belgrade, Horst Grabert, Germany's conduct:

...was a bad precedent, since Germany waived long-established rules on diplomatic recognition concerned with a government's control of its territory and population, and turned a blind eye to Croatia's flouting of the EC-imposed conditions about protection of minority and human rights.<sup>147</sup>

For Chancellor Kohl, however, the decision was "a great victory for German foreign policy".<sup>148</sup> A declaration issued by the Foreign Ministry in Bonn affirmed that the two republics "fulfilled the conditions fixed for recognition as members of the EC".<sup>149</sup> Yet the Arbitration Commission declared that



Slovenia and the Yugoslav republic of Macedonia met the Community's conditions for diplomatic recognition; Croatia and Bosnia-Herzegovina did not.<sup>150</sup> Nonetheless, the other EC states fell into line on 15 January 1992 and recognised Slovenia and Croatia as independent states.<sup>151</sup> This was seen by the Serb-controlled Presidency as a "violation of the principles of the UN Charter and the CSCE". For the Presidency, it was a "deliberate destruction of Yugoslavia" which did not solve the crisis but on the contrary "worsened" it.<sup>152</sup> The granting of recognition undermined also the EC Conference on Yugoslavia and was seen by Lord Carrington as a "betrayal".<sup>153</sup> The Chairman of the Peace Conference felt that:

...there was no point in continuing with the conference after that. When two countries had got their independence, they had no further interest in the proceedings, and I don't suppose the Serbs had much interest in it either. The only incentive we had to get anybody to agree to anything was the ultimate recognition of their independence. Otherwise there was no carrot. You just threw it away, just like that.<sup>154</sup>

#### **4.5 A critical review of the European Community's capability-expectations gap**

The EC's involvement in former Yugoslavia was motivated by factors relating to the goals and methods of European integration and the desire to redefine and refine its foreign policy mission and identity, as well as reach a consensus about its relations with the other European security organisations with which most of the EC's member states are also affiliated. The war in former Yugoslavia was, therefore, seen both as a challenge and an opportunity. As a challenge because the member states of the Community were compelled under the circumstances to develop structures for foreign policy cooperation that were effective enough to identify and pursue joint initiatives affecting the complicated process of disintegration in Yugoslavia. As an opportunity because the EC could, through a common foreign policy, maximise its influence in the Balkans and be seen as a component of the new European geostrategic landscape with substantial troops on the ground in its own backyard, able to achieve a political settlement of ethnic conflicts over territory without the military power and political leadership of the United States.

The US had made it clear that it regarded Yugoslavia as Europe's problem and seemed content to let the EC take over

the role of mediator between Serbia and Croatia. In an article in *Foreign Affairs*, Warren Zimmermann wrote that an official from the State Department's European Bureau commented that Yugoslavia had become "a tar baby in Washington. Nobody wanted to touch it. With the American presidential election just a year away, it was seen as a loser".<sup>155</sup> Some also thought that the reluctance of the Bush administration to become involved in the Balkan conflict was because the Americans believed that Europe was bound to fall in former Yugoslavia emphasising thus the need for American leadership and the fact that the EC could not ignore its fundamental dependence on the United States for military security in Europe itself. The Gulf war also had a deterrent impact on American willingness to become militarily involved in Yugoslavia. According to Georg Schild military observers in the US:

...warned that the success in the Gulf War was based on a unique political and military setting. In the Gulf War, a broadly based international military coalition was formed comprising highly advanced Western democracies, former people's democracies, and prosperous Muslim states. Furthermore, the Gulf terrain was ideal for air force operations, in which the West was able to display its technological superiority. None of these conditions applied to a possible military engagement in the Balkans...Consequently, leading American military officials, such as the chief of general staff Colin L. Powell, were among the most vehement champions of American

opposition to military engagement in the Balkans.<sup>156</sup>

Once, however, the EC's inability to muster a degree of consensus sufficient to enable the Community to act with one voice became clear, American leaders decided to become more involved in the sundry international initiatives and actions undertaken to try to bring the warring sides in former Yugoslavia to the negotiating table.<sup>157</sup> It was in this period that the American administration realised that the EC and the WEU could not successfully handle the Yugoslav crisis alone and had little to contribute to the resolution of the fundamental problems in the Balkans.

The terms frequently used to describe the European Community's performance in the first security challenge that it ventured to handle alone are "inadequate" and "too little too late". The EC's inability to stop the fighting was widely perceived as evidence of a divided and impotent Community incapable of making a success of an undertaking such as the pacification in former Yugoslavia. Worse, the inevitable rendering on the media of what was happening in former Yugoslavia gave rise to understandable but sometimes iniquitous criticism on the part of public opinion. This led to widespread public disenchantment with the European Community, which was made the scapegoat for the EC member states' lack of political will to act in unison thus inhibiting an

effective solution to the crisis. Michael Brenner, in a critical article on the EC's intermediation in the Yugoslav crisis, summarised the mistakes of the Community's diplomacy in the following way:

It was not preordained that EC countries be so shortsighted about the dangers of Yugoslavia's dismantlement and their ethnic passions it liberated; nor that they act fitfully and, too often, too late in trying to bring their influence to bear; nor that they cast the die for Bosnia through the ill-considered, premature recognition of Slovenia and Croatia; nor that they respond to the Bosnia catastrophe with hollow threats whose unfulfillment gave courage to the intransigent; nor that they refrain from interdiction measures to enforce the economic embargo or bring sustained pressure to bear on key European violators;...nor that their stern demands for the closing of detention camps and cessation of the shelling of cities be left as paper declarations while the Twelve exhausted their time and energy on the Maastricht ratification crisis.<sup>158</sup>

What seemed, however, an incoherent response to an enormously complex problem must be assessed solely in terms of the political and military means available to the EC, regardless of whether or not these were sufficient to meet the demands of the crisis. Only then can the implications for the EC's foreign and security policy of the disintegration of a non-aligned, Mediterranean European state be contemplated.

The point of departure for a consideration of the EC's overall performance in the war in former Yugoslavia must be a recapitulation of the EC's capacity for action. Its principal characteristics involved three elements:

- the EC had no contingency plans or operational structures and lacked both a logistic base for military operations and technical expertise. Crisis management procedures had to be worked out as the crisis in former Yugoslavia developed;
- the EC lacked the financial and human resources needed to give backbone to a single coherent foreign policy; and
- the member states were divided over the need for some form of intervention and did not possess the political will to consent to the deployment of an intervention force.

In truth the EC's task of harnessing together a number of incremental initiatives to facilitate a resolution of the Yugoslav conflagration was always extremely difficult:

The highly complex and emotional nature of the issues at stake, the important role played by poorly disciplined irregular forces, the ill-will with which nearly all the major actors entered into the diplomatic process, and the pervasiveness of war propaganda and distorted information all combined to make the conflict particularly opaque and intractable.<sup>159</sup>

The EC's efforts were directed at brokering cease-fires and attempting to get the warring parties to negotiate a political settlement.<sup>160</sup> The threat to use economic measures against republics which were not cooperative, isolate Serbia diplomatically, and grant recognition to Slovenia and Croatia had some effect on the negotiations for a political solution. The greatest merit of these diplomatic and economic coercive measures was probably to provide the stimulus for the Serbian camp to agree to a cease-fire in Croatia on 2 January 1992.

The EC's role as a coercive peacemaker, however, could not have had an impact on the course of the conflict because the EC itself did not credibly threaten the use of force: "It was goodwill without the will to power".<sup>161</sup> In fact, the JNA's high command shortly after the war in Croatia started escalating had dismissed already any forceful Western military action to prevent Yugoslavia's dissolution and violent outcome or to defend the values that the West proclaimed were at stake. Critical to this assessment, according to Sabrina Petra Ramet, was the Persian Gulf war. JNA analysts studied Western responses to Iraqi threats and to the eventual Iraqi invasion of Kuwait and specifically ruled out any conclusion that a similar Western response might be anticipated in the case of Yugoslavia. That conclusion was "based on the recognition that the EC countries, through the Western European Union,

could not engage in meaningful military operations without US support, which, because the United States was not significantly involved, was lacking".<sup>162</sup> While intervention on the ground was excluded as a military option in former Yugoslavia many believed that the effectiveness of the EC's involvement could have been enhanced by the use of coercive violence.<sup>163</sup> This was to be accomplished by discouraging any potential aggressors from thinking that the gains achieved by deliberately resorting to conflict could ever outweigh the costs of embarking upon such a course. This line of reasoning led Stuart Kaufman to the conclusion that the attempts of the EC "to use economic leverage to deter undesired action was doubly ineffective since it neither deterred nor reassured".<sup>164</sup> Thus, the lesson to be drawn from the experience in former Yugoslavia is that use of military force can be a useful instrument for diplomacy to be effective.<sup>165</sup> This is not to say, however, that the use of force *per se* leads to political settlements. This can only be achieved at the negotiating table among the warring factions themselves.

It follows, therefore, that the EC could not have played a role which was commensurate with its weight as an international actor. The EC was, to use Jacques Delors' phrase, "as a child confronted with an adult crisis".<sup>166</sup> Nonetheless, these intellectual and practical difficulties, which demonstrate the conditions to be met for the EC to be an influential actor in the



international scene, did not prevent the Twelve from inventing a wide variety of new foreign policy procedures in their bid to contribute to a peaceful solution to the Yugoslav crisis. EC involvement took various forms: the dispatch of ministerial Troika missions to mediate in Slovenia; successive peace conferences with a permanent EC chairman; the dispatch of teams of monitors;<sup>167</sup> the deployment of an assortment of economic instruments as a means of pressure designed to support the EC's mediatory diplomacy; the imposition of economic sanctions; the provision of humanitarian assistance; and support for the creation of stable political and economic systems, reconstruction and development, and the establishment of normal relations among all the states and people in former Yugoslavia.

It could be argued, therefore, that the EC had a considerable impact on the conflict in former Yugoslavia. James Gow and Lawrence Freedman concur with this opinion:

From the perspective of achieving a concerted, albeit sometimes divided, limited and uneven, response, the Community did rather better, although the human cost in Yugoslavia makes "success" an inappropriate term...EC common foreign policy...probably got it as right as circumstances allowed.<sup>168</sup>

Moreover, as Martin Holland suggested, the Yugoslav crisis

established an important principle of Community foreign policy which was added to the EC's list of foreign policy instruments and options: "the possibility of acting autonomously and of invoking external political intervention within Europe's immediate sphere".<sup>169</sup>

However, as Simon Nuttall pointed out: "these are all internal. The invention of new procedures is a praiseworthy activity, but one of interest only to the Community".<sup>170</sup> The fact remains that when these measures failed to resolve the crisis, the Community's limited competence in security and defence matters and, more importantly, its member states' disparate foreign policy objectives together ensured that the EC's ambition to assert its presence as an international actor was impaired by its inability to maintain common positions. Even though in its initial response to the crisis, the EC succeeded in maintaining a relatively cohesive position, its later inability to compose divergent views within its own ranks undermined its effectiveness. In John Newhouse's words:

That Europe would fail in Yugoslavia should have been clear to those who were charting the path to Maastricht. The test was an unduly stiff one for a community that still lacked the political cohesion required for the making of foreign policy.<sup>171</sup>

This incapacitation having been stated, it remains of course

necessary to be assessed against other factors.<sup>172</sup> In the first place, it is doubtful whether any European country acting alone would have enjoyed the same power to act <sup>as</sup> than the EC as a whole. Giving expert evidence to the House of Commons Foreign Affairs Committee in January 1992, Peter Ludlow, Director of the Centre for European Policy Studies, claimed that the Community was:

condemned to succeed by one basic fact, which is the fact that the member states have long ago reached the limits of their power in circumstances such as the Yugoslav crisis...[for]...the Member States have reached the limit of their possibilities. They may scream at their Community but if they did not do it through that instrument they will not do it through any other.<sup>173</sup>

Similarly, strenuous efforts to maintain consistent and appropriate EC responses have averted the danger of the conflict turning into a European war. None of the parties to the conflict was able to play one European country off against another. Finally, the EC's policy produced regularities and expected patterns of behaviour by Yugoslavia's neighbours which were induced to accept the EC position. In line with this analysis, José Cutileiro, former Secretary-General of the Western European Union, noted that:

Former Yugoslavia does show that in 1991 we had not yet reached a

stage where political agreement among us could have led to swift and decisive collective action. But it also shows – and this is more important – that we had already reached a stage where a conflict of that magnitude and closeness to our borders was unable to make us break ranks and come into confrontation with each other. If we look back to history, this is a remarkable achievement.<sup>174</sup>

To the extent that the EC had a policy towards the crisis in former Yugoslavia, that policy relied heavily on the EPC machinery. In relation to its objective constraints as a foreign policy actor, the Community did demonstrate ingenuity in inventing “ways of dealing with the crisis which did it nothing but credit”.<sup>175</sup> By forcing the belligerent parties into a structured dialogue, the EC created opportunities for them to communicate, negotiate and forge compromises among themselves. In addition, by explicitly expressing its continuous support for the peace process through the declarations, Troika missions, and especially the peace conferences, the Community contributed to an amelioration of the situation. By the same token, however, the war in former Yugoslavia showed the communitarian limits of EPC which suffered from a weakness in the common mechanisms for crisis management and the mobilisation of resources to assist with the formulation and then the support of active diplomacy by the Twelve, and the lack of adequate forecasting, analysis and planning capacity at the Community level.<sup>176</sup> The result was that:

the deliberations of the Council became those of a diplomatic conference mediating among the domestic interests of the participants, rather than of a body working out and implementing a common foreign and security policy reflecting the joint interest of the Community.<sup>177</sup>

**This view is echoed by Geoffrey Edwards:**

Given the differences, say, between Germany and Spain over recognition or France and the UK over a peace-keeping force, it would seem unlikely that the European Council would have been able to have reached any different conclusion.<sup>178</sup>

However, it should be noted that the EPC's response to the Yugoslav crisis should not have been overly surprising, given its record in coping with crises. Christopher Hill, has empirically supported the assertion that EPC was not "particularly well-suited to handling international crises, even those in which the Europeans [were] themselves directly involved". As Hill argued, EPC was able to respond increasingly quickly to major international events but unable to react firmly, decisively, and dramatically to such events. Thus, he suggested that:

over the twenty years of its life, EPC has got better at engineering consensus, in and out of crisis, and at avoiding the humiliating

silence of complete inaction when faced with a new drama or threat. But member states are often still forced into anodyne generalizations by their fundamental lack of the capacity to agree amongst themselves on international questions. 179

Would things have been different if the CFSP provisions had been in place in 1991? This question takes us into the next chapter and further treatment is reserved for then.

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<sup>1</sup> James Gow, *Yugoslav Endgames: Civil Strife and Inter-State Conflict* London Defence Studies 5 (London: Brassey's for the Centre for Defence Studies, 1991), 4.

<sup>2</sup> Lajos Arday, "The Historical Background of the Crisis in Former Yugoslavia", *Aussenpolitik* 44, 3 (1993), 257.

<sup>3</sup> Keith Sword, ed., *The Times Guide to Eastern Europe. Inside the other Europe*, (London: Times Books, 1990), 157.

<sup>4</sup> *Ibid.*, 159-160.

<sup>5</sup> Dusko Doder, "Yugoslavia: New War, Old Hatreds", *Foreign Policy* 91 (1993), 13.

<sup>6</sup> Christopher Cvlic, *Remaking the Balkans* (London: Pinter/RIIA, 1991), 63.

<sup>7</sup> Hugh Poulton, *The Balkans. Minorities and states in conflict* (London: Minority Rights Publications, 1993), 57.

<sup>8</sup> Cvlic, *op. cit.*, 67.

<sup>9</sup> *Keesing's*, March 1989, 36514.

<sup>10</sup> *Keesing's*, February 1989, 36470.

<sup>11</sup> According to Brian Hall: "It [was] in Kosovo in April 1987, at a hearing of Serb grievances, [when] one of the faceless grey Communists stepped forward and startled everyone by breaking the code of silence on nationalist issues, and publicly pledging his support for the Serbs' cause. Any Serb could recite the opening lines of his speech: You must stay here. Your land is here. Here are your houses, your fields and gardens, your memories. His name was Slobodan Milosevic", Brian Hall, *The Impossible Country* (London: Minerva, 1994), 318-319.

<sup>12</sup> Sabrina P. Ramet, "Serbia's Slobodan Milosevic: A Profile", *Orbis* 35, 1 (1991), 95.

<sup>13</sup> Dennison Rusinow, "Yugoslavia: Balkan Breakup?", *Foreign Policy* 83 (1991), 153.

<sup>14</sup> *Time*, 5 February 1990.

<sup>15</sup> *Keesing's*, April 1990, 37381.

<sup>16</sup> *Keesing's*, July 1990, 37622.

<sup>17</sup> *Time*, 21 May 1990.

<sup>18</sup> John Zametica, *The Yugoslav Conflict*, Adelphi Paper 270 (London: ISS/Brassey's, 1992), 17.

<sup>19</sup> *Keesing's*, August 1990, 37666.

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- 20 *EC Bulletin*, 12/1968, 56.
- 21 *EC Bulletin*, 12/1969, 65.
- 22 *EC Bulletin*, 4/1970, 16.
- 23 *Official Journal of the EC*, No L 58, 13 March 1970.
- 24 *Official Journal of the EC*, No L 117, 3 May 1973.
- 25 *Official Journal of the EC*, No L 224, 13 August 1973.
- 26 *EC Bulletin*, 11/1976, 60-61.
- 27 *Official Journal of the EC*, L 41, 14 February 1983.
- 28 *Official Journal of the EC*, No L 130, 27 May 1980.
- 29 *Eurostat: EC-Yugoslavia Trade*, 1988.
- 30 *Official Journal of the EC*, No L 389, 31 December 1987.
- 31 For an account of EIB's contribution and support for upgrading Yugoslavia's transport system, see "Yugoslavia seeks EC links", *British Business*, 2 December 1988, 10.
- 32 *EC Bulletin*, 12/1988, 122. The overall volume of trade increased from \$8.8 billion in 1979 to \$18.5 billion in 1989. A trade deficit of \$3.7 billion on the Yugoslav side in 1979 was reduced to \$638 million in 1989. Yugoslav exports to the EEC in 1980 represented 24.6 per cent of overall exports, and imports from the Community represented 34.1 per cent of overall imports. The corresponding figures in 1989 were 38.8 per cent and 39.4 per cent, Boran Karadzole, "Yugoslavia: Tiptoeing into Europe", *European Affairs* 3 (1990), 95.
- 33 *Keating's*, Supplement 1988, 36373.
- 34 *Keating's*, March 1989, 36534.
- 35 *Keating's*, November 1990, 37867.
- 36 *EC Bulletin*, 12/1990, 118-119.
- 37 *Time*, 4 March 1991.
- 38 *Keating's*, February 1991, 38019. As Hall suggested: "The Croats were not even calling what they had done "secession". The fact was, the Croatian Parliament had dithered and squawked and strutted while the Slovenes had methodically laid the legal groundwork for secession, and when it finally dawned on the Croats that the Slovenes really *were* [emphasis added] going to secede...the [Croatian] Parliament had stayed up all night and passed a flurry of vague and panic-stricken resolutions, and when dawn came Croatia was "dissociated"", Hall, op. cit., 288.
- 39 Central to the pact was a declaration that in the event of armed intervention by the JNA [*Jugoslovenska Narodna Armija* – The Yugoslav People's Army] in either republic, both would immediately declare their full independence from Yugoslavia, *Keating's*, February 1991, 38019.
- 40 Quoted in Mark Almond, *Europe's Backyard War. The War in the Balkans* (London: Mandarin, 1994), 43.
- 41 John Newhouse, "The Diplomatic Round. Dodging the problem", *New Yorker* 68, 27 (24 August 1992), 61.
- 42 *Ibid.*
- 43 *Time*, 20 May 1991.
- 44 R. Craig Nation, "Italy and Ethnic Strife in Central and Southeastern Europe" in Vojtech Mastny, ed., *Italy and East Central Europe* (Boulder, Colorado & Oxford: Westview Press, 1995), 64.
- 45 *Time*, 20 May 1991.
- 46 *Keating's*, May 1991, 38203.

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47 EPC Press Release, P.42/91.

48 Quoted in Almond, op. cit., 37.

49 Two, in particular, high-ranking officials in the US foreign policy establishment played a major role in the making of US policy towards the Yugoslav crisis. Deputy Secretary of State, Lawrence Eagleburger, and National Security Adviser, Brent Scowcroft. For their commitment to the Yugoslav cause, see Almond, op. cit., 39-40.

50 *Keesing's*, June 1991, 38275.

51 Quoted in Laura Silber and Allan Little, *The Death of Yugoslavia* (London: Penguin Books and BBC Books, 1995), 165.

52 *Agence Europe*, 24-25/6/1991, No 5519.

53 *Agence Europe*, 27/6/1991, No 5521.

54 *Keesing's*, June 1991, 38275.

55 *Ibid.*

56 *Agence Europe*, 29/6/1991, No 5523.

57 Quoted in Almond, op. cit., 32.

58 *Ibid.*, 234.

59 *Ibid.* As Misha Glenny recalled: "The three foreign ministers looked pleased with themselves, especially Gianni de Michelis who believed he understood the Yugoslav situation much better than his eleven European Community peers...I cornered de Michelis who told me triumphantly that the Troika had sorted out the entire problem and the fighting would stop the very same day". Misha Glenny, *The Fall of Yugoslavia. The Third Balkan War* (London: Penguin Books, 1993), 2nd ed., 99.

60 As Glenny wrote: "This time de Michelis was no longer wearing his mask of confidence...[He] assured me that on the occasion of the second press conference at Banski Dvor, the Troika had reached full agreement with all leaders. "That's what you told me last time," I reminded him. "Yes," he countered in desperation rather than triumph, "but this time we've got it all down on paper!", *Ibid.*

61 *Financial Times*, 1 July 1991.

62 *Guardian*, 1 July 1991.

63 *Time*, 8 July 1991.

64 Almond, op. cit., 31.

65 *Agence Europe*, 1-2/7/1991, No 5525.

66 *Ibid.*

67 EPC Press Release, P.61/91.

68 *Guardian*, 2 July 1991, quoted in James B. Steinberg, *The Role of European Institutions in Security After the Cold War: Some Lessons from Yugoslavia* RAND Note (Santa Monica: RAND, 1992), 15.

69 *Agence Europe*, 6/7/1991, No 5529.

70 *Ibid.*

71 For the full text, see Appendix 1.

72 As Mark Thompson emphasised: "By agreeing a fortnight later to withdraw all its forces from Slovenia, the JNA admitted...that Slovenia was gone, never to return...In 1991 the guardians of united Yugoslavia let Slovenia go because it was not snared in the web of reciprocal grievances which, after the Titoist rhetoric of *bratstvo i jedinstvo* (brotherhood and unity) had peeled away and communism had retreated to its republican citadels, seemed all that held Yugoslavia together. For these reasons, and of course because it was the best-developed republic, Slovenia's standing toward the



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rest of the federation was uniquely arbitrary...[Slovenes's] freedom of manoeuvre was enjoyed by no other nation or republic", Mark Thompson, *A Paper House* (New York: Pantheon Books, 1992), 289 & 11.

73 *Agence Europe*, 11/7/1991, No 5532.

74 *Agence Europe*, 15-16/7/1991, No 5535.

75 *Agence Europe*, 29-30/7/1991, No 5544.

76 Sonia Lucarelli, *Europe and the Breakup of Yugoslavia* (The Hague, London and Boston: Kluwer Law International, 2000), 189-194.

77 Jonathan Eyal, *Europe and Yugoslavia: Lessons From a Failure* (London: Royal United Services Institute for Defence Studies, 1993), 32-33.

78 *Time*, 19 August 1991.

79 *Agence Europe*, 21/9/1991, No 5572.

80 *Ibid.*

81 *Agence Europe*, 20/9/1991, No 5571.

82 *Agence Europe*, 30/9-1/10/1991, No 5578.

83 Since it proved impossible for the Yugoslavs to agree on the name of the two members they were to appoint, it was the three already appointed by the Twelve who chose their colleagues, European Parliament, Directorate General for Research, *The crisis in the former Yugoslavia*, Working Paper 18, Political Series, Luxembourg, 1993, 76.

84 EPC Press Release, P.82/91.

85 *Agence Europe*, 29/8/1991, No 5555.

86 *Ibid.*

87 *Agence Europe*, 30/8/1991, No 5556.

88 For the full text of the opening declaration, see Appendix 2.

89 Eurobarometer, December 1991, No 36.

90 EPC Press Release, P.101/91.

91 *Agence Europe*, 19/10/1991, No 5592.

92 Quoted in Silber and Little, op. cit., 210.

93 *Ibid.*, 212.

94 Christopher Bennett, *Yugoslavia's Bloody Collapse. Causes, Course and Consequences* (London: Hurst & Company, 1995), 176 & 177.

95 *Agence Europe*, 26/10/1991, No 5597.

96 Almond, op. cit., 243.

97 Silber and Little, op. cit., 184.

98 EPC Press Release, P.106/91.

99 "Even as diplomats in Bonn worked each day to find an effective solution to the conflict, they were, as one put it privately, subjected each night to harsh criticism at home from their spouses for not doing enough", quoted in Marten H.A. van Heuven, "Testing the New Germany: The Case of Yugoslavia", *German Politics and Society* 29 (1993), 60.

100 Thanos M. Veremis and Michael Thumann, "The Balkans and CFSP. The Views of Greece and Germany", *CEPS Paper* 59 (Brussels: CEPS, 1994), 21.

101 *Ibid.*, 22.

102 On 14 October 1991 and 17 December 1991, *Die Welt* contended "that American and British policy toward the Balkans and Yugoslavia was directed backwards", *Ibid.*

103 Beverly Crawford, "German Foreign Policy and European Political Cooperation: The Diplomatic Recognition of Croatia in 1991", *German Politics*

and *Society* 13, 2 (1995), 10.

104 *Ibid.*, 8.

105 *Ibid.*, 6.

106 *Ibid.*, 10-17.

107 William Horsley, "United Germany's Seven Cardinal Sins: A Critique of German Foreign Policy", *Millennium: Journal of International Studies* 21, 2 (1992), 240. As Crawford pointed out: "...although the CDU was not threatened by the Greens, early calls for self-determination resonated with the conservatives' postwar ideological position. The SPD was pressed by both the conservatives and, ideologically, by the Greens. The FDP was the last to jump, being firmly under Genscher's control and having traditionally had the luxury of being courted by the larger parties. Nonetheless, it was too small to have carried an opposing position alone", Crawford, *op. cit.*, 16.

108 *Time*, 30 December 1991.

109 Hanns W. Maull, "Germany in the Yugoslav Crisis", *Survival* 37, 4 (Winter 1995-96), 102.

110 Silber and Little, *op. cit.*, 219.

111 Wolfgang Krieger, "Toward a Gaullist Germany? Some Lessons from the Yugoslav Crisis", *World Policy Journal* 11, 1 (1994), 30.

112 van Heuven, *op. cit.*, 62.

113 *Time*, 19 August 1991.

114 *Agence Europe*, 9-10/9/1991, No 5563.

115 Peter Viggo Jakobsen, "Myth-making and Germany's Unilateral Recognition of Croatia and Slovenia", *European Security* 4, 3 (1995), 400-416.

116 *Agence Europe*, 16-17/12/1991, No 5631.

117 Silber and Little, *op. cit.*, 220.

118 *Agence Europe*, 16-17/9/1991, No 5568.

119 In this connection, Maull commented that: "Concern about a Yugoslavian "domino effect" on the Soviet Union played an important part in German policies towards Yugoslavia before the fighting broke out, but lost saliency afterwards. By late August 1991, the Soviet Union had already begun to break up; and, by then, Bonn's policy shift towards Yugoslavia had been completed", Maull, *op. cit.*, 113.

120 Olivier Lepick, "French Perspectives" in Alex Danchev and Thomas Halverson, eds., *International Perspectives on the Yugoslav Conflict* (Houndmills: Macmillan Press, 1996), 78.

121 *Time*, 30 September 1991.

122 *Ibid.*

123 *Agence Europe*, 16-17/12/1991, No 5631.

124 Maarten Lak, "The involvement of the European Community in the Yugoslav crisis during 1991" in Martin van den Heuvel and Jan G. Siccamo, eds., *The Disintegration of Yugoslavia*, Yearbook of European Studies 5 (Amsterdam-Atlanta: Rodopi, 1992), 180.

125 EPC Press Release, P.109/91.

126 *Agence Europe*, 9/11/1991, No 5606.

127 Maull, *op. cit.*, 104.

128 Krieger, *op. cit.*, 30.

129 Lord Carrington, interview with author, Tape recording, London, 2 July 1996.

130 Pia Christina Wood, "European Political Cooperation: Lessons from the Gulf War and Yugoslavia" in Cafruny W. Alan and Rosenthal G. Glenda,

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eds., *The State of the European Community. Vol. 2. The Maastricht Debates and Beyond* (Boulder, Colorado: Lynne Rienner, 1993), 236.

131 Susan L. Woodward, *Balkan Tragedy. Chaos and Dissolution after the Cold War* (Washington: The Brookings Institution, 1995), 184.

132 Glenny, op. cit., 191-192.

133 Quoted in Newhouse, op. cit., 66.

134 Douglas Hurd, interview with author, Tape recording, London, 4 July 1996.

135 Quoted in Hans-Heinrich Wrede, "'Friendly Concern' – Europe's Decision-making on the Recognition of Croatia and Slovenia", *The Oxford International Review* 4, 2 (1993), 32.

136 According to Almond the Arbitration Commission: "...was intended as a time-wasting exercise. It was also an expression of wounded Gallic pride: Paris was increasingly distressed by Britain's provision of the EC peacemaker and wanted to share what passed for the glory of managing the peace process", Almond, op. cit., 245. For a different opinion on the Arbitration Commission, see Alain Pellet, "The Opinions of the Badinter Arbitration Committee. A Second Breath for the Self-Determination of Peoples", *European Journal of International Law* 3 (1992), 178-185.

137 EPC Press Release, P.129/91. For the full text of the Declaration on the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union" and the "Declaration on Yugoslavia", see Appendix 4.

138 For a discussion of the so-called "Macedonian question" see Suzanne Crow, "Russia and the Macedonian Question", *RFE/RL Research Report* (13 November 1992), 36-38; Erich Frankland, "Struggling with Collective Security and Recognition in Europe: The Case of the Macedonian Republic", *European Security* 4, 2 (1995), 354-379; Evangelos Kofos, *The impact of the Macedonian question on civil conflict in Greece (1943-1949) Occasional Papers* 3 (Athens: ELIAMEP, 1989); Stephane Lefebvre, "The Former Yugoslav Republic of Macedonia (FYROM): Where to?", *European Security* 3, 4 (1994), 711-733; Nicolaos K. Martis, *The Falsification of Macedonian History* (Athens: Euroekdotiki, 1984); Duncan M. Perry, "Macedonia: A Balkan Problem and a European Dilemma", *RFE/RL Research Report* (19 June 1992), 35-45; Duncan M. Perry, "The Republic of Macedonia and the Odds for Survival", *RFE/RL Research Report* (20 November 1992), 12-19; Duncan M. Perry, "Politics in the Republic of Macedonia: Issues and Parties", *RFE/RL Research Report* (4 June 1993), 31-37; Duncan M. Perry, "Macedonia: From Independence to Recognition", *RFE/RL Research Report* (7 January 1994), 118-121; Duncan M. Perry, "Macedonia", *RFE/RL Research Report* (22 April 1994), 83-86; James Pettifer, "The new Macedonian question", *International Affairs* 68, 3 (1992), 475-485; James Pettifer, "Macedonia: still the apple of discord", *The World Today* (March 1995), 55-58; Hugh Poulton, "The Republic of Macedonia after UN Recognition", *RFE/RL Research Report* (4 June 1993), 22-37; Emmanuel Spyridakis, *The "Macedonian Question". An Historical and Diplomatic Review* Defence and Foreign Policy Studies 8 (Athens: ELIAMEP, 1991); Stefan Troebst, "Macedonia: Powder Keg Defused?", *RFE/RL Research Report* (28 January 1994), 33-41; Michael W. Weithmann, "Macedonia – "Land between Four Fires"", *Aussenpolitik* 44, 3 (1993), 261-270.

139 Misha Glenny, "Germany fans the flames of war", *New Statesman and Society* 4, 182 (20 & 27 December 1991), 14.

140 Crawford, op. cit., 34 (footnote 80).

141 Lenard J. Cohen, *Broken Bonds. Yugoslavia's Disintegration and Balkan Politics in Transition* (Boulder, Colorado: Westview Press, 1995), 2nd

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ed., 238.

142 Crawford, op. cit., 2 & 24.

143 Douglas Hurd, interview with author. Tape recording, London, 4 July 1996.

144 Crawford, op. cit., 25.

145 Ibid., 24.

146 *The Times*, 23 December 1991, quoted in Wrede, op. cit., 32.

147 Interview with Horst Grabert carried on the *Today Programme*, BBC Radio 4, on 19 December 1991, quoted in Horsley, op. cit., 239.

148 *Time*, 30 December 1991.

149 *Agence Europe*, 23-24/12/1991, No 5636.

150 *Agence Europe*, 16/1/1992, No 5647. For an excellent account of this from a legal perspective see Marc Weller, "The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia", *The American Journal of International Law* 86, 3 (1992), 569-607; Marc Weller, "Yugoslavia: words make law", *Solicitors Journal* (14 February 1992), 135; and Roland Rich, "Symposium: Recent Developments in the Practice of State Recognition", *European Journal of International Law* 4 (1993), 36-91. For the full text of Opinions 4-7 of the Badinter Commission dealing with the question of recognition of Bosnia-Herzegovina, Croatia, the Yugoslav republic of Macedonia, and Slovenia, see Appendix 5.

151 Silber and Little noted that: "Croats began to sing a new song: *Danke Deutschland*. In the Adriatic port city of Split, a popular quayside café on the old city waterfront changed its name to Café Genscher", Silber and Little, op. cit., 221.

152 *Agence Europe*, 18/1/1992, No 5649.

153 David Owen, *Balkan Odyssey* (London: Victor Gollancz, 1995), 29.

154 Silber and Little, op. cit., 221.

155 Warren Zimmermann, "The Last Ambassador. A Memoir of the Collapse of Yugoslavia", *Foreign Affairs* 74, 2 (1995), 15.

156 Georg Schild, "The USA and Civil War in Bosnia", *Aussenpolitik* 47, 1 (1996), 23. See also David Gompert, "How to Defeat Serbia", *Foreign Affairs* 73, 4 (1994), 30-47.

157 Branko Pribicevic, "Relations with the Superpowers" in Sabrina Petra Ramet and Ljubisa S. Adamovich, eds., *Beyond Yugoslavia. Politics, Economics, and Culture in a Shattered Community* (Boulder, Colorado & Oxford: Westview Press, 1995), 342-343.

158 Michael J. Brenner, "EC: Confidence Lost", *Foreign Policy* 91 (1993), 31.

159 Nation, op. cit., 63. See also V. P. Gagnon, Jr., "Yugoslavia: Prospects for Stability", *Foreign Affairs* 70, 3 (1991), 17-35; James Gow, "Deconstructing Yugoslavia", *Survival* XXXIII, 4 (1991), 291-311; Cvijeto Job, "Yugoslavia's Ethnic Furies", *Foreign Policy* 92 (1993), 52-74; Ioan Pascu, "Romania and the Yugoslav Conflict", *European Security* 3 (1994), 153-161; Sabrina Petra Ramet, "War in the Balkans", *Foreign Affairs* 71, 4 (1992), 79-98; Michael Wilson, "The Balkans" in Kevin Clements and Robin Ward, eds., *Building International Community. Cooperating for Peace. Case Studies* (Canberra: Allen & Unwin in association with the Peace Research Centre RSPAS, ANU, ACT, 1994), 140-162.

160 For an excellent account of the EU's inexperience and ineffectiveness in negotiating cease-fires see James Gow and James D.D. Smith, *Peace-making, Peace-keeping: European Security and the Yugoslav Wars* London Defence Studies 11 (London: Brassey's for the Centre for Defence Studies, 1992).

161 Josef Joffe, "The new Europe: Yesterday's ghosts", *Foreign Affairs* 72, 1

(1992/93), 31.

162 Sabrina Petra Ramet, *Balkan Babel. The disintegration of Yugoslavia from the death of Tito to ethnic war* (Boulder, Colorado: Westview Press, 1996), 2nd ed., 244.

163 See James Gow, "The use of coercion in the Yugoslav crisis", *The World Today* (November 1992), 198-202.

164 Stuart Kaufman, "The irresistible force and the imperceptible object: The Yugoslav breakup and Western policy", *Security Studies* 4, 2 (Winter 1994/95), 309.

165 As one senior UN official engaged in the handling of the Yugoslavia break-up observed: "Force is the ultimate arbiter and any diplomatic policy that does not rely on carrots and sticks will not really get you very far. Without a club in the closet, without a credible threat of force, policy becomes bluff, bluster.", Herbert Okun, UN Special Adviser and Deputy-Head of Civilian Affairs UNPROFOR, Interview, "Diplomacy and Deceit" Channel 4 TV, 2 August 1993, Media Transcription Service, *Bloody Bosnia*, MTS/M2578, WPS, 4, quoted in James Gow, "Nervous Bunnies: The International Community and the Yugoslav War of Dissolution, the Politics of Military Intervention in a time of change" in Lawrence Freedman, ed., *Military Intervention in European Conflicts* (Oxford: Blackwell, 1994), 24.

166 *Time*, 30 September 1991. Looking upon the weapons at the Community's disposal, Delors was of the opinion that the EC had only three: public opinion, the threat to recognise Slovenia and Croatia, and economic sanctions, *European Parliament, Directorate-General for Information and Public Relations*, 9-13 September 1991, **PE 152.616/rev**, 17.

167 In Simon Nuttall's view the institutional significance of the observer mission for the Community internally has been seriously underestimated: "Quite apart from its contribution to the Community's diplomatic efforts, here was an international force, wearing a white uniform and the blue brassard of the European Community. The mission was recognizable as the embodiment of the Community on the ground in just the same way as the UN troops were recognizable by their blue berets as the embodiment of the United Nations on the ground; and this at a time when the Community had still not succeeded, after 40 years, in reaching agreement on a common armed European force displaying the same insignia.", Simon Nuttall, "The EC and Yugoslavia – *Deus ex Machina* or *Machina sine Deo?*", *Journal of Common Market Studies* 32 (Annual Review 1994), 22.

168 James Gow and Lawrence Freedman, "Intervention in a fragmenting state: the case of Yugoslavia" in Nigel S. Rodley, ed., *To Loose the Bands of Wickedness. International Intervention in Defence of Human Rights* (London: Brassey's, 1992), 130.

169 Martin Holland, *European Community Integration* (London: Pinter, 1993), 136.

170 Nuttall, op. cit., 12.

171 Newhouse, op. cit., 61.

172 Catherine Guicherd, "The Hour of Europe: Lessons from the Yugoslav Conflict", *The Fletcher Forum of World Affairs* 17 (1993), 164.

173 Quoted in Gow and Smith, op. cit., 54.

174 José Cutileiro, "Western European Union – myth and reality", speech to the Royal Institute for International Relations, Palais d' Egmont, Brussels, 9 February 1995, quoted in *The situation in former Yugoslavia*, WEU Assembly, Document 1467, 12 June 1995.

175 Nuttall, op. cit., 24.

176 Willem van Eekelen, "WEU prepares the way for new missions", *NATO Review* (October 1993), 19-23.

177 Nuttall, op. cit., 25.

178 Geoffrey Edwards, "European Responses to the Yugoslav Crisis: An Interim Assessment" in Reinhardt Rummel, ed., *Toward Political Union: Planning a Common*

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*Foreign and Security Policy in the European Community* (Boulder, Colorado: Westview Press, 1992), 183.

179 Christopher Hill. "EPC's Performance in Crises" in Rummel, *Ibid.*, 135-146.

# **5 From Cooperation to Joint Action: 1992-1995**

## ***5.1 The Vance-Owen Peace Plan***

By February 1992 the attention of the Community shifted to Bosnia-Herzegovina as it was becoming increasingly clear that a substantial international effort might be required to prevent its disintegration. This could not have been otherwise, for the Presidents of Serbia and Croatia agreed explicitly in March 1991 to divide Bosnia-Herzegovina largely between them, when they met on the border between their two republics.<sup>1</sup>

Following a referendum on 1 March 1992 confirming the desire of 99.4 per cent of the voters for independence,<sup>2</sup> a conference was organised under the auspices of the EC Council President Joao de Deus Pinheiro in an effort to try to solve ethnic and constitutional problems. This was preceded by a joint EC-US declaration recommending that the requests for recognition be given "positive consideration" and strongly urging "all parties in Bosnia-Herzegovina to adopt without delay constitutional arrangements that will provide for a peaceful and harmonious development of this republic within its existing borders".<sup>3</sup> On 10 March 1992, the conference arrived at an agreement entitled "Statement of Principles". The Statement spelled out the details of the envisaged constitutional framework for Bosnia-Herzegovina, which included

commitments by the Serb, Croat and Muslim communities to maintain Bosnia-Herzegovina's existing frontiers and to refrain from supporting any territorial claims by neighbouring states. Bosnia-Herzegovina would have been an independent state consisting of three constituent units created according to economic, geographic and other criteria. The agreement provided for the creation of a bicameral parliament with a "Chamber of Citizens" elected through universal suffrage, and a "Chamber of Constituent Units" to which the constituent entities would send an equal number of representatives. The Muslim, Serbian and Croatian entities would have been competent in all fields, except those reserved for the central government – foreign affairs, economic policy and central bank.<sup>4</sup> However, in the wake of Serbia's rejection of the agreement and the break out of intense fighting in Bosnia-Herzegovina, the EC abandoned the plan. Instead the Community decided on 6 April 1992 to recognise Bosnia-Herzegovina.<sup>5</sup> As de Deus Pinheiro declared:

The decision had been taken by the Twelve in the assumption that it was the best one to take. We hope that this decision would help to calm things down, and pacify the Bosnia-Herzegovina crisis.<sup>6</sup>

When fighting continued unabated, the Community called all parties "to reach a peaceful and negotiated solution within the framework of the talks on constitutional arrangements for Bosnia-Herzegovina held under the auspices of the EC Peace Conference". The EC and its member states called upon "Serbian and Croatian Governments to exercise all their undoubted influence to end the



interference in the affairs of an independent Republic and to condemn publicly and unreservedly the use of force in Bosnia-Herzegovina".<sup>7</sup> Faced with the serious danger of a widespread conflict the Twelve withdrew their ambassadors from Belgrade.<sup>8</sup> In addition, the Community and its member states decided on 1 June 1992, in line with the UN Security Council Resolution 757 of 30 May, to impose sanctions on Serbia and Montenegro in the hope that this coercive pressure would force Serbs to stop the fighting. To ensure uniform implementation throughout the Community, Regulation 1432/92 was passed on 1 June. These sanctions included: a total trade embargo, including oil and oil products but excluding medicine and food products for humanitarian ends; a ban on all activities whose direct or indirect object or effect would be to promote commercial transactions; an embargo on the supply of non-financial services liable to benefit the economy of Serbia and Montenegro (including transport, and in particular, air links).<sup>9</sup> As Zachary Irwin remarked:

An effective regime of sanctions implied that Serbia's fighting ability could be crippled by material deprivation, diplomatic isolation, and possibly domestic opposition.<sup>10</sup>

In a bid to tighten sanctions, the WEU Council of Ministers decided on 11 July 1992 to send ships to the Adriatic to monitor the embargo. According to the President of the WEU Council this "important and concrete" measure demonstrated "Europe's desire to be present and to react to a dramatic crisis in a region that is geographically very clear and important for common security".<sup>11</sup> In

the meantime France adopted a more independent line in its pursuit of a political solution to the crisis. On 28 June 1992, President Mitterrand, in a bold move that surprised everyone, flew to Sarajevo in the hope that his visit would help open its airport to humanitarian flights. Even though he exacted from the Serbs an agreement to hand over the airport to the UN, his "freelance" efforts did little to preserve a semblance of unity. Worse yet, the lack of any consultation prior to the trip frustrated the British who were scheduled to assume the Presidency of the EC Council on 1 July and who were caught unawares.<sup>12</sup> This did not bode well for future Franco-British relations, particularly in light of another sore point. France's insistence on a peace conference involving both the EC and the UN. Mitterrand was keen to promote an international conference in order to allow for participation of the Russians who he thought might have some influence over the Serbs. Despite Major's initial objection to an international conference growing domestic pressure for armed intervention left him with few opportunities for serious disagreement. By 25 July 1992, the British Prime Minister announced that he would convene an international conference at the end of August.

The London Conference opened on 26-27 August 1992 and brought together the representatives of twenty-two countries, including leaders of the six former Yugoslav republics and representatives of the EC, of the five permanent members of the UN Security Council, the CSCE and other governments and concerned parties, including political organizations of the Kosovo Albanians and the Hungarian minority in Vojvodina. The conference was opened by John Major,

and Boutros-Boutros Ghali, Secretary-General of the UN. Cyrus Vance, the former US Secretary of State and the UN's special envoy on Yugoslavia, also attended. The resignation of Lord Carrington as the chair of the ongoing EC-sponsored peace process, was announced as the conference opened. On 27 August 1992, Lord Owen, another former British Foreign Secretary, was named as Carrington's successor. With Vance, he was to co-chair the UN-EC peace initiative.

Organised initially to define the future structure of the old confederation, the opening meeting of the conference dealt mostly with the priority task of ending hostilities and basic human rights violations. Five important documents were adopted by all delegations, including the Serbs.<sup>13</sup> The first was a "Statement of Principles" binding on all parties and including: the mandatory cessation of hostilities and respect for the cease-fire; a refusal to recognise any advantage obtained through force; participation by all parties in negotiations to settle political problems; complete respect for human rights; guaranteed basic rights and freedoms for ethnic or national minorities; an end to ethnic cleansing and the closure of detention camps; action to bring to account those responsible for violating the Geneva War Crimes Convention; respect for the borders, independence, sovereignty and territorial integrity of all the States in the region; the need for agreement on the new make-up of the former Yugoslavia to be reached by consensus or arbitration based on mutual respect between the States; compliance by all States and factions with UN resolutions; the need to supply humanitarian aid; cooperation by all parties with international

efforts to maintain peace and arms control operations; and international guarantees that the agreements reached at this conference and subsequently in Geneva would be implemented.

The delegations then endorsed a specific three-point action programme. The first measure was designed to reach an "effective and durable cessation of hostilities" in the former Yugoslavia, particularly in Bosnia-Herzegovina. This involved international monitoring of heavy weaponry. The second measure allowed for the channelling of humanitarian aid, the progressive return of refugees, the dismantling of detention camps and the establishment of safe areas. The third stepped up the trade embargo on Serbia and Montenegro, making it as tight as possible, especially on the Danube and in the Adriatic. A statement on Bosnia-Herzegovina and another on Serbia and Montenegro were then adopted. The first called on the warring factions to cease hostilities and all forms of violence completely and definitively, and to resume immediately and unconditionally negotiations on the establishment of an international peacekeeping force under the UN, and the placing of heavy weaponry under UN control. In the second declaration, Serbia and Montenegro undertook to halt incursions into Bosnia-Herzegovina, prevent Bosnian Serbs from seizing territory and expelling people, restore ethnic minority rights in Kosovo and Vojvodina, ensure the closure of camps under their control and respect the integrity of current borders.

On 3 September 1992, the first meeting of the Steering Committee of the International Conference on the Former Yugoslavia (ICFY)

was held in Geneva, co-chaired by Lord Owen and Cyrus Vance. Two months later, on 28 October, the Geneva negotiators presented a draft constitution for a decentralised Bosnia-Herzegovina aimed at preserving its territorial integrity.<sup>14</sup> The plan proposed regionalising Bosnia-Herzegovina into ten provinces which were to retain substantial powers and autonomy to control education, police, health and law enforcement while leaving a central government in Sarajevo in charge of defence, foreign policy, and a single currency. The draft did not specify the borders of the ten provinces which were to be negotiated.<sup>15</sup> It was envisaged that there would be extensive international involvement in the affairs of state, especially as regards human rights. The proposals included the establishment of a Human Rights Court, the majority of whose members were to be appointed by the Council of Europe, an International Commission of Human Rights for Bosnia-Herzegovina, and the appointment of ombudsmen with special responsibility to reverse ethnic cleansing. The proposals, however, were rejected by the Bosnian Serbs and the Bosnian Croats. As the co-Chairmen recognised afterwards:

The daunting challenge for the ICFY in November 1992 was whether, armed only with moral authority and weak economic sanctions, and with no credible threat of selective counterforce, we could roll back the Serb confrontation lines and create a new map.<sup>16</sup>

This view was echoed by Willem van Eekelen, former Secretary-General of the WEU, who referring to the reluctance of European

countries to become heavily engaged with ground forces said at the time:

Military measures are sometimes necessary to achieve political objectives. Our credibility is zero politically because we are just not doing anything.<sup>17</sup>

January 1993 started with Jacques Delors, the President of the European Commission, expressing in an interview on French television his regret that the Twelve had lacked vision. "Therefore", he suggested, "1993, is beginning under heavy clouds".<sup>18</sup> On 2 January, Lord Owen and Cyrus Vance presented a plan for a solution to the war in Bosnia-Herzegovina. The Vance-Owen Peace Plan (VOPP) consisted of three sections comprising the constitutional principles, a detailed cessation of hostilities agreement and a map. It was, as the negotiators put it: "by no means ideal – "a peace from hell", Owen said – but it offered a measure of justice".<sup>19</sup>

The main points of the plan were as follows:<sup>20</sup>

#### **I. Constitutional Principles**

- Defines Bosnia and Herzegovina as a decentralized state, with guaranteed freedom of movement throughout.
- Gives substantial autonomy to the provinces while denying them any international legal character.
- Provides for democratically elected national and local government and a mechanism for resolving disputes between them.

- Stresses strong, internationally monitored human rights provisions.

## **II. Military Paper**

Requires:

- cessation of hostilities within seventy-two hours;
- withdrawal of heavy weapons from Sarajevo in five days and from remaining areas in fifteen days;
- demilitarization of Sarajevo, and eventually the whole country;
- separation of forces followed by a return of forces to designated provinces within forty-five days.

## **III. The Map**

- Delineates a ten-province structure reconstituting Bosnia-Herzegovina.

### **Annex: Working Paper on Interim Arrangements**

- Nine-member interim central government (three members from each party) to take decisions by consensus.
- Multi-ethnic provincial governments to be set up to reflect all groups fairly, based on the pre-war census.
- Reversal of ethnic cleansing to get under way immediately.
- International Access Authority to be established to guarantee freedom of movement.
- National authorities to be created to restore power, banking services, telecommunications and civil aviation.

Sarajevo was to remain a demilitarized mixed province. Serbs had to withdraw from nearly 40 per cent of their then land holdings and Croats were to control western Herzegovina.<sup>21</sup> It was envisaged

that the central government and all provinces except Sarajevo would have separate elected legislatures, elected chief executives, and independent judiciaries. The ten provinces would carry out most government functions but would have no international legal personality and could thus not enter into agreements with foreign states or with international organisations.<sup>22</sup>

In the hope of stepping up the pressure on the Bosnian Serbs, the EC began considering new measures leading up to the total isolation of Serbia. Following a meeting of EC Foreign Ministers in Paris on 13 January 1993, a statement was adopted expressing the Twelve's "firm support for the efforts of the Conference and the two co-Chairmen". According to the EC "the proposals for a political solution to the situation in Bosnia-Herzegovina tabled in Geneva" represented "the only possibility for a peaceful outcome". The statement set a deadline of six days for the Bosnian Serbs to accept unconditionally "the proposed constitutional framework for Bosnia-Herzegovina and the document on military arrangements". If the Bosnian Serbs rejected the peace plan, the EC and its member states would immediately take measures aimed at the "total isolation" of Serbia and Montenegro, including breaking off all economic, diplomatic and other ties with Belgrade, and cutting off all communications with the "Federal Republic of Yugoslavia". The statement emphasized that time was running out and that no more delaying tactics were to be tolerated.<sup>23</sup>

Following four weeks of intensive negotiations between the leaders of the three factions during which little progress was made, Lord



Owen and Cyrus Vance finally referred the plan to the UN Security Council in the hope of incorporating it into a UN Resolution.<sup>24</sup> The two international mediators thought that the fear of possible international military action under a Security Council mandate, or the more effective enforcement of sanctions, would persuade the warring groups to conclude a deal.<sup>25</sup> They told the Security Council that 15,000 to 25,000 UN troops were needed to enforce their plan. The mediators stressed that an enforceable "no-fly" ban would be required after a cease-fire to ensure the control of heavy weapons. Aircraft used for enforcing the air exclusion zone might also be empowered to strike at any heavy weapons not declared to the UN Protection Force.<sup>26</sup> The two mediators blamed the Bosnian Muslims' government for refusing to discuss the proposed map put forward by them. This reluctance derived from Washington's assurance to the Bosnian Muslims that the Clinton administration were not to subscribe to any solution which would force the Muslims to make territorial concessions. Clinton was very critical of the VOPP, for supposedly failing to guarantee the Bosnian Muslims' rights. One of the main reservations about the plan expressed in Washington, other than that it "rewarded" the Bosnian Serbs for their policy of ethnic cleansing, was that even if it was signed by all the warring factions, there were not sufficient guarantees that it would be properly implemented.<sup>27</sup> In addition, there were suggestions that the embargo on arms exports to the Bosnian Muslims should be lifted. As David Rieff suggested:

...the Americans, though they had no intention of intervening, were unwilling to be seen publicly sanctioning a Bosnian defeat by throwing

their weight behind the Vance-Owen plan...The Bosnians were willing to die for their state and their principles, and the Clinton administration preferred to let them do so – and never to really make clear what the limits of its involvement were – rather than be seen as abetting ethnic cleansing or, initially, climbing down from the stirring promises of help for Bosnia that candidate Clinton had made during the 1992 presidential campaign to embarrass George Bush.<sup>28</sup>

In the face of what appeared to be serious reservations by the Clinton administration about aspects of the VOPP deemed to favour the Serbs, the two mediators adopted a robust stance to prove that their proposed solutions were fair and equitable. Lord Owen charged that under this approach to American critics of the VOPP he was able to maintain the support of the European countries for the peace plan: “This would particularly apply to the French, who were in turn crucial in holding the Germans to the VOPP. If Paris saw me adopting the usual British posture of bending the knee to US objections then Mitterrand would go off on his own with a purely French initiative”.<sup>29</sup> In an interview with the *New York Times*, Lord Owen, said he was “bitter about the Clinton administration’s blocking of the Geneva plan”, which was the “best settlement that can be obtained. The Americans should stop their idle talk about the use of force”, asserted the co-Chairman of the ICIFY.<sup>30</sup> Calls for the lifting of the UN arms embargo were also rejected by Lord Owen who stressed that “if you lift it for one side, you would also be lifting it for everybody else, pouring fuel on the flames”.<sup>31</sup>

American support, however, was considered vital if the Security Council was to exert effective pressure on the Bosnian Serbs, Muslims and Croats to make the necessary concessions for an agreement. This was recognised by the Twelve which through the Danish President of the EC Council, Niels Helveg Petersen, tried to convince the US to support the VOPP. Speaking to the press, Petersen said that he hoped that "the Americans will come around to accept the view taken by the Community...I am certain that if this plan is not signed, is not carried, then we will be worse off than before".<sup>32</sup> The Community's view was shared by Russia's Foreign Minister, Andrei Kozyrev, who in an interview with the *Financial Times*, stated that he expected the US to support the VOPP "with only a few corrections, but they must be small corrections". Kozyrev suggested that the virtue of the VOPP was that "it left everyone equally unhappy. To change it would be a zero sum game, for if you give more to the Bosnians you give less to the Serbs, and then you will never get agreement. You will get another six months of killing and raping and then a VOPP mark two".<sup>33</sup> Kozyrev was "cautiously optimistic" that the VOPP would soon be put to, and adopted by the UN Security Council. "After that we can, not impose – you cannot impose anything in this area – but we can insist that there is no better solution". He also warned the Bosnian Muslims:

not to have any illusions that they would get more help from the international community, including the US, than was available under the plan. [The Bosnians] have probably had a wrong signal from the US press.

[But] it would be a total mistake for them to rely on outside intervention. No one has the massive force for this.<sup>34</sup>

On 10 February 1993, the US Secretary of State, Warren Christopher, announced an American six-point plan aimed at settling the conflict in former Yugoslavia.<sup>35</sup> The plan provided for:

1) the US actively committing itself in the negotiation begun under the auspices of Cyrus Vance and Lord Owen. The current American representative to NATO, Reginald Bartholomew, was appointed special envoy for these talks, which should lead to "creative solutions", acceptable to all;

2) the American President letting it be known to the Bosnians, Serbs and Croats that negotiation is the only way to resolve the conflict; it was not possible to impose a solution all parties have not reached voluntarily;

3) the President acting in favour of the strengthening economic sanctions and increasing political pressure on Serbia; Washington would cooperate with its Allies and Moscow along these lines. The US would act in case of conflict in Kosovo caused by the Serbs and would help in reinforcing the international presence in Macedonia;

4) the American President working with a view to reducing the suffering of the population and calling on all parties to stop the bombardments and violence. He was ready to have the air exclusion zones respected over Bosnia according to the UN Resolution relating to this. Humanitarian aid would have to get through without obstacles. Washington also proposed the creation of a war crimes tribunal under the auspices of the UN;

5) the US being ready to assume their share of responsibility so as to strengthen an agreement which could be acceptable to all parties and

taking part in a peace-keeping force, responsible for ensuring any such agreement is implemented;

6) the US wanting to remain in close contact with their Allies and Russia.

The US endorsement of an international peace process was greeted with relief by the international mediators. The emphasis placed by Christopher on cooperation with Russia and the EC was seen as putting new life into the stalled negotiations. While the Clinton administration still regarded the peace plan as flawed, it saw no other prospective basis for a settlement. As Jacques Delors said in Paris on 15 February 1993, he regretted that the US did not accept the VOPP from the beginning:

If the peace plan worked out by the EC and the UN, although imperfect, had been accepted immediately by the US, the warring factions would have received a signal that continuing to fight does not pay.<sup>36</sup>

The American decision on 27 February 1993 to parachute humanitarian supplies to besieged Muslim enclaves in Bosnia-Herzegovina provoked another debate between the EC and the Americans. Warren Christopher's portrayal of the airdrops as an emergency mission forced on them after Europe had failed to rally to the aid of the Bosnians, triggered an angry reaction by the British and the French who made the strong point that "this was a distortion of the true nature of the relief operation in which European governments had been massively engaged".<sup>37</sup> As Roland Dumas, put it:

It is a good thing the Americans have joined the Europeans in an affair that concerns the whole world. But let us not forget what the Europeans are doing. The international community with France and Britain in the lead, has been delivering an average of 1,000 tonnes per week.<sup>38</sup>

At the same time as peacemaking efforts were being explored, Hans van den Broek was raising the possibility of some form of a joint EC, US and Russian military force to bring an end to the conflict. In his opinion military intervention was "necessary to uphold a political settlement based on the UN-EC Vance-Owen plan, or to impose a solution from the outside. In both scenarios, Europe will face painful choices as to its military intervention".<sup>39</sup> The British, however, remained cautious. As one British diplomat suggested:

Mr van den Broek is on dangerous ground if he is threatening to impose an outside settlement. More than 50,000 troops might be needed to broker and enforce a truce. He needs to explain where he is going to get the men and the money.<sup>40</sup>

International attempts to forge a united response to the crisis in Bosnia-Herzegovina were further undermined in April as a result of views expressed by the Clinton administration that the UN arms embargo approved in September 1991 should be lifted to allow arms supplies to the Bosnian Muslims, and that allied air strikes should be used to reinforce sanctions and diplomatic pressure. EC Foreign Ministers meeting on 5 April 1993 in Denmark took the view that lifting the arms embargo would risk escalating and prolonging the conflict. As the President of the Council of Ministers, Niels Helveg

Petersen, suggested: "It would seem to me that more weapons are not what Yugoslavia needs". This view was shared by Lord Owen who repeated Douglas Hurd's prediction that lifting the arms embargo would "only create a level killing field in Bosnia".<sup>41</sup> Instead the Community expressed its support for the VOPP and for tougher UN sanctions to further isolate Serbia and Montenegro.<sup>42</sup>

"Ethnic cleansing" in eastern Bosnia-Herzegovina and the growing exasperation in Western Europe over the failure to bring about a peaceful solution led to increasing calls, especially in the UK, for arming the Bosnian Muslims. On 13 April 1993, speaking on BBC Television News, Lady Thatcher denounced Western governments, particularly the EC, for failing to intervene. She said:

The present policy of humanitarian aid plus negotiations plus trying to get a ceasefire clearly has not worked. You cannot go on with these policies, feeding people but leaving them to be massacred. The first thing is to see that the Bosnian Muslims are armed. Everyone has a right to self defence – much older than the UN – but it has been frustrated by a resolution of the UN...I am ashamed of the EC, that this is happening in the heart of Europe and they have not done anything about it. There is no conscience. We have been like accomplices to massacre.<sup>43</sup>

However, it was strongly felt in the UK that tighter economic pressure was needed to bring an end to the violence. It was a theme echoed frequently by the British Foreign Secretary. According to Duglas Hurd:

It would be an error to arm the Muslims. Other people have looked at this option, and may look at it again, but I think in terms of actually ending the misery, it has very real drawbacks. It could lead to a prolonging of the fighting.<sup>44</sup>

The French, too, were hostile to arming the Muslims as it would mean the "internationalisation of the conflict and a general conflagration in the Balkans".<sup>45</sup> It was a view also expressed by John Major in the House of Commons:

I share the view...expressed about the need to damp down and not increase the supply of arms...I want to widen and deepen existing UN sanctions.<sup>46</sup>

On 17 April 1993, the Security Council passed Resolution 820 imposing tough new UN sanctions against the Federal Republic of Yugoslavia. They included a 12-mile maritime exclusion zone barring all ships from Yugoslav waters; a freeze of Yugoslav financial assets overseas; and a ban on the trans-shipment of supplies through Yugoslavia to other countries.<sup>47</sup>

If such acts were designed to encourage the Bosnian Serbs to accept the VOPP they failed. During an emergency session on 25-26 April 1993, the self-styled Bosnian Serb assembly voted overwhelmingly to reject the proposed territorial arrangements in the VOPP.<sup>48</sup> As the crisis deepened the representatives of the governments of the EC member states meeting on 25 April in Middelfart, Denmark, decided to adopt Regulation (EEC) No 990/93 with the aim of



strengthening the embargo against Serbia and Montenegro, in particular by preventing transit through the territory in question. The new provisions strengthened the existing prohibitions, allowing only a few exceptions for humanitarian purposes, and then only with the authorization of the UN Sanctions Committee. The texts in question specifically applied the embargo to Serb-controlled areas of the republic of Croatia placed under UN protection. Exceptions in the latter cases could only be authorized by the Bosnian or Croatian governments. The embargo was also specifically extended to the territorial sea of the Federal Republic of Yugoslavia. Another important feature of the new provisions required EC member states to impound Yugoslav vessels, freight vessels, rolling stock and aircraft and to detain and indeed confiscate means of transport from elsewhere suspected of violating the embargo or found to have done so.<sup>49</sup> There was also a nearly unanimous consensus, with the notable exception of Germany, that the use of air strikes or the lifting of the arms embargo to allow the Bosnian Muslims to defend themselves would lead to more bloodshed and to an immediate end to the provision of humanitarian aid.<sup>50</sup>

On 1 May 1993, a summit meeting between all those involved in the fighting in Bosnia-Herzegovina was organised in Athens by the co-Chairmen of the ICFY. One day later, a "final" agreement on the VOPP was concluded when Radovan Karadzic, agreed to accept the plan if it were given a final approval by the self-styled Bosnian Serb assembly.<sup>51</sup> Following the defiant rejection of the peace plan,<sup>52</sup> the Security Council declared on 6 May 1993 that Sarajevo and five

other besieged Muslim enclaves in Bosnia-Herzegovina should be regarded as UN-monitored safe areas. Resolution 824 called for the encircling Bosnian Serb forces to withdraw to a point where they no longer threatened the towns and demanded also unimpeded access by humanitarian bodies. The key paragraph of the Resolution stated "that the capital city of the republic of Bosnia-Herzegovina, Sarajevo, and other such threatened areas, in particular the towns of Tuzla, Zepa, Gorazde, Bihac, as well as Srebrenica should be treated as safe areas by all the parties concerned and should be free from armed attacks and from any other hostile act".<sup>53</sup> In addition, Slobodan Milosevic decided to step up pressure on the Bosnian Serbs by closing Serbia's borders with Bosnia-Herzegovina and applying sanctions against his former *protégés*.

Against a background of growing concern and exasperation that so little impact was being made on the situation mainly due to Serbian intransigence the EC hinted that it might consider the possibility of a combined policy of arming Bosnian Muslims and selective air strikes against Serb forces. Although there had been an adverse reaction from several member states, especially the British, nonetheless there was a consensus that the US should send forces to help UN troops with the delivery of humanitarian aid, with the security of the "safe areas" in Sarajevo and other threatened towns and cities, and also with monitoring the closing of Serbia's borders with Bosnia-Herzegovina.<sup>54</sup> As Willy Claes, the Belgian Foreign Minister, pointed out:

There is a clear tendency by the Community to consider lifting the embargo on arming Bosnia which have been identified as protected zones by the UN.<sup>55</sup>

**As for the forces deployed to assure the implementation of the peace plan, once accepted by all, Lord Owen said that it was:**

very important for the US contribution to be less than 50 per cent, and not dominant. The western European contribution to this force should not be below a level which would make our political commitment less credible.<sup>56</sup>

**It was the question of abandoning the VOPP that caused further divisions between the US and the Community. An indication of the disagreements that had arisen by the Bosnian Serb rejection of the VOPP was suggested by a statement by Warren Christopher that he was no longer pursuing the Vance-Owen peace plan. Instead he declared that he was looking at alternative diplomatic approaches: "I think it [VOPP] is something to build upon...but I do not think it's appropriate for the US to try to implement a plan which has been so firmly rejected by one of the parties [Bosnia's Serbs]".<sup>57</sup> On the other hand, the Twelve, on 18 May 1993 adopted a statement noting the rejection of the VOPP by the Bosnian Serbs and reaffirming their total support for the plan.<sup>58</sup>**

**As the crisis deteriorated public opinion swung in favour of military intervention in former Yugoslavia. According to a Eurobarometer poll produced for the European Commission, 55 per cent of all EC**

citizens supported military intervention, with only 28 per cent against.<sup>59</sup> This growing concern of public opinion that not enough was being done by the international community prompted France, the US, Russia, Spain and the UK to adopt a joint action plan in Washington on 22 May 1993. The agreement was as follows:<sup>60</sup>

France, the Russian Federation, Spain, the United Kingdom and the United States are profoundly concerned that the conflict in Bosnia-Herzegovina is continuing despite the strenuous efforts of the international community and the co-chairmen of the International Conference on the Former Yugoslavia. We have common views on the most productive immediate steps to take. These should lead to implementation of relevant United Nations Security Council resolutions.

**Sanctions:**

The economic sanctions imposed by the UN Security Council against Serbia and Montenegro must be rigorously enforced by all members of the UN until the necessary conditions, including the withdrawal of Bosnian Serb troops, are met.

**Sealing borders:**

We note the pledge of the Belgrade authorities to close the border with Bosnia to put pressure on the Bosnian Serbs to accept the peace plan. We are watching to see if the border closure is effective. We can assist by placing monitors on the borders or providing technical expertise or conducting aerial surveillance.

**Safe areas:**

The concept of "safe areas" could make a valuable contribution. We will work to secure early adoption of the new Security Council resolution under discussion. The UK and France already have forces serving with UNPROFOR in "safe areas". Troops from other countries, including Spain and Canada, are playing an important role. The Russian Federation is considering making forces available in Bosnia in addition to its forces in Croatia. The US is prepared to help protect UNPROFOR forces.

**No-fly zone:**

The no-fly zone should continue to be enforced in Bosnia.

**War crimes tribunal:**

We support the rapid establishment of the war crimes tribunal, so that those guilty of atrocities may be brought to justice.

**Durable peace:**

Negotiated settlement in Bosnia, building on the Vance-Owen process and international co-operation, is the way a durable peace can be established.

**Central Bosnia:**

We are deeply concerned about the fighting between Bosnian Croat and Bosnian government forces and the related "ethnic cleansing", and we agree that Croatia should be put on notice that assistance to Bosnian Croat forces engaged in these activities could result in the international community imposing sanctions.

**Containment:**

We will co-operate closely to enhance efforts to contain the conflict and prevent the possibility that it will spill over into neighbouring countries.

**Former Yugoslav Republic of Macedonia:**

It is essential that everyone in the region understands that aggression against the former Yugoslav Republic of Macedonia would have grave consequences. We will support an increase in the international presence there.

**Kosovo:**

We favour an increase in the international monitoring presence in Kosovo. Human rights should be respected in this formerly autonomous region, although we do not support declarations of independence there.

**Croatia:**

The same considerations apply to the Serb-populated areas of Croatia. We will work for the renewal and strengthening of UNPROFOR's mandate. The Croatian government and the local Serb authorities should maintain the ceasefire and constructively pursue dialogue.

The Washington plan in effect accepted that the Serbs would keep much of the Bosnian territory they have won and that a Greater Serbia was likely to emerge.<sup>61</sup> It also meant the abandonment of the VOPP. The reference to it twice in the Washington *communiqué* as "process" rather than plan diminished its importance. Lord Owen makes the most categorical judgement here, holding that:

Although I went through the motions of keeping open the European Community position on the VOPP and the WEU option for the next few days I knew that the plan had now been effectively ditched by the Americans and could never be got back on the road. The only way to revive it would have been for the Europeans to say that they would implement the VOPP through the WEU and hive off from NATO the command and control structures to do so; then to rally sufficient troop numbers from non-EU countries like Russia, the Ukraine, Poland, the Czech Republic and Slovakia to give the implementation force credibility. The truth was that there was not the political or military will in Europe without France and Britain to do this and in my heart I knew it.<sup>62</sup>

The impact and the implications of the Washington plan were significant for the Community. Belgium, the Netherlands, Germany and Italy in particular, were openly dismayed at the Washington agreement and frustrated that they were not consulted. As an Editorial in *Agence Europe* suggested at the time:

If the content, ambiguous though it is, of the joint action programme can be strongly criticized, the procedure followed to establish it was literally devastating concerning all the institutional structures and mechanisms which should assure a certain political balance at world, Atlantic, pan-European and European level. Organized Europe, i.e. that of the Twelve and growing, has been totally ignored. This was perceived in Europe as a slap in the face. The marginalisation of the EC is all the more grave as it was backed by three of its members.<sup>63</sup>

**Despite intense diplomatic efforts by the Twelve to underline their unity there were also unmistakable differences of approach to the use of force. As one Commission official suggested:**

**Mr van den Broek and others who applauded the references in the Washington statement about the so-called "secure zones" for the Bosnian Muslims also want to know how exactly these are going to be defended.<sup>64</sup>**

**On the other hand, it was van den Broek's opinion that military action should not be ruled out:**

**Conflict prevention would have a better chance of success if the EU acquires a credible backup capacity for cases where preventive diplomacy fails. Managing security risks and acting promptly, when necessary, will be essential tasks for the future European Union. In cases where the WEU is not yet able to provide such a capacity, NATO, with its highly developed infrastructure, should be called on to act.<sup>65</sup>**

**Divisions between the EC and the US over the status of the VOPP were clearly deep. Meeting in Council in Luxembourg on 8 June 1993, EC Foreign Ministers insisted that the VOPP remained "the centrepiece of EC strategy for peace in Bosnia-Herzegovina" and declared that there was "no feasible alternative to the Vance-Owen Peace Plan as the basis for reaching a durable political solution based on the principles agreed by all at the London Conference, including the sovereignty of the Republic of Bosnia-Herzegovina, the inviolability of its territorial integrity, respect for its pluralist character, and the inadmissibility of the acquisition of territory by**



force".<sup>66</sup> According to the Twelve the Washington agreement on setting up Bosnian safe areas was "no more than a short-term necessity, designed to prepare the ground for the implementation of the VOPP".<sup>67</sup>

The prospect of implementing the VOPP was, however, effectively ended in June following developments on the battlefield. On 15 June 1993, an agreement was reached in Geneva between the Serbs and the Croats on a three-way division of Bosnia-Herzegovina into Muslim, Serb and Croat areas.<sup>68</sup> Following the announcement of the agreement, Lord Owen admitted that his ten-month effort to reach a peace settlement had failed. At a press conference, he said that:

There won't be a lot of honour [in the emerging deal] and there won't be anywhere near the sort of settlement that I would have ideally liked. But I'm a realist and we have to live with what is happening on the ground.<sup>69</sup>

As the *Guardian* wrote at the time:

VOPP's epitaph might read: "Was creative in resolving the contradiction between the lofty principle that aggression should not pay and the grim reality that no government was prepared to pay the price to make that happen". The VOPP failed because the international community would not use the political and military muscle needed to reverse Serb gains.<sup>70</sup>

For the EC, as Klaus Kinkel, the German Foreign Minister, observed it was "a bitter pill to swallow".<sup>71</sup> For Warren

Christopher it was a “dynamic situation” which left the US with no choice but to accept the partition of Bosnia-Herzegovina.<sup>72</sup>

## **5.2 From a “Union of Three Republics” to the Dayton Agreement**

Following discussions in Copenhagen on 20 June 1993 between Lord Owen and EC Foreign Ministers, the European Council at its 21-22 June meeting issued a declaration on Bosnia-Herzegovina in which it expressed its full confidence in Owen and Stoltenberg;<sup>73</sup> agreed not to accept a territorial solution dictated by Serbs and Croats at the expense of the Bosnian Muslims; reaffirmed the conviction that a negotiated settlement had to be based on the principles of the London Conference on the former Yugoslavia, as reflected in the Vance-Owen peace plan; supported the call of the Bosnian government for an immediate ceasefire; called for speedy implementation of UN Security Council Resolutions on safe areas; and decided to respond positively to the UN Secretary-General's request for men and money.<sup>74</sup> But only the Dutch came forward with a concrete promise of 400 troops. As John Major declared: “Britain has already made its contribution”. He was also opposed to lifting the arms embargo.<sup>75</sup> However, it was Chancellor Kohl's view that the embargo on arms sales should be lifted. In addition, François Mitterrand:

stressed how urgent it was to act in Bosnia-Herzegovina, and affirmed that either the international community, and Europe in particular, should be able to send the extra troops necessary to protect the safe areas very rapidly, or it should recognize its powerlessness and lift the ban on arms. However, this would be a desperate solution.<sup>76</sup>

On 30 July 1993, the Geneva Conference co-chaired by Lord Owen and Thorvald Stoltenberg secured acceptance from Izetbegovic for the division of Bosnia-Herzegovina into three constituent republics – Croat, Muslim and Serb – within a demilitarized Union of Republics of Bosnia-Herzegovina. The federal government's role was to be limited to foreign policy and foreign trade. The Union was to have a rotating three-member presidency, and a 120-member assembly delegated equally from the parliaments of the three constituent republics, for which the first elections were to be carried out under UN auspices. Citizens were to have the right to settle anywhere in Bosnia-Herzegovina.<sup>77</sup> On 16 August 1993, the Geneva talks resumed to discuss proposals for the administration of Sarajevo and for territorial divisions. Karadzic, Boban, and Izetbegovic agreed that Sarajevo would be demilitarized, except for a UN presence, and placed under UN control for two years. The city was to comprise nine out of the ten pre-war municipalities, excluding the suburb of Pale where the Bosnian Serb headquarters were situated. An administrator appointed by the UN Secretary-General were to be assisted by a ten-member multiethnic advisory body.<sup>78</sup> On 29 September 1993, however, the Bosnian parliament voted overwhelmingly to reject the Geneva peace plan.<sup>79</sup>

On 8 November 1993, foreign policy was for the first time not discussed by the Foreign Ministers acting under EPC but was formally included in the agenda of the General Affairs Council as CFSP matters, in accordance with the procedure set out in the TEU. During the meeting a joint Franco-German letter was considered attempting to break the deadlock in Bosnia-Herzegovina. The proposal put forward by the French Foreign Minister, Alain Juppé and his German counterpart, Klaus Kinkel, recommended a triple approach: pushing the Serbs to abandon the 3 per cent of the territories claimed by the Bosnians, which meant that they would be guaranteed that UN sanctions would be lifted. "The Bosnian Muslims are asking for an increase in territory and Milosevic seems ready to negotiate", the Franco-German letter said. "The Serb party will only show the indispensable territorial flexibility if it obtains assurances that UN sanctions will be progressively lifted in exchange".<sup>80</sup> At the same time, EU was to offer Izetbegovic the guarantee of financial aid so that his country could be viable without the territorial extension he regarded as necessary; new measures to secure aid routes in central Bosnia-Herzegovina to avert a humanitarian disaster; launching a modest operation in order to make the situation more bearable in Krajina, notably with the supply of petrol and the opening of roads, in order to alleviate tension. The Council also decided, in conformity with the guidelines of the 29 October 1993 European Council meeting in Brussels, its first joint action on the convoying of humanitarian aid in Bosnia-Herzegovina.<sup>81</sup>

The Franco-German proposal, however, to link a possible lifting of sanctions against Belgrade to land concessions triggered a fierce reaction from the US which warned the EU that such an action could involve the deliberate rewarding of aggression. As a result, EU Foreign Ministers agreed to suspend rather than lift some sanctions. According to an EU diplomat: "We need US support because this will have to go through the UN, so we have backed off the idea that we should promise to lift sanctions".<sup>82</sup> On 29 November 1993, an international conference on the war in Bosnia-Herzegovina was convened in Geneva. The conference and subsequent negotiations revived the plan for a "Union of Three Republics", discussed in the previous round of negotiations. The conference was the result of a strategy adopted by a meeting of EU Foreign Ministers in Luxembourg on 22 November 1993, which envisaged that some international sanctions imposed on Serbia could be suspended if the Bosnian Serbs agreed to surrender a further 3.3 per cent of conquered land.<sup>83</sup> According to press reports, however, there was some acrimony between the US and the EU over tactics in the Geneva conference. The critical issue was the "linkage" of a peace settlement to the abandonment of aid convoys suggested by Lord Owen and Douglas Hurd. Warren Christopher, opposed any such idea. As he pointed out:

I do not believe that humanitarian aid should be used as a lever...on the Bosnian government. I have never felt that the way to achieve a result [in Geneva] was to exert pressure on the Bosnian government, which has already given up so much territory and whose people have suffered so terribly.<sup>84</sup>

The European Council met again on 10 and 11 December 1993 in Brussels to consider the situation in Bosnia-Herzegovina. At the end of the meeting the Twelve adopted a declaration inviting Serbs, Croats and Muslims to meet the Council of the EU on 22 December in Brussels. It also stated that if the Serbs continued in their lack of flexibility and did not make any "real territorial concessions" in Bosnia-Herzegovina and did not accept a *modus vivendi* in Croatia, the sanctions against them could be even more rigorously implemented and even reinforced.<sup>85</sup> However, Belgium, the Netherlands and Germany were unhappy with Lord Owen who they thought had concentrated in the Geneva peace talks on discussions regarding the partition of Sarajevo rather than forcing Serbia to give up 3 per cent more of the lands it conquered. As a result, Douglas Hurd, admitted that "there has been some considerable criticism of Dr Owen and recent developments in the peace process. But I am confident that the critics have been reassured".<sup>86</sup> It was an issue raised in the European Parliament on 20 January 1994 when a motion of no confidence in the EU mediator was passed by 106 to 95 with 21 abstentions. Unlike the EP, however, the EU member states placed their confidence in the British diplomat. In a *communiqué* issued on 21 January they expressed their hope that Lord Owen and Thorvald Stoltenberg would continue "to offer their valuable services in their endeavours to implement their mandate as stated in the declaration of the European Council of 10 and 11 December".<sup>87</sup> Meanwhile, peace talks broke down again on 20 January.

The rift between the EU and the US over Bosnia-Herzegovina widened further when Alain Juppé, in an interview with the *New York Times* on 25 January 1994, warned that the US would be responsible for a “catastrophe” in Bosnia-Herzegovina if it failed to add to European and Russian pressure on the warring parties to reach a settlement. As Alain Juppé put it:

The only way we can reach a political settlement is to join efforts – the Europeans, the Americans and the Russians – and put pressure on all three parties to sign an agreement. If the Americans do not convince the Bosnian Muslims that they must stop fighting and that there is no chance that the United States would come to their rescue, then the United States will give them incentives to pursue the fighting on the ground. It would be a catastrophe. And we say to our American friends that they will be responsible for this.<sup>88</sup>

Juppé’s comments reflected growing French frustration at the US position, expressed by US State Department spokesman, Michael McCurry, who suggested that “forcing a settlement on the aggrieved party [the Bosnian Muslims] requires a very strange moral calculus”. Richard Duque, French Foreign Ministry spokesman, took umbrage at this: “If we are talking on a moral level, the choice today is between merely watching the fighting or doing everything possible to stop it”.<sup>89</sup> It was an allusion to the reluctance of the US to commit any ground troops. A similar view was expressed by Lord Owen:

One of the fundamental weaknesses of America's criticism of Europe ...was that you [Americans] were employing your high moral standard on the basis of absolutely zero involvement. When you had the opportunity, at the start, in 1991 to go in, guns blazing, and to take a dominant military role, you declined to do so, saying it was Europe's problem. The European Community has already shouldered the biggest burden. It has done so in terms of refugees, humanitarian aid and military forces committed to the United Nations, with lives lost.<sup>90</sup>

Following the shelling of Sarajevo's market on 5 February 1994,<sup>91</sup> the EU's Foreign Ministers unanimously expressed their "revulsion at the renewed brutal shelling of civilians in Sarajevo" and recalled earlier NATO and UN decisions threatening airstrikes. At the end of their meeting in Brussels on 7 February the Twelve adopted a statement which supported "a very early meeting of the North Atlantic Council" with the aim of achieving "the immediate lifting of the siege of Sarajevo, using all means necessary including the use of air power". According to the statement "the measures taken would be the first step in the implementation of the European Union's action plan". The statement also reiterated the EU's support "for the efforts of the co-chairmen to place the administration of Sarajevo under the authority of the United Nations".<sup>92</sup> Further EU action, however, remained problematic due to internal disagreements. France, Belgium and the Netherlands were strongly advocating military action to lift the siege of the Bosnian capital. As Willy Claes pointed out: "This is a moral issue. The Bosnian Serbs must be shown that the international community will not fail to respond to atrocities".<sup>93</sup> Others,



notably Greece and Lord Owen, opposed the use of force against the Bosnian Serbs. As Lord Owen was reported as saying:

I know of nobody who believes that this [staging airstrikes against Serbian positions] will do anything other than intensify the war. Air strikes would make a negotiated settlement very much harder because we would be seen to be partisans, we would be combatants.<sup>94</sup>

In addition, the French argued that the EU and NATO should issue the Bosnian Serbs an ultimatum to withdraw their heavy artillery from around Sarajevo or face military action. The British, however, remained cautious, while the Germans agreed that something had to be done but not by German troops. The pressures on the Greek presidency to keep the Twelve together were therefore considerable. It was not perhaps surprising that they took the opportunity of Boutros Boutros-Ghali's request for NATO airstrikes "against artillery positions in or around Sarajevo which...[were] responsible for attacks on civilian targets",<sup>95</sup> to avert a breakdown of European consensus on the growing crisis in the besieged city of Sarajevo.

The issue of some form of response to the massacre of civilians in Sarajevo was raised by France in NATO. The latter, on a joint French and US proposal, gave on 10 February 1994 its full support to Boutros Boutros-Ghali's request to implement any future airstrikes and also agreed to issue an ultimatum to the Bosnian Serbs to the effect that if heavy weapons in a 13-mile "exclusion zone" around the centre of Sarajevo, had not been either withdrawn or submitted to UN control by midnight on 20 February then

airstrikes were to be carried out against any remaining heavy weapons. The British despite being reluctant to support NATO airstrikes consented to such a move in order to prevent a confrontation with the French and to preserve the credibility and solidarity of NATO.<sup>96</sup> Only Greece failed to support airstrikes, but it agreed to refrain from vetoing the NATO ultimatum.<sup>97</sup> The NATO ultimatum was greeted with scepticism by Russia which decided to act on its own.<sup>98</sup> On 17 February 1994, Vitaly Churkin, Russian special envoy to former Yugoslavia, concluded an agreement with the Bosnian Serbs to withdraw their heavy weapons from the besieged city within 36 hours and promised to send 400 men to help maintain the cease-fire.<sup>99</sup> The Russian initiative grew in part out of concern that Russian interests were neglected by the West and it also reflected growing pro-Serb sentiment among Russian nationalists.<sup>100</sup>

On 1 March 1994, a preliminary pact was brokered in Washington between the Bosnian government, Bosnian Croat leaders and Croatia. The Washington agreement provided for a Muslim-Croat federation with a powerful central government on just over half of Bosnia-Herzegovina's pre-war territory. The federation was to merge in a looser economic union with Croatia.<sup>101</sup> Three weeks later, on 18 March 1994, at a ceremony in Washington hosted by US President Bill Clinton, representatives from Bosnia-Herzegovina and Croatia signed an accord on the creation of a federation of Bosnian Muslims and Croats, and a further "preliminary agreement on the establishment of a confederation" linking this new planned Bosnian federation to Croatia in a loose confederation.<sup>102</sup>

The Washington agreement was welcomed by the EU Brussels Council meeting on 7 and 8 March 1994 as a particularly encouraging development which constituted "an important step on the path to a negotiated settlement in Bosnia-Herzegovina". At a more general level, the EU recalled that "it was been involved in the efforts to resolve the conflict for a long time" and declared that it "will continue to assume its responsibilities, in cooperation with the US and Russia, by playing a role commensurate with its interests in the region and the scale of its aid".<sup>103</sup> Following Bosnian Serb attacks on Gorazde, EU Foreign Ministers meeting in Luxembourg on 18 April 1994, adopted a declaration condemning Bosnian Serb aggression at Gorazde and calling "for an immediate and unconditional ceasefire in and around Gorazde and the pullback of Bosnian Serb forces which threaten the security of Gorazde". The declaration demanded the immediate release of "all detained United Nations' personnel" and unimpeded access through Bosnian Serb territory for UN humanitarian aid to "the people of Gorazde and more widely in Bosnia including to Sarajevo".<sup>104</sup> In addition, EU Foreign Ministers ruled out any further use of force to save Gorazde.<sup>105</sup> As Douglas Hurd put it:

Military action has its place, which the UN and NATO recognise, but it has its limitations...no one is prepared to move into participation in a war in which they can see no end. What can and should emerge from this meeting is a decision neither to abandon the UN effort nor to escalate into a war.<sup>106</sup>

His views were echoed by Alain Juppé and also by Klaus Kinkel. The EU called instead “for an intensified diplomatic effort by the international community, including the United Nations, the European Union, the United States and Russia to ensure the convergence of their initiatives and to bring about talks between the parties at an early date based on the European Union plan and taking into account the Washington accord and the talks on the Krajinas”.<sup>107</sup> According to Alain Juppé: “As long as there is no common position between the US, the UN, the EU and Russia, we allow the Serbs to play their double game”.<sup>108</sup>

In response to a call on 19 April 1994 by President Boris Yeltsin for an international summit on Bosnia-Herzegovina between Russia, the US and the EU a “Contact Group” was formed in London on 26 April comprising senior German, French, British, American and Russian officials with the aim of working “as a matter of urgency towards a full cessation of hostilities for four months”. As Lord Owen suggested:

The US wanted EU involvement but they were not prepared to get into the business of involving all twelve governments and the Troika mechanism was not very attractive for them. Anything from Europe made little sense if it excluded the British and French, who were necessary for coordinating action in the Security Council within the established procedure of consulting in depth the US and Russia...<sup>109</sup>

According to a “British source” the purpose of the Contact Group was “to concentrate on the nitty gritty of an overall ceasefire and

get to grips with the map. So far everyone has been doing their own thing. This is supposed to pull things together and concentrate efforts".<sup>110</sup> As Pauline Neville-Jones suggested the advantages of creating the Contact Group were immediate: reasserting European influence; developing a single policy line via the Contact Group's plan; reducing the warring parties' ability to play outside powers off against each other; and creating a greater capacity than previously to match political objectives with the situation on the ground and the UN force's capabilities.<sup>111</sup> However, the need for a common policy often overruled the requirements of an effective policy in terms of the proclaimed objectives, and at times the Contact Group seemed to be sustained only by the shared reluctance to admit total failure.<sup>112</sup> The effort of obtaining a compromise "between five governments was so heroic that it rendered them incapable of further joint policy development. Underlying differences remained and immobilism set in".<sup>113</sup> As Stephan Keukeleire wrote:

This inertia, which lasted for more than one year, was not only the result of the involvement of Russia. It also resulted from the internal divisions among the three EU member states and from the divergences within the USA (within the American administration and between the American political and military leaders).<sup>114</sup>

On 13 May 1994, an agreement was reached by the three warring factions on a partition plan allocating 51 per cent of Bosnia-Herzegovina to the Muslim-Croat federation and 49 per cent to the Bosnian Serbs. Under the terms of the agreement, a four-month cessation of hostilities had to be observed and negotiations

resumed within a fortnight.<sup>115</sup> However, the fragility of the agreement was revealed when the US refused to coerce the Bosnian Muslim leadership into a deal.<sup>116</sup>

On 6 July 1994, the Contact Group offered to the warring factions in Bosnia-Herzegovina a peace plan which hinged on a map. In particular, the Contact Group's map envisaged that the Muslim-Croat Federation of Bosnia-Herzegovina was awarded 51 per cent of Bosnia-Herzegovina territory; that Bosnian Serb forces cede to the Muslim-Croat Federation about one-third of the territory which they occupied, including strategically crucial land on the Bosnian-Croatian border; that many towns "ethnically cleansed" of their Muslim population by the Serbs remain under Serb control, including Banja Luka and Prijedor; and that the UN and the EU place under their protection and administration key adjacent areas, which together included Sarajevo and the disputed enclaves such as Srebrenica and Gorazde in eastern Bosnia-Herzegovina and also the towns of Doboj and Brco in the north.<sup>117</sup> Leaders of the warring parties were given two weeks to approve the map. The EU strongly appealed "to all those concerned to seize the opportunity to achieve peace. We are convinced that the plan transmitted to them on 6 July offers the only viable basis for a peaceful solution. It should be accepted without any ifs or buts in the interest of the suffering people of the former Yugoslavia".<sup>118</sup>

The threat of lifting the arms embargo on Bosnia-Herzegovina or relaxing the UN economic sanctions in force against Serbia and Montenegro was employed by the Contact Group in the hope that it

would ensure the acceptance of the plan.<sup>119</sup> Despite, however, diplomatic efforts and pressure by Milosevic,<sup>120</sup> the Bosnian Serbs refused to endorse the plan.<sup>121</sup> Their rejection provoked a severe rebuke by Milosevic who cut all except humanitarian supplies to the Bosnian Serbs and closed Serbia's borders with Bosnia-Herzegovina.<sup>122</sup>

The refusal of Milosevic to allow international observers to supervise the closure of Serbia's frontier with the Bosnian Serbs was, however, the subject of growing concern with further discussions among the EU Foreign Ministers. Meeting on the central Baltic coast island of Usedom on 11 September 1994, the Twelve were able to confirm the willingness of Milosevic to accept monitoring. In return, EU governments were preparing amendments to UN sanctions against Serbia to allow the resumption of air traffic as well as sports and cultural contacts. In addition, the Foreign Ministers agreed to further isolate the Bosnian Serbs.<sup>123</sup> On 24 September 1994, the ban on air travel and sporting and cultural contacts was lifted.<sup>124</sup>

At the same time as peacemaking efforts were explored, the US was announcing on 11 November 1994 that it would no longer enforce the arms embargo against the former Yugoslavia.<sup>125</sup> The decision was met with dismay by the EU.<sup>126</sup> As Alain Juppé put it:

[The US decision to stop enforcing the embargo] is the first time a country such as the United States exempts itself from a [UN] Security Council

resolution for which it itself voted, and from decisions adopted unanimously by the Atlantic Alliance.<sup>127</sup>

US views began to change in December in response to developments on the battleground. At an interview with the CNN, William Perry, the US Defence Secretary, declared that one “thing that would be considered is allowing a federation between Bosnian Serbs and the Serbs”. As he put it:

We [the US] have rejected both walking away [from Bosnia] and an excessive use of military force. That means limiting the violence while we pursue diplomatic ways of ending the war.<sup>128</sup>

As part of the Contact Group's contribution, the US proposed a further reduction in international economic sanctions against Serbia and constitutional arrangements which could permit for reaching links between the Belgrade government and the breakaway Bosnian Serbs. According to Klaus Kinkel:

We [the Contact Group] have looked at all the alternatives but see no alternative to a renewal of the diplomatic process. We want an immediate ceasefire in Bihac leading to a cessation of the conflict throughout Bosnia. We reiterate the division of territory on the basis of 51 per cent to Bosnia and 49 per cent to the Bosnian Serbs but details of the division can be negotiated between the parties.<sup>129</sup>

On 10 December 1994, the European Council meeting in Essen adopted a declaration expressing its full support for “the peace plan



for Bosnia-Herzegovina presented to the parties by the Contact Group, as the basis for a settlement which provides for a viable and reasonable solution for all parties". The Twelve recalled that "the territorial proposal can be adjusted by mutual agreement between the parties and that constitutional arrangements agreeable to the parties will need to be drawn up which preserve the integrity of Bosnia-Herzegovina and allow equitable and balanced arrangements for the Bosnian Croat and Bosnian Serb entities". In addition, the European Council underlined "the necessity for the effective internationally verified closure of the border between the Federal Republic of Yugoslavia and Bosnia-Herzegovina and to that end attaches importance to the urgent reinforcement of the ICFY mission".<sup>130</sup> It did so in an effort to avert a new row with the US which warned that unless it was satisfied that no arms or fuel were getting through to the Bosnian Serbs, it could refuse to renew the easing of UN sanctions against Serbia. The need to keep the US in step was considered vital. It was necessary not simply in order to exercise maximum influence on Belgrade but also because of the need to prevent a further conflict with Russia.<sup>131</sup>

On 31 December 1994, a four-month ceasefire accord was signed by the three warring factions in Bosnia-Herzegovina.<sup>132</sup> The agreement on the cessation of hostilities was welcomed by the EU Foreign Ministers at their meeting in Brussels on 23 January 1995. The EU urged all sides "to respond favourably to the efforts that have been made so as to achieve a peaceful outcome and to resume the political negotiations at the earliest opportunity on the basis of acceptance of the peace plan as a starting point". The Foreign

Ministers called upon "all parties to implement in full the provisions of the agreement on the cessation of hostilities in Bosnia-Herzegovina". They also expressed their concern "at the implications which the Croatian Government's decision not to accept the renewal of UNPROFOR's mandate might have for the efforts of the international community and for the peace process in the former Yugoslavia",<sup>133</sup> and called on the Croatian government "to reconsider its position".<sup>134</sup>

On 6 March 1995, in an attempt designed to encourage Croatia to abandon its demand for all UN peacekeeping forces to leave Serb-occupied Krajina the EU offered Tudjman the prospect of privileged trading links. As Douglas Hurd suggested:

the proposed agreement would not come into force as long as there was a question mark over war and peace. We are all extremely concerned about the danger of a renewal of fighting in both Bosnia and Croatia. We want to bear on all concerned to maintain the peace.<sup>135</sup>

One week later, on 12 March 1995, Zagreb succumbed to intense international pressure and agreed to "a scaled down force continuing to police the frontline with Serbs".<sup>136</sup> On 18 March, EU Foreign Ministers during their informal meeting in Carcassonne, in southwest France, "reaffirmed their opposition to any unilateral lifting of their economic and trade sanctions against Belgrade, as demanded by President Milosevic, so long as the Yugoslav government refused to acknowledge the internationally recognised borders of Croatia and Bosnia".<sup>137</sup>

As retribution for NATO airstrikes against Bosnian Serb weapons bunkers on 25 and 26 May 1995, Bosnian Serb forces inflicted a massive bombardment on Tuzla and Sarajevo and began detaining UNPROFOR personnel as hostages on 26 May. On 29 May 1995, EU Foreign Ministers meeting in Brussels expressed their "very grave concern at the worsening of the situation in Bosnia-Herzegovina" and voiced their "indignation at the deliberate shelling of the civilian population and at the odious hostage-taking of United Nations soldiers and observers". The EU strongly condemned "the attitude of the Bosnian Serbs" and warned them "of the consequences they might face". The Foreign Ministers expressed their "full support for UNPROFOR" and called for "the Bosnian Serbs to cease the shelling and for the immediate and unconditional release of the United Nations soldiers and observers detained and threatened by them". The EU, which considered "Bosnian Serb leaders responsible for the fate of the hostages", expressed its willingness "to provide its support for the reinforcement measures which are essential for UNPROFOR to be able to recover its freedom of movement, to ensure its improved security and effectively to fulfil its task, notably the protection of the safe areas". Moreover, the EU reiterated "the importance it attaches to the conclusion of an overall settlement to the conflict in the former Yugoslavia, guaranteeing the sovereignty and territorial integrity of all the States within their internationally recognised frontiers and respect for human rights".

To this end, and as a first step, the EU supported “the diplomatic efforts under way to bring about the mutual recognition of Bosnia-Herzegovina and the FRY (Serbia-Montenegro)”.<sup>138</sup> EU Foreign Ministers also confirmed that they would not support any precipitate withdrawal of UN forces from Bosnia-Herzegovina. As one EU diplomat put it: “For the time being withdrawal has become less likely not more likely if only because no one wants to run in front of what are no more than Karadzic’s bandits”.<sup>139</sup> Instead they agreed to give UN troops greater firepower, including artillery, air support, helicopters and tanks, greater strength of numbers, and a far greater freedom to take offensive action.<sup>140</sup>

On 30 June 1995, EU and its NATO allies met in Paris and agreed on the creation of a 10,000-strong rapid reaction force (RRF).<sup>141</sup> The tasks of the RRF were set out by the Paris meeting as follows: to retaliate in the event of an attack on UN forces; to assist isolated units to regroup; to support the besieged enclaves of eastern Bosnia; to resupply besieged peacekeepers; and to police UN-declared weapons-free zones, notably that around Sarajevo.<sup>142</sup> As Volker R  he, the German Defence Minister, suggested:

if this last chance fails, then only the safety net of withdrawal [of UN troops] remains, but it would be a human catastrophe and highly politically undesirable.<sup>143</sup>

According to Neville-Jones, the deployment of the RRF changed the climate of the war on the ground: “The peacekeepers were treated with greater respect by both sides. They were able to defend

themselves better, face down local Bosnian Serb commanders and – although still relying on Bosnian Serb acquiescence – to extricate themselves from the most vulnerable and dangerous positions, thus enabling air-power to be used at – just – acceptable risk to troops on the ground”.<sup>144</sup>

On 12 June 1995, the former Swedish Prime Minister, Carl Bildt, replaced Lord Owen as the EU’s mediator in the former Yugoslavia. In a statement published the same day, the EU expressed “its gratitude to Lord Owen who has acted on its behalf with nurturing devotion in the International Conference on the former Yugoslavia” and assured Carl Bildt of its “support”.<sup>145</sup>

Meeting with fifteen member states for the first time on 26 and 27 June 1995 in Cannes, the EU Council urged Carl Bildt “to encourage the Zagreb government and the Krajina Serb leaders to resume talks, revive the economic Agreement of 2 December 1994<sup>146</sup> and to accept the draft Agreement known as plan Z4<sup>147</sup> and to urge the Federal Republic of Yugoslavia to support that plan”.<sup>148</sup> Three days later, on 30 June 1995, the German parliament decided to send fighter and transport planes, medical crews and a field hospital to support NATO’s RRF in Bosnia. As Klaus Kinkel declared:

Showing solidarity also means taking on burdens and facing risks and dangers. Our friends and allies need to know that united Germany is not just paying lip service to its responsibilities.<sup>149</sup>

On 11 July 1995, Bosnian Serb forces captured the town of Srebrenica a UN-designated "safe area" in eastern Bosnia-Herzegovina. The fall of Srebrenica prompted an urgent appeal from Jacques Chirac to use the RRF to retake the Muslim enclave. According to a statement from Chirac's office it was:

indispensable to bring a halt to the abandonment of the enclaves by a firm, yet limited military action. Accepting a fait accompli would remove all meaning from the diplomatic efforts undertaken to reach a lasting peace.<sup>150</sup>

However, his request received little support from the EU.<sup>151</sup> As Malcolm Rifkind, the British Foreign Secretary, put it:

The RRF had neither the size nor the capacity to be a war-fighting machine. We would be responsible for a cruel deception if we implied otherwise...One of the great mistakes of the last three years has been both for the United Nations, NATO and for individual governments to use a rhetoric which implies a capability which has never been provided.<sup>152</sup>

By mid-July, Bosnian Serb forces were also attacking Zepa. Meeting on 17 July 1995 in Brussels, EU Foreign Ministers after repeating their "condemnation of the occupation of the safe area of Srebrenica by the Bosnian Serb forces" firmly condemned the "horrible practice of ethnic cleansing carried out in the areas under Bosnian Serb control" and demanded that "they [the Bosnian Serbs] fully respect the human rights of everyone in those areas, whatever their ethnic or religious origins". The Ministers also

“demanded an immediate halt to the attacks against Zepa” and called for “the respect of all the other safe areas under United Nations status”. The EU made an appeal “for full freedom of movement for the civilian population of the safe areas and for UNPROFOR as well as freedom of access for international humanitarian organizations”. The Council of Ministers agreed “to increase the humanitarian effort in order to cope with the terrible problem of new flows of refugees provoked by the latest military action by the Bosnian Serbs”. The Council stressed the need for the international community to act together and repeated its support for Carl Bildt’s efforts to reach a negotiated settlement and instructed him to “pursue his contacts with all the parties in Bosnia-Herzegovina”. The EU recalled that even though the search for a negotiated solution remained “urgent”, it did not “exclude the use of the Rapid Reaction Force in support of the objectives agreed upon in the relevant UN Security Council Resolutions”. The Council finally “heard a detailed report by Commissioner Emma Bonino on the humanitarian situation of refugees in Bosnia-Herzegovina” and expressed its “willingness to provide supplementary humanitarian aid, including financial assistance if needed”.<sup>153</sup> According to Hans van den Broek, EU Foreign Affairs Commissioner, the British and the French governments could still not agree:

on what they should be doing. No one wants to go to war but the EU and the UN must now draw a line in the sand to indicate that, although Srebrenica and Zepa may be lost, we intend to defend Gorazde and the

other enclaves. It is no use talking about a political agreement at any price. If this does not coincide with justice it will not last long.<sup>154</sup>

On 21 July 1995, Foreign and Defence Ministers of the Contact Group and the eleven other main contributors to the UN peacekeeping force in the former Yugoslavia convened in London for a one day-long Lancaster House conference. In a statement issued at the end of the meeting, Malcolm Rifkind, declared that threats to UN personnel would “engage the national interest” of the countries concerned and insisted that if air power needed to be used “decisions can be taken in minutes”.<sup>155</sup> However, the Russian Defence Minister, Pavel Grachev, expressed his opposition to the use of airstrikes since it “would escalate the war, unite the Serbs and provoke an earlier attack on Gorazde”.<sup>156</sup> Following the London conference, Boutros Boutros-Ghali agreed to rescind his right to veto NATO airstrikes to General Bernard Janvier, the French commander of UNPROFOR, thus increasing the credibility of the NATO threat. This decision was welcomed by Warren Christopher: “We do have a substantial improvement and modification in what used to be called the dual-key approach”.<sup>157</sup>

Following Croatia's successful Krajina offensive in August,<sup>158</sup> the EU's diplomatic efforts were sidelined as its envoy Carl Bildt was declared by Zagreb as *persona non grata*. The cause of the Croatian outburst had been some reported remarks of Carl Bildt to the effect that Franjo Tudjman could be indicted for war crimes for Croatia's artillery bombardment of Knin. As Carl Bildt declared:



I am not only a mediator. I am also here to uphold certain values. We can't really condemn the shelling of Sarajevo or the rocket attacks against Zagreb and then say it's OK to do the shelling of Knin. There are moral and European standards to be upheld.<sup>159</sup>

And if this set him at odds with the Croatian President, it also affected his relationship with Bosnian officials who on 17 August 1995 refused to meet him. As a Bosnian government spokesman put it:

Bildt is the EU mediator for a peace process that is dead and therefore it was not deemed necessary to meet him. We gave him the cold shoulder partly out of solidarity with Croatia, where he is *persona non grata*, and partly for our own reasons.<sup>160</sup>

At US instigation a meeting of the Contact Group and the Foreign Ministers of Bosnia-Herzegovina, Muhamed Sacirbey, Croatia, Mate Granic, and Yugoslavia, Milan Milutinovic, was held in Geneva on 8 September 1995. At the end of the talks the parties signed an agreement covering the basic principles of a peace accord, including the continued existence of Bosnia-Herzegovina within its pre-war borders consisting, however, of two entities: the Serb Republic (Republica Srpska) and the Federation of Bosnia-Herzegovina. The accord, which was hailed by Richard Holbrooke, Assistant Secretary of State and the US mediator, as "an important milestone in the search for peace", an opinion shared by US President Clinton, was greeted by Aliza Izetbegovic as "a bitter pill...but not lethal", as it

did not signify a division of Bosnia-Herzegovina, but a division within Bosnia-Herzegovina.<sup>161</sup>

The agreement was also welcomed by an informal meeting of EU Foreign Ministers in Santander on 9 and 10 September 1995 during which they “acknowledged the progress that had been made but stressed the major difficulties that still had to be overcome”. According to EU Foreign Ministers “the momentum given on September 8 in Geneva to a political settlement in the former Yugoslavia should be maintained and the EU should make an active contribution to this positive development”. The aim, as Germany insisted, was a “Marshall Plan for the Balkans”, sponsored by an international body, such as the World Bank or the International Monetary Fund to help promote economic reconstruction and redevelopment. As Klaus Kinkel put it: “If peace is restored in Bosnia, we have to be able to start the reconstruction process straight away”.<sup>162</sup>

At a further meeting held at the US mission to the UN in New York on 26 September 1995, the Foreign Ministers of the three warring factions in Bosnia-Herzegovina agreed on a set of constitutional principles supplementing the ones adopted in Geneva. However, there was no agreement on a ceasefire or how Bosnian territory was to be divided between the two entities.<sup>163</sup>

On 5 October 1995, a 60-day ceasefire was announced in Washington by Richard Holbrooke.<sup>164</sup> The ceasefire was greeted by President Clinton as:

an important moment in the painful history of Bosnia. We must be clear-eyed about it. What matters is what the parties do, not simply what they say...We are now on the right road, but have by no means reached our destination.<sup>165</sup>

#### According to Holbrooke:

I'll be surprised if we didn't have a few crises along the way. But we are headed towards the moment when President Izetbegovic, President Milosevic and a joint Yugoslav-Bosnian Serb negotiating team and President Tudjman and his delegation will sit down in the same area under the auspices of the US and the Contact Group, and start talking about how to end this terrible tragedy.<sup>166</sup>

This moment came on 1 November 1995 and was followed by three weeks of intense negotiations at the US Wright-Paterson airforce base near Dayton, Ohio, at the end of which the warring factions in Bosnia-Herzegovina initialed on 21 November 1995 a peace accord.<sup>167</sup> The agreement provided for the creation of a 60,000-strong NATO force to enforce the peace and to implement a division of Bosnia-Herzegovina into two entities joined by a loose political structure.<sup>168</sup> On 8 and 9 December 1995, a Peace Implementation Conference was held in London. The London meeting abolished the ICFY and pledged full support for a mission of the OSCE which was to prepare and conduct elections across Bosnia-Herzegovina.<sup>169</sup> Finally, on 14 December 1995, in Paris the signing of the Dayton agreement took place.

Meanwhile, the EU Foreign Ministers at a meeting in Luxembourg on 30 October 1995 approved a European Commission Communication regarding reconstruction in the former Yugoslavia.<sup>170</sup> As a statement published by the Spanish presidency of the EU after the Dayton agreement declared, the EU was willing "to contribute to the implementation of the civil aspects of the Peace Agreement and to participate in the international efforts to maintain the reconstruction and stabilisation of the region". It was a view echoed by Jacques Santer and Hans van den Broek. As they put it:

The reconstruction of the countries of ex-Yugoslavia requires a major international effort. The EU and its member states will contribute in a substantial way and in the same spirit as they have carried out their peace keeping and humanitarian operations up to now. The Commission and the World Bank are now in contact in order to organise a pledging conference for all potential donor countries which should take place as soon as possible. Moreover, the EU is ready to play an important part in the civil implementation of the whole peace process.<sup>171</sup>

By the end of November, the European Commission had already approved an initial package of EU measures for the reconstruction of Bosnia-Herzegovina by releasing ECU 4.5 million for four projects: the first phase of the repair work for the airport in Sarajevo; the re-establishment of the high-tension electricity link Zenicka-Tuzla; repair of six schools in the region of Tuzla and eight

university buildings in Sarajevo; and the reconstruction of an area of Sarajevo.<sup>172</sup>

### **5.3 From Political Cooperation to Joint Action: Bridging the capability-expectations gap?**

According to Joao de Deus Pinheiro, Portugal's Foreign Minister at the time, nothing in substance in the Twelve's handling of the Yugoslav conflict would have changed if the CFSP provisions had been in place in 1991. Only main guidelines could have been fixed according to other procedures.<sup>173</sup> As Philippe de Schoutheete de Tervarent opined:

In legal terms we were operating in the framework of EPC until the entry into force of the Maastricht Treaty on November 1, 1993. That being said, it does not make much difference. I do not believe that if the TEU had been enforced, the problems would have been any easier to solve. One should not overestimate the influence which these legal aspects have on the decision-making mechanism especially since in fact the decision-making mechanism is not at all that different. The way CFSP works under Maastricht is not all that different from the way it used to work as EPC and the problems we face, the incapacity to decide, some hesitation on committing force, of taking very strong actions, would have been the case with or without Maastricht. We must not forget that in many of these cases solutions such as that can only be settled if you have a big stick and you are ready to use it. Collectively because of their history Western

European countries hesitate to use big sticks in that sort of problems and maybe Yugoslavia had to go through this terrible period of suffering in order to find its own solution. It is also a mistake to think that you can solve problems at that part of the world without strong contribution from the people concerned.<sup>174</sup>

**As Douglas Hurd also underlined:**

It is argued, for example, that somehow we would have achieved more as a European Union in Bosnia if we had put different procedures to work around the table of 12 Ministers. This is unreal. Our aims in Bosnia were consistent and agreed, but limited. We worked to prevent the spread of war. We ironed our differences among ourselves. We did not, like our grandfathers, take different sides in the Balkans. We produced peace makers and ideas for peace. We mitigated the suffering by providing aid and troops to protect that aid. But we did not, any of us, intervene, to enforce a particular solution on the warring factions. No one in my hearing from any country ever suggested that we should. That we made mistakes I do not doubt...I do not believe that any of the facts which I have mentioned would have been different if the Treaty of Maastricht had provided for majority voting on the main issues of foreign policy.<sup>175</sup>

**In line with this analysis, Luigi Mattiolo noted:**

The point is that CFSP could not have made a difference. There are among the member states, with respect to such a close region of strategic importance to all of us, specific historical links and traditional friendships. If you consider also that no European government could or was able to

foresee the consequences of the disintegration of Yugoslavia, you can understand why some countries were much more open than others to recognition of single fragments of former Yugoslavia. I do not want to say that the most reluctant to such a step among European member states were wiser or were more prudent or more sophisticated than those so immediately in favour of self-determination or right of independence or of a negotiating divorce from Belgrade. It depends on the history of our countries.<sup>176</sup>

The war in former Yugoslavia provides a most telling example of the fact that although the TEU put at the member states' disposal the mechanisms and procedures for a more coherent approach to external affairs such as joint actions, it did not provide them with appropriate and adequate instruments for achieving the ambitious objectives set out in Article J.1(2) of the TEU.<sup>177</sup>

For example, the adoption by the Council of Foreign Ministers on 8 November 1993 of a joint action<sup>178</sup> aimed at increasing the EU's contribution towards the resources placed at the disposal of the Office of the United Nations High Commissioner for Refugees and supporting the convoying of humanitarian aid in Bosnia-Herzegovina, in particular through the identification, restoration and preservation of priority routes, was seen as an appropriate instrument enabling the Union "to assume its responsibilities in the service of peace and international co-operation".<sup>179</sup>

On 16 May 1994, EU Foreign Ministers meeting in Brussels decided to adapt and extend the application of Decision 93/603/CFSP in

order to allocate 32 million ECU for the European Union Administration of Mostar (EUAM). Mostar had suffered two bouts of fighting. In 1991 Muslims and Croats jointly fought off an attack by the Serb-dominated Yugoslav army. But in 1993, fearing they would be swallowed up in a Muslim-dominated Bosnia-Herzegovina, the Croats expelled thousands of Muslims living on the west bank of the Neretva river. The Muslims promptly cleansed the east bank of Croats.<sup>180</sup> Restoring freedom of movement throughout Mostar and creating a single, unified Muslim-Croat police force were central objectives of the EU operation.<sup>181</sup>

According to the 16 May 1994 Council decision, the administrator, was to “assess the requirements and the means necessary for their financing and...communicate those particulars to the Presidency”. The latter, “assisted by an advisory working party composed of representatives of the Member States and in association with the Commission” was to “issue guidelines, determine what measures are needed to meet these requirements and decide to release the amounts necessary to finance them” in instalments.<sup>182</sup>

On 13 June 1994, the EU Troika, i.e. the Foreign Ministers of Germany, Greece and France (Klaus Kinkel, Karolos Papoulias and Alain Juppé), Hans van den Broek for the European Commission, Peter Kooijmans on behalf of the Presidency of the WEU, the representatives of the Republic and Federation of Bosnia-Herzegovina, Aliza Izetbegovic and Kresimir Zubak, and the mayors of East and West Mostar, Safet Orucevic and Mijo Brjkovic, agreed to a Memorandum of Understanding (MoU) to establish the



conditions for the EU Administration of Mostar for a two-year period in collaboration with the WEU.<sup>183</sup> Among the conditions was:

- to give the parties time to find a lasting solution for the administration of Mostar;
- to contribute to a climate leading to a single, self-sustaining and multi-ethnic administration of the city;
- to hold democratic elections before the end of the EU administration of Mostar;
- to assist in the return to normal life in the city;
- to restore public utilities;
- to ensure the protection of human rights;
- to enable the return of refugees and displaced persons;
- to assist in organising and providing humanitarian aid;
- to prepare and implement programs for economic reconstruction;
- to ensure the maintenance of public order;
- to reestablish all public functions; and
- to ensure the national, religious and cultural identity of all the people in the area under EU administration in compliance with the Constitution of the Federation of Bosnia-Herzegovina.<sup>184</sup>

The aims and principles of the MoU were further developed in a strategy document dated 13 May 1995. The main criteria in the strategy document considered fundamental to the commonly accepted concept of a unified city included:

- a population willing to live under a common set of rules;
- a central municipal authority acceptable to the population;

- a common legal framework and guaranteed rights for all citizens independent of religion, language and culture;
- a common public service tax system;
- a common police force; and
- freedom of movement.

The principal assumptions against which the overall EUAM strategy document was prepared were that:

- the Federation between the Bosnians and the Bosnian-Herzegovinan Croats would remain intact and further developed;
- the United Nations Protection Force would remain in the region with its existing strength unchanged;
- the shelling of Mostar by the Bosnian Serb Army would not reach a level that rendered the task of the EU administration impossible; and
- the EUAM would progressively build the confidence of the citizens of Mostar and not be obstructed in achieving its aims and objectives by any of the different parties.<sup>185</sup>

According to Articles 12 and 13 of the MoU a Unified Police Force of Mostar (UPFM) was to be established with the support of a 182-strong police force element from 12 WEU countries. The UPFM was entitled to “organize, administer, direct, supervise and monitor some police functions, such as criminal investigations, public relations, handling of some sensitive inter-ethnic policing under supervision of the EUAM, routine patrols, traffic control, and the control of persons and goods”.<sup>186</sup> This was the first time the WEU involved itself in a fully integrated joint action under the TEU.

Already, on 7 October 1993, a "Mostar" working group was set up within the WEU framework. During the first half of 1994, it examined the personnel and financial requirements for sending a WEU police unit to Mostar. The task of such a unit was to advise the EU administrator in Mostar, recruit and train local police forces, help set up the necessary transmission systems and participate in police actions. In April 1994, WEU sent two top-level police experts and two members of the Planning Cell to Mostar, in the framework of a preparatory mission by the European Union.<sup>187</sup>

Unfortunately, when, on 23 July 1994, Mostar formally came under EU administration, with the aim of overcoming the ethnic division between Muslims and Croats through a process of technical and economic reconstruction and political and social reunification, none of these conditions were fulfilled in practise due to Muslim and Croatian intransigence. The non-cooperation and obstruction of efforts reached a climax in February 1996 when Croats attacked Hans Koschnick's car, the EU Representative to Mostar, as he moved to implement a Mostar administration scheme – allotting three districts each to the Muslims and the Croats and a central shared seventh district.<sup>188</sup> This made it virtually impossible for the EU team to succeed although its presence made a significant difference to people's lives in Mostar by allocating 150 million ECU over a period of two years to the restoration of water and electricity supplies and the rebuilding of houses, schools and bridges.<sup>189</sup>

**Cooperation with the WEU police force was not a success story either. According to Arnhild and David Spence:**

**WEU personnel were prepared to take orders from the WEU's political authorities only, not from the EU administration. The command structure had clearly not been agreed by the EU and WEU in advance of the operation. Under the prevailing circumstances, the city of Mostar was not under EU administration in any meaningful way.<sup>190</sup>**

**What the EU joint action in Mostar revealed, therefore, in terms of the EU's foreign and security policy, was both the opportunities for stepping up from EPC by exhibiting foreign policy behaviour of an active, innovative nature and the limits to common action. As Jörg Monar suggested, three major lessons were drawn from the EU Administration of Mostar: for major joint actions like Mostar, the Union needed more effective planning in the initial phase; major CFSP operations needed more continuity and a clearer assignment of responsibilities during implementation; and major CFSP operations needed an adequate budgetary basis, both in terms of resources and budgetary procedures.<sup>191</sup>**

**Thus, although the joint action was rather successful in that it interlinked the efforts of member states towards a common aim, made an appreciable contribution to the pacification of the region through the administration of Mostar, and as Giovanni Jannuzzi observed, preserved and consolidated a fundamental experience of the EPC, namely the interrelationship between political objectives and economic instruments,<sup>192</sup> it was far from being an adequate**

response to the conflict in former Yugoslavia since it failed to stop the fighting. As a result, "the states most closely concerned have considered it more effective to take action outside the framework of the CFSP",<sup>193</sup> through *ad hoc* arrangements like the Contact Group which was created "to combat evident deficiencies in the decision-making process of the EU, the lack of a EU foreign policy that covers all topics and regional areas in a coherent and operational way, the possibility that one member state can block decisions and actions wanted by the other member states, etc.". <sup>194</sup>

Therefore, it was becoming increasingly apparent that "the provisions of the Treaty cannot alone provide ready-made solutions to problems, but only the means to tackle them. The political will to act is a determining factor in the proper use of the instruments of the Treaty".<sup>195</sup> However, as Jannuzzi suggested:

Political will – and adequate structures – do not exhaust CFSP's problem. Foreign policy requires effective instruments. The Union undoubtedly has political and economic clout. What is missing is the military dimension...We must face the fact that in some cases, the protection of European interests may require military action either in support of political action or instead, should the latter fail. An adequate military instrument is in fact one of the elements that characterizes effective foreign policy.<sup>196</sup>

What does this mean for the analysis of the political and security identity of the EU? According to Jonathan Eyal, the ultimate lesson of Yugoslavia is that if:

France, Britain, Germany and the US agree on a course of action, nearly everything is possible; if one of these states seriously disagrees, almost nothing can be done. No amount of bureaucratic "construction" from Brussels is likely to change this equation, if only because in defence matters military hardware speaks louder than any vision.<sup>197</sup>

The notion of a common foreign and security policy implies that there are shared assumptions about such issues as sovereignty, peace, security and the nature of threats. The basis for such a policy may be the power of a specific state or states or the power of supranational authorities. If the characteristics of the policy as a whole and the nature and needs of the participants are in congruence, then the policy may be exceptionally effective. In the case of the EU, however, they are not, and this is what gives rise to important questions about the source of the policy and about the relationship between the capacities of the policy and the expectations of individual actors outside or within it. Unless these issues are addressed the CFSP will fail "to achieve common action for the common good" and the EU "will fail to influence significantly the development of any new European security system".<sup>198</sup> In the meantime, it is difficult to disagree with Nicole Gnesotto that:

the more the Europeans are likely to be prudent and minimalist in their common approach to the risks they are prepared to run and the price they are willing to pay, nationalist in the order of priority they allocate to their security interests, and inclined to pass to "others" the responsibility for

the management of crises in Europe...the more the very existence of Europe is at risk...In this sense, the Yugoslav experience has not led to the abandonment of the objective of a common European policy: it has had the opposite effect.<sup>199</sup>

EU involvement in finding a settlement for the war in former Yugoslavia was based on a sense of responsibility and a feeling of pride: the Union ought to have been able to find a peaceful solution for the problems through diplomatic negotiations, both in Croatia and Bosnia-Herzegovina.<sup>200</sup> Only later did it transpire "that the EC's actual capabilities and hence the credibility of its CFSP aspirations could be eroded if the EC failed to live up to highly exaggerated expectations".<sup>201</sup> The rapid evolution of events in former Yugoslavia has confronted the member states with the reality that the dangerous gap between the EU's actual capabilities and will to act and the expectations as to what it can do cannot be easily closed. As Jonathan Eyal opined:

The failure in Yugoslavia was not merely one of will; fundamentally, it was a disaster created by the Europeans' eagerness to substitute "vision" for reality. The European Community has tried to run before it could walk. "Europe's hour" may yet arrive one day. But only when its foreign policy and security structures are in place before, rather than after a conflict erupts...<sup>202</sup>

However, the incongruities between rhetoric and reality have to be resolved.<sup>203</sup> For, as Brenner suggests:

in the Yugoslav crisis the Community has crossed a threshold from which there is no going back. Whatever the lapses, and frictional costs, of its initial venture into the security arena, it is now unthinkable that EC members will shrink from the responsibility of tending to future threats to continental peace...For it is in Europe, dealing with European questions, that the Twelve will succeed or fail in forging a common security policy.<sup>204</sup>

What were the implications of the war in former Yugoslavia for the EU's foreign and security identity? The political disintegration of former Yugoslavia raised fundamental questions about security and defence cooperation in Western Europe, forcing Western governments to treat reform of the EU's capacity for a common foreign policy and NATO reform as two inextricably intertwined processes. For some people the alleged failure of the EU over Yugoslavia demonstrated the futility of attempting to pursue a single foreign policy with majority voting. The obvious consequence of the Yugoslav experience was that, for the time being, NATO should remain the principal organisation for military collaboration within Europe. For others, the Yugoslav episode provided further proof of the value of an integrated European foreign policy and the necessity for an independent West European defence organisation.<sup>205</sup> Those who believe that common foreign policy is desirable attributed EU's inadequate response to the conflict to institutional weaknesses. The breaking out of the war coincided with the Intergovernmental Conference on Political Union and therefore CFSP was still too much in its infancy. And in any case the Yugoslav crisis "cannot be used as a test of the newborn



CFSP".<sup>206</sup> This simple statement, however, was used to conceal the fact that:

Yugoslavia no longer seemed as central to Western security interests, as it had been during most of the Cold War era...Common to Americans and Europeans [was] the feeling that national interests were not sufficiently at stake in the Yugoslav conflict to justify the commitment of military force.<sup>207</sup>

In line with this analysis, Josef Joffe noted:

When [statesmen] command the youth of their countries to face death in battle, there must be compelling national interests to justify the sacrifice. In Bosnia the strategic argument was hard to make, unless it was clad in terms of remote consequences such as the possible spillover of the war into the larger region. There was no oil to be safeguarded, no nuclear-armed dictator to be stopped, no strategic balance to be restored. Nor did the Balkan war offer a reasonable chance of success at a reasonable price.<sup>208</sup>

In addition, as Susan Woodward insightfully noted the conflict in former Yugoslavia fuelled by unrestrained nationalism and emotional appeals to the past, baffled the West, which saw it as an anachronistic and unpleasant reminder of old ethnic and religious conflicts that modern Europe had left behind:

...outsiders insisted that the Yugoslavs were not like them, that such atrocities always characterized the troublesome region and its penchant

for war and balkanization, that more than anything else the violence demonstrated the difference between *them* and *us* [emphasis added]...Even the morally outraged used a language of distinctions in their label of barbarism: the “otherness” of nations capable of such evil. This act of dismissal...justified inaction.<sup>209</sup>

In this respect the obvious constraints on the EU's international influence can only be overcome by a “change of mentality”. According to the former President of the European Commission, Jacques Delors, the EU:

needs to be more aware than it is today of the problems of peace and security in a turbulent world. It needs the political will to confront the dangers and the determination to acquire the necessary institutional and financial resources.<sup>210</sup>

In this state of affairs CFSP was like a giant who had no arms and legs; to walk and work, it needed artificial limbs. The limbs, which had to be supplied by the member states, were not, however, forthcoming. As Nuttall points out this was:

...perfectly defensible. What is not defensible is to demand more far-reaching results, while continuing to refuse those changes in the system which alone can bring them about.<sup>211</sup>

It was under these circumstances that negotiators met in the 1996 IGC to discuss improvements to the CFSP machinery.

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<sup>1</sup> Robert M. Hayden, "The Partition of Bosnia and Herzegovina, 1990-1993", *RFE/RL Research Report* (28 May 1993), 1-17.

<sup>2</sup> Holding a referendum had been one of the requirements stipulated by the Arbitration Commission before it would consider diplomatic recognition. The overwhelming majority of Serbs, who accounted for 30 per cent of the population, boycotted the referendum. The Bosnian-Serb leader, Radovan Karadzic, declared that they were not going "to accept an independent Bosnia-Herzegovina". On 27 March the "Serbian Republic of Bosnia-Herzegovina" was proclaimed. Its loyalty was to the "all-Serb state of Yugoslavia", *Keesing's*, March 1992, p.38832.

<sup>3</sup> EPC Press Release, P.32/92.

<sup>4</sup> *Agence Europe*, 11/3/1992, No 5686. For the full text, see Appendix 6.

<sup>5</sup> EPC Press Release, P.40/92.

<sup>6</sup> *Agence Europe*, 7/4/1992, No 5706.

<sup>7</sup> EPC Press Release, P.46/92.

<sup>8</sup> EPC Press Release, P.56/92.

<sup>9</sup> *EC Bulletin*, 6/1992, 91.

<sup>10</sup> Zachary T. Irwin, "Yugoslavia's Relations with European States" in Sabrina Petra Ramet and Ljubisa S. Adamovich, eds., *Beyond Yugoslavia. Politics, Economics, and Culture in a Shattered Community* (Boulder, Colorado: Westview Press, 1995), 381. In this regard, Nicholas Miller opined that "...pressure in the form of sanctions [was] destined to fail in the short and medium term, as long as its goal [was] to nurture opposition to Milosevic's policies in Bosnia and Croatia". "...while Serbian politicians", wrote Miller, "differ on many important economic and political issues, the national question is not often one of them." In Miller's opinion, "...the thrust of their [Serbia's political parties] politics remains the same - to unify all Serbs in a single state, no matter what the means or the cost...The lesson is not that there is no diversity in Serbian politics; it is merely that a remarkable unity exists where the Serbian national question is concerned", Nicholas J. Miller, "Serbia Chooses Aggression", *Orbis* **38**, 1 (1994), 59-66.

<sup>11</sup> *Agence Europe*, 11/7/1992, No 5770.

<sup>12</sup> "Unrepentant, Mitterrand explained that first, informing a large number of people would have made the trip more dangerous and second, his initiative was a perfect example of subsidiarity. "...the European Council has decided upon a policy to follow in Yugoslavia but inside that policy, each country maintains its right to initiatives as long as it is not a substitute for the Community.", Pia Christina Wood, "France and the Post Cold War Order: The Case of Yugoslavia", *European Security* **3**, 1 (1994), 139.

<sup>13</sup> For the full texts, see Appendix 7.

<sup>14</sup> According to Noel Malcolm the draft constitution was: "...a "solution" arrived by taking the demands of the Serbs, Croats and Muslims and trying to find some geometrical mid-way point between them. The result gave the Serbs enough to make the Muslims feel that the Serbs were being rewarded for their actions, and enough also for the Serbs to feel that if they continued their actions they could press for more", Noel Malcolm, *Bosnia. A Short History* (London: Macmillan, 1994), 247.

<sup>15</sup> *Guardian*, 29 October 1992.

<sup>16</sup> David Owen, *Balkan Odyssey* (London: Victor Gollancz, 1995), 67.

<sup>17</sup> *Financial Times*, 9 December 1992.

<sup>18</sup> *Agence Europe*, 4-5/1/1993, No 5890.

19 David Rieff, *Slaughterhouse. Bosnia and the failure of the West* (London: Vintage, 1995), 118. As Malcolm commented: "The merits of the Vance-Owen plan were its insistence that refugees should be allowed to return to their homes throughout Bosnia, and its provision that the cantons corresponding to Serb-occupied areas would not be connected on the map in such a way as to make it easy for them to seek to join Serbia as a single territorial block", Malcolm, op. cit., 247-248.

20 Owen, op. cit., 89-90.

21 According to Ed Vulliamy: "The plan, for reasons best known to its architects, played fairly godmother to the Croats, whom it treated with illogical and gratuitous magnanimity. With seventeen per cent of the population, they were awarded some twenty-seven per cent of the land, most of it in a cohesive block conveniently adjacent to the border of Croatia proper...The Serbs were not the only people in Bosnia who wanted to take what they could grab and accede to a mother republic. But unlike the Serbs, the Croats needed a vehicle which could help them look as though they were annexing their corner of Bosnia with some legitimacy. Through its generosity to the Croats, the Vance-Owen plan gave Mate Boban and the HVO just the excuse they needed to take their brutish programme into top gear...The word for "thank you" in Serbo-Croat is "Hvala"...A dry joke circulating among Muslims had it that HVO stood for "Hvala Vance-Owen"", Ed Vulliamy, *Seasons in Hell* (London: Simon & Schuster, 1994), 249-250, 253 & 255.

22 *Keating's*, January 1993, 39277.

23 *EC Bulletin*, 1-2/1993, 92.

24 According to Graham Messervy-Whiting, the first serving British military adviser to an EC-appointed statesman – Lord Owen – the EC states: "...were four-square behind the Co-Chairmen when they took the Vance-Owen Plan to New York in February 1993", Graham Messervy-Whiting, *Peace Conference on former Yugoslavia: The politico-military interface* London Defence Studies 21 (London: Brassey's for the Centre for Defence Studies, 1994), 13.

25 *Financial Times*, 1 February 1993.

26 *Financial Times*, 10 February 1993.

27 *Financial Times*, 8 February 1993.

28 Rieff, op. cit., 118.

29 Owen, op. cit., 108-109.

30 *Agence Europe*, 4/2/1993, No 5912.

31 *Financial Times*, 1 February 1993.

32 *Agence Europe*, 5/2/1993, No 5913.

33 *Financial Times*, 16 February 1993.

34 *Ibid.*

35 *Agence Europe*, 12/2/1993, No 5918.

36 *European Report*, 17/2/1993, No 1836.

37 *Guardian*, 2 March 1993.

38 *Ibid.*

39 *Financial Times*, 4 March 1993.

40 *Ibid.*

41 *Guardian*, 7 April 1993.

42 EPC Press Release, P.31/93.

43 *Guardian*, 14 April 1993.

44 *Guardian*, 15 April 1993.

45 *Guardian*, 22 April 1993.

46 *Guardian*, 16 April 1993.

47 *Guardian*, 27 April 1993.

48 *Keesing's*, April 1993, 39425.

49 *Official Journal of the EC*, No L 102, 28 April 1993.

50 *Agence Europe*, 26-27/4/1993, No 5968.

51 *European Report*, 7/5/1993, No 5975.

52 As Rieff suggested: "To their credit, Vance and his able deputy, Herbert Okun, resigned soon after, unwilling to negotiate another agreement that they knew would be morally unjustifiable. Owen, for his part, did not resign. The joke about him in Bosnia was that "Dr Death", as he was called, was now responsible for the destruction of two British political parties and a small Balkan country.", Rieff, *op. cit.*, 119.

53 *Guardian*, 7 May 1993.

54 *Guardian*, 11 May 1993.

55 *Guardian*, 7 May 1993.

56 *Agence Europe*, 10-11/5/1993, No 5977.

57 *Guardian*, 19 May 1993.

58 EPC Press Release, P.47/93.

59 Eurobarometer, June 1993, No 39.

60 *Guardian*, 24 May 1993.

61 As Malcolm recalled: "When President Izetbegovic heard the news of this agreement – the foreign ministers having not even bothered to consult him in the matter – he issued the following statement: "If the international community is not ready to defend the principles which it itself has proclaimed as its foundations, let it say so openly, both to the people of Bosnia and to the people of the world. Let it proclaim a new code of behaviour in which force will be the first and the last argument."", Bosnian Government Information Centre, statement, quoted in Malcolm, *op. cit.*, 251.

62 Owen, *op. cit.*, 172.

63 *Agence Europe*, 2/6/1993, No 5991.

64 *Guardian*, 28 May 1993.

65 *Ibid.* Lord Owen claimed that van den Broek: "...had for some months shown signs of being traumatized by his own painful experiences during the Dutch Presidency in the second half of 1991. It was as if he regretted not being able to mobilize opinion for military intervention at the time of the shelling of Vukovar and Dubrovnik, and was keen to be seen at all times as a hawk. He therefore kept trying to put forward a military option without any consistent or coherent strategy for implementing it or sustaining it. As a consequence I fear he was barely listened to by the other Foreign Ministers in the Council when he argued his rather maverick positions, which seemed to have no firm support in the Commission", Owen, *op. cit.*, 213.

66 EPC Press Release, P.53/93.

67 *Guardian*, 10 June 1993.

68 For an edited version of the joint Serbian-Croatian constitutional plan, see Appendix 8.

69 *Guardian*, 18 June 1993.

70 *Ibid.*

71 *European Report*, 24/6/1993, No 1869.

72 *Guardian*, 18 June 1993.

73 On 2 April the Norwegian Foreign Minister, Thorvald Stoltenberg, was confirmed as a replacement to Cyrus Vance, who stepped down in May.

74 *EC Bulletin*, 6/1993, 19-20.

75 *Guardian*, 23 June 1993.

76 *Agence Europe*, 23/6/1993, No 6006.

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- 77 *Keesing's*, July 1993, 39563.
- 78 *Keesing's*, August 1993, 39604.
- 79 *Guardian*, 30 September 1993.
- 80 *Guardian*, 9 November 1993.
- 81 *Official Journal of the EC*, No L 286, 20 November 1993.
- 82 *Guardian*, 18 January 1993.
- 83 *Keesing's*, November 1993, 39743.
- 84 *Guardian*, 2 December 1993.
- 85 European Union, P.113/93.
- 86 *Guardian*, 13 December 1993.
- 87 CFSP/94/4, 21/1/1994.
- 88 *Guardian*, 26 January 1994.
- 89 *Guardian*, 28 January 1994.
- 90 David Owen, "The Future of the Balkans", *Foreign Affairs* **72**, 2 (1993), 4.
- 91 For a detailed account of the explosion of a mortar shell on 5 February in the northeast corner of Sarajevo's crowded Markale marketplace see David Binder, "Anatomy of a massacre", *Foreign Policy* **97** (1994), 70-78.
- 92 *EU Bulletin*, 1-2/1994, 65.
- 93 *Guardian*, 8 February 1994.
- 94 *Ibid.*
- 95 *Keesing's*, February 1994, 39870.
- 96 *Guardian*, 11 February 1994.
- 97 *Daily Telegraph*, 11 February 1994.
- 98 As explained by Anatoly Adamishin, deputy Foreign Minister, Russia's policy towards Bosnia-Herzegovina differed from that of NATO on several points: Moscow did not consider that the UN had already granted NATO the prerogative of launching airstrikes without further consultation in the Security Council; Bosnian Muslims had already become virtually the main obstacle on the road to settlement, because they were preparing for military action, particularly against the Croats; and there was no proof that Bosnian Serbs had launched the mortar attack which killed 68 people in Sarajevo market, *Daily Telegraph*, 11 February 1994.
- 99 *Guardian*, 18 February 1994.
- 100 *Keesing's*, February 1994, 39871.
- 101 *Guardian*, 3 March 1994.
- 102 For the main points of the Constitution of the Federation of Bosnia-Herzegovina, see Appendix 9.
- 103 PRES/94/31, 8/3/1994.
- 104 *EU Bulletin*, 4/1994, 58.
- 105 The meeting in Luxembourg followed two UN airstrikes against Bosnian Serb positions around Gorazde which however proved insufficient to deter the repeated Bosnian Serb tanks, artillery and infantry attacks.
- 106 *Daily Telegraph*, 19 April 1994.
- 107 *EU Bulletin*, 4/1994, 58-59.
- 108 *Daily Telegraph*, 19 April 1994.
- 109 Owen, *Balkan Odyssey*, 275.
- 110 *Guardian*, 26 April 1994.
- 111 Pauline Neville-Jones, "Dayton, IFOR and Alliance Relations in Bosnia", *Survival* **38**, 4 (1996-97), 46.

- 112 Lawrence Freedman, "Why the West Failed", *Foreign Policy* 97 (1994), 54.
- 113 Neville-Jones, op. cit., 47.
- 114 Stephan Keukeleire, "Directorates in the CFSP/CESDP of the European Union: A Plea for "Restricted Crisis Management Groups"", *European Foreign Affairs Review* 6, 1 (2001), 80.
- 115 *Guardian*, 14 May 1994.
- 116 *Guardian*, 20 May 1994.
- 117 *Keesing's*, July 1994, 40110.
- 118 *EU Bulletin*, 7-8/1994, 68.
- 119 *Guardian*, 7 July 1994.
- 120 As a formal statement issued in Belgrade put it: "If you [the Bosnian Serbs] fail to accept peace, you will commit the greatest ever treason against Serb national interests", *Guardian*, 3 August 1994.
- 121 *Guardian*, 4 August 1994.
- 122 *Guardian*, 5 August 1994.
- 123 *Agence Europe*, 12-13/9/1994, No 6313.
- 124 *Observer*, 25 September 1994.
- 125 A further fissure in the transatlantic relationship was averted by the Clinton administration when it persuaded Izetbegovic to declare that he wanted to defer lifting the arms embargo for six months, Owen, *Balkan Odyssey*, 304.
- 126 *Keesing's*, November 1994, 40287.
- 127 *Guardian*, 14 November 1994.
- 128 *Guardian*, 1 December 1994.
- 129 *Guardian*, 3 December 1994.
- 130 *EU Bulletin*, 12/1994, 102.
- 131 *Guardian*, 12 December 1994.
- 132 The accord envisaged: the withdrawal of forces from frontlines across Bosnia-Herzegovina, UN patrols between the combatants, the removal and UN monitoring of heavy weaponry, and the relief of besieged Muslim enclaves by the opening of UN-secured "blue routes". In return for the opening of a safe route through Bosnian Serb lines in and out of Sarajevo, Bosnian government forces were to vacate positions on Mount Ingman south-west of the capital, *Guardian*, 2 January 1995.
- 133 On 12 January, President Franjo Tudjman, in a letter to the UN Secretary General, Boutros Boutros-Ghali, stated that the UN mandate to patrol the quarter of Croatia held by rebel Serbs since the 1991 Serb-Croat war was not to be renewed when it expired at the end of March.
- 134 *EU Bulletin*, 1-2/1995, 87.
- 135 *Guardian*, 7 March 1995.
- 136 *Guardian*, 13 March 1995.
- 137 *European Report*, 22/3/1995, No 2026.
- 138 *EU Bulletin*, 5/1995, 51-52.
- 139 *Guardian*, 30 May 1995.
- 140 *Ibid.*
- 141 Three days later, on 31 May, President Bill Clinton, pledged to deploy US ground troops to assist NATO in any "reconfiguration" of UNPROFOR personnel, i.e. in operations to extract UNPROFOR troops from dangerous situations, *Keesing's*, June 1995, 40607.
- 142 *Keesing's*, June 1995, 40606.
- 143 *Guardian*, 9 June 1995.
- 144 Neville-Jones, op. cit., 48.
- 145 *EU Bulletin*, 6/1995, 102-103.

146 On 2 December 1994 officials of the self-proclaimed Republic of Serbian Krajina (RSK) signed an economic agreement with Croatian officials. The agreement envisaged the re-establishment of key services between Croatia and RSK, including the reintegration of water, oil and electricity supplies and the opening of key roads, *Keesing's*, December 1994, 40328.

147 On 19 October 1994 a "Mini-Contact Group" (otherwise known as the Zagreb Group or the Z4) composed of the Ambassadors to Croatia of the USA and Russia and two representatives of the EU was formed to resolve the impasse between Croatia and the rebel RSK. The Z4 proposed that the Krajina Serbs were reintegrated into Croatia, but awarded extensive autonomy. In exchange fertile land and oil wells currently under RSK control would revert to Croatian sovereignty; and Croat refugees would be allowed to return to Krajina, *Keesing's*, October 1994, 40248.

148 EU DOC/95/6, 27/6/1995.

149 *Guardian*, 1 July 1995.

150 *Guardian*, 14 July 1995.

151 In a declaration issued by the Presidency on behalf of the EU on the situation in Srebrenica, the Fifteen: strongly condemned the attacks launched by the Bosnian Serb forces on the safe area of Srebrenica and their subsequent occupation of the town; demanded an immediate halt to the Bosnian Serb forces' offensive and UNPROFOR personnel being held, and full freedom of movement for the civil population of Srebrenica and for UNPROFOR; requested that humanitarian aid organisations be allowed unrestricted and immediate access to the Srebrenica area in order to ensure supplies of water, food and medicines, and to enable the wounded to be transported to hospitals; expressed their grave concern at the bombardment of Zepa and demanded that it stop immediately, PESC/95/68, 13/7/1995.

152 *Guardian*, 13 July 1995.

153 *EU Bulletin*, 7-8/1995, 88.

154 *Guardian*, 18 July 1995.

155 *Guardian*, 22 July 1995.

156 *Ibid.*

157 *Guardian*, 27 July 1995. The "dual key approach" required both NATO and the UN to agree on the use of airstrikes before any action could be taken.

158 In early August Croatian government forces launched a highly successful operation to recover control of the Krajina region from the Croatian Serbs who had held it since 1992.

159 *Guardian*, 8 August 1995.

160 *Financial Times*, 18 August 1995, reproduced in *Keesing's*, August 1995, p.40690.

161 *Keesing's*, September 1995, 40735.

162 *European Report*, 13/9/1995, No 2066.

163 For the full text of the Geneva Agreement on Basic Principles and Further Agreed Basic Principles, see Appendix 10.

164 For the full text of the ceasefire, see Appendix 11.

165 *Guardian*, 6 October 1995.

166 *Guardian*, 6 October 1995.

167 The Dayton agreement was preceded by two other important accords. On 10 November Presidents Tudjman and Izetbegovic signed an agreement designed to reinforce the March 1994 Muslim-Croat Federation agreement, and on 12 November Croatian Serbs in eastern Slavonia



agreed to the region's eventual reintegration into Croatia, *Keesing's*, November 1995, 40830.

168 For a summary of the main points of the agreement, see Appendix 12.

169 *Independent*, 11 December 1995.

170 For the full text, see Appendix 13.

171 *Agence Europe*, 23/11/1995, No 6611.

172 *Agence Europe*, 29/11/1995, No 6615.

173 *Agence Europe*, 10/1/1992, No 5643.

174 Philippe de Schoutheete de Tervarent, Représentation Permanente de la Belgique auprès de l'Union Européenne, interview with author, Tape recording, Brussels, 24 June 1996.

175 Douglas Hurd, "Europe Looks East", *Winston Churchill Memorial Lecture*, Luxembourg, 14 March 1996.

176 Luigi Mattiolo, Secretariat General du Conseil, DG E – PESC, Direction Affaires Générales, interview with author, Tape recording, Brussels, 25 June 1996.

177 As Jacques Santer, President of the European Commission, emphasised: "the general objectives laid down in Article J.1(2) centred as they are on the concept of identity on the international scene (Article B), represent a direct continuation of the entire history of the European Communities, and they constitute a first positive result.", Jacques Santer, "The European Union's security and defence policy. How to avoid missing the 1996 rendez-vous", *NATO Review* (November 1995), 4.

178 Council Decision 93/603/CFSP, L 286, 20/11/1993. According to Neil Winn and Christopher Lord this joint action was "never realised due to continuous Bosnian Serb harassment of the convoys", Neil Winn and Christopher Lord, *EU Foreign Policy beyond the Nation-State. Joint Actions and Institutional Analysis of the Common Foreign and Security Policy* (Houndmills: Palgrave, 2001), 104, footnote 8.

179 *Agence Europe*, 31/10/1993, No 6098.

180 *Economist*, 16 December 1995.

181 *Guardian*, 31 October 1995.

182 *EU Bulletin*, 5/1994, 54.

183 *EU Bulletin*, 7-8/1994, 66 and Fraser Cameron, *The Foreign and Security Policy of the European Union. Past, Present and Future* (Sheffield: UACES & Sheffield Academic Press, 1999), 51.

184 Cameron, *Ibid.*, 52.

185 Winn and Lord, *op. cit.*, 83.

186 *Ibid.*, 84-85.

187 Assembly of the Western European Union, *Western European Union* (1998), 113.

188 *Guardian*, 15 February 1996.

189 *The Sunday Times*, 24 December 1995.

190 Arnhild Spence and David Spence, "The Common Foreign and Security Policy from Maastricht to Amsterdam" in Kjell A. Eliassen, ed., *Foreign and Security Policy in the European Union* (London, Thousand Oaks, New Delhi: SAGE, 1998), 55-56.

191 Jörg Monar, "Editorial Comment – Mostar: Three Lessons for the European Union", *European Foreign Affairs Review* 2, 1 (1997), 1-5.

192 Giovanni Jannuzzi, "The European Union's Common Foreign and Security Policy and its contribution to global security", *NATO Review* (December 1994-January 1995), 15.

193 Santer, *op. cit.*, 6.

194 Keukeleire, *op. cit.*, 78.

- 195 Report of the Council on the Functioning of the Treaty on European Union, 25.
- 196 Jannuzzi, op. cit., 16.
- 197 Jonathan Eyal, "Time for Mr Major to choose?", *The Independent*, 11 March 1996.
- 198 Juliet Lodge, "From civilian power to speaking with a common voice: the transition to a CFSP" in Juliet Lodge, ed., *The European Community and the Challenge of the Future* (London: Pinter, 1993), 2nd ed., 248.
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# 6 From Amsterdam to Nice

## **6.1 The Reflection Group**

The official purpose of the 1996 IGC was to revise the European Treaties “with the aim of ensuring the effectiveness of the mechanism and the institutions of the Community”. The formal agenda was prescribed as follows:

1. To consider a report on the future security and defence arrangements of the Union, including the future of Western European Union;
2. To reappraise the “three pillar” structure of the Union whereby the original European Community does not deal with either internal or external security policy;
3. To consider widening the scope of the co-decision procedure whereby the Parliament shares legislative power with the Council;
4. To revisit the question of the classification of European laws by their gravity, nature and purpose;
5. To consider the introduction to the Treaty of specific clauses in the fields of civil protection, energy and tourism.<sup>1</sup>

On 24-25 June 1994, the European Council in Corfu decided to establish a “Reflection Group”, which began its work in Taormina (Sicily) on 3 June 1995 under the chairmanship of the Spanish Secretary of the State for European Affairs, Carlos

Westendorp, "to allow for free discussion of possible reforms of the EU unburdened by the constraints imposed by official character of intergovernmental conferences".<sup>2</sup> Since the Reflection Group was composed of representatives of the fifteen member states, the Commission and two representatives of the European Parliament, its work looked like a first round of pre-negotiations on the agenda of the IGC.<sup>3</sup> However, the German State Minister, Werner Hoyer, tried to scale down expectations at an early stage:

It is neither a pre-intergovernmental conference nor a round of negotiations. The Reflection Group should at least be a creative event. Furthermore, it should enable a "brainstorming" in which members engage without intransigent positions in an effort to genuinely explore the available room for manoeuvre on these European issues.<sup>4</sup>

What may have appeared to be a "creative event", however, soon developed group dynamics of a completely different kind. As Franklin Dehousse pointed out:

It must nevertheless be emphasised that it [the Reflection Group] was basically neither a reflection nor a group. Most people came in the group to represent strictly the point of view of their member state. This is certainly not a good basis for a long term structural reflection. Furthermore, control by the foreign affairs administrations was quite strong. Independence of mind, as a matter of fact, was hardly appreciated.<sup>5</sup>

This view was echoed by Elmar Brok, one of the two representatives of the European Parliament to the Reflection Group: "The members of the Reflection Group all bring along such an awful lot of notes from home".<sup>6</sup>

On 5 December 1995, the Reflection Group adopted its Report on the 1996 Intergovernmental Conference chapter IV of which concerned the Union's foreign and security policy.<sup>7</sup> According to the Group, a challenging issue for the IGC would be to provide the European Union "with a greater capacity for external action, in a spirit of loyalty and mutual solidarity".<sup>8</sup>

The text made a distinction between the Union's external action and security and defence. With regard to foreign policy, the first aspect discussed was the extent to which external policy was comprehensive and coherent. Although it was felt that one of the shortcomings of Title V was the lack of overall consistency in coping with the new challenges which have taken place outside the Union, in the political and security context as well as in the economic and commercial sphere, disagreement existed concerning its causes. Some member states considered that this was "due to the lack of running-in time of a novel part of the Treaty yet to be developed or to the creation of excessively high and as yet unfulfillable expectations", others that political will was lacking, while the majority saw a "structural problem of a mismatch between fairly ambitious, albeit somewhat vague, objectives and inadequate instruments for achieving them".<sup>9</sup>

On the subject of the objectives of external action, some member states considered it vital that there was greater consistency in all aspects of external action so that the Union's political weight matched its economic strength.<sup>10</sup> In this context, many member states called for a "global approach to overcome inconsistencies between the external dimension of the Community and foreign policy proper".<sup>11</sup> To this end, two basic options were set out: dispensing with the pillar structure while retaining specific proposal, decision making and implementation procedures within pillar I following the EMU example; or enhancing cooperation between pillars while maintaining the pillar structure.<sup>12</sup>

With respect to the Union's fundamental interests some member states were in favour of a more specific statement. Reference was also made to the need to provide the Union with an "international legal personality" and a general consensus existed on the need to establish an analysis, forecasting, planning and proposal unit for the common foreign policy.<sup>13</sup> On the composition and location of the unit, the Report listed two possibilities: either locating it at the General Secretariat of the Council with its facilities strengthened and the Secretary General raised in rank to ministerial level; or creating a new figure, a High Permanent Representative for CFSP, appointed by the European Council, in charge of the analysis and planning unit and chairing the Political Committee.<sup>14</sup> In any event, the majority of the Group thought that the Commission should be associated with planning and analysis work.

Regarding decision making procedures, some member states supported the greater use of qualified majority voting while others expressed the view that consensus and the right of veto were essential "in matters which lie so close to the heart of national sovereignty".<sup>15</sup> In this connection, the Report suggested exploring several *ad hoc* arrangements such as unanimity with "positive or constructive abstention", "unanimity minus one", "super-qualified majority", qualified majority with dispensation of the minority, general platforms of decisions taken by unanimity to be followed in their specifics by qualified majority voting, to overcome the risk of "deadlock".<sup>16</sup>

On implementation of the CFSP, two possible approaches were identified in the Group: exploring arrangements maintaining the central role of the Presidency; or assigning implementation tasks to an *ad hoc* body ("Mr or Ms CFSP"). In addition, there was consensus in the Group on the need to finance CFSP out of the Community budget and to establish specific procedures to ensure that the necessary funds were available for rapid action. As for the possibility of "positive abstention" or "opting out", the Group felt that financial solidarity should "underlie financing arrangements".<sup>17</sup>

With regard to the European Parliament, the majority of the member states recognised that its role could not be the same in CFSP as in Community legislation. Although some member states thought it advisable to involve the EP more closely in

determining the broad lines of the CFSP and in handling the Union's external political affairs, others were reluctant to see any increase in its role and several pointed out that the EP "should not under any circumstances be given powers in this area in which governments conduct their foreign policy without prior authorisation from Parliament, except in cases of extreme gravity".<sup>18</sup>

On meeting security and defence challenges facing Europe, the Group stressed the need to develop a collective response. As far as territorial defence was concerned, the Group agreed on the vital importance of NATO's role and called for the WEU to progressively develop a European Security and Defence Identity as the European pillar of NATO. While accepting that consensus had to be the rule in the field of defence, they wished to see some flexibility brought to bear on that principle by applying the rule that "no one can be obliged to take part in military action by the Union, neither should anyone prevent such action by a majority group of Member States".<sup>19</sup> It was further proposed that states that did not take part should show solidarity with the action taken, both financially and politically.

On the subject of EU-WEU relations, the Report stressed the agreement of all WEU member states "to strengthen the EU-WEU institutional and operational links, together with WEU's operational capabilities".<sup>20</sup> At the same time, a number of member states did not think that a merger between WEU and the EU was feasible in the foreseeable future. Another view



advocated a “greater role of the Union in the Petersberg tasks while at the same time preserving WEU as a separate defence organization”.<sup>21</sup> Two options were mentioned in this context: either providing for a “closer and more formal link between both organisations by means of either political or legally binding directives”; or fully transferring the Petersberg tasks from WEU to the EU.<sup>22</sup>

However, the majority of the Group advocated the creation of a genuine European Security and Defence Identity through the progressive integration of the WEU into the EU with its two potential aspects: territorial defence under the Article V guarantee and the crisis management tasks.<sup>23</sup> With the prospect of eventual merger between the EU and the WEU in view, some member states suggested establishing some “political or legal commitment whereby WEU would be subordinated to the EU in matters concerning the operational-military elaboration and implementation of EU decisions and actions, so as to act as implementing body of the Union in this area, while maintaining the possibility of WEU deciding autonomously its own actions”.<sup>24</sup> Three possible ways of establishing this commitment were suggested: firstly, a new article J.4 stating that the European Council will address general guidelines to WEU “as the organization requested to implement through the appropriate military actions the follow-up decisions adopted by the EU at ministerial level”; secondly, amending article J.4 to state that the EU will address concrete instructions to WEU “thereby expressing its political and operational subordination

to the Union"; lastly, establishing a legally binding EU-WEU agreement whereby the WEU would be committed to implementing decisions of the Union with defence implications.<sup>25</sup>

Finally, some members of the Reflection Group proposed introducing intermediate arrangements between autonomy and integration of the WEU within the EU, at least until integration was achieved, through the transfer of all WEU functions and capabilities from WEU to pillar II or by including in the TEU the Petersberg tasks while leaving the collective defence guarantee to a "Defence Protocol to which those Member States so desiring would opt in on conditions to be agreed".<sup>26</sup>

The final report of the Reflection Group was transmitted to the European Council for its Madrid session on 15-16 December 1995 at which it was also decided to open the IGC in Turin on 29 March 1996. The agenda had three main items: a "Union closer to its citizens"; more democratic and efficient institutions, especially in the context of future enlargement; and strengthening the Union's capacity for external action. The IGC was asked to: identify the principles and areas of common foreign policy; define the actions needed to promote the EU's interests; set up efficient and expedient procedures, including that of how the Union was to present itself to the outside world; and agree on their financing.<sup>27</sup> The report of the Reflection Group was accepted by the Heads of State and Government as a "sound basis" for the work of the IGC. Not surprisingly, all

kinds of ideas were ultimately canvassed. The report proposals relating to CFSP were controversial. The great majority of the EU states was, in varying degrees, in favour while the UK was basically opposed to making a commitment in this area of policy.<sup>28</sup> Thus, the general conclusion which can be drawn is that the Group played a positive role in the preparation of the IGC. Its impact has been summarised by Jan Grünhage who points out that the Group "...clarified issues and forced all delegations to start thinking and developing positions on the points under consideration...facilitated good personal relationships...[and] started the process of "diplomatic Darwinism", i.e. it identified issues not suited for the IGC, such as the idea of altering significantly the balance between the institutions to the detriment of the European Commission".<sup>29</sup>

The following section summarises the positions of the governments of the member states and of the EU institutions involved in the IGC negotiating process (Council, European Commission, European Parliament), and of the Western European Union while the next section elaborates some reflections on the CFSP provisions of the Treaty of Amsterdam. Concluding remarks give a general assessment of the "capability-expectations gap" in the light of the Treaty of Amsterdam and recent developments.

## **6.2 National Positions**

The main issues that were to dominate the 1996 IGC discussions may be summed up as follows:

*Analysis and Planning Unit:* There was general agreement on the idea of establishing an analysis and planning unit. Both the member states and the EU's institutions that expressed a view supported this objective although there was controversy over the role of the unit and its position in the administrative structure of the Union. France and Germany, for example, were of the opinion that the unit had to be attached to the Council Secretariat and comprising staff from the member states, the Commission and the WEU Secretariat.<sup>30</sup>

London's preference was for "a modest strengthening of the Council Secretariat" to prepare analyses and options on issues dealt with by the Political Committee and the General Affairs Council. According to the UK, to accomplish these tasks, five or six additional officials on secondment from member states's foreign ministries would be required together with one, on secondment from the European Commission whilst there would be a contact point in the WEU. Member states and Commission would provide information on an informal basis through their officials on secondment, but there would be no formal requirement to supply confidential material to the Council Secretariat. The "planning and analysis group" would be tasked

by the Director General for External Relations to produce forward looking annotated agendas for the Political Committee and the General Affairs Council; analyses of issues and events, highlighting the implications for CFSP; papers examining policy options in particular areas and putting forward argued recommendations; draft joint actions, common positions and EU declarations; forward-looking papers analysing broad CFSP priorities and identifying areas in which CFSP could focus in future; and an “early warning” of trouble spots and crises.<sup>31</sup>

In the Netherlands's view if the Commission was to be fully associated with the work carried out in the common foreign and security policy field as laid down in Article J.9, it had to be able to participate in the activities of a strengthened CFSP unit within the Council Secretariat or the new CFSP framework.<sup>32</sup> Similarly, a Luxembourg government memorandum advocated the establishment within the Council Secretariat of an analysis and planning capacity, with which the Commission were to be fully associated and to which the WEU were also to contribute.<sup>33</sup> On 8 March 1996, a memorandum on the IGC was adopted by the Prime Ministers of Belgium, Luxembourg and the Netherlands at a summit held in the Hague which proposed *inter alia* that an analysis and planning unit was established creating close links between the member states, the Commission and the WEU Secretariat. Such a unit was to be directed by a senior official, appointed by the Council with the Commission's agreement, and was to deliver opinions to the Council and the Commission.<sup>34</sup>

In Sweden's view, the EU's planning and analysis capacity had to be improved by means of a strengthened common structure for the preparation and monitoring of decisions.<sup>35</sup> This task was to be carried out mainly by the Council Secretariat, with the Commission being given some scope for action. Denmark favoured setting up an analysis and planning unit under the auspices of the Council of Ministers in order to provide a better common basis for decisions in the field of foreign policy.<sup>36</sup> For Finland, one way of facilitating the identification of common interests in the Council was to establish a common evaluation and analysis capacity within the Council Secretariat.<sup>37</sup>

For Italy, setting up a body with analysis, planning and implementation tasks was necessary in order "to ensure better preparation of and a more thorough follow-up to decisions of the Council".<sup>38</sup> The Portuguese government considered it desirable to set up an analysis and planning unit located within the Council Secretariat cooperating with the Commission and comprising staff from both the Commission and the member states. As a preparatory body, however, it could have no formal right of initiative.<sup>39</sup> Greece supported the creation of an analysis and planning unit within the framework of the Council General Secretariat consisting of representatives of the member states, the Commission and the Council.<sup>40</sup> Finally, the Irish government also favoured the development of a planning and analysis capacity within the Council Secretariat. Dublin proposed that there was close cooperation between any unit set

up for that purpose and the Commission given the latter's competence in the field of external economic relations and the need to ensure coherence between the economic and political aspects of external policy.<sup>41</sup>

*Decision making:* On the question of decision making, the participants in the IGC were divided into three camps. On the one hand, a majority of member states (Austria, Benelux, Finland, Germany, Italy, Spain) argued that an introduction of qualified majority voting in CFSP, was needed. In particular, Germany proposed the extension of qualified majority voting but with unanimity being retained for certain areas such as the projection of operational capacities.<sup>42</sup> Italy believed that the foreign ministers of the Union could take decisions by majority vote more frequently by reaching prior consensus at the European Council level on the principles and content of the Union's foreign policy. Such prior consensus could make it possible to resort to more flexible formulas, such as constructive abstention and strengthened qualified majority, in compliance with a political and financial solidarity that was appropriately regulated.<sup>43</sup>

For decisions concerning the implementation of a joint action, the Dutch government proposed improving the wording of Article J.3.2 so as to ensure that all decisions in this area were taken by a qualified majority. In addition, it advocated wider use of the abstention option when adopting a joint action and restricting the unanimity rule by introducing a system of

consensus minus one which was to become the rule, except where the vital interests of member states were at stake, in which case the consensus rule had to apply. For the Netherlands the German idea of introducing a system of majority voting when adopting joint actions, meant majority decision making within an intergovernmental context as opposed to a majority decision making system within the Community framework. Furthermore, after clarifying that the options proposed regarding the adoption of joint actions were also relevant to decision making on common positions pursuant to Article J.2, the Dutch government expressed the view that under no circumstances could departures from the consensus rule lead to a situation in which “member states can be forced to deploy troops for crisis management tasks under a common defence policy developed by the EU at some future date”.<sup>44</sup>

The Benelux governments proposed alternatives to the unanimity rule namely “partial consensus” or a reinforced qualified majority; decision making by qualified majority for certain CFSP areas that had to be determined; and decision making by qualified majority for Commission proposals.<sup>45</sup> Finland, finally, believed that intergovernmental cooperation had to remain the norm and that decision making issues of substance had to be based on consensus. However, with a view to making the existing intergovernmental cooperation more effective, the Finnish government raised the possibility of making greater use of qualified majority voting “with other issues, especially those connected with implementation”.<sup>46</sup>



The second camp led by the UK, and which included Denmark, Greece, Portugal and Sweden, was reluctant to allow any dilution of CFSP's intergovernmental procedures by extending decision making by qualified majority voting. Some of these countries suggested the "consensus minus one" option as an acceptable compromise. Denmark, for example, with a view to making the existing intergovernmental cooperation more effective, was prepared to accept the principle that a concerted action could be undertaken even when one or two member states opted out, provided a specific decision was adopted on the conditions applying to the countries not participating in the joint action.<sup>47</sup>

A third camp, consisting of Ireland and France, preferred some extension of qualified majority voting without, however, undermining sovereignty on key issues. Joint Franco-German proposals about invocation of the principle of constructive abstention and recourse to qualified majority voting for decisions at the implementation stage provided a realistic basis for negotiation.<sup>48</sup>

*Defence:* In the matter of defence, Franco-German thinking was somewhat elucidated by a joint declaration on 27 February 1996. The declaration supported the objective of incorporating the WEU into the EU and considered that the IGC had to produce clear and specific undertakings in this direction. Furthermore, it was stated that the European Council had to lay down

guidelines for security and defence on the basis of which the WEU could, at the request of the EU, undertake action on the latter's behalf. This had to be incorporated in the TEU.<sup>49</sup> These ideas were supported by countries such as Belgium, Luxembourg and the Netherlands which considered that pillar II of the Maastricht Treaty had to include the Petersberg tasks and collective defence.

For the Benelux countries, the practical implementation of collective defence had to remain a matter for NATO, with which the Union were called on to establish specific links in the defence field. The three countries also wished to see the rapid development of the CJTF project, as a vital element for the realisation of joint European actions with military implications, and closer European cooperation in the arms industry.<sup>50</sup> Greece also favoured the incorporation of WEU into the EU according to a specific timetable pending which it considered that a legally or institutionally binding agreement had to be drawn up in which the WEU would commit itself to carry out duties and missions assigned to it by the Union.<sup>51</sup> Furthermore, Athens, suggested that in addition to these tasks, the Treaty should recognise the possibility for the EU to extend its action in the area of defence and add new missions. In particular, Greece proposed the modification of: paragraph 2 of Article J.1 in order to introduce the reference "including helping to [protect] [strengthen] its external borders"; paragraph 4 of the same article, in order to add: "The Union [shall respond] to requests from its Member States to show solidarity with all the

means at its disposal". Greece considered that the objectives of the CFSP as were laid down in Article J.1 of the TEU had to be made more detailed and be extended to include provisions for the prevention of conflicts; the peaceful resolution of disputes; the maintenance of respect for international law and practice in the development of international and inter-state relations; and the protection of the external borders of the EU and the territorial integrity of the member states.<sup>52</sup>

Other countries – like the United Kingdom, supported by Denmark – suggested maintaining WEU as an autonomous Organisation with its own Treaty base developing its operational capabilities to enable it to operate effectively in peacekeeping, humanitarian and other limited crisis management tasks, and reinforcing the partnership between the EU and the WEU.<sup>53</sup>

Others, such as Italy, Portugal and Spain, were somewhat chary of laying down any strict timetable for the incorporation of WEU into the EU. Instead they showed greater interest in the ways of bringing about an enhanced working relationship with the Union and its institutions. On the question of integrating the WEU into the EU and with respect to security guarantees, the Netherlands took the view that a common defence policy had to contain a reciprocal obligation, although this did not alter the fact that fulfilment of that obligation had to remain a matter for NATO. In addition, the Dutch government believed that the inclusion in the TEU of new objectives and tasks in the field of a common defence policy did not have to "entail an obligation to

undertake those tasks jointly at all times and in all circumstances”, although if necessary they could be undertaken by an *ad hoc* coalition. Furthermore, incorporating the WEU into the EU could create a direct link between the EU and NATO which could take the form of an Atlantic contract.<sup>54</sup>

Another group of states consisted of the so-called neutral states. On 25 April 1996, Finland and Sweden submitted a joint memorandum which proposed providing the EU with a capacity to act in military crisis management by revising Article J.4 of the TEU to include humanitarian and rescue operations, peacekeeping and crisis management tasks. According to the two governments the operationalisation of the EU's competence in military crisis management was to be achieved through the establishment of a reinforced institutional link between the Union and the WEU. All the contributing EU member states were to participate on an equal footing in planning and decision making related to operations enacted by the EU and they were encouraged to provide information of their forces available for such EU-enacted and WEU-conducted operations. When such operations were undertaken, appropriate consultation was required with other international institutions such as NATO. As it was also stated, steps towards an enhanced competence in the security and defence dimension of the Union had to respect the “specific character of the defence solutions of the members” and could not affect their status “as states pursuing independent or common defence”. For Finland and Sweden cooperation in military crisis management was separable from collective defence

commitments. The decision finally, to strengthen the EU's role in the area of conflict management was not to prejudice the further development of the security and defence dimension of the Union as stipulated in the TEU or any future decisions on the CFSP called for by the enlargement of the Union nor was to be linked with any particular future step.<sup>55</sup>

In Ireland's view, a primary objective of a common EU defence policy had to be the preservation of peace and the strengthening of international security, in accordance with the UN Charter and the principles of OSCE. The Union's defence agreements had to form part of a comprehensive cooperative security framework in Europe so that efforts to create an EU security and defence policy did not result in new divisions and greater instability. Furthermore, for Ireland a common defence policy had to be compatible with a broad-based approach recognising the crucial contribution to security of economic progress, resolution of the causes of conflict, action against crime and drug trafficking and protection of the environment. In Dublin's opinion, this policy could not run counter to its objectives regarding disarmament and arms control. Ireland also recalled its undertaking to hold a referendum on the outcome of any negotiation that could entail its participation in a common defence policy and stressed its willingness not to propose the country's membership of NATO or the WEU or the assumption of their mutual defence guarantees.<sup>56</sup> Austria, finally, generally accepted that the EU should make use of the WEU as "operational wing" for

Petersberg tasks and that these action should come within the Treaty.<sup>57</sup>

*Visibility of CFSP:* To improve the visibility and continuity of the CFSP, it was considered necessary to create a new “post”. Here the broad split was between the UK and France which was undoubtedly the keenest advocate of a “Mr or Ms CFSP”. For Paris, a “High Representative” with a three to five year mandate and with an organisational and representative role in the area of CFSP had to replace the rotating six-month presidency. This figure was to be appointed by the European Council and was to be responsible for exercising the functions assigned to him by that body or by the Council of Ministers. The Council Secretariat was to be strengthened in order to provide the figure with the necessary support and resources.<sup>58</sup>

The UK instead preferred a person with a lower profile than the “Mr or Ms CFSP” suggested by France.<sup>59</sup> This Representative, according to London, would have the rank of Secretary General, would be appointed by the Council – perhaps for a three year term on a renewable basis – and would be located in the Council Secretariat. It would not, however, report to the Secretary General but to the Council, and, in the first instance, the President, and should work closely with the Presidency in the Political Committee. The Representative would have as its main job to formulate and prepare questions relating to CFSP discussed by the General Affairs Council and, if called on by the Council, to represent agreed EU policies abroad, to monitor

implementation of agreed measures and to conduct political dialogue with third countries. He would be an independent member of the Political Committee – with full speaking rights – within which he could submit reports on proposals prepared by planners within the Council Secretariat. He would take part in COREPER meetings in which appropriate external issues are being discussed, as well as in meetings of the General Affairs Council – with the right to speak – and, under the same conditions, in meetings of Foreign Ministers at European Councils. The Representative would have no formal responsibility for issues under pillar I – the Director General for External Relations would continue to be responsible for these issues within the Council – but would be informed on the activities of the Council's Secretariat on these issues.

### ***6.3 Positions of EU institutions and of the Western European Union***

At the Corfu European Council, it was decided to request of all institutions of the EU to draw up reports on the functioning of the Maastricht Treaty. Their inputs are of importance for evaluating the implementation of the TEU and because they also provide an indication both of the ideas which these institutions sought to champion throughout the IGC and in the course of the preparation leading up to it and of their strategies for ensuring that their interests were fully articulated and properly

defended. A comment will also be made on the WEU's contribution to the IGC.

### *6.3.1 The Council*

On 10 April 1995 the Council released a Report "on the functioning of the Treaty on European Union" presenting "the experience gained in implementing the TEU as objectively and as factually as possible".<sup>60</sup> In its fifth part, on the "External Relations of the Union", and more specifically on the question of the Union's foreign and security policy the document proposed the following:

- the Council and its General Secretariat should be given direct access to information concerning the CFSP;
- the functions of the different policy instruments, that is to say statements, common positions and joint actions should be clarified and the necessary distinctions observed;
- the EPC bodies and structures should be properly integrated into the single institutional framework provided for by the TEU;
- working parties should be merged;
- the use of the COREU procedure should be further defined;
- better use should be made of the qualified majority made possible by Article J.3.2;
- the respective roles of the Presidency/Troika on the one hand and the Council's General Secretariat on the other in the "administration" of the CFSP should be defined more clearly without encroaching on the Commission's responsibilities;



- the Council's General Secretariat should be put to more effective use for the purpose of monitoring the implementation of CFSP;
  - bearing in mind that the TEU did not explicitly assign legal personality to the Union, more satisfactory solutions should be found with respect to legal commitments to the outside world;
  - appropriate funding arrangements should be laid down for the CFSP;
- and
- the relationship between the Council's General Secretariat and the WEU Secretariat General should be discussed.<sup>61</sup>

In sum, the opinions of the Council were focused on the need to fine-tune CFSP. Rather than challenging CFSP's intergovernmental character, the Council characteristically wished to safeguard this feature.

### *6.3.2 The European Commission*

In May 1995 the European Commission published a Report entitled "Intergovernmental Conference 1996 – Commission report for the Reflection Group" containing its views regarding the operation of the TEU.<sup>62</sup> In the opinion of the Commission although the TEU "enhanced the European Parliament's powers, consolidated the Commission's legitimacy, launched economic and monetary union, and generally reinforced the Union's capacities" left much to be desired as regards the degree of the Union's democratic legitimacy and effective operation.<sup>63</sup> In this respect the Report stated that a guiding principle for the work of the 1996 IGC should be to strengthen substantially the Union's

ability to act in the field of foreign and security policy by “providing it with a full range of possibilities with which to act, and thus ensure the well-being and security of its peoples”.<sup>64</sup>

The Report<sup>7</sup> refers to a number of structural, financial and legal difficulties which hinder the effective implementation of policies adopted in pillar II and recommends measures to make cooperation in foreign and security policy more constructive, including improving practical cooperation between institutions; reducing the overlap between various intergovernmental committees; exploring the avenues opened up by the different CFSP policy tools and defining them more clearly; avoiding insistence on unanimity even where qualified majority is already admissible under the Treaty; connecting more closely the pillars of the Treaty; concluding an interinstitutional agreement on financing of the CFSP; subjecting action under pillar II to legal review; reforming the EU's system of external representation; giving the Union legal personality; and coordinating member states' policies with that of the Community in fields of shared competence.

On the question of the connection between the WEU and the EU, the document noted that it has been “used rarely and with limited success” and suggested defining WEU's position *vis-à-vis* the Union from a long term perspective; improving the exchange of documents and the cross-participation of their respective Secretariats in meetings; and setting up integrated multilateral forces under the responsibility of the WEU and/or NATO.

In the first half of 1996, the Commission drew up an Opinion on "Reinforcing political union and preparing for enlargement".<sup>65</sup> According to the document in order to "empower the Union to act rather than react" and to "defend the interests of its people" the IGC should, firstly, bring together the various strands comprising foreign relations into a single effective whole, with structures and procedures designed to enhance consistency and continuity; secondly, improve the common foreign and security policy at all stages of its operation; and, finally, establish a proper European identity with regard to security and defence as an integral part of the common foreign and security policy.

With this in view, the Commission suggested that a "joint analysis unit" was set up composed of experts from the member states and the Commission, possibly with a contribution from the WEU. In addition, it proposed incorporating a permanent Political Committee into the Council's existing machinery for preparing decisions. With regard to the decision making system, the document advocated making qualified majority voting the norm with specific rules for decisions involving military matters. In this connection, the Commission also stressed the need to provide for the possibility of reinforced cooperation or coalitions between willing states acting on behalf of the Union as long as these initiatives were not against the general interest of the Union and provided that the latter was duly represented. With reference to the implementation of decisions, the document stated that primary responsibility should be with the Presidency

and the Commission although this “should not prevent certain tasks being allocated to specific personalities designated on an *ad hoc* basis”. For the Commission, expenditure incurred in implementing the common foreign and security policy should be included in the Community budget, unless an express decision to the contrary was taken.

On the question of the relations between the EU and the WEU the opinion put forward a series of proposals relating to the building of a European Security and Defence Identity within NATO and through extension of the CFSP to common defence, namely allowing Union commitments to missions aimed at restoring or keeping peace to be written into the Treaty; reinforcing the Union's security capability by providing for Defence Ministers to play an appropriate role in the Council; reconsidering the WEU's role with a view to incorporating it into the EU according to a fixed timetable; and strengthening the Union's industrial base in the armaments field by a “better integration” of the armaments industry into the general Treaty rules, greater effectiveness in the field of procurement by means of the establishment of an “agency” and a “consistent approach” to foreign trade.<sup>66</sup>

In conclusion, the Commission's proposals have been geared both to improving the effectiveness of the second pillar and to strengthening its tenuous position *vis-à-vis* the member states in CFSP.

### **6.3.3 The European Parliament**

On 17 May 1995 the European Parliament adopted a "Resolution on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference – Implementation and development of the Union" laying down guidelines on the following four subjects: objectives and policies of the Union; institutions of the Union; decision making mechanisms of the Union; and prospects for enlargement.<sup>67</sup> As regards the Union's CFSP, the EP believed that a more effective EU foreign policy should be established encompassing the common commercial policy, development cooperation policy, humanitarian aid and CFSP matters and achieving better defined security and defence policies at EU level. Common defence policy should guarantee that the borders of the Union and its member states are safeguarded, and powers should be transferred from the WEU to the Union to enable the EU to "carry its responsibilities for maintaining and restoring the rule of law internationally". The Resolution maintained that the Intergovernmental Conference should also provide a qualified majority of member states with the option of embarking on humanitarian, diplomatic or military action, if they so wished, which would qualify as a "joint action". According to the EP individual member states should not be forced to take part but nor could they prevent the majority from engaging in such action.

On the role of the Commission, the European Parliament advocated fully integrating it in the definition and elaboration of

the CFSP with a right of initiative and implementing power. It was also proposed that a joint Commission-Council planning and analysis unit was set up. As regards Parliament itself, the Resolution claimed consultative powers whenever the Council adopted a common position or a decision on joint action and considered it vital that the CFSP was supervised by the EP and the national parliaments. The document also declared itself in favour of deleting Article 223 of the Treaty and establishing a European Civil Peace Corps to train monitors, mediators and specialists in conflict resolution.

One day later, the EP adopted a further "Resolution on progress in implementing the common foreign and security policy (November 1993-December 1994)" proposing that an interinstitutional agreement on the application of Article J.7 of the TEU and financing of the CFSP was concluded "so that the CFSP may be implemented in a more democratic and more transparent way in keeping with the respective powers of each institution".<sup>68</sup> In addition, it was stressed that the participation of European Parliament observers at international conferences should be "standard practice".

The EP's Resolution argued that an analysis and assessment centre had to be set up within the EU and a mutual assistance clause incorporated in the TEU "to be applied if Member States' frontiers are violated". The document also suggested equipping the EU with "suitable means and mechanisms to be better able to prevent and solve conflicts by peaceful means" and advocated

making greater use of common positions. On the question of improving the decision making process, the EP favoured drawing up a "typology of decisions" for which a qualified or double qualified majority or unanimity was required. With a view to improving the effectiveness of the EU's foreign policy measures the European Parliament believed that it was essential for the EU to have its own diplomatic apparatus and stressed the need to upgrade Commission delegations to third countries to the status of European Union embassies. Lastly, the document declared that the EU should be provided with its own means of gathering intelligence, including optical reconnaissance satellites and radar to complement conventional means.

On 13 March 1996, the EP adopted a Resolution embodying firstly, its opinion on the convening of the Intergovernmental Conference, secondly, an evaluation of the work of the Reflection Group and, finally, a definition of its political priorities with a view to the Intergovernmental Conference.<sup>69</sup>

For the EP, giving the European Union international legal personality was a condition for an effective common foreign and security policy. Strengthening the external role of the EU also meant that the Union should guarantee its territorial integrity and the security of its external frontiers. Consequently, it suggested that the EU and its member states act in a spirit of solidarity, consistently and efficiently, in the case of external developments or threats or challenges at the external frontiers. In addition, the provisions of the various aspects of external

policy, including the future common defence policy, had to be incorporated into one chapter of the TEU.

At the same time, the capacity for the analysis and planning of Union decisions had to be improved, mainly by establishing a central unit for making policy studies and submitting proposals to assist the Council and the Commission. According to the document, the unit would be run by the Commission in close cooperation with the Secretary General of the Council and it would consist of staff from the Commission and the Council.

On representation of the Union in the CFSP, the Parliament rejected the idea that there should be a "High representative" for the CFSP and advocated the option by which it would be entrusted to the member of the Commission with responsibility for foreign policy. This member could be appointed in accordance with the procedure applying to the President of the Commission.

A further major theme considered in the Resolution was the decision making process. It was the Parliament's opinion that in every aspect of external policy, including the CFSP, decisions should be taken by a qualified majority. Any member state which was not in agreement with a common position or joint action of a military nature in the areas covered by the CFSP should have a dispensation facility, but should not be able to veto the common position or joint action. Concerning the Union's representation in third countries, the document



suggested taking the necessary steps to have a diplomatic representation of the Union established in third countries where fewer than four member states had embassies. On the issue of CFSP's financing, the Parliament's view was that the common foreign and security policy should be funded from the Community budget. Member states which made use of the dispensation clause could not withdraw from Community financing. Finally, the EP believed that it should be consulted in respect of common positions and joint actions and be responsible for the monitoring of the CFSP where appropriate in cooperation with the national parliaments.

On security and defence policy, the document suggested gradually merging the WEU into the EU. To this end, all the tasks of the WEU including the objectives of the Petersberg tasks but excluding Article V had to be taken over and had to be binding on all EU member states. In addition, once integration in the EU was complete, WEU operations had to be financed by the Community. Furthermore, it was the Parliament's opinion, that Article 223 of the Treaty was deleted.

All in all, Parliament's proposals were again based on the tryptic of broader Community competence, a more effective decision making procedure, notably through extending qualified majority voting, and greater democratic accountability.

#### ***6.3.4 The Western European Union***

On 14 November 1995, in the WEU Ministerial Council in Madrid, a "Contribution to the European Union Intergovernmental Conference of 1996" was submitted comprising, firstly, of an assessment of the progress made regarding the evolution of the European Security and Defence Identity since Maastricht; and, secondly, of proposals for the future development of the ESDI with a view to furthering the objectives of the TEU.<sup>70</sup>

In the first part of the Contribution, WEU analysed the development of its relations with the EU and WEU, assessing the results achieved and identifying the shortcomings encountered; reviewed its relations with NATO, also assessing progress and difficulties; and considered the progress made and the problems encountered in developing its operational role. The second part of WEU's Contribution contained a series of possible theoretical options for the future institutional development of the ESDI, namely reinforced partnership between an autonomous WEU and the EU; a range of intermediate options towards an EU-WEU institutional convergence; and the possibility of integrating WEU into the EU.

With regard to the first of these Options, supported by the UK,<sup>71</sup> priority had to be given to further increasing WEU's operational capability in crisis management while maintaining the institutional relationship between the EU and the WEU as

set out in the Maastricht Treaty. Under this Option, the differentiated institutional structure had to be reinforced and exploited to provide a framework within which to encourage the contribution of associate members, observers and associate partners of WEU in its operations in accordance with their status. With regard to the decision making procedure on matters with defence implications the basic rule of consensus had to be strictly maintained both in the CFSP and in the WEU framework. Option A also involved preserving the existing WEU bodies which had to remain completely independent of those of the EU. However, the enhanced cooperation between the two institutions had to be given political form by the creation of a "WEU Summit" holding joint meetings with the European Council when necessary.

As Option B, the WEU Contribution, set out a series of intermediate options providing for "even closer EU-WEU links and continuity of action through convergence between the two Organisations". The various options, promoted by France and the Netherlands,<sup>72</sup> retained the distinction between membership of the EU and of the WEU and respect for individual national positions concerning security and defence matters. As Option B.1, the document proposed granting the Union a greater political role in defence matters, enabling it to set the framework for military action by the WEU, especially in crisis situations. In this context, the European Council was to be responsible for drawing up general guidelines on questions having defence implications. Option B.2 suggested reformulating Article J.4.2

of the TEU so as to clarify that the WEU was both politically and operationally subordinate to the EU and that its main function was to implement decisions taken by the EU. To this end, the word "requests" in the first sentence of that Article had to be replaced by "instructs". As part of the same approach, the revision of the TEU could make it possible for the EU to adopt decisions concerning joint actions with defence implications. Finally, as intermediate Option B.3, the Contribution proposed the conclusion of a legally binding agreement between the EU and the WEU.

Option C, favoured by Belgium and Germany,<sup>73</sup> referred to the integration of WEU into the EU. The legal consequences of the WEU-EU merger were the disappearance of the modified Brussels Treaty and the establishment, within the European Union, of a juridical framework for defence issues with the aim of providing the functions and capabilities transferred from WEU with a legal basis. According to the WEU Contribution, this juridical framework could take two forms depending on the EU area in which the collective defence commitment were to be placed. Firstly, European defence could be made part of pillar II. This would imply incorporating all defence aspects into the main body of the new TEU, while offering those states not able or not willing to participate in a collective defence commitment the possibility of an opt-out clause. The second modality, Option C.2, addressed the possibility of adopting a defence protocol to be annexed to the TEU. Defence was to be placed within the EU framework in such a way as to ensure that no country would be

“compelled to either assume a collective defence commitment or resort expressly to an “opting-out” from this commitment”. Provisions for a common European defence policy, in which all member states could participate, were thus to be included into the main body of the revised TEU, while a Protocol for collective defence open to all EU member states was to be incorporated as an annex to the Treaty.

In its Conclusions, the WEU Contribution focused on further steps that could be taken both in the operational and in the institutional field, in order to strengthen the European Security and Defence Identity. In operational terms, the document stressed that although there was a broad consensus on the need to acquire the necessary operational capabilities for European military action, particularly in the field of the new tasks defined at Petersberg, the mostly organisational measures agreed at Maastricht in this connection were yet to be fully implemented and additional efforts were necessary to deliver effective and credible military assets and capabilities. At the same time appropriate arrangements for the use of NATO resources had to be concluded and relations with NATO and the transatlantic link had to be reinforced.

In general terms, it may be said that WEU's active involvement in EU's deliberations produced a realisation that participation in WEU could be beneficial. It also meant that for Denmark and the neutral states their only real prospect of being able to exercise any sort of influence was through the adoption of

positions of their own. According to Catriona Gourlay and Eric Remacle, “rather than a direct spillover effect (extension from one sphere of competence to another one within the Union), this trend can be compared to a vortex effect (mutual interference between developments in the EU and in other organizations)”.<sup>74</sup>

#### **6.4 The Treaty of Amsterdam and CFSP**

The Treaty of Amsterdam recognised the necessity to ensure the consistency of the Union’s external activities as a whole in the context of its foreign relations, security, economic and development policies. Article 3 (ex Article C) was amended to stress the responsibility of both the Council and the Commission – each in accordance with its respective powers – to cooperate to ensure such consistency. The new possibility for the Council to request the Commission to “submit to it any appropriate proposals relating to the common foreign and security policy to ensure the implementation of a joint action” (Article 14.4) and the fact that the “Declaration on the establishment of a Policy Planning and Early Warning Unit” explicitly stated that “appropriate cooperation shall be established with the Commission in order to ensure full coherence with the Union’s external economic and development policies”<sup>75</sup> can help to “increase synergetic effects between the Community and the CFSP pillar”.<sup>76</sup>

According to Article 11.1, when defining and implementing the CFSP, one or more of the following objectives must be pursued:

- safeguarding the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;
- strengthening the security of the Union in all ways;
- preserving peace and strengthening international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;
- promoting international cooperation;
- developing and consolidating democracy and the rule of law, and respect for human rights and fundamental freedoms.

Attention should be given here to the explicit wording of Article 11, as it speaks of “the Union”. The difference lies in the deletion of the phrase “and its Member States” from the introductory sentence and from the second indent which brings, according to Alan Dashwood, “a gain in coherence. When acting within the framework of Title V TEU, the Member States do not have an identity separate from the Union”.<sup>77</sup>

Compared to Article J.1, Article 11 added as an objective of the Union’s CFSP, the safeguarding of the “integrity of the Union in conformity with the principles of the United Nations Charter”. In this context, Jörg Monar wrote:

the new reference to “conformity with the principles of the United Nations” may be regarded both as a reassuring gesture towards third countries and as a hidden assertion of the Union as a regional security arrangement in the sense of Article 52 of the Charter of the United Nations.<sup>78</sup>

In addition, the Treaty of Amsterdam included an acknowledgement of the principles of the United Nations Charter with particular emphasis on the protection of external borders. According to Patrick Keatinge, the reference to “external borders” was extremely general, “not indicating whether any of the relevant principles (e.g. inviolability, change by mutual consent) has priority, and this does not prescribe a particular course of action”.<sup>79</sup>

Another point of divergence between Articles J.1 and 11 was that paragraphs 1 and 2 of Article J.1 were merged in one paragraph:

This apparently cosmetic change has a bearing on an issue of some importance as to the scope of the CFSP...The assimilation of the list of objectives into paragraph (1) will strengthen the case for reading them as qualifying the scope of the CFSP. It will be more difficult, in future, to argue convincingly that CFSP instruments may be used to organise external action by the Member States in the economic field.<sup>80</sup>

Finally, Article 11.2 stated that the signatories shall “work together to enhance and develop their mutual political solidarity”. This formula could be interpreted as representing



both a response to the evident political controversies between the big and the small countries among the Fifteen which conditioned a sinuous path to partial disengagement from effective collective action as well as a warning to governments preventing united CFSP decisions from being formed due to particular "vital" self-centred national interests which the other member states stopped short of acknowledging.<sup>81</sup>

Under Article 12 (ex Article J.2) the Union shall pursue the objectives of the CFSP by: defining the principles of and general guidelines for the CFSP; deciding on common strategies; adopting joint actions; adopting common positions; and strengthening systematic cooperation between member states in the conduct of policy.

Article 13 defined the Union's common strategies:

2. The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common. Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States.

3...The Council shall recommend common strategies to the European Council and shall implement them, in particular by adopting joint actions and common positions.

This new instrument was a well-judged package deal which provided a firm framework for increasing consistency and

appeased national concerns over qualified majority voting. The significance of the new procedure will depend on the ability of the European Council to reach agreement. If the European Council tables common strategies clearly designed to represent the interest of the Union, and does so in a manner that recognises the susceptibilities of the member states, then over time common strategies may come to serve as a catalyst for greater CFSP effectiveness and efficiency. The obvious problem is that the European Council meets only once every six months. Hence, any common strategy would have to be rather “farsighted and consequently couched in general terms, which appears to stand in contradiction to the detail expected from a common strategy as opposed to a general guideline”.<sup>82</sup>

Article 14.1 contained the following new definition of joint actions:

The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.

Article 15 specified that the common positions “shall define the approach of the Union to a particular matter of a geographical or thematic nature”. As Monar suggested:

This draws a clear line of distinction between this instrument and operational "joint actions", and it makes the "common position" appear like the more specific and limited version of the "principles and guidelines" to be adopted by the European Council. As a result of this clarification "common positions" could become the standard points of reference for the Member States' positions on specific issues in international organizations. The legal nature of the instrument, however, has not been further clarified.<sup>83</sup>

Both joint actions and common positions explicitly commit the member states "in the positions they adopt and in the conduct of their activity".

The Treaty of Amsterdam reinforced the role of the European Council by assigning it the responsibility of laying down policy at the general level: it "shall define the principles of and general guidelines for the common foreign and security policy, including for matters with defence implications". The Council's role will be to give concrete substance to such policy by taking "the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council" and by ensuring "the unity, consistency and effectiveness of action by the Union" (Article 13).

Article 18.3 brings a new actor into CFSP – the Secretary General of the Council who exercises "the function of High Representative for the common foreign and security policy".

Moreover, the Council may, whenever it deems it necessary, appoint a special representative with a mandate to handle particular issues (Article 18.5). According to Article 26, the Secretary General/High representative assists the Council "in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties". He is also heading the new Policy Planning and Early Warning Unit. The Cologne European Council in June 1999 appointed former NATO Secretary General Javier Solana as the first High Representative.

The provisions for the establishment of the Unit were spelled out in a "Declaration on the establishment of a Policy Planning and Early Warning Unit". The Declaration stated that:

1. A policy planning and early warning unit, shall be established in the General Secretariat of the Council under the responsibility of its Secretary General, High Representative for the CFSP. Appropriate cooperation shall be established with the Commission in order to ensure full coherence with the Union's external economic and development policies.
2. The tasks of the unit shall include the following:
  - (a) monitoring and analysing developments in areas relevant to the CFSP;

- (b) providing assessments of the Union's foreign and security policy interests and identifying areas where the CFSP could focus in future;
  - (c) providing timely assessments and early warning of events or situations which may have significant repercussions for the Union's foreign and security policy, including potential political crises;
  - (d) producing, at the request of either the Council or the Presidency or on its own initiative, argued policy options papers to be presented under the responsibility of the Presidency as a contribution to policy formulation in the Council, and which may contain analyses, recommendations and strategies for the CFSP.
3. The unit shall consist of personnel drawn from the General Secretariat, the Member States, the Commission and the WEU.
  4. Any Member State or the Commission may make suggestions to the unit for work to be undertaken.
  5. Member States and the Commission shall assist the policy planning process by providing, to the fullest extent possible, relevant information, including confidential information.

The Unit's effectiveness, consisting of 20 members, one from each EU member state, one WEU representative, one from the Commission and three from the Council staff, was to depend not only "on the recruitment of the personnel but also on the access to information particularly via the national diplomatic services and the Commission's delegations abroad".<sup>84</sup>

The Presidency, the Secretary General, the next Presidency and the Commission constitute a new Troika. The Treaty of Amsterdam left the role of the Commission largely unchanged:

**“The Commission should be fully associated with the work carried out in the common foreign and security policy field” (Article 27). The European Parliament should be consulted “on the main aspects and the basic choices of the common foreign and security policy” and its views should be “duly taken into consideration”. Moreover, the EP should be “kept regularly informed by the Presidency and the Commission of the development of the Union’s foreign and security policy” (Article 21).**

**The role of the Political Committee remained the same (Article 25). As before the Political Committee “shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility’ of the Presidency and the Commission”. A “Declaration on Article 25”, however, augmented the role in so far that “...Member States shall ensure that the Political Committee...is able to meet at any time, in the event of international crises or other urgent matters, at very short notice at Political Director or deputy level”.**

**The Treaty of Amsterdam relaxed the unanimity requirement by increasing the use of qualified majority voting in the CFSP, except for those decisions which have military or defence implications (Article 23). Although unanimity remained the**

general principle the possibility of “constructive abstention” was introduced. The member state abstaining in a vote may qualify its abstention by making a formal declaration. In that case, it will not be obliged “to apply the decision, but shall accept that the decision commits the Union”. It shall also “refrain from any action likely to conflict with or impede Union action based on that decision”. However, if the member states abstaining constructively represent more than “one third of the votes weighed in accordance with Article 205(2) of the Treaty establishing the European Community, the decision shall not be adopted”.

The Council will be able to act by qualified majority when “adopting joint actions, common positions or taking any other decision on the basis of a common strategy”; and when “adopting any decision implementing a joint action or a common position”. If, however, a “member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority” a vote will not be taken. In this case, the Council may “acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity”. This provision, as Ben Soetendorp opined “looks very much like the formal institutionalization of an important ground rule that guides the participants in EU decision making in general, based on the so-called Luxembourg compromise”.<sup>85</sup> Finally, for procedural questions, the Council will act by a majority of its members.

Article 28 stated that operational expenditure shall “be charged to the budget of the European Communities, except for, such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise”. If expenditure is not charged to the EC budget it shall be charged to the member states in accordance with the “gross national product scale”, unless the Council acting unanimously decides otherwise. It is also established that member states who had constructively abstained from a CFSP decision under Article 23.1 “shall not be obliged to contribute to the financing thereof”. In sum, the budgetary procedures in the Treaty of Amsterdam remained contentious and did not remove David Allen’s “horns of a dilemma”:

Anxious to preserve their independence and to give both the European Parliament and the Commission as little control of their CFSP activities as possible, the member states have a principled interest in paying for the CFSP themselves. However, most diplomatic services have a natural resistance to multilateral calls on their often tightly restricted budgets and so have a pragmatic interest in “losing” such expenditure in the overall Community budget.<sup>86</sup>

An “Interinstitutional agreement between the European Parliament, the Council and the European Commission on provisions regarding financing of the Common Foreign and Security Policy” stated that CFSP expenditure “shall be treated as expenditure not necessarily resulting from the Treaty”.



According to the agreement, the EP and the Council, on the basis of the preliminary draft budget established by the Commission, shall “annually secure agreement on the amount of the operational CFSP expenditure to be charged to the Communities’ budget and on the allocation of this amount among the articles of the CFSP budget chapter”. These articles are: observation and organisation of elections and participation in democratic transition processes; EU-envoys; prevention of conflicts and peace and security processes; financial assistance to disarmament processes; contributions to international conferences; and urgent actions.<sup>87</sup>

The agreement obliges the Presidency to consult the EP on the main aspects and basic choices of the CFSP on a yearly basis and inform the Parliament on the development and implementation of CFSP actions on a regular basis.<sup>88</sup> The Council is required “each time it adopts a decision in the field of CFSP entailing expenses, immediately and in each case communicate to the European Parliament an estimate of the costs envisaged (*fiche financière*), in particular those regarding time-frame, staff employed, use of premises and other infrastructure, transport facilities, training requirements and security arrangements”. In addition, the Commission is to inform the “budgetary authority on the extension of CFSP actions and the financial forecasts for the remaining period of the year on a quarterly basis”. No funds will be entered into a reserve.<sup>89</sup>

Article 17 was the result of a compromise agreement reached in Amsterdam on one of the most controversial areas in the negotiations – security and defence. The Treaty amendments included: replacing the “eventual” framing of a common defence policy with the word “progressive” (Article 17.1); writing WEU's Petersberg tasks into the TEU (Article 17.2); and a provision that the Union “will avail itself of the WEU to elaborate and implement decisions and actions of the Union which have defence implications” (Article 17.3). The competence of the European Council to establish guidelines in accordance with Article 13 will also obtain in respect of the WEU for those matters for which the Union avails itself of the WEU. When the Union avails itself of the WEU on the Petersberg tasks, all contributing member states will be allowed to “participate fully and on an equal footing in planning and decision-taking in the WEU”.

Article 17.1 considers the WEU as an integral part of the development of the Union providing it with access to an operational capability notably for the Petersberg tasks. The Union shall “foster closer institutional relations with the WEU with a view to the possibility of the integration of the WEU into the Union, should the European Council so decide”. This decision is to be adopted by the member states “in accordance with their respective constitutional requirements”. On 21 March 1997, Germany, France, Italy, Spain, Belgium and Luxembourg (with the support of the Dutch Presidency) presented a draft Protocol to be annexed to the TEU proposing the gradual

integration of the WEU into the EU over a three-phase period. Passage from one phase to another would be decided by the European Council. The three phases would be the following: firstly, the WEU's institutional independence would be maintained, but the structures, rules and procedures of the two Organisations would be harmonized; secondly, the WEU Secretariat would be incorporated in the EU Council Secretariat and the Union Council would take the decision, also binding for WEU, on the implementation of military actions for crisis management (the WEU would be responsible for executing them); thirdly, all WEU structures and the assistance guarantee laid down in Article V, would be incorporated in the EU Treaty or in an additional Protocol.<sup>90</sup> However, this coalition was "solidly blocked" by another one opposed to a rapid merger of the EU and the WEU: Britain, Portugal, and the WEU Observers – Austria, Finland, Sweden, Denmark, Ireland.<sup>91</sup>

According to a "Protocol on Article 17" arrangements for enhanced cooperation between the EU and the WEU were to be drawn up within a year from the entry into force of this Protocol. These included:

- arrangements for improving the coordination of the consultation and decision making processes of the respective organisations. In particular in crisis situations;
- holding of joint meetings of the relevant bodies of the two Organisations;

- harmonisation as much as possible of the sequence of the Presidencies of WEU and the EU, as well as the administrative rules and practices of the two Organisations;
- close coordination of the work of the staff of the Secretariat General of the WEU and the General Secretariat of the Council of the EU, including through the exchange and secondment of personnel;
- arrangements to allow the relevant bodies of the EU, including its Policy Planning and Early Warning Unit, to draw on the resources of WEU's Planning Cell, Situation Centre and Satellite Centre;
- cooperation in the field of armaments, as appropriate, within the framework of the WEAG, as the European forum for armaments cooperation, the EU and WEU in the context of rationalisation of the European armaments market and the establishment of a European Armaments Agency;
- practical arrangements for ensuring cooperation with the European Commission reflecting its role in the CFSP as defined in the revised Treaty on European Union; and
- improved security arrangements with the European Union.

In relation to NATO, Article 17.1 said that the policy of the Union "shall respect the obligation of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty". Amsterdam's "Declaration Relating to Western European Union" reaffirmed that NATO "continues to be the basis of collective defence". According to the Declaration, WEU is an "essential element" of the development of the ESDI "within the Atlantic Alliance" and it will "continue its efforts to strengthen

institutional and practical cooperation with NATO". To this end, WEU will develop in cooperation with NATO, in particular in the following fields:

- mechanisms for consultation between WEU and NATO in the context of a crisis;
- WEU's active involvement in the NATO defence planning process; and
- operational links between WEU and NATO for the planning preparation and conduct of operations using NATO assets and capabilities under the political control and strategic direction of WEU, including military planning, conducting by NATO in coordination with WEU and exercises; a framework agreement on the transfer, monitoring and return of NATO assets and capabilities; liaison between WEU and NATO in the context of European command arrangements.

The reference, finally, to armaments policy was a "compromise between the proposals of the Franco-German coalition and those states which favoured the status quo".<sup>92</sup> The new paragraph in Article 17.1 simply stated that "the progressive framing of a common defence policy will be supported as Member States consider appropriate, by cooperation between them in the field of armaments". As Simon Duke suggested, "a slightly cynical interpretation of this clause is that it was inserted not so much as an underpinning for a CDP [Common Defence Policy] but as a reaction to a series of mergers in the American defence industry".<sup>93</sup>

The Treaty of Amsterdam did not endow the EU with a legal personality as this was “staunchly opposed by France and the United Kingdom, which feared that any such step might weaken the intergovernmental character of the CFSP and justice and home affairs cooperation under Title VI TEU”.<sup>94</sup> Nevertheless Article 24 could “be interpreted in the future as recognising an implicit legal personality for the EU”.<sup>95</sup> It reads:

When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this Title, the Council, acting unanimously, may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council acting unanimously on a recommendation from the Presidency. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall apply provisionally to them.

The provisions of this Article shall also apply to matters falling under Title VI.

Finally, a “Declaration relating to Articles 24 and 38” specified that Article 24 and 38 and the agreements resulting from them “shall not imply any transfer of competence from the Member States to the Union”.

## **6.5 Implications of the Treaty of Amsterdam for the “capability-expectations gap” and recent developments**

What did the 1996 IGC accomplish in the field of foreign and security policy? A unit for analysis and planning was created, new responsibilities were given to the Secretary General of the Council, qualified majority voting was extended, the concept of “constructive abstention” was introduced, and the instrument of common strategies was adopted.<sup>96</sup> Equally important was the writing into the Treaty of the Petersberg tasks. Yet there was a “half-heartedness about the reforming exercise”.<sup>97</sup> Despite agreement on the need to further improve CFSP’s operation in order to enable the Union to fulfil its international role in a more credible manner, the changes enacted did not substantially alter the character of CFSP. The reforms made in Amsterdam “have been designed to make the Treaty of Maastricht work, not to replace it”.<sup>98</sup>

While subscribing to this judgement, Christopher Hill, also detects a serious potential problem. Flexibility may improve effectiveness, but it may also reduce expectations that Europe will act as a whole in international relations.<sup>99</sup> In addition, Allen suggests that “constructive abstention” might deserve the label “destructive abstention” in that it sets out “conditions in which a Member State may dissociate itself from a CFSP decision”.<sup>100</sup> Thus, it is difficult to sustain the claim that the revised CFSP provisions offer some dynamism for an improved

EU capacity to act and to assert its identity on the international scene.

The Treaty's provisions on common foreign and security policy leave the impression of being very much a temporary arrangement, shaped by the same teleological spirit that characterises the mainstream EU institutions. They are not a permanent end in themselves but are geared to the achievement of fixed objectives, possessing a certain dynamic and the possibility of institutional reform. But, as in other areas of the Treaty, there was a gap between rhetoric and substance. In the case of CFSP, member states experienced great difficulty in giving practical expression to their ambitions almost immediately after they have ratified the Maastricht Treaty. The potential contribution of the Amsterdam Treaty provisions for CFSP to the further narrowing of the "capability-expectations gap" should not be overestimated. For one thing, because it must rely on measures taken in the intergovernmental pillar for its success, national control in this area will remain strong. Nor should one exaggerate the degree to which this form of foreign and security policy represents an extension of EC powers and an erosion of national sovereignty. In substance it consists of a series of minor changes which were already on the horizon in 1994 and might have been introduced sooner or later whether the Amsterdam Treaty had come along or not.

There is, of course, nothing wrong in principle with setting ambitious objectives and continuously improving procedures to



secure a rapid, inexpensive and efficient common foreign and security policy. But if EU policies are to have public support, then the public must be properly informed of their scope, technical detail and political impact. The dramatic negative effects which flow from leaving this task to the media is illustrated by the activities of the press in the case of the war in former Yugoslavia. This presupposes, however, that there is a shared identity which, in turn, implies that there is a far greater level of democratic accountability for European foreign policy making process. As Anthony Forster and William Wallace have argued "the absence of any serious engagement of public opinion, in any member state, left the half-commitments made in Title V without the domestic foundations needed for the successful conduct of common foreign policy".<sup>101</sup> The objective of a foreign and security policy at the EU level, in other words, is unlikely to be sustainable without "substantial symbolic support to strengthen the popular sense of shared political community".<sup>102</sup> According to John Peterson, "it is plausible to suggest that a "common" foreign policy cannot, by definition, exist as long as there is no "European public"".<sup>103</sup>

The gradual evolution of CFSP is occurring against a backdrop of a growing number of socio-economic, ecological and political forces and variables that have been slighted by the political sciences in the past: ethnicity, territoriality, boundaries, nationalism, natural resources, environmental quality, population growth and distribution, migration, and the growing interdependence and inequity among world regions and their

economies. The variables and processes that define political power and vulnerability have increased and become more interrelated. The forceful acquisition of territory and resources, exemplified in Kuwait and Bosnia, remains a major international dilemma. Old land boundaries continue to be a source of conflict and tensions. And new maritime disputes have erupted and become complicated as states have incorporated 12-mile territorial seas.

As the interdependencies that characterise our world increase in complexity and visibility, more and more pressure is being brought to bear on sovereignty as an underlying precept of the international order. In fact, it is difficult to think of any significant social problem that does not have some sort of international dimension, be it civil strife or human rights violations. Moreover, supranational aspects of these problems precipitate a subtle shift away from the state as the spatial unit within which problems are assumed to be most appropriately confronted. At the same time, the rise of sub-state nationalism and regionalism in the post-Cold War era is challenging the sanctity of state. One important consequence of this is that the member states of the EU were forced to undertake a series of initiatives to confront the challenges generated by instability in neighbouring regions which eventually led to the EU becoming directly involved in defence affairs. The breakthrough in the debate on a European defence policy came about because of the "coincidence of a number of factors: the experience of Europe's military weakness in the Kosovo crisis which made all

governments convinced of the need to develop an EU crisis management capacity; the fundamental change of British policy; and the supportive attitude of the United States".<sup>104</sup>

In particular: on 26 August 1998, the suggestion was made by President Chirac that "...we shall have to see whether, when the time comes, one must create a European Council of Defence Ministers to affirm our solidarity in the field";<sup>105</sup> in October 1998, at an EU summit in Pörtlach, Austria, Blair bemoaned the fact that Europe's ability for autonomous military action was so limited and unveiled his "Initiative" on European defence calling for major institutional and resource innovations to make Europe a more equal partner in the transatlantic Alliance;<sup>106</sup> in November 1998, the first ever informal meeting of Defence Ministers was convened in Vienna at the initiative of the Austrian EU Presidency which also arranged a meeting between the Austrian Presidency and the Secretary General of NATO;<sup>107</sup> and on 3-4 December 1998, the Franco-British summit in Saint Malo broke new ground. The joint declaration that came out of that meeting stated *inter alia*:

...It will be important to achieve full and rapid implementation of the Amsterdam provisions on CFSP. This includes the responsibility of the European Council to decide on the progressive framing of a common defence policy in the framework of CFSP. The Council must be able to take decisions on an intergovernmental basis, covering the whole range of activity set out in Title V of the Treaty on European Union.

To this end, the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises. In pursuing our objective, the collective defence commitments...must be maintained...Europeans will operate within the institutional framework of the European Union (European Council, General Affairs Council, and meetings of defence ministers)...

In order for the European Union to take decisions and approve military action where the Alliance as a whole is not engaged, the Union must be given appropriate structures and a capacity for analysis of situations, sources of intelligence, and a capability for relevant strategic planning, without unnecessary duplication, taking account of the existing assets of the WEU and the evolution of its relations with the EU. In this regard, the European Union will also need to have recourse to suitable military means (European capabilities – pre-designated within NATO's European pillar or national or multinational European means outside the NATO framework).

Europe needs strengthened armed forces that can react rapidly to the new risks, and which are supported by a strong and competitive European defence industry and technology...<sup>108</sup>

Taking the principles set forth in St Malo as a starting point, EU member states decided in the European Council in Cologne, on 3-4 June 1999, on regular (or *ad hoc*) meetings of the General Affairs Council including defence ministers; setting up a permanent EU Political and Security Committee (PSC); setting up an EU Military Committee (MC) making recommendations to

the PSC, along with an EU Military Staff (MS), and a Situation Centre; and the transfer of WEU functions to the EU.<sup>109</sup>

Pending permanent establishment of those bodies, three interim bodies were set up on March 2000. These were, firstly, an interim PSC (iPSC) made up of top civil servants or ambassadors with responsibility for drafting recommendations on the future functioning of the Common European Security and Defence Policy (CESDP) and for day-to-day management of CFSP-related issues in close conjunction with the Secretary-General/High Representative. Secondly, an interim Military Body (iMB) consisting of military representatives of the Chiefs of Staff of the member states whose job was to provide the iPSC with military advice when necessary. Lastly, the Council Secretariat was reinforced with military experts from the member states to contribute to work in connection with the CESDP and to form the core of the future EU Military Staff.

Few months later, the European Council in Helsinki (11-12 December 1999) stated its "determination to develop an autonomous capacity to take decisions and, where NATO as a whole is not engaged, to launch and conduct EU-led military operations in response to international crises". The European Council declared in particular that "member states must be able by 2003 to deploy within 60 days and sustain for at least one year, military forces of up to 50,000 to 60,000 men capable of carrying out the full range of Petersberg tasks including the most demanding. These forces should be self-sustaining with the

necessary command and control and intelligence capabilities, logistics, and other combat support sources and additionally, as appropriate naval and air elements". Furthermore, the Helsinki European Council took account of the wishes of the WEU associate members and associate partners when it agreed that "appropriate arrangements will be defined that would allow, while respecting the Union's decision-making autonomy, non-EU NATO members and other interested states to contribute to EU military crisis management".<sup>110</sup>

At the European Council in Feira (19-20 June 2000) EU member states examined progress made towards the Common European Security and Defence Policy since Helsinki and reaffirmed their commitment to "building a Common European Security and Defence Policy capable of reinforcing the Union's external action through the development of a military crisis-management capability as well as a civilian one, in full respect of the principles of the UN Charter". In addition, they undertook to provide by 2003 "up to 5,000 police officers for international missions across the range of conflict prevention and crisis-management operations".<sup>111</sup>

In Feira, the Fifteen approved also a document setting out the principles underlying EU-NATO relations, namely respect for EU decision making autonomy and mutual reinforcement, taking account, in the adaptation of EU/NATO agreements, of the different nature of the two Organisations; and no discrimination against non-member or non-allied states. This document also

provided for a widening and deepening, in terms of stated needs, of informal relations between the EU and NATO on an *ad hoc* basis. With this in view, four Working Groups have been set up on issues over which contact is required between the two Organisations: security issues; capability goals; EU access to NATO assets; and permanent arrangements. The four Working Groups have already met several times whereas interim security arrangements, necessary for exchanges of documents, have been adopted. On 19 September 2000, the first joint North Atlantic Council/iPSC meeting took place.

On 20 November 2000, in Brussels, EU member states took part in the Capabilities Commitment Conference (CCC) held to receive pledges from nations towards meeting the military capabilities objectives fixed by the Helsinki European Council. The Conference marked the initial stage in a progress geared to strengthening EU military crisis management capabilities to achieve the so-called "Headline Goal" by 2003. Member states at the CCC pledged to supply, on a voluntary basis, national contributions to meeting the rapid reaction capability identified for the achievement of the Headline Goal. They announced their initial commitment as follows:

Germany: 13,5000 troops	Finland: 2,000
Britain: 12,500	Sweden: 1,5000
France: 12,000	Belgium: 1,000
Italy: 6,000	Ireland: 1,000
Spain: 6,000	Portugal: 1,000
The Netherlands: 5,000	Luxembourg: 100
Greece: 3,5000	Denmark: 0
Austria: 2,000	<b>Total: 67,1000 troops</b>

Table 7.1

Finally, at the European Council in Nice (7-11 December 2000), a number of changes to Title V of the TEU were introduced. The most significant ones were to Article 17 TEU, which removed all but one reference to the WEU. The effect of this will be "to make the EU directly responsible for framing the defence aspects of CFSP and providing access to an operational capability (which is not the same as *having* an operational capability)".<sup>112</sup> Furthermore, according to Article 25 of the Treaty of Nice, the Political Committee is replaced by a Political and Security Committee which shall "monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative". Moreover, the Committee shall exercise, under the responsibility of the Council, "political control and strategic direction of crisis management operations". Finally, a new



Article 27b was introduced which stated that "enhanced cooperation" shall "relate to implementation of a joint action or a common position" but it shall not relate to "matters having military or defence implications".<sup>113</sup>

In brief, the decisions taken in St Malo, Cologne, Helsinki, Feira and Nice have:

unquestionably moved the question of European defence out of the realm of rhetoric and into that of practical achievement. However, the priority given to military means does not render the question of institutional capacities obsolete or redundant, in that the Union must also have an autonomous capacity for real-time decision-making and effective politico-military crisis management.<sup>114</sup>

It is easy to exaggerate the Union's difficulties in the post-Cold War period, although serious problems undoubtedly exist. Yet the notion of a Union incapable of wielding considerable attraction to outsiders could be misleading. The Union is an inextricable part of the political process, economic organisation and social structure in the states which wish to join the EU. Here, as in external economic relations more generally, the EU has the potential to engage in "strategic action", as Michael Smith has suggested.<sup>115</sup> The EU's civilian, "soft security" instruments, in other words, have had and continue to have an extraordinary impact on political, social and economic developments inside and outside the Union's borders.

In conclusion, the targets Europeans have jointly set themselves are within their grasp. They depend on their political will, now and in the years to come. A crucial period has, therefore, begun during which building a CFSP and a Common European Security and Defence Policy will take full shape in line with each country's ability to keep to its commitments and the EU's to demonstrate in practical terms the credibility of its common security and defence policy.<sup>116</sup> Whether the gap between outside expectations and the capacity to meet such expectations will go away is questionable. As Hill suggested "...it will probably never do so, even if it is highly desirable that European foreign policy-makers should realise the dangers of hubris and scale down their ambitions to remake international relations".<sup>117</sup> But, a "capability-expectations gap" need not be a liability: "for such a gap can encourage the EU to continually develop and refine its capabilities".<sup>118</sup>

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<sup>3</sup> Catriona Gourlay and Eric Remacle, "The 1996 IGC: The Actors and their Interaction" in Kjell A. Eliassen, ed., *Foreign and Security Policy in the European Union* (London, Thousand Oaks and New Delhi: SAGE, 1998), 59.

<sup>4</sup> Hennes, op. cit., 33.

<sup>5</sup> Franklin Dehousse, *Amsterdam: The Making of a Treaty* (London: Kogan Page, European Dossier Series, 1999), 7.

<sup>6</sup> Quoted in Hennes, op. cit., 33.

<sup>7</sup> Three months earlier, on 1 September, the Group published in Madrid a "Progress Report on the 1996 Intergovernmental Conference".

<sup>8</sup> Reflection Group, *Reflection Group's Report*, Brussels, 5 December 1995, VII.

<sup>9</sup> Ibid., 39.

<sup>10</sup> Ibid., 40.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid., 41.

<sup>14</sup> Ibid., 42-44.

- 15 Ibid., 42.
- 16 Ibid.
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- 19 Ibid., 46.
- 20 Ibid., 47.
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- 22 Ibid., 48.
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- 33 "Luxembourg government memorandum on the 1996 Intergovernmental Conference, 30 June 1995, <http://europa.eu.int/en/agenda/igc-home/ms-doc/state-lu/positn.html>
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- 36 "Basis for negotiation. An open Europe – Intergovernmental Conference 1996", 11 December 1995, <http://europa.eu.int/en/agenda/igc-home/ms-doc/state-dk/basisdk.htm>
- 37 "Finland's points of departure and objectives at the European Union's Intergovernmental Conference in 1996", 27 February 1996, <http://europa.eu.int/en/agenda/igc-home/ms-doc/state-fi/pos.htm>
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# 7 Conclusions

To understand CFSP and to make reasonable prognoses about the future, we must begin by arming ourselves with an array of information and conceptual tools, entertaining rival interpretations of CFSP, and questioning the assumptions on which these contending CFSP views rest. International relations theories, theories of foreign policy and integration theories have a lineage that dates years back. Yet our understanding of CFSP – and of its impact – is still patchy at best.

CFSP is a new kind of foreign policy mechanism for which most of the standard theories of integration and of international relations provide only a partial explanation. The motives behind the creation of EPC/CFSP are relatively clear, but the driving forces behind its development since the 1970s are still widely debated. Shared values have played a part, as have external threats, convenience and the self-interest of elites, but whether the process of EPC/CFSP has had its own internal logic or has been forced is still open to debate. Most explanations hover somewhere between the internal logic arguments of the neofunctionalists and the emphasis realists place on EU member states as rational actors. Wherever the truth lies, CFSP has emerged as a new species of foreign policy organisation that does not easily fit most of the conventional explanations about why states cooperate in the field of foreign and security policy. Terms such as federal, confederal, intergovernmental, and

supranational have only limited value in describing and understanding CFSP. Attempts to define its nature are complicated by the fact that its dimensions and identity have changed over time.

Members of the European Union have sought since foreign policy cooperation was first launched under the name European Political Cooperation in 1970 to coordinate their efforts in hopes of devising a common position on foreign policy issues. Initially on a tentative basis, and quite outside the framework of the Community Treaties, the EC member states in the 1970s and 1980s increasingly cooperated with one another on foreign policy matters – to such an extent that by the mid-1980s there were few major international issues on which the EC did not pronounce. This developing importance of foreign policy cooperation was recognised when EPC was accorded its own section – Title III – in the SEA. However, by pronouncing a CFSP, member states raised false expectations about the EU's ability to take concerted international action, especially involving the use of force. The negotiations on Political Union manifested a commitment to greater international involvement and greater international activism, although the CFSP established limits beyond which member states would or could not collectively go. To some extent the Union was a victim of its own success. European designs and statements did raise expectations at home and abroad that exceeded CFSP's capabilities. The under-resourced nature of CFSP was first revealed during the war in former Yugoslavia (1991-1995) and



again in response to the crises in the Aegean (1996), Albania (1997) and Kosovo (1998).

The system of CFSP that was to emerge from the TEU selected the war in former Yugoslavia as one of its first topics for consideration. This war was an unusually complex and difficult problem. This fact, combined with the region's geopolitical significance which invites numerous external interferences, made the Balkans a severe testing ground for any prospective international actor wishing to be involved in the solution of the Yugoslav conflict. It should therefore, be taken into account that the EU's effort to formulate a European Yugoslav foreign policy was an unusually difficult venture.

The initial response to the war in former Yugoslavia was the promulgation of a heady rhetorical claim within official EU circles that held the Organisation capable in both aspiration and mandate of projecting successfully Europe's external identity. "This is the hour of Europe". Needless to say, this estimate was wildly astray. Such statements, could be multiplied, but the object of citing them is not to crow at their failure to predict the events of 1991 and after. It is rather to point up the enormous gap between the subterranean course of events and EU's capacity to comprehend them. Frameworks of understanding devised for one set of circumstances served poorly as guides for circumstances which defied all expectations. Translating EU's aspirations to handle satisfactorily a number of extremely difficult questions into practice would prove a

daunting task, rendered all the more difficult since the EU's member states unwillingness to wield the instruments of their national power, namely military force, hamstrung EU's efforts to check the course of events.

It is not surprising therefore, that the war in former Yugoslavia highlighted the EU's impotence and utter dependence on American leadership when armed conflict erupted. It was this case, more than any other perhaps, that stoked fears about the extent to which the Union's foreign policy process is capable of defining and pursuing appropriate and effective international action, although it seems to have accentuated the trend to a re-examination of CFSP's lofty ambitions.

When the former Yugoslavia started to disintegrate, Washington backed off from the conflict, and Europe interpreted this as an opportunity to show what it could achieve politically and militarily. Intent to not be charged with lack of resolve, the EU quickly found itself deeply engaged in active mediation and in the dispatch of ceasefire monitors. However, EU's inability first to construct an effective foreign policy consensus on the Balkan crisis and then to control the conflict resulted both in many civilian and military casualties in the former Yugoslavia and a setback for CFSP.

Closer policy coordination among EU member states and the determination of policies at a European level depend on member states sharing the same perceptions and explanations of

problems, on the willingness of national institutions to cooperate, on political culture, reconcilable national interests and so on. In the Yugoslav case, from 1992 onwards – at least in France, Britain and Germany – the European forum remained useful as long as it was outlining general purposes, or as long as it was suitably serving national interests; priority, however, as regards action, lay with national policies. Characteristic examples of such attitude<sup>s</sup> were Germany's decision to recognise Croatia, Mitterrand's visit to Sarajevo and Greece's stance on FYROM's recognition. The awkwardness of the procedures at the Union's level were also divisive of the Twelve/Fifteen in that they encouraged larger states, in particular Britain, France, and Germany, to pursue joint initiatives and to hold consultations outside the formal CFSP framework. Furthermore, European positions were subject to the electoral fortunes of many different governments, all attempting to pursue national objectives both within and outside the limits of CFSP. The six monthly rotating Presidency meant that the local leaders in former Yugoslavia were faced by a bewildering collection of European leaders and officials successively claiming to be acting in the name of the Union. Although EU support was welcomed, it generated little return. Because the Europeans were not seen as fundamental to the peace process they became the object of much symbolic diplomacy. The demands of Balkan regional politics could often be met by an assault on European actions and statements.

When economic action was used, there was a symmetry in the European response; but military action produced an asymmetric

action. Once military intervention was used the EU institutions were sidelined, the decision to become involved lay with the individual national governments, and some member states were unable or unwilling to participate in the military operations. Here, the EU as an entity was not able to act fully, as the action came to involve military means. The asymmetry reminded the world that the US was a military superpower, while the EU was not. The United States extracted Europe from its predicament by getting NATO directly involved in Bosnia, and by providing American military leadership and combat forces to the operation. Europeans drew the lesson from Bosnia that for a military operation to be a success, NATO and the United States must participate at the highest levels.

Two remarks are worth repeating in relation to EU's policy in former Yugoslavia. First, the fact that the EU member states did not shy away from policy innovations – at first proactive and imaginative, and later increasingly desperate – was by itself remarkable. Judged in its own terms, it is regarded as an achievement for the EU member states to have progressed as far as the provision of emergency relief, the sending of monitors, sanctions on Serbia, the appointment of a mediator, the administration of Mostar, and use of the WEU in checks of shipping. Most significantly, however, EU policies in the civil area of activity made a substantial contribution to alleviating suffering and to preparing the way for the eventual accord reached at Dayton. Second, the EU's lack of military capability must be seen in context. By Kosovo, the limitations of military

force in producing a tenable political settlement had become only too apparent.

The remarks just made are crucial in making a correct assessment of the EU's role and achievements. This is because a balanced assessment necessitates keeping in proportion the context, the objectives and the means available to the EU member states: the context was one of a highly complex issue; the objective, creating and maintaining peace on the ground was intractable as further instability and conflict in Albania and Kosovo have demonstrated all too clearly; and the means which were available to a regular international (state) actor, were not available to them unless indirectly and by common agreement – that is only if they all agreed to use part of their national means for the achievement of common objectives.

Yet the EU's shortcomings having been stated, it remains of course necessary to be assessed against any other foreign policy actor's incapacity for wrestling with the political and military challenges presented by the crisis in former Yugoslavia. In the area of foreign policy, then, there might be times when EU institutions are not capable of providing a formula for the solution of the problems posed by ethnic conflicts, irredentist border disputes, state fragmentation, and national minorities. This unsatisfactory situation though, does not mean that one or more of its member states will undertake a series of complementary measures aimed at the prevention, control and absorption of conventional threats or the more novel threats

posed by terrorist groups and transnational criminal organisations. Nor that its member states will demonstrate innovative thinking, and greater sensitivity to new forms of vulnerability. Instead no action may be taken at all. Having said this, and despite the weaknesses and failures of EU institutions in dealing with the post-Cold War crises that have arisen, fallibility is not the same as futility; limited achievement is not the same as unlimited failure; and risk is not the same as imminent danger. Identifying the successes achieved by EU diplomacy is difficult to achieve, but there is no doubt that EU institutions have helped to reduce tensions in areas like Moldova and Bosnia.

A major concern of this study has been with the question of how to assess CFSP. Chapter 1 surveyed the relevance of different types of explanatory frameworks to CFSP. It concluded that EPC/CFSP was best captured by the notion of the “capability-expectations gap”. Chapters 3, 4, 5 and 6 have analysed empirical evidence with a view to evaluating the usefulness of this pretheoretical device. Our conclusion is that it has provided a useful way of understanding CFSP in general and its particular performance in the former Yugoslavia. Undoubtedly, there is still no clear conceptual consensus in favour of cooperative security, and the process of building a “European foreign policy worthy of the name with an executive capable of taking clear decisions on high policy matters, commanding resources and instruments that have a sophisticated bureaucracy at their disposal and enjoys democratic legitimacy”

is still at a very early stage. Past and present experience suggests that the EU's claim to full "actorness" is unlikely to be an achievable objective. Many of CFSP's critics subscribe to the view that the nation state, not a multinational framework, is the "natural" supreme political unit. They argue that insofar as transferences of power to Brussels undermine national sovereignty, they should be resisted. But what proponents of this view all too often fail to recognise is that the member states of the EU were seeing their sovereignties being steadily eroded long before EPC/CFSP was established, and since it was established they have seen their sovereignties further eroded by forces that are not a consequence of EU membership. Whether it is because of movements in financial markets, US military dominance, the relative availability of weapons of mass destruction, near-instantaneous electronic communications, environmental crises, demographic pressures of many kinds, and desperately aggressive "peoples" without states, virtually all West European states have become increasingly affected by, and at the mercy of, international developments they cannot control. The fact is that in an ever expanding range of policy and decision making sectors, states have not been able to act in isolation but have had to adjust and adapt so as to fit in with an array of external influences.

CFSP is often criticised for being weak in structure with far too much bickering over trivial matters and not enough visionary thinking and united action to tackle major problems. Unquestionably there is much in these criticisms, but that the

CFSP should find harmonious collective policy making difficult is not surprising to anyone with a historical perspective. For before they joined EPC/CFSP the member states made decisions for themselves on most matters. It is not easy, especially for those states which, until relatively recently, have been great powers or which believe themselves to be different or to have special interests, to have to cede sovereignty by transferring decision making responsibilities to a multinational framework in which other voices may prevail. Any explanation and understanding of what CFSP is, and what it has and has not achieved in former Yugoslavia, must recognise this. CFSP must, in other words, be seen in the context of the forces that have made it, and are still making it. Some of these forces have served to push the states together. Others – and long established assumptions regarding the importance of national independence and sovereignty are very much amongst these – have resulted in progress towards cooperation being slow, difficult and far from continuous.

Thus, in the 1990s there has been some movement in the direction of the harmonisation of interests and some progress in the field of capabilities, which has been the result of a demand for a growing EU international role. There is no guarantee of success, but equally there are no iron laws of international politics that preordain failure. EU foreign, security and defence policy is ambiguous and complex. Capabilities and expectations are contradictory. Certainly they are based on different assumptions about the EU's role in international relations.



This being so, the most realistic aim of European statesmen should be to continue the search for a compromise between the realities of EU's power and the moral and prudent imperatives of building a more peaceful, just and stable Europe able to meet the basic needs of far more of its citizens.

## **APPENDIX 1: JOINT DECLARATION (Brioni, 7 July 1991)**

At the invitation of the Yugoslav Government, the European Community Ministerial Troika met on 7 July 1991 at Brioni, with representatives of all parties directly concerned by the Yugoslav crisis.

The objective of the Troika mission was to create the appropriate conditions for a peaceful negotiation between all the parties. All the parties concerned took note of the European Community and its member States' declaration of 5 July 1991 and reaffirmed their commitment to full implementation of the European Community's proposals on 30 June 1991 in order to secure the cease-fire and enable negotiations on the future of Yugoslavia.

In regard of these proposals further modalities were agreed in Annex I.

Parties agreed that in order to ensure a peaceful settlement, the following principles will have to be fully followed:

- it is up to only the peoples of Yugoslavia to decide upon their future;
- a new situation has arisen in Yugoslavia that requires close monitoring and negotiation between different parties;
- negotiations should begin urgently, no later than 1 August 1991, on all aspects of the future of Yugoslavia without preconditions and on the basis of the principles of the Helsinki Final Act and the Paris Charter for a New Europe (in particular respect for human rights, including the right of peoples to self-determination in conformity with the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States);
- the Collegiate Presidency must exercise its full capacity and play its political and constitutional role, notably with regard to the Federal Armed Forces;
- all parties concerned will refrain from any unilateral action, particularly from all acts of violence.

The Community and its member States for their part will assist in reaching peaceful and durable solutions to the present crisis, provided and as long as the commitments undertaken above are fully abided by.

In this context, the European Community and its member States accept the request by the other parties to assist and facilitate the negotiating process.

Their help could be extended to monitoring the progress of the negotiations, and expertise for the working groups to be established by the parties concerned on, *inter alia*, legal, human rights, including the rights of minority populations, economic, commercial, financial and security relations.

In the wake of the decision taken in Prague in the framework of the CSCE, they agreed that a monitoring mission should become operational as soon as possible in order to help stabilise the cease-fire and to monitor the implementation of the remaining elements of the agreement reached between Yugoslav parties with the contribution of the European Community. Guidelines for the preparatory mission are set out in Annex II.

They welcome the expected arrival on 9 July of this preparatory mission of High Officials.

All Yugoslav parties committed themselves to support the envisaged monitoring mission by, *inter alia*, providing full protection and guaranteed freedom of movement.

They all agreed that the protection of minority populations is critical to a successful outcome of the negotiations. They also reconfirmed that they fully respect in this matter their commitments under international law.

The European Troika is prepared to inform all the CSCE Participating States about developments in the negotiating process.

## **ANNEX I**

### **FURTHER MODALITIES IN PREPARATION OF NEGOTIATIONS**

#### **I. Border regime**

Control of border crossings will be in the hands of Slovenian police. They will act in conformity with federal regulations.

## **II. Customs**

The agreement signed by the representatives of the Federal Government and the Government of the Republic of Slovenia on 20 June 1991 is reconfirmed and shall be implemented. Custom duties shall remain a federal revenue and be collected by Slovenian customs officials. They shall be paid into a joint account to be controlled by the federal and republican Ministers of finance plus one or two external controllers.

## **III. Air Traffic Control**

There is a single air traffic control for the whole of Yugoslavia. All domestic and international air traffic over Yugoslavia is controlled and guaranteed by the competent federal authority.

## **IV. Border security**

The situation prevailing before 25 June 1991 shall be re-established. Within the suspension period (of three months) negotiations shall be completed in order to ensure an orderly transfer of the competences of the JNA in this field. A border regime based on European standards remains a firm objective.

## **V. Further modalities for the implementation of the cease-fire**

- lifting of blockade of JNA units and facilities;
  - unconditional return of JNA units to their barracks;
  - all roads to be cleared;
  - return of all facilities and equipment to JNA;
  - de-activation of territorial defence units and their return to quarters.
- All these measures shall be effective as soon as possible, but no later than 8 July at 24.00 hours.

## **VI. Prisoners**

All prisoners detained in connection with hostilities since 25 June 1991 shall be released at the earliest but no later than 8 July at 24.00 hours. The International Red Cross should be associated with the implementation of this decision.

## **ANNEX II**

### **GUIDELINES FOR A MONITORING MISSION TO YUGOSLAVIA**

#### **Introduction**

The situation in Yugoslavia is of concern to all CSCE Participating States. The Committee of Senior Officials meeting in Prague discussed the dispatch of a multinational Monitoring Mission into Yugoslavia. Obviously, such a Monitoring Mission can only operate with full consent of all Parties concerned. To ensure that the Monitoring Mission can fulfil its tasks, it is necessary to define its mandate and to determine its rights and duties. The financing of the operation and a number of practical aspects have to be decided upon. For this purpose, the following elements are suggested:

#### **Mandate**

A Monitoring Mission will be established with the objective to monitor the situation in Yugoslavia, in particular by monitoring activities in Slovenia – and possibly also Croatia. The aim of these activities is to monitor the implementation of the remaining elements of the agreement reached between Yugoslav parties with the contribution of the European Community.

#### **Duration of the mandate**

The Monitoring Mission should be able to take up its activities as soon as possible. The Monitoring Mission could continue its operation as long as this is deemed necessary by all Parties concerned.

#### **Area of deployment**

Under the current circumstances, the Monitoring Mission would geographically limit its activities to Slovenia, and possibly Croatia. If need arises, the area of deployment could be reviewed in agreement with all Parties concerned.

#### **Composition and operation**

The Monitoring Mission could be of mixed composition, i.e. both military and civilian personnel.

The Mission could consist of 30 to 50 people. Since it is important to act as expeditiously as possible, selection of personnel should not be allowed to delay the beginning of the Monitoring Mission's activities. A practical solution could be to recruit monitors from the civilian and military members of the Vienna CSBM delegations where expertise on the CSCE process is available. They could be supplemented with other civilian and/or military officials.

The Mission would establish a Co-ordination Centre within Yugoslavia. From this Centre smaller units – of e.g. two men would be deployed in different sectors. One liaison officer of each of the opposing parties would be assigned to escort such monitoring units at all times.

#### **Command structure and supervision**

The monitoring units would work under the responsibility of the Head of the Monitoring Mission.

The Head of Monitoring would submit a daily report, through the Prague CSCE Secretariat, to the Committee of Senior Officials.

The Committee could be the appropriate venue to take stock of the activities of the Monitoring Mission and to decide on the prolongation of the mandate of the Mission, if this is necessary.

#### **Legal arrangements**

Legal arrangements would be necessary to ensure that the Monitoring Mission can carry out its tasks. These arrangements include provisions concerning diplomatic immunity as well as the freedom to travel and communicate freely within Yugoslavia, i.e. with the Co-ordination Centre and with Embassies.

#### **Practical arrangements**

Amongst the many practical arrangements to be decided upon are questions regarding the means of transport and interpretation services that will have to be made available to the monitoring units and the way in which the monitors will identify and distinguish themselves as members of the CSCE Monitoring Mission.

Since the Monitoring Mission is not a peace-keeping force, the monitors would not carry arms.

**APPENDIX 2: DECLARATION ON THE OCCASION OF THE CEREMONIAL  
OPENING OF THE CONFERENCE ON YUGOSLAVIA (Peace Palace, The Hague,  
7 September 1991)**

**We, the representatives of the European Community and its member states and of Yugoslavia and its Republics, participating in the opening session of the Conference on Yugoslavia, have assembled in the Peace Palace at The Hague on 7 September 1991.**

**Our common aim is to bring peace to all in Yugoslavia and to find lasting solutions which do justice to their legitimate concerns and aspirations. To this end we have decided also to establish an Arbitration Commission in the framework of the Conference.**

**Today's opening session marks the beginning of the negotiations on the future of Yugoslavia and its peoples, the outcome of which must take into account the interests of all who live there.**

**We pledge to seek a peaceful settlement based on all the principles and commitments agreed upon in the CSCE process.**

**We are determined never to recognise changes of any borders which have not been brought about by peaceful means and by agreement.**

**We reiterate our commitment undertaken in the Charter of Paris for a new Europe to build, consolidate and strengthen democracy as the only system of government for us all.**

**We solemnly declare our will to do everything in our power to enable the Conference on Yugoslavia to proceed in a peaceful environment for which the cease-fire observed in all its elements immediately is essential, thus contributing to its successful outcome.**

*Source: EPC Press Release, P.86/91.*

**APPENDIX 3: RESOLUTION 713 (1991) (Adopted by the Security Council at its 3009th meeting, on 25 September 1991)**

The Security Council,

Conscious of the fact that Yugoslavia has welcomed the convening of a Security Council meeting through a letter conveyed by the Permanent Representative of Yugoslavia to the President of the Security Council (S/23069),  
Having heard the statement by the Foreign Minister of Yugoslavia,  
Deeply concerned by the fighting in Yugoslavia which is causing a heavy loss of human life and material damage, and by the consequences for the countries of the region, in particular in the border areas of neighbouring countries,  
Concerned that the continuation of this situation constitutes a threat to international peace and security,  
Recalling its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security,  
Recalling also the provisions of Charter VIII of the Charter of the United Nations,  
Commending the efforts undertaken by the European Community and its member States, with the support of the States participating in the Conference on Security and Cooperation in Europe, to restore peace and dialogue in Yugoslavia, through, *inter alia*, the implementation of a cease-fire including the sending of observers, the convening of a Conference on Yugoslavia, including the mechanisms set forth within it, and the suspension of the delivery of all weapons and military equipment to Yugoslavia,  
Recalling the relevant principles enshrined in the Charter of the United Nations and, in this context, noting the Declaration of 3 September 1991 of the States participating in the Conference on Security and Cooperation in Europe that no territorial gains or changes within Yugoslavia brought about by violence are acceptable,  
Noting also the agreement for a cease-fire concluded on 17 September 1991 in Igalo, and also that signed on 22 September 1991,  
Alarmed by the violations of the cease-fire and the continuation of the fighting,  
Taking note of the letter dated 19 September 1991 to the President of the Security Council from the Permanent Representative of Austria (S/23052),  
Taking note also of the letters dated 19 September 1991 and 20 September 1991 to the President of the Security Council from respectively the Permanent Representative of Canada (S/23053) and the Permanent Representative of Hungary (S/23057),  
Taking note also of the letters dated 5 July 1991 (S/22775), 12 July 1991 (S/22785), 22 July 1991 (S/22834), 6 August 1991 (S/22898), 7 August 1991 (S/22902), 7 August 1991 (S/22903), 21 August 1991 (S/22975), 29 August 1991 (S/22991), 4 September 1991 (S/23010), 19 September 1991 (S/23047), 20 September 1991 (S/23059) and 20 September 1991 (S/23060), from respectively the Permanent Representative of the Netherlands, the Permanent Representative of Czechoslovakia, the Permanent Representative of Belgium, France and the United Kingdom of Great Britain and Northern Ireland, the Charge d'Affaires a.i. of Austria, and the Permanent Representative of Australia,

1. Expresses its full support for the collective efforts for peace and dialogue in Yugoslavia undertaken under the auspices of the member States of the European Community with the support of the States participating in the Conference on Security and Cooperation in Europe consistent with the principles of that Conference;
2. Supports fully all arrangements and measures resulting from such collective efforts as those described above, in particular of assistance and support to the cease-fire observers, to consolidate an effective end to hostilities in Yugoslavia and the smooth functioning of the process instituted within the framework of the Conference on Yugoslavia;
3. Invites to this end the Security-General to offer his assistance without delay, in consultation with the Government of Yugoslavia and all those promoting

the efforts referred to above, and to report as soon as possible to the Security Council;

4. Strongly urges all parties to abide strictly by the cease-fire agreements of 17 September 1991 and 22 September 1991;
5. Appeals urgently to and encourages all parties to settle their disputes peacefully and through negotiation at the Conference on Yugoslavia, including through the mechanisms set forth within it;
6. Decides, under Chapter VII of the Charter of the United Nations, that all States shall, for the purpose of establishing peace and stability in Yugoslavia, immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Security Council decides otherwise following consultation between the Security-General and the Government of Yugoslavia;
7. Calls on all States to refrain from any action which might contribute to increasing tension and to impeding or delaying a peaceful and negotiated outcome to the conflict in Yugoslavia, which would permit all Yugoslavs to decide upon and to construct their future in peace;
8. Decides to remain seized of the matter until a peaceful solution is achieved.

**APPENDIX 4: DECLARATION ON THE "GUIDELINES ON THE RECOGNITION OF NEW STATES IN EASTERN EUROPE AND IN THE SOVIET UNION" (16 December 1991)**

In compliance with the European Council's request, Ministers have assessed developments in Eastern Europe and the Soviet Union with a view to elaborating an approach regarding relations with new states.

In this connection they have adopted the following guidelines on the formal recognition of new States in Eastern Europe and in the Soviet Union:

The Community and its Member States confirm their attachment to the principles of the Helsinki Final Act and the Charter of Paris, in particular the principle of self-determination. They affirm their readiness to recognize, subject to the normal standards of international practice and the political realities in each case, those new States which, following the historic changes in the region, have constituted themselves on a democratic basis, have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process and to negotiations.

Therefore, they adopt a common position on the process of recognition of these new States, which requires:

- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights;
- guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE;
- respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement;
- acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability;
- commitment to settle by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes.

The Community and its Member States will not recognize entities which are the result of aggression. They would take account of the effects of recognition on neighbouring States. The commitment to these principles opens the way to recognition by the Community and its Member States and to the establishment of diplomatic relations. It could be laid down in agreements.

**DECLARATION ON YUGOSLAVIA**

**(Extraordinary EPC Ministerial Meeting, Brussels, 16 December 1991)**

The European Community and its Member States discussed the situation in Yugoslavia in the light of their Guidelines on the recognition of new States in Eastern Europe and in the Soviet Union. They adopted a common position with regard to the recognition of Yugoslav Republics. In this connection they concluded the following:

The Community and its Member States agree to recognize the independence of all the Yugoslav Republics fulfilling all the conditions set out below. The implementation of this decision will take place on 15 January 1992.

They are therefore inviting all Yugoslav Republics to state by 23 December whether:

- they wish to be recognized as independent States;
- they accept the commitments contained in the above-mentioned Guidelines;
- they accept the provisions laid down in the draft Convention – especially those in Chapter II on human rights and rights of national or ethnic groups – under consideration by the Conference on Yugoslavia;
- they continue to support:
  - the efforts of the Secretary General and the Security Council of the United Nations; and
  - the continuation of the Conference on Yugoslavia.



The applications of those Republics which reply positively will be submitted through the Chair of the Conference to the Arbitration Commission for advice before the implementation date.

In the meantime, the Community and its Member States also require a Yugoslav Republic to commit itself, prior to recognition, to adopt constitutional and political guarantees ensuring that it has no territorial claims towards a neighbouring Community State and that it will conduct no hostile propaganda activities versus a neighbouring Community State, including the use of a denomination which implies territorial claims.

*Source: "Symposium: Recent Developments in the Practice of State Recognition", European Journal of International Law 4 (1993), 36-91.*

**APPENDIX 5: OPINIONS No. 4-7 OF THE ARBITRATION COMMISSION OF THE INTERNATIONAL CONFERENCE ON YUGOSLAVIA**

***Opinion No.4 on International Recognition of the Socialist Republic of Bosnia-Herzegovina by the European Community and its Member States***

In a letter dated 20 December 1991 to the President of the Council of the European Communities, the Minister of Foreign Affairs of the Socialist Republic of Bosnia-Herzegovina asked the Member States of the Community to recognize the Republic.

The Arbitration Commission proceeded to consider this application in accordance with the Declaration on Yugoslavia and the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union adopted by the Council on 16 December 1991 and with the rules of procedure adopted by the Arbitration Commission on 22 December.

For the purposes of its deliberations the Commission took note of the following materials supplied by the Socialist Republic of Bosnia-Herzegovina (SRBH):

1. Answers to the Commission's questionnaire sent to the Republics concerned on 24 December 1991;
2. Extracts from the relevant provisions of the 1974 Constitution of the SRBH, the constitutional amendments passed in 1990, the Constitution of the Socialist Federal Republic of Yugoslavia and the draft Constitution currently being prepared;
3. The "Memorandum" and "Platform" of the Assembly of the SRBH, dated 14 October 1991;
4. Letter of 27 December 1991 from the President of the Presidency of the SRBH to Lord Carrington, Chairman of the Conference on Yugoslavia, on the formation of an "Assembly of the Serbian People in Bosnia-Herzegovina";
5. The Decision of 8 January 1992 by the Prime Minister of the SRBH, published in the Official Journal, whereby the Government undertook to abide by the international agreements cited in the Guidelines;
6. Answers, dated 8 January 1992, to the Commission's request for additional information on 3 January.

The Commission also had before it two letters, dated 22 December 1991 and 9 January 1992, from the President of the "Assembly of the Serbian People in Bosnia-Herzegovina", copies of which were sent to the Chairman of the Commission on the same dates.

Having regard to the information before it, and having heard the Rapporteur, the Arbitration Commission delivers the following opinion:

1. By an instrument adopted separately by the Presidency and the Government of Bosnia-Herzegovina on 20 December 1991 and published in the Official Journal of the Republic on 23 December these authorities accepted all the commitments indicated in the Declaration and the Guidelines of 16 December 1991.

In that instrument the authorities in question emphasized that Bosnia-Herzegovina accepted the draft Convention produced by the Hague Conference on 4 November 1991, notably the provisions in Chapter II on human rights and the rights of national or ethnic groups.

By a Decision of 8 January 1992 the Government of the SRBH accepted and undertook to apply the United Nations Charter, the Helsinki Final Act, the Charter of Paris, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and all other international instruments guaranteeing human rights and freedoms and to abide by the commitments previously entered in to by the SFRY concerning disarmament and arms control.

The current Constitution of the SRBH guarantees equal rights for "the nations of Bosnia-Herzegovina – Muslims, Serbs and Croats – and the members of the other nations and ethnic groups living on its territory".

The current Constitution of the SRBH guarantees respect for human rights, and the authorities of Bosnia-Herzegovina have sent the Commission a list of the laws in force giving effect to those principles; they also gave the

- Commission assurances that the new Constitution now being framed would provide full guarantees for individual human rights and freedoms.
- The authorities gave the Commission an assurance that the Republic of Bosnia-Herzegovina had no territorial claims on neighbouring countries and was willing to continue participating in the Conference on Yugoslavia in a spirit of constructive cooperation.
2. The Commission also noted that on 24 October 1991 the Assembly of the SRBH adopted a "platform" on future arrangements for the Yugoslav Community. According to this document the SRBH is prepared to become a member of a new Yugoslav Community on two conditions:
    - (i) the new Community must include Serbia and Croatia at least; and
    - (ii) a convention must be signed at the same time recognizing the sovereignty of the SRBH within its present borders; the Presidency of the SRBH has informed the Commission that this in no way affects its application for recognition of its sovereignty and independence.
  3. The Commission notes:
    - (a) that the declaration and undertakings above were given by the Presidency and the Government of the Socialist Republic of Bosnia-Herzegovina, but that the Serbian members of the Presidency did not associate themselves with those declarations and undertakings; and
    - (b) that under the Constitution of Bosnia-Herzegovina as amended by Amendment LXVII, the citizens exercise their powers through a representative Assembly or by referendum.

In the eyes of the Presidency and the Government of the SRBH the legal basis for the application for recognition is Amendment LX, added to the Constitution on 31 July 1990. This states that the Republic of Bosnia-Herzegovina is a "sovereign democratic State of equal citizens, comprising the peoples of Bosnia-Herzegovina – Muslims, Serbs and Croats – and members of other peoples and other nationalities living on its territory". This statement is essentially the same as Article 1 of the 1974 Constitution and makes no significant change in the law.

Outside the institutional framework of the SRBH, on 10 November 1991 the "Serbian people of Bosnia-Herzegovina" voted in a plebiscite for a "common Yugoslav State". On 21 December 1991 an "Assembly of the Serbian people of Bosnia-Herzegovina" passed a resolution calling for the formation of a "Serbian Republic of Bosnia-Herzegovina" in a federal Yugoslav State if the Muslim and Croat communities of Bosnia-Herzegovina decided to "change their attitude towards Yugoslavia". On 9 January 1992 this Assembly proclaimed the independence of a "Serbian Republic of Bosnia-Herzegovina".

4. In these circumstances the Arbitration Commission is of the opinion that the will of the peoples of Bosnia-Herzegovina to constitute the SRBH as a sovereign and independent State cannot be held to have been fully established.

This assessment could be reviewed if appropriate guarantees were provided by the Republic applying for recognition, possibly by means of a referendum of all the citizens of the SRBH without distinction, carried out under international supervision.

Paris, 11 January 1992.

### ***Opinion No.5 on the Recognition of the Republic of Croatia by the European Community and its Member States***

In a letter dated 19 December 1991 to the President of the Council of the European Communities, the President of the Republic of Croatia asked the Member States of the Community to recognize the Republic.

The Arbitration Commission proceeded to consider the application in accordance with the Declaration on Yugoslavia and the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union adopted by the

Council on 16 December 1991 and with the rules of procedure adopted by the Arbitration Commission on 22 December.

For the purposes of its deliberations the Commission took note of the following materials supplied by the Republic of Croatia:

1. Answers to the Commission's questionnaire sent to the Republic concerned on 24 December 1991;
2. Document supporting the application for recognition of 19 December 1991, entitled "Answers to the Declaration on Yugoslavia and to the Declaration on the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union";
3. Constitution of the Republic of Croatia of 22 December 1990;
4. Report on the results of the referendum held on 19 May 1991;
5. Constitutional Decision of 25 June 1991 on the sovereignty and independence of the Republic of Croatia, as confirmed by Article 140(1) of the Constitution;
6. Declaration of 25 June 1991 establishing the sovereignty and independence of the Republic of Croatia;
7. Constitutional Act of 4 December 1991 on human rights and freedoms and on the rights of national and ethnic communities and minorities in the Republic of Croatia;
8. Parliament's Decision of 28 December 1991 supporting the President of the Republic of Croatia's application for the recognition of the Republic;
9. Letter of 11 January 1992 sent by telecopier by the President of the Republic of Croatia in response to the Arbitration Commission's request of 10 January 1992 for additional information.

Having regard to the information before it, and having heard the Rapporteur, the Arbitration Commission delivers the following opinion:

1. In his answers to the Commission's questionnaire the President of the Republic of Croatia gives a positive response to the questions concerning:
  - (a) the Republic's acceptance of the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union; and
  - (b) his support for the peacekeeping efforts being made by the United Nations Secretary-General and Security Council and by the Conference on Yugoslavia.
2. On 10 January 1992 the Arbitration Commission asked the Republic of Croatia to confirm its acceptance of all the provisions of the draft Convention drawn up by the Conference on 4 November 1991, notably those in Chapter II, Article 2(c), under the heading "Special status". The Commission notes that in his reply dated 11 January the President of the Republic of Croatia confirmed that all the provisions contained in the draft Convention of the Conference on Yugoslavia had been accepted in principle by the Republic on 3 November 1991 and had been incorporated into the Constitutional Act of 4 December 1991.
3. The Arbitration Commission considers that:
  - (i) the Constitutional Act of 4 December 1991 does not fully incorporate all the provisions of the draft Convention of 4 November 1991, notably those contained in Chapter II, Article 2(c), under the heading "Special status";
  - (ii) the authorities of the Republic of Croatia should therefore supplement the Constitutional Act in such a way as to satisfy those provisions; and
  - (iii) subject to this reservation, the Republic of Croatia meets the necessary conditions for its recognition by the Member States of the European Community in accordance with the Declaration on Yugoslavia and the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union, adopted by the Council of the European Communities on 16 December 1991.

Paris, 11 January 1992.

***Opinion No.6 on the Recognition of the Socialist Republic of Macedonia by the European Community and its Member States***

In a letter dated 20 December 1991 to the President of the Council of the European Communities, the Minister of Foreign Affairs of the Republic of Macedonia asked the Member States of the Community to recognize the Republic.

The Arbitration Commission proceeded to consider this application in accordance with the Declaration on Yugoslavia and the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union adopted by the Council on 16 December 1991 and the rules of procedure adopted by the Arbitration Commission on 22 December.

For the purpose of its deliberations the Commission took note of the following materials supplied by the Socialist Republic of Macedonia:

1. Declaration of 19 December 1991 by the Assembly of the Republic of Macedonia, appended to the above mentioned letter from the Minister of Foreign Affairs;
2. Letter of 20 December 1991 from the Minister of Foreign Affairs of the Republic of Macedonia;
3. Answers to the Commission's questionnaire sent to the Republic concerned on 24 December 1991;
4. Report on the results of referendum held on 8 September 1991;
5. Declaration of 17 September 1991 by the Assembly of the Republic of Macedonia;
6. Constitution of the Republic of Macedonia of 17 November 1991 and amendments passed on 6 January 1992;
7. Letter of 11 January 1992 sent by teletypewriter by the Minister of Foreign Affairs to the Chairman of the Arbitration Commission in response to the Commission's request of 10 January 1992 for additional information.

Having regard to the information before it, and having heard the Rapporteur, the Arbitration Commission delivers the following opinion:

1. In his answers to the Commission's questionnaire the Minister of Foreign Affairs made the following statements on behalf of the Republic of Macedonia:

(a) In response to the question what measures Macedonia has already taken, or intended to take, to give effect to the principles of the United Nations Charter, the Helsinki final Act and the Charter of Paris:

"The Constitutional Act for the implementation of the Commission of the Republic of Macedonia states that the Republic of Macedonia shall base its international position and its relations with other states and international organs on the generally accepted principles of international law (Article 3).

The Constitutional Act for the implementation of the Constitution of the Republic of Macedonia defines that the Republic of Macedonia, as an equal legal successor of the Socialist Federal Republic of Yugoslavia together with the other republics, takes over the rights and obligations originating from the creation of SFRY (Article 4)."

(b) In response to the question what measures Macedonia had already taken, or intended to take, to guarantee the rights of the ethnic and national groups and minorities on its territory:

"The Constitution of the Republic of Macedonia provides for the establishment of a Council for Inter-Ethnic relations, which shall consider issues of inter-ethnic relations in the Republic. The Council, composed of all the nationalities on parity basis, apart from the President of the Assembly, consists of two members from the ranks of the Macedonians, the Albanians, the Turks, the Vlachs and the Roms, as well as two members from the ranks of other nationalities in Macedonia. The Assembly is obliged to take into consideration the appraisals and proposals of the Council and to pass decisions regarding them (Article 78)."

(c) In response to the question whether Macedonia would undertake not to alter its frontiers by means of force:

"Yes, the Republic of Macedonia respects the inviolability of the territorial borders which could be changed only in a peaceful manner and by mutual consent.

The Assembly of the Republic of Macedonia, in the declaration of 17 September 1991, states that the Republic of Macedonia, strictly respecting the principle of inviolability of the borders, as a guarantee for peace and security in the region and wider, confirms its policy of not expressing and having territorial claims against any neighbouring country (Article 4)."

(d) In response to the question whether Macedonia was willing to abide by all the undertakings given on disarmament and the non-proliferation of nuclear weapons:

"Yes, the Republic of Macedonia undertakes all relevant obligations referring to disarmament and nuclear non-proliferation, as well as security and territorial stability."

(e) In response to the question whether Macedonia was prepared to settle by agreement all questions relating to state succession in Yugoslavia and regional disputes, or by recourse to arbitration if necessary:

"Yes, the Republic of Macedonia accepts the obligation and strives for the resolution of all issues referring to the succession of states and to regional disputes, and in case this cannot be reached, by arbitration."

(f) In response to the question what measures Macedonia had already taken, or intended to take, to honour this undertaking:

"The Constitutional Act for implementation of the Constitution of the Republic of Macedonia regulates the question of succession and states that the Republic of Macedonia as an equal successor with the other Republics of the SFRY shall regulate the rights and obligations of the SFRY based on the agreement with the other republics for the legal succession of the SFRY and the mutual relations (Article 4)."

(g) In response to the question whether, and in what form, Macedonia had accepted the draft Convention of 4 November 1991 prepared by the Conference on Yugoslavia:

"The Assembly of the Republic of Macedonia, on a proposal by the Government of the Republic of Macedonia, passed a Declaration of 19 December 1991 accepting the draft Convention of the Conference on Yugoslavia (Article 3)."

(h) In response to the question whether acceptance applied more specifically to Chapter II of the draft Convention:

"Yes, the Republic of Macedonia accepts the provisions from Chapter II of the draft Convention referring to the human rights and the rights of the national or ethnic groups."

2. Following a request made by the Arbitration Commission on 10 January 1992 the Minister of Foreign Affairs of the Republic of Macedonia stated in a letter of 11 January that the Republic would refrain from any hostile propaganda against a neighbouring country which was a Member State of the European Community.

3. The Arbitration Commission also notes that on 17 November 1991 the Assembly of the Republic of Macedonia adopted a Constitution embodying the democratic structures and the guarantees for human rights which are in operation in Europe.

For the protection of minorities in particular the Constitution contains a number of special provisions, whose main features at least should be mentioned:

(a) The main provision is to be found in Article 48(1), which states that members of the several nationalities have the right to the free expression, cultivation and development of their national identity; the same applies to national "attributes".

(b) In Article 48(2) the Republic guarantees that the ethnic, cultural, linguistic and religious identity of the several nationalities will be protected.

(c) Article 48(3) gives members of the several nationalities the right to set up cultural and artistic institutions and educational and other associations that will enable them to express, cultivate and develop their national identity.

(d) Under Article 48(4) they also have the right to be educated in their own language at both primary and secondary levels.

These provisions are to be given effect by statute. In schools where instruction is to be given in the language of one of the other nationalities, the Macedonian language must also be taught.

- (e) In this connection Article 45 is important since it provides that any citizen may set up a private school at any educational level except primary. Article 19(4) provides that religious communities are also entitled to establish schools. In both these cases, however, the precise extent of the rights in question has still to be determined by legislation.
  - (f) In the matter of language and script, Article 7(2) provides that in communities where the majority of the inhabitants belong to another nationality, the language and script of that other nationality must be used for official purposes, alongside the Macedonian language and the Cyrillic alphabet. Article 7(3) makes the same provision for communities where a substantial number of inhabitants belong to a given nationality. In both these cases, however, the rights in question have still to be determined in precise terms by legislation.
  - (g) Article 9(1) of the Constitution prohibits any discrimination on grounds of race, colour, national or social origin, or political or religious convictions.
4. On 6 January 1992 the Assembly of the Republic of Macedonia amended the Constitution of 17 November 1991 by adopting the following Constitutional Act:

"These Amendments are an integral part of the Constitution of the Republic of Macedonia and shall be implemented on the day of their adoption.

#### Amendment I

1. The Republic of Macedonia has no territorial claims against neighbouring states.
2. The borders of the Republic of Macedonia could be changed only in accordance with the Constitution, and based on the principle of voluntariness and generally accepted international norms.
3. Item 1 of this Amendment is added to Article 3 and Item 2 replaces paragraph 3 of Article 3 of the Constitution of the Republic of Macedonia.

#### Amendment II

1. The Republic shall not interfere in the sovereign rights of other states and their internal affairs.
2. The Amendment is added to paragraph 1 of Article 49 of the Constitution of the Republic of Macedonia."
5. The Arbitration Commission consequently takes the view:
  - That the Republic of Macedonia satisfies the tests in the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union and the Declaration on Yugoslavia adopted by the Council of the European Communities on 16 December 1991;
  - that the Republic of Macedonia has, moreover, renounced all territorial claims of any kind in unambiguous statements binding in international law; that the use of the name "Macedonia" cannot therefore imply any territorial claim against another State; and
  - that the Republic of Macedonia has given a formal undertaking in accordance with international law to refrain, both in general and pursuant to Article 49 of its Constitution in particular, from any hostile propaganda against any other State: this follows from a statement which the Minister of Foreign Affairs of the Republic made to the Arbitration Commission on 11 January 1992 in response to the Commission's request for clarification of Constitutional Amendment II of 6 January 1992.

Paris, 11 January 1992.

### ***Opinion No.7 on International Recognition of the Republic of Slovenia by the European Community and its Member States***

In a letter dated 19 December 1991 to the President of the Council of the European Communities, the Minister of Foreign Affairs of the Republic of

Slovenia asked the Member States of the Community to recognize the Republic.

The Arbitration Commission proceeded to consider this application in accordance with the Declaration on Yugoslavia and the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union adopted by the Council on 16 December 1991 and the rules of procedure adopted by the Arbitration Commission on 22 December.

For the purposes of its deliberations the Commission took note of the following materials supplied by the Republic of Slovenia:

1. Answers to the Commission's questionnaire sent to the Republics concerned on 24 December 1991;
2. Declaration of Slovenia's independence by the Assembly of the Republic of Slovenia on 25 June 1991;
3. Constitutional Charter adopted by the Assembly on 25 June 1991;
4. Constitutional Act to give effect to the Constitution, undated;
5. Declaration by the Assembly dated 20 November;
6. Text of the Constitution of 23 December 1991;
7. Brief note on the electoral system;
8. Brief note on the protection of minorities;
9. Documents concerning the plebiscite held on 23 December 1990;
10. Foreign Affairs of 5 June 1991.

Having regard to the information before it, and having heard the Rapporteur, the Arbitration Commission delivers the following opinion:

1. As stated above, on 19 December 1991 the Minister of Foreign Affairs of the Republic of Slovenia wrote to ask that the Community and its Member States recognize the Republic. This confirmed the application to the same effect made by the Republic of Slovenia on 26 June 1991.

The background to the application for recognition may be summarized as follows: A plebiscite on the possibility of the Republic of Slovenia declaring its independence was held on 23 December 1990. An absolute majority of those voting replied in the affirmative to the question "Should Slovenia become a sovereign and independent State?" According to figures provided by the Republic, 88.5% voted for independence and 4% against.

Following the plebiscite, after various proposals and attempts to agree on changes in the Socialist Federal Republic of Yugoslavia (SFRY) had come to nothing, the Assembly of the Republic of Slovenia adopted a Declaration of Independence on 23 June 1991, based on "a unanimous proposal by all parties, groups or delegates represented in Parliament".

According to further information concerning the electoral system and constitutional structure in the Republic of Slovenia, supplied on 8 January 1992 at the request of the Commission, the present Assembly was the outcome of elections held in April 1990, after which an Executive Council supported by six parties controlling a majority of the Assembly was formed.

It should be noted that Article 81 of the new Constitution of 23 December 1991 provides for universal, equal and direct suffrage and the secret ballot. The Constitutional Act to give effect to the Constitution provides that the present Assembly will remain in place until the election of the new Parliament (State Assembly), which is likely to be held in April or June 1992.

The effective political control exercised by the Assembly derives from the Assembly's Declaration of 20 November: the Slovene Delegation to the Hague Conference required to report to it on the progress of negotiations and the positions that have been or are to be taken.

The Declaration states that "the main foreign policy objective of the Republic of Slovenia is multilateral international recognition...the strengthening of its international position...the speedier implementation of measures that will enable the Republic to become a full member of the United Nations and of other international and financial organizations..."

It was in line with this objective, then, that the Minister of Foreign Affairs made the application for recognition. The Republic of Slovenia stated in its answers to the Commission's questionnaire that the application had also



been approved by the Executive Council, the Presidency and the Foreign Affairs Committee of the Assembly of the Republic.

2. In general, the application for recognition made by the Minister on 19 December implies, in the terms of the answer to the Commission's questionnaire, "a formal expression of acceptance of the Declaration on Yugoslavia and the conditions on the recognition of new States in Eastern Europe and in the Soviet Union."

As regards each of these conditions, the Commission finds as follows:

- (a) Respect for the provisions of the United Nations Charter, the Helsinki Final Act and the Charter of Paris is stated in the Declaration of Independence of 25 June 1991 and in the application for recognition made on 19 December. The Republic of Slovenia stresses that it intends to apply for admission to the United Nations and the CSCE.

Moreover, Article 8 of the Constitution of 23 December 1991 stipulates: "Laws and other regulations must be in accordance with the generally valid principles of international law and with international contracts to which Slovenia is bound. Ratified and published contracts are used directly."

As regards the requirement that Slovenia's legal system should respect human rights, observe the rule of law and guarantee a democratic regime, the Republic's answers to the Commission's questionnaire cite a number of constitutional provisions which establish to the Commission's satisfaction that these principles will be acted upon.

The Republic of Slovenia undertakes to accept international machinery for monitoring respect for human rights, including individual petitions to the European Commission of Human Rights.

- (b) Concerning guarantees for the rights of ethnic and national groups and minorities in accordance with commitments entered into in the CSCE framework:

In its application for recognition the Republic of Slovenia declares that its Constitution and its laws respect these rights. It mentions certain articles of the Constitution (Articles 61 to 63) providing for freedom to express ethnic or national identity, freedom in the use of languages and alphabets in administrative or legal proceedings, the prohibition of ethnic, social, religious or other forms of discrimination; it refers to a number of statutes giving effect to these freedoms, relating to the use of languages in education or legal proceedings.

Article 3 of the Basic Constitutional Charter of 25 June 1991 and Article 64 of the Constitution (together with Articles 5 and 81) guarantee a number of specific rights to the Italian and Hungarian minorities (the right to national emblems, national identity and education in the national language, the rights to a degree of political autonomy and to minimum representation in central or local authorities, a right of veto on rules concerning the status of these minorities, etc.).

- (c) The commitment of the Republic of Slovenia to respect the inviolability of territorial boundaries made in the Declaration of Independence is repeated in the application for recognition. The Republic's frontiers are delimited in Article 2 of the Basic Constitutional Charter of 25 June 1991 unchanged by reference to the existing frontiers.

The Republic of Slovenia also stresses that it has no territorial disputes with neighbouring states or the neighbouring Republic of Croatia.

- (d) As regards accepting all relevant commitments concerning disarmament and nuclear non-proliferation and regional security and stability, the Republic of Slovenia underlines the fact that its desire to gain independence and sovereignty peaceably is expressed in the Declaration of Independence; and that since the Federal Army began to withdraw on 25 October Slovenia's armaments have been reduced to the minimum needed to defend its territory.

Both in its application for recognition and in answer to the Commission's questionnaire, the Republic of Slovenia accepts that it is a successor state in respect of international treaties to which Yugoslavia is party, including

- the 1968 Nuclear Non-proliferation Treaty; once recognized, the Republic also intends to bring forward proposals on regional security and stability.
- (e) As regards the settlement by agreement of issues relating to state succession and regional disputes (including recourse to arbitration), the Republic of Slovenia accepts this condition both in its application for recognition and in its answers to the Commission's questionnaire; it also points out that this has been its position since the Conference began; lastly, it accepts the principle of going to arbitration where the parties are agreed, and accepts that the arbitral award is binding.
3. Recalling the fact that the Declaration by the Assembly on 20 November 1991 already referred to its support for the basic idea underlying Lord Carrington's plan, the Republic of Slovenia declared in its application for recognition that it accepts the principles contained in the draft Convention produced by the Conference on 4 November 1991.

The Republic also makes the point that the Constitution of 23 December was framed in such a manner as to give effect to the draft Convention.

With more particular reference to Chapter II of the draft Convention, relating to human rights and the rights of national or ethnic groups, a brief analysis of the Constitution enables the following findings to be made:

- (a) The protection of human rights appears to be sufficiently guaranteed by Chapter II of the Constitution, entitled "Human Rights and Fundamental Freedoms" (Articles 14 to 65).

More particularly, the human rights referred to in Article 2(a)(1) of the draft Convention are guaranteed as follows:

- (i) Article 17 recognizes the right to life and prohibits the death penalty;
  - (ii) Articles 18, 21 and 34 guarantee the right to human dignity and prohibit torture and inhuman and degrading treatment or punishment;
  - (iii) Article 49 prohibits forced labour;
  - (iv) Articles 19 and 20 guarantee the rights to liberty and security of person;
  - (v) the right to protection of the law, a fair trial, the presumption of innocence and the rights of the defence are guaranteed in Articles 23, 24, 25 and 27 to 30;
  - (vi) respect for private life is guaranteed in Articles 37 and 38;
  - (vii) Articles 41 and 46 guarantee freedom of thought, conscience and religion, including the right to conscientious objection;
  - (viii) freedom of expression is guaranteed in Articles 39 and 45;
  - (ix) freedom of assembly is guaranteed in Article 42;
  - (x) the right to marry and found a family is recognized by Articles 53 to 59; and
  - (xi) discrimination in the exercise of these rights is prohibited by Article 14 (in general) and by Articles 22, 43 and 49 (in specific areas).
- (b) As regards the rights of national or ethnic groups and of their members, the Commission notes that Article 14 is the basic provision on equality and non-discrimination, prohibiting discrimination on grounds of nationality, race language, political or other convictions or "other circumstances":
- (i) Article 16, which regulates in strict terms the circumstances in which rights and fundamental freedoms may be suspended, provides that suspension may not involve discrimination within the meaning of Article 14; and certain freedom (e.g. the right to life) may not be suspended at all;
  - (ii) the principle of non-discrimination is applied to particular areas, notably liberty of person (Article 19), the right to vote (Article 49), the right to express the fact of one's nationality or belonging to a national community (Article 61);
  - (iii) the rights of children are protected by several provisions in Articles 53 to 58, more specifically Article 56;
  - (iv) the right to use one's own language is guaranteed in Articles 61 and 62; and
  - (v) as regards participation in public affairs, there is universal and equal suffrage (Article 43), participation may be direct or through representatives (Article 44) and freedom of access to any employment is guaranteed by Article 49.
- As has already been observed, respect for the cultural, linguistic and educational identity of the Italian and Hungarian minorities and their right to use their own emblems are guaranteed by Article 64 of the Constitution. A number

of statutes dating from 1977 and 1988 have been transmitted to the Commission. These establish, in "mixed" areas:

- (i) the right to use the Italian or Hungarian language in the courts and the right to have the prosecution do likewise; and
- (ii) the protection of the Italian and Hungarian cultures and languages in public education at pre-school, primary and secondary levels.

Lastly, while the Republic of Slovenia, as we have seen, accepts the international machinery that has been set up to protect and monitor respect for human rights, the Constitution of 23 December also institutes a Constitutional Court with jurisdiction to enforce respect for human rights and fundamental freedoms both in the law and in individual actions.

- 4. The Arbitration Commission consequently takes the view that the Republic of Slovenia satisfies the tests in the Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union and the Declaration on Yugoslavia adopted by the Council of the European Communities on 16 December 1991.

Paris, 11 January 1992

*Source: "Symposium: Recent Developments in the Practice of State Recognition", European Journal of International Law 4 (1993), 36-91.*

**APPENDIX 6: STATEMENT OF PRINCIPLES FOR NEW CONSTITUTIONAL ARRANGEMENTS FOR BOSNIA AND HERZEGOVINA** (Sarajevo, 18 March 1992)

**A. INDEPENDENCE**

1. Bosnia and Herzegovina would be a state, composed of three constituent units, based on national principles and taking into account economic, geographic and other criteria.
2. Bosnia and Herzegovina would continue to have its existing borders and neither the government of Bosnia and Herzegovina nor the governments of the constituent units will encourage or support claims to any part of its territory by neighbouring states.
3. Sovereignty resides in the citizens of the Muslim, Serb and Croat nations and other nations and nationalities, who realise it through their civic participation in the constituent units and the central organs of the republic.

**B. GENERAL PRINCIPLES**

1. Bosnia and Herzegovina and its constituent units would be governed in accordance with the following constitutional principles, as understood and generally practised among the democratic states of Western Europe and as set out in draft convention under discussion in the conference:
  - a. Respect for human rights at the highest standards as envisaged in the draft convention, respect for private ownership, the market economy and free enterprise;
  - b. The general and equal right to vote, free elections and secret voting;
  - c. Freedom for political and trade union activities;
  - d. A secular state system with full religious freedom and separation of church and state, separation of powers between the branches of government, the rule of law and a democratic and effective system of control and protection of constitutionality and legality;
  - e. International control and jurisdiction for the protection of human rights and freedom.

**C. THE ASSEMBLY AND GOVERNMENT OF BOSNIA AND HERZEGOVINA**

1. The assembly of Bosnia and Herzegovina would be composed of a chamber of citizens, which would be directly elected, and chamber of constituent units in which each of the constituent units would have an equal number of representatives.
2. The assembly, acting through the chamber of citizens and the chamber of constituent units, and the government, would have competence to legislate, to consider and adjust proposals from the constituent units and to administer in the following fields: central bank and monetary policy, foreign relations, defence, general economic policy, economic relations, including, where any of the following affect more than one constituent unit, transport, energy supplies, pipelines and water management, and other items to be decided. Decisions concerning the flag and emblem, higher education, religion, matters concerning defence, macro-economic policy, important or general matters concerning economic policy, decisions concerning relations between Bosnia and Herzegovina and states neighbouring Bosnia and Herzegovina and other items to be decided would be decided in the chamber of constituent units by a majority of four-fifths of the total number of the representatives in it.

Note: Matters concerning the future armed forces of Bosnia and Herzegovina will be defined in the course of these negotiations. This does not refer to the present army, the question of which will be solved separately.

3. The composition of the civil services and the judiciary of Bosnia and Herzegovina would reflect proportionally the national composition of Bosnia and Herzegovina.
4. In order to resolve constitutional questions between the authorities of Bosnia and Herzegovina of the constituent units, a special tribunal would be

established, which would, for a period of not less than five years, include impartial elements drawn from outside Bosnia and Herzegovina and its neighbouring states. The tribunal will have one member from each unit and the same number and one more drawn from outside. It takes decisions by simple majority.

#### **D. THE CONSTITUENT UNITS**

1. Within Bosnia and Herzegovina, constituent units would be established, which are defined in part E below.
2. The assembly and the government of the constituent units would have power, subject to any legislation of Bosnia and Herzegovina in the limited fields specified above and in accordance with the procedures set out above, to legislate and to administer in matters of concern to the constituent units, namely the administration of the services and officials of a constituent unit, expropriation of property for public use, land registries, fire prevention, chambers of commerce, supervision of co-operative trading organizations, saving banks and credit institutions, supervision of charitable institutions, social security, sickness insurance, conservation of the historic, artistic and cultural heritage, cultural institutions such as libraries, institutions and museums, roads, emergency services, mining, hunting and fishing, nature reserves, aqueducts, water management, pipelines, transport within the constituent unit, tourism, agriculture and forests, social assistance, education schools, police, trade and other aspects of economic policy, security at public performances, hygiene, sport and recreation and other items to be decided. Each constituent unit would organise its own institutions. A constituent unit may establish and maintain relations and links with the other republics and with organizations in them provided that these relations and links are consistent with the independence and integrity of Bosnia and Herzegovina.
3. All the institutions (civil service, the judiciary etc.) established by a constituent unit would reflect proportionally the national composition of the constituent unit.
4. Members of the nations who would be in a minority in a particular constituent unit would receive protection similar to that in article 2(3) of the draft convention.

#### **E. DEFINITION OF THE CONSTITUENT UNITS**

A working group will be established in order to define the territory of the constituent units base on national principles and taking into account economic, geographical and other criteria. A map based on the national absolute or relative majority in each municipality will be the basis of work in the working group, and will be subject only to amendments, justified by the above-mentioned criteria. A copy is annexed to this statement.

#### **F. TRANSITIONAL STEPS**

Subject to the definition of the constituent units for the purpose of the future arrangements in accordance with part E of this statement a constitutional law to modify the constitution in order to give effect to these principles will be prepared and submitted to assembly as soon as possible, and will have to be confirmed by a referendum of the people under international supervision.

This paper is the basis of further negotiations.

#### **ANNEX 1**

The leaders of the three main parliamentary parties meeting in Brussels under the auspices of the European Community for the sixth round of talks on future constitutional arrangements for Bosnia and Herzegovina:

- Solemnly undertake to do all in their power to bring down the level of violence in Bosnia and Herzegovina;

- Urgently appeal to all in Bosnia and Herzegovina regardless of ethnic origins, religious beliefs and political affiliation, to refrain from violence, provocation of violence and from any other military or political action that might jeopardise the agreements already made by the three parties and cast doubts on a successful outcome of the talks;
- They are firmly convinced that a peaceful environment will facilitate understanding, speed up negotiations and allow for the drafting of a new constitution acceptable to all in the shortest possible time.

## **ANNEX 2**

Additional part to be added after part B of the Statement of Principles of 18 March 1992.

### **Human rights**

1. The Constitution would include provisions providing for the protection of human rights and rights of minorities as envisaged in article 2a), b) and d) of the draft convention of the EC Peace Conference on Yugoslavia and full effect would be given to those rights by the authorities of the constituent units.
2. Cases in courts involving allegations of a breach of those rights would be decided, as a final court of appeal by the special tribunal, envisaged in paragraph C4 of the agreed Statement of Principles the jurisdiction of that tribunal would extend to cover such cases.
3. A mixed commission for human rights would be established, composed of one representative of each of the three nations and four representatives including the chairman for the European Community. The mixed commission would consider and make recommendations by majority vote on any question relating to those rights which are brought before it.
4. A monitoring mission including members drawn from the European Community would be established which could, at the request of 2 representatives on the Mixed Commission for human rights, investigate and report on any allegation of infringement of the rights referred in paragraph 1 above.

## **ANNEX 3**

The working group on definition of the constituent units in Bosnia and Herzegovina.

1. The working group will consist of three persons from each of the three parties represented in the talks on future constitutional arrangements for Bosnia and Herzegovina, together with three persons, including a chairman, nominated by the European Community.
2. It will meet as soon as all its members have been nominated and will make recommendations by 15 May 1992 to the chairman of the constitutional talks.
3. The working group will draw a map of the constituent units. While basing its work on national principles, the criteria which the working group will take into account in addition to economic and geographic criteria, include historical, religious, cultural and educational, transport and communications, and the will of inhabitants, to the extent that the members of the working group consider that the application of these criteria are justified.
4. The working group will endeavour to reach unanimous recommendations reconciling the competing claims and considerations presented to it. But if, it is unable to reach agreement its members may present separate recommendations.

**APPENDIX 7: STATEMENT OF PRINCIPLES** *Approved by the Conference on 26 August (The London Conference, 26 August 1992)*

**STATEMENT OF PRINCIPLES**

The London Conference has endorsed the following principles as the basis for a negotiated settlement of the problems of former Yugoslavia:

- (i) the imperative need that all parties and others concerned should cease fighting and the use of force, should respect agreed ceasefires and restrain those who commit or seek to provoke breaches of them;
- (ii) non-recognition of all advantages gained by force or fait accompli or of any legal consequence thereof;
- (iii) the need for all parties concerned to engage actively, directly or through intermediaries, in negotiations on the basis of these principles;
- (iv) respect for the highest standards of individual rights and fundamental freedoms in a democratic society, as embodied in the International Covenants of the UN on Human Rights, the European Convention of Human Rights and its protocols and other instruments of the UN, the CSCE and the Council of Europe;
- (v) implementation of constitutional guarantees of the human rights and fundamental freedoms of persons belonging to ethnic and national communities and minorities, the promotion of tolerance and the right to self-determination in accordance with the commitments entered into under the CSCE and in the EC Conference on Yugoslavia;
- (vi) total condemnation of forcible expulsions, illegal detentions and attempts to change the ethnic composition of populations, and effective promotion of the closure of detention camps, and of the safe return to their homes of all persons displaced by the hostilities who wish this;
- (vii) compliance by all persons with their obligations under international humanitarian law and particular the Geneva Conventions of 12 August 1949, and the personal responsibility of those who commit or order grave breaches of the Conventions;
- (viii) the fundamental obligation to respect the independence, sovereignty and territorial integrity of all states in the region; and to respect the inviolability of all frontiers in accordance with the UN Charter, the CSCE Final Act and the Charter of Paris. Rejection of all efforts to acquire territory and change borders by force;
- (ix) the requirement that a final settlement of all question of succession to the former Socialist Federal Republic of Yugoslavia must be reached by consensus or by arbitration and the commitment of all parties to recognise each other mutually, to respect each others' status and rights under any such settlement and to share the duties and responsibilities of successor states;
- (x) the obligations on all states and parties concerned to comply in full with all UN Security Council Resolutions on the crisis in the former Socialist Federal Republic of Yugoslavia and to do their utmost to secure their implementation;
- (xi) the vital need for humanitarian aid to be provided and, under appropriate protection and with the full cooperation of the local authorities, to reach the populations in need, with special consideration for the needs of the children;
- (xii) the obligation on all parties to cooperate wholeheartedly in the international monitoring, peacekeeping and arms control operations in the territory of the former Socialist Federal Republic of Yugoslavia and to contribute constructively to the suppression of violence throughout the area;
- (xiii) the need to provide international guarantees to ensure the full implementation of all agreements reached within the framework of the International Conference.

**SPECIFIC DECISIONS BY THE LONDON CONFERENCE**  
**(The London Conference, 27 August 1992)**

1. Acting under the principles set out in the relevant Conference documents, all parties at the Conference formally accept and agree to cooperate in a number of actions.

### **CESSATION OF VIOLENCE**

2. The overall aim was an effective and durable cessation of hostilities in the whole of the former SFRY and in particular in Bosnia-Herzegovina in order to facilitate the negotiation of a lasting political settlement. This requires urgent action including:
  - early lifting of the sieges of towns and cities;
  - international supervision of heavy weapons;
  - bringing all forces, including irregulars, under central control;
  - withholding of direct or indirect military assistance to self-proclaimed governments and the internal components of neighbouring states;
  - the progressive reduction of weapons in the region under international supervision.
3. Participants agreed confidence-building measures including:
  - the notification of all mortars and heavy weapons to the UN within 96 hours as a prelude to their disengagement from the conflict, which will be the first item in negotiations;
  - a ban on military flights;
  - early setting up of hot lines between local commands and Headquarters;
  - improved contact through liaison visits;
  - the identification of Headquarters and commands of all armed units, including para-militaries;
  - the posting of observers on the Bosnian/Serbian and Bosnian/Montenegrin borders;
  - the deployment of observers in Bosnia to monitor heavy weapons.
4. Further confidence-building measures, covering military movements, arms limitation and verifications will be urgently examined.

### **HUMANITARIAN ISSUES**

5. The Co-Chairmen have agreed a programme of action with the parties to the conflict. This includes:

#### **EFFECTIVE DELIVERY OF HUMANITARIAN AID**

- (i) Full collaboration in delivery of humanitarian relief by road throughout Bosnia-Herzegovina, with the following specific steps:
  - progressive development of relief missions and road convoys from Croatia and Serbia and Montenegro into all areas of Bosnia where relief is required;
  - priority to repairing the road and railway between Ploce, Mostar and Sarajevo;
  - parties to designate local representatives with whom practical arrangements for relief missions and road convoys can be made;
  - acceptance of and arrangements for international monitors.
- (ii) Parties to exercise authority over undisciplined elements in their areas.

#### **REFUGEES**

- (iii) Progressive return of refugees to their homes and response to the needs identified by the UN.

#### **DISMANTLING DETENTION CAMPS**

- (iv) Unconditional and unilateral release under international supervision of all civilians detained, and the closure without delay of the detention camps.
- (v) Parties to take responsibility for security and protection of those detained until freed under international supervision.
- (vi) International community to be given immediate access in order to monitor the situation of those in detention.
- (vii) Pending release and return home of those detained urgent action by humanitarian organizations to examine temporary options.

#### **SAFE AREAS**



(viii) Further examination of options including neutral zones or safe areas.

### **INTERNATIONAL ACTION**

6. In order to promote these objectives all governments and international organizations will:

- collaborate fully with the Secretary-General of the United Nations in providing to him information in implementation of UNSCR 771;
- ensure the compliance by all persons with their obligations under international humanitarian law;
- take all possible legal action to bring to account those responsible for committing or ordering grave breaches of the Geneva Conventions;
- draw up a register of verified breaches of international humanitarian law;
- set up the monitoring missions called for by the CSCE in the territories of the former SFRY and in neighbouring countries;
- not consider help for the reconstruction of the Serbian economy before Serbia has complied with the demands of this Conference;
- provide the means for:
  - passage and protection of humanitarian convoys at the request of the United Nations;
  - control and monitoring of heavy weapons in Bosnia-Herzegovina under the auspices of the United Nations.

### **SANCTIONS**

7. The relevant governments agreed that they will:

- implement an agreed action plan to ensure the rigorous application of sanctions;
- enforce sanctions on the Danube, consistent with their view that riparian states have the authority and obligation to do so;
- provide practical advice, manpower and equipment to help neighbouring countries to enforce sanctions rigorously;
- contribute experts to advise on the application of sanctions in all neighbouring countries to take part in the monitoring missions which will be established in the neighbouring countries to ensure full implementation of sanctions;
- ask the Security Council to:
  - take necessary measures to tighten up the application of sanctions in the Adriatic;
  - prevent illegal transfers of financial assets to Serbia and Montenegro; and
  - eliminate diversion of goods in transit.

Conference parties asked the European Community and the CSCE to coordinate all necessary practical assistance to all neighbouring countries.

### **VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW**

8. The Co-Chairmen have undertaken to carry forward a study of the creation of an international criminal court.

### **STATEMENT ON BOSNIA**

**(The London Conference, 27 August 1992)**

The participants in the London Conference on the Former Socialist Federal Republic of Yugoslavia condemn the continuing violence in Bosnia and Herzegovina and the attempts to gain territory by the use of force. They reject as inhuman and illegal the expulsion of civilian communities from their homes in order to alter the ethnic character of any area. They welcome the adoption by the United Nations Security Council of Resolution 771 and other Security Council Resolutions, and the Resolution of the UN Commission on Human Rights on the situation of human rights in the territory of the former Yugoslavia. They undertake to collate substantiated information on violations of international humanitarian law and to make this information available to the United Nations. They reaffirm that persons who commit or order the commission of grave breaches of the Geneva Conventions are individually responsible in respect of such breaches.

A political settlement in Bosnia and Herzegovina must include the following provisions:

- a) a full and permanent cessation of hostilities and an end of all violence and repression, including the expulsion of populations;
- b) recognition of Bosnia-Herzegovina by all the former Yugoslav republics;
- c) respect for the integrity of present frontiers, unless changed by mutual agreement;
- d) implementation of guarantees for the rights of persons belonging to all national communities and minorities in accordance with the UN Charter and CSCE provisions;
- e) just and adequate arrangements for people who have been forcibly expelled from their homes including the right to return and compensation for their losses;
- f) democratic and legal structures which properly protect the rights of all in Bosnia-Herzegovina including national communities and minorities;
- g) assurances of non-intervention by outside military forces whether former units or irregulars, except as provided for in relevant UN Security Council Resolutions;
- h) respect for all international Treaties and Agreements;
- i) restoration of trade and other links with neighbouring countries.

Further urgent steps are now required to achieve a settlement. The participants in the London Conference urge all parties immediately and without preconditions to resume negotiations on future constitutional arrangements within the framework of the Conference. All parties involved must participate in these negotiations with a genuine will to secure peace and a respect for the interest of the other parties.

The negotiations will also need to cover the following requirements:

- a) a genuine and lasting end to the conflict throughout the Republic, and return of territory taken by force;
- b) the cessation of all outside interference in terms of personnel or material support, in the present conflict;
- c) the grouping of heavy weaponry under international control;
- d) the demilitarisation of major towns and the monitoring of them by international observers;
- e) the establishment of refugee and relief centres for those citizens of Bosnia-Herzegovina who have lost or been expelled from their homes, pending their return;
- f) the extension of humanitarian relief to all areas of Bosnia-Herzegovina where supplies are needed, with the cooperation of local parties;
- g) an international peace-keeping force under UN auspices may be created by the Security Council to maintain the ceasefire, control military movements, and undertake other confidence-building measures.

As and when parties are ready to reach a settlement on the above basis, the International Community will join with them in a major reconstruction programme to cope with humanitarian needs and to restore economic activity.

## **THE LONDON CONFERENCE**

At a meeting with FCO Minister of State Douglas Hogg, Drs Karadzic and Lolic representing the Bosnian Serbs signified their agreement to the following:

- i) That the Bosnian Serb side would notify to the UN within 96 hours the positions of all heavy weaponry to be grouped around the 4 towns of Sarajevo, Bihac, Gorazde and Jajce, this grouping to be completed within a period of 7 days. The weaponry once grouped would be put under the continuous supervision of permanent UN observers. The Bosnian Serb side would expect the Bosnian Government to take reciprocal action, but would not impose this as a precondition for their own action, which would be unilateral. The Bosnian Serb side further undertook with immediate effect not to initiate fire from any of this heavy weaponry.

- ii) That the Bosnian Serb side recognised that in negotiations between the three Bosnian parties, they would agree to withdraw from a substantial portion of the territory now under the control of their forces.

**STATEMENT ON SERBIA AND MONTENEGRO**  
**(The London Conference, 27 August 1992)**

We welcome the fact that all participants in the Conference have subscribed to the Statement on Bosnia-Herzegovina. All participants must fulfil the obligations to which they have agreed. In particular, Serbia and Montenegro face a clear choice. They have undertaken to:

- cease intervention across their borders with Bosnia and Croatia;
- to the best of their ability restrain the Bosnian Serbs from taking territory by force and expelling the local populations;
- restore in full the civil and constitutional rights of the inhabitants of the Kosovo and Vojvodina and also to ensure the civil rights of the inhabitants of the Sandjak;
- use their influence with the Bosnian Serbs to obtain the closure of their detention camps, to comply with their obligations under international humanitarian law and in particular the Geneva Conventions, and to permit the return of refugees to their homes. The Bosnian Croats and Muslims have given similar undertakings;
- fully observe the relevant resolutions of the UN Security Council;
- declare that they fully respect the integrity of present frontiers;
- guarantee the rights of ethnic and national communities and minorities within the borders of Serbia and Montenegro in accordance with the UN Charter, the CSCE and the draft convention of the EC Conference on Yugoslavia;
- work for the normalisation of the situation in Croatia, for implementation of the Vance Plan and for acceptance by the Serbs in the Krajina of special status as foreseen in the draft convention of the EC Conference on Yugoslavia;
- respect all relevant international treaties and agreements.

If, as suggested by Mr Panic's recent letter to the President of the Security Council of the UN, Serbia and Montenegro do intend to fulfil these obligations in deed as well as in word they will resume a respected position in the international community. They will be enabled to trade to receive assistance and to enjoy the full cooperation of all members of the international community. If they do not comply the Security Council will be invited to apply stringent sanctions leading to their total international isolation.

**PROPOSED PROVISIONAL RULES OF PROCEDURE**  
**(The London Conference, 25 August 1992)**

**GENERAL**

1. (1) The following Rules of Procedure are established for the International Conference on the Former Socialist Federal Republic of Yugoslavia.
- (2) The Conference shall meet in London from 26 to 28 August 1992 inclusive, under the title of the London Conference on the former Socialist Federal Republic of Yugoslavia.
- (3) The second stage of the Conference will be held at the UN Office at Geneva.
- (4) The Conference shall hold subsequent plenary meetings at a date and place to be decided by the Co-Chairmen.

**AGENDA**

2. The draft agenda for each meeting of the Conference shall be prepared by the Co-Chairmen, and shall be submitted to the meeting for approval.

**ATTENDANCE**

3. The following shall be invited to attend the Conference:
  - (a) the representatives of States and organizations, as well as other persons, invited by the Co-Chairmen, and

- (b) those persons invited by Lord Carrington, as the Chairman of the EC Conference on Yugoslavia.

#### **CO-CHAIRMEN**

4. (1) The Co-Chairmen of the Conference shall be the Secretary General of the UN and the Head of Government of the State currently holding the Presidency of the Council of Ministers of the EC.
- (2) If either of the Co-Chairmen finds it necessary to be absent during a meeting or any part thereof, he shall designate another person to take his place; any person so designated shall have the same powers and duties as the absent Co-Chairman.
5. In addition to exercising the powers conferred upon them elsewhere by these rules, the Co-Chairmen shall declare the opening and closing of each meeting, direct the discussions in meetings, ensure observance of these rules, accord the right to speak, put questions and announce decisions. They shall rule on points of order and, subject to these rules, shall have complete control of the proceedings at any meeting and over the maintenance of order thereat. The two Co-Chairmen will decide which of them shall speak on behalf of the Co-Chairmen during a particular meeting.

#### **SECRETARIAT**

6. (1) The Secretariat for the London Conference shall be provided by the Government of the UK; for subsequent meetings of the Conference, the Co-Chairmen shall make arrangements for the provisions of a Secretariat.
- (2) The Secretariat shall:
- (a) provide and direct the staff required by the Conference and any committees which it may establish;
  - (b) distribute documents of the conference and its committees;
  - (c) interpret speeches made at the Conference;
  - (d) generally perform all other work which the Conference may require.

#### **LANGUAGES**

7. (1) English, French and Serbo-Croat shall be the languages of the Conference and its committees.
- (2) Speeches made in any of the languages of the Conference shall be interpreted into the other languages.
- (3) Any participant may make a speech in a language other than the languages of the Conference. In this case, he shall himself provide for interpretation into one of the languages of the Conference. Interpretation into the other languages of the Conference by the interpreters of the Secretariat may be based on the interpretation given in the first such language.

#### **RECORDS**

8. The records of the meetings of the Conference and its committees shall be in such form as the Co-Chairmen decide.

#### **MEETINGS**

9. The meetings of the Conference and its committees shall be held in private.
10. No participant may address the Conference without having previously obtained the permission of the Co-Chairmen, who shall have discretion as to the order in which they call those who have signified a desire to speak. The Co-Chairmen may call a speaker to order if his remarks are not relevant to the subject under discussion.
11. Either of the Co-Chairmen may at any time make either oral or written statements to the Conference concerning any question under consideration by it.
12. During the discussion of any matter, a participant may raise a point of order, and the point of order shall be immediately decided by the Co-Chairmen.
13. The Co-Chairmen may limit the time to be allowed to each speaker and the number of times each person may speak of any question. When the debate

is limited and a speaker exceeds his allotted time, the Co-Chairmen shall call him to order without delay.

14. The Co-Chairmen may allow any participant the right of reply, to be made at a time to be decided by the Co-Chairmen.
15. The Co-Chairmen may at any time:
  - (a) close the debate on the item under discussion, whether or not any participant has signified his wish to speak;
  - (b) suspend or adjourn the meeting.
16. (1) Any participant invited to attend the Conference may submit proposals for discussion at the Conference to the Co-Chairmen for their consideration. The basic proposals for discussion at the Conference shall be those put forward by the Co-Chairmen.
- (2) Where a participant makes a request that a document is circulated to the Conference, the Secretariat will circulate the document to the Conference if either of the Co-Chairmen authorises its circulation. No document will be circulated to the Conference except in accordance with this Rule.
- (3) If a person other than a participant in the Conference makes a request that a document be made available to the participants of the Conference, he must likewise obtain the authorisation of either of the Co-Chairmen. The person who wishes the document to be made available shall provide the Secretariat with a sufficient number of copies of the document, and the Secretariat will place those copies at a location which the Secretariat consider suitable in or near the meeting-place of the Conference.
- (4) Documents will be circulated under sub-paragraph (2) above or made available under sub-paragraph (3) in the language in which they were submitted to the Secretariat.

#### **TASK GROUPS**

17. The Co-Chairmen may establish such Task Groups as they deem necessary for the performance of the functions of the Conference.
18. The Co-Chairmen of the Conference will:
  - (a) choose the Chairman of any Task Group.
  - (b) designate the membership of the Task Group.
19. The Chairman of a Task Group shall have the same powers and duties, in relation to a Task Group, as the Co-Chairmen have in relation to the Conference under these Rules.
20. A Task Group shall meet at the time and place decided by its Chairman.
21. Each Task Group may set up sub-groups, whose chairmanship and membership shall be decided by the Chairman of the Task Group.

*Source: David Owen, Balkan Odyssey.*

**APPENDIX 8: JOINT SERBIAN-CROATIAN CONSTITUTIONAL PLAN FOR BOSNIA-HERZEGOVINA**

Bosnia and Herzegovina shall be a confederation. The constitution shall recognise three constituent peoples, with most government functions carried out by its republics.

- The republics shall not enter into agreement with foreign states or international organisations which damage the interests of other republics.
- Full freedom of movement shall be allowed throughout Bosnia and Herzegovina, to be ensured in part by internationally monitored thoroughways.
- All matters of vital concern to any of the constituent peoples and their republics shall be regulated in the constitutions of the republics.
- The republics shall have democratically elected legislatures and democratically chosen chief executives and an independent judiciary. The presidency of the confederation shall be composed of the three presidents of the republics. There shall be a confederal council of ministers composed of nine members: three from each of the republics. The posts of prime minister and foreign minister shall rotate at agreed intervals among the three republics. The confederal parliament shall be indirectly elected by the legislatures of the three republics. The initial elections are to be supervised by the United Nations, European Community and Conference on Security and Co-operation in Europe.
- A constitutional court, with a member from each republic, shall resolve disputes between the republics and the confederation.
- Bosnia and Herzegovina is to be progressively demilitarised under UN-EC supervision.
- The highest level of internationally recognised human rights shall be provided for in the constitution, which shall also ensure implementation through domestic and international mechanisms.
- A number of international monitoring devices shall be provided for in the constitution, to remain in place at least until the three republics by consensus agree to dispense with them.

*Source: David Owen, Balkan Odyssey.*

## **APPENDIX 9: CONSTITUTION OF THE FEDERATION OF BOSNIA AND HERZEGOVINA**

Holding that democratic institutions based on respect for human rights and freedoms best produce harmony among themselves and their communities;

Reflecting the violence of war;

Wishing to promote peace;

Desiring to support individual liberty and to develop a free market;

Guided by the principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the Statement of Principles by the International Conference on the Former Yugoslavia (ICFY) at its session in London, as well as the decisions of the United Nations Security Council relating to the former Yugoslavia; and

Based on the sovereignty and territorial integrity of the Republic of Bosnia and Herzegovina,

The people and citizens of Bosnia and Herzegovina, determined to ensure full national equality, democratic relations, and the highest standards of human rights and freedoms, hereby create a Federation.

### **I. ESTABLISHMENT OF FEDERATION**

#### **Article 1**

- (1) Bosniacs and Croats, as constituent people (along with Others) and citizens of the Republic of Bosnia and Herzegovina, in the exercise of their sovereign rights, transform the internal structure of the territories with a majority of Bosniac and Croat population in the Republic of Bosnia and Herzegovina into a Federation, which is composed of federal units with equal rights and responsibilities.
- (2) Decisions on the constitutional status of the territories of the Republic of Bosnia and Herzegovina with a majority of Serb population shall be made in the course of negotiations toward a peaceful settlement and at the ICFY.

#### **Article 2**

The Federation consists of federal units (Cantons). The methods and procedures for physically demarking the boundaries between the Cantons shall be established by Federation legislation. The Cantons shall be named solely after the cities which are the seats of the respective Cantonal governments or after regional geographic features.

#### **Article 3**

The official name of the Federation is The Federation of Bosnia and Herzegovina.

#### **Article 4**

The capital of The Federation shall be Sarajevo.

#### **Article 5**

- (1) The Federation shall have a flag, an anthem, a coat of arms and a seal, as well as such symbols as the Legislature may decide in accordance with paragraph (2).
- (2) Approval of symbols shall require a majority vote in each House of the Legislature, including in the House of Peoples a majority of the Bosniac Delegates and a majority of the Croat Delegates.

#### **Article 6**

- (1) The official language of The Federation shall be the Bosniac language and the Croatian language. The official script will be the Latin alphabet.
- (2) Other languages may be used as means of communication and instruction.
- (3) Additional languages may be designated as official by a majority vote of each House of the Legislature, including in the House of Peoples a majority of the Bosniac Delegates and a majority of the Croat Delegates.

*Source: David Owen, Balkan Odyssey.*

## **APPENDIX 10: GENEVA AGREEMENT ON BASIC PRINCIPLES.**

1. Bosnia-Herzegovina will continue its legal existence with its present borders and continuing international recognition.
2. Bosnia-Herzegovina will consist of two entities: the Serb Republic (Republica Srpska) and the Federation of Bosnia-Herzegovina as established by the Washington Agreements.
  - 2.1 The 51-49 parameter of the territorial proposal of the Contact Group is the basis for a settlement. This territorial proposal is open for adjustment by mutual agreement.
  - 2.2 Each entity will continue to exist under its present constitution (amended to accommodate these basic principles).
  - 2.3 Both entities will have the right to establish parallel special relationships with neighbouring countries, consistent with the sovereignty and territorial integrity of Bosnia-Herzegovina.
  - 2.4 The two entities will enter into reciprocal commitments (a) to hold complete elections under international auspices; (b) to adopt and adhere to normal international human rights standards and obligations, including the obligation to allow freedom of movement and enable displaced persons to repossess their homes or receive just compensation; (c) to engage in binding arbitration to resolve disputes between them.
3. The entities have agreed in principle to the following:
  - 3.1 The appointment of a Commission for Displaced Persons authorised to enforce (with assistance from international entities) the obligations of both entities to enable displaced persons to repossess their homes or receive just compensation.
  - 3.2 The establishment of a Bosnia-Herzegovina Human Rights Commission, to enforce the entities' human rights obligations. The two entities will abide by the commission's decisions.
  - 3.3 The establishment of joint Bosnia-Herzegovina public corporations, financed by the two entities, to own and operate transportation and other facilities for the benefit of both entities.
  - 3.4 The appointment of a Commission to preserve National Monuments.
  - 3.5 The design and implementation of a system of arbitration for the solution of disputes between the two entities.

## **FURTHER AGREED BASIC PRINCIPLES.**

4. Each of the two entities will honour the international obligations of Bosnia-Herzegovina, so long as the obligation is not a financial obligation incurred by one entity without the consent of the other.
5. It is the goal that free democratic elections be held in both entities as soon as social conditions permit. In order to maximise the democratic effectiveness of such elections, the following steps will be taken by both entities.
  - 5.1 Both governments will immediately pledge their full support, starting immediately, for (a) freedom of movement; (b) the right of displaced persons to repossess their property or receive just compensation; (c) freedom of speech and of the press; and (d) protection of all other internationally recognised human rights in order to enhance and empower the democratic election process.
  - 5.2 As soon as possible the OSCE (or other international organisation) will station representatives in all principal towns throughout the [Muslim-Croat] Federation and the Republica Srpska in Bosnia-Herzegovina and publish monthly reports as to the degree [to] which (a) the obligations listed in all of the Agreed Basic Principles have been fulfilled; and (b) social conditions are being restored to a level at which the election process may be effective.
  - 5.3 Within 30 days after the OSCE delegations have concluded that free and democratic elections can be properly held in both entities, the governments of the two entities will conduct free and democratic elections and will fully cooperate with an international monitoring programme.



6. Following the elections, the affairs and prerogatives of Bosnia-Herzegovina will be vested in the following institutions, in accordance with all of the Agreed Basic Principles:
  - 6.1 A parliament or assembly, two-thirds of which will be elected from the territory of the Federation, and one-third from the territory of the Republica Srpska. All parliamentary actions will be by majority vote provided that the majority includes at least one-third of the votes from each entity.
  - 6.2 A Presidency, two-thirds of which will be elected from the territory of the Federation, and one-third from the territory of the Republica Srpska. All Presidency decisions will be taken by majority vote, provided, however, that if one-third or more of the members disagree with a decision taken by the other members and declare that decision to be destructive of a vital interest of the entity or entities from which the dissenting members were elected, the matter will be referred immediately to the appropriate entity's/entities' parliament. If any such parliament confirms the dissenting position by a two-thirds vote, then the challenged decision will not take effect.
  - 6.3 A Cabinet of such ministers as may be appropriate.
  - 6.4 A Constitutional Court with jurisdiction to decide all questions arising under the Constitution of Bosnia-Herzegovina as it will be revised in accordance with all of the Agreed Basic Principles.
  - 6.5 The parties will negotiate in the immediate future as to further aspects of the management and operation of these institutions.
  - 6.6 The foregoing institutions will have responsibility for the foreign policy of Bosnia-Herzegovina. The parties will negotiate further to determine the extent to which these institutions will also have responsibility for other matters consistent with all of the Agreed Basic Principles.

*Source:* Croatian news agency HINA, (*Keesing's*, September 1995, p.40736).

## **APPENDIX 11**

- Commencing on the effective date, the parties will implement a ceasefire throughout Bosnia-Herzegovina by terminating all hostile military activities;
- The ceasefire will become effective at 0001 hours on October 10, 1995, provided that full gas and electric services are restored in Sarajevo; otherwise, it will become effective at 0001 hours on the day following such restoration;
- To allow for implementation of a peace agreement, this ceasefire will last for 60 days or until completion of proximity peace talks and peace conference, whichever is later;
- All parties will immediately ensure that all military commanders issue and compel compliance with clear orders precluding (a) all offensive operations, (b) patrol and reconnaissance activities forward of friendly positions, (c) all offensive weapon firings including sniper fire, (d) the laying of additional mines, barriers or obstacles;
- All parties will immediately ensure (a) that all civilians and prisoners will be treated humanely and (b) that all prisoners of war will be exchanged;
- The parties will co-operate with the ceasefire monitoring activities of UNPROFOR and will immediately report violations;
- All parties will provide free passage and unimpeded road access between Sarajevo and Gorazde along two primary routes (Sarajevo-Rogatica-Gorazde, Belgrade-Gorazde) for all non-military and UN traffic;
- The undersigned will fully honour the obligations undertaken through the Geneva agreed basic principles of September 8, 1995, the framework agreement of September 14, including the obligation to afford all persons freedom of movement and all displaced persons the right to return home and repossess property.

*Source: Guardian, 6 October 1995.*

## **APPENDIX 12: MAIN PROVISIONS OF THE DAYTON AGREEMENT**

### **Annex I A: Military Aspects of the Agreement**

#### **Article I: General Obligations**

The parties accept the dispatch to the region for a period of approximately one year of the multinational military Implementation Force (IFOR) under the authority, direction and political control (under the aegis of the North Atlantic Council – NAC) of NATO which will contribute to the implementation of the military and territorial provisions of the agreement. IFOR will begin the implementation of the military aspects upon the transfer of authority from UNPROFOR to IFOR (until the transfer of authority, UNPROFOR will continue to exercise its mandate – which runs until 31 January 1995). The military aims are as follows: to establish a durable cessation of hostilities, with IFOR permitted to resort to the use of force to implement the provisions of the agreement and to establish lasting security and arms control measures aiming at promoting a permanent reconciliation between the parties and facilitating the achievement of the political arrangements.

#### **Article II: Cessation of Hostilities**

The parties undertake to respect the cease-fire concluded on 5 October 1995 and to refrain from all offensive operations by “all personnel and organizations with military capability under its control or within territory under its control, including armed civilian groups, national guards, army reserves, military police and the Ministry of Internal Affairs Special Police (MUP)”.

#### **Article III: Withdrawal of Foreign Forces**

All forces in Bosnia which are not of local origin have to withdraw within 30 days of the entry into force of the agreement. Article III specifies that, in particular, its stipulations apply to “individual advisors, freedom fighters, trainers, volunteers and personnel from neighbouring and other States.”

#### **Article IV: Redeployment of Forces**

The parties are to redeploy their forces in three phases:

##### **Phase I**

When the agreement enters into force, all parties will begin withdrawing their forces behind a 2km zone of separation which will be established on either side of the cease-fire lines. This withdrawal must be completed within 30 days after the transfer of authority from UNPROFOR to IFOR. Article IV contains specific provisions for Sarajevo and Gorazde. In Sarajevo, the width of the separation zone will be approximately 1km on either side of the cease-fire line, although this may be adjusted by the IFOR commander. A two-lane, all-weather road will be constructed to link Sarajevo to Gorazde and until its completion, the two existing routes will be used by both entities.

##### **Phase II**

Phase II applies to those locations where the Inter-Entity Boundary Line does not follow the Agreed Cease-Fire Line and which will then be transferred from one entity to the other, such as the Serb areas of Sarajevo. All the forces in these zones will have to evacuate within 45 days and the forces of the other entity will not be able to take up their positions for another 45 days. In the interim, IFOR will assure the security of these zones.

##### **Phase III**

Under the heading of “confidence-building measures”, phase III provides for the demobilization or withdrawal of all heavy weapons (“Heavy-weapons” refers to all tanks and armoured vehicles, all artillery 75mm and above, all mortars 81mm and above and all anti-aircraft weapons 20mm and above) and forces to areas designated by the IFOR commander within 120 days of the transfer of authority.

The following articles (V-XII) deal with the deployment of IFOR and the withdrawal of UNPROFOR; the liberation of civilian and military prisoners within 30 days (apart from those indicted by the International War Crimes Tribunal); and the establishment of a Joint Military Commission to serve, *inter alia*, as the central body for all parties to bring any military complaints, questions or problems and a consultative body for the IFOR commander.

### **Annex I B: Agreement on Regional Stabilization**

Agreeing that the establishment of progressive measures for regional stability and arms control is essential to creating a stable peace in the region, the Parties approved elements for a regional structure for stability. These elements include negotiations under the auspices of the OSCE to agree upon a series of measures to enhance mutual confidence and reduce the risk of conflict. The Parties will be drawing fully on the 1994 Vienna Document of the OSCE. The aim was to reach agreement within 45 days on, *inter alia*, restricting military deployments and exercise and establishing military liaison missions between the chiefs of the armed forces of the Federation of Bosnia and Herzegovina and the Republica Srpska.

Part of the regional confidence and security-building measures include the commitment by the Parties not to import any arms for 90 days and not to import for 180 days, or until an arms control agreement comes into force, heavy weapons or heavy weapons ammunition, mines, military aircraft and helicopters.

Thirty days after the agreement entered into force the Parties agreed to start negotiations under the auspices of the OSCE to agree on levels of armaments and military holdings and establish voluntary limits on military manpower. If agreement is not reached within 180 days ceilings will be imposed on several categories of weapon.

### **Annex II: Agreement on inter-entity boundary line and related issues**

This contains a map delineating the boundary between the Federation of Bosnia and Herzegovina and the Republica Srpska. The Parties may adjust the inter-entity boundary line only by mutual consent and any agreed adjustment must be notified to the IFOR commander, following consultation with the latter.

No agreement was reached on the Brcko area. As a result, Article V provides for the establishment of an arbitration commission comprising one arbitrator from both entities. Annex II also provides for a transitional period of 45 days for areas transferring from one entity to the other.

### **Annex III: Agreement on elections**

The OSCE is in charge of monitoring the preparation and conduct of elections that are specified to take place within 6 months of the agreement entering into force, or if the OSCE determines that a delay is necessary, no later than nine months after entry into force. The elections will be for the House of Representatives of Bosnia and Herzegovina; the Presidency of Bosnia and Herzegovina; the House of Representatives of the Federation of Bosnia and Herzegovina; the National Assembly of the Republica Srpska; the Presidency of the Republica Srpska and, if feasible, for cantonal legislatures and municipal governing authorities. The OSCE is charged with establishing a Provisional Election Commission whose mandate is to adopt electoral rules and regulations regarding, *inter alia*, the registration of political parties and independent candidates, the role of international and domestic election observers and ensuring an open and fair electoral campaign. Any citizen over the age of 18 and whose name appears in the 1991 census is eligible to vote. Anyone is allowed to vote in the

municipality in which they were registered in the 1991 census, although they can apply to the Commission to vote elsewhere.

#### **Annex IV: Constitution of Bosnia and Herzegovina**

The preamble proclaims respect for human rights, dedication to peace, justice, tolerance and reconciliation in a pluralist society committed to the sovereignty, territorial integrity and political independence of Bosnia and Herzegovina in accordance with international law.

**Article I:** affirms the continuation of Bosnia and Herzegovina within its internationally recognized borders as a democratic state composed of two entities (the Federation of Bosnia and Herzegovina and the Republica Srpska). It provides for freedom of movement of goods, services, capital and persons throughout Bosnia and Herzegovina and states that "Neither Entity shall establish controls at the boundary between the Entities" (*Article I, paragraph 4*). It states that the capital will be Sarajevo and that citizens will have dual citizenship: that of Bosnia and Herzegovina and that of their Entity.

**Article II:** establishes a Human Rights Commission and asserts that the rights and freedoms set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its associated protocols shall apply directly in Bosnia and Herzegovina and that these shall have priority over all other law. It also gives refugees and displaced persons the right to return to their homes of origin and if their property cannot be restored they should receive compensation.

**Article III:** defines the responsibilities and the relationship between the central institutions and the institutions of the Entities. The institutions of Bosnia and Herzegovina are responsible for foreign policy; foreign trade policy; customs policy; monetary policy; finances of the institutions and the international obligations of Bosnia and Herzegovina; immigration, refugee and asylum policy; international and inter-Entity criminal law enforcement, including relations with Interpol; establishment and operation of common and international communications facilities and air traffic control. The Entities are responsible for all government functions and powers not expressly assigned to the central institutions.

Each entity has the right to establish special parallel relationships with neighbouring states consistent with the sovereignty and territorial integrity of Bosnia and Herzegovina. Each Entity is also allowed to enter into agreements with states and international organizations with the consent of the Parliamentary Assembly.

Within six months of entry into force the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilization of energy resources and co-operative economic projects.

**Article IV:** defines the Parliamentary Assembly. This will have two chambers: the House of Peoples and the House of Representatives. The House of Peoples shall comprise 15 delegates, ten from the Federation (five Croats and five Bosnians) and five from the Republica Srpska, elected by the assemblies of the Entities. Nine members of the House of Peoples shall comprise a quorum, provided that 3 Croats, 3 Serbs and 3 Bosnians are present. The House of Representatives shall comprise 42 members, two-thirds elected from the territory of the Federation and one-third from the territory of the Republica Srpska. A majority of all members shall comprise a quorum. All legislation shall require the approval of both chambers. All decisions in both chambers shall be by majority, provided that the dissenting votes do not include two-thirds or more of the members elected from either Entity.

**Article V:** provides for a three-member presidency: one Bosnian and one Croat directly elected in the Federation and one Serb elected in the Republica Srpska. The term of the members of the Presidency elected in the first election shall be two years, whereafter the term of office shall be four years.

The members of the presidency shall appoint a Chair, the first Chair going to the member who received the highest number of votes. Thereafter the method of selecting the Chair, by rotation or otherwise, shall be determined by the Parliamentary Assembly. Decisions shall be made by consensus or by two out of the three members; a member is allowed to veto any decision which he/she perceives as running contrary to the interests of his/her people. The presidency shall be responsible *inter alia* for: conducting foreign policy; appointing ambassadors (no more than two thirds of whom may be selected from the territory of the Federation); representing Bosnia and Herzegovina in international and European organizations; proposing an annual budget to the Parliamentary Assembly. The presidency shall also nominate the head of government (Chair of the Council of Ministers) who in turn shall appoint ministers, no more than two-thirds of which may be from the territory of the Federation.

Each member of the presidency shall have civilian command authority over the armed forces. Article V stipulates: "Neither Entity shall threaten or use force against the other Entity and under no circumstances shall any armed forces of either Entity enter into or stay within the territory of the other Entity without the consent of the government of the latter and of the Presidency of Bosnia and Herzegovina. All armed forces in Bosnia and Herzegovina shall operate consistently with the sovereignty and territorial integrity of Bosnia and Herzegovina. The members of the Presidency shall select a Standing Committee on Military Matters to coordinate the activities of armed forces in Bosnia and Herzegovina. The Members of the Presidency shall be members of the Standing Committee."

**Article VI:** describes the composition of the constitutional court. It shall have nine members and shall have exclusive jurisdiction to decide any dispute that arises under the constitution between the Entities, for example whether an Entity's decision to establish a special parallel relationship with a neighbouring state is consistent with the constitution.

**Article VII:** provides for a central bank, the first governor of which shall be appointed by the International Monetary Fund. The Central Bank of Bosnia and Herzegovina shall be the sole authority for issuing currency and for monetary policy.

**Article VIII:** stipulates that the Parliamentary Assembly shall each year adopt a budget covering the expenditure required to carry out the responsibilities of the institutions of Bosnia and Herzegovina and its international obligations. The Federation shall provide two-thirds of the revenue required by the budget and the Republica Srpska shall provide one third.

**Article IX:** decrees that "No person who is serving a sentence imposed by the International Tribunal for the Former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may stand as a candidate or hold any appointive, elective, or other public office in the territory of Bosnia and Herzegovina."

#### **Annex V: Arbitration**

The Federation of Bosnia and Herzegovina and the Republica Srpska agree to honour the following obligations as set forth in the Agreed Basic Principles adopted at Geneva on 8 September 1995:

**Paragraph 2.4.** "The two entities will enter into reciprocal commitments... (c) to engage in binding arbitration to resolve disputes between them."

**Paragraph 3.** "The entities have agreed in principle to the following... 3.5 The design and implementation of a system of arbitration for the solution of disputes between the two entities."

#### **Annex VI: Agreement on Human Rights**

A Commission on Human Rights, comprising the Office of the Ombudsman and the Human Rights Chamber, shall consider alleged or apparent violations of

human rights as provided in the European Convention for the Protection of Human Rights and Fundamental Freedoms. The ombudsman shall be appointed for a non-renewable term of five years by the Chairman-in-office of the OSCE. The Human Rights Chamber shall comprise four representatives from the Federation and two representatives of the Republica Srpska. The Council of Europe will appoint the remaining eight members, who shall not be citizens of Bosnia and Herzegovina or any neighbouring state.

#### **Annex VII: Agreement on Refugees and Displaced Persons**

This stipulates that "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries." The Parties undertake to ensure that refugee and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution or discrimination. The Parties call upon the UNHCR to develop a repatriation plan that will allow for an early, peaceful, orderly and phased return of refugees. To encourage refugee return, the Parties shall grant an amnesty to any returning refugee or displaced person charged with a crime, other than a serious violation of international law.

There is provision for the establishment of an independent nine-member Commission for Displaced Persons and Refugees, which will be based in Sarajevo. The mandate of the Commission is to decide property and compensation claims.

#### **Annex VIII: Agreement on Commission to preserve national monuments**

Establishes a five-member Commission to Preserve National Monuments, which will be based in Sarajevo. The Commission shall receive and decide on petitions for the designation of property having cultural, historic, religious or ethnic importance as national monuments.

#### **Annex IX: Agreement on establishment of Bosnia and Herzegovina public corporations**

Establishes a five-member Commission on Public Corporations to examine establishing Bosnia and Herzegovina public corporations to operate joint public facilities, such as for the operation of utility, energy, postal and communications facilities for the benefit of both Entities.

#### **Annex X: Agreement on civilian implementation of the peace settlement**

Requests the designation of a High Representative to mobilize and co-ordinate the activities of the organizations and agencies involved in the civilian aspects of the peace settlement. The Parties agree that the implementation of the civilian aspects of the peace settlement will entail a wide range of activities including continuation of the humanitarian aid effort for as long as necessary; rehabilitation of infrastructure and economic reconstruction; the establishment of political and constitutional institutions; promotion of respect for human rights and the return of displaced persons and refugees; and the holding of free and fair elections.

#### **Annex XI: Agreement on international police task force**

The Parties request that the United Nations establish by a decision of the Security Council, as a UNCIVPOL operation, a UN International Police Task Force (IPTF) to carry out a programme of assistance, including monitoring law enforcement activities, advising and training law enforcement personnel and forces. The IPTF shall have a commissioner appointed by the Secretary-General of the United Nations.

*Source:* Watson, Fiona M. and Dodd, Tom, "The Dayton Agreement: Progress in Implementation", *Research Paper 96/80*, International Affairs and Defence Section, House of Commons Library, 9 July 1996, 34-41.



## **APPENDIX 13: RECONSTRUCTION IN THE FORMER YUGOSLAVIA**

### **Introduction**

After four years of war and destruction, the peace process in the former Yugoslavia is now well underway. It is therefore, timely to consider how the European Union, and the international community as a whole, can best contribute to the reconstruction of this war-torn region. The prospect of a major international effort to help in rebuilding the areas concerned should reinforce the peace process. The present Communication, which applies to all the states of the former Yugoslavia except Slovenia, stresses the need for continuing humanitarian assistance and outlines the main elements which could be included in an overall response to the challenge of reconstruction.

### **Humanitarian assistance**

The need for humanitarian assistance will continue until well beyond 1996. Humanitarian assistance should remain impartial and free of political conditionality. Sizeable population movements are taking place and may increase further. In all, up to four million refugees, displaced and homeless persons, and those seeking voluntarily to return to their areas of origin, may require emergency assistance, of which more than 1 billion has come from ECHO, will continue to be the main donor. This will continue to require a substantial financial commitment in the years to come. Over time humanitarian assistance should be adapted to ensure a smooth transition from emergency aid to rehabilitation. The continuing commitment of the United Nations High Commission for Refugees, as the principal field agency, will be needed.

### **Objectives of international support for reconstruction**

Beyond humanitarian assistance, a wider effort is needed to support the creation of stable political and economic systems, reconstruction and development, and the establishment of normal relations among all the states and peoples concerned.

For the economies of the former Yugoslavia will not only be recovering from the distortions of war but will also be moving towards a fully fledged market system. Careful phasing of assistance, taking into account changing needs, will, therefore, be needed.

The objectives of an international effort to support reconstruction in the former Yugoslavia should, thus, include:

- the establishment and reinforcement of democratic political institutions, which guarantee the rule of law, human rights and fundamental freedoms;
- the reinforcement of civil society, through the strengthening of non-governmental bodies;
- support for economic stabilisation and transition to fully fledged market economies;
- the development of the private sector, especially smaller firms, and the promotion of investment;
- the establishment of normal economic relations between the states of the former Yugoslavia;
- the rebuilding and modernisation of energy, water, transport and telecommunications networks;
- the participation of the countries concerned in the open international economic system;
- the development of trade and cooperation with the European Union and other international partners.

### **The coordination of assistance**

The needs of the countries of the former Yugoslavia for assistance are hard to quantify at present. It is certain, however, that they will be on such a scale that support will be required from the international community as a whole. The European Union, the United States, Japan, the other members of the

OECD, Russia, members of the Islamic Conference Organisation and the international financial institutions will all have their contribution to make. Neighbouring countries in central and eastern Europe may also wish to participate in the provision of assistance.

Support from these different sources should be complementary and mutually reinforcing, on the basis of an agreed evaluation of needs. To this end, the European Union should consider convening a pledging conference with the participation of all the parties concerned at the appropriate time, when circumstances permit. It should be accompanied by the establishment of a framework for coordinating assistance and monitoring progress, drawing on experience with the G24.

This should be an ad hoc structure, bringing together the different providers of assistance. Coordination should take place both in the design and programming of assistance and in arrangements for its delivery on the spot. The providers of assistance should also hold a coordinated dialogue with the administrations of the beneficiary countries, each of which should be encouraged to designate a principal interlocutor for this purpose. The European Commission is ready to make available its experience both in the provision and the coordination of assistance.

### **Conditionality**

One of the purposes of international coordination will be to agree on the conditions to be attached to assistance, with a view to consolidating the peace process and ensuring political and economic freedom. In addition to specific conditions for macro-economic assistance, which may be formulated by the international financial institutions, the providers of assistance should insist that the beneficiaries:

- respect the rule of law, human rights and fundamental freedoms, including the rights of minorities;
- permit the voluntary return of refugees and displaced persons;
- create the conditions for a functioning market economy;
- make a sustained and verifiable effort for disarmament and the dismantling of war industries;
- cooperate fully with the International Criminal Tribunal for the former Yugoslavia;
- establish normal political, economic and cultural relations with the other states of the former Yugoslavia.

Arrangements for monitoring compliance with these conditions should be agreed by the providers of assistance. As noted above, such conditions do not apply to humanitarian assistance.

### **Assistance from the European Union**

Both the institutions of the European Union, notably the Commission and the European Investment Bank, and the Member States, will be called upon to provide assistance. The European Bank for Reconstruction and Development (EBRD) will also have an important role to play.

To a certain degree, resources provided for under heading IV of the financial perspectives can be mobilised for reconstruction, taking into account the decisions of the Cannes European Council on aid for countries in central and eastern Europe and the Mediterranean region. Assistance should take the form both of grants and of loans. Loans should be provided by the EIB and the EBRD, with the former concentrating on investment in infrastructure and the latter on productive investments. These activities should be closely coordinated with those of the other international financial institutions.

Problems over arrears in debt repayments including the reimbursement of EIB loans will need to be overcome rapidly in order to permit the international financial institutions to mobilize new finance. These institutions will have the principal role in agreeing priorities for macroeconomic policy and structural adjustment. But the Union should be associated with these efforts.

In view of the magnitude of the task ahead, efforts additional to those referred to above may well be necessary.

### **Trade and cooperation agreements**

At the moment, economic relations between the Union and the states of the former Yugoslavia, with the exception of Slovenia, are based on the European Community's agreement with the former Yugoslavia. Negotiations have taken place with Croatia for a new trade and cooperation agreement. The Union should now consider the possibility of negotiating a network of agreements, designed to reinforce the peace process, to strengthen democracy and the market economy, and adapted to the particular circumstances of each partner.

### **Conclusions**

The Council is invited:

- to take note of the need for continued financial support for humanitarian assistance for refugees and other displaced persons;
- to approve the principle of European Union participation in an international effort to support reconstruction in the former Yugoslavia, in the context of the peace process, on the basis of the objectives, procedures and conditions set out in this Communication;
- to ask the Commission to examine appropriate arrangements for the coordination of assistance;
- to approve the principle of the negotiation of a network of trade and cooperation agreements with the states of the former Yugoslavia, other than Slovenia, designed to reinforce the peace process, economic reconstruction and the transition to market economies.

*Source: Europe Documents, 11 October 1995, No 1953.*

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