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Global and regional crises and challenges, coupled with developments within the EU, have made new demands on the EU's external activities. Given the importance of the external relations and security policy of the EU in the present international climate, we have asked three specialists on foreign and security policies to express their views on the challenges EU is presently confronted with.

THE FOREIGN AND SECURITY POLICIES OF THE EUROPEAN UNION

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ABSTRACT: In only a decade the European Union has moved from being a new kid on the block in terms of foreign and security policies to being a high profile and surprisingly effective international actor. Certainly, it has failed to match the ambitions of some of its most enthusiastic proponents. Certainly, too, European publics know next to nothing about what the Union does in the international realm. It is because of this that, despite their potential and their effectiveness to date, EU policies in this sphere were widely derided as failures following the moment when the attacks of 11 September 2001 shook the western world to its core. The Convention on the Future of Europe and subsequent intergovernmental conference look set to make significant institutional changes to the Union's foreign and security policy systems. In undertaking these reforms, Convention members and national governments are doubtless motivated by the laudable objective of enabling the Union to do more on the international stage. One can only hope that these motives notwithstanding, they do not simply propose reforms for their own sake and, in the process, undermine a system that, to the surprise of many, has continued to function respectably in an ever more complex and ever more dangerous world.

Introduction

The last few years have been a period of extremes for the Union in the foreign and security policy spheres. On one hand, they have represented one of the highest profile areas of EU activity since the end of the 1990s. The development of the European Security and Defence Policy (ESDP) following the December 1998 Franco-British summit at St Malo, the high profile initiatives embarked on by both External Relations Commissioner Chris Patten and the High Representative Javier Solana, and the increasing salience of security issues following the terrorist attacks in the United States of 11 September 2001 all have contributed to focusing both scholarly and public attention on this policy sector.

On the other hand, at the time of writing – April 2003 – it would be all too easy to lapse into fatalism, not to say profound cynicism, about the European Union's foreign and security policies. After all, the Union played no

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role in either the crisis leading up to, or the subsequent prosecution of, the war against Iraq. Indeed, insofar as it figured on the international politics radar screen at all, this was largely via periodic appearances to air its divisions.

Yet, whilst crises such as that in Iraq necessarily dominate the headlines and the international agenda, there is far more to contemporary international affairs than the war against Iraq. Out of the limelight, and often in areas of little interest to either European publics or many of their political leaders, the Union has in fact become a highly active and, in some respects, highly influential, actor on the international stage. Low profile achievement has, in other words, accompanied high profile crises.

It is worth adding a rider to what follows at this point. Insofar as the Union's role in international politics is concerned, events are happening fast. The combination of the war in Iraq, and the ongoing debates within the context of the Convention on the Future of Europe about EU external policies have implied a need to shoot at a rapidly moving target. What follows, therefore, is a desperate attempt both to analyse current events and to put these in broader context. This article is divided into three parts. Part one provides the background to recent developments, placing foreign and security policies in historical context. Part two focuses on developments over the last three years, focusing on the development of EU competence in the field of defence, and the CFSP Parts three and four assess the prospects for the future in light of the Iraq war and developments within the Convention on the Future of Europe respectively.

Background

European integration has, from its inception, been concerned with issues of foreign and defence policy. Indeed, its first institutional embodiment was the 1948 Brussels Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence. Similarly, France and Germany would not have created the European Coal and Steel Community had it not been for a desire on their part to eliminate the possibility of future conflict between them.

However, following the failure of the French National Assembly to ratify the European Defence Community in 1954, foreign and security affairs were effectively removed from the agenda of European integration. Whilst EC members took steps to coordinate their foreign policies from the 1970s in the framework of European Political Cooperation (Nuttall 2000), it was not until the Single European Act of 1985 that the EC itself was formally given a purview over this policy sector.

The European Union Treaty (EUT), signed at Maastricht in December 1991, built significantly upon these foundations. Title 5 created the legal basis for the development of a common foreign and security policy (CFSP). It incorporated European Political cooperation within the legal structures of the European Union and empowered the EU to implement a common foreign and security policy including the framing of a common defence policy which might in time lead to a common defence. (art J 4 1). In relation to defence matters, the Union was given the right (Article J4) to request the West European Union (WEU) to 'elaborate and implement decisions and

actions of the Union which have defence implications.'

Despite the fact that the Maastricht Treaty was only ratified in November of 1993, the member states committed themselves in it to undertake a review of the CFSP in 1996. The Amsterdam Treaty, partly conceived in order to carry this out, amended the CFSP provisions of the Treaty in several significant ways. First, it introduced a new form of foreign policy decision. The European Council was empowered to provide a general framework and strategic direction for foreign policy activity across the three pillars by defining, via consensus, common strategies. Once a common strategy is agreed, the Council may implement it through joint actions and common positions adopted by a qualified majority.[1] As early as December 1998 the Council recommended three common strategies to the European Council – on Russia, the Ukraine and the Mediterranean.

Second, the Treaty provided for the creation of a High Representative for Foreign Policy (HR-CFSP). He is responsible for assisting the Council in CFSP-related matters by contributing to the formulation, preparation, and implementation of decisions. At the request of the Presidency, he acts on behalf of the Council in conducting political dialogue with third parties and endeavours to improve the visibility and consistency of the CFSP. The Cologne Council meeting of June 1999 appointed Javier Solana, NATO Secretary General, as the first incumbent.

To offer administrative and institutional support to the High Representative, a policy planning and early warning unit was set up in the General Secretariat of the Council under the authority of the High Representative for the CFSP. The unit is charged with monitoring and analysing developments in areas relevant to the CFSP; providing assessments of the Union's interests in relation to the CFSP; providing timely assessments of events, potential political crises and situations that might have significant repercussions on the CFSP; and producing policy option papers for the Council.

Finally, the new Treaty made modest amendments to the provisions concerning defence policy. A semantic shift in wording enabled the European Council to 'avail itself' of the WEU rather than simply 'request it' to carry out missions, as stipulated at Maastricht. In October 1999, the High Representative was appointed as Secretary-General of the West European Union so as to enable him to preside over the other major initiative introduced by the Amsterdam Treaty – its incorporation into the EU. The new Treaty also incorporated the Petersberg tasks, namely 'humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking'.

No sooner had the ink dried on the new Treaty than startling developments occurred in an area where least progress had been possible at the summit itself. At Amsterdam, as at Maastricht beforehand, progress in the sphere of defence was stymied by the United Kingdom. The new British Prime Minister, Tony Blair, arrived at his first EU summit armed with the arguments of his predecessors concerning the importance of separating defence issues from the Union. As he reported

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[1] There remained a safeguard clause enabling Member States to block majority voting for important reasons of national policy. In such cases, when the Member State concerned has stated its reasons, the Council may decide by a qualified majority to refer the matter to the European Council for a unanimous decision by the Heads of State and Government.

back to the House of Commons after the summit:

> 'Getting Europe's voice heard more clearly in the world will not be achieved through merging the European Union and the Western European Union or developing an unrealistic common defence policy. We therefore resisted unacceptable proposals from others.'
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> (House of Commons, Hansard, 18 June 1997, Col 314).

Yet within months of the summit, the British position began to shift. A myriad of supposed explanations for this change have been put forward, ranging from increasing dissatisfaction with the United States following experience in the Balkans, to a desperate desire for Europe to do more in order to convince the US of the continued vitality of NATO in the light of increasingly clear concern in Washington about the military utility of the Alliance, to Mr Blair's desire to assert 'leadership' in Europe (Howorth 2000; Whitman 1999).

Whatever the root cause, the shifting of the British position led to dramatic results. On 4 December 1998, Tony Blair and Jacques Chirac signed the St Malo declaration which advocated the development of an 'autonomous' political and military capacity for the EU. At the Cologne European Council meeting of the following June, the Union created the institutional framework necessary to take political decisions concerning defence matters, and the following December at Helsinki the Heads of State and Government established the so-called Headline Goals setting force targets for the Union's military capabilities (for a full discussion, see

Howorth 2002: 37-41). Foremost amongst these targets was the decision to create, by December 2003, a EU Rapid Reaction force. The idea was that this should be capable of undertaking the full range of Petersberg tasks and be militarily self-sustaining with the necessary command, control and intelligence capabilities, logistics, other combat support services and, as appropriate, air and naval elements.

The changes brought about at successive European Council meetings were codified at the Nice European Council of December 2000. Few changes of any significance were made to the provisions for foreign policy. In terms of defence, however, the new Treaty removed virtually all references to the WEU, thereby underlining the fact that the Union itself was now empowered to take and implement defence decisions. Moreover, a report from the French presidency submitted to the summit formalised the existence of the interim ESDP institutions (the Political and Security Committee, the Military Committee and the Military Staff) which, by then, were functioning routinely. These became permanent institutions in January, April and June of 2001 respectively. A year later, paragraph A of the Laeken declaration declared ESDP operational.

The Substance of Foreign and Security Policies

A process of rapid institutional change has thus occurred as far as common foreign and particularly security polices are concerned. Yet, as ever, European leaders were not left in peace to perfect the institutional architecture intended to lay the basis for common external policies.[2] Rather, within a year of the signing

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[2] Being overtaken by events has hardly been a new experience for European leaders in their attempts to forge a collective capacity in foreign and security affairs. Discussions in the context of the IGC preceding the Maastricht Treaty were overshadowed by the outbreak of the Gulf conflict, whilst the short period of time in which the Maastricht provisions were in force prior to their renegotiation at Amsterdam were dominated by the appalling scenes from the Balkans.

of the Nice Treaty, the terrorist attacks of 11 September 2001 rocked the world and, particularly, the United States. Such was the impact of those events that international politics came to be dominated by their aftermath, Washington's 'war on terrorism'. Consequently, and somewhat unfortunately as far as the Union was concerned, it was in the context of the post 9/11 world, and of America's activist policies, that its foreign and security policies came to be judged.

The inability of the European Union to make any kind of military contribution to the post 9/11 American campaign contributed to a growing sense that, once again, expectations of the Union in the area of foreign and security policies had clearly exceeded its capabilities.[3] Not only that, but profound and highly public disputes between EU member states over the conflict with Iraq led many to proclaim that the Union's foreign and security policies were effectively moribund. Thus Alexander Stubb, an adviser to the European Commission, wrote in the *Financial Times* (13 March 2003) that:

> 'in the past few weeks we have been subjected to an unprecedented European foreign policy cacophony. The Union had a unique chance to show that Europe can speak with one voice in international crises. The failure was as fantastic as the opportunity, and it seems that everyone is to blame.'

In even more striking tones, Anatol Lieven (*FT* 3 February 2003) declared that it 'may be time to admit that there will never in fact be a common European foreign and security policy'. Certainly, there are clear reasons as to why one might reach such conclusions. A more balanced assessment, however, shows that they might be premature.

The reality of ESDP

If any area exemplified informed frustration about the chasm between stated intentions and outcomes, it was defence policy. Following the St Malo declaration, the conference circuit was overflowing with those confidently predicting that the Union, because of the political momentum behind the project, was about to take a qualitative step forward in equipping itself with a meaningful defence policy (Howorth 2002: 93).

Yet for all the fanfare accompanying the development of the ESDP, the Union made no military contribution to either of the military actions (so far) undertaken by the Americans as part of the 'war against terrorism'. Indeed, following the apparent triumphs of Saint Malo, Helsinki and Nice, it become increasingly difficult to discern when, if ever, the Union would be able to act militarily at all. Thus when the Belgian Foreign Minister announced to the press in the margins of the Laeken European Council on 14 December 2001 that the EU was going to send a 'multinational force' to Afghanistan, he was almost immediately publicly reminded - by both the British Minister for Europe, Peter Hain, and the German Foreign Minister, Joschka Fischer - that this was not an EU force but an international one backed by the UN (*Europe*, 15 and 16 December, *The Guardian*, 15 December). During 2002, despite much public speculation about the possibility of the Union replacing the NATO peacekeeping force in Macedonia, nothing – for the moment – actually transpired.

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[3] Though of course it is debatable whether Washington would have wanted such a military contribution even if it had been forthcoming.

At least three factors explain this apparent lack of progress. First, the Union was, of course, not the only institution interested in stamping its imprimatur on European security affairs. As it was engaged in creating incipient structures to handle defence policy, NATO was in the process of adapting its own structures to handle the new security threats of the post 11 September world. Most striking in this regard was the decision taken at the NATO Prague summit of November 2002 to create a rapid response force. The stark differences with the EU's own planned force could hardly have been more striking: the NATO undertaking was predicated on the reorganisation of existing capabilities for high intensity war fighting. (interview with Lord Robertson, NATO Secretary General, *European Voice,* 21 November 2002). In terms of actual military capabilities, while the EU rapid reaction force of 50-60000 was to be available at 60 days' notice and in the field for one year, the NATO equivalent was to number up to 21000 and be deployable within 5-30 days. One senior Council of Ministers source commented wryly on the EU undertaking that it is 'not necessarily rapid, not necessarily reactive and not necessarily a force'. (*European Voice* 21-27 March 2002)

Second, the EU was hamstrung by a simmering row involving Turkey and Greece, which stymied negotiations with NATO about EU access to NATO assets for almost two years. The heart of the problem was that, given its limited military capacities, the Union was reliant, for most conceivable military operations, on guaranteed access to NATO experts and planning facilities – the so-called Berlin Plus formula that had been agreed at the German city in June 1996. Turkey, however initially blocked the signing of

implementation agreements between the Union and NATO. As far as Ankara was concerned, the EU's new defence policy decision-making arrangements discriminated against non-EU NATO European member states (*IHT* 26 Jan 2001). At the end of 2001, a deal was finally struck whereby the Union guaranteed that its rapid reaction force would not intervene near the Turkish geopolitical sphere of influence. Turkey in return gave up its demand for a right to have a say in the operational decisions guiding the force (*Le Monde* 15 December 2001). Following this, the Greek government expressed its opinion that too much had been conceded to the Turks, and themselves blocked the signing of the agreement. It was not until mid-December 2002, at the Copenhagen European Council, that a solution was finally arrived at.

Finally, the slow progress in setting up an operational defence policy is explicable in terms of the second thoughts of certain states concerning the viability and value of the project. From the start, EU member states had vastly different opinions about the idea of ESDP (Menon 2001). Crucially, the single most important state in terms of the effectiveness of any European defence initiative – the United Kingdom - was far from totally committed to the undertaking, and certainly uncommitted to ambitious French objectives for it. The preference of the British for working with the Americans was never in doubt – and was illustrated clearly by the UK bombing targets in Iraq with US a mere two weeks after declaration at St Malo. From the first, the EU defence initiative was openly viewed by London as a means to an end rather than as an end in itself, a tactic to improve military capabilities rather than a political project intended to strengthen the Union itself. As

Defence Minister Geoff Hoon stated to the Brooking Institution in January 2000, 'Helsinki is all about enhancing military capability. It is not about political niceties. . If hanging a 'European' tag on it is what it takes to make it happen, then so be it.' Moreover, at British insistence, the Union moved to stress its relatively limited defence ambitions, and the continued primacy over security affairs of NATO. Thus the Helsinki declaration stated unambiguously:

> 'The European Council underlines 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. This process will avoid unnecessary duplication and does not imply the creation of a European army. (European Council Presidency Conclusions Helsinki 10-11 December 1999).'

The events of 11 September 2001 and America's activist foreign policy thereafter forced London into a more explicit choice between Europe and the US than British policy makers could possibly have foreseen at the time of St Malo. Whilst the choice has been neither as clear cut nor as definitive as those who see Prime Minister Blair as simply a 'poodle' of President George W Bush imply, it is clear that the divisions in Europe over Iraq – divisions that have centred round a confrontation between the two leading proponents of ESDP will severely impair progress in that particular field for some time to come (Menon and Lipken 2003).

However, it is not yet time to sound the death knell for the ESDP For one thing, given the events of September 2001, it is simply unfair to judge Europe's nascent military capabilities against the backdrop of American military might revealed so massively and effectively in the 'war' against terrorism. The absence of the EU from the military responses to 11 September should be put into context. First, the EU is not Europe. Whilst the Union found itself unable to act, several European states made important contributions both to the operation in Afghanistan and to the conflict in Iraq. The picture that Charles Grant (2002:141) paints of 'US forces hunting for terrorists in caves, and Europeans keeping the peace on the streets of Kabul' is misleading in that several European states made major contributions to the war fighting in Afghanistan. It was often British special forces that did the searching in caves whilst the French military contribution was also highly significant (Shapiro 2002). Nor should the importance and difficulty of peacekeeping – be it in Kabul or elsewhere – be underestimated.

Moreover, for all its failings, ESDP has, at last, become operational. The deployment of peacekeeping troops to Macedonia (operation Concordia was launched (worryingly) on 1 April 2003) provides a nice illustration of both the shortcomings and strengths of ESDP For a period of six months, around 250 troops from 15 EU countries will participate in this Berlin Plus mission under the operational command of German Admiral Rainer Feist, currently Deputy Supreme Allied Commander Europe, with the objective of overseeing the agreement reached in 2001 between the Macedonian government and Albanian rebels.[4]

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[4] France is sending most of the 350 soldiers and will therefore assume most of the responsibility on the ground, but a total of 27 countries will take part in the mission. They will wear national uniforms with insignia bearing the letters 'EUfor' and will have a badge with the European colours (blue with gold stars) on their right shoulders.

The lessons of Macedonia are threefold. First, discussions concerning its inception illustrate the divisions amongst member states concerning the scope of ESDP. The Union was originally intended to take over the NATO mission in October 2002. However the simmering dispute with the Turks about ESDP meant that the requisite agreements with NATO could not be signed. Several member states, including France and Belgium, argued that, because the operation was relatively small (the NATO force numbered only some 800 troops) the EU mission should go ahead even in the absence of any EU-NATO accords. This was blocked, however, by Britain, Spain and Germany. Not only were this latter group concerned about the implications for the transatlantic alliance of such a move, but their military commanders pointed out that, whilst the proposed mission was itself small, there was still the possibility of escalation, in which case the Union would need support from NATO.[5]

The fact that the Macedonia mission has been designated a Berlin Plus operation marks a recognition on the part of all the member states that, even in undertaking small-scale missions, the Union faces the possibility of escalation and will therefore need to be able to turn, in the last resort, to NATO for back up and assistance. As NATO Secretary General Lord Robertson pointed out, it 'marks an important milestone in the development of the EU-NATO strategic partnership. The full set of agreements for ready access by the EU to the collective assets and capabilities of NATO for EU-led operations is the key for the European Union to take over NATO's mission in Macedonia.' (*EU Observer* 19 March 2003)

Third, Macedonia is symptomatic of an emerging functional division of labour between Europeans and Americans. Operation Concordia is in keeping with a broader pattern whereby American troop withdrawals from the Balkans have been compensated for by Europeans. There is a real possibility that this trend will be taken further as and when the European Union takes over the NATO operation in Bosnia, as is scheduled to happen either later in 2003 or early in 2004. Further afield, European forces make up the bulk of the International Stabilisation and Assistance Force that is currently patrolling the streets of Kabul. Thus, at the lower end of the military spectrum, the European Union, or European states acting through other fora, are increasingly coming to complement and reinforce American military might.

ESDP, moreover, also includes non-military tasks. Away from the public gaze (focussed very much on its military dimension) the EU has also created a civilian ESDP. The Nordic countries in particular, drawing on their strong traditions in the area of conflict prevention and supported by Germany's Red-Green coalition, insisted that civilian crisis-management capabilities be developed alongside the military aspects of ESDP. The Cologne European Council of June 1999, and subsequent meetings at Helsinki, Feira and Nice, and Gothenburg thus developed civilian ESDP. In keeping with the approach adopted for military forces, the June 2000 Feira European Council meeting emphasised four non-military areas: police, the administration

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[5] Peter Feith, the senior EU official in charge of the operation stated: "We should never exclude even the worst case scenario. If there would be a requirement to extract the force, then that would be done under NATO command and control with the assistance of NATO-led forces." BBC News online, 28 March 2003.

of justice, civilian administration and civil protection. Specific targets in each of these areas were laid out at Gothenburg in 2001, and in November 2002 the Danish Presidency declared that the four civilian headline goals had been met. In tandem, institutional structures were put in place, with the Committee for the Civilian Aspects of Crisis Management, which reports to the PSC, set up in June 2000. Just two months after the headline goals had been met, the Union embarked on its first civilian ESDP mission, with the deployment of a police training force to Bosnia in January 2003.

Certainly, one should not exaggerate the significance of this first mission. The EU Police mission (EUPM) represents a rather unchallenging debut for civilian ESDP in that it is following in the footsteps of a United Nations mission which had been on the ground since 1995, and the Union had twelve months warning prior to taking its place. However, the importance of civilian ESDP is that its existence provides the Union with the full gamut of foreign and security options from which to draw It also marks an acceptance of the fact that military power is not the only aspect of external policy with a role to play in contemporary external relations, a notion stressed by Scandinavian officials in the EU (interviews, Brussels, January 2003).

The Fate of CFSP

If civilian ESDP serves to show that military force is not everything in international affairs, other aspects of the EU's foreign and security policies reinforce this message. The term 'soft power' is an ambiguous one, used in some cases pejoratively, in others to refer to non-military forms of power, and still others as power to attract, rather than coerce, others.

Whatever the definition one chooses, the fact is that the Union's foreign and security policies have more resources at their disposal than many seem to believe. Indeed, one of the problems with over hasty judgements about the EU's international performance in recent years has been the fact that debates about its foreign policy role have been subsumed beneath public and political discussion about the state of the military aspects of ESDP

On a non-military level, the Union's response to the attacks of 11 September was both more rapid and more united than most would have predicted. As early as 14 September, it issued a joint declaration on 9/11 at level of heads of state and government. More practically, the Union moved quickly to upgrade its cooperation with the US in the area of Justice and Home Affairs (Den Boer and Monar 2002: 14). On 12 September, the Commission tabled proposals for a European Arrest Warrant.

EU diplomatic activity also had a more direct impact on events following 11 September. The Union, prior to the events of that day, had gradually been building its links with the Iranian regime. This process of constructive engagement culminated on 10 September 2001 in a meeting between External Relations Commissioner Chris Patten and the Iranian Foreign Minister, at which the EU announced its intention to negotiate a trade and cooperation agreement. Following the terrorist attacks in the US, the EU played a crucial role in bringing Iran within the ambit of the global coalition against terrorism and in liasing, through Javier Solana, over the future of Afghanistan (Allen and Smith 2002: 107).

The Union was also active in helping bring about a successful resolution to the Afghan conflict itself. Two respected observers have

commented that the 'UN-backed agreement on political transition in Afghanistan signed in Bonn on 5 December would not have been possible in its final form without EU efforts in the CFSP context' (Den Boer and Monar 2002: 15). Moreover, not only was it predominantly European troops that remained in the country to make up the bulk of the stabilisation force in Kabul, but the EU, following the end of hostilities, remained engaged economically, providing 280 million euros in 2002 and, on 17 March 2003, pledging a further 400 million euro package of reconstruction for the country for 2003-4.

The real test for the Union's ability to wield political influence via the exercise of 'soft power' has been the Middle East. In terms of direct political influence, the EU has clearly been dwarfed by the United States. That being said, it has become an irreplaceable source of aid in the region, particularly for the Palestinian authority. From 1993 to the end of 2001, the EU committed about EUR 1 billion in grants and loans to the region (Soedentopf 2002: 288). Together with the contributions of individual member states, the EU contributes about 50% of the total aid to the Palestinian Authority (Everts 2003: 23-4). As Roy Ginsberg has noted (2001: 136): 'the Palestinians have come to depend as much on the EU for an economic lifeline and diplomatic support as the Israelis have come to depend on the US for diplomatic support, military cooperation and economic aid.'

From such economic beneficence stemmed a degree of political influence. In 1999, the Union was instrumental in persuading Palestinian President Yasser Arafat to step back from his threat unilaterally to declare Palestinian statehood. (Soedentop 2002: 290-1). The following year, Javier Solana was present at the summit meeting in Sharm el-Sheikh, where the Israeli Prime Minister Ehud Barak and Arafat - together with President Bill Clinton, the Secretary General of the UN and the leaders of Jordan and Egypt - tried to define ways to end the violence between Israel and the Palestinians. Solana became one of the five members of this Sharm el-Sheikh Fact Finding Committee, the so-called Mitchell Committee. In April 2002 Solana and the EU special Representative Miguel Moratinos brokered the agreement on the release of the Palestinians holed up in the Church of the Nativity in Bethlehem in April 2002.

Certainly it would be foolish to exaggerate the EU's influence in this region. Whilst it has become a recognised partner of the US in the region, (as witnessed by America's creation, at a meeting in Washington in May 2002, of a Quartet on the Middle East, composed of the US, EU, Russia and the UN), it could do little but watch as Israeli troops brutally destroyed the infrastructure it had funded. In April 2001, a high-level diplomatic mission to Israel in April, comprising of the High Representative and the Spanish Presidency were not permitted to visit President Arafat in his besieged headquarters. Moreover it is hard to argue with one cynical Foreign Office observer who told this author that it will be clear if and when the United States ever becomes serious about promoting peace in the Middle East. At that moment, Washington will cease to work through the quad, as it does when it is keen to share out the blame for failure, and act alone (interview, London, March 2003).

Soft security, therefore, has its limits as a means of exerting global influence. Yet it remains the case that, often behind the scenes, and certainly with little if any political or public recognition, the Union has been both active

and surprisingly effective in the foreign and security policy spheres. Clearly it is extremely difficult to measure the effectiveness of such policies in terms of their impact on security, and particularly on western security. Yet, as Javier Solana, the Union's foreign policy High Representative commented recently:

> 'as far as contemporary security is concerned, there is no standard "unit of account". How much additional security does an aircraft carrier bring? Is it more or less than spending the equivalent amount of money on peacekeeping or the reconstruction of failed states? Security today is a multi-dimensional concept. Bringing peace, stability and order is an effective way of "draining the swamp". Nation building is not for wimps, as we have found out in Afghanistan and as we will be reminded in Iraq. And Europe's security contribution and her ambitions are relevant and useful.'

> (Solana 2003: 5).

The Impact of Iraq

The Iraq conflict not only dominated headlines during the spring and early summer of 2003, but also had a profound effect on Europe's aspirations to become an influential global actor. In the first place, the crisis heightened fears, already prevalent in many parts of Western Europe, concerning the dangers of American unilateralism. Such fears have hardly been lessened by the rhetoric of the neoconservative right in Washington which has criticised European weakness and painted the EU as a powerless actor in the face of American might (Kagan 2003).

Moreover, sections of the American right have not only encouraged the administration to adopt a unilateralist approach to international affairs, but have also propounded a policy of divide and rule towards the Europeans themselves. A striking feature of US policies towards Europe has been the willingness of the administration to promote divisions amongst Europeans on issues ranging from the ICC (where the administration placed heavy pressure on European states to sign bilaterals exempting US personnel from the jurisdiction of the court) to Iraq. At the annual Wehrkunde meeting in the spring of 2003, Secretary of Defense Donald Rumsfeld made a point of insisting that there were more differences among Europeans on Iraq than between the US and Europe (*Financial Times,* 10 February, 2003).[6]

Not, of course, that outside intervention has proved necessary in order to foster divisions between EU member states. Public differences between the major European players were marked and increasingly vitriolic in the build up to war. Perhaps most significantly, the Iraq crisis has driven a wedge between France and Britain. Immediately before the war, relations between London and Paris in particular degenerated to an alarming degree. Each side clearly had a different agenda as concerned transatlantic relations at a time when they had appeared to be converging over the necessity to create an EU defence capability. It will take time before we can accurately assess the full implications of the high levels of personal resentment that the crisis has spawned. What is clear is that the public falling out between Europe's two most

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[6] Certain right-wing US commentators have explicitly propounded cherry picking as an approach destined to maximise American influence whilst minimising the constraints upon it. See, for example, Charles Krauthammer, **'American Unilateralism'**, speech given at the third annual Hillsdale College Churchill Dinner, Washington, DC, December 4, 2002. http://www.hillsdale.edu/newimprimis/2003/january/default.htm

militarily powerful states will almost certainly stymie developments in the sphere of ESDP, if only because it has reopened old divisions about whether ESDP has a 'Europeanist' or Atlanticist' vocation (for a fuller discussion of this, see Menon and Lipken 2003).

Institutional reform

The second source of uncertainty concerning the future are the on-going discussions concerning the future institutional shape of the Union, begun in the Convention on the Future of Europe, and due to be taken up again by the Intergovernmental Conference later this year.

In the foreign and security policy spheres, the debate about institutions has been dominated by the twin issues of coherence and leadership. Multiple actors are involved in the formulation and implementation of the Union's foreign and security policies, including four European Commissioners, several sectoral Councils (above and beyond the External Relations Council), the Presidency of the Council and the High Representative for foreign policy. Perhaps inevitably, therefore, the Union is plagued with problems when it comes to ensuring that its actions in the international system are coherent. In an internal memo of late June 2000, Commissioner for External Relations Chris Patten complained of an 'unresolved tension' between the intergovernmental and community methods in eternal relations, complaining that the creation of the HR-CFSP had complicated foreign policy (*Financial Times* 6 July 2000).

Indeed, certain aspects of external policies are characterised by multiple overlapping institutional jurisdictions. Thus, although they come under the formal authority of the High

Representative, EU Special Representatives are paid for out of the Community budget. Whilst civilian ESDP belongs in the second pillar, the Commission paid for some 80 per cent of initial training for the civilian ESDP experts. Moreover, in the wake of the development of civilian ESDP, the EU now concurrently operates two different civil protection schemes – one in the Council and one under the Commission.

Perhaps predictably, the Convention on the Future of Europe has been dominated by the need for big ideas to rejuvenate the Union's international role. Consequently, it has focused on the need for clear and effective leaderships as a way of resolving the issue of coherence and making the Union a more effective presence on the international stage.

Of particular concern has been the perceived need to reform the rotating Presidency of the Council:

> "The [six-monthly rotation system] has reached its limits. It creates for Europe a weakness of continuity in leadership: a fatal handicap in the development of an effective Common Foreign and Security Policy. What's worse, each Presidency sees itself as setting its own distinctive agenda for the Union." (Blair 2002)

Certainly, there is reason to believe that successive Presidencies have managed to impose their own preferences onto EU foreign policy agendas. From the Northern dimension favoured by the Finns, to the emphasis on the Mediterranean characteristic of French and Spanish presidencies, this is hardly a new trend. At the time of writing (April 2003), the focus of debate seems to be on ways to overcome the perceived deficiencies of the rotating presidency, whilst at the same time avoiding 'duplication' between the Council of

Ministers, responsible for decisions concerning foreign and security policies, and the European Commission, charged with other aspects of foreign policy, including crisis management (*European Voice* 11 July 2002).

The problems with the schemes on the table – to create a European Foreign Minister based simultaneously in the Council and the Commission, as well as a permanent European Council chair with some responsibility for representing the Union in the outside world – are manifold. Two in particular stand out. First, reinforcing the Council by providing the European Council with a permanent chair, and the Council of Ministers with an input into the Commission via the new Foreign Minister is bound to exacerbate tensions between the large and small member states. These were illustrated clearly in 2001. First, on the occasion of the Ghent European Council meeting of 20 October when Blair, Chirac and Schroeder held informal talks on Afghanistan an hour before summit started, infuriating both the Presidency and the Commission. More strikingly, the same tensions broke out into the open on the occasion of a Downing Street dinner on 4 November, when, initially uninvited, the Prime ministers of Italy, Spain, the Netherlands, along with the Belgian Presidency and Javier Solana forced their way to the table – in the case of the Dutch Prime Minister at such short notice that he was forty minutes late (*The Economist* 10 November). The small member states see moves towards greater intergovernmentalism not only as a direct attack on a Commission they see as their defender, but also as an attempt on the part of the 'bigs' to create a directorate for foreign and security affairs. Fostering such fears will hardly help in the quest for foreign policy consensus or effectiveness.

Second, it is obviously politically tempting for the Convention – and its president Giscard d'Estaing – to come up with high profile institutional initiatives. However, doing so runs the risk of both undervaluing what has already been achieved and of introducing gimmicks which play well politically at home in the short term, but have little, or even negative, practical effects in Brussels. Certainly, the EU's institutional system is far from perfect. Yet much has been accomplished, as argued above, in the realms of foreign and security policy. And much of what has been accomplished – the judicious use of aid and trade, the use of soft security tools and so on, has been managed relatively effectively by the Commission. Moreover, alongside the Commission, the High Representative has, slowly but surely, begun to assume a higher profile and play a more important role. In June 2002, *Newsweek* claimed that 'quietly and almost unnoticed, Javier Solana has done the unthinkable. He has created a common European foreign policy.' This is doubtless overstated. Yet the fact remains that the jury is still out on the performance of the intuitions created at Amsterdam and Nice for foreign and security policies. Rushing to reform them before they have become properly embedded, on the basis of judgments concerning their performance in a crisis that only one country in the world proved able to confront, smacks of the worst kind of short-sighted short termism.

Conclusions

In only a decade the European Union has moved from being a new kid on the block in terms of foreign and security policies to being a high profile and surprisingly effective international actor. Certainly, it has failed to

match the ambitions of some of its most enthusiastic proponents. Certainly, too, European publics know next to nothing about what the Union does in the international realm. It is because of this that, despite their potential and their effectiveness to date, EU policies in this sphere were widely derided as failures following the moment when the attacks of 11 September 2001 shook the western world to its core. Yet even in the crises that succeeded the terrorist attacks in New York City and Washington D.C., European states, and in certain instances the EU itself, responded rapidly and effectively.

The Convention on the Future of Europe and subsequent intergovernmental conference look set to make significant institutional changes to the Union's foreign and security policy systems. In undertaking these reforms, Convention members, and national governments are doubtless motivated by the laudable objective of enabling the Union to do more on the international stage. One can only hope that these motives notwithstanding, they do not simply propose reforms for their own sake and, in the process, undermine a system that, to the surprise of many, has continued to function respectably in an ever more complex and ever more dangerous world.

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TOWARDS AN EU STRATEGIC CONCEPT

Fraser Cameron*

ABSTRACT: The article 'Towards an EU Strategic Concept' examines the state of the EU's foreign and security policy after the Iraq war and after publication of both the Convention's draft constitutional proposals and Mr Solana's European security strategy paper. It suggests that while the Iraq war caused considerable damage to the EU there is now a desire to move forward as evidenced by the welcome all member states gave to the Solana paper at the European Council meeting in Thessaloniki. There remains much work to be done and there are difficult choices ahead, especially in the EU's relations with the United States.

Introduction

In June 2003, Javier Solana presented his European Security Strategy (ESS) paper to the Thessaloniki European Council. In the same month the Convention on the future of Europe finished its deliberations and included proposals to strengthen the external relations of the European Union (EU). The demand for the Solana paper came partly as a result of the Union's open disarray during the Iraq crisis and partly in response to the US national security strategy paper of September 2002 that secured worldwide headlines for its open promulgation of 'pre-emptive strikes'. This article examines the state of the EU's foreign and security policy on the eve of the intergovernmental conference (IGC) and just a few months before the biggest-ever EU enlargement.

Lack of coherence

Individual Member States have their own security concepts but the Iraqi crisis exposed the vacuum at the EU level. According to polls, European citizens, especially in Romania, are overwhelmingly in favour of 'more Europe' in the foreign and security policy fields. This public support and interest, as was evident in the massive anti-war demonstrations throughout Europe in February 2003, is something on which to build. The Union's lack of coherence on Iraq had a damaging effect on its identity, credibility and institutional structures as well as impairing trust between Member States. As the EU foreign ministers seem to recognise, there is an urgent need for the EU to agree on a basic security concept if it is to develop further as a major international actor. No one doubts this will be an easy task, especially as the very nature of security is evolving as a result of the end of the Cold War, globalisation, extreme disparities in global wealth, regional tensions, ethnic disputes, international terrorism and rising trans-border crime. Furthermore, for many years European elites have become so accustomed to the United States (US) taking the lead in international security that they have lost any

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sense of responsibility for playing a role themselves. This attitude must change.

New threats – new roles

The EU is not threatened by military attack from any other state or regional grouping. But security today is much more than the absence of any direct military threat. According to the ESS, the EU's security could be threatened by instability in its immediate neighbourhood, interruption to its energy supplies, terrorist attack, the spread of weapons of mass destruction (WMD) as well as a breakdown in the multilateral system that has developed since 1945. The EU's security is thus inextricably linked to developments in the global arena.

In recent years the EU has played an increasing role on the international stage. It is not a military power like the United States (US) but has a wide range of tools to exert influence and defend its interests. When the Union speaks with one voice as it does in international trade negotiations its views command respect. When it fails to do so, as in the Iraq crisis, the Union lacks influence and credibility. The EU's poor performance on Iraq should not hide the fact that it is now the main promoter of stability in the Balkans and its Member States have more peacekeepers on the ground there, and in Afghanistan, than the US. The Union has also shown itself capable of taking a global leadership role in areas from global warming (Kyoto Protocol) to the International Criminal Court (ICC), in both cases in opposition to the US. The EU has also been a staunch defender of the United Nations (UN) and other institutions of global governance. Here again, there is an area of growing disagreement with the US with its preference for à la carte multilateralism.

Economic giant

The EU's economic strength and size means that it cannot escape global responsibilities. It has a gross domestic product (GDP) of around 8.5 trillion euros accounting for about one fifth of world output and a population of 375 million. The enlarged EU of 25 Member States will be the biggest single market in the world, with more than 450 million people and a GDP equal to, if not larger than, that of the US. The EU is the world's leading exporter of goods and services and a major source of foreign direct investment. It is the main export market for more than 130 countries around the world, has the largest integrated market in the global economy and the world's second reserve currency. Its main trading partners are the US, Japan, China, Turkey, Switzerland and Russia. The EU plays a vital role in the WTO and was crucial in setting the agenda leading to the launch of the Doha Development Agenda (DDA) in November 2001.

Common values, different traditions

The EU's external policies are founded on the same values and principles that underpin its internal development, namely support for democracy, the rule of law, human rights, market economy, solidarity, sustainable development and the preservation of national and cultural diversity. The EU is still struggling, however, to agree on some of the major issues of international security, particularly those involving the threat or use of military force. There are different strategic cultures, traditions, and capabilities in the Member States. Most Member States belong to NATO but some do not and reject any moves for closer defence cooperation. There are divergent views on threat assessments. Indeed

there is no real Union mechanism to assess threats and it is to be hoped that the debate on a EU strategic concept will accelerate such a capability. There is an urgent need for more intelligence cooperation and sharing, and more joint diplomacy. These problems, however, can only be overcome with time, by building on areas of agreement and joint action. In the meantime, enhanced cooperation may be a practical vehicle to drive CFSP and ESDP forward.

There is, for example, very broad support for conflict prevention and peacekeeping operations. The first operational steps have been made on the security front in 2003 with the EU taking over peacekeeping operations in Macedonia, Bosnia and the Congo. These modest first steps need to be followed by the EU fulfilling its commitment to establish a 60,000 rapid reaction force (RRF) later this year to deal with peacekeeping and peace enforcement missions. The continuing capability gaps must be addressed.

The Convention

The structures of the common foreign and security policy (CFSP) of the Union were under discussion at the Convention on the future of Europe. A number of useful proposals were put forward to strengthen both the foreign and defence policy arrangements. Agreement on granting the EU legal personality is a step forward. The proposed new Foreign Minister could be a strong figure in EU external policy based partly on an EU diplomatic service. But structures alone are insufficient. The EU needs to develop and maintain the political will, as well as the institutions, to act together on the world stage. Such a move is even more imperative in light of the forthcoming enlargement of the Union

to 25 Member States. There is still too much emphasis, however, on intergovernmental decision-making.

Relations with the US

One of the key issues is how to respond to a US that has stated it will tolerate no challenge to its unique superpower status and has a security doctrine based partly on the concept of pre-emptive strikes. For the first time since the start of European integration, there are voices in the US questioning the wisdom of supporting the idea of a strong, united EU speaking with one voice. Developing a new partnership with the US will thus be a major challenge for the EU.

Some present and future Member States seem prepared to accept a unipolar world while others would prefer a multipolar one. These are false choices. The EU must support a multilateral framework of global governance based on the rule of law This is not due to any alleged military weakness but is in the interests of all states, including the US.

Key Recommendations

- EU foreign policy must be based on shared values and principles. Make more use of conditionality to pursue EU values and interests
- Strengthen support for global governance and EU's voice in multilateral institutions.
- The IGC should agree more qualified majority voting (QMV) to improve CFSP/ESDP decision-making structures, essential in an enlarged Union of 25/27 Member States. Reinforced cooperation may be an important instrument to overcome blockages.

- Continue priority to immediate neighbourhood (Central and Eastern Europe, Russia, SE Europe, Mediterranean and wider Middle East). Continue enlargement process, put increased resources into neighbourhood policy, tackle unresolved issues in the Balkans, reinvigorate Barcelona process, continue pressure for implementation of Middle East Road Map.
- Establish an EU threat assessment mechanism. Discuss threat assessments with European Parliament and national parliaments. Agree criteria for use of force.
- Need for more intelligence sharing and cooperation. Increase conflict prevention efforts.
- Establish joint diplomatic missions, EU task forces.
- Ensure Rapid Reaction Force (RRF) is on target. Tackle capabilities gap. Encourage more sharing of defence assets. Change ministries of defence to departments of international security.
- Increase development assistance to 0.7% GDP. More emphasis on good governance.
- Ensure balanced approach in tackling terrorism and proliferation. Need to strengthen existing inspection regimes.
- Develop EU/NATO relations to ensure coherent division of labour.
- Seek partnership with US based on shared values and interests (Balkans, Afghanistan, HIV/AIDS). But disagree when necessary (Kyoto, ICC).
- Ensure more consistent approach between all policy areas impinging on external security (trade, development, immigration, CFSP).

EU values and interests

The EU has an interest in promoting a world order akin to that between its Member States. In the past 50 years the EU has succeeded in developing a genuine security community in which it is unthinkable today that problems between members would be resolved by force or even the threat of force. This is a truly historic achievement when one considers the often bloody and terrible history of past centuries, particularly the first half of the 20th century. The conditions for this development have included tolerance, growing economic interdependence, an unprecedented pooling of national sovereignty and unique institutions representing states, citizens and the common European interest. Largely as a result of its history and the inspiration of its Founding Fathers, the EU has a firm interest in promoting its own values and model of society to the wider world. The Union has had most success in exporting its values and standards to the EU's immediate neighbourhood through a variety of contractual agreements, including the very important carrot of EU membership.

The Treaty on European Union (TEU) defines the objectives of the CFSP *"to strengthen the security of the Union in all ways . . . . .to safeguard the common values, fundamental interests, independence and integrity of the Union. . ."* It adds that this goal should be pursued *"in conformity with the principles of the United Nations Charter."* It also defines the objective *"to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms."* In addition, EU development policy *"shall foster sustainable economic and social development, promote the smooth and gradual integration of the*

developing countries into the world economy and tackle global poverty".

These objectives enjoy widespread support by all Member States and citizens of the Union and represent a coherent set of values-based policy goals for the external relations of the Union. They should be given greater prominence in external policy through increased resources and greater use of conditionality.

Globalisation and The Rule of Law

Most EU members have long recognised their impotence acting alone on the world stage. Nor is acceptable that the strong should impose their will on the weak. The only alternative, therefore, is a rules-based international system that protects the interests of all. Member States have accepted that EU law overrides national law and the readiness to accept shared sovereignty means that the EU is perhaps more willing than most to seek a strengthened system of global governance based on the UN system. The acceptance of the Charter of Fundamental Rights within EU law and EU support for the ICC are examples of this trend. The medium term goal for the EU should be a reform of the UN Security Council including a single EU seat.

The enormous expansion of cross-border trade in goods and services, and in foreign direct investment, as well as in international telecommunications and the services they facilitate has created a global economy in which all national economies are inextricably embedded. This increasing economic interdependence means that in most countries governments are largely powerless to impose their will on their economies if this implies acting contrary to international markets. Growing interdependence also means that economic performance in one country impacts on the lives of citizens elsewhere. For example, both the growth of the US economy in the 1990s and the downturn of the US economy after 9/11 had a major impact on the EU. This is also true as regards the global environment. Greenhouse gas emissions in Europe or in North America can contribute to the magnitude of floods in Bangladesh or to the incidence of hurricanes in the Caribbean. In today's world, economic acts have become in practice instruments of foreign policy. Hence the necessity of a rules-based international system.

The Market Economy

The Union has an interest in shaping a global economy based on social market principles, the principles that have characterized the EU since its birth. It is on this basis that the Common Market was created, the competition policy implemented, and the Single Market created. Within the last decade, economic policies in Europe, as elsewhere in the world, have moved away from an interventionist model and towards a reliance on competition within open markets to generate economic growth and prosperity. At the same time the EU has developed a distinctive social and economic model with the emphasis on social solidarity, regional cohesion and environmental sustainability.

The EU pursues these principles through its support for trade liberalization under the WTO. The principle of solidarity also implies that the process of liberalisation of trade in particular and of globalisation in general are managed in such a way that they benefit all countries. Hence the emphasis on the need for Doha to lead to a result to the benefit of developing countries. The EU could have a

much more effective voice in the international financial institutions (e.g. IMF, World Bank), that often play a key role in world affairs, if the Member States were prepared to act together. This issue needs to be addressed both in the Convention and in relevant Councils. The Union also needs to take all decisions on trade policy by qualified majority vote (QMV). Article 133 of the treaty needs to be amended accordingly.

Democracy, Good Governance and Human Rights

Democracy and human rights are core Union values that the EU seeks to promote beyond its borders, using a mix of conditionality (Copenhagen criteria, trade and association agreements) and financial and technical support. More resources need to be devoted to the promotion of these core values with the priorities being the EU's immediate neighbourhood and the wider Middle East. Democracy involves much more than occasional elections. It requires a vibrant civil society, a free media and good governance. Corrupt, failed and dysfunctional states can swiftly become breeding grounds for new security threats. The EU must give increased priority to these issues. It must also agree guidelines for military intervention for humanitarian purposes and to protect human rights. At present only the UNSC or article 51 of the UN charter provide legitimate authority for the use of force. Given the changed nature of security it is time to revisit this issue.

Sustainability

The concept of sustainable development has been a major EU policy aim for many years and was incorporated into the TEU in 1997. The adoption by the European Council at Gothenburg in June 2001 of a Strategy for Sustainable Development has begun to turn this into practical policy. On global climate change and all other issues related to international ecological interdependence, there is simply no viable alternative but to pursue accelerated multilateral action and the EU should certainly continue to take the lead in this as it did with regard to the Kyoto Protocol. If the EU is seen to be implementing policies designed to make its own development sustainable, its credibility on the international stage will grow correspondingly.

Preservation of National Identity and Cultural Diversity

Europe is a microcosm of the world community in that it is a mosaic of overlapping, distinct ethnic groups with clearly defined cultural differences and political borders inherited from the past, which only partially reflect these ethnic groups. The European experience of sharing sovereignty in order to more effectively pursue its interests, while respecting these cultural and ethnic differences, can provide lessons as to how the world community can deal with similar problems. Certainly the proliferation of regional bodies would seem to suggest that the EU model is widely admired.

The changing nature of security

During the Cold War, security policy was clear, a US-dominated NATO versus a Soviet-dominated Warsaw Pact. Security policy was largely confined to a few experts in nuclear deterrence. For the first 30 years of its existence there was no real attention to foreign and security policy at EU level. With the collapse of communism, the military division in Europe was overcome and the EU (and

NATO) prepared for enlargement. Within the EU there was no debate, let alone agreement, on what were the new security threats and priorities. The EU reacted to but was unable to prevent the conflict in the Balkans. It was US military force that brought Milosevic to the negotiating table at Dayton and ended ethnic cleansing in Kosovo. For the EU, lessons were learned as to the diverse nature of security threats as well as the need to improve military capabilities.

In the decade after the end of the Cold War, the US developed a military capability that dwarfed all other nations or regional groupings. But this awesome military power cannot tackle problems associated with globalisation such as financial instability, poverty, unequal development or deal with ethnic and religious disputes. It could also not prevent the worst terrorist incident in history, on 11 September 2001. The terrorist attacks on the Twin Towers in New York and on the Pentagon ensured that international terrorism became the number one security threat for the US. The ability to inflict massive destruction was no longer confined to nation states. The new threat heralded a fundamental and ongoing change in the geopolitical landscape and a dramatic change in American attitudes toward security, culminating in the doctrine of pre-emptive strikes.

The European response to 9/11 was impressive and far-reaching but EU Member States did not agree on the role of military forces in dealing with so-called rogue states such as Iraq (or Iran or North Korea) or in combating terrorism. Significantly, most Europeans spoke of the *fight* against terrorism while the US spoke of a *war* against terrorism. Some analysts have pointed to the growing propensity of the US to seek 'military'

solutions to problems, largely as a result of its immense military power. But others have cautioned that power in today's world involves more than military muscle. Political, diplomatic, economic, financial and other tools - soft power - are essential in tackling most of today's security problems. For example, the reconstruction of 'failed states' is an enterprise that requires all the above tools, plus considerable civilian administration expertise, and patience.

While the EU is correct in giving increased attention to international terrorism, there is also a danger in exaggerating terrorism. The EU cannot ignore other security threats, some of which may be related to terrorist activities. In particular the EU must pay greater attention to both 'failed states' and dysfunctional states, of which there are many in its neighbourhood.

As regards territorial defence, there is no challenge in Europe to the dominant role of NATO. The EU was never responsible for territorial defence, a task for NATO and the Western European Union (WEU). But the impact of 9/11 led to discussion of the need for a solidarity clause, lest a Member State was subjected to a terrorist attack, and rekindled debate about a mutual defence clause being included in the Union. It would be inconceivable that if a Member State was threatened or attacked that all other Member States did not offer assistance. If members are serious about a political union then there should be no argument about the necessity of a mutual defence clause. Many members of the Convention posed the question as to whether it is now appropriate for the enlarged Union to take on responsibility for its own security. To put it another way, how long can Europeans expect Americans to take prime responsibility for their security?

Threat assessment

Although there is no direct threat to the Union's territory, the EU needs to discuss and establish a list of priority threats. Such a list cannot be static or exhaustive, but the Union must refrain from a lengthy shopping list of priorities that would undermine its seriousness. Any such list should include the stability of its neighbourhood, including the Mediterranean and Middle East, tackling global poverty, strengthening multilateral institutions and international law, terrorism and the proliferation of WMD. This list should be discussed with the US and the Union's other principal partners in the knowledge that there is and never will be absolute security.

At the same time the EU must examine what tools it has, at Union and Member State level, to meet these threats. Too often in the past there has been a mismatch between EU objectives and instruments. Some capabilities, such as support for economic transition and civil administrations, are well developed. Elsewhere there are serious gaps. For example, the Union must improve its military capabilities, not least to ensure that it can undertake the Petersberg Tasks (peacekeeping, peace enforcement, humanitarian support). In an era of tight budgets, these improvements are likely to come from sharing of facilities and joint procurement. The EU must also significantly improve its decision-making structures in the field of CFSP and defence policy. There were some encouraging proposals on the table at the Convention but regrettably no advancement in QMV for CFSP

The EU's neighbourhood

Enlargement

Over the past decade, the Union's most successful foreign policy instrument has undeniably been the promise of EU membership. The enlargement strategy, underpinned by massive financial and technical assistance packages (e.g. Phare, Sapard, Ispa), has borne fruit with ten new Member States ready to join the Union on 1 May 2004. Other countries, including Bulgaria, Romania, Turkey and Croatia, also have a perspective of membership, as do other countries in SE Europe. Ensuring the success of the current enlargement process and preparing other neighbours for future accession should be a major priority for the Union.

The EU's relations with South Eastern Europe

Following the bloody tragedy of the Balkan conflicts during the 1990s, when the European performance was less than glorious, the Union has now made substantial progress in ensuring stability in the region. It has negotiated Stabilisation and Association Agreements (SAA) with Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (FRY), the Former Yugoslav Republic of Macedonia (FYROM) and Albania, which seek to underpin the reform process and prepare the countries for the ultimate goal of EU membership. Since 1991, the EU has provided more than €6 billion to the region through its various aid programmes and by 2006, that figure will have risen to some €10 billion. In addition, the countries of the region benefit from generous trade preferences with a majority of products enjoying duty-free and unlimited access to EU markets.

The Union must continue to view SE Europe as a priority because it is an area with a number of highly dysfunctional states where the potential for armed conflict and social

unrest remains. A failure to stabilise the region would lead to increased crime affecting the Union and also be a blow to the EU's credibility with the US and others. The final status of Kosovo (and Montenegro) must be tackled in the near future.

Neighbourhood Policy

The EU has signed Partnership and Cooperation Agreements (PCAs) with nearly all countries of Eastern Europe and central Asia, including Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Russia, Turkmenistan, Ukraine and Uzbekistan. PCAs are legal frameworks, based on the respect of democratic principles and human rights, that set out the political, economic and trade relationship between the EU and its partner countries. This legal framework is supported by a substantial technical assistance programme (Tacis.) Between 1991 and 1999 €4,226 million were committed through the Tacis programme, and an additional €3,138 million is foreseen for 2000-2006.

The EU's relations with Russia are of special note given its size, geography, history, natural resources and international role. In 1997 the EU agreed a common strategy towards Russia that was lengthy in words but short on content. The EU is correct to identify Russia as a strategic partner and must put more substance into the relationship. President Putin would appear to share the EU's views on the importance of multilateral institutions. This could be the basis for closer political cooperation to augment the growing trade and economic relationship. Continued EU support for Russia's WTO membership should be another EU priority.

Recently the EU has proposed a neighbourhood strategy, setting out a new framework for relations with Russia, Ukraine, Belarus and Moldova, and the Southern Mediterranean countries that do not have the perspective of membership. It suggests that, in return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, all neighbouring countries, depending on their performance, should be offered the prospect of a stake in the EU's internal market. It will be important to devote adequate resources to this strategy if the EU is to succeed in its aim of helping to develop a ring of stable and increasingly prosperous friends in its neighbourhood.

The Mediterranean and Middle East

The Mediterranean and Middle East are areas of essential strategic importance to the EU.

The flagship policy of the EU in the Mediterranean is the Barcelona process, launched in 1995, and including Morocco, Algeria, Tunisia (Maghreb); Egypt, Israel, Jordan, the Palestinian Authority, Lebanon, Syria (Mashrek); Turkey, Cyprus and Malta; Libya currently has observer status at certain meetings. The main principles of the Barcelona Declaration are to establish a common Euro-Mediterranean area of peace and stability based on fundamental principles including respect for human rights and democracy, to create an area of shared prosperity through the progressive establishment of a free-trade area between the EU and its partners and among the Mediterranean partners themselves.

The MEDA programme is the principal financial instrument of the European Union for the implementation of the Euro-Mediterranean Partnership. For 1995-1999 the programme

accounted for € 3.435 million with € 5.35 billion foreseen for 2000-2006. Despite these optimistic aims and substantial resources it is doubtful that the Barcelona process can be described as a success. Both sides must assess the reasons for the failures to date and draw up both regional and bilateral programmes which are transparent and realistic. The EU should emphasise more the use of conditionality.

The publication of the Middle East Road Map means that the EU, with other members of the Quartet (US, UN, Russia), must give this the highest priority because without a resolution of the Palestine-Israel dispute there will be little chance of reviving the Barcelona Process or dealing successfully with other problems in the region. The EU must be ready to use its leverage, including trade preferences, on both parties to push the negotiations forward.

On Iraq, the EU must continue to give preference to the fullest UN involvement in its reconstruction. Whatever the merits of the decision to go to war on Iraq the EU, along with the US, has a vital interest in the stability of the country with the second largest oil reserves in the world. On Iran, the EU should continue its approach of critical engagement and conditionality, especially on WMD. It needs to engage in a frank dialogue with the US on the merits of its approach.

The EU must also ensure greater prominence for its own values of democracy and human rights in its dealings with the Middle East. This should mean greater support for those bodies trying to promote a more pluralist society. Stabilisation, modernisation and democratisation is even more directly in the EU's interests than the US's.

In addition to the Barcelona process, the EU has negotiated bilateral association agreements with a number of countries including Tunisia, Israel, Morocco, Egypt, Algeria, Lebanon and the Palestinian Authority. The new neighbourhood policy of the EU envisages increased financial assistance and gradual involvement in parts of the Single Market for each state depending on it reaching certain reform benchmarks. This is a good model on which to proceed.

Tackling global poverty

Increased Development Assistance

Far too many citizens of the world live in abject poverty. There are too many states plagued by corruption and poor governance. While there are no magic solutions to the immense problems facing most inhabitants of the planet, the developed world, and particularly the EU and US, have a responsibility to devote more attention and resources to their plight. Civil wars rage in several parts of Africa with only minimal media coverage and involvement of Western leaders and institutions. More failed states provide new breeding grounds for terrorist and criminal gangs.

The EU's record is not bad but it needs to do more. The Union is the largest provider of development assistance in the world. It promotes close ties with developing countries through the Cotonou Agreement (formerly the Lome Convention), which ties 77 African, Caribbean and Pacific (ACP) countries into trade and investment agreements with the European Union. The EU is by far the biggest market for these ACP countries and around €16 billion in aid is foreseen over the next five years. Europe's overall official development

assistance accounts for about half of all international development assistance. The EU is also by far the largest provider of humanitarian assistance (55%, including Member State contributions). There needs to be improved coordination between the Union and Member States on both the development and humanitarian sides. Above all, the EU needs to meet its target of 0.7% of GDP as development assistance. This would be an act of enlightenment, and self-interest.

The EU has gradually deepened its economic and trade links with all continents. For example, in Latin America it has negotiated free trade agreements with Mexico (and is currently negotiating an accord with Chile) as well as supporting regional developments e.g. MERCOSUR, Andean Community, Central America. This has resulted in a doubling of trade and a tripling of FDI between 1990 and 2000. But the Union also needs to tackle the problem of agricultural access to its market.

Immigration

The EU has a major interest in stemming illegal and promoting legal immigration. A reduction in illegal immigration will only be possible by assisting the economic development of those regions producing migrant labour. At the same time the Union needs to encourage legal migration of skilled workers because of its ageing population and need to continue economic growth. An essential element here is increased synergy between the foreign trade and internal security policy areas of the Union. For example, the Union's external borders need to be managed in an efficient, secure and humane manner to meet the wider security interests of the Union. It is not too early to discuss the merits of a global agency for migration.

The EU and global governance

Strengthening Multilateral Institutions

The EU has a major interest in seeking to strengthen the institutions of global governance. Despite the Union's disarray over Iraq, there is a growing trend for Member States to coordinate and vote together in the UN. In 2002 the Member States voted together on more than 90% of UN resolutions. The Member States are the largest financial contributors to the UN system. They pay around 37% of the UN's regular budget, around 40% of UN peacekeeping operations and around 50% of all UN Member States' contributions to UN funds and programmes. The EU should continue to emphasize the centrality and authority of the UN in dealing with international security issues. They should seek the implementation of the Brahimi report on conflict prevention and peacekeeping and lead the debate on ways to strengthen and reform the UN, including the Security Council.

The EU also has an interest in strengthening other major global institutions, including the IMF, World Bank and WTO, and increasing its obligation to speak with one voice. It should ensure a preference for working through inclusive multilateral institutions rather than ad hoc bodies such as the G8. It should further strengthen the OSCE and Council of Europe which do invaluable work in conflict prevention and in promoting the Union's values.

Terrorism

Since 9/11 international terrorism has moved to the top of the security agenda. Member States such as Spain, Italy, Germany and the UK, have lengthy experience of dealing with terrorism, preferring to use police and

intelligence cooperation rather than armed forces. But the scale of the 9/11 terrorist attacks were of a different magnitude and demonstrated the destructive and organisational abilities of the Al Quaeda network. There is no doubt that this network is also active in Europe and willing to undertake attacks against European targets. The Union responded rapidly to the terrorist attacks of 9/11 and the fight against terrorism has become a major policy objective. A comprehensive action plan has been agreed including increased diplomatic, intelligence, police and judicial cooperation, measures to stop the funding of terrorism and strengthening security for air travellers. There is a new Terrorism Task Force within Europol. The EU has agreed a common European arrest warrant and a common definition of terrorism and what is a terrorist act. While all these steps are worthy and justified, it is important that anti-terrorist measures do not impinge on democratic rights and civil liberties. There is increasing concern about the balance between security and civil liberties in the US. The EU needs to ensure that the fight against terrorism is kept in perspective. Indeed, according to the State Department, there has been a remarkable drop in the number of terrorist incidents since 1999.

Proliferation of WMD

The proliferation of WMD is confined to a relatively small number of countries. As regards a possible ballistic missile attack on the EU there is no evidence of such a threat. But as technologies develop and the range and accuracy of missiles are extended, the danger might grow. The EU has a global approach to WMD centred on the respect and effective implementation of multilateral treaties and conventions to ban or to minimize the

recourse to and development of WMD. The Member States are committed to the various non-proliferation regimes, which help to co-ordinate the consistency and effectiveness of non-proliferation export control measures (The Australia Group, the Zangger Committee, the Missile Technology Control Regime and the Wassenaar Arrangement). Furthermore, the Commission has implemented assistance programmes with Russia and North Korea (KEDO) to reinforce non-proliferation and support the realisation of disarmament projects.

The EU has also taken initiatives to reinforce multilateral instruments, improve information exchange practices, control outreach and transparency of export control regimes, improve preparation for international assistance in relation to the Chemical Weapons Convention (CWC) and the Biological and Toxin Weapons Convention (BTWC). All EU Member States are committed to controlling the export of dual-use technology. This twin approach of diplomacy, including conditionality in agreements with third countries, and support for the strengthening of non proliferation regimes should be continued. The EU should also press the US to sign up to these regimes, and be ready to work with the US, Russia and other parties to strengthen these agreements. There needs to be an accepted system of sanctions for non-compliance, including the use of force as a last resort. At the same time, present nuclear states need to live up to their international obligations.

Conflict prevention

Petersberg Tasks

Seeking to interest ministers in conflict prevention is like seeking to interest teenagers

in their pensions. Too often there is an imbalance between the electoral cycle and potential conflicts. The EU is thus in a better position than some actors to pay due attention to the importance of conflict prevention. In recent years EU Member States have been heavily engaged in often difficult, expensive and hazardous peacekeeping operations in the Balkans, Afghanistan and elsewhere. The EU began its first military mission on 1 April 2003 in Macedonia. In Kosovo, some 36,000 troops (80% of the total force) and 800 civilian police from EU Member States serve alongside other international partners. Furthermore, the EU plans the takeover of the NATO-led peacekeeping mission in Bosnia and Herzegovina in early 2004 (12,000 troops). In February 2003 Germany and the Netherlands assumed the command of the international security force (ISAF) in Afghanistan. In addition, EU Member States currently contribute military personal to UN peacekeeping forces in Cyprus, Georgia, East Timor, Democratic Republic of Congo, Pakistan/India and Sierra Leone. Furthermore, the EU has created a civilian peacekeeping force to help manage crisis situations and control conflicts.

EU Member States are not inherently pacifist but recognise that war is an admission of failure. By stressing the importance of conflict prevention and peacekeeping they do not ignore the possibility of recourse to armed intervention. The Helsinki European Council in December 1999 agreed operational targets for the creation of a European Rapid Reaction Force (RRF). This included the military Headline Goals whereby "Member States must be able, by 2003, to deploy within 60 days and sustain for at least one year military forces of up to 60,000 troops capable of carrying out the full range of Petersberg tasks". These tasks are humanitarian and rescue, peacekeeping, and tasks of combat forces in crisis management, including peacemaking.

These commitments need to be fulfilled if the EU is to maintain a minimum of credibility. Furthermore, as there is little prospect of substantially increased defence expenditure, there is a strong case for closer cooperation in the defence field. Proposals from the Convention allow enhanced cooperation and four countries (Germany, France, Belgium and Luxembourg) recently declared their readiness to go down this path. The EU should not try and emulate the US in military power projection but it does need to develop a greater military capacity to defend its own values and interests. This means more effective spending. The EU must question whether it can afford 25 separate defence establishments, usually with outdated structures and troops untrained for today's security tasks. Defence ministries might usefully be renamed departments of international security because that is their principal task in today's world.

EU-NATO Relations

For many years the EU and NATO did not talk to each other even though there was an overlap in membership, shared similar interests and they were located in the same city. More recently there has been a sea change in their relations with the EU and NATO agreeing arrangements whereby the EU can utilise NATO assets in times of crises. For the foreseeable future NATO will take the lead not only on territorial defence but on military missions at the top end of the spectrum. NATO and EU have worked well together in the Balkans and may do so again in other theatres such as

Afghanistan. This interface needs to be consolidated and further developed.

CFSP/ESDP structures

Institutional structures cannot compensate for the lack of political will but good structures can create a framework in which a common will can be more efficiently created. The Convention has produced several important recommendations regarding improvements to CFSP and European Security and Defence Policy (ESDP) structures. These include the creation of a EU Minister of Foreign Affairs, a streamlining of bureaucracies, a modest extension of qualified majority voting (QMV), a sharing of research capacities and provisions for enhanced cooperation. In seeking to strengthen these structures, governments should take into account the strong public support for CFSP and ESDP, the need to provide adequate financial resources to match ambitions and the need for democratic accountability of foreign and security policy. The prospect of an EU diplomatic service being developed, complementary to those of Member States, should further assist the establishment of common threat assessments and increase the EU's external profile.

EU-US relations

Constructive and cooperative relations between the EU and US are essential for global stability. Yet there is some evidence that the growing number and seriousness of disputes, including over Iraq, the Israel-Palestine conflict, dealing with 'rogue states' and terrorism, global warming and arms control, the importance of global institutions, may already be undermining the trust necessary to tackle global problems together. There is no agreement on how the EU should seek to develop its relations with the US. Some Member States argue that the EU has no alternative than to accept a unipolar world while others would prefer the EU to develop its own identity as part of a multipolar world.

So far economic relations have been largely protected from the political disputes. The two blocs dominate world trade and provide by far the lion's share of economic, development and technical assistance. Daily trade amounts to more than 1.25 billion euros. Transatlantic trade comprises approximately 20 % of each side's overall foreign trade. European exports to the US totalled 260 billion euros in 2000 while imports from the US amounted to 195 billion euro. Mutual investments have contributed even more than actual trade to economic integration: more than 60 % of foreign investments in the US come from the EU and roughly 45 % of US foreign investments go to the EU. Furthermore, 7 million Americans owe their livelihoods to European investors; the corresponding European figure is 6 million. The US and EU account for over 70% of global expenditure on defence.

While the economic relationship remains solid, it is increasingly necessary to discuss the growing political problems in a frank manner. This presupposes, however, that the EU is able to speak with a common voice. This was manifestly not the case on Iraq and the EU paid a heavy price for its disarray. For the first time in US post-war history there are voices questioning the wisdom of supporting a strong, united EU. Many prefer the traditional strategy of divide and rule. The EU will therefore need to demonstrate a much more cohesive approach, and more credible defence forces if it is to exert influence in Washington. It will need to convince the US that many of today's global problems can only be addressed

through multilateral institutions which may imply some sharing of sovereignty. The US also needs to make a psychological adjustment to accept the EU as a global partner, the partner of choice in tackling international problems. The EU needs to become both a counterpart and a counterweight to the US. In a majority of cases the EU and US will probably agree on policy. But as George Bush noted at the G8 Evian summit, good friends and partners must also be able to disagree when necessary.

Conclusion

The EU is an increasingly influential actor on the world stage and must take on more responsibility for its own, regional and global security. It cannot hope to achieve common positions on all issues but is learning gradually, and sometimes painfully, that speaking with one voice pays far greater dividends than speaking with disparate voices. Efforts in the Convention/IGC to strengthen CFSP/ESDP structures should be supported. If the outcomes are insufficient then there may need

to be more recourse to enhanced cooperation. Half-way integration means half-way power.

Although the EU has global interests, priority in external relations should be given to the EU's immediate neighbourhood as the EU's security is most likely to be affected by adverse developments in these regions.

At the same time, the EU stands for a number of core values and principles that influence its internal and external development. It has a vital interest therefore in strengthening global governance and the rule of law Although the Union prefers negotiation, dialogue and persuasion to military force, it cannot ignore that force may have to be used from time to time to defend its values and interests. This will require greater dialogue between Member States and between the Union and its principal partners to agree criteria for the use of force in the new security environment.

The Solana strategy paper was a good start in defining EU interests. The difficult part lies ahead when the Union has to decide on its priorities and agree the means to achieve its policy aims.

THE CONVENTION, THE DRAFT CONSTITUTION AND EXTERNAL RELATIONS: EFFECTS AND IMPLICATIONS FOR THE EU AND ITS INTERNATIONAL ROLE

Simon Duke*

ABSTRACT: This article reviews the likely effects and implications of the draft EU Constitution on external relations. One of the most potentially significant reforms is the suggested adoption by the EU of legal personality. This may well open up the possibility of developing an EU wide diplomatic service, beyond that of the current External Service, to assist the EU Foreign Minister. It is argued that more thought is necessary on consistency and coherence in external relations, especially how the various actors should relate to one another. The potential relationship between the EU Foreign Minister and the President of the European Council are of particular relevance. It is also argued that the sections pertaining to defence are likely to be immensely controversial in the forthcoming IGC and should be rethought since the value added of adopting an interim mutual defence commitment is far from evident. It is also less than clear that a solidarity clause for threats emanating from non-state sources, marks a significant advance. Finally, the inclusion of a possible European Armaments, Research and Military Capabilities Agency in the draft Constitution is welcome in principle, but it is questioned whether this belongs in the Constitution.

Introduction

The European Council of Laeken stated that the Union 'has to become more democratic, more transparent and more efficient'.[1] One of the ways of contributing to this general aim was through the simplification and restructuring of the existing treaties. The Convention was, of course, also intended to pave the way for enlargement of the Union to twenty-five and to establish the institutional modus operandi to cope with the ten new members. The preparations for enlargement applied to external relations as well as to other areas of EU activity, but the central issues were those that predated the Convention. The questions surrounding the EU's legal identity, consistency in external relations as a whole, the role of defence, and the general communautaire versus intergovernmental thrust of CFSP had all featured in previous intergovernmental conferences. The imminent enlargement of the Union was a catalyst, but not the specific cause, of the Convention's recommendations on external relations. In short, the challenge, as identified at Laeken, is how the EU should 'shoulder its responsibilities in the governance of globalisation'.

The purpose of this article is not so much to judge whether the Convention achieved its goals, but to consider the likely effects of the draft Constitution for EU external relations, especially those aspects relating to the Common Foreign and Security Policy (CFSP) and whether the EU is better equipped to meet the Laeken challenge.[2] It is evident that the Constitution is very much in a draft stage, with

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inconsistencies here and there and details remaining to be worked out, but the basic structure of the constitution has been established. With this in mind, the following examination will consider where there may be problematic elements for EU external relations, where inconsistencies exist between the constituent parts of the constitution and where the main debating points are likely to emerge in the Intergovernmental Conference (IGC). It should be noted that the traditional role of the IGC is to discuss treaty amendments and not to solve every perceived institutional malaise. The IGC cannot therefore be expected to address all of the problems of EU external relations but it should, at a minimum, establish the basis for sound and consistent decision-making, accompanied by relevant structures and instruments. The extent to which the draft Constitution does this will be examined below.

External Relations and the Convention

The Convention members found early agreement that it was 'important for the EU to be a strong, effective and efficient player on the international scene'. Many also believed that the Union's performance so far in this area 'fell short of expectations, especially considering its economic and financial weight'.[3] This reflected the common impression that the EU is an economic giant and a political pygmy or, as NATO's Secretary-General, George Robertson, more accurately put it, a flabby giant. In international institutions, such as the UN, IMF and WTO – it was also agreed that 'Europe lacks a common voice'.[4] The Convention deliberations were unavoidably influenced by wider political considerations such as the 'impression of living in a unipolar world where the U.S. sets the tone' – notably

with regard to the military intervention in Iraq.[5] The debates surrounding Iraq starkly illustrated the gap between rhetoric and reality in EU external relations and, at times, gave the Convention proceedings an almost surreal quality.

Many of the earlier discussions in the Convention took a well-trodden path revisiting the traditional tensions between those advocating the extension of the Community method, which 'had worked so well in other aspects of external relations', and those who 'drew attention to the specific character of foreign policy, noting that it is much less legislative in nature than many internal policies'.[6] However, consensus was soon reached on the general observation that 'properly coordinated' use of all instruments, political and economic, was central to the Union's ability to exert its influence on the international scene. The importance of achieving a 'dynamic foreign policy' was also recognised. Under the recommendations made in this regard, the need for unanimity in CFSP came under scrutiny. For some, the extension of QMV to CFSP would permit the EU to respond in a timelier manner and avoid the risk of repeated paralysis. The perceived need for a more pro-active CFSP was also linked to the question of funding with some advocating the desirability of improved resources, both human and financial.

Although there were calls from some quarters for the abolition of the pillar structure, it was apparent that any changes in this regard would be incremental and would not lead to the rapid communautarisation of CFSP or, conversely, any appreciable increase in intergovernmentalism. It was therefore unsurprising that attention quickly focussed on the coordination and representation functions

of the High Representative for CFSP and the Commissioner for external relations as the symbols of, respectively, the intergovernmental and communautaire approaches to external relations.

The relatively recent addition of the European Security and Defence Policy (ESDP) to the Union's external relations also made it an obvious subject for debate. In particular, the establishment of a Working Group on Defence drew attention to what had hitherto been a rather taboo subject – defence, or the silent 'd' in ESDP The fact that it appeared on the agenda may be attributed largely to the changes in the security environment wrought by '9-11'. Again, in a rather predictable manner, the debate revisited historical divisions between those who saw defence as primarily an issue for NATO, and those who saw the development of an autonomous defence capability as a legitimate component of European integration. The reappearance of well-rehearsed positions, albeit in a rapidly changing international security environment, led to suggestions that 'enhanced cooperation' should be extended to security and defence. Concern was also voiced over the lack of interoperability between national armed forces and thus the need for better coordination of research, development and acquisition policies.

The question of legal identity, with which we start, was another issue that was scarcely new and thus not provoked specifically by enlargement.[7] Of all of the innovations to come out of the Convention, this is perhaps one of the most dramatic for external relations. At the political level it also paves the way for the reinforcement of the common aspects of the pillar structures and gives the Union the basis for the diplomatic representation, which is essential if it is to live up to its (treaty-based) aspiration to be an effective actor on the international scene.

The effects of legal personality

Article 1-6 of the draft Constitution simply states that 'The Union shall have legal personality'. The Working Group on Legal Identity (with one exception) expressed strong support for the explicit recognition of the Union's legal personality. However, for some their support was made conditional on the recognition that the conferral of legal personality does not change the intergovernmental character of the second and third pillars, nor must it imply a shift in the political balance between the Member States and the institutions of the Union.[8] For others the conferral of legal personality was built on the practical observation that the 'artificial distinction between Communitarian and intergovernmental aspects of foreign policy does not have any longer any real substance'.[9]

What does legal personality mean for the Union? At its most basic, the conferral of legal personality on the Union will supplant the legal personalities of the existing bodies. Agreement on the legal personality of the Union is also a necessary precursor for the merger of the treaties into a single text.[10] However, the specific characters of the intergovernmental pillars (intergovernmental cooperation in criminal matters and CFSP) were left largely unchanged, although the logic of a single legal personality hinted at the anachronistic nature of the pillar structure. Debates in other working groups, notably External Action and Defence, strongly indicated that the retention of the intergovernmental character of the second and third pillars did not represent a barrier to the

assumption of a single legal personality. In terms of effect, the assumption of a single legal personality would, according to most members of the Convention, 'lead to greater effectiveness in [the Union's] external relations'.[11]

If the Union is granted legal personality, what are the likely implications for EU external relations? The first and most obvious is that the Union would become a subject of international law alongside the Member States. As a result, the Union would 'be able to avail itself of all means of international action (right to conclude treaties, right of legation, right to submit claims or to act before an international court or judge, right to become a member of an international organisation or become party to international conventions) as well as to bind the Union internationally'.[12]

The current provisions of the treaties provide for separate representation of the Union and of the Community. The Treaty establishing the European Union (TEU) stated in Article 18(1) that the Presidency shall 'represent the Union in matters coming within the common foreign and security policy'. It is therefore up to the Presidency to represent the Union in the CFSP area, but up to others (such as the Commissioner for External Relations or even the Commission President) to represent the Union in non-CFSP aspects of external relations, as in relations with the organs of the UN and its specialised agencies.[13] The following article, 19(1) TEU, states that the Member States shall 'coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such fora'. Since this stipulation falls within the CFSP title, there is no legal measure to ensure that it is upheld since the European courts do not have jurisdiction. The

powers of suasion are therefore political, notably in terms of the pressure that can be exerted by the Presidency. Even with the assumption of legal personality by the EU, the situation is unlikely to change significantly in terms of jurisdiction of the Courts.

The second main effect of the Union's assumption of legal personality will be in how the EU is represented in international organisations. The multiple representations in EU external relations has led to demands on several occasions, based on Kissinger's apocryphal remark, that Europe needs a 'telephone number' or, at least, a clearer identity and voice. The logic of a single legal personality of the Union would point strongly in the direction of the Union being represented by a single delegation in order to uphold effectively its interests. Even in those circumstances where an international organisation is open only to states (such as the International Labour Organisation), Member States are instructed to 'coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such fora'.[14] They are also required to keep the Member States, as well as the EU Foreign Minister, informed on matters of common interest if not all of the EU Member States are represented. Those who are members of the UN Security Council will defend the positions and interests of the Union and, for those who sit on the UN Security Council, they shall request that the Minister of Foreign Affairs be asked to present the Union's position.[15]

A third, and related, area of potentially significant change is legation overseas. Currently both the Council and the Commission represent the EU in third countries. The former is represented by the

diplomatic representation of the country holding the Presidency of the Council. The Community, or more specifically the Commission, is represented by 128 delegations to third countries or international organisations. The delegations are recognised as having diplomatic status by the host states but, in spite of the common practice of calling them 'EU delegations', their legal identity and thus mandate stems from the Community. Moreover, the delegations are part of the External Service of the Commission and (not yet) that of a common Joint External Action Service of the Union.

The most obvious implication of conferring legal personality on the Union would be that the current delegations would become delegations of the EU, even if the Commission continued to perform the same functions as at present. Under the draft Constitution it is made clear that the Commission 'shall ensure the Union's external representation', but 'with the exception of the common foreign and security policy'.[16] The draft Constitution also states that the 'Union delegations in third countries and to international organisations shall represent the Union' and that the delegations 'operate under the authority of the Union's Minister for Foreign Affairs and in close cooperation with Member State's missions'.[17] This indicates that the Council Secretariat is liable to have a role in the Union delegations reporting to the Union's Foreign Minister, who is responsible for the conduct of CFSP as well as the other aspects of EU external relations.[18] Indeed, reference is made in the draft treaty to the 'establishment of a Joint European External Action Service', to assist the Minister, which would presumably incorporate the Commission, Council and,

where relevant, national representation functions.[19]

The Working Group on External Action discussed the pros and cons of establishing such as service, replete with a Diplomatic Training Academy, but there has also been evident political opposition (notably to the idea of an academy). Nevertheless, the logic of having an EU Foreign Minister and Union delegations points in the direction of some type of EU diplomatic service emerging. Proposed reforms within the Commission, specifically the idea of reforming RELEX to incorporate elements of other Directorates-General with a legitimate external relations mandate, may also indicate a more extensive external service in the future.

Some more practical considerations, such as the expense of maintaining national representations as well as the increasing European component in national diplomacy, may also point towards greater national involvement in EU delegations (on a seconded basis). The increasing difficulty of identifying where 'Community' competence in external relations ends and where that of the Council (CFSP) starts, may also point to a greater role for the Council Secretariat in the delegations. Issues such as weapons proliferation, terrorism, or conflict prevention are, by nature, matters of concern for the External Service as well as the Council.[20] In short, the adoption of legal personality by the Union and the practical considerations outlined above will lead to a profoundly different form of external representation emerging. Although putting the cart before the horse, the requirements of the new, emerging Joint European External Action Service will inevitably lead to further consideration about how best to prepare officials for European-level diplomacy.

A fourth, and final, way in which the assumption by the Union of legal personality will make a difference is the conclusion of international agreements. Under the current treaty, Article 24 (TEU) permits the Council to conclude agreements with one of more states or international organisations, for matters falling under CFSP. The treaty also notes that, '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'. This stipulation does not exonerate the Member State from applying the agreement, but merely allows the necessary adjustments to be made while the agreement applies to the remaining Member States on a provisional basis.

Article 300 of the Treaty establishing the European Community (TEC) specifies the way in which the Community may reach agreements with one of more States or international organisations. The Article concludes by noting that 'agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States'. The draft Constitution permits the Union to conclude 'agreements with one of more third countries or international organisations where the Constitution so provides', as well as association agreements with one of more third countries or international organisations.[21] Under the modified procedures, the Council may not conclude any agreement until the European Parliament has been consulted, with the exception of CFSP agreements. The Council shall act by QMV except when adopting an act in a field in which unanimity is required for the adoption of a Union act, as well as for association agreements and the

Union's accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms. It is worth noting that the old guarantees falling under Article 24 (TEU) which refers to the possible delay in applying an agreement due to constitutional procedures, have been removed. Presumably, the (hypothetical) protection that this clause afforded is now provided by the ability of a Member State to make a formal declaration qualifying its wish to abstain from a vote adopting a European decision under CFSP[22]

The framework for international agreements contained in the draft Constitution will operate under a single legal personality, that of the Union, but the practical implications of the communautaire procedures and those of the predominantly intergovernmental second pillar mean that some differences remain (broadly speaking, replicating those of Article 24 and 38 TEU and Article 300 TEC). The main difference between the respective procedures lies in the role of the European Parliament, which has the right to deliver its opinion or, in certain cases to give its assent, on international agreements that do not relate exclusively to CFSP. The question of exclusivity gives rise to consideration of what may happen in case of mixed agreements (those having both Community and CFSP aspects). The draft Convention is unclear on this point.

Generally, the recommendation that the Union be granted legal personality has many positive aspects to it. Indeed, it is difficult to see how the 'Union shall uphold and promote its values and interests' in the wider world if, in fact, what is meant is primarily the Community, plus the intergovernmental aspects.[23] However, the practical implications of extending the current External Service into

Union delegations, a phrase which appears several times in the draft, needs further attention. The ability of the delegations to represent the Union points to wider representation in the delegations, including Council Secretariat officials for instance, and possibly to the revision of relations between the diplomatic and consular missions of the Member States and the delegations. This also gives rise to the practical question of how to prepare officials for their new extended tasks.

Decision-making and the telephone number

One of the underlying assumptions for the Convention was that the Union was not as effective as it could be on the international scene. Even before the Convention, an active debate had arisen about how to streamline decision-making in external relations. In the Convention this soon focussed on the roles of the Council and Commission. Romano Prodi, President of the European Commission, advocated the idea of making the Commission the 'centre of gravity for policy initiative' but also one in which it is in 'control of policy initiative and which identifies and articulates the common interest'.[24] Prodi's fear was that, left to its own, CFSP risked paralysis and domination be a *directoire* of larger Member States. The case for a stronger central executive (the Commission) was thus compelling for Prodi, the European Parliament as well as a number of EU Member States.[25] Central to Prodi's vision was the fusion of the role of the High Representative for CFSP with that of the Commissioner for External Relations, currently held by Chris Patten. The resultant post would assume vice-presidential status in the Commission and would, purportedly, have the 'twin legitimacy

stemming from the agreement of the Member States and from the EP's endorsement of the Commission'.[26]

Under Anglo-French proposals, backed by Italy and Spain, the role of the Council would be strengthened, thus echoing the struggles of de Gaulle almost three decades before.[27] Under the proposals, a Presidency of the Council would be created, replacing the rotating Presidency system or supplementing it. The elected president would replace the role of the High Representative for CFSP and would, theoretically, give the EU an enhanced identity (and answer Kissinger's apocryphal question of whom to dial when he wants to speak to Europe).

The compromise was to recommend the appointment of an EU Foreign Minister, who shall conduct CFSP, but shall also be one of the Vice-Presidents of the Commission where he shall be responsible for 'handling external relations and for coordinating other aspects of the Union's external action'.[28] In CFSP terms, the Union Foreign Minister will have a number of significant additions to his powers over those of the current High Representative. The most significant is the Minister's right, shared with the Member States, to make proposals for action to the European Council or the Council. The Union's Foreign Minister also chairs the Foreign Affairs Council which, unlike the other formats of the Council, shall not be subject to a (revised) rotating Presidency.[29]

With the exception of CFSP, the European Commission ensures the Union's external representation. The new Minister of Foreign Affairs/Vice President will be one of fifteen (voting) Commissioners, and this includes the President. The European Council, deciding by qualified majority vote, appoints the Foreign

Minister and the nomination is then subject to a vote of approval by the European Parliament (along with the thirteen Commissioners and the President).

At least on paper the adjustments are eminently sensible. A Union Foreign Minister will have a better overview of EU external relations generally and will be able to ensure greater consistency between the Community and CFSP in external relations. There is though the question of whether one person can assume the inevitably crippling workload, especially when the details of the supporting Joint European External Action Service remain murky. Much of his/her ability to carry out the demanding role will inevitably depend upon the complementary emergence of a seasoned and professional EU diplomatic service.

The second general concern is whether the collegial nature of the Commission will be compromised, or even damaged, by the presence of the EU Foreign Minister. Although this concern surfaced in the deliberations of the Working Group on External Action, the potential benefits of having a key person with an overview of all of the Union's external action seem to outweigh any potential erosion of the Commission's collegial nature.

A more pressing concern is what relationship the Foreign Minister should establish with the two other persons with a legitimate right to speak about EU external relations. First, the proposed permanent European Council chair, who will be elected for a two and a half year term (renewable once).[30] The President of the European Council shall in 'that capacity' and 'at his level', ensure the 'representation of the Union on issues concerning its Common Foreign and Security Policy, without prejudice to the responsibilities of the Minister of Foreign

Affairs'.[31] The President will prepare, chair and organise the proceedings of the European Council and ensure its decisions are carried out and shall represent the Union on the international scene at the meetings of the heads of State or government. The implication is therefore that the Foreign Minister conducts the day-to-day business pertaining to CFSP It remains unclear how this division of labour will work out, especially if the President of the European Council is someone of high political profile (such as a former head of state or government) who will be a well-known external relations figure in his (or her) own right.

A further issue in this context is to whom the EU Foreign Minister reports, since he is appointed by the European Council, on approval of the European Parliament (as Vice-President in the Commission). It would seem that the Foreign Minister should be accountable to the executive (i.e. President of the European Council), but whether this is enough accountability for what has the potential to be a very influential post, remains to be seen. In both cases the proposed positions have engendered criticism, or even opposition, from smaller Member States who see the proposals as an attempt to impose the will of the larger Member States on external relations.

The second potential area of friction is with the President of the Commission. One of the tasks of the President of the Commission is to 'ensure that [the Commission] acts consistently, efficiently and on a collegiate basis'.[32] The degree to which the EU Foreign Minister will be able, as a member of the College of Commissioners, to conform to this is unclear. It is also far from clear how the quid pro quo for getting the Benelux countries to

agree to the idea of a President of the European Council, which was the two-tier Commission of elected and non-elected members, will work in practice. In the case of the European Council President and the EU Foreign Minister it is more than likely that the appointments (at least initially) will come from the larger Member States which, following the pattern of Convention debates, may then leave the Commission as the bastion of the smaller Member States in external relations. In practice, much will presumably depend upon the characters involved and their willingness to let the EU Foreign Minister act as the face (and telephone number) for EU external relations.

The Presidency and external relations: a non-role?

The institutional revisions of the draft Constitution also substantially revise the Presidency. Under the new formulations, the old and problematic General Affairs and External Relations Council is divided into a General Affairs and Legislative Council and a Foreign Affairs Council. The European Council is responsible for deciding on further formations. The Foreign Affairs Council (FAC) is chaired by the EU Foreign Minister and shall 'flesh out' the Union's external policies, on the basis of strategic guidelines laid down by the European Council. The FAC shall also ensure that its actions are consistent. The broad mandate accorded to the FAC leaves open the question of how security and defence issues are addressed within the Council. The (somewhat baffling) distinctions made at several points in the draft Constitution between foreign and security policy and security and defence policy (see below) opens up two possibilities. Either the FAC will, as is the case at present, address security and

defence issues with the EU defence ministers present as required or, the European Council may yet decide to inaugurate a specific Council format meeting as defence ministers.[33]

A further point of interest with regard to the FAC is that the draft Constitution specifies that, 'The Presidency of a Council formation, other than that of Foreign Affairs, shall be held by Member State representatives within the Council on the basis of equal rotation, for periods of at least a year'.[34] This may give rise to two issues. First, under the current arrangements (Article 18 (1-5)) the Presidency represents the Union in matters within the common foreign and security policy, is also responsible for the implementation of CFSP and shall, in principle, express the position of the Union in international organisations and international conferences. The assumption of these duties by the EU Foreign Minister will alter the old practice of the 'troika' representing the Union in CFSP matters and will make the EU Foreign Minister a very influential figure (possibly too influential for some). It also, by implication, makes it difficult for the Presidency to act in the external relations field which may lead to clashes with the 'non-Presidency' FAC since they are responsible, based on guidelines established by the European Council, for 'fleshing out the Union's external policies'.[35]

The second issue that arises is that, in external relations, the Presidency currently has some significance for implementing certain CFSP instruments. For instance, démarches are delivered through the country holding the Presidency to third parties. The Foreign Service of the country holding the EU Presidency has other broad, and often demanding, representative functions. It is not clear who assumes the former role of the Presidency

regarding its diplomatic representative functions.[36] Presumably, the Foreign Minister assisted by the Joint European External Action Service, and the delegations thereof, will assume these functions.

The two key institutional adaptations in EU external relations, that of the permanent European Council chair and the EU Foreign Minister, will have the effect of eroding the significance of the Presidency in external relations. Arguably, this is trend already apparent under the current arrangements since there are already a significant number of permanent positions (for example, the High Representative, the Chairs of the EU Military Committee and Military Staff) in the CFSP area. In addition, the EU Military Staff, the Policy Unit and the Situation Centre all report directly to the High Representative. Elsewhere, the ECOFIN, Eurogroup and JHA Councils elect their chairmen for two years from amongst their members. The chairmanship of the other Council formations will therefore have to be organised in such a way as to guarantee the greatest possible participation of all the member States on the basis of a strict system of rotation. It will however mean that the Presidency will have even less of a role to play in external relations which, bearing in mind the often considerable portion of the Presidency conclusions devoted to external relations, is not an insignificant point.

The EU Foreign Minister's role has the potential to be tremendously influential, especially as it combines the current Council and Commission representation in external relations. The Foreign Minister may also provide a public face for EU external relations, which has sometimes been lost in the cacophony of voices that currently speak for the EU in external relations. The potential for frustration is however still there since it remains to be seen how the President of the European Council defines the responsibility to ensure the 'external representation of the Union' on issues concerning CFSP 'without prejudice' to the responsibilities of the EU Foreign Minister. Similar tension may also be evident between the EU Foreign Minister and the President of the Commission and, depending upon the future formulation of the Presidency, it is also unclear whether the Presidency may feel frustrated at the loss of voice in external relations.

New Petersberg tasks and CSDP

The draft Constitution makes reference to the common foreign and security policy and the common security and defence policy (CSDP), the latter being an integral part of the former. Under the CSDP (formerly referred to as ESDP) the Petersberg tasks are effectively expanded to now include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking and post-conflict stabilisation.[37] How does this new elaboration of CSDP tasks help?

In the first place, the tasks reflect those tasks for which both civilian and military means might be employed. This is of psychological importance since it moves the Union away from the previous division between the Petersberg tasks (in Article 17(2) TEU) and the remaining civilian aspects of crisis management, many of which were not specifically mentioned in the Petersberg tasks but nevertheless took their legitimacy from CFSP's general mandate covering 'all areas of foreign and security policy'. The expanded Petersberg tasks also describe more accurately

what the EU is actually doing on the ground as in, for instance in the Former Yugoslav Republic of Macedonia *(Operation Concordia)* or the Democratic Republic of the Congo *(Operation Artemis)*. The inclusion of tasks, such as conflict prevention, under the CFSP heading could have caused tension since this was a task assumed primarily, but not exclusively, by the Commission following a major initiative in this area in April 2001. The presence of an EU Foreign Minister will hopefully negate any such tensions, but it does point out the continuing need for consistency between CFSP and the Community on external relations. This is provided for in the stipulation that the Foreign Minister, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall 'ensure coordination of the civilian and military aspects' of the above tasks.[38]

The framing of CSDP in the draft constitution also mentions the civil and military assets which may be used 'on missions outside the Union' for peace-keeping, conflict prevention and strengthening international security.[39] *Operation Artemis,* which commenced in early June 2003, had already opened the possibility of using armed EU peacekeepers outside the region. Formerly this had been an issue of considerable speculation since the EU Rapid Reaction Force had no specific geographical limits of operation, whereas the EU Police Missions were delineated as international in scope from the outset.

Beyond this, the CSDP aspects of the Union have been subject to three additional changes. The first is the application of structured cooperation to the tasks outlined above. The second innovation is the presence of 'solidarity' and 'mutual defence' clauses. Finally, following the recommendations of the defence working group, a European Armaments, Research and Military Capabilities Agency was also included. These will be considered in turn.

Structured Cooperation and CSDP

One of the underlying issues dogging ESDP was its reliance on coalitions of the willing – sometimes merely as ad hoc coalitions of EU and other states operating outside the Union's purview (i.e. Lead Nation operations). This was partly influenced by reservations when it came to defence-related issues from Denmark (with its opt-out on all defence-related provisions of the TEU), as well as the neutral or non-aligned EU Member States (Austria, Finland, Ireland and Sweden). More pragmatically, the formation of ad hoc coalitions of the willing also reflected the fact that only a handful of larger Member States has the actual capacity to provide the framework structures required for Petersberg tasks. Future operations therefore will either be co-ordinated with NATO (using NATO assets with command through the Deputy Supreme Allied Commander Europe) or will be a framework nation operation with a Member State assuming responsibility for the headquarter and operational command elements but open to other members.

Perhaps unusually, the deliberations in the Convention were being rapidly overtaken by practice as an EU police operation commended in Bosnia-Herzegovina at the beginning of the year; in March the EU assumed a NATO mission in the former Yugoslav Republic of Macedonia; and in June the EU responded to a call from the UN for intervention in the Democratic Republic of the Congo. These admittedly modest, but

politically significant missions, may have influenced the debates on enhanced cooperation in external relations and the decision that the 'Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to maintain the Union's values and serve its interests'.[40] As with the existing treaty-based arrangements, any decisions having military or defence implications are subject to unanimous support in the Council. The unanimity stipulation also remains subject to the Amsterdam Treaty's 'constructive abstention' clause.[41]

For CFSP, the Member States who wish to establish enhanced cooperation between themselves address the Council (in other areas it is the Commission). The EU Minister for Foreign Affairs then gives an opinion on whether enhanced cooperation is consistent with the Union's CFSP and the Commission will ascertain whether the proposed enhanced cooperation is consistent with other Union policies. The execution of the task in question shall be entrusted by the Council to 'a group of Member States having the necessary capability and the desire to undertake the task'.[42] Those Member States, in association with the Union Foreign Minister, then agree on the management of the task.

The draft Constitution also permits those (unspecified) Member States 'which fulfil high military capability criteria to enter into more binding commitments' and to establish 'structured cooperation' for the completion of the modified Petersberg tasks outlined above.[43] However, the 'Specific provisions for implementing CSDP', which appear in Part I, and the provisions governing the application of structured cooperation, which appear in

Part III of the constitution, differ in some significant ways.[44] The former stipulates that those Member States who fulfil higher criteria and 'which have made more binding commitments to one another', may establish structured cooperation within the Union framework. Part III though specifies that those 'who wish to enter into more binding commitments' may establish structured cooperation. It is therefore unclear whether the cooperation builds upon existing bilateral and multilateral links, or if structured cooperation applies to any coalition of the willing. Furthermore, it is unclear how structured cooperation differs in conceptual and practical terms from enhanced cooperation.

Mutual Defence Clause

The procedures for enhanced cooperation contain one important exception – they do not apply to cooperation in the area of defence.[45] Under defence 'closer cooperation' is provided for whereby, 'if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military or other, in accordance with Article 51 of the United Nations Charter'.[46] 'Closer cooperation' is open to all Member States and provision is made for other Member States to take part.

The Working Group on defence initially discussed threats stemming from non-state entities, especially with the fallout of '9-11' in mind.[47] The 'solidarity clause', which applies specifically to this type of threat, is discussed below. However, the discussions on defence also strayed into the area of armed aggression on the territory of one or more Member States.

The distinction between the 'solidarity clause' and the provisions for closer cooperation on 'mutual defence' is therefore reasonably clear; the former applies to terrorist attacks, natural or man-made disasters, whereas the latter applies to more traditional notions of armed aggression against the territory of a Member State, presumably originating from a state source.

Generally, the determination of a number of EU Member States to move towards a common defence policy and common defence would seem to have been reinforced in the draft Constitution. The original wording of Article 17(1) TEU states that 'The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy . . . which might lead to a common defence should the European Council so decide'. The draft Constitution now reads, 'The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides'.[48] How likely is this?

Inevitably, the well-established divisions between 'Atlanticists' (primarily the United Kingdom, Portugal, the Netherlands and Spain), the reservations of the neutral and non-aligned (Austria, Finland, Ireland and Sweden – to which should be added Denmark as a special case) and the 'Europeanists' (including Belgium, France, Germany and Luxembourg) surfaced in the Convention.

The main objection of the first group, that it would challenge or undermine the role of NATO,[49] was partially addressed through the stipulation that, 'In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation'.[50] It is incidentally unclear if the terms 'common defence' and 'mutual defence', within the same article, are used interchangeably.[51] The draft Constitution appears to refer to a common defence in the EU and a mutual defence among a group of Member States. Anyway, the extent to which this may become a direct challenge to NATO was also shared by the EU accession countries, all of whom are, or are about to become, NATO members. The recent cooperation between the EU and NATO in, for example, the ongoing operations in the Former Yugoslav Republic of Macedonia, may make the Atlantic-oriented EU members even more determined to avoid the perception that the EU is a challenge to NATO. The reassurances in the draft Constitution that the mutual defence clause 'shall not affect the rights and obligations' resulting from NATO membership, may not be enough. Moreover, the mutual defence clause comes at a very sensitive time in EU-U.S. relations and it could be perceived as not only an anti NATO stance, but hostile to the U.S. as well.

The neutral and non-aligned countries have a different set of political (and in some cases, like Austria, constitutional) objections. In their cases, the extension of a defence role to the EU may not only cause immense political difficulties for these countries, but may lead to negative knock-on effects for EU support generally in these countries. It is worth noting in this context the immense sensitivity of the Irish to the impression that the EU is being militarised in the first (negative) referendum on the Nice Treaty.

The last group, the Europeanists, has historically wished to see a stronger role for Europe in all aspects of security and defence.

The latter would include minimal, or no dependence upon NATO or the U.S. for Europe's security and defence. Support for further development of European autonomy in this area was clearly demonstrated by Belgium, France, Germany and Luxembourg after their mini-summit at the end of April 2003.

There is room for compromise amongst all of the views, but in order to reach a settlement (which will not be easy) the following points will need elaborating:

- What is the value added of mutual EU defence versus the common defence currently provided through the modified Brussels Treaty or the Washington Treaty?
- Does 'closer cooperation' on mutual defence within the EU replace existing commitments between the WEU full members? If so, what form of supplement to the Constitution would be necessary to replace the Modified Brussels Treaty?[52]
- The precise meanings of 'armed aggression' and other forms of aggression, such as 'terrorist attack' (see the 'solidarity clause' below) are not clear;
- It is ambiguous whether the assistance provided under mutual defence arrangements consist exclusively of national assets, or whether they refer to existing EU arrangements or NATO arrangements (Berlin Plus in particular);
- The mutual defence clause specifies that 'the participating Member States shall work in close cooperation' with NATO. Does this mean that the participating states should be members of NATO?

- The mechanisms by which EU institutions work in restricted format (i.e. involving the participating states) is not clear;
- The manner in which non-EU states that may wish to associate themselves with Union actions is not clear.

In order for the mutual defence clause to be annexed to the Constitution in some form or another (since a declaration may be insufficient), the above points will have to be addressed. Nor is this merely an internal process for the IGC to deliberate since it directly impacts on EU relations with other organisations such as the WEU, NATO and the UN.

On the WEU, the thinking of the Working Group on Defence was that the 'Member States who so wished could share between themselves the obligations laid down in the Brussels Treaty relating to mutual assistance, thus bringing to an end the Western European Union'.[53] However, the existing stipulations relating to mutual assistance in the WEU context pose some potential challenges for the EU. Article 4 of the Modified Brussels Treaty specifies that 'Recognising the undesirability of duplicating the military staffs of NATO, the Council and its Agency will rely on the appropriate military authorities of NATO for information and advice on military matters'. The incorporation of the treaty into a final version of the Constitution establishing the EU would therefore have to consider this. Furthermore, Article V unambiguously confines the obligation to 'provide all the military and other aid and assistance in [the treaty signatories] power' to armed attacks in Europe. Even if it is agreed that Article V of the Modified Brussels Treaty is a role model, the specific concerns of the Interparliamentary

European Security and Defence Assembly will have to be taken into account.

The second general question arising from the mutual defence clause is that, although it is open to all EU Member States, it is already predicable that some will choose not to associate themselves. What then is the benefit of a mutual defence arrangement that covers only a number of EU Member States? In the hypothetical case of an act of armed aggression on an EU Member State who is not a party to the proposed declaration (but who may be party to NATO's Partnership for Peace or the Euro-Atlantic Partnership Council), what obligations, if any, would arise for the signatories to the declaration?

The final point concerns EU relations with the UN which, especially after the 2003 Iraq conflict, are a sensitive issue. The main concern in this regard is whether a prior UN mandate must exist as the basis for any use of military force by the Union. Some EU Member States adamantly insist that this is a pre-condition – Finland being a prime example. The 'mutual defence' clause is less than specific though about the stage at which the UN may be involved since mention is made of the need to 'inform immediately' the UN of any armed aggression 'and the measures taken as a result'.[54]

The stipulations on mutual or common defence seem likely to remain controversial. The possibility of leaving the mutual defence aspects incomplete and subject to deliberation by the European Council would seem desirable at the moment for two reasons. First, the types of defence falling outside those covered in the 'solidarity clause' are not as urgent since large-scale aggression against any Member State 'is now improbable'.[55] The primary security challenges to the Union remain those of terrorism, proliferation of weapons of mass destruction and those threats emanating from failed states and organised crime. These are the types of challenges that do not depend specifically upon the presence of a 'mutual defence' clause in the draft Constitution. Second, and related, given the somewhat peripheral nature of classical defence-related challenges to the enlarged EU, is it worth exacerbating the inevitable tensions that will be caused by the proposed clause? It may be too late to avoid such a debate but, at the very least, a clearer explanation of the value added by the EU if a number of Member States adopted such a clause is necessary.

The European Armaments, Research and Military Capabilities Agency

The draft Constitution recommends the establishment of a European Armaments, Research and Military Capabilities Agency (EARMCA).[56] The main functions of the agency are outlined in Article III-207. The EARMCA is option to Member States who wish to be a part of it. According to the Working Group on Defence the agency would 'incorporate, with a European label, closer forms of cooperation which already exist in the armaments fields between certain Member States'.[57] The specific agencies mentioned are OCCAR[58], LoI[59] and WEAG,[60] all of whose mandates overlap with the proposed agency.

It remains unclear however how the appointment of an agency would significantly improve military capabilities, joint procurement or harmonise operational needs. The agency would probably comprise the same members who currently constitute the membership of the agencies named above but in some cases, such as WEAG which also has Norway and Turkey as participants, it is not

clear whether these countries would then be excluded. The logic of coordinating functions currently carried out by OCCAR, LoI and WEAG (to which others could be added, like WEAO or POLARM) is admittedly attractive, but a new agency will not substitute for the apparent lack of political will on the part of the EU Member States to loosen the often close strings between governments and the key defence contractors. Some of the key defence contractors, such as the United Kingdom, have already indicated their opposition to the proposal.[61]

The EARMCA also gives rise to the question of whether the exclusion of the arms industry from the single market and competition regime should be ended, as has been advocated by some.[62] The Working Group on Defence recommended that the head of the prospective agency should make recommendations as to what specific rules apply to the armaments sector with a view to a European market which would strengthen the industrial base and optimise military spending, thereby enabling the scope of Article 296 TEC to be specified.[63]

A Joint Franco-German proposal for the Convention on ESDP also recommended the adaptation of Article 296 TEC 'in particular'.[64]

In spite of these recommendations, the essence of Article 296 TEC has been retained and the production of or trade in arms is therefore excluded from the common provisions covering the internal market.[65] It is therefore unclear whether the retention of Article 296 TEC is compatible with the attainment of the objectives of the EARMCA. Presumably, since the EARMCA is open to those Member States who wish to become members, the blanket incorporation of the defence-industrial sector would be inappropriate. Given the retention of Article 296, EARMCA is

little more than a method of trying to implement the current European Capabilities Action Plan (ECAP). At a minimum, Article III-339 (which incorporates Article 296 TEC) should be moved from its current location under 'Common Provisions' and incorporated in the section addressing CSDP

Conclusions

The draft constitution is exactly that. The intergovernmental conference will hammer out the details, remove parts and fix inconsistencies, of which there are a number. The purpose of this examination was not to ascertain whether the Convention actually reached a constitution that is any more, or less, readable than the existing treaties. Instead, the purpose was to examine the likely impact of the draft constitution on the EU and external relations.

The first and perhaps most sweeping potential change is the assumption by the EU of legal personality. Not only will this transform the existing External Service, but it will also alter the representation, legation and treaty making abilities of the Union. In addition, it underpins the introduction of European level competence in decision-making in EU external relations, most notably in the case of the EU Foreign Minister. The introduction of the Foreign Minister's post is the second notable feature of the draft Constitution. Although long anticipated, it is far from clear how the holder of this post will associate with the Commission, especially given its collegial nature, and the respective Presidents of the European Council and Commission. Nevertheless, the position, when combined with a Joint External Action Service, promises to equip the EU with something closer to a professional diplomatic service, building on

the current External Service of the Commission. Although this has the potential to contribute enormously to the presence of the Union as an international actor, this may also be perceived as a threat to intergovernmental aspects of the EU's external relations.

The changes in the draft Constitution to CSDP are less reassuring. Three aspects in particular are troublesome. First, the solidarity clause does not add any obvious value beyond political symbolism. Is it conceivable that in the face of a major terrorist attack, natural or man-made disaster, that EU Member States would not assist if requested to do so? As a device for coordinating inter-pillar coordination it may have merits, but it is unclear why this deserves specific mention in the Constitution.

Second, the defence aspects remain deeply problematic. Until the European Council adopts a common defence, the suggestion is for those Member States who so wish to move ahead with cooperation in this area. Although provision is made for cooperation with NATO, it remains unclear that the suggested interim arrangements will improve the common defence. Indeed, the potential for friction is higher as this seems almost bound to complicate the Union's internal dynamics, especially with the sensitivities of the neutral or non-aligned countries in mind, as well as the Atlanticist-oriented members (and future members). Although often neglected from the debate, it is also unclear what effect this proposal may have on the WEU, especially

upon the Interparliamentary European Security and Defence Assembly.

Finally, the need to rationalise European defence-industrial cooperation has long been recognised. The inclusion of a European Armaments, Research and Military Capabilities Agency in the draft constitution is a useful framework for cooperation that will, hopefully, supersede the existing alphabet soup in this area (OCCAR, LoI, and WEAG). However the underlying problem will remain, which is the general reluctance of the Member States themselves to cooperate and harmonise. None of the existing mechanisms in this area gives tremendous room for optimism. In terms of the draft constitution, it is also unclear why a proposed agency warrants mention in the actual body of the text. If this particular agency is mentioned, could this lead to demand from other agencies for similar recognition?

On paper, the draft Constitution has the potential to transform EU external relations and even, in the rather grandiose wording of the Laeken declaration, to enable the Union to more effectively shoulder its responsibilities in the governance of globalisation. The specific task ahead for the IGC is to reach consensus on a final version of the constitution. As has been indicated, this will not be an easy task, difficult and potentially far-reaching decisions will have to be faced. Whatever the final constitution looks like, the extent to which the EU fulfils its potential as a significant actor on the international stage rests mainly on the shoulders of the Member States themselves.

Endnotes

[1] The Future of the EU: **Declaration of Laeken,** 15 December 2001.

[2] The term 'Constitution' is that used by the Convention when referring to the final version of the draft presented to the plenary session of the Convention on the future of the EU on 13 June 2003.

[3] **Summary Report of the Plenary Session,** 11-12 July 2002, CONV 200/02, Brussels, 16 July 2002. Para. 5.

[4] Hannes Farnleitner and Gerhand Tusek, **'A Common Foreign Policy for the European Union'**, Annex, Preliminary Draft Constitutional Treaty, CONV 369/02, 28 October 2002, p.1.

[5] Ibid. Loc cit.

[6] **Summary Report of the Plenary Session,** 11-12 July 2002, CONV 200/02, Brussels, 16 July 2002, Para. 7-8.

[7] The European Council in Florence in June 1996 had already called on the next intergovernmental conference to find ways of simplifying the treaties. In addition, Dutch proposals to the 1997 IGC specifically recommended conferring legal personality on the Union.

[8] See Observations by Mr. Kenneth Kvist to the Preliminary draft report submitted by the Chairman at the meeting of 18 July 2002 (SN 03130/02), Brussels, 5 September 2002.

[9] See Observations by Mr. Panayotis Ioakimidis, alternate member of the Convention, **The Development of the EU's Common Foreign and Security Policy and Defence Policy,** (SN 03130/02), Brussels, 5 September 2002.

[10] The Constitutional Treaty will technically be an amendment to existing treaties and, as such, the stipulations of Article 48 of the Treaty on European Union apply. In order to be adopted there will have to be agreement at the 2004 Intergovernmental Conference and ratification of the treaty by all Member States.

[11] **Summary report on the plenary session,** The European Convention, Brussels 3-4 October 2002, CONV 331/02, Brussels, 11 October 2002, p.3.

[12] **Final Report of Working Group III on Legal Personality,** WG III 16, CONV 305/02, 1 October 2002, Para. 19.

[13] Article 302, TEC.

[14] Draft Constitution, Vol. II, CONV 725/03, 27 May 2003, Art. III-201.

[15] Ibid. Art. III-201(2).

[16] Article 1-25, CONV 797/1/03, Rev 1, Vol. 1, Brussels, 12 June 2003.

[17] Draft Constitution, Vol. II, CONV 725/03, 27 May 2003, Article III-225.

[18] Ibid. Article 1-27.

[19] Draft Constitution, Vol. I, CONV 797/1/03, 12 June 2003, Article 1-27 (Footnote 1).

[20] As was made clear in Javier Solana's strategy paper, **A Secure Europe in a Better World,** presented to the European Council, Thessaloniki, 20 June 2003.

[21] Draft Constitution, Vol. II, CONV 725/03, 27 May 2003, Article III-220-221.

[22] Ibid. Article III-196.

[23] Draft Constitution, Vol. I, CONV 797/1/03, 12 June 2003, Article I-4.

[24] Communication from the Commission: **A Project for the European Union,** Commission of the European Union, COM(2002) 247 FINAL, p.13.

[25] See The Common Foreign and Security Policy and enlargement of the European Union, Briefing No. 30, http://www.europarl.eu.int/enlargement/briefings/30a2_en.htm.

[26] Communication from the Commission: **A Project for the European Union,** Commission of the European Union, COM(2002) 247 FINAL, p.14.

[27] George Parker, 'France and the UK call for new force at top of EU', Financial Times, 16 May 2002.

[28] Draft Constitution, Vol. I, CONV 797/1/03, 12 June 2003, Article 1-27 (1-3).

[29] The current General Affairs and External Relations Council will be split into separate entities. The General Affairs and Legislative Council will deal with horizontal issues, including ensuring consistency, and the Foreign Affairs Council will deal with CFSP/ESDP matters.

[30] It should though be noted that the proposal is deeply unpopular with 101 members of the Convention, from 15 governments, petitioning against the creation of such as position. See Deutche Welle, 'The Labour Pains of an EU Constitution', at http://www.dw-world.de/english/0,3367,1430_A_869577_1_A,00.html .

[31] Draft Constitution, Vol. I, CONV 797/1/03, 12 June 2003, Article 1-21(3).

[32] Ibid. Art. 1-26(3).

[33] As was advocated by several contributors to the Working Group on Defence.

[34] Draft Constitution, Vol. I, CONV 797/1/03, 12 June 2003, Article 1-23(4) (emphasis added).

[35] Ibid. Art. I-23 (4).

[36] The question of Presidency representation is complicated by the fact that the Member State exercising the Presidency is sometimes not represented in a third country, in which case the Presidency is exercised by the next in line. In the case of the 'next in line' not being represented, the Presidency is exercised on a rota basis until representation of either the country holding the Presidency or the next in line are present.

[37] Draft Constitution, Vol. II, CONV 725/03, 27 May 2003, Art. III-205 (1).

[38] Ibid. Art. III-205 (2).

[39] Draft Constitution, Vol. I, CONV 797/1/03, 12 June 2003, Art. I-40(1).

[40] Draft Constitution, Vol. I, CONV 797/1/03, 12 June 2003, Article 1-40(5).

[41] This appears in the draft Constitution as Article III-196, whereby 'When abstaining from a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the European decision, but shall accept that the latter commits the Union ...'

[42] Draft Constitution, Vol. II, CONV 725/03, 27 May 2003, Art. III(1).

[43] Draft Constitution, Vol. I, CONV 797/1/03, 12 June 2003, Art. I-40(6).

[44] Ibid. Art. I-40(6) and Art. III-208(1).

[45] See Draft Constitution, Vol. II, CONV 725/03, 27 May 2003, Art. III-318.

[46] Art. I-40(7). The working of the Article suggests that the type of defence in mind is very much traditional territorial defence, resting upon a response to an actual physical violation of the territory of a Member State. The possibility of the adoption of an EU variant of the U.S. 'pre-emptive' strategy depends upon the interpretation of Article 51 of the UN Charter by EU Member States. Interpretations of Article 51 vary but generally the current interpretation by the Bush administration, which permits pre-emptive action of the basis of proven threats, counters the practice of the Cold War years where pre-emption was generally not seen as a valid interpretation of

the article. Given the differences over the legality of military action in Kosovo and Iraq, it is not clear that there is EU-wide consensus on this either.

[47] See Final Report of Working Group VIII, Defence, CONV 461/02, 16 December 2002.

[48] Draft Constitution, Vol. I, CONV 797/1/03, 12 June 2003, Art. I-40(2) (emphasis added).

[49] Eleven EU Member States (Germany, Belgium, Denmark, Spain, France, Greece, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom) are NATO members. All, with the exception of Denmark, are also full members of the WEU.

[50] Draft Constitution, Vol. I, CONV 797/1/03, 12 June 2003, Art. I-40(7).

[51] The Final Report of the Working Group on Defence, CONV 461/02, Brussels, 16 December 2002, called for a 'collective defence' clause, Paras. 61-64.

[52] This point was made by the WEU Assembly when a resolution argued that if the EU replaces the Modified Brussels Treaty in its entirety, the arrangements 'must be set out in a Protocol to be appended to the Constitutional Treaty and duly ratified'. See Resolution 115 on Security Policy in an enlarged Europe, Assembly of the Western European Union, The Interparliamentary European Security and Defence Assembly, 49th Session, Strasbourg, 3 June 2003.

[53] **Final Report of the Working Group VIII –** Defence, CONV 461/02, Brussels, 16 December 2002, Para. 61.

[54] Draft Constitution, Vol. II, CONV 725/03, 27 May 2003, Article III-209(3).

[55] Javier Solana, **A Secure Europe in a Better World,** presented at the European Council, Thessaloniki, S0138/03, 20 June 2003.

[56] It is not clear why the EARMCA actually appears in the draft constitution since, if incorporated into the final version, it would be the first agency to actually appear at this level.

[57] **Final Report of Working Group VIII –** Defence, WG VIII 22, CONV 461/02, Brussels, 16 December 2002, Section III, Para. 64.

[58] The Organisation for Joint Armament Cooperation (OCCAR), consisting of France, Germany, Italy and the United Kingdom.

[59] The Letter of Intent (LoI) countries consist of France, Germany, Italy, Spain, Sweden and the United Kingdom.

[60] WEAG is the Western European Union's group for armaments cooperation between 19 European countries (of which 14 are EU members and 16 NATO members).

[61] Jean Eaglesham, **'UK set to spurn plan for EU defence procurement',** *Financial Times,* 9 December 2000.

[62] See, for example, Convention on the Future of the Union, Information Note, Andrew Duff MEP, 15 February 2002, at http://www.andrewduffmep.org/Convention/Laeken%20Q%20&%20A.doc .

[63] Article 296 TEC exempts Member States from supplying information which may be prejudicial to its national security interests and permits Member States to take all necessary measures to protect the essential interests of its security connected with the production or trade in arms, munitions or war material.

[64] **Joint Franco-German Proposals for the European Convention on European Security and Defence Policy,** 22 November 2002, reproduced at http://www.dgap.org/english/tip/tip0301/fr_ge_22 1102.htm .

[65] Draft Constitution, Vol. II, CONV 725/03, 27 May 2003, Article III-339.

WHAT IS AT STAKE FOR ROMANIA IN THE PROCESS OF EUROPEAN INTEGRATION?

Valentin Cojanu[*]

ABSTRACT: Economists consider the social impact of the economic phenomena from a somewhat detached analytical perspective. This article argues that the process of economic integration Romania is pursuing requires instead a more compassionate approach as the social burden looms large enough not to be ignored. Romania is not in the position to capitalize in the short run on the economic or political advantages of the EU enlargement. As this argument suggests, the energy and economic policies should be directed in the near future to alleviate the consequences of declining gains from trade and to improve the existing capacity to increasingly compete in similar industries. The road to periphery with its associated effects of economic dualism and widespread poverty does not necessarily imply a geographic location, but failure to profitably take part in regional economic development.

1. Introduction

The increasing exposure of economies to the external environment puts at disadvantage primarily those countries, industries, or companies, which are less adapted to the international competition or reveal a low potential to do so. Globalization is not made by choice, and when market positions become vulnerable the costs overwhelmingly arise in job losses, economic dualism, and stifled innovation. At regional level, the integration process represents a perfect match for the global institutional, economic, and competitive connections, except for its magnified speed and impact.

The option of non-accession to the European Union's structures has not made any sense, if such issue had been ever put forth, irrespective of each side's perspective. For Romania, the cultural bond, including here the attachment to free and democratic values, has epitomized the strongest link to Western Europe for considerably long part of its history, and seemingly held back an equally important option to have developed. For its part, the European Union (EU) is in the enviable position to extend its own legislative body and political and economic practices over such a sizeable area as Eastern Europe, sooner and easier than its possible rivals – the United States and Russian Federation – could have worked out something alike. The economics provides substantial arguments (e.g. Daianu and Vrânceanu) to regard the integration process as a predictable event as well.

But, if integration is but certain, what is at stake in coming economically closer to Western Europe? It is just this familiar sense, which the integration has come to be perceived in, confirmed by one of the strongest popular support in Romania – which is by no means a result of "costs-benefits" analyses – which seriously affect the judgment on the

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advantages of integration. The lack of any plausible alternative in effect obscures what Romania has to lose most as the EU membership comes later rather than sooner.

The present article argues that the social consequences should be seen as imperative in order to appropriately manage the process of integration. Due to the specific circumstances explained here, Romania is not in the position to capitalize either economically or politically on the expected gains in the short run. The social impact is perhaps the most vulnerable issue of the process of economic integration. It gets such an overwhelming importance because of the need to alleviate to the utmost degree the social problems such as poverty, income inequalities, and interest groups' pressure, which are essentially associated with the openness of the economy, and particularly weigh heavily for the Romanian economy.

2. Argument

The European integration is above all an economic issue. Before the accession negotiations started in 1998, an Association Agreement had been concluded in 1993 with a view to liberalizing trade and establishing a free trade area. Since 2002, the objective has been mostly accomplished. The results did live up to expectations by increasing Romanian trade dependence on the EU market to 70% from approx. 30% in 1989.

As far as the bilateral perspective is concerned, this trade evolution is noteworthy as a good part of the economy faces now open competition, and once the Common Customs Tariff is adopted the competitive impact will be positively amplified by further tariff reductions against non-EU member countries.

These influences notwithstanding, there is not much left to benefit from. Free trade is conducive to increased productive efficiency and hence to economic growth, but it is not by itself inevitably correlated to better prosperity, if one understands it as decreasing gaps in economic performances or multiplication of activities characterized by increasing returns. The period of 1993-1996 provides an example at hand, as it witnessed a relatively long economic and exports growth without any significant change in the export structure; income-generating activities on the external markets performed at the same low parameters. A recent analysis (Zaman) confirms this statistical evidence.

The competitive disadvantages against the Western firms diminish further the positive prospects. Ample and time-consuming mechanisms are required to adjust this imbalance, provided that the policy measures are most appropriately chosen. Romania's position in the EU's economy is relatively small – 0.6% of exports, 0.4% of imports, and 0.5% of the GDP – and probably stagnant in the long run. Despite the remarkable foreign trade growth rates Romania has lately evidenced, countries with export volumes thrice as large (e.g. Poland, Czech Republic, and Hungary) achieve comparable, if not bigger, growth rates.

From a global perspective and excepting the commercial costs, it is however more suggestive to note that the increasing trade dependency within the European integration does not provide for the most promising sources of growth. Romania predominantly concentrates its sales on a market where economic growth has been and will remain lower than the US' and much lower still than those of several dynamic Asian economies. The better economic potential other regions present is reason of concern by virtue of the presently inescapable nature of trade

geography. From 1990 to 2001, the annual average imports growth rate in Western Europe was 5.7%, but reached levels of 8.1% in USA, 15% in China, 9% in Malaysia or 8% in Philippine (WTO). In the last 20 years, the annual average growth rate was 2.3% in EU, but 3.3% in USA. The 2000 Lisbon Agenda, a promising commitment of the EU member states to create the most competitive economy in the world over the next decade, increasingly disappoints in the absence of major reforms and provides for criticism both within and outside the Union (The Economist *Still Sclerotic...;* Miklos).

As for the political aspect of the European integration, Romania's options are decisively dominated by the NATO membership. This external engagement implies relationships with the US as much truthful and dedicated as within the European space.

If further improvement of the democratic life were envisaged as a political objective, that would be considerably below one could reasonably expect from being part of the EU political structures since it basically relies on the domestic election system. On the other hand, an influential role inside the European politics would probably represent too ambitious a goal if one took into account the present power balance in Europe and, more relevant, the own assumed delayed accession deadline of 2007 at the earliest.

Besides, a positive impact on the domestic political life would have been substantial enough had it not been lost the possibility to get more favorable concessions during negotiations. The opportunity slipped away under circumstances which did not allow the start of the accession negotiations between the EU and the candidate countries *as a group.* Although the EU discussed bilaterally most of its external agreements, the rule does have notable exceptions, as are for instance the negotiations of the European Economic Space with EFTA and of the Association of the Overseas Countries and Territories. The 12 Eastern European countries and Turkey stand as the EU second biggest commercial partner after the US, and for this very reason a common negotiating agenda would have left each of these countries better off in contrast with the case of bilateral negotiations that actually emerged.

Due to the expected benefits, the economic and political linkages may play a decisive role for Romania to consolidate its position within the EU in the long run, but they are nonetheless only a meager incentive to mobilize the energy and to define the policy so that the integration process, once initiated, will be advantageously completed. The trade and production structures developed in relation with the EU member states however point to several areas of utmost interest as regards the integration impact in the near future. They predominantly refer to social problems and address such issues as income distribution and prosperity.

3. The economics of integration and the social impact

The experience of previous enlargements eloquently shows that the convergence or bridging the gap between the new entrants' and the EU's average level of prosperity – though precariously measured by the GDP level per capita – does not necessarily eradicate, but can even deepen the regional problems and the unequal income distribution. Studies of Lima, Storper et al. and Hamilton et al. are illustrative in this respect. The importance of this subject for Romania

stems from two origins: the complementary trade and relocation of production as a result European-wide decreasing commercial costs.

Complementary trade

Romania's economy relies to a considerable extent on the external trade, and, because of its share, especially on the relationship with the EU: exports and imports amount to approx. 75% of GDP value. As immediate consequence, factors' opportunity costs and utilization are highly dependent on foreign trade. The strength of this dependency is not by itself a negative development, but the characteristics of commercial flows may be nevertheless indicative of its economic impact.

Statistics presented in Annex point to limited possibilities for the economy to assimilate superior gains from trade and widespread benefits of prosperity. The trade structure with the EU features high shares of complementary flows, where exports are primarily based on low-manufactured goods and imports on high-valued goods. Sales are mainly concentrated on products with low-income elasticity of demand, which may explain exports increases in times of recession, but only in correlation with marginal profits as they are assimilated with necessities.

Another characteristic of the main exports industries – textiles, clothing, and footwear – is the lowest level of wages their laborers earn among the other employees in the tradable sectors. Export jobs admittedly offer relatively better earnings perspectives – for instance, in USA estimates show export earnings approx. 17% higher than the average level in the economy – precisely because they allow for specialization according to comparative advantages. The relatively more productive factor employment in the domestic market is

valued better on the external markets. Contrary to this prediction and common sense business expectation, the Romanian economy witnesses an evident loss of these advantages while nurturing impoverishing structures of trade and production. The "minimal wage" syndrome in the export industries takes a considerable part in explaining the delay in productive restructuring.

On the other hand, for the cases where the intra-industry trade appears appreciable exchanges are mostly vertical in nature – similar but qualitatively different goods change hands – between industries belonging to the same branch. If horizontal intra-industry trade – exchange of substitute goods of similar quality – had been instead the case, the evolution would have been illustrative of actual convergence with the EU productive structures and of better resilience to competitive pressures. Research available (Aturupane et al.) points to an appreciable gap as to the horizontal trade index against several Eastern European countries (e.g. Czech R. and Slovenia), although the disparity somewhat attenuates as to the rest ex-communist countries.

Noteworthy differences however remain (Exhibit 1). The proportion of two-way trade is markedly diminished on the segment of higher processed goods as compared with the most accession candidates. Besides, Romanian industries compete with the EU ones only to a negligible extent, both in exports, and especially in imports. Elementary reasoning shows that complementary trade may have different nuances of impact, but the social issues it engenders as reflected by minimal wages, idle productive capacities, unemployment, and factor immobility are

prominent and sources of potential political conflict in all cases.

The inherently gradual evolution of the productive and trade structures does not allow the import-competing industries to employ in the short run advanced and well-remunerated factors, as are for instance highly qualified labor, knowledge, investments and innovations. It is for this very reason that the commercial flows lay a supplementary burden on the social problems, as long as they are based on different occupational structures between exports and imports, with notably dissimilar qualifications and incentives. Besides, political and academic opinions (quoted by The Economist *Drowning...*) draw attention to the neglected issue of regional aids, object of various pre-accession programs, which may perversely distort the resource allocation by encouraging activities not necessarily aiming at a better factor utilization locally, but the opportunistic exploitation by local entrepreneurs of temporarily subsidized funds.

An economy capable of taking part in proportionately more intense similar trade or intra-industry trade is little exposed to those problems as it creates greater scale productive opportunities. History tells that transformation of economic structures is time consuming, and hence the associated social problems remain severe.

Production location [1]

Economic integration calls attention to another issue of concern: clustering of production and trade around traditionally developed business and productive networks. The adoption of the common customs tariff (CCT) and of the rules regarding free

movement of factors induce unevenly dispersed opportunities for growth from the mere fact of being part of a greater customs territory.

Trade costs constantly fade away and thus create increasingly accurate opportunities to assess the economic attractiveness of various regions by a wide range of indicators: purchasing power of population, extension of technological networks, informational stock, average qualification of labor, innovative capabilities etc. The technological characteristics of the new production processes converge to deepen existing specialization by clustering production around regions with favorable prospects for further development. Industries tend to cluster in particular areas thanks to location external economies, such as specialized providers of inputs or uniquely specialized labor market and knowledge generation. Disparities in potential of this sort are the main sources of gradually but regularly disconnections among regional developments.

It could be the case that some industries be better situated than others and thereby inherit historically location advantages; or it may be that some regions come closer through integration – by diminishing transaction costs – to markets, which disproportionately attract a bigger slice of the productive pool of factors (labor, innovation, technology and so on). A prevalent view is that Romania participates to the enlarged European economic space largely at competitive disadvantage as regards both external trade, and foreign investments. The two areas of trade and investments are closely linked by business decisions to develop production and employ factors in a particular location. How does the market assess

[1] This part partly draws on Ciupagea et al., III.3, 62-69.

Romania's opportunities so that to offer clues as to the integration in the European structures of commerce and production?

Romania is in the position to manage the change from a commercial partner to a regional player in the European economy. That emerging perspective is important: the sources of prosperity, and hence of lessening regional developmental problems at a national level, increasingly rest on the successful integration of economic sectors in regional productive networks rather than some ambiguous effects of domestic economic policy. Experiences of Spain, Portugal, and Ireland, where declining regions coexist with some others flourishing, are illustrative of the misleading association between geography and periphery. The latter is more appropriately understood in terms of manifest failure of regions and industries therein contained to benefit from the most advantageous productive and commercial networks essential for spreading prosperity at a regional level.

Several recent researches (e.g. Ciupagea et al.; Sachs et al.) underscore that underlying commercial, economic, and geographic circumstances leave Romania better positioned to benefit from the advantages of regional integration within the South-East Europe, both with the EU members, and the candidate countries. To put it differently, the businesses' decisions are to evaluate by and large equally the opportunities revealed by this economic space. This perspective helps deepen the horizontal intra-industry trade, that is, products qualitatively distinct from other competitors, because it sharpens the competitive advantages among similarly developed industries.

New industries and part of traditional ones alike see the market growth potential small not only compared to national boundaries, but to an entire region as well. The automotive industry offers an example. Estimates indicate an Eastern European market share of 13% of Western European companies' sales no sooner than 2012 (The Economist *European Carmakers...*). Yet, the investors' decisions already discriminate among markets by choosing different locations for their production centers despite comparable labor costs: expensive Peugeot Citroën and Toyota models assembled in Slovakia and Czech R., while more popular Renault models start up from Romania.

The new regional determinants of competitiveness do not transfer by themselves the burden of losses to certain locations. As the previous example shows, it is the exploitation of the existing potential which matters and that in as many as possible industries. There is not within easy reach to find the appropriate ways of improving the competitive standing of industries by redirecting attention and policies to economically distant countries which Romania does not possess either the right location, or the capability to engage mutually flourishing trade with. Trade liberalization with the EU just makes this opportunity more discernible as it allows companies to choose among different locations according to their existing and prospective advantages.

4. Conclusions

The challenges of complementary trade and production location outline a less evident context to discuss on the current advantages and disadvantages of the integration process and point out some policy recommendations. Firstly, the impact on factor employment and particularly on labor should be checked by an adequate administration of structural funds

and generally of pre-accession financial instruments (SAPARD, ISPA, PHARE). The objective to alleviate the social burden is directly opposed in the short run to the harmful consequences generated by commercial exchanges. The conclusion is however qualified by the specific role those funds play to only counterbalance as much as possible the social impact; they do not guarantee a prosperity surplus, but the conditional support to bear inherent losses. Romania will probably benefit from the largest amount of structural assistance in the EU history, and that speaks eloquently enough about the urgency of Romania's social problems at the Community level even in absolute terms.

Secondly, the internal effort should be supplemented with work on common programs between the government and business community in order to optimally exploit the most productive local factors. There is a documented risk that transferring funds to a region may distort resource allocation and consequently diminish in the long run the gains from the most efficient factor employment.

Thirdly, the institutional development to expand regionally similar trade flows is deemed to have a positive economic impact with positive social consequences. The challenge here is to eschew potential ambitions to compete with economically distant economic regions at the expense of a more considerate approach to the opportunities to integrate production inside zones of equivalently economic potential. A possible solution would be working out selected regional programs to cooperatively promote investments and trade projects with

countries as much attractive as regards the relatively abundance of factors and productivity levels. If taken separately, countries and industries enjoy only limited resources, at least in contrast with rivals from developed countries, to successfully deploy marketing strategies or widen their distribution channels. Besides, individual market shares of products with comparative advantage are insignificant. It is for this reason that ventures to jointly deploy sales or promotional efforts, for example in the case of a mutually favorable tourism location, would arguably enjoy better market reception.

Frequent examples of countries, regions, or companies suggesting cooperative initiatives paved already the way in favor of a consistent policy model. A short list of international experiences will include at least the common stance adopted by the CAIRNS group within the framework of WTO agricultural negotiations; the economic development policy of Catalonia, a Spanish province, where the local government, universities, and business community converge their interests to the benefit of regional prosperity; the marketing links and acquisition policies lately undertaken by wine producers in USA and Australia to oppose the competitive threat from such countries like France, Italy or Chile.

Finally, against this background of complex economic and social evolutions, Romania experiences a process of assimilation of Community standards, such as quality and environmental norms, financial discipline and fiscal rules, which develops to an unparalleled extent. Because of unpredictable capability to appropriately assimilate such a huge legislative and policy body, the impact looms obviously ambiguous in the long run. An analogy can be

drawn as regards the competitive ability of Romanian industries to adapt to the circumstances of an enlarged market.

It is the main point of this article that all these ongoing processes are hardly beneficial on the short term, while the benefits are conditional on the quality of transformation on the long term. However, an immediate and discernible benefit can be enjoyed if the socially negative effects inherently associated with open competition are successfully counterbalanced. Passing by the 2004 accession momentum creates a disadvantage just because leaves Romania beyond an economic space which it will however adhere to. The social stake would be a harmful consequence of integration if ignored since it is the only economic policy area which real and beneficial influence can be exercised on in the immediate present.

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Annex
Exhibit 1: Comparative view on selected CEECs' trade structures with EU (2000)

Main products in exports	% of total	Intra-industry trade intensity*	Main products in imports	% of total	Intra-industry trade intensity*
Romania					
Articles of apparel and clothing	33,8	164,1	Textile yarn, fabrics	16,4	20,2
Footwear	11,3	147,7	Electrical machinery	9,6	65,2
Furniture and parts thereof	5,5	178,2	Road vehicles	6,5	28,6
Electrical machinery	5,3	65,2	Telecomm., sound recording apparatus	6,5	75,6
Telecomm., sound recording apparatus	4,5	75,6	Articles of apparel and clothing	6,5	164,1
Iron and steel	4,4	147,3	Machinery specialized	5,1	24,3
Non-ferrous metals	4,2	167,5	General industry machinery	4,9	61,3
Poland					
Road vehicles	11,4	81,5	Road vehicles	11,4	81,5
Furniture and parts thereof	8,3	169,6	General industry machinery	7,4	40,4
Articles of apparel and clothing	7,9	163,1	Electrical machinery	6,9	81,8
Electrical machinery	6,9	81,8	Textile yarn, fabrics	6,0	44,6
Power generating machinery	6,5	130,1	Machinery specialized	4,7	36,7
Manufactures of metals	5,3	96,3	Telecomm., sound recording apparatus	4,4	65,9
Slovakia					
Road vehicles	21,5	112,9	Road vehicles	17,7	112,9
Electrical machinery	9,7	101,2	Electrical machinery	10,1	101,2
Articles of apparel and clothing	6,9	170,7	General industry machinery	6,7	90,4
Iron and steel	5,9	154,1	Textile yarn, fabrics	5,9	71,4
General industry machinery	5,2	90,4	Power generating machinery	5,2	57,0

Hungary

Power generating machinery	13,2	156,4	Road vehicles	18,1	72,6
Teleconm., sound recording apparatus	11,8	129,4	Electrical machinery	13,2	91,8
Electrical machinery	11,8	91,8	Office machines	6,4	122,1
Road vehicles	10,8	72,6	Telecomm., sound recording apparatus	6,1	129,4
Office machines	10,5	122,1	General industry machinery	5,1	64,1
Articles of apparel and clothing	4,8	143,2	Textile yarn, fabrics	3,8	48,6

* The index can vary between 0 and 200: 0 means only imports, 200 only exports and 100 means balance in trade (Index: (((x+m)-(x-m))/(x+m))*100).

Source: Parliamentary Documentation Centre/European Parliament, **Task Force Enlargement. Statistical Annex**, March 2001.

PROGRESS AND OBSTACLES IN THE AREA OF JUSTICE AND HOME AFFAIRS IN AN ENLARGING EUROPE

Joanna Apap* & Sergio Carrera*

ABSTRACT: This article makes an assessment of the legislative achievements made so far of the objectives set by the Amsterdam Treaty and the Tampere European Council. A number of Justice and Home Affairs (JHA) policy areas have experienced a major degree of development or convergence more than others. Why? This is a most sensitive field of study, which has been until now guarded very much as an area primarily of national sovereignty or where sovereignty issues could be at stake. The existence of frictions and strains can be considered as the main justification for this to happen. The way in which certain frictions between member states have affected the implementation of policy as well as how these may be further exacerbated by the forthcoming enlargement will be equally analyzed. The article is divided into two main parts: the evaluation of the main progress in implementing the Tampere Scoreboard on the eve of enlargement, as well as the analysis of the reasons why some JHA policy areas have not achieved the expected level of development.

1. Introduction

Justice and Home Affairs (JHA) has been the most dynamic policy domain in the EU since the Treaty of Amsterdam came into force on 1 May 1999. The policies grouped under the heading of JHA are numerous, as well as diverse. They are also characterised as being the most difficult and 'sensitive' areas for the EU because of the great divide between elites in Member States, European Institutions and large populations throughout the EU. In the Amsterdam Treaty, these areas were grouped together under the new Heading IV of the European Community Treaties (TEC) and enshrined under three dimensions: Freedom, Security and Justice (FSJ) and judicial cooperation in penal matters - the vestiges of the old third pillar which is found under Heading VI of the Treaty on European Union (TEU).

The EU adopted an ambitious work programme at the Tampere European Council of 15-16 October 1999, which aimed at crystallising a proper balance between freedom, security and justice. It also outlined a timetable - the Tampere scoreboard - which set objectives as well as deadlines and gave structure to the agenda in this area.

This paper assesses the achievements made so far in the objectives set by the Amsterdam Treaty and the Tampere European Council. Some policy areas have experienced a greater degree of development or convergence than others. We will also evaluate the reasons why certain policies have not achieved the expected outcome, as well as the practical consequences

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of existing frictions and strains between Member States.

2. To what extent has convergence been achieved in the JHA area?

This part analyses the key measures for achievements in the Area of Freedom, Security and Justice (AFSJ), and their development so far based on the Commission's biannual update of the scoreboard to review progress on the creation of an AFSJ area in the EU, during the first half of 2003.

2.1 Immigration

Based on the Amsterdam Treaty, the policy orientations established in the Tampere European Council of 15-16 October 1999 and the Seville Conclusions of 21-22 June 2002, the Commission has formulated the main elements needed to create a 'common policy on migration'. In the Laeken European Council in December 2001, the objective to establish a common EU policy in this area was reaffirmed. Thus, since that time the Commission has increased its authority and is becoming a prominent actor. The activity of the Commission to date has been positive and forward-looking. It merits more recognition and greater support than it has so far received. Yet these areas of policy remain governed by the unanimity rule until the end of 2004 (Art. 67, EC Treaty) and agreement is not easy on many measures, with Member States seeking to preserve as much of their authority as possible. Consensus on the general strategy for dealing with illegal immigrants has not been easy, as was demonstrated by the weak compromise reached at the June 2002 Seville Council.

Thus, even though the European Commission has already made proposals in a wide number of areas that provide the first elements for a common legislative framework, the Council has not followed up with sufficient support. This is exemplified by two Commission Communications, on a community immigration policy and on an open method of coordination for the policy. There has not been a concrete response by the Council in relation to either communication, even though their adoption would represent a key step towards the achievement of a 'common immigration policy' at EU level. This raises questions of whether or not national governments are genuinely committed to cooperate in this field.

The June 2002 meeting of the European Council in Seville highlighted the need to speed up the implementation of all aspects of the programme presented at Tampere and to develop a 'common policy on immigration'. It welcomed the comprehensive plan to combat illegal immigration and trafficking of human beings in the EU that was adopted by the Council on 28 February 2002. The plan aimed at defining a common and integrated approach to these issues and identified seven areas where action was considered necessary.[1] Consequently, a high priority was given to the fight against illegal immigration and the trafficking/smuggling of human beings. Regarding relations with countries of origin, the idea of placing sanctions on them for failing to control illegal immigration was presented as a real option. Thankfully, this proposal to sanction poor countries was not considered practical, because it was recognized

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[1] These seven areas include: visa policy, the exchange of information, readmission and repatriation policies, the monitoring of borders and measures to take when borders are crossed, Europol and penalties, and the adoption of measures aimed at combating immigration and trafficking in human beings more effectively.

as virtually impossible for any non-totalitarian regime to effectively control exit from its territory. It was agreed instead that migration diplomacy (to reach agreements on legal immigration to the EU) and co-development programmes (to reduce migratory pressures) should be actively pursued. The Seville European Council asked for the conclusion of these agreements to be speeded up and for new negotiating mandates to be approved.

This has been developed in the Communication from the Commission to the Council and the European Parliament, integrating migration issues in the European Union's relations with third countries, COM(2002)703 final, of 3 December 2002. The Commission is in the process of negotiating several readmission agreements between the European Community and third countries, in which both parties agree to accept the return of illegal migrants into their territory.[2]

Indeed, an area of increasing concern for the Member States is the prevention and fight against illegal immigration, which is essential to a common asylum policy of the EU. This is a point where the first and third EU pillars come together. A major trend towards convergence at EU level can be seen in this area since the Seville Conclusions were presented in June. Among others, the following legal instruments need special consideration:

- Proposal for a Council Directive on the short-term residence permit issued to those victims of illegal immigration or trafficking in human beings who

cooperate with the competent authorities COM(2002)0071 final - CNS(2002)0043, 11 February 2002;

- Council Directive on the mutual recognition of decisions about the expulsion of third-country nationals. The Directive was adopted by the Council on the initiative of the French presidency on 28 May 2001. The main purpose of the Directive is to ensure that once an individual is expelled by one member state, s/he becomes a *persona non grata* in the whole Schengen area. Trust in the national administration of other member states for enforcing a restrictive measure does not seem to pose a problem in this field;

- Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration COM(2001)0672 final, 15 November 2001;

- Proposal for a Council Decision to adopt an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO), COM(2001)0567 final, 29 January 2002;

- Framework Decision of 19 July 2002 on combating trafficking in human beings, 2002/629/JHA, 19 July 2002;

- Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, 2002/946, 28 November 2002; and

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[2] The first EC Readmission Agreement to enter into force was signed with Hong Kong on 27 November 2002. Agreements with Macao and Sri Lanka were initiated on 30 May 2002 and 18 October 2002 respectively, and are in the process of being ratified. Moreover, the Council has adopted decisions authorising the Commission to negotiate readmission agreements between the EC and Russia, Pakistan, Morocco and Ukraine. Negotiations started in November with Ukraine and informal discussions are continuing with Morocco. Further proposals to negotiate such agreements with Albania, Algeria, China and Turkey were submitted to the Council in October 2002.

- Council Directive defining the facilitation of unauthorised entry, transit and residence, 2002/90, 28 November 2002.[3]

2.2 Third-country nationals

Regarding non-EU citizens or so-called third-country nationals, the Treaty of Amsterdam neither framed a coherent strategy nor a comprehensive approach to them in Arts. 61, 62 and 63 TEC. After the first few years of applying these provisions, the European Commission forwarded proposals to the Council for various Directives to integrate these policy issues further. Yet once again, the response by the Council has been insufficient.

Among the legislative agenda, the following legal instruments that pertain to third-country nationals should be highlighted:

- One of the first post-Amsterdam initiatives proposed by the Commission in the area of immigration is the draft Directive on the right to family reunification, submitted to the Council on 1 December 1999. The Commission presented an amended proposal, COM(2002)225 to the Council of Ministers on 2 May 2002, that was finally adopted politically by the Council of Ministers of the European Union on 28 February 2003. Although this represents an important step, the promise of equal treatment for third-country nationals is still far from achieved;[4]
- In March 2001, the Commission proposed a Directive to the Council concerning long-term, resident third-country nationals to extend their free movement rights, on the basis of Art. 63(4), COM(2001)127 final. The proposed Directive has now been politically agreed upon by the JHA Council on 5 June 2003;
- The Commission proposed a Council Regulation to extend the provisions of Regulation EEC No. 1408/71 to nationals of third countries who are not already covered by these provisions solely on the grounds of their nationality COM(2002)59, 6 February 2002;
- The Commission proposed a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of studies, vocational training or voluntary service COM(2002)548, 7 October 2002; and
- The Commission's Proposal for a Council Directive, COM(2001)0386 final, of 11 July 2001, on conditions of entry and residence of third-country nationals for the purposes of paid employment and self-employed economic activity is another move forward in the same direction.

The adoption by the Council of some of the Commission's proposals, such as the Proposal for a Council Directive COM(2002)0071 final, of 11 February 2002 (on the short-term residence permit issued to those victims of illegal immigration or trafficking who cooperate with the authorities) and the Proposal for a Council Framework Decision (on combating racism and xenophobia), COM(2001)0664

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[3] These three last measures have been adopted by the Council on the initiative of France.

[4] While the Commission's Explanatory Memorandum for the proposal explains that several provisions in the proposal are based on Community law, it is important to recall that none of these instruments is expressly mentioned in the legal measure itself, with the exception of Regulation 1612/68/EEC (which concerns the abolition of reverse discrimination between member state nationals and EU citizens who are using their freedom of movement).

final, as well as the others mentioned above, would represent a positive step towards the goal of harmonisation.[5]

2.3 Asylum

The European Commission proposed a Council Decision for a European Refugee Fund on 14 December 1999. The objective was a framework for 'structural measures' to facilitate the reception and voluntary repatriation of asylum seekers. Emergency aid was also included to help Member States face the financial burden in the event of an unexpected arrival of large numbers of refugees or displaced persons. The proposal establishing the European Refugee Fund was adopted as Council Decision 2000/596/EC on 28 September 2000.

The provision of minimum temporary protection for displaced persons, including residence permits, access to employment, accommodation and housing, means of subsistence, access to medical treatment, the right to education of minors, and so on, was proposed by the Commission in May 2000. The initiative aimed at harmonising the temporary protection measures across national borders in the EU, while preventing 'asylum-shopping' and simplifying decision-making mechanisms. The European Parliament approved the proposal on 13 March 2001. The Directive (2001/55/EC) was formally adopted by the Council on 20 July 2001, and became the first serious achievement towards European regulation of asylum.

Others initiatives to develop a 'common European asylum' policy include:

- Council Regulation 2725/2000 of 11 December 2000, to establish *Eurodac* for fingerprints of asylum seekers. The Eurodac system is meant to aid the application of the 'first safe haven' principle of the Dublin Convention. As agreed in Copenhagen 2002, Eurodac became operational for the 15 member states in January 2003; and
- Council Directive 2001/55/EC, of 20 July 2001, on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof.

The European Commission persistently seeks to devise a comprehensive European asylum regime. In September 2000, it tabled a proposal for a Council Directive on minimum standards for procedures in Member States to grant and withdraw refugee status. The approach respects national regulatory systems and avoids the introduction of uniform procedures. The Member States have wide discretion to apply their national procedures as long as they ensure certain minimum standards with respect to granting and withdrawing refugee status. This proposal was amended on 18 June 2002 by the Commission proposal COM(2002)326, in accordance with the conclusions of the Laeken European Council.

The following recent developments should also be emphasised:

- The Commission presented a draft Directive outlining minimum standards for the reception of asylum seekers

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[5] The Commission is planning to present a Communication on the integration of third-country nationals in 2003.

COM(2001)181. This Directive has been recently adopted by the Council of Ministers of the European Union on 27 January 2003. The Member States will have to implement its provisions by 6 February 2005, following its Art. 26. Despite its general nature and the wide room for exceptions or adaptation that it allows, it represents significant progress in overcoming the difficulties caused by different standards across the Member States;

• Regarding the so-called Dublin II Regulation, the Council agreed on 18 December 2002 on the basis of the Danish Presidency compromise. On the eve of the JHA Council of 19 December 2002, it agreed on the Commission's proposal for a Dublin II Regulation. The Council Regulation (EC) No. 343/2003 was adopted on 18 February 2003, establishing the criteria and mechanisms of determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. This Convention shall replace the one that determines the state responsible for examining asylum applications lodged in one of the Member States of the European Community, signed in Dublin on 15 June 1990 (Dublin Convention). It has maintained the structure of the Dublin Convention, while improving several aspects of it that proved to be unsatisfactory.

The Commission is planning a progress report on work on the common asylum procedure and the uniform status, and on the implementation of the first-stage instruments in 2003. In addition, two communications are planned to be presented at the end of 2003 that concern the examination of asylum applications outside the EU and the establishment of a single procedure for examining applications for protection within the Member States.

Again, as far as asylum matters are concerned, the main Commission proposals have not yet been adopted by the European Council, such as the Communication from the Commission to the Council and the European Parliament, towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, Brussels, 22 November 2000, COM(2000)755 final. The Communication from the Commission to the Council and the European Parliament on the common asylum policy, introducing an open-coordination method - the first report by the Commission on the application of Communication COM(2000)755 final of 22 November 2000 – is still pending. Also awaiting adoption by the Council is the Proposal for a Council Directive on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection, COM(2001)0510 final.

Furthermore, the practical implementation by the Member States of existing EU and national legislative regimes may not fully safeguard the human rights of victims, nor offer them the necessary protection that our humanitarian traditions require (in particular the protection set out in the Geneva Convention). This has been clearly shown in the report on the situation of fundamental rights in the European Union and Member States, in which the current practices of the

different member states have been studied and criticised.

2.4 Judicial cooperation in criminal matters

After the events of 11th September 2001, the EU third pillar made internal security affairs a matter of intergovernmental cooperation between the Member States for the first time. It provided the means to develop an integrated and coherent anti-terrorist policy.

The subject of 'terrorism' is primarily dealt with by the third pillar of the TEU, Title VI, Arts. 29-42. After the Amsterdam Treaty, police and judicial cooperation in criminal matters remained uncovered by the Community, and continue to be of an intergovernmental nature. The stated objective of the Union in this area, according to Art. 29 TEU, is to provide a 'high level of safety' by adopting common actions among the Member States in police and judicial cooperation and by preventing racism and xenophobia.

This has been the main legal framework used by the Council of Ministers to adopt the legislative measures after the events of 11th September 2001. At its extraordinary meeting on 21 September 2001, the European Council stated that "terrorism is a real challenge to the world and to Europe and that the fight against terrorism will be a priority objective of the European Union". Indeed, within ten days, the JHA Council decided on a package of anti-terrorist measures in the areas of judicial and police cooperation, the prevention of financing of terrorism, improved border controls and cooperation with the United States. All of these radical measures were subject to less controversy and agreed more quickly than could have conceivably been the case without the events of 11th September 2001.

The core legislative developments in this field are:

- Framework Decision of 13 June 2002 on the European arrest warrant, 2002/584/JHA;
- Framework Decision on combating terrorism, 2002/475/JHA, of 13 June 2002;
- Regulation (EC) No. 2199/2001 amending Council Regulation (EC) No. 467/2001, and prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources relating to the Taliban of Afghanistan;
- Regulation (EC) No. 342/2003, amending for the twelfth time the Council Regulation (EC) No. 881/2002, and imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, 21 February 2003;
- Council Regulation (EC) No. 561/2003 amending, (as regards to exceptions to the freezing of funds and economic resources) Regulation (EC) No. 881/2002, and imposing specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, 27 March 2003;
- Council Decision 2003/48/JHA, on the implementation of specific measures for police and judicial cooperation to combat terrorism, 19 December 2002;
- 2001/500/JHA, the Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of

instrumentalities and the proceeds of crime; and

- Council Regulation (EC) No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.[6]

In addition, in the aftermath of the events of 11th September, the EU was able to make progress on a number of other policy issues that are of importance in terrorist action, such as the amendment of the Directive on money laundering and the setting up of the Eurojust cross-border prosecution unit. Nevertheless, these measures clearly have a general impact that extends far beyond combating terrorism. Decisions were also taken on improved cooperation between police and intelligence services. These included charging the Police Chiefs Task Force with cooperation with third countries; guaranteeing a high level of security particularly in air safety; and, considering the missions given to a team of counter-terrorist specialists within Europol. A further strengthening of controls at the external borders was also agreed, for which the Police Chiefs Task Force was also made responsible. The strengthening of surveillance measures under Art. 2.3, Schengen 1990, was agreed as well.

3. Main reasons for the persistence of frictions and strains in the JHA arena

In this part the potential frictions and strains that exist on the eve of enlargement are analysed. The implementation of policy related to establishing an Area of Freedom, Security and Justice has been fundamentally affected by the rise of frictions and strains among Member States, as well as their relations with the

candidate countries and the neighbouring states. These frictions can be identified as the main obstacles and/or tensions that have either prevented or negatively affected a further convergence of policies between the member states in the JHA arena.

The reasons why some JHA policy areas have not achieved the expected level of development can be summarised as follows:

1. *Weakness of political resolve in European cooperation.* The EU suffers from weak legitimacy in this area, making the cooperation of governments and citizens less than reliable. The political decision-making processes are inefficient. Member States are ambivalent, pushing for measures and then failing to implement them. As a matter of fact, very few of the Commission's ideas have so far been translated into legislation by the Member States, raising questions of whether national governments are genuinely committed to cooperate in this field. The sorry record of third pillar Conventions – with only one ratified and implemented out of the 25 negotiated – is a graphic illustration of this point. When the solution to a problem is entirely in their hands (such as the supply of criminal intelligence to Europol) the Member States tend not to live up to their commitments. Furthermore, wide variations in perceptions of problems, priorities and unresolved contradictions among the policy objectives also represent a major problem. The excessive complexity of programmes and cooperative arrangements create additional strains.

2. *Operation of national legal systems.* Different approaches to legal issues among the Member States represent potential points of

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[6] See the Order of the President of the Court of First Instance in Case T-47/03 R, *José Maria Sison v Council and Commission.*

conflict and can cause tensions between them in certain areas, for example: the use of pre-trial detention in some countries; varying standards of due process and fair trial; the existence of excessive delays; the lack of common definitions of crime (particularly of fraud); the so-called forum- or jurisdiction-shopping; the variations in sentencing practice in the different states; and, the lack of response to new European systems of coordination such as Eurojust. In the vertical information exchange (local-national-European), there is quite often a failure to communicate with Europol – which a good response to the creation of Eurojust would help to address. Each state varies in its reception of international law conventions and in non-recognition of European soft law by national courts, (which is not legally binding). Double penalisation of foreigners and the existence of collective expulsions, which are contrary to the guidelines set up by the UNHCR, are also points of contention.

3.   *Police practices.* The practices and malpractices of police represent another area of friction, and may provoke hostile reactions and incomprehension between partner states, e.g. the unjustified use of firearms, illegitimate violence (particularly against suspects, and legal and illegal immigrants), or the use of riot control measures against transnational demonstrators, football fans and holiday-makers. Furthermore, the existence of police corruption in the different Member States (especially in the new applicant states) is of major importance, as is the interface of security services and police, with the former seeking or being accorded new policing roles. The marginalisation of official European channels of communication and cooperation is a problem as well. There is an absence of information-sharing. Also, the lack of adequate training for police in handling immigrants at the borders of different Member States is another common concern.

4.   *Difficulties of arriving at European policies on immigration and asylum.* The reactions in favour of a 'half-open door' immigration policy, given high structural unemployment in some Member States, put a real strain on further policy developments. In addition, the slow and inefficient asylum procedures, giving rise to a high number of persons remaining in a legal limbo for several years and the eventual need for amnesties, generates even more tension. The persistence of clandestine immigration, allegations of laxity in border controls and surveillance, and the perceived connections between the transitional period for free movement of nationals of new members and immigration of third-country nationals are also major sources of strains. Additional sources of friction are the different interpretations of a well-founded claim for asylum and the existence of the safe third-country classification, which could prevent genuine asylum seekers from presenting their claims. Finally, the lack of structure in the system of work/residence permits for workers causes some to alternate between legality and illegality.

5.   *Corruption.* There is a perception that closer European integration brings the risk that corrupt practices from some other Member States will become even more widespread. Attempts to impose higher anti-corruption standards in the new Member States than those practiced by some old Member States are a major cause of tension. Corrupt connections are prevalent among foreign, security and trade policies in the arms trade among others. A lack of respect for

agreed European standards in foreign trade is another example. Finally, the illegitimate interference of political and economic interests in trade and competition policy, along with the failure to implement European Directives can be qualified as one more source of friction.

6. *The lack of consistency owing to the practice of rotating EU.* The priorities change greatly with each presidency, and there is a real risk each time of substantial policy shifts. Furthermore, some countries holding the EU Council presidency still promote their own particular interests exclusively.

7. *Unsatisfactory and unclear character of the EU pillar structure.* The variety of legal instruments in each of the pillars, which are not always the most suitable instruments for JHA, contributes to the confusion. Ambiguity in the division of powers between the pillars as well as within the pillars also characterises the system, which should be replaced in the proposals for the next inter-governmental conference by a simple division of powers. This should entail transferring a maximum of competence to the first pillar (which is at the Community level), while retaining a minimum of the most sensitive areas under the exclusive responsibility of the Member States, along with some powers to be exercised solely by the European institutions. In addition, the introduction of a qualified majority voting is necessary for all JHA policies, allowing for unanimity voting only for those issues that remain the exclusive competence of the Member States. The introduction of such a system is particularly necessary after enlargement, to avoid blockages in decision-making that could result in complete stalemate on some issues.

4. Conclusion

The road to establish a genuine Area of Freedom, Security and Justice is still a long one. The widely held view that these issues are matters of national sovereignty continues to create obstacles to progress in this area. The legislative progress attained so far shows the difficulties of arriving at European policies on immigration and asylum, as well as the rights of third-country nationals. A low level of convergence towards 'freedom' concerns in these three areas can be appreciated by looking at the Tampere scoreboard. Higher levels of trust, flexibility, coordination and efficiency, in terms of cost and rapidity of response, are required to overcome the mentioned tensions and strains (see Anderson and Apap, 2002).

The right balance between Freedom, Security and Justice needs to be ensured. Security and law enforcement policies need to be developed with 'freedom' as the point of departure. A danger of the aftermath of the 11th September 2001 terrorist attacks and the current preoccupation with undocumented/illegal immigration is that a pattern may be established that leads to overly zealous security policies for European society, with adverse effects on the internal cohesion of Europe. In particular, certain minority groups may feel, as they already do in some cases, which they are subject to excessive attention by security forces. In addition, it is also perceived that the terrorist attacks in the USA have radically changed perceptions of security in the EU. Undoubtedly, these attacks have provided a new impetus for the development of the AFSJ. The Member States' governments, security agencies and public opinion have been made dramatically aware of the extent to which international forms

of crime threaten traditional internal security. The AFSJ provides the perfect framework for positive action to be taken. They have had, and continue to have, a powerful influence over the Justice and Home Affairs agenda. Consequently the problem of balance between security and freedom has become more acute and needs to be carefully studied, along with the policy developments and concrete legislative instruments adopted so far by the Council of Ministers of the European Union.

Progress in these areas will need constant attention, particularly as the inevitable attempts to shore up national sovereignty result in the perverse effects of undermining accountability and the rule of law. Active citizen participation, increased transparency of decision-making and a constant effort by authorities at all levels to inform and explain their actions to the public are needed. Nevertheless, these conditions are extremely difficult to fulfil.

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APPENDIX

This appendix presents a review of the Commission Communication, the Bi-annual update of the Tampere scoreboard to review progress on the creation of an AFSJ in the European Union, first half of 2003, Brussels, 22.5.2003, COM(2003)291 final. The main legislative instruments proposed to date, as far as immigration, asylum, third-country nationals and third pillar matters are concerned, are shown in Tables A.1-A.3.[7]

Table A.1 EU legislation governing immigration policy and the rights of third-country nationals

MEASURES	PROPOSALS	STATUS
Directive	Commission Proposal for a Council Directive on the implementation of the principle of equal treatment of all persons without distinction as to race or ethnic origin, COM(1999)566, 25.11.1999	Adopted by the Council OJ L 180, 19 June 2000, p. 22
Directive	Proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation COM(1999)565, 25.11.1999 / Amended in October 2000, COM(2000)652, 12.10.2000	In November 2000, the Council adopted OJ L 303, the Amended Commission Proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation, COM(2000)652
Commission Communication	The Commission is planning to present a communication on the integration of third-country nationals	
Directive	Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents COM(2001)127, 13.3.2001	Politically agreed upon by the Council on 5 June 2003
Directive	Council Directive on the mutual recognition of decisions on the expulsion of third-country nationals, 2001/40/EC	Adopted by the Council on 28 May 2001

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[7] This is not an exhaustive list of legislation, but cites some of the most important legal measures introduced to date.

MEASURES	PROPOSALS	STATUS
Directive	Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities COM(2001)386, 11.7.2001	
Directive	Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of studies, vocational training or voluntary service COM(2002)548, 7.10.2002	
Commission Communication	Commission Communication to the Council and the European Parliament on a common policy on illegal immigration, COM(2001)0672 final, 15.11.2001	
Regulation	Proposal for a Council Regulation extending the provisions of Regulation (EEC) No. 1408/71 to nationals of third countries who are not already covered by these provisions solely on the grounds of their nationality, COM(2002)59, 6.2.2002	Adopted by the Council in December 2002
Directive	Proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human being who cooperate with the competent authorities, COM(2202)71 final, 11.02.2002	
Green Paper	In April 2002, the Commission presented a Green Paper and a Communication on a Community return policy on illegal residents COM(2002)175, 10.4.2002	In November 2002, the Council adopted a repatriation programme on the basis of the Commission Green Paper and a programme for the return of refugees to Afghanistan

MEASURES	PROPOSALS	STATUS
Regulation	Commission Proposal for a Council Regulation extending the provisions of Regulation (EEC) No. 1408/71 to nationals of third countries who are not already covered by these provisions solely on the grounds of their nationality COM(2002)59, 6.2.2002	
Directive	Commission Proposal for a Directive on short-term residence permits for victims of trafficking in human beings and trafficking in migrants who cooperate with the authorities, COM(2002)71, 11.2.2002	
Directive	Proposal for a Council Directive on family reunification, COM(1999)638, 1.12.1999 / Amended Proposal for a Council Directive on the right to family reunification, COM(2002)225, 2.5.2002	Politically adopted by the Council on 28 February 2003
Council Decision	Proposal for a Council Decision adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO), COM(2001)0567, 29.01.2002	
Comprehensive Plan	Proposal for a Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union, 2002/C 142/02	Adopted by the Council on 28 February 2002
Framework Decision	Framework Decision on combating trafficking in human beings, 2002/629/JHA	Adopted by the Council on 19 July 2002
Directive	Commission Proposal for a Directive on short-term residence permits for victims of trafficking in human beings and trafficking in migrants who cooperate with the authorities, COM(2002)71, 11.2.2002	

MEASURES	PROPOSALS	STATUS
Directive	Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of studies, vocational training or voluntary service COM(2002)548, 7.10.2002	
Green Paper	In April 2002, the Commission presented a Green Paper on a common policy on repatriation of persons residing unlawfully in the EU, the so-called Green Paper on a Community Return Policy on Illegal Residents, COM(2002)0175 final	
Framework Decision	Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, 2002/946/JHA	Adopted by the Council on 28 November 2002
Directive	Council Directive defining the facilitation of unauthorised entry, transit and residence, 2002/90	Adopted by the Council on 28 November 2002
Regulation	Commission Proposal for a Council Regulation amending Regulation No. 539/2001, listing the third countries whose nationals must be in the possession of visas when crossing external borders and those whose nationals are exempt from that requirement, COM(2002)679, 28.11.2002	
Commission Communication	Commission Communication on a Community return policy on illegal residents COM(2002)564, 14.10.2002	Adopted by the Council on November 2002
Commission Communication	Commission Communication to the Council and the European Parliament, integrating migration issues in the European Union's relations with third countries, COM(2002)703 final, of 3 December 2002	

MEASURES	PROPOSALS	STATUS
Regulation	The Commission is planning to present a proposal in 2003 for a regulation establishing a legal base regarding cooperation with third countries in the area of migration	
Commission Communication	Commission Communication to the Council and the European Parliament to present an action plan for the collection and analysis of Community statistics in the field of immigration, COM(2003)179, 15.4.2003	

Table A.2 EU legislation governing asylum policy

MEASURES	PROPOSALS	STATUS
Decision	Commission Proposal for a Council Decision on the European Refugee Fund COM(1999)686, 14.12.1999	Council Decision 2000/596/EC on 28 September 2000 adopting a proposal establishing the European Refugee Fund
Directive	Commission Proposal for a Council Directive on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof COM(2000)303, 24.5.2000.	Council Directive (2001/55/EC) of 20 July 2001, about minimum temporary protection for displaced persons. Adopted by the Council on July 2001.
Regulation	Commission Proposal for a Council Regulation concerning the establishment of Eurodac COM(1999)260, 26.5.1999 / Amended proposal for a Council Regulation concerning the establishment of Eurodac to facilitate the implementation of the Dublin Convention COM(2000)100, 15.3.2000	Council Regulation laying down certain detailed rules for the application of the Regulation 2725/2000 of 11 December 2000 concerning the setting up the Eurodac system, OJ L 62, 5 March 2002

MEASURES	PROPOSALS	STATUS
Working Document	Commission Working Document on the relationship between safeguarding internal security and complying with international protection obligations and instruments, COM(2001)743 final, Brussels, 05.12.2001	
Directive	Commission Proposal for a Council Directive on minimum standards for the reception of applicants for asylum in member states COM(2001)181, 3.4.2001	Adopted by the Council on 27 January 2003
Regulation	Commission Proposal on July 2001 for a Regulation laying down the criteria and mechanisms for determining the member states responsible for examining an asylum application lodged in one of the Member States by a third-country national COM(2001)447, 26.7.2001	Council Regulation (EC) No. 343/2003 of 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
Directive	Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status COM(2000)578, 20.9.2000 / Amended Proposal COM(2002)326, 18.6.2002, in accordance with the conclusions of the Laeken European Council	
Commission Communication	At the end of 2003, two communications are planned concerning the examination of asylum applications outside the EU and the establishment of a single procedure for examining applications for protection in the Member States	

MEASURES	PROPOSALS	STATUS
Commission Communication	Commission Communication on the common asylum policy and the Agenda for protection (Second Commission report on the implementation of Communication COM(2000)755 final of 22 November 2000), Brussels, 26.03.2003, COM(2003)152 final	
Decision	In the latter half of 2003, the Commission plans to present a proposal for a Decision on the implementation of the European Refugee Fund for 2005-2009	

Table A.3 EU legislation governing third pillar matters

MEASURES	PROPOSALS	STATUS
Council Regulation	Council Regulation (EC) No. 337/2000, concerning a flight ban and a freeze of funds and other financial resources in respect of the Taliban of Afghanistan	Adopted by the Council on 14 February 2000
Council Regulation	Council Regulation (EC) No. 467/2001, prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing Regulation (EC) No. 337/2000	Adopted by the Council on 6 March 2001
Commission Regulation	Commission Regulation (EC) No. 2199/2001 amending, for the fourth time, Council Regulation (EC) No. 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan and repealing Regulation (EC) No. 337/2000	Adopted by the Council on 12 November 2001

MEASURES	PROPOSALS	STATUS
Commission Regulation	Commission Regulation (EC) No. 342/2003, amending for the twelfth time Council Regulation (EC) No. 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No. 467/2001; followed by Commission Regulation No. 414/2003 15.03.2003	Adopted by the Council on 21 February 2003
Council Regulation	Council Regulation (EC) No. 561/2003 amending, as regards exceptions to the freezing of funds and economic resources, Regulation (EC) No 881/2002, imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban	Adopted by the Council on 27 March 2003
Framework Decision	Council Framework Decision on the European Arrest Warrant, 2002/584/JHA	Adopted by the Council on 18 July 2002
Framework Decision	Council Framework Decision on combating terrorism, 2002/475/JHA	Adopted by the Council on 13 June 2002
Council Decision	Council Decision 2003/48/JHA, on the implementation of specific measures for police and judicial cooperation to combat terrorism	Adopted by the Council on 19 December 2002

INDRUMAR PENTRU AUTORI

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