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# *After Amsterdam: A Report on the Common Foreign and Security Policy of the European Union*

Franklin Dehousse\*

## **Abstract**

*One of the objectives of the 1996–1997 Intergovernmental Conference (IGC) was to improve the functioning of the Common Foreign and Security Policy (CFSP). This was expressly foreseen in the Maastricht Treaty with regard to defence problems. The mandate of the IGC was in fact much broader.<sup>1</sup>*

*The results, however, have been quite limited. To give a quick summary, the intergovernmental nature of the CFSP has not been modified. The Treaty of Amsterdam has rationalized the CFSP instruments. The system of qualified majority voting has been simplified, but still allows the use of national vetoes. It has complicated both the decision-making and implementation processes. Finally, a slightly improved long-term perspective on the integration of defence has been exchanged for an equally slightly improved confirmation of NATO's supremacy in the defence realm.*

*The first part of this report looks at the stakes of the debate. The solutions adopted are then examined in the second part. This analysis enables us to draw clear conclusions regarding the objectives of the CFSP and the requirements they imply for the Member States.*

\* Professor at the University of Liège and at the College of Europe. The author was the Belgian representative in the Reflection Group, and the Special Representative of the Belgian Minister of Foreign Affairs in the Intergovernmental Conference. He is still Special Representative. The present analysis must be considered as personal, and does not reflect an official position of the Belgian government.

<sup>1</sup> See the report of the Reflection Group (Introduction, III) and the conclusions of the Torino European Council (Bull. EU 3–1996, pt. LII).

# 1 The Stakes in the IGC

## A *The Problems*

### 1 *The New Geopolitical Context*

The process of disintegration of the communist regimes in Europe beginning in 1989 has brought about a radical shift in the geopolitical balance on the European continent. To be sure, it has greatly reduced the threat of large-scale conflict – at least for the time being. Yet, at the same time, it has fostered the re-emergence of ethnic-based territorial disputes, resulting in the threat and appearance of local conflicts. Thus, the disappearance of the Soviet menace has, paradoxically, fundamentally improved European security, while rendering the continent more unstable.

Further, with the partial retreat of the United States, this instability has become more difficult for the European countries to manage. The disappearance of the Soviet threat has also reduced American interest in European problems. For instance, as a result of the disarmament agreements signed during the Gorbachev period, American troops stationed in Western Europe have been reduced to 100,000 men.

### 2 *Insufficient Cooperation in the Area of Foreign Policy*

In such a context, it would seem logical that the Member States of the European Union should strengthen their cooperation in the field of foreign policy. However, it was reinforced only to a small degree at the time of the American retreat. Doubtless, foreign policy is an area of great symbolic value for the Member States, with each nation trying very hard to maintain an outward appearance of sovereignty. Hence, the improvements incorporated in the Maastricht Treaty in this area were more apparent than real.

By the same token, it can be argued that the importance of the problem of foreign policy is most likely overestimated. The external policy of the European Union may be divided into three sectors: external economic policy, defence policy and foreign policy in the narrow sense of the word. This last sector is the smallest as most foreign policy decisions interconnect with international economic cooperation or defence.

### 3 *The Rapid Decline of the European Armaments Industry*

Since 1989 the armaments industry has suffered a considerable worldwide reduction in demand (except in Asia, where economic growth has allowed regular increases in military budgets). Quite notably different reactions to this new situation may be observed. American enterprises implemented drastic reforms (with destabilizing effects on the Californian economy for some time) and reoriented towards an export market. The European response was slower, with the result that companies there are now facing the competitive disadvantage of higher costs and are losing substantial parts of their traditional world market share.

This evolution also has important strategic implications. Conflicts reappearing in Europe are being fought with light weapons which have a high technological capacity. The inertia of the European armaments industry has thus caused it to fall increasingly behind in the world market. In addition, the closed nature of the national

markets within Europe has exacerbated the problem of insufficient competitiveness. In turn, these difficulties in the defence industry affect the defence capacity of the Member States.

#### *4 The Weakness of European Defence Capacity*

At the same time, there is little coordination among existing defence instruments. Very few integrated units are in place (with the exception of the Eurocorps currently being set up). Integration of command is weak, as is the information structure. Each country is likely to rely on its own materials and resources.

### **B The Responses of the European Union to Date**

The importance of the EU's foreign policy is often exaggerated. In the narrow sense, foreign policy corresponds to diplomatic decisions that are not of an economic nature (which come within the field of the European Community) and are not defence issues (which for the moment are dealt with in other organizations). Nevertheless, it continues to carry an intense symbolic value, especially for the large Member States which are anchored in their own diplomatic tradition dating back several centuries.<sup>2</sup>

#### *1 The Institutionalization of Political Cooperation*

##### a) The Beginnings of Political Cooperation

The rapprochement of Member State foreign policies has always been an extremely complicated exercise. Starting from 1970, it was dealt with in the framework of European Political Cooperation (EPC), which was based on traditional diplomatic mechanisms operating outside the Community institutions. These mechanisms were formally confirmed by the Single European Act of 1986.

However, this official 'consecration' only barely improved the results of political cooperation. The Member States multiplied their common diplomatic declarations during the 1970s and 1980s, without however producing any notable concrete results. The influence of the European Community in the important conflicts of that period (armaments negotiations with the Soviet Union, the Middle East peace process, American military action in Central America, the survival of the apartheid regime in South Africa) was extremely weak, even when its fundamental interests were at stake.

##### b) The Maastricht Treaty: The Common Foreign and Security Policy

In 1992, the Maastricht Treaty established a Common Foreign and Security Policy (CFSP). This is the 'second pillar' of the general framework of the European Union. Its provisions envisage a reinforcement and expansion of political cooperation. In this perspective, the objectives of the policy and the instruments it made available have been described with great enthusiasm.

<sup>2</sup> In the abundant literature, see for the beginnings, D. Allen, R. Rummel and W. Wessels (eds), *European political cooperation* (1982); P. De Schoutheete, *La coopération politique européenne* (1986). The results of European political cooperation are analysed in A. Pijpers et al., *European Political Cooperation in the 1980s: A Common Foreign Policy for Western Europe?* (1988); S. Nuttall, *European Political Cooperation* (1992); E. Regelsberger, P. De Schoutheete and W. Wessels (eds), *Foreign Policy of the European Union* (1997).

Unfortunately, the decision-making mechanism remained essentially unchanged. On the one hand, the Treaty provides that a qualified majority can be used, on the condition that it is unanimously agreed beforehand. There is also a declaration annexed to the Maastricht Treaty stating that the Member States will try to avoid blocking decisions supported by a qualified majority by demanding a unanimous vote.

Within this framework, the European Union has been able to obtain some, albeit limited, results. These include the launch of the Stability Pact for Europe and support for the Non-proliferation Treaty. In general, however, the results have been disappointing. Indeed, the system's failure is much more obvious than its success.

Firstly, the European Union has not as yet been able to delineate an appropriate answer to the conflicts in the former Yugoslavia. Admittedly, a solution to these conflicts is far from self-evident. However, given the degree of interest of the Member States in this issue, their inability to act certainly does not bode well. Secondly, coordination between actions in the framework of the first pillar (European Community) and in the framework of the second pillar (CFSP) has been problematic. At times the separation between these two frameworks and the types of procedures pertaining to each has proved very difficult to maintain. Thirdly, it has been the first pillar, and not the CFSP, that has enabled the EU to accomplish its most important diplomatic successes. We need only refer here to the conclusion of the commercial negotiations of the Uruguay Round, the support to the economic restructuring of the countries of Central and Eastern Europe, the renegotiations of certain elements of the Lomé Convention and the political and economic rapprochement with the Mediterranean countries.

The crisis in Chechnya showed the difference between these two types of procedure very clearly. In the framework of intergovernmental cooperation, the Member States have continued to produce statements and positions without exerting any real influence. The threat to end the first-pillar negotiations for a Partnership Agreement has proved to be much more effective.

## *2 A Cautious Rapprochement between the European Union and the Western European Union*

The Maastricht Treaty sought to bring about a rapprochement between the European Union and the Western European Union, with the long-term aim of establishing a role for the WEU as an EU instrument for the implementation of the CFSP. This rapprochement, however, has remained extremely cautious. In the provisions of the Treaty itself, there is no reference to defence issues. A declaration of WEU member countries annexed to the Maastricht Treaty states that they 'agree to strengthen the role of WEU, in the longer term perspective of a common defence policy'. The restrictions in this phrase are more striking than its substance.

In reality, more factual progress has been obtained in the framework of specific cooperation between certain Member States (Eurocorps, regrouping of navy forces) than in the framework of the European Union. The only intervention made by the

WEU in the framework of the CFSP was the sending of troops in 1994 to maintain public order in the city of Mostar.<sup>3</sup>

### C *The IGC Debate*

What is foreign policy about? The question is not so simple, as the IGC negotiators discovered. It had not been discussed at length during the Maastricht negotiations, but the failures of the former Yugoslavia necessitated some reflection. While many preliminary comments were published,<sup>4</sup> this introspection unfortunately remained somewhat limited. Many of these writings were not widely read.

#### 1 *The Development of a Diplomatic Instrument*

##### a) A Capacity for Information and Analysis

All observers recognize the need for a structure that combines capacities for information and analysis. Yet there is no agreement on the management of such a structure. Some would prefer it to be under the umbrella of the Commission, others argue that it should be the responsibility of the secretariat of the Council of Ministers, and yet others would like to see the appointment of a special representative to undertake this role. In addition, various mixed solutions have been proposed.

The most rational solution would be to consign this mission to the Commission. It must be underlined, however, that this would imply a reinforcement of the Commission's responsibility towards the other institutions of the European Community. If not, the actual lack of Commission legitimacy would obstruct such a reform. In addition, mechanisms for cooperation would need to be developed with the national ministries of foreign affairs. The intervention of the Commission would allow a maximal coherence to be maintained between diplomatic action and the management of external economic policy (which is a fundamental element of long-term security policy).

One must nevertheless acknowledge that the granting of new powers to the Commission would increase an already sizeable problem of accountability. Considering its present powers, it is necessary that the Commission be more effectively controlled. Mechanisms must be developed. Federally minded Member States (and the Commission) strongly underestimated this problem in the preparation of the IGC. Yet, one cannot always seek a strengthening of the powers of the Commission without considering the question of a strengthening of its accountability.

However, for the present, many Member States unfortunately oppose the idea of entrusting this new task to the Commission. A compromise solution might be to set up a mixed entity comprising people from the Commission and the secretariat of the Council of Ministers. This would allow at least minimal coordination for the different

<sup>3</sup> OJ 1994 L 134.

<sup>4</sup> For an analysis of possible reforms, see Willaert and Marques-Ruiz, 'Vers une politique étrangère et de sécurité commune: état des lieux', *RMUE* (1995) 35; W. Van Eekelen, 'The Security Agenda for 1996: Background and Proposals', *CEPS Papers*, no. 64 (1995); A. Dashwood (ed.), *Reviewing Maastricht – Issues for the 1996 IGC* (1996), at 211–275; J. Winter, D. Curtin, A. Kellermann and B. De Witte (eds), *Reforming the Treaty on European Union – The Legal Debate* (1996), at 323–376; Rummel, 'The Intergovernmental Conference 1996: How to Reform CFSP?', in E. Regelsberger *et al.*, *supra* note 2, 363.

aspects of the external policy of the European Union. Every other solution would inevitably add a new layer of bureaucracy, which would in turn further complicate coordination between the institutions, making it even less comprehensible for the public.

b) A Capacity to Decide

The highly symbolic value attached to foreign policy decisions has led to proposals for complex decision-making methods in recent years: reinforced qualified majority, consensus minus one, selective veto. Two general orientations, however, seem clear. On the one hand, it would seem evident that the possibility of qualified majority voting should be developed. Otherwise, the existing paralysis of the European Union, and thus crisis, will continue. On the other hand, this reform cannot be used as an alibi in order to reintroduce the right to veto, even for the deployment of armed forces.

c) A Capacity to Implement

For the moment, the implementation of every foreign policy decision creates problems. As in the analysis area, it is necessary to establish mechanisms for cooperation between the services of the Commission and national administrations. The delegations of the Commission in third countries could be used as coordination centres. However, for the management of urgent crises, requiring humanitarian or armed interventions, the Commission is badly equipped. This type of intervention should be coordinated by the WEU.

## *2 The Development of a Military Instrument*

a) Improved Cooperation for Armaments

In its attempt to maintain the technological capacity of the European industry and improve the efficiency of armaments, while at the same time reducing their cost, coordination in the area of armaments production should be strongly reinforced. The creation of an armaments agency in the framework of the WEU is thus a necessity.

b) Improved Cooperation for Defence

Cooperation between the European states with regard to their defence organization also constitutes a necessity. This cooperation, together with an effective integration of defence, would produce even better results, enabling a substantial improvement in the efficiency of military instruments while at the same time reducing costs. This is especially justified in those sectors – including military intelligence (particularly the use of satellites), strategic transport and units under integrated command – where the operational capacities of the armies of the European states are still largely dependent on American support.

## **2 The Results of the Amsterdam Treaty: Some Small Steps in the Right Direction**

The modifications brought about by the Amsterdam Treaty in the field of external

relations are modest, although some of them might have substantial consequences.<sup>5</sup> The introduction of qualified majority voting is certainly the most important change, even though possibilities to block it were introduced simultaneously. Only future experience will allow us to determine the importance of the new decision-making system.

A second important change introduced with the Amsterdam Treaty concerns security policy and, specifically, the integration of the so-called Petersberg missions (defined in the framework of the WEU) in the EU. These missions range from humanitarian aid to peace-keeping. Given the tradition of neutrality in certain Member States, the integration of the Petersberg missions in the Union framework constitutes a significant change. A third innovation, again modest, is the progressive 'rapprochement' between the EU and the WEU. Apart from these changes, however, the Treaty provides for very few alterations in the defence field.

Finally, problems also exist with regard to external relations outside the second pillar. In the area of external economic relations, the attempt to enlarge the field of the common trade policy was unsuccessful. Given the growing importance of services and intellectual property in international commerce, this is a regrettable failure which will complicate trade negotiations during the coming years.

In general, the results appear to be modest. There are several reasons for this. The neutral Member States showed very little enthusiasm and, indeed, the UK continues to defend a strictly intergovernmental approach. As in other areas, however, the main reason for the modest outcome of the negotiations should be sought in the absence of a clear objective. Several Member States that had in the past been in favour of more far-reaching integration now seem to have doubts. France and Germany did not agree on qualified majority voting, nor on the role of a Secretary-General for the CFSP, and The Netherlands did not support the proposal to integrate the WEU in the EU.

Fundamentally, and however curious this may seem, there is no longer a feeling of threat, either in the strategic or in the economic field. Despite the negative experience of the former Yugoslavia, a large majority of Member States seem to prefer the highly intergovernmental character of CFSP. Yet, despite the relative technological weakness of European countries in the field of armaments, the economic weight of this sector and the restructuring that several European countries have set in motion, a collective approach does not exist.

<sup>5</sup> For some comments on the new provisions, see Keatinge, 'Strengthening the Union's International Voice and Capacity', in B. Tonra, *Amsterdam — What the Treaty Means* (1997) 97; Gnesotto, 'Defense européenne et partenariat atlantique', in F. De La Serre and C. Lequesne (eds), *Quelle Union pour quelle Europe? L'après-traité d'Amsterdam* (1998) 67; Des Nerviens, 'Les relations extérieures', in *Le traité d'Amsterdam* (1998) 93; Monar, 'The European Union's Foreign Affairs System after the Treaty of Amsterdam: A Strengthened Capacity for External Action?', 2 *European Foreign Affairs Review* (1997) 413.

## A *The Modest Reform of CFSP*

### 1 *Preparing Decisions: The Ambiguous Role of the Policy Planning and Early Warning Unit*

Several analyses have pointed to the fact that the CFSP has to date failed to establish a common approach to diplomatic issues. To solve this problem a declaration to the Treaty of Amsterdam provides for the creation of a Policy Planning and Early Warning Unit. Established under the responsibility of the Secretary-General of the Council (whose responsibilities have been changed), it comprises personnel drawn from the General Secretariat of the Council, the Member States, the Commission and the WEU.

The Unit will monitor developments, evaluate the Union's interests, give rapid alert in dangerous situations and prepare papers on the Union's diplomatic options. Each Member State, or the Commission, may make suggestions for work to be undertaken. The Unit shall produce papers, at the request of the Council, the Presidency or on its own initiative. This in itself gives an indication of the importance of the future role of the Council's Secretary-General.

The usefulness of such a unit cannot be contested. From a functional point of view, combining information and analysis resources will probably reinforce the coherence of the Union's foreign policy. At the same time, however, the Unit's position is ambiguous. Firstly, it considerably strengthens the position of the Council's Secretary-General in relation to the presidency. It will also weaken the Commission's position *vis-à-vis* the General Secretariat. This seems to lead to a dualistic (at its best) structure in the field of external relations. In the worst case scenario, the CFSP will have three heads: the presidency, the Secretary-General and the Commission.

### 2 *Making Decisions: Potential Qualified Majority Voting Blocked by Potential Veto*

The Treaty of Amsterdam sought to achieve a compromise between the need to develop qualified majority voting, for reasons of efficiency, and the will to protect essential national interests. Several mechanisms were set up for this purpose (see Article J.13).

#### a) *Implementation of Common Strategies*

The Maastricht Treaty provided for an impressive list of instruments for the CFSP. The Amsterdam Treaty adds another one, which comes with the 'general guidelines', joint actions and common positions: namely, the common strategy (Article J.2). Common strategies have two characteristics (Article J.3). They are defined by the European Council in areas where the Member States have important interests in common. They 'set out their objectives, duration and the means to be made available by the Union and the Member States'. The Council of Ministers recommends common strategies to the European Council.

When a common strategy has been adopted, the Council of Ministers may implement it through a qualified majority decision. There remains, however, a possibility for the Member States to block such a decision. If a Member State opposes the adoption of a decision by qualified majority 'for important and stated reasons of

national policy', the Council will not vote on it. Nevertheless, a qualified majority in the Council may 'request that the matter be referred to the European Council for decision by unanimity'.

Thus, the possibility of establishing common strategies depends on the willingness of the Member States. It is not likely to be so difficult to adopt such strategies. Nevertheless, the Member States will be very careful, knowing that they open up the possibility of qualified majority decision-making. The option of stopping such a decision is provided for, but the Member States will certainly prefer not to use it. The problem, however, is that it will most likely be difficult to establish a common strategy prior to the emergence of a crisis. And when a crisis has already exploded, the European Council will certainly not be well placed to develop an urgent complete strategy, though it will most probably attempt to produce an immediate answer. Thus, the whole mechanism is a limited reinforcement of European integration.

Even if a common strategy is adopted, this does not guarantee a smooth process of implementation. Each implementation decision can always be contested by a government which considers that it does not fall within the framework of the common strategy because it relates to another topic or because it does not respect the general objectives. One must not forget here that no judicial authority exists to settle such conflicts of interpretation.

#### b) Constructive Abstention

A Member State may decide to have recourse to constructive abstention. In such a situation, that Member State will not prevent the adoption of a decision. This solution is different from the system of qualified majority voting. In certain circumstances, the mechanism can make it possible to circumvent the unanimity requirement. If a Member State makes a formal declaration at the moment of the vote, it is not obliged to apply the decision. This mechanism, however, cannot be applied if Member States representing more than a third of the weighted votes choose to use it.

What are the consequences of constructive abstention? A decision is made by the Union, but the Member State that abstains is not bound by that decision. At the same time, in a spirit of mutual solidarity, it 'shall refrain from any action likely to conflict with or impede Union action based on that decision'. In theory, this seems to be a reasonable compromise. In practice, however, this will not always be the case. If, for instance, the EU decides to recall its representatives, to break off its relations with a regime or to apply economic sanctions, it would seem to be impossible to remain neutral.

#### c) Implementation of Joint Actions and Common Positions

The implementation of a joint action or a common position can also be done by qualified majority. This is a possibility that has perhaps been underestimated. The European Council might adopt few common strategies. It will be more difficult for the Council of Ministers not to adopt joint actions or common positions. This might open the door to real possibilities for initiatives. Here too, however, it remains possible to block a decision 'for important and stated reasons of national policy'. Nevertheless, a

dynamic presidency could use this opportunity. It would become more difficult for reluctant Member States to maintain express opposition.

### *3 Implementing Decisions: The Potential Danger of the Secretary-General for the CFSP*

The creation of a 'high representative' or a 'special representative' for foreign policy (often referred to as '*Monsieur PESC*') was one of the demands made by France. The final result was a compromise. The Treaty of Amsterdam provides for the creation of a High Representative, but it is the Council's Secretary-General (Article J.16). Thus, this person will remain a high-ranking civil servant rather than a political personality. He will nevertheless have an important role to play.

The Secretary-General will have several functions. Some of these will only be exercised following an initiative from the presidency. This is mainly the case for representation *vis-à-vis* third countries. Other functions, in contrast, will only be able to be exercised on the Secretary-General's own initiative, namely the preparation of documents indicating the diplomatic options for the European Union. In principle, the Secretary-General contributes 'to the formulation, preparation and implementation of policy decisions' (Article J.16).

Moreover, two important complements have been provided for. Firstly, the management of the Council's General Secretariat will be taken over by a Deputy Secretary-General (Article 151 § 2 EC). Secondly, the Council 'may, whenever it deems it necessary, appoint a special representative with a mandate in relation to particular policy issues' (Article J.8 § 5). This indicates that special missions such as that undertaken by Mr Bildt in the former Yugoslavia will be repeated. In certain situations it is useful to mandate a person who will represent the Union and coordinate the actions of the Community and Member States. Nevertheless, the introduction of the High Representative might diminish the use of that procedure.

This indicates the dangers inherent in the new organization of the CFSP. In an institutional system that already has too many actors, a few more are added in the name of efficiency. This does not seem very convincing. It risks causing a multitude of bureaucratic conflicts. Moreover, by gradually pushing out the Commission, representation in relation to third countries will become even more fragmented than it already is.

It should be noted that this fragmentation could become even greater than was anticipated in Amsterdam. In 1998, the first reports on the implementation of the new Treaty went so far as to indicate that there should be a division of tasks between the policy planning and early warning unit and the CFSP unit of the Council's secretariat, while 'working in close synergy'. The former would be in charge of the new aspects of the CFSP and the latter would take care of the old ones.

Revealingly, political leaders were unable to agree in June 1998 (one year after the Amsterdam summit) on the geographical location of the unit, the autonomy of the High Representative, the role of the rotating presidency, existing special envoys and the WEU. In a delightful reversal of positions, federally minded Member States (and the Commission) are now pleading for a strong autonomy of the High Representative. The

French government is surprised to discover that an intergovernmental setting puts the brakes on new initiatives. The British government is surprised by this analysis because it expected precisely the reverse.

#### 4 Controlling the CFSP: A Reduced but Accepted Role for the European Parliament

Control over foreign policy expenditures has created significant conflicts between the Council and the European Parliament in past years. These conflicts were exacerbated by the constant growth of the expenditures, which fall under the Community budget. It is here that the problem lies. Foreign policy remains intergovernmental (second pillar), but is financed through a supranational mechanism (first pillar). The European Parliament, the budget authority, considers itself to be competent to judge on the use of the expenditures and the freezing of credits. The Council, the diplomatic authority, considers this Community interference in the intergovernmental second pillar to be superfluous.

According to the Treaty of Amsterdam 'administrative expenditure ... for the institutions shall be charged to the budget of the European Communities' (new Article J.18, second paragraph). 'Operational expenditure ... shall also be charged to the budget ... , except for such expenditure arising from operations having military or defence implications, and cases where the Council acting unanimously decides otherwise' (new Article J.18, third paragraph). The execution of these principles form the subject of an inter-institutional agreement between the European Parliament, the Council and the Commission. This agreement was introduced in the new Treaty.

The Council and the European Parliament have tried to frame the determination and execution of the budget in such a way as to achieve two goals: the maintenance of efficiency and the guarantee of effective control. In both cases, mechanisms are foreseen to avoid possible obstacles. When, for instance, agreement cannot be reached on the amount to be allocated to the CFSP budget, they 'shall at least agree to enter in the CFSP budget the amount contained in the previous budget, unless the Commission proposes to lower that amount' (point C). There are, moreover, specifications of expenditures through different articles and the reserve may not extend to 20 per cent of the total amount (point G).

The role of the Commission in establishing the amount of the budget is important. Negotiations between the Council and the European Parliament only starts if either of the two institutions 'intends to depart from the preliminary draft budget of the Commission' (point I). The Commission, on the other hand, has a weaker position in the execution of the budget. Credit transfers between articles are only possible 'on the basis of a Council decision' (point E).

Finally, mechanisms are provided to offer regular and effective information to the European Parliament. As far as large-scale orientations are concerned, the Council presents 'the main aspects and basic choices of the CFSP'. For each decision entailing expenses, the Council will communicate 'an estimate of the costs envisaged (*fiche financière*), in particular those regarding time-frame, staff employed, uses of premises and other infrastructure, transport facilities, training requirements and security arrangements' (point M). Finally, the Commission informs the Parliament on a

quarterly basis 'on the execution of CFSP actions and the financial forecasts for the remaining period of the year' (point N).

### **B A Weak Defence Chapter**

Given that the issue of defence was one of the original reasons for holding this IGC, it is paradoxical to see that the results are rather weak. If one takes into account what happens outside the EU framework, one can even see a degradation of the idea of a common European defence. Without being stated explicitly, there is a shift towards a division of labour between NATO and WEU. NATO will be responsible for defence and the WEU (using the means of NATO) will take care of humanitarian actions and peace-keeping. This evolution is not the result of written texts, but is a matter of reality. European countries are not willing to make the budgetary effort, nor are they prepared to set up an integrated European operational structure. As a consequence, they are slowly losing their market share, their technological independence and their strategic autonomy.

#### *1 Integration of the Petersberg Missions in the European Union*

From the point of view of diplomacy, the integration of the Petersberg missions in the EU was carried out successfully. The Petersberg missions consist of three types of tasks which were taken up by the WEU through a declaration that it adopted in 1992: 'humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking' (new Article J.7 § 2).

Through this integration, all Member States, including the traditionally neutral states (Austria, Finland, Ireland and Sweden) recognize that they have a responsibility in the international security system. This is an important change. At present, the threat of a large-scale military conflict is very limited. The main threat that does exist derives from the possibility and presence of local conflicts. The Petersberg missions provide the most appropriate response to this threat.

At the same time, it must be said that this integration amounts to no more than a matter of principle. Firstly, all decisions 'having military or defence implications' must be approved unanimously. The type of conflicts that require a Petersberg mission are local-based. This is exactly the type of conflict that does not prompt the Member States to a collective reflex action. Finally, even with the best of all intentions, an adequate intervention can only take place if the necessary instruments are available. The EU does not have such instruments.

#### *2 The (Very Slow) Rapprochement between the EU and the WEU*

Relations between the EU and the WEU were already the object of extremely complex provisions in the Maastricht Treaty. The Treaty of Amsterdam has slightly modified the wording of those provisions. The CFSP now includes 'the progressive framing of a common defence policy'. This 'might lead to a common defence, should the European Council so decide' (Article J.7).

In order to try to accelerate this development, six Member States had proposed to integrate the WEU into the EU in three phases. The main outcome is a very general statement: 'The Union shall accordingly foster closer institutional relations with the

WEU with a view to the possibility of the integration of the WEU into the Union, should the European Council so decide.'

There thus exists a prospect of rapprochement between the two organizations, though it remains a distant possibility. The main issue, however, is not whether or not the two organizations will merge. Rather, it is whether the final integration of the WEU into the EU will lead to a confirmation of the EU's defence dimension or the disappearance of the WEU's defence dimension. In this respect the Treaty of Amsterdam does not seem very promising.

### 3 *The Lack of an Effective Military Capacity*

In the defence area, negotiations were overly focused on texts and insufficiently focused on reality. Since 1989, European states have reduced their military budgets, European armaments producers have lost an important part of their international market share, and Europe has fallen increasingly behind in the field of intelligent arms production. The only way to deal with these problems in a coherent way is to integrate armaments production as well as military structures. Yet this has not been realized. Moreover, the autonomous defence capacity of European countries is in decline. In 1997, during the NATO summit in Madrid, the supremacy of the US in the organization of European security was absolutely clear.

#### a) *The Absence of an Autonomous Integrated Military Instrument*

The absence of an autonomous military capacity was clearly shown by the intervention made by the countries of the Atlantic alliance in the former Yugoslavia. Outside NATO, the European countries have only a limited capacity to act, even against opponents with modest means. Their own information sources are feeble and this is also the case for their means of rapid transport. The WEU is in the same situation. It does not have sufficient operational resources to manage an operation that goes beyond peace-keeping. Even peace enforcement, one of the Petersberg missions, requires the use of NATO means. These considerations explain why the European states have been interested since 1996 in the NATO concept of Combined Joint Task Forces (CJTF). This concept would allow them to use the military means of NATO.<sup>6</sup>

#### b) *The Absence of a Viable Armaments Industry*

The second weakness of a possible European defence policy concerns the fact that the European armaments industry is increasingly lagging behind its competitors. Since 1989, US producers have undertaken ambitious restructuring operations, including important concentrations and rationalizations. Their production has been reoriented towards new products as well as towards new markets. This example was not followed in Western Europe. European enterprises continued working within their own national market, and there has been no restructuring. The result is that they are

<sup>6</sup> This is the theory. Would this be workable in practice without the clear support of the United States? This seems doubtful at first sight. See Jopp, 'The Defense Dimension of the European Union: The Role and Performance of the WEU'. In Regelsberger *et al.*, *supra* note 2, 153.

now incapable of keeping astride with their competitors' technological capacities. The gap *vis-à-vis* the United States became evident after the Gulf War.

Two possible solutions could be envisaged. For the moment, the armaments sector is not covered by the internal market rules (see Article 223 EC). It would have been possible to liberalize this market. It would also have been possible to set up a common purchasing approach, particularly in the framework of the WEU. The Treaty of Amsterdam carries no such provision. There is only one sentence which states that cooperation in armaments will be developed 'as Member States consider appropriate' (Article J.7 § 1 al. 4).

### 3 Conclusion : Much Ado about Nothing

One cannot escape the feeling that the provisions of the Treaty of Amsterdam give, as a general rule, more of the same, at times with a different wrapping. The system is a bureaucratic maze. Behind the improvement in wording, however, the Treaty of Amsterdam does little to simplify it. The national veto can be invoked at each step of the decision-making process. It is invoked at each step in the Treaty of Amsterdam. The creation of 'Mister CFSP' will make Henry Kissinger's telephone nightmare more agonizing in the future. It will also complicate the task of the Commission in the external field.

Looking back upon the past decades, one distinguishes somewhat surprisingly two European foreign policies. On the one hand, there are the external relations of the European Community, which have made possible a long list of diplomatic successes: the Lomé Convention, the European agreements which assisted in the economic restructuring of Central and Eastern Europe countries, the Uruguay Round negotiations and the development of ambitious international environmental treaties. On the other hand, there is the CFSP, which has produced a very short list of diplomatic failures: former Yugoslavia, Rwanda. At present there is no real common foreign policy in relation to the most important foreign policy challenges: Russia, China, Turkey. While the Treaty of Amsterdam marginally improves this second European foreign policy, it could also marginally reduce the efficiency of the first one.

In fact, there could be some kind of spillover between the pillars. It is clear that the Commission could be constrained in the future by the decisions taken at the level of the European Council, and perhaps the Foreign Affairs Council. It hardly seems possible for the Commission to invoke its independence in the first pillar in order to refuse the implementation of general orientations given in the second one (especially if the European Parliament itself is constrained).

Some fundamentals have been forgotten since the beginning of the CFSP. Foreign policy is in essence something other than the creation of a single market, which first requires legislative action. Like economic policy, foreign policy is basically an executive function. This means that it requires some form of centralization. A real foreign policy requires a strong Community system, stronger in fact than for the single market. This was not accepted prior to the crisis in the former Yugoslavia. It has not

yet been accepted after the former Yugoslavia crisis. It is here that the fundamental conclusion of the 1996 Intergovernmental Conference lies for the field of foreign policy.

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