

THE CFSP AT MAASTRICHT: OLD FRIEND OR NEW ENEMY?

Argument

Is the Common Foreign and Security Policy (CFSP) which has developed from the Maastricht Treaty (TEU) an old friend or a new enemy? Does it merely carry forward the procedures and ethos of European Political Cooperation (EPC) - an old friend, predictable in its functioning and threatening no interests - or is it so interwoven with Community procedures that it alarms both the neo-Gaullists, determined to keep foreign policy intergovernmental, and the integrationists, equally determined to safeguard Community procedures? Is it the new enemy of both orthodoxies?

This paper describes the features that made EPC work, and the drawbacks to that process. It suggests that the negative features of EPC persist in the post-Maastricht period, while the positive ones are being eroded. It chronicles the development of "consistency" and the genesis of the Maastricht Treaty, and shows how the TEU's inability to grasp procedural nettles has left a clear field for rival bureaucratic groups representing rival foreign policy cultures to contend for power. The old foreign policy establishment appears to be losing out in this struggle. Finally, through an examination of the concept of legitimacy, it suggests that the on-going institutional debate in the Intergovernmental Conference is ultimately sterile, and that only a reevaluation of the nature of the Union's foreign policy can prevent the CFSP from falling victim to an argument which neither side can win.

The Ethos of EPC

European Political Cooperation was set up in 1970 as part of the deal which stabilised the financing of the CAP and brought the United Kingdom into the Community. It strengthened the foreign policy capabilities of the EC at a time when the new *Ostpolitik* was making Germany's European partners nervous, and President Nixon's abandonment of the dollar had thrown global financial markets into disarray. It was formally abrogated twenty-three years later, in November 1993, when the Maastricht Treaty replaced it with the CFSP. The political context was not dissimilar: the unification of Germany revived its partners' nervousness, and, more generally, the end of the Cold War cast doubt on the United States' continued willingness to play a leadership role.

Over nearly three decades the successive generations which had been involved in the operation of EPC had accumulated a wealth of experience and working methods which contributed to a strong sense of identity. This was enhanced by the deliberate attempt to keep the process separate from the EC. The separateness was demanded by France as part of the bargain (soon to be supported by the United Kingdom and Denmark), and indeed EPC procedures were modelled on those which had been tried out while the Fouchet negotiations were proceeding. One feature of the Fouchet plan was missing: the new intergovernmental mechanism in no way claimed to oversee from the political angle the operation of the Community, as General de Gaulle had proposed a decade earlier.

EPC was therefore designed to be self-standing, and it was to be intergovernmental, based on the rule of consensus. These requirements had certain consequences. As the operation was intergovernmental, then by definition the Community Institutions were not involved. This meant that the functions normally performed by them either had to be performed by someone else, or not at all. This led to a considerable strengthening of the Presidency, culminating in its recognition in the Maastricht Treaty as the formal representative of the Union. Similarly, the rule of consensus led to a collective form of agenda-setting which was able to dispense with the exclusive right of initiative. That function really only comes into its own when decisions are taken by majority voting.

The separate and intergovernmental nature of EPC caused it to develop a series of characteristics, some negative and some positive, the latter being often the mirror image of the former. Here are two lists.

Negative characteristics

a) The process was essentially reactive. The Six/Nine/Ten/Twelve rarely moved to forestall future events, or even to shape them to their liking. The common way of referring to EPC, by the number of participants, was significant. Institutionally, it was a collection, not a collectivity. Each participant came to the conference table already the proud possessor of a national position. This could be adjusted in order to achieve a common position, but the effect of the process was inevitably reactive. For it to have been otherwise, there would have had to exist a body with autonomous agenda-setting powers - the equivalent of the Commission in the Community system. This was not the case. Formally, the Presidency proposed the agenda, but it did so on the basis of suggestions from partners and a careful reading of the newspapers. Some of the more adventurous Member States sometimes seized the opportunity of holding the Presidency to table speculative papers, but on the whole the practice was frowned on.

To react to events is an essential part of foreign policy, and in this EPC was no different from national policies. Its failing was that it was institutionally incapable of doing otherwise. Attempts to remedy the failing are still being made in the current Intergovernmental Conference (IGC).

b) There was no concept of the European interest. The writer does not believe that "interest", whether national or European, has real existence in the Platonic sense. At the most, "interest" is whatever the duly authorized body declares it to be. Thus, in foreign policy matters, the British "interest" is whatever the Foreign Office (or the Prime Minister) says it is. In Germany, it is the Auswärtiges Amt (or the Bundeskanzler). In the Netherlands, it is the Buitenlandse Zaken. But in EPC, there was no body duly authorized to declare what was the EPC, or European, interest (other than the Presidency, in a purely tautological sense). EPC participants had national legitimacy, following the Gaullist argument, but they did not have collective legitimacy (see last section).

The situation was different in the Community, although a satisfactory description of the concept of "Community interest" has not (to the writer's knowledge) so far been offered. It is customary to assert that the Commission is guardian of the "Community interest". A more attractive approach is to describe it as the outcome of the Community process, in the course of which the Commission has ensured that the ground rules have been respected, and that the smaller Member States have not had to concede too much to the superior weight of the larger ones. Nothing like this existed in EPC, where the larger Member States traditionally exploited their greater diplomatic and other resources to secure their national foreign policy goals.

c) EPC talked, but did not act. EPC had few instruments at its disposal, compared with those commanded by the individual Member States. It could in the beginning only give expression to its personality through declarations and démarches. These were not without effect, as shown early on in the discussions leading to the Helsinki Final Act, but they fell an easy victim to criticisms that EPC could talk, but did not know how to act. The assumption was (and is) that an activist foreign policy must be a good one - a sure sign of shaky legitimacy. In due course, EPC began to turn to the EC for policy instruments (see section on "consistency" below).

None of these three negative characteristics is morally reprehensible or attributable to a lack of "political will"; they are the natural outcome of the intergovernmental method. That all are perceived to persist is shown by the fact that they lie at the heart of current attempts to improve the functioning of the CFSP.

Positive characteristics

a) EPC was d-i-y. One of the great strengths of EPC was that it was a do-it-yourself operation, done by diplomats for diplomats. There were no participants outside the magic circle, to prepare and execute decisions, and be blamed when things went wrong. The

luxury of distancing oneself from the action was not on offer. If the diplomats did not do something, then nothing was done. This inculcated in the participants a deep sense of responsibility and proprietorship. EPC was their thing, and they, and no-one else, had to make it work.

b) Implementation was in the hands of the participants. Not only did the diplomats prepare and take the decisions (under the authority of Foreign Ministers), they also had to carry them out. This was the corollary of the relative lack of instruments at the disposal of EPC. Much of the end-product took the form of common positions, which were not fully exploited unless propagated. Only the diplomats themselves could do this, and carry conviction. Few, if any, EPC decisions could be executed by delegation. When delegation there was, for example for a *démarche*, it was to the Presidency or the Troika.

c) The diplomats were home-based. Who were these diplomats who took part in EPC? They were not the Permanent Representatives to the EC, but the Political Directors and Heads of Department from the Foreign Ministries. In other words, they were not accredited representatives carrying out instructions, but officials with operational responsibilities in their Ministries who as often as not wrote their own instructions. At last Foreign Ministry officials had the opportunity to make a new area of Community business - foreign policy - their own, and to do so in a way which precluded all outside interference.

d) The success of EPC came through socialisation. All participants in EPC attest to the beneficial effect of the club atmosphere in bringing points of view closer together and making concessions easier. This meant that, contrary to popular belief, intergovernmentalism did not invariably favour the least common denominator, and “constructive abstention” became a frequent practice in spite of the rule of consensus. For socialisation to work, however, you had to socialise. Meetings were important, but so were lunches and dinners and agreeable little excursions, and the atmosphere depended on light procedures and not too many participants. It has also to be admitted that the system worked in favour of the larger States. Belgium, for example, was more likely to engage in “constructive abstention” than, say, Germany.

e) The reward of socialisation was solidarity. Within reasonable limits, foreign policy was personalised. If country x had a problem, one was understanding and helpful in finding a solution because one was a friend of country x’s representative. There was no doubt a general assumption that one day one might need a favour in return, but there was no strict calculation of profit and loss, nor *realpolitik* bargains over individual cases.

Just like the negative characteristics, the five positive characteristics were inherent in the system. But we shall see that, whereas the negative characteristics are still with us, the positive characteristics have begun to weaken as the system changes in the post-Maastricht era.

“Consistency”

We have seen that EPC was criticized for its preference for talk over action. “Joint action” is an aspiration found in the early texts, but only began to take concrete form when, in the early 1980s, EPC began to look to the EC to provide the instruments with which to implement its policies (“interaction”). The institutional implications of this shift can best be seized through an analysis of the notion of “consistency”.

“Consistency” is one of those code-words, like “subsidiarity” and now “flexibility”, which abound in the EU, and whose purpose in life is to permit endlessly variable interpretation. “Consistency” has at least three meanings, which are not mutually exclusive: 1) there should be no contradiction between policies followed by EPC/CFSP and policies followed in the Community framework; 2) the policies followed in the two frameworks should interact, EPC/CFSP providing the orientations and the EC the instruments; and 3) the “I’m in charge” theory, whereby the “political” actors in EPC/CFSP direct the EC on the conduct of its policies where these have “political” implications. The gamut is run from a concern for coherence, though a desire to maximise efficiency, to a turf battle between bureaucrats - and all

in a single word.

The earliest signification was the first. In the early days of EPC, “consistency” meant what it said, and no more. The texts - the Luxembourg Report (1970), the Paris Summit declaration (1972), and the Copenhagen Report (1973) - all make arrangements to ensure that what was done in EPC did not cut across the work of the Community. The Copenhagen Report is explicit: “The Political Cooperation machinery, which is responsible for dealing with questions of current interest and where possible for formulating common medium- and long-term positions, must do this keeping in mind, inter alia, the implications for and the effects of, in the field of international politics, Community policies under construction”.

The second and third meanings of “consistency” began to come into prominence with the start of “interaction” mentioned above. From 1981 to 1987 EPC and the EC worked constructively together to produce a series of combined foreign policy actions - sanctions in the case of the Soviet Union, Argentina and South Africa, positive measures in the case of Central America and South Africa. This was the second meaning. By and large, the cooperation worked well.

But the second meaning carried with it the third, in two respects. The barriers between EPC and the EC had indeed begun to fall as a result of “interaction”, but with the barriers down traffic could move in both directions. Just as the Commission, on behalf of the Community, found itself playing a role in EPC through its deployment of EC instruments, so Member States no longer felt inhibited about attacking EC policies outside the Council framework. The most difficult cases reflected the Cold War divide - structural aid to Ethiopia, aid to Vietnam - and Member States were rarely united, but the principle was established that EPC was entitled to impose a politically correct view on the EC Institutions.

Perhaps more serious, EPC attempted to take over the management of politically sensitive programmes, even when these were decided and financed according to EC procedures. The arrangements agreed for the management of the aid programmes in favour of Central America, the victims of apartheid, the Palestinians and the Afghan refugees showed a progressive shift in management responsibility from the Commission to the Member States. Whatever the theoretical benefits of such a move, it certainly led to decreased efficiency, both because of the bureaucratic weight of documents engendered and because of the tendency of one or the other Member State to fight again at the stage of implementation battles which had been lost at the stage of decision.

The official text governing the question was the Single European Act (1987). While apparently simple and clear, the relevant passage was rich in sub-texts. It read: “The external policies of the European Community and the policies agreed in EPC must be consistent. The Presidency and the Commission, each within its own sphere of competence, shall have special responsibility for ensuring such consistency is sought and maintained.” To start with, the tone is a long way from that of the Copenhagen Report; neither side has primacy over the other. Then, the text is operational, and designed to be so: in the original draft the responsibility for ensuring “consistency” lay on the Member States, but was shifted to the Presidency in order to have some meaning in practice. Finally, the words “each within its own sphere of competence” were added at the request of the Danish Delegation, anxious to ensure the Commission did not thereby acquire any new powers to meddle in EPC business. They were welcomed by the Commission, which saw in them protection against meddling by EPC in EC business. In spite of these skirmishes, experience of practical cooperation seemed likely to lead in time to arrangements to ensure “consistency” satisfactory to all parties.

The Treaty on European Union

Time was what EPC did not have. The collapse of the Communist system in Central and Eastern Europe exposed EPC’s shortcomings and led directly to an attempt to replace it with a system of a different kind. The attempt failed, but the Maastricht Treaty preserves the traces.

With the collapse of Communism came the urgent need to consider how the countries of Europe should rearrange their affairs. One might have supposed that EPC would have been the ideal forum: it was not so used. Instead, such reflexion as did take place was done in NATO, to some extent in the Western Economic Summit, and principally by the victorious powers of the Second World War together with the Federal Republic of Germany. This was not surprising: the most pressing problem was the unification of Germany, and the former Great Powers, no less than the Federal Republic, were anxious to keep down the numbers of those taking part in the negotiations. The EC was only peripherally involved, to make sure that East Germany could be brought into the Community without a painful accession negotiation, and for that the Commission and the European Parliament, surprisingly enough, took the leading roles.

The Community, not EPC, was also in the lead as regards relations with the Central and European countries (PECOs). This was because the approach chosen was predominantly an economic, rather than a political one. The Western Economic Summit meeting in Paris in the summer of 1989 had asked the Commission to coordinate the international aid effort, first for Poland and Hungary and then for the other PECO's, and the Commission played its usual lead role in negotiating Cooperation Agreements with them, including the politically important question of conditionality. It was not until the Irish Presidency in the first half of 1990 that attempts were made to involve the political side more closely in the Community's action. The supervision of the EC's PHARE programme was carried out, as far as the member States were concerned, by a Council, not an EPC, Working Group.

It was against this background that President Mitterrand and Chancellor Kohl launched their initiative for a Political Union. No less than his predecessors a generation earlier, Mitterrand was sensitive to French fears of an apparently ever more powerful Germany. After having toyed with one or two pan-European schemata, Mitterrand fell back on the old device of binding Germany more tightly into an integrated West European grouping. For the same reasons Kohl shared this ambition, and the Intergovernmental Conference on Political Union was born, grafted onto the already planned Conference on Economic Union, which followed a logic of its own.¹

"L'intendance suit." The French and German political leaders had fixed the political end, but they appeared to have few ideas about the technical means. Their officials were no more enlightened. The field was clear for each country to bring forward its own ideas about the shape of political union, including a Union foreign policy. Boosted by the experience with the PECO's, Belgium, the Netherlands and the Commission wanted a system in which the way was cleared for an amalgamation of EPC and EC foreign policies, to the benefit of the latter. Other Member States, especially the United Kingdom and Denmark, were equally determined to defend the intergovernmental system, by which they believed national sovereignty was preserved.

The outcome was a compromise which united the two mechanisms at Ministerial level but left the situation unclear at the level of officials. At the same time, it preserved intact the two separate decision-making systems and hence the two bureaucratic cultures and populations. On only one specific point was guidance given as to the procedure to be followed when the two overlapped. As an exercise in irresponsibility it took some beating, and the results have been correspondingly unsatisfactory.

"Consistency" was ensured by the setting up of a single institutional framework to cover all the activities of the Union (Art. C). But on examination, the single institutional framework proves not to go below the Ministerial level. The old EPC Ministerial Meetings disappear, and their business is merged with that of the Council (a reform which was rejected at the time of the Single European Act), but consideration of what happens at the level of officials

¹ For the sake of space this account simplifies a more complex chain of events. In particular it ignores the important role played by the Belgian memorandum, which derives from the ineffectiveness of EPC in 1989.

is quite simply shelved. Declaration No. [28] puts off a decision on this question until later. A similar procedure was adopted in the case of the Working Groups.

If “consistency” was to be ensured by the single institutional framework, there should logically have been no need for any other arrangements. But the failure to amalgamate the two mechanisms, or otherwise provide ground rules for their coexistence, meant that specific measures had to be adopted. This is done in Art. C, second subparagraph, and Art. J.8.2, which take up the provisions set out in the Single European Act, except that this time the responsibility is given to the Council rather than to the Presidency, an incomprehensible change and one that makes the text less operational. The only provision which specifically caters for the continued existence of two parallel decision-making procedures is Art. 228a, which describes how to proceed in order to impose sanctions.

What has been the effect on the ethos of foreign-policy making of the institutional changes introduced in the Maastricht Treaty? The result of negotiations to define the respective roles of the Political Committee and Coreper ended in a deal whereby Coreper performs its statutory right to engage in the final preparation of the Council’s agenda, there being a gentleman’s agreement that it would not seek to alter recommendations made by the Political Committee which fall within the competence of that body. However, any recourse by CFSP to EC instruments for the implementation of its policies naturally falls within the remit of Coreper. This means that for the old-type EPC activities, the Political Committee retains its autonomy, while for “mixed” activities the final word lies with Coreper. This is not in itself much of a change from the previous situation; what is more significant is that “mixed” activities play a much more important role than they used to, and that Coreper has set up a permanent structure to deal with the increased business.

This is the Group of Counsellors - permanent officials from the Permanent Representations who act in a way as the Antici group for CFSP. They advise the Ambassadors on the Community implications of CFSP proposals, whether financial, legal or institutional. In other words, they have taken over most of the institutional functions of the Group of Correspondents.

Although many of the Working Groups (EPC and Council) have been merged on paper, the merger has been less satisfactory in practice. The difficulty was one of combining the two cultures and bureaucratic populations. Who was going to chair the merged Group, the Presidency representative from the Permanent Representation, or the one from the home Foreign Ministry? A frequent compromise was for the Group to meet three times a month in the old Council composition, and once a month in the old EPC composition.

At the level of both the Political Committee and the Working Groups, the chief casualty has been the phenomenon of socialisation, with its beneficial effect on decision-making and the maintenance of solidarity. It was pointed out earlier that for socialisation to work, you have to socialise. The opportunities for this have been reduced. Since the Working Groups have met in Brussels (since the Single European Act) the practice of lunching together has been abandoned. Political Directors with experience of EPC have complained about the more formal atmosphere of CFSP in the Political Committee, and the bureaucratisation of the process as more and more experts present more and more voluminous reports. The increase in size of the CFSP Secretariat, its dilution within the Council Secretariat, the mixture of seconded diplomats and permanent Council staff and the importation of Council working practices has also contributed to this. In order to fend off criticisms that it was not meeting sufficiently frequently to be effective, the Political Committee has taken to meeting three times a month. The result is that the Political Director himself does not attend all the meetings, and sends his deputy to represent him. Inevitable given the Political Director’s other duties, the practice nevertheless contributes to the sapping of the EPC ethos. It was always going to be difficult to maintain the club atmosphere as more members joined; the practices introduced following the TEU have compounded the difficulties.

We thus see that the positive characteristics of EPC are in decline, while the negative

ones still exist and are being addressed in the IGC. Whereas traditional EPC-type activities are still conducted by the Political Committee in the old way, "mixed" activities are increasingly shifting towards Coreper. In the absence of clear rules, ways of working together have to be worked out in practice on the ground. This is sometimes a painful process, with deleterious effect on the credibility of the policies produced.

Legitimacy

This muddled situation is likely to persist as long as there is a stand-off between the supporters of the intergovernmental method and those whose creed is integration. The intergovernmental method, as General de Gaulle pointed out many years ago, is valid because it draws its legitimacy from the national democratic political process. The temptation for the integrationists is to construct a counter-legitimacy, also based on traditional democratic principles, which ultimately involves the responsibility of a European government before a European Parliament. The problem about this, so far as foreign policy is concerned, is that there is no halfway house on the way to a European Super-State. Independently of whether such a State is considered to be a good or a bad thing, few would deny that it is politically inconceivable for the foreseeable future. The likelihood therefore is that there will continue to be stalemate between the two schools, with positions hardening as matters of principle because of the requirements of the IGC negotiating process, instead of adjusting through pragmatic development as had previously been the practice in EPC. As we seem to be condemned to at least one more conference in the IGC series, and possibly several, the situation may remain unchanged for some time.

The flaw in the integrationists' argument is that it is based on the old-fashioned idea that legitimacy can only be conferred through the ballot-box. To escape from the dilemma of the CFSP, we should review the idea that legitimacy can also come from acceptance through the successful pursuit of policy goals enjoying popular support. Here we come across the Yugoslavia paradox: the EU had no policy with regard to former Yugoslavia, and that policy was a failure. CFSP policies only exist if they succeed. I would add that even successful policies will not gain acceptance unless they are publicised, something which CFSP has for structural reasons been very bad at.

This raises difficult questions about the nature of the EU and in particular of the CFSP, which imply a basic choice about the form of society. The CFSP will not work if it is seen as a Euro-version of national policies, for the simple reason that each Member State will try to ensure that it is its own national foreign policy which is adopted at European level - thus favouring the larger Member States to the detriment of the Community bargain. A new concept of the CFSP is therefore required. My own preference would be for a civilian policy, defined in terms of a new relationship with the United States, and concentrating on "macro-policies" - long-term structural policies concentrating on results over time. The policy would have to resist the temptation to fight unwinnable battles, and would need to publicize what it got right. This vision is built on the antithesis of most national foreign policies, and it is no coincidence that it strongly resembles the existing Community approach to external relations.

Whether or not the reader shares this vision, it is clear that a concept of EU foreign policy must be developed to bring out the added value as compared with national foreign policies. Without such a concept, there will be no alternative legitimacy, and the participants will resume their institutional battles.

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