

The European Union : from External Relations to Foreign Policy?

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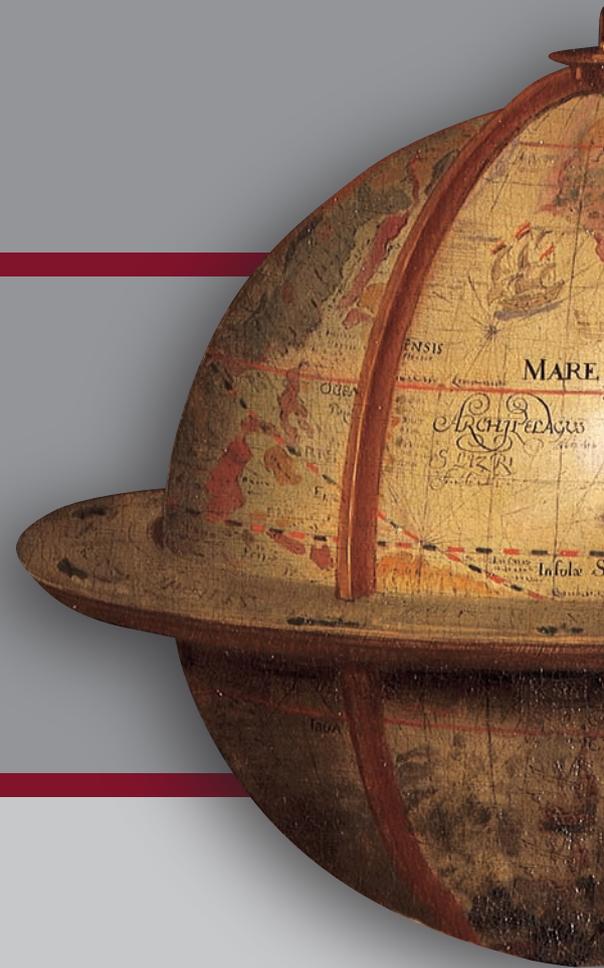


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Abstract

Assuming that the European Community has become a world actor in the field of external economic relations, is the European Union now to be considered, by way of the Common Foreign and Security Policy and the European Security and Defence Policy, as an actor in the field of (classical) foreign policy? The answer is that we are facing an evolving process with important and perhaps enduring specificities of the two facets of EU relations with the outside world. The following questions are addressed: What are the main features and the practical developments in the two fields? What is important, in this perspective, for the external action of the Union in the Constitutional Treaty of 2004? Should we define the EU as a civilian power? What is "European" in the European Security Strategy of December 2003?

Introduction¹

The suspense inherent to the question mark in the title "The European Union: from external relations to foreign policy?" is not comparable to the one offered by a thriller, either a film or a novel. Indeed (mostly) external economic relations as organised by the EC Treaty are part of foreign policy, including the classical, more "political" fields of foreign and security policy.

The distinction between low and high politics, that is external economic relations focusing mainly on trade and development but also on transport, fisheries, environment etc., and classical diplomacy, including the possible use of force, still has some justification but everybody agrees that it is a relative one. When the EU enters into negotiations with Russia for gas supply, is it low or high politics? Are the negotiations within the Doha Round in the WTO low or high politics?

Why is it that foreign policy analysts express such an intense interest for the nature and development of the foreign policy of the European Union? It obviously derives from the fact that in the family of international organisations, the EU/EC has a very special place. It is clearly not a state but it is not a classical international organisation either. Questions about, for example, treaty-making power of other international organisations, universal or regional, are mostly of a technical nature. The relations of the EU with the rest of the world are the projection and, in a way, the barometer of an original process of integration among states and peoples, which contrary to what happens in federations still preserves the international existence and legal capacity of its member states.

The European Community has started and developed as a unique experiment. Cremona uses the rather neutral expression of a "regional integration arrangement" to characterise the Union and she stresses that it has served as a model in other continents.² The role of law in this model is predominant. As Walter Hallstein, the first president of the EEC Commission, stated in 1965, the Community, based on law, has

¹ This paper is a revised version of the Inaugural Lecture of the Jean Monnet Chair at the Department of Economics, Free University of Bolzano, 9 November 2006.

² See Marise Cremona, "The Union as a Global Actor: Roles, Models and Identity", 41 *CMLRev.* 2004, pp. 553-573.

law as its main instrument.³ It means that contrary to states, it does not benefit from the so-called monopoly of legitimate constraint on its territory. It has no police and no army of its own and it relies on law in order to achieve its objectives. It consequently has built a legal order; it promotes the rule of law to a degree unknown in other international organisations; it develops democracy in its internal structure; it naturally projects its values in its relations with other states and international organisations; and it works as a “stabiliser” especially for its neighbours.⁴

A Community of values, it is also a Community of interests with a population of half a billion people, a GDP of approximately a quarter of the world’s GDP and a total of 20 percent of world imports and exports. When the EU/EC participates in (multilateral) negotiations, it automatically is one of the two or three most important players. The EU acts as the “engine of the multilateral system”.⁵ It inevitably influences its neighbours and the states in its periphery; it is a “market player”.⁶ And as the Commission observes, the EU has become a “key” and a “world” player.⁷ Javier Solana, in an inspired formula, declared in 2005 that “everywhere in the world I hear a need for Europe”.⁸

But the (economic) external relations of the EC are, as a matter of principle, separate from the Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP) of the Union under the present legal situation (i.e. under the Treaties as modified by the Treaty of Nice). The so-called “pillar system” finds its origins in an historical process of which I will recall the main stages up to the Constitutional Treaty. I will have a quick look at the different legal regimes of the two facets of foreign policy. Thereafter I will refer to the description made and the qualifications given to foreign policy and try to confront foreign policy analysis, law and politics in this debate. I will look at what is typically “European” in the foreign policy. I will conclude by some considerations on enlargement and foreign policy.

³ Parlement européen, Débats, 17 juin 1965, p. 220.

⁴ Cremona, *op.cit.*, pp. 558ff.

⁵ Mario Telò, *EU, Global Governance, World Order*, Palgrave Macmillan, 2006, pp. 58-64.

⁶ Cremona, *op.cit.*, pp. 555ff.

⁷ European Commission, “A World Player. The European Union’s External Relations”, ec.europa.eu/publications/booklets/move/47/index_en.htm (28 September 2006).

⁸ Javier Solana, Discours, Paris, 18 avril 2005 (author’s translation).

From the Rome Treaty to the Constitutional Treaty

The Treaty of Rome, concluded fifty years ago, endowed the EEC with an international legal capacity that, gives it the competence to conclude international agreements. The treaty expressly provides for tariffs and trade policy, association agreements with European countries as a preliminary stage before accession and the association of colonies (mostly African ones) soon to be independent. This resulted in the conclusion of agreements with a number of countries in different parts of the world (ACP and bilateral agreements).

Thanks to the progressive case law of the Court of Justice, the EC developed implied powers in the international field (famous ERTA judgment of 1971).

The EC has concluded hundreds of bi- or multilateral agreements, many of them jointly with its member states (so-called mixed agreements) when these agreements exceeded in some parts or were thought to exceed the international competence of the EC.

In 1969, the December summit decided a "*relance*" of the EEC, which included the will to progress on the way to a political union and to launch the so-called "political cooperation" in the field of foreign policy, starting on a purely informal basis with the creation of a committee of ambassadors for consultation and coordination. The Single European Act of 1986 included a chapter (article 30) on Political Cooperation but this intergovernmental process remained separate from the Community. It received a permanent secretariat.

The Maastricht Treaty of 1992 introduced the so-called pillar system. The Community pillar, the second pillar which included the very ambitiously defined CFSP, without introducing qualitative differences to the former political cooperation, and the third pillar on Justice and Home Affairs. The Commission and the Court had very limited to non-existent powers in the second and third pillars, the European Parliament was only to be kept informed and unanimity was the rule in the Council.

The 1997 Amsterdam Treaty introduced some important novelties. It broke up the third pillar, "communitarised" some aspects, introduced a bridge clause and

recognised a possibility of intervention of the Court of Justice in the field of cooperation in criminal and police affairs which remained in the third pillar. It created the function of High Representative for the CFSP and introduced an article 24 (made applicable by article 38 in the third pillar) which provided treaty-making power for the entire field of CFSP.

The 2000 Treaty of Nice brought some modifications in the second pillar. It recognised in particular the existence and the functions of a Political and Security Committee (article 25) and mentioned the ESDP, which has developed since the St Malo French-British Declaration of 1998 in parallel with the Treaty provisions.

The Constitutional Treaty includes important modifications such as the creation of the post of a Foreign Minister who would at the same time be Vice-President of the Commission, of a President of the European Council appointed for a renewable mandate of two years-and-a-half with, in particular, a representative function, and a joint external service. Article I-3 states the objectives of external action, and its principles are defined in article III-292, which covers all the aspects of external action in the "Community" and the CFSP/ESDP. Even if the intention was to remove the pillars, the CFSP/ESDP still present specificities such as the limited role of the Commission and the Court of Justice as well as of the Parliament and the importance of unanimity in the decision-making process of the Council.

So, on the one hand, there are external relations where the role of the Commission and the Court is important, the prerogatives of the European Parliament progressively increasing, and majority voting within the Council the rule. On the other hand, there is what has been considered as a separate category of competences⁹ that is due to remain specific and separate from the first pillar, although there are bridges between the two, especially in the civil management of crises. The development of a complementarity between the two external fields of action can be observed. An official French document of August 2006, entitled "*Guide de la PESC*", gives the following examples: the improved EU capability of confronting emergency situations, crises and catastrophes, the exchange of staff between the Commission and the Council secretariat, a unified representation of the Union

⁹ As far as the situation in the Constitutional Treaty is concerned, see "L'action extérieure de l'Union", by Barbara Delcourt, in *Commentaire de la Constitution européenne*, edited by M. Dony and E. Bribosia, Brussels, Editions de l'Université de Bruxelles, 2005, pp. 355ff.

through the merging of the functions of special representative of the Union and the delegate of the Commission, a more active and better coordinated communication policy that gives greater visibility to the whole of external action.¹⁰

If there are bridges between the first and the second pillars, foreign policy is also concerned with external aspects of internal security, the province of the third pillar. As a matter of fact, trans-pillar actions have been conducted by international agreements concerning police and judicial cooperation in the fight against terrorism.

The CFSP is not a common policy like the common commercial policy, based on an exclusive competence of the Community. There is not a "single" foreign policy at the level of the Union but it has evolved from a mere "declaratory" policy, that is, a series of common positions expressed by the Council or the European Council on many aspects of the international situation, to a more active policy through common operations including the possibility of the use of force if needed (the so-called Petersberg operations of which an updated list figures in article III-309 of the Constitutional Treaty). Javier Solana described the twelve crisis management operations in which the Union was involved in September 2006: "From Bosnia to Moldova and soon Kosovo in Europe, from Darfur to Congo in Africa, from Gaza to Iraq in the Middle East and in Aceh in Asia. We have also nine so-called EU Special Representatives, which are senior ambassadors working on some of the world's most pressing regional conflicts. Being present on the ground has helped to address our Achilles Heel: our inability to translate our large sums of money into political influence. It has also lead to a more serious mindset and the beginning of a common strategic culture."¹¹

Political Science Analysis of European Foreign Policy, Law and Politics

The specificity of the Union's position on the international scene has attracted a lot of interest on the part of specialists of international relations. They have attempted to

¹⁰ Ministère des Affaires étrangères, *Guide de la PESC*, p. 7, www.diplomatie.gouv.fr, (28 September 2006).

¹¹ See Javier Solana, "Europe's answers to the global challenges", University of Copenhagen, 8 September 2006, S245/06. On the intervention of the EU in civil crisis management see various authors, "Civilian crisis management: the EU way", ISS, Chaillot Paper, no. 90, June 2006.

integrate European foreign policy in a model of international actor: the “civilian power”, and they have described the complexity of it by defining it as a “system”. I will first make some references to this literature and then propose some critical comments.

The Row about the Union as a Civilian Power

The controversy on the nature of the Union (Community) in its relations to the world has been on the agenda since a famous article by François Duchêne in 1972,¹² and the debate has since then expanded into a multitude of scholarly contributions, especially by British, American and German political scientists.¹³ François Duchêne coined his definition with regard to the EC but the concept of civilian power was also used for Japan or Germany, two countries with limitations on their military forces.

The most radical vision of the “ideal type” of civilian power has been exposed by Karen Smith.¹⁴ She proposes the following definition: “A civilian power is an actor which uses civilian means for persuasion, to pursue civilian ends, and whose foreign policy-making process is subject to democratic control or public scrutiny: all four elements are important.”¹⁵

There are various particularly important points in such a definition: first, both the means and the objectives are due to be “civilian”, and the means precede the aims in the definition. Second, civilian is associated with persuasion which is opposed to coercion. Third, civilian is linked with democratic control and public scrutiny, another way of expressing both the legitimacy and accountability of the actors. One also could express reservations to the use of the word “power” that recalls for some the

¹² François Duchêne, “Europe’s role in world peace”, in Richard Mayne (ed.), *Europe Tomorrow: Sixteen Europeans Look Ahead*, London, Fontana, 1972, pp. 32-47.

¹³ See, among others, Christopher Hill, “The Capacity-Expectations Gap, or Conceptualising Europe’s International Role”, 31 *JCMS* 1993, pp. 305-328; Christian W. Burckhardt, “Why is there a public debate about the idea of a ‘Civilian Power Europe’? EI Working Paper 2004-02, October 2004, London School of Economics, European Institute; Christian W. Burckhardt, “Defining the Ideal-Type Civilian Power”, 2006; Bryan White, “Foreign Policy Analysis and European Foreign Policy”, FORNET Working Group I, London School of Economics, 7-8 November 2003; Richard Whitman, “The Fall, and Rise, of Civilian Power Europe?”, National Europe Center Paper, n°16, University of Westminster, 3-4 July 2002; Thomas Diez, “Constructing the Self and Changing Others: Reconsidering ‘Normative Power Europe’”, *Millennium: Journal of International Studies*, June 2005, pp. 613-636.

¹⁴ Karen Smith, “Still ‘civilian power EU’?”, European Foreign Policy Unit Working Paper 2005/1, London School of Economics.

¹⁵ Karen Smith, *op. cit.*, p. 5.

"*Europe Puissance*" which necessarily implies the possibility of using (some degree of) military force.

Not all the writers share the idea that not only the ends but also the means are to be "civilian" in order for an actor to qualify as civilian power. Jan Orbie defines civilian power in a rather sober way "as a power that uses its resources, hard power and soft power, in pursuit of material goals (interests) and normative goals."¹⁶ For some, like Stelios Stavridis, "thanks to the militarising of the EU, the latter may at long last act as a real civilian power in the world, an international force for the promotion of democratic principles."¹⁷ The same author emphasises that "the EU needs to become a civilian power 'by design' rather than a mere civilian presence 'by default', as it is now the case", and "thanks to the militarising of the EU, the latter may at the long last act as a real civilian power in the world: an international force for the promotion of democratic principles."¹⁸

The recourse to the concept of a "civilising power" proceeds from the same idea. It expresses, to quote an author who has intensively written on the matter, "the willingness to exert a form of cooperative leadership intended to civilise international relations", in other terms, an "attempt to civilise the international system by promoting the rule of law and by strengthening international institutions and regimes".¹⁹

If one follows this line, what distinguishes the "civilian" power from a "military" one? It is the fact that the recourse to force is submitted to "stringent conditions regarding the use of force promoting collective security, international legitimation and collective implementation".²⁰ It has been noticed that this standpoint raises questions about the legitimacy of so-called "humanitarian interventions" which could imply apparently arbitrary decisions as far as the country and circumstances are

¹⁶ Quoted by Edith Vanden Branden, "The role of the European Union in global environmental politics: green civilian power Europe?", Ghent University, 2006, www.keele.ac.uk/research/lpj/ecprsumschool/Papers/E.BrandeGnCivPower.pdf (28 September 2006).

¹⁷ Stelios Stavridis, "Militarising the EU: the concept of civilian power revisited", *The International Spectator*, Rome, 2001, n° 4, pp. 43-50.

¹⁸ *Ibid.*, p. 50.

¹⁹ Hanns W. Maull, research project on "Civilian Powers in International Relations: Germany, Japan and USA in Comparison", www.politik.uni-trier.de/forschung/workshop/CP-RP.htm (28 September 2006).

²⁰ Maull, *op.cit.*, p. 2.

concerned and apply in general to small and weak countries. Very often, the suspicion arises about the concealed true motives of the intervention. The right of "*ingérence humanitaire*" appears to be contrary to the prohibition of the use of force if it is not for self-defence or in a collective action decided under chapters VI and VII of the UN Charter.

The Description of the "Complex and Unique" Policy Domain

Many authors describe European foreign policy as a "system"²¹ and at the same time they underline its "fragmented" character. For example, Bryan White distinguishes three "forms or types of activity":²²

1. the (economic) external relations: the EC foreign policy,
2. the CFSP: the EU foreign policy, and
3. the foreign policy of the member states.

He rejects the view of the EU as a single actor and claims that "the EU is more appropriately analysed as a non-unitary or disaggregated entity in world politics".²³ The link between member states and European policy is seen as a two-way process, a "reciprocal relationship".²⁴ The main message is that European foreign policy is neither only shorthand for the collective foreign policy of the member states nor is it simply EU or EC foreign policy. Within the CFSP, the distinction is made between the action of the EU as a delegate of the member states and the action of the member states as it is coordinated under the CFSP process.

Sometimes, authors add the foreign policy among the member states as a part of European foreign policy, the so-called "internal foreign policy", which could seem paradoxical because we are speaking here of the relations with the outside world of an entity, the Union, with a fully fledged (EC) and emerging (EU) international capacity.

²¹ Christian Kaufholz, "Thinking Outside the Box : The EU as a Foreign Policy System", LES European Foreign Policy Conference, 2-3 July 2004. See also the references in Jordi Vaquer i Fanes, "Europeanisation and Foreign Policy", Institut Universitari d'Estudis Europeus, Barcelona, Obs, Working Paper, n° 21, April 2001.

²² Brian White, *op.cit.*, p. 5.

²³ *Ibid.*

²⁴ Ben Tonra, quoted by White, *op. cit.*, p. 16.

Some Comments on Foreign Policy Analysis

First of all, I would like to focus on the difference between the concept of a system of European foreign policy and **EU** foreign policy. It is true that the pillar system and what will remain of it in the Constitutional Treaty is detrimental to the view of the EU as a unitary entity or as a single actor. But this cannot conceal the achievements of the EC/EU in the field of foreign policy. There is not only a spectacular development of EC external relations but also an ever-increasing development of joint or coordinate actions in the field of CFSP and ESDP, with its sometimes important failures, as in the case of the Iraq war. It must be clear, in spite of the frequent invocation of the merits of diversity also in this field that unilateral actions of the member states on the international scene in a matter declared as common interest are detrimental to the assertion of the EU in the world. It is contrary to its long-term efficiency. As Hubert Védrine, the former French Foreign Minister remarks, "although Europe's international partners of course have to talk to Brussels, whether with the Commission or with Javier Solana ..., where and when they can also take advantage of the diverging positions of Britain, Germany, France or other member states by playing one off against the other."²⁵

It is important for the Union to act as an entity, and the expression of this requirement is the attribution of legal personality, as provided for the Union as a whole in the Constitutional Treaty, with the classical attributes of such personality as concluding agreements, participating in and having a single seat in international organisations, developing diplomatic relations, and acceding to forms of peaceful dispute settlements. In order to illustrate this point, I would say that the perspective of having for the Union a single seat in the UN Security Council is not an impoverishment in the defence of our collective interest but the only way to have a coherent foreign policy. This objective should cease to remain a purely rhetorical formula. As a minimum, there should be no contradiction among EU members in the external expression of policy attitudes on questions of common interest. As Javier Solana observed in 2002: "To put it bluntly, Europe can choose to speak with a single voice, or Europe can decide not to be heard."²⁶ In October 2005, he repeated: "There is a compelling case for Europe to really speak with one voice so that our interlocutors

²⁵ Hubert Védrine, "How others see us: Policy lessons for Europe", *Europe's World*, autumn 2006, n° 4, pp. 14ff.

²⁶ Javier Solana, "Shaping an effective EU foreign policy", Speech, Brussels, 19 February 2002, S0025/02.

get a clear view of what Europe wants".²⁷ It is irresponsible to defend the view, as it has been done, that a diversity of opinions and policies at the international level could be a source of strength. The EU is seen as a global actor, perhaps in anticipation, by the outside world. Two authors do not hesitate to proclaim that "It is clear that, as far as the UN is concerned, the EU is in business as a single actor."²⁸

Second, it is also clear that there are two different approaches at the basis of the concept of civilian power: a "realist" and a "normative" one. And this opposition covers different views on the possibility or the need for Europe to have a military capacity.

For the "realists", the EU, not being a state and depending on others for its defence, cannot have the military attributes of a state. It is condemned to be virtuous because it is weak and it will remain so. It is a view forcefully expressed some years ago by American neo-cons like Robert Kagan in his distinction between Mars and Venus, the conversion of the Europeans to Venus being a rather new factor if one looks at the wars of the past.²⁹ The peace-oriented post-World War II (Western) Europe has replaced the Wilsonian post-World War I USA, perhaps with the same lack of results.

For the "normative" school, the Union should not be a military power in the meaning of a (potentially) aggressive power ("*Machtstaat*"³⁰), and it has to make the best of its exceptional experience of integration, projecting the vision of a Union of values on the external scene. But, as many authors admit, the Union as a civilian power should be able to use force for the defence of these values.

The Union has indeed been endowed with a relatively limited military capacity. We are still paying the price for the failure of the European Defence Community in 1954. In the present situation, the EU seems to be reaching the physical limits of

²⁷ Javier Solana, Speech at the inauguration of the academic year of the College of Europe, 19 October 2005.

²⁸ Kennedy Graham with Tania Felicio, "Regional Organisations and Collective Security: the Role of the United Nations", in *The European Union and the United Nations. Partners in effective Multilateralism*, ISS, Chaillot Paper, June 2005, n° 78, pp. 83ff.

²⁹ Robert Kagan, *Of Paradise and Power: America and Europe in the New World Order*, New York, Knopf, 2003.

³⁰ Adrian Hyde-Price, "The EU, Power and Coercion: From 'Civilian' to Civilising' Power", CIDEL Workshop, Oslo, 22-23 October 2004.

intervention implying the possibility of the use of force. If, as Solana said in a speech of September 2006, “without Europe no expanded UNIFIL and without UNIFIL no hope for a more permanent peace”³¹, one has to remember that the member states have sent the troops to Lebanon, working under UN command. The EU is still far from disposing of a force of 60.000, the so-called “EU Rapid Reaction Force”. When it conducts a military operation, the EU has to rely on NATO capacities under the “Berlin Plus” arrangements. Hanns W. Maull has summed up the situation of Europe vis-à-vis the US in the following dramatic words: “From the beginning of the Cold War and beyond its demise, the US has been serving as the (free) world’s government by default. The EU has been acting broadly as its junior partner – no less, but also not much more.”³² The question is not about breaking the Atlantic Alliance but about rebalancing it in favour of the Union. But it is a long time ago since John Kennedy evoked “the two-pillar alliance”.³³ And perhaps NATO is no longer the best framework for transatlantic cooperation, as suggested by the former Belgian Permanent representative, Philippe de Schoutheete.³⁴

Indeed, defence should also be a concern for the Union. To be sure the Cold War is over but that does not mean that there is no need for a defence policy of the Union. The Maastricht Treaty in article 17 §1 TEU (cf. also article I-16 §1 of the Constitutional Treaty), defines the CFSP as including “the progressive definition of a common defence policy, which could lead to a common defence, if the Council so decides”, a decision which would require a ratification by the member states under their constitutional procedures. The Belgian Prime Minister Verhofstadt recently supported the idea of a common defence in his pamphlet on “*The United States of Europe*”.³⁵ We still live in a Hobbesian world where the question raised by Stalin about the number of military divisions under the command of the Vatican keeps some validity.

³¹ Javier Solana, “Europe’s answers to global challenges”, speech, 8 September 2006, Copenhagen.

³² Hanns W. Maull, “Why Europe must hang together”, in *Dragons, Elephants and Tigers: adjusting to the new global reality*, EPC, Challenge Europe Issue 15, September 2006, pp. 84-85.

³³ Hubert Védrine, “How others see us: policy lessons for Europe”, *Europe’s World*, autumn 2006, p. 18.

³⁴ Philippe de Schoutheete, “*La cohérence par la défense. Une autre lecture de la PESD*”, Chaillot Paper, 2004, p. 88.

³⁵ Guy Verhofstadt, *The United States of Europe*, Federal Trust, 2005, chapter 9.

What is “European” in the EU Foreign Policy?

In order to answer this question, I will rely on four documents with different legal status, two from the EU and two from the US. I will start with the European ones. The first is the Constitutional Treaty, which in its articles I-3 and III-292 lists the objectives of the so-called “external action” of the Union and emphasises the importance of values such as democracy, the rule of law, universality and indivisibility of human rights and fundamental freedoms, the respect of human dignity, the principles of equality and solidarity and, last but not least, the respect for the principles of the UN Charter and international law. In the same spirit, the text favours multilateral solutions to common problems, in particular in the UN framework. These principles, that are not all new in the treaties, are common to all aspects of “external action”, both EC and CFSP. What is new is the accent on multilateralism and the insistence on the importance of international law. The addition of principles that should inspire external action demonstrates the fundamental normative feature of EU foreign policy. It is not insignificant that the text was drafted by the Convention on the future of Europe at the time (2003) when the US invaded Iraq.

The second European document is the “*European Security Strategy*” (ESS), with the revealing subtitle “*A Secure Europe in a Better World*”.³⁶ The document was preceded by a communication of the Commission of 10 September 2003 with the explicit title “The European Union and the United Nations: the choice for multilateralism”.³⁷ This communication pleaded for the Union to adopt a determined “front-runner” approach to the negotiation and implementation of important UN initiatives in the fields of sustainable development, poverty reduction and international security, taking a more active approach to the development of international instruments and specific EU implementation actions.

The ESS was adopted on a proposal of the High Representative in December 2003, thus after the adoption of the draft constitution but before the end of the IGC. It describes among the main challenges weapons of mass destruction, terrorism and

³⁶ European Council, *European Security Strategy*, 12 December 2003, ue.eu.int/uedocs/cmsUpload/78367.pdf (28 September 2006).

³⁷ This document after its approval by the Troika became “The enlarging EU at the UN: Making multilateralism matter”, April 2004, www.ec.europa.eu/comm/external_relations/library/publications06_eu-un_en.pdf (28 September 2006).

regional conflicts. This document is perfectly in line with the principles listed in the Constitutional Treaty. It favours an international order based on effective multilateralism and puts forward the objective of building a stronger international society, well functioning international institutions and an international order based on a series of rules. The same accent is set as in the Constitutional Treaty on the defence and development of international law and the allegiance to the UN Charter. The primary responsibility of the Security Council for maintaining peace and security is reaffirmed as well as the priority for Europe to strengthen the UN. The role of other international organisations is also stressed such as the WTO and the international financial institutions. The ESS mentions the support to new institutions like the International Criminal Court (ICC). It claims that democratic well-governed states are the best protection for our security. It emphasises the role of trade and development policies as powerful instruments for promoting reforms.

All these points and others are typical for the objectives a civilian power is supposed to aim at on the international scene. It also stresses the importance of a more capable Europe and mentions the creation of a defence agency as a step in the right direction. "Systematic use of pooled and shared assets would reduce duplications, overheads and, in the medium-term, increase capabilities."³⁸ The document also notes the importance of the transatlantic alliance and it especially mentions the EU-NATO permanent arrangements, in particular Berlin Plus, which "enhance the operational capability of the EU and provide the framework for the strategic partnership between the two organisations in crisis management".³⁹ Commenting on the future European Security Strategy, a month before its final adoption, Javier Solana remarked: "Europe has to be prepared to contribute vigorously to extending the scope of international law, to strengthening the institutions of World governance and to developing closer regional cooperation."⁴⁰

The other two documents are both on "The National Security Strategy of the USA" (NSS), the first of September 2002 and the second of March 2006.⁴¹ These documents and more so the first one are typical of what was called American exceptionalism

³⁸ European Council, *European Security Strategy, op.cit.*, p. 12.

³⁹ *Ibid.*

⁴⁰ Javier Solana, "The EU Security Strategy. Implications for Europe's role in a changing world", Berlin, 12 November 2003, S0230/03.

⁴¹ For 2002 www.whitehouse.gov/nsc/nss/2002, and for 2006 www.whitehouse.gov/nsc/nss/2006 (28 September 2006).

and unique responsibility. The 2002 document claims for the US “a distinctly American internationalism that reflects the union of our values and our national interests”, a preference for multilateral action but a strong affirmation of the right to act alone if needed.⁴² “While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting preemptively against such terrorists, to prevent of doing harm against our people and our country”.⁴³ The document is keen to extend the conditions for preventive action: “We must adapt the concept of eminent threat to the capabilities and objectives of today’s adversaries”.⁴⁴

The later document includes less theory and appears less aggressive in its affirmation and justification of US action but the overview of America’s National Security Strategy starts with this unambiguous statement: “It is the policy of the US to seek and support democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in our World.”⁴⁵ This is the objective that the hegemonic hyperpower US assigns to itself. It includes action, if necessary military, against “rogue” or failed states. This vision is clearly inspired by the principles common to the diverse forms of neo-conservatism.⁴⁶ From these principles, two are relevant: “A belief that American power has been and would be used for a moral purpose and that the US needs to remain engaged in international affairs” and “skepticism about the legitimacy and effectiveness of international law and institutions.”⁴⁷

When looking at the civilian power concept and the European documents, the importance of the commitment to values in foreign policy is noticeable. This feature is common to the US and Europe but instruments to achieve the objectives and the limits of military actions are very differently conceived.

Of course, the strategy as expressed in the EU December 2003 document develops the way the member states and the institutions see the ideal configuration of the

⁴² NSS 2002, *op.cit.*

⁴³ *Ibid.*, p. 6.

⁴⁴ *Ibid.*, p. 15.

⁴⁵ NSS 2006, *op.cit.*, p. 1.

⁴⁶ Quoted by Veronika Necasova, “‘After the Neocons: America at the crossroads’, by Francis Fukuyama”, NATO Defence College, Academic Research Branch, Research Note n° 2, September 2006.

⁴⁷ *Ibid.*, p.2.

Union's external action. One can discuss the conformity of all policies and actions to the strategy. The EU has intervened in the Kosovo conflict in the framework of NATO without a UN Security Council mandate. And some have found the criticism by many Europeans of the war in Iraq hypocritical, alleging that the EU itself is not irreproachable. On the other hand, the trust in multilateralism and UN action is considered as naïve, taking into account the difficulty to reach a unanimous vote among the permanent members of the Security Council. One can reply to these objections that the Iraq invasion by the US and the intervention during the war in Kosovo are not comparable, neither in scale nor in the motives invoked. The recipe for the paralysis of the Security Council is in the better integration of both Russia and China in the international system. It is not an easy task but one can view the recourse to negotiations as it happened, under European pressure, with Iran, as a necessary stage before sanctions, although a moment could come when they are unavoidable. One could also observe that contrary to the Europeans, the US government has demonstrated on several subjects (Kyoto Protocol, ICC,⁴⁸ the attitude towards the International Court of Justice, Guantanamo, recourse to torture, etc.) a *de facto* reluctance towards international law, in conformity with its vision of responsibility for peace and security in the world. But perhaps pessimism is not allowed when thinking about the future orientation of US foreign policy. It is not far fetched to already notice some development. The way the US has managed the crises with Iran and with North Korea is encouraging whatever the motivation of such a relatively new approach. It is indeed possible to think that the European attitude has had some influence on the policy of the US government.

On the other hand, it is to be hoped that the policy of the EU will remain coherent with the strategy it has defined. But the choice made by the Commission for negotiating bilateral trade agreements with India and South Korea without concentrating its efforts in order to give a last chance to the Doha Round within the WTO is not in line with its preference for multilateral solutions and the promotion of international institutions. The same could be said concerning the defensive and unimaginative attitude adopted by the EU for the reform of the international financial institutions.

⁴⁸ On the International Criminal Court, see in particular, NSS 2002, *op.cit.*, p. 31.

Conclusions: A Foreign Policy in an Enlarged Union

According to Christopher Hill, "It is difficult to see how the transformation of the EU into a 25-member system, with at least eight states still enjoying the recovery of their national independence, can in the short run avoid making foreign policy coordination a looser and more competitive process. Indeed, there is some risk that in terms of international relations, the EU will become more of a framework organisation, like the OSCE, than the action organisation it aspires to."⁴⁹ And he predicted that "the almost inevitable consequence would be a strengthening of the tendency to form inner groups, particularly of the more powerful states."⁵⁰

Too many states but also too many issues and subjects which are not of common interest for all the states present around the Council's table, are problems accentuated by the 2004 and 2007 enlargements.⁵¹ Geoffrey Edwards also commented that "Most of the new Member States were very much more preoccupied with territorial defence and a collective memory of Soviet domination".⁵² The paucity of references to Russia in the European Security Strategy paper was a cause for concern since "Russia has always been the litmus test for Polish public opinion and politicians of European foreign policy ... It will be hard to convey to the Polish public that 'the resolution of the Arab/Israeli conflict is a strategic priority for Europe', but Russia's policy on the Caucasus is beyond the main scope of the ESS."⁵³

To illustrate the multiplicity of issues that can be on the agenda of a meeting of a working group of the Council, Stephan Keukeleire refers to the Working Group on Africa of 13 September 2006: "During this meeting, the WG had to discuss: Sudan, DR Congo, Burundi, Ivory Coast, Somalia, Malawi, Madagascar, Togo, the progress report on the joint EU-Africa strategy, the EU's concept for strengthening African capabilities for the prevention, management and resolution of conflicts, the

⁴⁹ Christopher Hill, "EU Foreign Policy since 11 September 2001: Renationalising or Regrouping?", First annual guest lecture in the 'Europe in the World' series, University of Liverpool, 24 October 2002, pp. 27-28.

⁵⁰ *Ibid.*

⁵¹ Stephan Keukeleire, "EU Core Groups: Specialisation and Division of Labour in EU Foreign Policy", CEPS Working Document, n° 252, October 2006.

⁵² Geoffrey Edwards, "Is There a Security Culture in the Enlarged European Union?", *The International Spectator*, 2006, n° 3, pp. 7ff, 19-20.

⁵³ *Ibid.*, quoting an article by O. Osica.

Commission Communication on Governance (as part of the EU strategy for Africa), and the EU Electoral Observation Programme for 2006 and 2007.”⁵⁴ The danger is a dispersion of the actions, with both the budget and the capabilities being limited.⁵⁵ There is a risk of incoherence when so many questions have to be resolved.

To face these problems, the Commission proposes some lines of action in its communication of June 2006 “Europe in the World – Some Practical Proposals for Greater Coherence, Effectiveness and Visibility”.⁵⁶ It underlines that “the success of EU external action depends on three main factors: first and foremost, political agreement among Member States on the goals to be achieved through the EU. This requires a strong partnership between the EU institutions and a clear focus on a limited number of strategic priorities where Europe can make the difference, rather than dispersing the efforts across the board. This is a condition *sine qua non*; second, whether the available policy instruments are suited to the task at hand, and backed with the necessary resources, and present clear advantages; third, the role and the responsibilities of the EU institutions and the legal environment.”⁵⁷ These are common sense ideas but not easy to put into practice.

The Belgian Foreign Minister Karel De Gucht has more radical views on the subject which he exposed in a speech in Helsinki in 2005⁵⁸ and Keukeleire has made a more elaborated presentation of similar proposals in a contribution called “EU Core Groups: Specialisation and Division of Labour in EU Foreign Policy”.⁵⁹ His aim is to avoid mutual obstruction by states having what he calls “uncommon interests”.⁶⁰ He notices the growing irrelevance of the Council and the working groups of the Council and he proposes a system of core groups of three member states or more. Participation in these groups would have to respect the Union’s law by both, the staff of the High Representative and the Commissioner. Such groups would be formed for “the many foreign policy domains that are situated slightly lower on the international

⁵⁴ Keukeleire, *op.cit.*, p. 6.

⁵⁵ Edwards, *op. cit.*, p. 22.

⁵⁶ Communication from the Commission to the European Council of June 2006, “Europe in the World – Some Practical Proposals for Greater Coherence, Effectiveness and Visibility”, 8 June 2006, COM(2006) 278 final.

⁵⁷ *Ibid.*, p. 5.

⁵⁸ Karel De Gucht, “Towards greater effect and appeal – Strengthening EU foreign policy”, speech in Helsinki, 27 October 2005, quoted by Keukeleire, *op. cit.*, p. 2.

⁵⁹ Keukeleire, *op.cit.*

⁶⁰ *Ibid.*, p. 3.

agenda and that are considered of major importance by only a limited number of Member States".⁶¹ They would be "created by a political agreement rather than through a formal legal agreement or legal mandate by the Council."⁶² The groups cannot bind the Union as a whole and they cannot decide "when actions fall under the formal competences of the EC or EU" because then "the formal decision-making procedure should be followed."⁶³ This does not prevent Keukeleire from admitting the possibility of appeals to the Court for annulment of the acts of the core groups under article 230 EC Treaty, although their existence is based on a political agreement and are neither Union nor Community organs, and their acts are not decisions of the institutions, adopted under the EC Treaty, the sole acts to be possibly controlled by the Court under article 230 EC. Apart from these (serious) legal problems that reveal the true nature of these core groups as types of informal collaborations outside the treaty, one can ask what the contribution of these "acts" to the building of a EU foreign and security policy is. I would understand their intervention in the preparation of the deliberations of the working groups of the Council and of the Council itself, which is already the case but which happens quite informally with the participation of neither the Commission nor the High Representative. I am not convinced of the merits of excluding the enhanced cooperation procedure, as Keukeleire does, in favour of the creation of core groups.

Speaking with Maull, I would say that the most promising route for Europe would be "assuming leadership in collective efforts to build a new sustainable order on the foundations of what we have today."⁶⁴ Or, as a group of economists writes in a paper prepared for the Finnish Presidency on "The EU and the governance of globalisation": "Europeans have rarely set the agenda. They have often responded to new developments in a reactive manner".⁶⁵ Now "European policy makers should be ready to assume the responsibilities that shifting patterns of leadership may imply for them."⁶⁶

⁶¹ *Ibid.*, p. 8-9.

⁶² *Ibid.*, p. 9.

⁶³ *Ibid.*, p. 10.

⁶⁴ Hans W. Maull, "Why Europe must hang together?", *op.cit.*, p. 87.

⁶⁵ Alan Ahearne, Jean Pisani-Ferry, André Sapir and Nicolas Véron, "The EU and the governance of globalisation", Bruegel Working Paper, n° 2006/02, p. 31, www.bruegel.org (28 September 2006).

⁶⁶ *Ibid.*

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