The European Union's Common Foreign and Security Policy: Emerging from the U.S. Shadow

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THE EUROPEAN UNION'S COMMON FOREIGN AND SECURITY POLICY: EMERGING FROM THE U.S. SHADOW?

Elizabeth Shaver Duquette*

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INTRODUCTION

Since their inception, the European Communities have focused not only on building economic ties between their Member States, but also between the Member States and the outside world as a means of achieving credibility and prominence. Unfortunately, economic achievements, such as the common market and the single currency, have not been paralleled by political achievements in the relations between the Communities and the rest of the world. For example, the European Union (Union) is a major contributor of international development and humanitarian aid throughout the Middle East, the former Soviet Union, Central and Eastern Europe, and numerous developing countries. To date, however, Europe's monetary contributions have not been matched by political action in the form of peacekeeping or the promotion of human rights and democratic principles, as Europe lacks a comprehensive and cohesive foreign policy. If it intends to become a leading force in international affairs, the European Union needs to complement its economic world influence with an effective security capability.

After the end of the Cold War, the risk of war in Europe lessened, but long simmering regional conflicts re-surfaced. The Common Foreign and Security Policy (CFSP) of the European Union aims to unite the Member States with the hope of better enabling the Union to address new security challenges. The CFSP touches on the heart of national sovereignty because its goal is the unification of European foreign policy. There is much debate on how much, if any, sovereignty the Member States have handed over to the European Community for matters falling under the European Community Treaty. However, there can be little doubt that foreign policy, and in particular defense policy, pinpoints even more centrally the core of a nation's concept of control. This "Europeanization of a core area of national sovereignty" is a necessary consequence if the Union wants an effective common front on the international scene.

The focus of this article is whether it is realistic to expect the Union to be an effective international actor in the field of foreign and security policy. More specifically, does it have the necessary tools, such as a workable institutional structure and an effective decision making process, to become a major player in global security issues? As most of the Member States are members of the North Atlantic

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Treaty Organization (NATO), comparing decision making procedures within both frameworks is instructive on how effective a collection of states can be in the international arena. The Union will be successful in its Common Foreign and Security Policy only if it has the ability, both practically and politically, to accomplish its goals. And, if the Union can execute a unified defense policy, it must then re-think its role within, and possibly separate from, NATO.

I. ORIGINS OF THE COMMON FOREIGN AND SECURITY POLICY

A. European Political Cooperation

For decades the Member States of the Community have cooperated in foreign policy, even beyond the scope of the Community Treaties. In 1970, six Member States established through the Luxembourg Report the European Political Cooperation (EPC), which was then formally adopted by the foreign ministers in the European Council. The EPC was purely an intergovernmental process through which the Member States agreed to cooperate in the field of foreign policy by consulting each other regularly and, when possible, harmonizing their views and instituting joint actions. As an intergovernmental process, the EPC took place entirely outside the Community institutions and was intended to unify Europe politically, as distinct from economic unification. Indeed, the subject matter of the EPC was beyond the scope of the Community treaties and, therefore, outside the jurisdiction of the Community institutions. Throughout the years it achieved agreed declarations of policy, common negotiating positions, coordination at international conferences, some common actions, and cooperation on the ground between Member States in their various overseas missions. The overall purpose of the EPC was to maximize the influence of the Member States on the international scene. The Member States believed that they could be more influential if viewed as a bloc.

The EPC evolved from a vacuum and a perceived need for European unity in foreign affairs. The Treaty of Rome, which formed the European Economic Community in 1958, did not entertain foreign policy ambitions. Its focus on economic policy was considered "low politics," leaving the "high politics" of foreign policy, which symbolized the core of national sovereignty, to loose forms of coordination through intergovernmental consultation within the framework of the EPC. By creating these discrete camps, the Member States intentionally and strictly separated the low politics of economics from the high politics of foreign

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4 NATO currently has nineteen member countries. Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom and the United States founded NATO in April 1949. Greece and Turkey joined in 1952, the Federal Republic of Germany joined in 1955, Spain joined in 1982, and the Czech Republic, Hungary and Poland joined in 1999.


6 Schmalz, supra note 3, at 422.
policy. As the EPC developed, however, the European Council became more involved, causing the line between the EPC and the Community to fade. The dividing line blurred further when the EPC attempted to control a third state's activities by imposing economic sanctions. The Member States quickly realized that to be a truly international actor, there would have to be closer ties between their economic and political external policies.

B. The Single European Act

In 1986, under the Single European Act (SEA), the EPC acquired a treaty foundation. In Title III, the SEA set out the framework for the EPC and thereafter the Member States coordinated their foreign policy within the parameters of the SEA. The broad scope of the EPC, stated as "any foreign policy matter of general interest" made this task easier. The EPC was never intended to be the basis for autonomous action; rather, the Member States would execute EPC action as a "cohesive force."

The SEA, while providing a treaty basis for the EPC, did little more than codify the existing, dualist practice. Rather than attempting to unite foreign policy and economic goals, the SEA created separate titles to govern each subject, thus emphasizing the intergovernmental nature of Title III. Although the SEA imposed new obligations on the Member States to inform and consult each other on foreign policy matters, in practice the commitments were weak. As before, common positions were products of consensus of which Member States were only required to take "full account." So that there was some awareness between the Member States' foreign and economic policies, the SEA required that Community external policies and EPC policies be consistent.

In spite of the voluminous criticism, the SEA successfully involved the Community institutions in the EPC process directly. For example, the Commission was charged with ensuring consistency between foreign and economic policy. The SEA also directly associated the European Parliament with the affairs of the EPC. The problem was, however, that none of the other Community institutions had any power in the EPC process. In sum, the SEA aligned Community and EPC processes without transferring any significant power over foreign affairs from the Member States.

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7 HARTLEY, supra note 5, at 24.
8 Schmalz, supra note 3, at 422.
10 Id. at art. 30(2)(a).
12 Schmalz, supra note 3, at 423.
13 Eileen Denza, Groping Towards Europe's Foreign Policy, in INSTITUTIONAL DYNAMICS OF EUROPEAN INTEGRATION 578 (Curtain & Heukels eds. 1994).
States to the Community institutions. In effect, it only added structure to an entrenched pattern of diplomatic dialogue.

II. THE CFSP: HOW IT WORKS

A. The Three Pillars

On November 1, 1993, the Maastricht Treaty, known as the Treaty on European Union (TEU), created the European Union.14 The Union is composed of three pillars, the first of which includes the European Community, the European Coal and Steel Community and the European Atomic Energy Community. Title V of the TEU covers provisions on the Common Foreign and Security Policy, also known as the Second Pillar, and replaces Title III of the SEA.15 In effect, Title V absorbed the EPC. Title VI of the TEU covers provisions on police and judicial cooperation in criminal matters, known as the Third Pillar.

The Member States' idea that there could ever be a truly common foreign policy may have been an aspiration backed by desire rather than genuine intent. Unlike the First Pillar, the Second and Third Pillars are essentially formalized intergovernmental cooperation, as was the original EPC. Critics argue that although the CFSP boasts a modified institutional and legal framework, it still lacks aptitude for impact due to the reality that the success of the CFSP is totally dependent on the political will of the individual Member States6 because they refused to grant the CFSP the supranational status held exclusively by the Community.7 In fact, it was important to the Member States that their ability to conduct national defense remained largely unchanged.8 Thus, similar to the structure of the EPC framework, the Community and the CFSP exist as wholly independent actors, although within a common legal framework. Some argue that because the CFSP is intergovernmental, it is nothing more than another rhetoric filled codification of the EPC with an equally dim prospect for effective action.

Even accepting that the CFSP was largely a codification of EPC practice,9 it still introduced important changes. Overall, Title V of the Treaty on European Union sets out a more developed framework that reaches a wider scope of issues. Additionally, unlike the EPC, the Title V lays the foundation for autonomous Union action, as opposed to action by the Member States individually.10 The fact

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15 Article 50(2) TEU repealed Title III of the SEA and replaced it with Title V of the TEU.
17 Schmalz, supra note 3, at 421.
18 CFSP website, supra note 1.
20 Cremona, supra note 11, at 251–52.
that the EPC evolved into the CFSP shows that there was a shift in the Member States’ emphasis on national control to one of “Europeanization.”\textsuperscript{21} While the Member States were not ready to fully integrate their foreign policies, they were willing to align them more closely. Through the CFSP, the Member States have the capability to speak with one voice on foreign policy and security issues, which should enable the Union to acquire greater international influence.\textsuperscript{22}

\textbf{B. The Institutional Actors}

As the Common Foreign and Security Policy evolves, its methods of implementation develop in tandem. Under Article 23 of the Treaty on European Union, the three pillars share a common institutional framework that is designed to “ensure the consistency and continuity of the activities carried out in order to attain its objectives.”\textsuperscript{23} The CFSP, however, is not implemented in the same way as other Community policies, such as agriculture or environmental protection. Because foreign policy and security go to the heart of a nation’s sovereignty, the Member States purposely restricted the powers of some Community institutions, as discussed below. Additionally, the Union must implement the CFSP with specific instruments, as opposed to the more general legal instruments, like directives and regulations, available for other Community policies. The European Council, which is not a Community institution,\textsuperscript{24} is composed of the heads of state or government of the Member States and the President of the Commission. Acting by consensus, it defines the “principles and general guidelines” and devises common strategies for the CFSP, including defense related matters.\textsuperscript{25} As a non-Community institution, the European Council is removed from the daily activities of the Union; however, its lofty composition ensures that the political direction and decision making leadership of the CFSP comes from the highest levels of government in each Member State.

Although the Council of the European Union (Council) acts under the overall direction of the European Council, the Council itself is responsible for the daily operations of the Common Foreign and Security Policy. It is empowered to define and implement the CFSP through common positions and joint actions and to recommend common strategies to the European Council.\textsuperscript{26} It also has the duty to ensure the “unity, consistency and effectiveness” of action by the Union.\textsuperscript{27}

\begin{footnotesize}
\begin{enumerate}
\item Schmalz, supra note 3, at 424.
\item CFSP website, supra note 1.
\item This article will use the new treaty numbering that came into effect on May 1, 1999 with the Treaty of Amsterdam. All Treaty references are to the Treaty on European Union, unless otherwise noted.
\item The European Council was created in 1974, but the TEU was the first treaty to describe its role and define its official function within the European Union.
\item Id. art. 13.
\item Id.
\item Id.
\end{enumerate}
\end{footnotesize}
Commission’s role is limited, but strong. It must be “fully associated” with the operation of the CFSP,\(^{28}\) has a right of initiative equal to the Member States\(^{29}\) and is a permanent member of the rotating Troika,\(^{30}\) making it well-positioned to ensure consistency between the Union’s three pillars. Specifically, the Commission must ensure that the CFSP policies are consistent with Community external economic relations and development cooperation.\(^{31}\) Finally, the European Parliament has only limited involvement in the CFSP. The Presidency must keep the Parliament informed about CFSP matters and must consult it on basic CFSP policy choices.\(^{32}\) Parliament does not have, however, a formal right to be consulted before the Union takes CFSP decisions, nor does it have any control over the Western European Union (WEU), the defense body that brings together the European members of NATO.\(^{33}\) Parliament’s main avenue for participation is through making non-binding recommendations to the Council. Such a limited role for the Parliament has invited the well-worn criticism of the Union generally that the CFSP also suffers from a democratic deficit.\(^{34}\)

It is important to note that the institutions’ competencies will vary considerably depending on the pillar under which their powers are exercised.\(^{35}\) As an extra measure of caution, Article 47 anticipates a possible overlap between the CFSP and the powers and activities of the Communities and, in effect, protects the Communities from CFSP encroachment. Although the European Court of Justice has no general jurisdiction over the Second or Third Pillar, it does have jurisdiction to determine the dividing line between the pillars.\(^{36}\)

The Presidency\(^ {37}\) represents the Union in all matters coming within the wide parameters of the Common Foreign and Security Policy. The president is responsible for implementing CFSP decisions and representing the Union in international fora. Under the Treaty of Amsterdam, the Presidency is assisted by the Secretary General of the Council, who for purposes of CFSP matters is called the High Representative and is supposed to improve the Union’s external representation. By assigning the

\(^{28}\) TEU art. 18.

\(^{29}\) Under Article 14 TEU, the Council may request the Commission to submit proposals concerning the CFSP and its implementation. Furthermore, it is noteworthy that the Commission’s right of initiative under the CFSP is not exclusive, as it is generally with other Community policies.

\(^{30}\) The Troika includes the Presidency, the High Representative and the Commission.

\(^{31}\) CFSP website, supra note 1, § III.

\(^{32}\) TEU art. 21.


\(^{34}\) Fink-Hooijer, *supra* note 16, at 192.

\(^{35}\) TEU art. 5.

\(^{36}\) Article 46 excludes the European Court of Justice from jurisdiction over the CFSP but expressly gives it jurisdiction over Article 47.

\(^{37}\) The “Presidency” is the current Member State holding the Presidency of the Council. The Presidency rotates every six months.
Presidency such a pre-eminent role in the CFSP, the Member States hoped to increase the visibility of the Union on the international scene. However, because the Presidency rotates every six months, some have concluded that the transient leadership could, at a minimum, confuse third countries.

The role of the High Representative should ease some of this concern, given that the position is relatively constant and the High Representative is one of two institutions in the Troika that is a permanent member. The tasks of the High Representative include assisting the Presidency in representing the Union in CFSP matters, implementing common measures and assisting the Council in all CFSP matters. The High Representative, while being involved in internal CFSP policy making, is primarily responsible for representing the Union in its foreign policy relations with third countries. It is hoped, therefore, that the High Representative will both improve the international visibility of the Union and enhance the continuity and coherence of the Union’s contacts with third countries. The success of this office, however, depends largely on the willingness of the Member States to support it, as well as the status and skills of the person appointed. The Union assigned the office of High Representative serious credibility by appointing Javier Solana, the former Secretary General of NATO, to the job in an effort to amplify Europe’s voice on world foreign policy and security issues.

C. The Purpose and Scope of the CFSP

The scope of the CFSP is extremely broad as it includes “all areas of foreign and security policy” and “questions relating to the security of the Union, including the progressive framing of a common defense policy ... which might lead to a common defense, should the European Council so decide.” Because the potential scope is so broad, the precise objectives of the CFSP are likely to evolve over time as the Member States better define what it is they hope to achieve through the CFSP. At the same time, however, the breadth of scope will likely give rise to legal base and competency questions, as the Community institutions must act within the defined limits of the treaty under which they are operating; i.e.,

38 Schmalz, supra note 3, at 433.
40 TEU arts. 18(3), 26.
42 CFSP website, supra note I, § III.
43 TEU art. 11.
44 TEU art. 17.
45 While beyond the scope of this article, it is important to note that European security issues are also addressed by economic sanctions under the First Pillar, various trade alliances such as the World Trade Organization, and the accession agreements between the Union and candidate Member States.
EU's Common Foreign and Security Policy

the European Community Treaty or the Treaty on European Union. This could lead to a rise in inter-institutional conflicts, which could consequentially diminish the overall effectiveness of the Union on the international stage.

One of the main purposes of the CFSP is to enable the Union to speak with one voice on foreign affairs and security matters with the idea being that it could more effectively create and maintain a stable international security environment. Article 17 addresses security as an issue separate from other areas of foreign policy. At the Treaty's creation, the Member States were sharply divided on the extent the Treaty should govern security. The final language is weak regarding the implementation of an effective international security policy. Article 17 states that there is to be a "progressive" framing of a common defense policy which "might lead to a common defense, should the European Council so decide [emphasis added]." Furthermore, if the European Council did so decide, the Member States would then have to adopt and ratify that decision according to their respective constitutional requirements—a process which is not only long, but also politically difficult.

It is important to note that it is the WEU, and not the Member States acting under the Treaty on European Union, that elaborates and implements the Union's decisions and actions which have defense implications. Article 17 states that the WEU is an "integral part of the development of the Union providing the Union with access to an operational capability ..." and furthermore, that the "Union shall foster closer institutional relations with the WEU with a view to the possibility of the integration of the WEU into the European Union, should the European Council so decide." This will require close cooperation between the WEU and the Union and illustrates that the WEU could, in the long term, be responsible for organizing a continent-wide defense policy. The Treaty language suggests that the ultimate objective is to develop the WEU as the Union's defense component to strengthen the European element of the NATO Alliance. As a safeguard measure, the Treaty also states that the CFSP must be compatible with NATO policy and its actions must not interfere with Member State obligations under NATO.

While the creation of the Common Foreign and Security Policy under the Treaty on European Union was intended to project the Union on the international scene, the end results were not satisfactory to the Member States. At the 1996 Intergovernmental Conference, the Member States empowered the Union with the

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46 Schmalz, supra note 3, at 427.
47 Cremona, supra note 11, at 248; This problem is exacerbated by the limited jurisdiction of the European Court of Justice under the Second Pillar.
48 Eaton, supra note 19, at 219.
49 TEU art. 17; Neuwahl, supra note 33, at 232.
50 TEU art. 17.
51 TEU art. 17.
52 Fink-Hooijer, supra note 16, at 195.
53 TEU art. 17; One could argue that this safeguard measure flatly prohibits the formation of a common defense policy altogether. See Neuwahl, supra note 33, at 232.
capability to take more efficient and effective external action. Indeed, the European Council identified the need for CFSP reform as one of three primary mandates of the 1996 Intergovernmental Conference. The resulting Treaty of Amsterdam amended and reconfigured the Treaty on European Union. The majority of the changes to the CFSP introduced by the Treaty of Amsterdam concern decision making procedures, which are discussed below.

III. COLLECTIVE DEFENSE IN THE UNION

Due to implications on national sovereignty, collective defense is a volatile issue in the European Union. Therefore, it is helpful to examine these issues closely before asking whether the Union has the ability to effectuate its Common Foreign and Security Policy. The methods the Union uses to implement its CFSP decisions reflect issues unique to the practice of collective defense.

Before the Treaty on European Union, defense was outside the parameters of European Community activity. As many of the Member States are also NATO members, each Member State addressed its own security through national programs or under the NATO umbrella. The 1990s marked a new era for European security, as the European members of NATO sought to increase their involvement in NATO. Essentially, Europe wanted to exercise more influence, power and control within NATO. This idea was first given legitimacy through the creation of the Common Foreign and Security Policy under the Treaty on European Union and later through the concept of the European Security and Defense Identity (ESDI).

New ideas, however, can generate fear. Because defense is so central to a nation's sovereignty, the idea of a European collective security, under the guise of the Union, has unleashed concern among several Member States. In 1992, Denmark issued a declaration at the Edinburgh European Council that it would not develop or implement Union decisions and actions that had defense implications. This resulted from the Danish referenda on whether Denmark should accede to the Treaty on European Union. Denmark consequently renounced its rights to exercise the role of Presidency for defense related matters. The Union’s understandable fear at the time was that other states negotiating their terms of future Union membership might view Denmark’s position as a precedent. While Ireland was the only neutral Member State when the Treaty on European Union was ready for signature, there were several candidate Member States, like Austria, Finland and Sweden, which also held a neutral status. In practice, the neutral status of Member States or even applicant Member States is not a threat to the Union, as any decisions having defense implications are still handled by the WEU. However, given that the Union may in the future take a more aggressive role on defense issues, applicant countries

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54 Monar, supra note 41, at 413.
56 Fink-Hooijer, supra note 16, at 196.
must accept the Treaty on European Union, as amended by the Treaty of Amsterdam, in its entirety.

A. The Western European Union

While drafting the Treaty on European Union, the Member States revitalized the WEU, which had largely disappeared from the international scene during the Cold War years. The Treaty refers to the WEU as an integral part of the European Union because it is charged with implementing the Union’s defense related decisions and actions. It would be through the WEU that the Union would exercise a common defense, if the European Council and Member States so decided. NATO itself recognized the resurrection of the WEU by declaring in 1994 that it would take measures to make NATO assets available for WEU operations taken to effectuate the Union’s Common Foreign and Security Policy and that it would seek to improve cooperation with the WEU. Importantly, however, the NATO heads of state also reaffirmed that NATO would remain the primary organization for addressing and handling security and defense policies affecting the NATO member countries.

Throughout the 1990s, the WEU continued its comeback. Although the Treaty of Amsterdam did not culminate in a full merger of the WEU and the Union, it did strengthen the links between the entities. Article 17 provides that the WEU shall provide the Union with “access to operational capability” and introduces the possibility of “integration of the WEU into the Union should the European Council so decide.” No deadline is set, and the language is non-committal, but it does lay the groundwork for future integration, should political winds blow in that direction. Article 17 also provides for the “progressive framing of a common defense” which the European Council can recommend that the Member States adopt in accordance with their constitutional requirements. Notably, Article 17(2) also extends the scope of the WEU’s operational activity to include “humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management” which are known as the “Petersberg tasks.” Indeed, even Member States that are not WEU members may participate in some of the WEU’s operational activities, a development that could lead to a “de facto merger” of Union and WEU crisis management mechanisms. Given the recent demand for peacekeeping forces in Europe, this provision could be pivotal in helping the Union to define its international standing and might. It must be remembered, however, that any use of

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57 Founded in 1954, the WEU now includes Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom.
59 Monar, supra note 41, at 429.
60 Should the Union utilize the WEU, all Union Member States, even those that are not WEU members, may fully participate in Union-WEU coordinated action.
61 Monar, supra note 41, at 430.
WEU military forces requires a unanimous Council decision, which could be difficult to achieve.

B. New Activity under the Treaty of Amsterdam

In the Treaty of Amsterdam, the Member States demonstrated a significant change in collective defense thinking by altering the objectives of the Common Foreign and Security Policy. The breadth of objectives remains, but the Treaty of Amsterdam adds that a further objective shall be to safeguard the “integrity of the Union.” The significance of this change lies in the word “integrity” which implies a political commitment to safeguard the Member States' external borders. This is the first reference to a territorial security identity of the Union. It should also be noted, however, that the same amendment pared down earlier language by deleting reference to strengthening the security of the Member States. Under the Treaty of Amsterdam, the CFSP must aim to strengthen the security of the Union, not the Member States. While the streamlined language can be interpreted as placing an even stronger emphasis on Union security, it is more appropriately interpreted as an assertion by some Member States that they do not consider the Union to be the primary defender of their national security interests.

Treaty of Amsterdam negotiations also turned Member State attention to apparent problems with Union decision making under the Second Pillar. The Member States agreed to rectify the CFSP’s reactive decision making history, as well as its inability to engage in long-term planning. The result was a Declaration to the Final Act on the establishment of a Policy Planning and Early Warning Unit (PPEWU). The PPEWU will act under the authority of the Secretary General and, therefore, it will be subject to the Council’s administration. Its tasks shall include monitoring and assessing international developments, assessing the Union’s foreign and security policy interests, detecting early warning of events that may have an effect on the CFSP and producing policy papers recommending strategies for the Union’s CFSP. If these tasks are met by the PPEWU, it should definitely improve the Union’s informed and effective decision making ability under the CFSP. As in other areas of the CFSP, the success of the PPEWU is largely dependent on the political will of the Member States. If the Member States do not accept and support

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62 TEU art. 11(1), first indent.
63 Monar, supra note 41, at 415.
64 Id.
65 TEU art. 11(1), second indent.
66 Monar, supra note 41, at 415.
67 Id. at 416.
68 Member States rejected a treaty amendment for fear that the PPEWU would gain greater independence and power than intended. See Monar, supra note 41, at 416.
69 CFSP website, supra note 1, § III.
the work of the PPEWU, the PPEWU might not further the Union’s efforts to strengthen the CFSP.\(^7\)

**C. The European Security and Defense Identity**

As the Union treaties evolved and gave shape to the Common Foreign and Security Policy, the WEU worked on developing a separate, but related, foreign policy and security vehicle. As early as 1991, before the Maastricht Treaty was even signed, the WEU member countries announced the need for a true European Security and Defense Identity so that Europe could have a greater say in global defense matters.\(^7\) The concept of the ESDI did not officially take shape until the 1997 Intergovernmental Conference leading up to the Treaty of Amsterdam where the WEU ministers announced that the WEU is both integral to the European Union’s development and essential to the development of the ESDI within NATO. Importantly, NATO supported the development of the ESDI, recognizing that it could provide greater flexibility to meet the growing variety of NATO missions.\(^7\) Furthermore, a solid ESDI could enable Europe to participate more effectively in NATO operations, even to the extent that it could generate a European military force to operate under WEU political control and strategic command.\(^7\)

At the heart of the ESDI is the issue of to what extent the WEU should be a part of NATO. During the 1997 Intergovernmental Conference, some Union Member States wanted to fully integrate the WEU in the Union as a means of enhancing the Union’s international identity while simultaneously providing the Union with a defense capability.\(^7\) Other states, however, strongly opposed such integration on the grounds that doing so could conflict with the absolute priority demanded by NATO\(^7\) or could interfere with their traditions of neutrality.\(^7\) The United Kingdom, for example, insisted that whatever defense capability Europe had through the WEU, the WEU should not be incorporated into the Union but should sit as a separate and independent institution somewhere between the European Union and NATO.\(^7\) As the Treaty of Amsterdam was in its formative

\(^7\) Schmalz, *supra* note 3, at 431; Monar, *supra* note 41, at 417.
\(^7\) *Id.* at v262.htm.
\(^7\) *Id.* at v106.htm, v262.htm.
\(^7\) Benelux, France, Germany, Italy and Spain favored integration. See Monar, *supra* note 41, at 429.
\(^7\) The United Kingdom was particularly concerned with the impact full integration of the WEU could have on Europe’s relationship with NATO. See Monar, *supra* note 41, at 429.
\(^7\) Austria, Finland, Ireland and Sweden are European Union Member States but are not NATO members.
stages, Britain opined that Europe’s ability to influence world politics would not be enhanced by an “unrealistic common defense policy.”

The future of the ESDI remains uncertain. While some view it as a structure on which to build a European defense capability separate from NATO, others see it as a means to strengthen the European arm within NATO. While the views are fundamentally at odds with each other, the common theme is how best to project the Union’s Common Foreign and Security Policy on the international stage; i.e., under or outside the NATO umbrella? As discussed below, the extent Europe should act in foreign policy and security areas without NATO involvement is disputed.

IV. DECISION MAKING UNDER THE SECOND PILLAR

The effectiveness of any foreign policy depends largely on the actor’s ability to make binding and timely decisions. When more than one actor is involved, the equation becomes exponentially more complex. In the case of the Union, fifteen Member States must agree to act, making the process by which it makes its decisions critical to its ability to act effectively. The Treaty on European Union devised several means of action, some of which were fortified by the Treaty of Amsterdam. Overall, the Treaty of Amsterdam amendments place an emphasis on decision making, rather than on the process of cooperation. Article 12 lists the means by which the Union can pursue its objectives under the CFSP: common strategies, joint actions and common positions. It replaces former Article JI (3), which focused on “establishing systematic cooperation” and “gradually implementing” joint actions. While Article 12 clearly shifts the focus to obtaining hard results, the Second Pillar is still intergovernmental, meaning that the decisions taken by the Member States under it remain predominantly consensus based.

A. Forms of Decisions

Common positions were the main means of action within the EPC, but under Article 12, common positions take on a more mandatory flavor. They “define the approach of the Union to a particular matter of geographical or thematic nature” and Member States must “ensure that their national policies conform to the common positions.” Furthermore, Member States must coordinate their actions and uphold common positions in international organizations and at international conferences. In effect, common positions are akin to finely tuned versions of the
principles and guidelines to be adopted by the European Council. Common decisions have taken the form of sui generis Council decisions, reached by unanimity under Article 23.

Joint actions are an important part of the CFSP, and, as amended by the Treaty of Amsterdam, concern the "operational" action of the Union. While the SEA introduced the idea of joint actions, they were not well-defined or binding instruments under the EPC. Joint actions are now binding on the Member States. Once the Council adopts a joint action, the Member States must align their foreign policy as necessary. In other words, a Member State may not, in principle, take unilateral action that is incompatible with the tenet of a joint action. Under the Treaty on European Union, the Council takes the lead role in effectuating joint actions based on general policy guidelines issued by the European Council. The Council must decide unanimously that a matter should be the subject of a joint action. However, the Council may act by qualified majority when adopting a decision that implements a joint action. Except for actions having defense implications, the Council may not act by qualified majority at all, making the tool of a joint action inappropriate for defense issues. The Commission and European Parliament have no direct role in the final decision making process of a joint action. Although the Commission has a right of initiative and is to be fully associated with the work of the CFSP and the Parliament must be consulted and kept informed about fundamental policy choices in the CFSP, only the Council may adopt a joint action. Joint actions will arise only where there is a political will to do so. However, given that the initial decision that a joint action is necessary must be unanimous, joint actions present a significant contribution to the CFSP, especially when compared to the non-binding actions taken within the framework of the EPC.

Unlike the decision making methods described above, the Council has a less direct role in the formation of common strategies, which are a product of the Treaty of Amsterdam. The European Council decides common strategies on a recommendation from the Council. The Council then implements common strategies via joint actions or common positions. Common strategies are meant to be fairly specific as illustrated by the requirement that they clearly spell out their "objectives, duration and

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83 Monar, supra note 41, at 426.
84 Neuwahl, supra note 33, at 229.
85 TEU art. 14(1).
86 TEU art. 14 (2, 6, 7).
87 TEU art. 14.
88 TEU arts. 4, 13.
89 TEU art. 23(2).
90 Neuwahl, supra note 33, at 233.
91 TEU arts. 14, 18; Fink-Hooijer, supra note 16, at 182.
92 On June 4, 1999, the Union adopted its first common strategy entitled, “Common Strategy of the European Union on Russia.” The next three scheduled common strategies will cover European Union relations with the Ukraine, the Middle East and the western Balkans.
the means to be made available by the Union and the Member States." Such specificity should enable the Union to eliminate the vagueness that plagued earlier CFSP acts. The Treaty of Amsterdam does not, however, specifically provide that common strategies shall commit the Member States, which leaves the issue of their binding nature open to interpretation.

B. Enforcement

The Union's actions in the Common Foreign and Security Policy will be effective largely to the extent that the Union is held responsible for its actions and non-actions. Given that the European Court has practically no jurisdiction over CFSP matters and that the Union cannot be challenged for failing to act in the interests of the CFSP objectives, there seems to be little a Member State can do to challenge the Union for acting either outside the scope of the CFSP or for having failed to act where it should have furthered CFSP objectives. Similarly, because internal CFSP matters are outside the European Court's jurisdiction, the Union cannot sue a Member State for failing to support the CFSP.

Under the CFSP, the basic method of enforcement is political pressure, as the Council must ensure that the Member States comply with the objectives of the CFSP. Because the European Council is the highest political body of the Union, it can also use political pressure on errant Member States to support Union objectives. Additionally, under Article 11(2), the Member States are obliged to "support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity." There are several other treaty provisions that oblige Member States to implement CFSP decisions. Admittedly, however, there is no provision stating that legal action can be taken against a Member State that does not comply with a CFSP provision, a matter that could prove to be especially volatile depending on the political sway of the disobedient Member State.

C. Voting

It was hoped during the June 1997 Intergovernmental Conference that the Treaty of Amsterdam would improve decision making procedures in the CFSP area. The procedural requirements, specifically voting requirements, necessary for decisions are crucial to decision making capacity generally. As mentioned above, the traditional unanimity requirement for CFSP action is identified as a key cause

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93 TEU art. 13.
94 Monar, supra note 41, at 426.
95 Eaton, supra note 19, at 221.
96 Id.
97 TEU art. 11(2).
98 See, e.g., TEU art. 14.
of delay in the decision making process which often leads to reduced substance in decisions, or worse, no decision at all.99

During the Intergovernmental Conference there were two opposing camps: those who favored majority voting100 and those who favored continued unanimous decision making.101 The much-debated merits of majority voting, such as increased efficiency, were viewed as insufficient benefits when the topic was a matter of foreign policy, as opposed to one of economic policy under the European Community Treaty. Some argue that a foreign policy decision adopted against the will of a Member State could lose international credibility and be undermined by signals from the opposing Member State through diplomatic channels.102 Proponents of majority voting argue that this risk, to the extent that it cannot be controlled through political pressure and loyalty clauses,103 is a necessary reality if the Union is serious about having an effective Common Foreign and Security Policy that is respected on the international stage. Furthermore, if important CFSP decisions could be taken by a majority vote, dissenting Member States would be highly motivated to compromise with the majority to have some of their concerns addressed rather than risk being outvoted all together.104

In the end, as is reflected by the Treaty of Amsterdam, the opposing camps compromised by retaining unanimous voting, with two exceptions: constructive abstention and limited use of qualified majority voting.105 Where a decision must be unanimous, a Member State’s abstention will not prevent the adoption of the Council’s decision to act. If the Member State’s abstention is “qualified,” then the Member State is not obliged to apply the decision, but must accept that it binds the Union. In other words, the Member State may not take any action that could conflict with or hinder the Union’s intended action. As a protection to minority dissenting Member States, Article 23(1) provides further that a decision cannot pass if Member States qualifying their abstention represent more than one-third of the votes under the Community qualified majority rules. While this constructive abstention exception was designed to reduce the rigidity of unanimous voting, it could be counterproductive to the Union’s desire to achieve a unified foreign and security policy. In effect, this provision allows a Member State to disassociate itself formally from a Union act, thus creating an “automatic opt-out possibility”106 which would directly undermine the “spirit of loyalty and mutual solidarity” principle of Article 11(2).

99 Monar, supra note 41, at 418.
100 Germany, Benelux, Italy and Austria favored increased majority voting. See Schmalz, supra note 3, 432.
101 The United Kingdom, Portugal and Greece favored maintenance of unanimity. See Schmalz, id.
102 Monar, supra note 41, at 418.
103 Monar, supra note 41, at 418.
104 TEU art. 11(2).
105 TEU art. 23.
106 Monar, supra note 41, at 419.
As the second exception to the unanimity requirement, Article 23(2) provides that the Council shall act by qualified majority voting "when adopting joint actions, common positions or taking any other decision on the basis of a common strategy" and "when adopting any decision implementing a joint action or common position." While apparently a considerable improvement, this exception to the unanimity rule is heavily qualified. Because the European Council decides common strategies, as well as their objectives, duration and means for their achievement, the decisions taken by the Council are likely to be mere implementing measures.\(^7\) As with the Treaty on European Union, the amendments of the Treaty of Amsterdam ensure that basic, important decisions are still reached, effectively, by unanimity through the work of the European Council. This requirement of majority voting is likely to thrust the level of substantive decision making upwards to the European Council.\(^8\)

As a further qualification to when unanimity is not required, Article 23(2) provides that a Member State may actually prevent any decision being adopted if it opposes a decision being taken by qualified majority for reasons of national policy. In such a case, however, the Council may act by qualified majority and refer the matter to the European Council, which can override the dissenting Member State by a unanimous vote.\(^9\) Additionally, the necessary qualified majority is actually a double qualified majority, as there must be both a "Community" qualified majority and a majority of at least 10 out of 15 Member States.\(^10\) Lastly, and perhaps most importantly, the qualified majority voting provisions do not apply to defense or military decisions. By flatly refusing to accept majority voting on these issues, the Member States signify their insistence on unqualified sovereignty over national security.

Whether the Treaty of Amsterdam amendments on voting procedures will constitute a major improvement in CFSP development remains to be seen. With more decisions taken by qualified majority voting, the system will, at a minimum, be more efficient. At a maximum, dissenting Member States could be pressured to compromise for the sake of CFSP unity. But, because there are so many qualifications on the Treaty of Amsterdam's attempted improvements to the decision making procedures, the actual improvement to the Union's CFSP decision making capacity is likely to be marginal.\(^11\)

D. Treaty Making

Treaty making capability is a critical demonstration of effective international action. It is an aspect of decision making that has also been affected by the Treaty of Amsterdam, as the amendments made some attempt to rectify the Union's lack of treaty making ability. If the Union is determined to speak with one voice on foreign

\(^{107}\) Id.
\(^{108}\) Schmalz, supra note 3, at 432.
\(^{109}\) TEU art. 23(2).
\(^{110}\) Schmalz, supra note 3, at 432; Monar, supra note 41, at 421.
\(^{111}\) Schmalz, supra note 3, at 432.
affairs, then it must have some method by which to reach binding agreements with third countries. Under the Treaty on European Union, there is no provision for the Union, as distinct from the Community, to conclude international agreements, nor is there a provision specifically granting the Union legal personality. 112

During the 1997 Intergovernmental Conference, the Member States were split on whether to grant the Union legal personality and, hence, treaty making power. 113 While it was agreed that the Union’s visibility and effectiveness would increase if it had legal personality, some Member States were concerned that granting the Union legal personality and treaty making capacity would further threaten their sovereignty. 114 Article 24 is the resulting compromise which provides that in order to conclude an international agreement to implement a CFSP measure, the Council may, acting unanimously, authorize the Presidency to open negotiations. The Commission may assist the Presidency where necessary. The Council, again acting unanimously and on recommendation from the Presidency, must conclude the agreement. The binding effect on each Member States is subject to national ratification procedures. 115 However, the Union still lacks legal personality, meaning that the Member States or the Community (or both via a mixed agreement) are the ultimate contracting parties with a third state. 116 The result of the Article 24 compromise is that there is now more practical ability for the Union to engage in treaty making. But without legal personality, the Union suffers from a lack of international standing, and possibly credibility, in the eyes of third countries. 117

E. Financing

Even if the Union does begin to make decisions efficiently and effectively, it will be of no consequence if subsequent decisions to finance the measures are stalled. Under the Treaty on European Union, inadequate and seriously delayed financing of CFSP actions spurred friction between the Council, Commission and European Parliament on questions of budgetary powers and procedures. 118 Furthermore, Member States often failed to adequately finance joint actions from their national budgets. 119 Infighting and delay only further injure the Union’s

Contrary to the prevailing view, one scholar argues that the Union does have legal personality, according to criteria established under international law. See Ramses A. Wessel, The International Legal Status of the European Union, 2 EFA REV 109 (1997). See also Cremona, supra note 11, at 250–251; Nanette Neuwahl, A Partner with a Troubled Personality: EU Treaty-Making in Matters of CFSP and JHA After Amsterdam, EFA REV. 177, 178–86 (1998).

112 Id. See also Cremona, supra note 111, at 185.

113 TEU art. 24.

114 Neuwahl, supra note 33, at 237; Cremona, supra note 11, at 251.

115 Schmalz, supra note 3, at 434–35; Monar, supra note 41, at 427.

116 Monar, supra note 41, at 429; Schmalz, supra note 3, at 429.
international reputation. Article 28(3) of the Treaty of Amsterdam removes the option and now clearly states that operational expenses for the implementation of Common Foreign and Security Policy measures must be charged to the European Communities budget. Military and defense operations are exempted, and the Council may decide unanimously to alter financing for CFSP measures. As a final precaution, the European Parliament, Council and Commission have reached an inter-institutional agreement to regulate budgetary procedures between them. This agreement should reduce, if not eliminate, conflicts over procedure between the institutions and thereby ensure increased coherence between the activities of the institutions in the area of the CFSP.

F. Unfair Criticism?

Critics of the Common Foreign and Security Policy cite the Union's general requirement for unanimous decision making as the central fault of the CFSP. The assumption is that if decisions must be unanimous, the Union cannot act effectively or efficiently on the international foreign affairs stage, especially considering that the qualified majority exception does not apply to decisions having defense implications. Precedent, however, does not support this criticism. The next section will address the decision making structure of an even larger, older and more effective international organization: NATO.

V. DECISION MAKING UNDER NATO

NATO acts by consensus. The main decision making body is the North Atlantic Council, which is composed of ambassadors or permanent representatives of all the NATO member countries. Whether the North Atlantic Council is composed of diplomats, foreign ministers or heads of government, its decision making powers remain constant, retaining the same validity and effect regardless of who represents the member countries. Through the North Atlantic Council, the member countries discuss issues, share information and express their views before arriving at a consensual decision. All votes must be unanimous, without exception. Because each member country has an equal say in the decisions, each has an equal responsibility for the resulting policies. The routine exchange of ideas and lengthy consultations ensure that no action is taken without the approval of each NATO member country.

The North Atlantic Council acts as an umbrella committee that oversees the work of numerous subcommittees which address specific policy issues. The Defense Planning Committee, for example, deals primarily with collective defense

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120 TEU art. 28. Before the Treaty of Amsterdam, administrative expenses were to be charged to the Community budget, while operational expenses were charged either to the Member States or the Community budget, as decided unanimously by the Council.
121 Schmalz, supra note 3, at 430; Monar, supra note 41, at 429.
issues. Each NATO member is represented on each subcommittee and, as with the North Atlantic Council, each subcommittee takes decisions only by unanimity. The expansive committee structure is designed to allow each NATO member country to participate in all areas of NATO activity, at all levels.

An effective alliance of independent states depends on the goodwill of each member country to regularly apprise the other members of its national policies that might affect the alliance as a whole. To this end, NATO has always encouraged regular political consultation among its members before pertinent national decisions are taken. Whether an individual member country is making policy within or outside the NATO Treaty area, political consultation through the North Atlantic Council is appropriate if it has strategic implications for the Alliance. Member countries exchange information and opinions and disclose plans for national operations that could affect the interests of other member countries, all with the goal of ensuring that national policies complement, or at least do not hinder, NATO policy.

Regular political consultation allows the NATO member countries to recognize areas that are appropriate for timely NATO action. Without political consultation, NATO would not be able to respond quickly and take appropriate action in urgent situations with the acquiescence of all the member countries. The constant flow of information is at the root of decisive and swift action by consensus, as each member country is aware of the potential need for NATO action long before it is necessary.

The NATO members chose to make all decisions by consensus. In the wealth of literature on NATO, there is little mention of logistical problems due to NATO's unanimous voting requirement. Unlike the European Union's Common Foreign and Security Policy, there is no exception to unanimity; majority voting is never an option. Unanimous decision making runs throughout the NATO structure, whether it is a decision of the North Atlantic Council or a subcommittee. One could, however, argue that a consensus reached around the North Atlantic Council table is really no more than an expression of what the United States of America has subtly, or even not so subtly, dictated. Perhaps less powerful NATO members simply surrender under the pressure of the majority's wish. Perhaps political persuasion is the true driving force behind consensus decision making in NATO. For example, while the Greek government publicly expressed reservations about NATO bombing the former Yugoslavia in 1998 and 1999, it never actually voted against undertaking or continuing the military operations there. Whatever the reason, NATO decision making is effective and efficient, without much complaint from any of the nineteen member countries.

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123 France is the only NATO member country that is not represented on the Defense Planning Committee. In 1966, France withdrew from NATO's integrated military structure, but it has always participated in the political structure.
125 Id. at v106.htm.
126 Id.
127 Id.
Are European Union decisions under the Second Pillar really any different than NATO decisions? Is the criticism of the CFSP decision making process justified? While NATO is often under attack for a huge variety of political reasons, its decision making structure is, essentially, a non-issue. Why, then, do critics assume that, because the Union's Common Foreign and Security Policy must be executed by consensus, it cannot be effective? The CFSP decision making process is more flexible than NATO's in that it allows for majority voting in two instances, as discussed above. Both alliances chose unanimity as the mainstay of their decision making processes because defense is paramount to sovereign nations. No nation wants to be told by another nation that it may, may not, or must go to war. Because foreign policy and security are at the heart of a nation's sovereignty, consensus ensures that no action will be taken which threatens that truism.

VI. THE DIRECTION OF THE CFSP

Europe's role in NATO is clearly changing, as is NATO's role in the world at large. Europe is taking positive steps to effectuate these expected changes, some of which are occurring within the construct of the European Union's CFSP. As the Common Foreign and Security Policy develops, Europe's changing role within NATO will become more apparent.

Through its Common Foreign and Security Policy, the European Union expresses bold goals, including safeguarding the independence of the Union and strengthening the security of the Union and its Member States. As the Union develops in this regard, third countries will develop perceptions of what the Union is and what it can achieve through the CFSP. NATO cites similar principles as the basis for collective security, namely political solidarity among the member countries, collaboration in areas of common interest, the sharing of responsibility and commitment, and the maintenance of a military force sufficient to support its policy and strategy. Military capability and the commitment of each member country to act collectively and decisively in the pursuit of common defense are clearly the main components of NATO's success, as they guarantee the security and integrity of each member country.

A. Realistic Goals?

The question remains as to whether the European Union enjoys the same capability and commitment as NATO, or whether it suffers from a capability-

128 The lessons of Denmark illustrate this point. In two referenda on whether Denmark should sign the Treaty on European Union, the Danish public made clear that they would not allow a third country to dictate when Danish youth would be called to fight for another country, or even Europe as a whole.

expectation gap. Or, phrased differently, can the Union live up to the image it hopes to project internationally? After the Treaty of European Union introduced the Common Foreign and Security Policy, there was real concern as to whether the Union had the capability to meet its intended goals. The Union’s anticipated inability to make binding decisions effectively and its lack of coordinated military power were cited as the main contributors to the gap that existed between the Union’s capabilities and the expectations demanded of the Union through its Common Foreign and Security Policy. For the situation to improve, it was suggested that capabilities increase or expectations lower. In other words, the Union would either have to revamp its decision making process and build an effective military force and command structure, or it would have to scale back its foreign policy goals and revise the image it portrays to third countries. In the seven years since the Treaty on European Union came into effect, has the assumed gap between the Union’s capability and outside expectations narrowed?

The important changes introduced by the Treaty of Amsterdam provide a promising base on which real changes to the Union’s Common Foreign and Security Policy can occur. Before the Amsterdam amendments, the Union had only limited means to effectuate its Common Foreign and Security Policy, rendering it more of a “hollow shell” than an effective foreign policy instrument. One of the most important additions to the Common Foreign and Security Policy is the office of the High Representative of the European Union for the Common Foreign and Security Policy. Since his appointment as High Representative on October 18, 1999, Javier Solana has highlighted the need for efficient decision making capabilities if the Union is to develop an active foreign policy, including an effective policy on security and defense.

As the study of NATO’s decision making structure shows, a collective body of states can make decisions effectively, even when acting only by consensus. While this is by no means an assurance that the Union’s Common Foreign and Security Policy will be as effective as NATO policy, it does mean that it is possible for the Union to act by consensus and be a major player in the field of global security and foreign policy. However, even assuming that the Union has the practical ability to wield influence with its current decision making structure, there is another potential roadblock to Union action on defense issues: will NATO allow the Union to take the decisions necessary for the Union to enhance the visibility and credibility of its Common Foreign and Security Policy? The practical issue

131 Id. at 315.
132 Id. at 316, 318.
133 Id. at 321.
134 Solana, supra note 2.
addresses the question of whether the Union can make decisions effectively under the Second Pillar. The political question is, will NATO permit such independence?

B. Nascent Parameters

Recently the European Union has made positive efforts to define the parameters in which it intends its Common Foreign and Security Policy to operate. At its June 1999 Summit in Cologne, the European Council recommended the development of a European Security and Defense Policy (ESDP). ESDP is essentially a specific application of the Common Foreign and Security Policy, and part of the progressive framing of a common defense policy, as spelled out in Article 17 of the Treaty on European Union. The core idea of the ESDP is that the European Union's Common Foreign and Security Policy can be successful only to the extent that it is reinforced by a solid military capability. The European Council specifically intended to grant the Council the means to implement the whole range of the Petersberg tasks as the European Council perceived a real need for Europe to take more responsibility for regional and global security. Indeed, the capacity to use force is deemed an "essential component of a credible foreign policy." With a more effective Common Foreign and Security Policy, the Union should be better able to affect international security and prosperity.

In December 1999 in Helsinki, the European Council fleshed out the idea for an increased Union military capability introduced at the Cologne Summit. As the starting point to its new European Security and Defense Policy, the European Council announced first that by 2003 the Union should develop the ability to deploy up to 60,000 troops to intervene in humanitarian crises with less than 60 days notice, and have the ability to sustain those troops for at least a year. This operational capacity must be accompanied by simultaneous development of command, control and support capabilities as well as basic support services. Second, the European Council decided to establish permanent political and military bodies, such as a Military Committee, in the Council to manage military operations on a daily basis, ensure quick decision making and provide accountability for military operations. Any decision making process within the ESDP must be flexible and short so that decisions can be taken quickly when necessary. Third, the European

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137 Id.


139 Solana, supra note 2.


141 Solana, supra note 2.
Council stressed the need for frequent and transparent consultation and cooperation with NATO and non-Union countries. Without the active support of its allies, neighbors and the WEU, the ESDP could fail before it even stretches its wings. As some or all of the Helsinki objectives could necessitate Union treaty amendment, the European Council has provided that the Union establish interim bodies to begin the process of forming the ESDP. The clear hope is that the above developments will enable the Union to assume an increased responsibility for a broader range of conflict prevention, crisis management tasks, peacekeeping functions and humanitarian and rescue missions.142

As the Union announced in Cologne and Helsinki its intentions to develop a European Security and Defense Policy with autonomous decision making ability, two major concerns arose from the international sector. First, some perceived the Union's plans as an attempt to militarize Europe by creating a European army.143 The Union has been quick to shoot down such perceptions, assuring the international community that the ESDP is not a vehicle for collective defense, as that function remains with NATO only, and that it does not affect the rights of Member States to maintain their own defense policies.144 The 60,000 troops for crisis management operations will be the product of improving and reorganizing existing national and multinational forces.145 Second, the United States has kept a watchful eye on just how much autonomy the Union intends to afford itself in areas of international security. The CFSP's High Representative has repeatedly assured the international community, and specifically the United States, that the Union will lead military operations only in situations where NATO is not involved and that a European Security and Defense Policy is not an attempt to undermine NATO.146

C. A Nervous Parent

The United States has repeatedly claimed that it supports the development of the European Security and Defense Identity. The United States views the ESDI not as a competitor of NATO, but rather as a complement to it. At the NATO Washington Summit in April 1999, the parties proclaimed that a European Security and Defense Policy would not only be compatible with the NATO Treaty, but would benefit the

143 Solana, supra note 2.
144 Id. Cologne European Council Declaration, supra note 135, at para. 5.
145 Solana, supra notes 137, 141; Cologne European Council Declaration, supra note 135, at para. 2.
146 See Dr. Javier Solana, Speech to the Foreign Policy Association, New York, Jan. 25, 2000; Solana, supra note 2.
Alliance generally. Additionally, the NATO countries specifically reaffirmed their commitments to reinforcing the European pillar of NATO. The American position on this issue has not changed. The United States has encouraged Europe to take a more proactive role in quelling regional conflicts and, therefore, knows that the Union must develop a military capability if it is to achieve this goal. However, Union assurances that Union-led military operations will occur only where NATO as a whole is not engaged do not assuage American concerns given that the issue of "sequencing" remains vague. Specifically, the United States does not want Europe to decide independently when it will exercise its own military capability. The sequence of decision making will determine how the balance of power swings between the European Union and NATO.

Because Javier Solana is the spokesperson for the European Union’s Common Foreign and Security Policy, his words shed light on the extent of strategic decision making power the Union intends to assert. Amid assurances that the Union will lead military operations only where NATO is not engaged, Solana also states that "there will be occasions when we [the European Union and NATO] agree between us that Europe should take the lead" and, more directly to the point, that "[t]he decision to launch operations has to be a decision for the fifteen [Member States]." While official Union proclamations do not state explicitly that the Union alone will decide when it leads a collective military operation, the conclusions from the recent European Council Summits are ominously vague as to where initial and ultimate decision making power to launch a Union-only operation should lie.

Such uncertainty over decision making authority, especially in light of Javier Solana’s comments, makes the United States, as a leading force in NATO, uncomfortable given the access to military forces NATO has promised to the European Union. At the April 1999 NATO Summit, the countries outlined the steps necessary to make the European Security and Defense Identity a reality by promoting the European Security and Defense Policy. NATO has undertaken the task of instituting arrangements for the European Union to have “presumed,” “assured” and “ready” access to NATO assets in the event of military operations “in which the Alliance as whole is not engaged militarily as an Alliance.” Shortly after the NATO Summit, the European Union announced at the Cologne and Helsinki Summits its intention to develop an autonomous security and defense policy. At the Cologne Summit, the European Council stated that, “the European Union will have to determine, according to the requirements of the case, whether it will conduct EU-led operations using NATO assets and capabilities.”

148 Id.
151 Solana, supra note 137.
152 Washington Summit Communiqué, supra note 146.
The Union's emphasis on autonomy alarmed the United States which insisted that, because NATO troops will be available to Union-only military operations, NATO should effectively have a "right of first refusal" over potential military operations; i.e., discussion about any European Union military operation must begin at the NATO level. In Helsinki, the European Council repeated its determination to develop an "autonomous" decision making capacity over military operations, but also stated that "[t]he development of the common European policy on security and defense will take place without prejudice to the commitments under Article 5 of the Washington Treaty." This seems to imply that perhaps NATO will have an understood right of first refusal to take military action it deems necessary for protecting the interests of the Alliance members. However, throughout the Helsinki Summit, the European Council repeatedly asserted that the Union has "autonomous capacity to take decisions ... to launch and then to conduct Union-led military operations." With each assertion of unbridled independence, the caveat of "where NATO as a whole is not engaged" grows less reassuring to the United States.

Europe seems to be in agreement that it should have an increased defense capability to implement the Union's Common Foreign and Security Policy. The United States, wearing its NATO hat, has generally supported Europe's intentions to gain military capability through the ESDI and ESDP, even to the extent of making NATO assets available for WEU-led operations. But, like a nervous parent, it does not want to relinquish control altogether. In the eyes of the United States, military capability should not evolve into a military independence that provides the basis for a European-only alliance, as this would not be in the security interest of Europe or the United States.

CONCLUSION

The critics of the European Union's Common Foreign and Security Policy commonly argue that the Union cannot be an effective international actor because Second Pillar decisions require unanimity as a general rule. However, as NATO's practice demonstrates, the requirement of unanimity is not fatal to effective decision making. Indeed, one could argue that unanimous decision making diffuses any threat to a nation's sovereignty occasioned by engaging in a collective defense arrangement.

Despite the desire of the Member States to have a foreign policy that rivals the success of its economic policies, the future of the European Union's Common Foreign and Security Policy is far from certain. The capability-expectations gap, which threatened the CFSP at its inception, still exists today, but for different reasons. It is not the practical requirement of unanimous decision making that will
undermine the ability of the Union to meet internal and external expectations. Rather, the political relationship of the Union with NATO is more likely to thwart Union efforts to be a truly independent actor in international affairs. American insistence that NATO have a right of first refusal over the Union’s potential military operations will effectively put the Union’s Common Foreign and Security Policy on a NATO leash. In effect, American foreign policy is an extra-institutional component of CFSP activity. All aspects of the Union’s foreign and security policy, whether it is the much-touted European Security and Defense Identity, the new European Security and Defense Policy, or the Common Foreign and Security Policy generally, will exist only under the shadow of NATO, or more precisely, the United States.

The CFSP is still relatively young. While it searches for its own place on the international stage, third countries, like the United States, will also consider appropriate applications of the CFSP. The United States agrees that there will be occasions when Europe alone should undertake collective military action to defend its borders and values. Therefore, the European Union will have the opportunity to be an effective international actor, even if it must do so beneath the American shadow. The question for the future is whether the American shadow will fade if the European Union demonstrates that its Common Foreign and Security Policy is not only credible, but also influential in shaping global security policy.