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I AM MY OWN WORST ENEMY: PROBLEMS AND POSSIBILITIES OF EUROPEAN FOREIGN POLICY VIS-À-VIS THE UNITED STATES

ERIC ENGLE*

I. ABSTRACT

The European Union ("EU") implements a Common Foreign and Security Policy. This paper argues EU Foreign policy is incohesive, but growing more cohesive. The EU poses no threat to U.S. interests; however, poses only limited opportunities for U.S. foreign policy because the U.S. has relentlessly pursued a short-sighted and self-destructive foreign policy since 2002. The paper elaborates this thesis by considering institutional actors and historical experiences. Thus, it provides an overview of the institutional structure of the EU Common Foreign and Security Policy, as well as an overview of historic experiences of EC foreign policy.

II. INTRODUCTION

Slowly yet inexorably Europe is unifying. The core members of Europe have a single currency, common customs, and common border controls. Europe also has the rudiments of foreign policy and defense institutions. Do these facts present an opportunity or a challenge to the United States? This paper argues that (1) Europe has the rudimentary institutions and processes in place to develop a common foreign and security policy ("CFSP"), and (2) that fact does not present a challenge to the United States, but rather an opportunity. This is because (a) Europe and the United States share a common ideology and liberalism, predicated on individual freedom and government by rule of law and free trade, and (b) even if there were no common ideology, Europe and America are economically dependent on each other. Rather than a challenge, Europe represents an opportunity, because it supports the same core values as the United States and is an important commercial partner. However, understanding the possibilities and limits of the opportunity Europe represents requires a capacity to think in a detached and objective manner.

* For Verena Brand, German environmental lawyer and friend.

III. THE TELEOLOGY OF THE EU

In order to understand the European Union and its foreign policy, we must look at it not in terms of its constituent elements, but rather from the perspective of the Union as a whole, its origins, purposes, and evolution. This dynamic and holistic perspective is the only one that can hope to encompass all of the various processes and the only one that can have explanatory and predictive power. An atomistic view would only be a partial view because it would ignore the synergies which the Union brings to its people. A static view would similarly be blind – by only looking at *ousia* (being) it ignores becoming.

The institutions of the European Union are famously deficient in popular input. Some, while acknowledging the problem of democratic deficit and national diversity, nevertheless argue that Europe can and should aim to become a superpower,¹ either to oppose the United States or to oppose terrorism.² Such a goal is at present unrealistic because European foreign policy is incohesive³ and ineffective. This can be seen perhaps most clearly in the crisis involving Yugoslavia, particularly in the recognition of successor states to the Yugoslavian state.⁴ As we will see, however, pursuant to the functional method, EU foreign policy is growing more cohesive.

Some argue that EU foreign policy is incoherent because European foreign policy expectations exceed European military abilities.⁵ Others

1. Mark C. Anderson, *A Tougher Row To Hoe: The European Union's Ascension as a Global Superpower Analyzed Through the American Federal Experience*, 29 SYRACUSE J. INT'L L. & COM. 83, 118-19 (2001).

2. Ian Ward, *The Challenges of European Union Foreign and Security Policy: Retrospective and Prospective*, 13 TUL. J. INT'L & COMP. L. 5, 37 (2005).

According to Romano Prodi, one of the essential goals of the European Union is to create a superpower on the European continent that stands equal to the United States. To a certain extent the challenge carries an antagonistic edge. Samuel Huntington famously described a prospective "clash of civilizations," between the "west" and "Islam." More recently, it has been posited that there might be an equally vital "clash" within western "civilization," between the 'soft' power of Europe and the 'hard' power of the United States, the multilateralism of the former and the unilateralism of the latter.

Id.

3. Ian Ward, *The Challenges of European Union Foreign and Security Policy: Retrospective and Prospective*, 13 TUL. J. INT'L & COMP. L. 5, 46 (2005). Ward correctly points out that "a coherent European foreign policy remains more of an aspiration than a current reality."

Id.

4. Sergio Baches Opi & Ryan Floyd, *A Shaky Pillar of Global Stability: The Evolution of the European Union's Common Foreign and Security Policy*, 9 COLUM. J. EUR. L. 299, 304-07 (2003).

5. Elizabeth Shaver Duquette, *The European Union's Common Foreign and Security Policy: Emerging From the U.S. Shadow?*, 7 U.C. DAVIS J. INT'L L. & POL'Y 169, 191 (2001).

admit incoherence and argue Europe needs a coherent foreign policy to create a common European identity.⁶ Both views confuse effects and causes. European foreign policy is incoherent in direct proportion to the extent of Europe's internal political divisions. The result of political incoherence is that little or no effective military means are available to Europe. If there were a coherent political will, the means to implement that will would be found. Likewise, a coherent foreign policy can exist only if there is a common identity. Without a common identity, a coherent foreign policy is not possible. Common identity may be based on language, race, religion, ideology or something else entirely. But the sense of common interest among the people of Europe – which does exist – is a necessary precondition to a common foreign policy.

A coherent foreign policy must align expectations with abilities to express a common political will arising out of a common identity. A common European foreign policy is necessary to express the need for peace,⁷ to secure the collective interests of all Europeans and because, without a common foreign policy, Europe will remain divided and irrelevant, watching the world go by rather than helping to shape it.⁸

We examine European foreign policy to understand the opportunities and challenges it presents and also to determine how best to shape it to help solve the manifold problems facing the world today. To that end, we look at the institutions and instruments of European foreign policy and then at the historic experiences and contemporary issues to see how Europe's foreign policy has interacted with that of the United States.

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.

Id.

6. See Opi & Floyd, *supra* note 4, at 299.

7. Donato F. Navarrete & Rosa María F. Egea, *The Common Foreign and Security Policy of the European Union: A Historical Perspective*, 7 COLUM. J. EUR. L. 41, 41 (2001).

European history has taught us two lessons. The first is that the unification of Europe has not been achieved by armed force despite the various attempts to do so over the last two centuries (e.g., Napoleon, Hitler, etc). The second, which also serves to explain the failure of these attempts, is that the countries of Europe have used every means possible to prevent the emergence of a preeminent power among them which could threaten their security. The corollary of these two ideas is clear: European unification must be achieved through the independence and freedom of its people or be condemned to failure.

Id.

8. Anderson, *supra* note 1, at 83-84. "In fact, the EU could very well languish indefinitely as 'an economic giant with the political influence of a pygmy' if the Member States, through their leadership, do not take concrete steps to address them." *Id.*

IV. ECONOMIC CONSTRAINTS OF CFSP

A. BRETTON WOODS⁹

The post war world cannot be understood without at least a basic grasp of the key role the Bretton Woods institutions have played in it. In the wake of the largest mass slaughter of persons in history, the leaders of the western world realized the war was caused by poverty and, more specifically, by hyperinflation.¹⁰ Thus, financial stability and economic interdependence came to be seen correctly as keys to preventing war.¹¹ Consequently, institutions such as the International Bank for Reconstruction and Development and the International Monetary Fund were established to prevent hyperinflation and fund reconstruction of the ruins that were Europe.¹² A key element of the Bretton Woods system was the gold standard: U.S. dollars were pegged to gold, and European currencies to the dollar.¹³ This policy became unsustainable because of the war in Vietnam. The U.S. went off the gold standard,¹⁴ the chaos of free floating currencies¹⁵ ensued and was followed shortly thereafter by "stagflation."¹⁶ From 1973 (at latest) to 1979 (at earliest), western economies were characterized by high rates of inflation, high rates of unemployment and low growth rates. As a result Europe began its search

9. The Bretton Woods Project works as a networker, information-provider, media informant, and watchdog to scrutinize and influence the World Bank and International Monetary Fund ("IMF"). Through briefings, reports, and the bimonthly digest *Bretton Woods Update*, it monitors projects, policy reforms, and the overall management of the Bretton Woods institutions with special emphasis on environmental and social concerns. Bretton Woods Project, <http://www.brettonwoodsproject.org/project/index.shtml> (last visited Apr. 6, 2006).

10. But see Timothy A. Canova, *Financial Liberalization, International Monetary Disorder, and the Neoliberal State*, 15 AM. U. INT'L L. REV. 1279, 1297 (2000) (arguing that German hyperinflation had ended by 1924 and that the forty percent rate of unemployment in the early 1930s was due to excessive deflationary policies). However, the point holds: the hyperinflation caused the overly deflationary policies resulting in unemployment and then war. *Id.*

11. Padideh Ala'i, *Free Trade or Sustainable Development? An Analysis of the WTO Appellate Body's Shift to a More Balanced Approach to Trade Liberalization*, 14 AM. U. INT'L L. REV. 1129, 1133 n.10 (1999).

12. *Id.*

13. Amy Youngblood Avitable, *Saving the World One Currency at a Time: Implementing the Tobin Tax*, 80 WASH. U. L.Q. 391, 391 n.4 (2002).

14. See, e.g., Kenneth W. Dam, *From the Gold Clause Cases to the Gold Commission: A Half Century of American Monetary Law*, 50 U. CHI. L. REV. 504, 526-27 (1983).

15. See generally Geoffrey G.B. Brow, *The Tobin Tax: Turning Soros into Plowshares?*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 345, 353 (1999).

16. Ryan D. Frei, *Reforming U.S. Immigration Policy in an Era of Latin American Immigration: The Logic Inherent in Accommodating the Inevitable*, 39 U. RICH. L. REV. 1355, 1372 (2005).

for monetary union.¹⁷ The result of this was the Euro, which has, since its introduction, “succeeded in gaining the confidence of financial markets and, to a limited extent, establishing itself as [the world’s second largest]¹⁸ international reserve currency”¹⁹ though not without political problems.²⁰ The creation of a second global reserve currency is one of the most important achievements of European foreign policy.

B. FREE TRADE

A stable currency system is the benchmark of the post-war liberal world order.²¹ Currency stability is a necessary precondition for the other key feature of the post-war liberal world – free trade. Trade is seen, correctly, as a positive sum game, encouraging prosperity and thereby peace by separating trade and territory.²² Though one can take a pessimistic zero sum view of Europe and equate advances in European integration with a decline in U.S. power, such a view is erroneous. In an interdependent world, the United States and EU are partners. When one trading partner’s economy improves, the well-being of the other partner improves too. Populist calls for national economies are unrealistic and underproductive. Protectionism is a failed trading policy that leads not just to economic failure, but even to war. The EU has grown into an economic and political partner of the United States.²³ Mutual dependence explains why the transatlantic partnership will, despite stress, endure. Indeed, “the European model . . . is a whole – monetarist, federal, Atlanticist – and it is impossible to accept one part of it without being forced to accept the others, nor to reject one part without renouncing the others.”²⁴ A socialist, isolated, autarchic Europe, though possible in theory, is, in practice, an underperformer, and has been clearly rejected since 1989 throughout Europe.

17. Alan W. Cafruny, *A Ruined Fortress? Europe and American Economic Hegemony*, 19 CONN. J. INT’L L. 329, 330 (2004).

18. Ronald A. Brand, *The European Union’s New Role in International Private Litigation*, 2 LOY. U. CHI. INT’L L. REV. 277, 277 (2005).

19. Cafruny, *supra* note 17, at 329.

20. *Id.* at 331.

21. Joel L. Silverman, *The “Giant Sucking Sound” Revisited: A Blueprint to Prevent Pollution Havens by Extending NAFTA’s Unheralded “Eco-Dumping” Provisions to the New World Trade Organization*, 24 GA. J. INT’L & COMP. L. 347, 369 (1994).

22. See Eric Allen Engle, *The Transformation of the International Legal System: The Post-Westphalian Legal Order*, 23 QUINNIPIAC L. REV. 23, 41 (2004).

23. See Cafruny *supra* note 17, at 333.

24. *Id.*

V. EUROPEAN FOREIGN POLICY INSTITUTIONS

To expect Europe to become a military power capable of either competing with or significantly aiding the United States is unrealistic at present. However, a less ambitious and more realistic common foreign policy is certainly attainable. To see how a common foreign policy can be implemented, we now look at the institutions which shape and implement European foreign policy.

European foreign policy is created and implemented under the rubric of the CFSP.²⁵ The CFSP is not equivalent to the foreign policy of a state.²⁶ Some argue this means Europe has no foreign policy.²⁷ That position goes too far and does not understand the functionalist method. Europe does not have a foreign policy in the sense of a centrally coordinated and hierarchically determined diplomatic and military apparatus. Rather, it has objectives which it seeks to attain by coordinating the foreign policies of the Member States. The objectives of the CFSP are found in TEU Article 11. They are:

- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter,
- to strengthen the security of the Union in all ways,
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,
- to promote international cooperation,
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.²⁸

The CFSP is an objective to be attained by the coordination and harmonization of the foreign policies of the Member States, a hybrid approach that is neither federal nor national.

25. See Mamedov Muschwig, *Crisis of Transatlantic Relations: NATO and the Future European Security and Defense Identity (ESDI)*, 10 U. MIAMI INT'L & COMP. L. REV. 13, 19 (2002).

26. *Id.* at 37.

27. Eric Stein, *European Foreign Affairs System and the Single European Act of 1986*, 23 INT'L L. 977, 992 (1989).

28. Consolidated Version of the Treaty on European Union, art. 11, 2002 O.J. (C 325) 5, available at http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002M/htm/C_2002325EN.000501.html [hereinafter TEU].

What emerges is a paradox: a state-inspired model of foreign policy expressed pursuant to multifarious procedures and carried out by States eager to emphasize its limits. In legal terms, this paradox is bound to give rise to acts whose significance and repercussions cannot be easily defined by our traditional legal vocabulary.²⁹

As elsewhere in EU law, the CFSP is *sui generis* and an example of the functionalist method that slowly but inexorably drives European integration ahead. To focus not on the dynamic of the CFSP, but rather to look at the CFSP statically, as if it were unchanging, really misses the point.

A. CREATING THE CFSP

We can best understand the policies formulated by the EU as a hierarchy. At the top of the hierarchy are the most general policies with the broadest coverage: the general guidelines, which outline aspiring goals and objectives of the CFSP. At a somewhat less abstract level, the common strategies elaborate general frameworks within which the EU plans to attain its goals. At the concrete level of implementation, the EU undertakes joint actions (operations) and the Member States adopt common positions. These policies, the decision makers that reach them, and the actors that implement them, are represented below:³⁰

29. Panos Koutrakos, *Constitutional Idiosyncrasies and Political Realities: The Emerging Security and Defense Policy of the European Union*, 10 COLUM. J. EUR. L. 69, 80 (2003) (citation omitted).

30. EU, *Common Foreign and Security Policy (CFSP) Financing* (2006), available at http://europa.eu.int/comm/external_relations/cfsp/fin/index.htm (last visited Apr. 6, 2006).

Instrument	Who proposes	Who decides	Who implements
General guidelines	Member States and Commission	the European Council	the Presidency
Common strategies	Member States and Commission	the European Council	the Presidency
Joint actions	Member States and Commission	the Council	the Commission
Common positions	Member States and Commission	the Council	Member States

Joint actions include operations in the fields of conflict prevention and crisis management, non-proliferation and disarmament, conflict resolution, verification, support for the peace process and stabilization, and the dispatching of European Union Special Representatives.³¹

As can be seen from the table, the key institutions of EU foreign policy are the EU and EC, the European Council, the Council, the Commission, the European Parliament and the European Court of Justice,³² the President of the Council of the European Union and the Member States. They make and implement the guidelines, common strategies, joint actions and common positions.

31. EU, *Common Foreign & Security Policy (CFSP) – Financing – Ongoing Joint Actions – Conflict Prevention and Crisis management* (2006), available at http://europa.eu.int/comm/external_relations/cfsp/fin/pja.htm (last visited Apr. 6, 2006).

32. Denis Chaibi, *The Foreign Policy Thread in the European Labyrinth*, 19 CONN. J. INT'L L. 359, 360 (2004).

1. The EU and EC – International Legal Persons with Foreign Policy Competence

An organization has international legal personality as a result of agreements between states which create a legal person distinct in powers and purposes from the members, and whose object is to exercise powers in international relations.³³ The EC is an international legal person³⁴ and has capacity to negotiate international treaties in given fields.³⁵ Though “the Amsterdam and the Nice Treaties did not determine whether the European Union had a legal personality[,]”³⁶ the “EC and EU policies are considered to form part of a single legal system.”³⁷ In terms of customary international law, other States treat the Union as an international legal person and thus it is, or is becoming, an international legal person. The best view is that the EU has implicit international legal personality³⁸ both from the relevant texts and from state practice. States believe the EU exists, and act like it does, so it does by operation of customary international law. Thus, the EU is like a state – it is a state “in being.”

Regardless of the question of the international legal personality of the EU, it is perfectly clear that the EU does have foreign policy competence. Trade policy is one important aspect of EU Foreign Policy.³⁹ Articles 5 and 133 of the EC Treaty give the EC competence in commercial policy. Moreover, “[t]he A[msterdam] T[reaty] grants the European Union competence to make agreements with other states and international organizations in the CFSP area.”⁴⁰ As time has passed, Europe’s foreign policy has become increasingly cohesive⁴¹ and with time, the Member States will continue to cede more of their foreign policy competencies to the Union.⁴² Europe’s foreign policy is developing along functionalist

33. *Id.* at 84.

34. TEU, *supra* note 28, art. 5.

35. European Community Treaty (Treaty of Rome), Art. 281 & 300.

36. Chaibi, *supra* note 32, at 384.

37. *Id.* at 385.

38. Koutrakos, *supra* note 29, at 84.

39. Chaibi, *supra* note 32, at 367.

40. Donato F. Navarrete & Rosa Maria F. Egea, *The Common Foreign and Security Policy of the European Union: A Historical Perspective*, 7 COLUM. J. EUR. L. 41, 54 (2001).

41. John J. Kavanagh, *Attempting to Run Before Learning to Walk: Problems of the EU’s Common Foreign and Security Policy*, 20 B.C. INT’L & COMP. L. REV. 353, 356-57 (1997).

42. Opi & Floyd, *supra* note 4, at 320.

[I]t is worth noting that Article 11 of the Treaty of Amsterdam begins by referring to the “Union,” and not to the “Union and the Member States” as in the former Article J.I of the TEU, as the entity in charge of defining and implementing a CFSP [T]his difference reflects the trend of Member States to start ceding sovereignty . . . to the EU.

lines, attaining what is possible here and now but always seeking to gain ground and legitimacy through its success. Europe's foreign policy is more cohesive than yesterday but less cohesive than tomorrow.

2. The Presidency of the Council of the European Union

The President (of the European Council) represents the EU in the CFSP.⁴³ The President implements general guidelines and common strategies.⁴⁴ The President holds executive powers.

3. The European Council

The European Council brings together the heads of states and the President of the Commission,⁴⁵ who determines⁴⁶ the content of general guidelines⁴⁷ and common strategies⁴⁸ of the CFSP, including defense and related matters.⁴⁹ Guidelines outline the goals of the Union; common strategies address activities with specific countries or regions, i.e., how those guidelines are to be implemented. Joint actions implement the policies outlined in the guidelines and the common strategies. Thus, the European foreign policy instruments are hierarchically arranged from general to specific with differing decision mechanisms for each policy instrument.

4. The Council of the European Union (the Council)

The Council consists of EU Foreign Ministers and the Commission External Relations Commissioner. It determines joint actions and common positions.⁵⁰ Joint actions "commit the Member States in the positions they adopt and in the conduct of their activity."⁵¹ Joint actions are what we typically think of as foreign policy actions, i.e., to implement a peacekeeping operation. That is, they are concrete steps taken to

Id.

43. TEU, *supra* note 28, art. 18, para. 1.

44. *Id.* at para. 2.

45. *Id.* at art. 4.

46. *Id.* at art. 13, para. 3. "The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council." *Id.*

47. *Id.* at para. 1.

48. *Id.* at art. 13, para. 2.

49. *Id.*

50. *Id.* at art. 14, para. 1.

51. *Id.* at para. 3.

implement the general policies of the guidelines and the common strategies.

The Council must ordinarily reach its CFSP decisions unanimously.⁵² That is a serious limitation on the ability of the EU to engage in a coherent forceful foreign policy. Consequently, mechanisms have been introduced to meet this challenge. Member States can abstain from voting, and abstention from voting will not prevent all other Member States from adopting a policy. Similarly, Member States can qualify their abstention such that the action of the Union will not be obliged to apply the decision which will bind all other Member States.⁵³ Further, in the event the Union as a whole cannot act, Member States can act with each other in “enhanced cooperation.”⁵⁴ However, enhanced cooperation as to matters with military or defense implications is expressly forbidden.⁵⁵ Enhanced cooperation is funded by the Member States,⁵⁶ not the Union.

Exceptionally, some votes of the Council may be taken by qualified majority, “when adopting joint actions, common positions, or taking any other decision on the basis of a common strategy, when adopting any decision implementing a joint action or a common position, when appointing a special representative in accordance with Article 18(5).”⁵⁷ However, qualified majority voting is expressly forbidden as to “decisions having military or defense implications.”⁵⁸ Further, Member States can force a vote to be taken on the basis of unanimity.⁵⁹

5. The Commission

Like the Member States,⁶⁰ the Commission can propose general guidelines, common strategies, joint actions and common positions.⁶¹ The Commission is solely responsible for European trade policy.⁶²

52. *Id.* at art. 23, para. 1.

53. *Id.*

54. *Id.* at art. 27a, para. 1.

55. *Id.* at art. 27b.

56. *Id.* at art. 44a.

57. *Id.* at art. 23, para. 2.

58. *Id.*

59. *Id.*

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

Id.

60. Adrian Toshev & Gregory Cheikhameguyaz, *The European Union and the Final Status for Kosovo*, 80 CHI.-KENT L. REV. 273, 285 (2005).

61. TEU, *supra* note 28, art. 22, para. 1.

6. The European Parliament

The European Parliament is the only directly elected EU institution, yet it has few powers.⁶³ The Parliament can recommend actions to the Presidency and request and receive information from the Commission and Presidency regarding the CFSP.⁶⁴ Parliament also has a consultative function and has the power to fund operating expenses of the CFSP.⁶⁵ If European foreign policy is to grow into a legitimate and effective instrument expressing the needs and hopes of Europe, then it will be through the parliament and, more exactly, through the struggles over taxation and budgeting that will occur, just as happened in Britain historically. Such struggles are examples of productive disunity.

Both macroeconomic and political forces explain the creation of Europe. Finance recurs as a key issue at the operational level as well. A major weakness of attempts to create a common European foreign policy is the lack of financial resources. "Current EU revenues are 1.3 percent of member-state GNP, much less even than the five to seven percent viewed as the minimum necessary budget called for in the McDougal Report of 1977."⁶⁶ CFSP budgeting is met pursuant to Article 28 of the EU Treaty, which funds operating expenses for the CFSP from the EC budget, excepting expenditures arising from defense operations,⁶⁷ in which case Member States are to pay proportionate to their national wealth excluding those states which opt out of those operations.⁶⁸ This gives the European Parliament some influence in foreign policy, namely the power of the purse.⁶⁹ This new funding mechanism "should reduce, if not eliminate,

62. Toshev & Cheikhameguyaz, *supra* note 60, at 285.

63. Opi & Floyd, *supra* note 4, at 311.

64. TEU, *supra* note 28, art. 21.

65. Opi & Floyd, *supra* note 4, at 311.

66. Cafruny, *supra* note 17, at 331-32.

67. Navarrete & Egea, *supra* note 7, at 55.

68. Opi & Floyd, *supra* note 4, at 322.

Article 28 of the TEU (as amended by the Treaty of Amsterdam) provides as a general principle that all operating expenses of the CFSP shall be directly charged to the EC budget, except for expenditures arising from defense operations and cases where the Council unanimously decides otherwise. In those cases in which expenditure is not charged to the EC budget, it shall be charged to the Member States in accordance with the gross national scale, unless the Council unanimously decides otherwise. Finally, as per expenditure arising from operations having military or defense implications, those Member States which have opted-out in accordance with Article 23(1) of the TEU, are not obliged to contribute to the financing thereof.

Id.

69. Chaibi, *supra* note 32, at 390.

Since the CFSP budget is established following the budgetary procedure laid down for the Community budget, the European Parliament has found a way to influence a CFSP from which it is institutionally excluded. This is even more important when the

conflicts over procedure between the institutions and thereby ensure increased coherence between the activities of the institutions in the area of the CFSP”⁷⁰ though financial issues remain, probably inevitably, contentious.⁷¹

7. The Member States

The Member States can propose general guidelines, common strategies, joint actions, and common positions,⁷² and implement the policies announced as common positions.

B. IMPLEMENTING THE CFSP

Implementing the CFSP, specifically its joint actions, requires common security institutions. However, the existing institutions – NATO, the WEU and the Rapid Reaction Force (“RRF”) – are inapt; they cover too much (NATO) to help build a cohesive union, or they are made irrelevant by NATO (the WEU), or they are badly coordinated (RRF, Eurocorps). Nevertheless, Europe has taken the first few faltering steps toward its own security institutions.

1. NATO

NATO is the core institution of transatlantic relations.⁷³ However, it is only one institution among others. The difficulty in using NATO as an instrument in European foreign policy arises from the fact that some EU Member States are not in NATO, and some NATO states are not in the EU.⁷⁴ The divergence of membership in NATO and the EU explains in part the transatlantic tensions that arise regarding the use of NATO resources.⁷⁵ NATO competes with Union institutions such as the WEU, and has preempted attempts to establish an independent Western European Security and Defense Initiative.⁷⁶ If the EU is to develop a truly European

initially forecasted CFSP budget is insufficient. The reinforcement of CFSP appropriations is then executed through either a transfer of appropriations or a supplementary and/or amended budget. In both cases, there is a need for a proposal from the Commission, and the European Parliament has the last word.

Id.

70. Duquette, *supra* note 5, at 188.

71. Kavanagh, *supra* note 41, at 366.

72. TEU, *supra* note 28, art. 22, para. 1.

73. Muschwig, *supra* note 25, at 37.

74. Chaibi, *supra* note 32, at 381.

75. See Duquette, *supra* note 5, at 191.

76. William Bradford, *The Western European Union, Yugoslavia, and the (Dis)Integration of*

foreign defense and security policy, it will likely have to do so outside of NATO. Thus, “[i]n April 2003, the leaders of Belgium, France, Germany and Luxembourg met and launched a new EU planning capability to be housed in Tervueren in Belgium.”⁷⁷ However, the TEU respects the Member States’ NATO commitments,⁷⁸ which are a serious, but perhaps inevitable, constraint on the EU’s foreign policy. As long as most Member States are in NATO, the EU will not need to develop its own institutions. At the same time, NATO cannot evolve into an exclusive club for Member States only. If there is an intractable problem in the CFSP, this may be it.

2. WEU

The Western European Union is an institution oft moribund conceived and a bit of a political football, at least historically. Today, “the WEU seems to be conceived as the European wing of NATO and the common defense remains within the NATO framework.”⁷⁹ Article 17 of the TEU provides that the WEU will coordinate with NATO and that the EU Member States will observe the obligations derived from the Atlantic Treaty.⁸⁰ The WEU is tasked with “implementing the Union’s defense related decisions and actions.”⁸¹ In theory, the WEU might become something, someday, but “[t]he reality is that the WEU plays a role of little significance. Almost the entirety of its activity is concentrated on the Petersberg missions, recognized in the AT, which are limited to humanitarian, rescue and peacekeeping activities.”⁸²

3. Eurocorps and the RRF

Implementing a common foreign policy requires military structure. Two efforts exist: the Eurocorps and the Rapid Reaction Force (“RRF”). The Eurocorps is a joint Franco-German force (Belgium, Luxembourg and Spain joined some time later) with some operational difficulties arising due to language and equipment differences.⁸³ The RRF is perhaps the beginning of a European army. The units in the RRF are maintained by the Member States and are intended for rapid sustained deployments: sixty

the EU, The New Sick Man of Europe, 24 B.C. INT’L & COMP. L. REV. 13, 15-16 (2000).

77. Chaibi, *supra* note 32, at 381.

78. TEU, *supra* note 28, art. 17, para. 1.

79. Navarrete & Egea, *supra* note 7, at 60.

80. TEU, *supra* note 28, art. 17, para. 1.

81. Duquette, *supra* note 5, at 179.

82. Navarrete & Egea, *supra* note 7, at 60.

83. Opi & Floyd, *supra* note 4, at 328.

days to deployment, with deployments of up to one year.⁸⁴ However, RRF deployment decisions are made by the Member States. Though the RRF is participating in the Concordia mission,⁸⁵ the EU does not yet have its own military means to enforce its policies and is dependent on the Member States.

VI. EUROPEAN FOREIGN POLICY INSTRUMENTS

A. DECLARATIONS

Europe's foreign policy expressed in the guidelines and common positions is communicated to third parties in "declarations following the meetings of the Ministers or the Heads of Governments, demarches with a third state, diplomatic missions entrusted to the President-in-Office, or common positions adopted in international fora."⁸⁶ Europe, when it formulates its will, can express that will to foreign states clearly. Of course, declarations are "just talk," but talking is an essential part of human interaction. However, when talking fails, Europe's actions speak louder than words.

B. SANCTIONS/FOREIGN AID

The EU can, and does, successfully use sanctions to assert its common foreign policy. Sanctions may be political, diplomatic, cultural, or economic. For example, sanctions were undertaken against Bosnia.⁸⁷ Trade may be restricted, as was done to Haiti,⁸⁸ or investments withdrawn or frozen. Goods can be embargoed,⁸⁹ for example, arms sales to Sudan were embargoed.⁹⁰

Just as Europe can offer economic sanctions, it can also offer foreign aid as a tool in its foreign policy. For example, aid was offered within Europe to Bosnia and outside of Europe to South Africa, Palestine and Nigeria.⁹¹ Thus, Europe has instruments for expressing its foreign policy which, while less visible than military means, are at least as effective.

84. *Id.* at 327.

85. *EU Force Takes over Peace Role*, The Guardian, March 31, 2003, available at <http://www.guardian.co.uk/macedonia/story/0,7369,926210,00.html> (last visited Apr. 6, 2006).

86. Stein, *supra* note 27, at 985.

87. Ward, *supra* note 2, at 11.

88. *Id.*

89. Chaibi, *supra* note 32, at 372.

90. Ward, *supra* note 2, at 11.

91. *Id.* at 10.

C. PEACEKEEPING

Though the most effective instruments of EU foreign policy are likely financial incentives and disincentives, Europe has in fact also participated in military peacekeeping missions. The EU does engage in international peacekeeping, sending military force overseas to maintain good order and promote democracy and human rights.⁹² The first peacekeeping operation was the European Union Police Mission (“EUPM”) in Bosnia and Herzegovina, lasting for three years and including five-hundred police officers from more than two dozen countries, fifteen of which are EU Member States.⁹³ The Concordia peacekeeping mission was launched on March 18, 2003, in Macedonia (ex Yugoslavia). NATO cooperated both in planning and providing assets for the Concordia mission.⁹⁴ The Artemis mission in the Democratic Republic of Congo (“DRC”) under UN mandate did not involve NATO, but only EU forces.⁹⁵

These missions show the ability and resolve of the Union to engage in a common foreign policy throughout the conflict spectrum.⁹⁶ All this activity occurred at a time when EU foreign policy was regarded as incoherent and ineffective.⁹⁷ Errors such as Yugoslavia are always evident, but success stories often go unnoticed. We now turn to historical experiences to try to assess the CFSP.

VII. HISTORICAL EXPERIENCES OF EU FOREIGN POLICY

We now look in historical order at the experiences of EU foreign policy to determine the trends. The trend is toward quantitative, not qualitative, improvements in coherence and cohesion of EU foreign policy. We have neither seen “catalytic” effects of the Union causing a sudden and more rapid integration (change in degree), or a “quantum” effect causing a radical alteration in state (change of type) from (coordinated) foreign policies to a single European foreign policy. At the same time, however, we do see a much clearer shift toward increasing dissatisfaction with U.S. domination of the transatlantic relationship and gradual closer integration of foreign policies of the Member States. If the common European foreign policy makes the quantum leap from a coordinating system for managing consensus to an operational system for implementing united policy, such a

92. Chaibi, *supra* note 32, at 374.

93. *Id.* at 379.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.* at 380.

state change would be the result of dissatisfaction with U.S. mismanagement. Once again, Europe does not have the initiative because of the lack of cohesive political will, and thus represents no threat to U.S. interests.

A. FALKLANDS

The first recent experience in European (at the time EC) foreign policy was also one of the more successful. In 1982, Argentina attacked the Falkland Islands resulting in a war with Britain. "[A]t the outbreak of the Falkland war, an economic embargo against Argentina was . . . put into effect by the Community, employing its common trade policy power."⁹⁸ The result was mixed: "the Member States initially provided solid support for the British action in the Falkland Islands/Malvinas War by agreeing to Community sanctions against Argentina, but the unanimity fell apart for individual political reasons once the sanctions came up for extension."⁹⁹ However, the Falklands crisis was, in comparison with the Yugoslav crises, a success for European foreign policy.

B. YUGOSLAVIA

The next major test of EU Foreign policy was the crises in Yugoslavia (particularly in Bosnia, Croatia, Serbia, Kosovo and Macedonia). EU Foreign policy singularly failed to prevent the conflicts and was unable to end them once they began.

In Bosnia, debate about how to react to the crises was frozen by the question of who should be responsible to solve the problem (NATO? The WEU? The Member States? Europe? The United States?).¹⁰⁰ As a result, violence was not prevented or stopped as quickly as it could have been. Ultimately, the United States intervened,¹⁰¹ whether despite Europe's desire to solve its own problems or because of Europe's inability to do so.¹⁰² To prevent or end such crises requires both a united will and military force – and Europe lacked both.¹⁰³ When a similar crisis played out again in Kosovo just a couple of years later in 1996, there was less diplomatic

98. Stein, *supra* note 27, at 985-86.

99. *A Community Within the Community: Prospects for Foreign Policy Integration in the European Community*, 103 HARV. L. REV. 1066, 1073 (1990).

100. Bradford, *supra* note 76, at 27.

101. Opi & Floyd, *supra* note 4, at 318.

102. *Id.* at 319.

103. *Id.*

confusion but still no real European military capacity.¹⁰⁴ The result in all cases in Yugoslavia was the needless slaughter of innocent civilians resulting from incoherence and incapacity of Europe to react to a crisis on its own doorstep which, in turn, discredited the EC. "Bosnia-Herzegovina . . . illustrated that the Western European ability to formulate and implement a CFSP still was far too meager in the absence of U.S. leadership and even, on occasions, unilateralism."¹⁰⁵ Thus, it is clear that "[i]f the EU intends to assume the trappings of sovereignty, it must develop a coherent defense identity and defense institutions to orchestrate the management of contingencies such as Yugoslavia. Otherwise, the responsibility for security in the European sphere will remain the province of an increasingly noncommittal U.S."¹⁰⁶ The CFSP was created because of the failure of the EC in Yugoslavia.¹⁰⁷

VIII. CONTEMPORARY ISSUES IN EU FOREIGN POLICY

A. COMMON TRANSATLANTIC INTERESTS AND IDEA(L)S

The CFSP must serve the common interests of the Member States¹⁰⁸ which are not merely economic, but are also full of aspirational, and include maintenance of democracy and protection of human rights, for example.¹⁰⁹ Economic growth and aspirations of democracy and human rights are also common transatlantic interests. Because the EU and United States have a common liberal view of politics and economics, their interests will converge more often than they diverge, and as the global economy grows even more interdependent, convergence of transatlantic interests will likely grow.¹¹⁰ Thus, a strong united Europe is in the interests of the United States; and indeed, in practice the United States does encourage European integration.¹¹¹ Common ideology and mutual Euro-American dependence also explain why a fundamental divergence of transatlantic interests is simply impossible, all the more so when we recognize the economic interdependence of the United States and the EU

104. *Id.* at 325.

105. Bradford, *supra* note 76, at 53.

106. *Id.* at 14.

107. *Cf. Opi & Floyd, supra* note 4, at 304-05 (stating that the dissolution of Yugoslavia "highlighted areas needing improvement and sparked the creation of the CFSP").

108. Muschwig, *supra* note 25, at 19-20.

109. *Id.* at 20.

110. Ward, *supra* note 2, at 40-41.

111. Muschwig, *supra* note 25, at 39. "Europeans and Americans jointly promote the process of integration and opening of the West in relation to the new Eastern European democracies." *Id.*

However, while transatlantic goals converge, serious disputes exist about how best to achieve those goals which we now examine.

B. TRANSATLANTIC CONFLICTS: TERRORISM & THE WAR IN IRAQ

Though a fundamental divergence as to the ends of political life between Europe and the United States is simply not possible, serious divergences as to the means to attain those ends can and do arise. These divergences, in fact, mark the current relationship of the EU and the United States.

Crises and a lack of vision have made the U.S. government the worst enemy of the people of the United States. The actions of the U.S. government since that fatal day in September have been as irrational and violent as the acts of a wounded animal. Some argue, “[t]he terrorist attacks of September 11, 2001, shocked the United States and the rest of the world, marking a new era in international law and policy[.]” and that this has resulted in a “a new concert of great powers that appear to recognize a need to coordinate their foreign policies to fight against terrorism.”¹¹² I disagree. I do not see any global or even much transatlantic unity on the prosecution of the war in Iraq. Nor do I see any unity on the maltreatment of prisoners at Abu Ghraib or at Guantanamo Bay. The majority of the rest of the world condemns the United States, and rightly so, for betraying its most basic principles in its pointless abuse of helpless prisoners of war. It is this helplessness, not self-proclaimed unity, which explains the war crimes the U.S. government has committed. The United States is essentially fighting a war it cannot win against an enemy it cannot see:

[t]errorism is notoriously hard to define, and so too, accordingly, is a strategy designed to counter it. It is difficult to wage war against an abstract noun. There is no identifiable and, critically, no finite enemy to be defeated. The very notion of terrorism is notoriously difficult to pin down in terms of existing international law.¹¹³

Concretely, the only results of the war on terror that anyone can see are violations of civil rights in Europe, mostly in Britain,¹¹⁴ and abuse of prisoners by the United States. The United States mistreats its prisoners because they are the only visible enemy, the only object against which they can exact revenge. But however satisfying it may be to beat a helpless man

112. Opi & Floyd, *supra* note 4, at 299.

113. Ward, *supra* note 2, at 47.

114. See Sophie Robin-Olivier, *Citizens and Noncitizens in Europe: European Union Measures Against Terrorism After September 11*, 25 B.C. THIRD WORLD L.J. 197, 207-08 (2005).

to death, the result is that the U.S. government, from the President to the Privates, is needlessly making enemies at every turn, and not just in the Arab world.

The inability to see the world as it is explains self destructive U.S. policies. The Bush administration has taken up an erroneous isolationist and unilateralist view of the world. What is the result of this U.S. unilateralism? "Transatlantic relations are arguably worse today than at any point since the Second World War."¹¹⁵ To which I can only add: Arguably? When were they worse? Indeed, "many Europeans today have come to consider the United States itself to be the outlaw, a rogue colossus."¹¹⁶ The EU did not participate in the war in Afghanistan because its foreign and security competence in the EU Treaty¹¹⁷ is limited to humanitarian and rescue tasks and its security competence did not include collective self defense.¹¹⁸ Given the subsequent debacle of the United States in Iraq, this is probably just as well. U.S. unilateralism, in instigating the second Iraq war, "dramatically raised the level of transatlantic conflict even as it deepened political fault lines within an expanding European Union."¹¹⁹

The ability of the United States to impose its will on Iraq reflects the post-war reality. "In the post-World War II world, nearly all conflicts between European and U.S. foreign policy ideas have been resolved in favor of the United States."¹²⁰ In the past however, legitimatization of U.S. hegemony by consultation or cooperation through NATO and/or the UN resulted in one-sided transactions which were accepted because they were seen as being in the interests of both the United States and Europe. But today, the United States has essentially abandoned both the UN and NATO as foreign policy legitimators. What has been the result of this unilateralism? The United States has successfully alienated close allies¹²¹ and the entire Islamic world. The United States can still impose its self

115. Christina Schweiss, *Sharing Hegemony: The Future of Transatlantic Security*, 38 COOPERATION & CONFLICT 211, 211 (2003).

116. ROBERT KAGAN, *PARADISE AND POWER: AMERICA AND EUROPE IN THE NEW WORLD ORDER* 100 (Vintage Books 2004) (2003).

117. Jan Wouters & Frederik Naert, *The European Union and 'September 11'*, 13 IND. INT'L & COMP. L. REV. 719, 769 (2003).

118. TEU, *supra* note 28, art. 17, para. 2. EU Treaty includes in security and foreign policy "humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking." *Id.*

119. Cafruny, *supra* note 17, at 329.

120. Daniel I. Fisher, "Super Jumbo" Problem: Boeing, Airbus, and the Battle for the Geopolitical Future, 35 VAND. J. TRANSNAT'L L. 865, 869 (2002).

121. Cafruny, *supra* note 17, at 329.

destructive unilateralist and isolationist view on an unwilling world, but not without serious budgetary and foreign policy consequences. And what did the United States get out of “winning” its dispute with France and Germany about starting a war in Iraq to get rid of non-existent chemical weapons? Nothing but dead Americans, wasted treasure, lost credibility, destroyed good will and expensive oil. On September 12, 2001, the entire world, including the majority of Moslems, was with the United States. That is no longer the case. It is safe to say much of the world now hates the United States and even thinks that the United States deserved to be attacked on September 11. The U.S. government is not hated because of its “freedom.” It is hated because it indiscriminately kills and tortures people. The absence of weapons of mass destruction in Iraq just makes that hatred all the more fierce.

Given the complete failure of recent U.S. foreign policy to do anything other than squander the goodwill of the entire world, “numerous observers perceive the European Union . . . as a possible entity that could counterweight America’s supremacy.”¹²² It is true that the “nations of Europe – acting individually or collectively – now appear to represent the only potential systemic challenge to America’s global economic and military hegemony.”¹²³ Thus, some Americans see in Europe, wrongly, “a potential threat to U.S. national security on several levels.”¹²⁴ However, those calling for a well-oiled European war machine, whether to support or oppose the United States, and those afraid of exactly such a beast are in fact being unrealistic, but in different ways and for different reasons. Common culture, economic interdependence, and common ideals explain why the United States and Europe will not fundamentally oppose each other. Moreover, Europe remains internally divided: “[t]he division [within Europe] over the Iraqi crisis and the failure to produce a Constitution in December 2003 could lead to the conclusion that Europe does not have a common vision of the world, nor does it have foreign policy instruments matching its economic strength.”¹²⁵ Some even accuse the United States of “playing on Europe’s own divisions.”¹²⁶ Whether or not that is true,

Europe may be characterized as an economic giant, a political dwarf and a military worm. Not once has the European Union succeeded in attaining the status of a superpower – not in the Near East or in Africa,

122. Chaibi, *supra* note 32, at 359.

123. Cafrun, *supra* note 17, at 329.

124. Fisher, *supra* note 120, at 869.

125. Chaibi, *supra* note 32, at 359.

126. Cafrun, *supra* note 17, at 329.

nor in Former Yugoslavia, and not even in Cyprus. In all these cases, Europe was helplessly stranded.¹²⁷

Thus, at least until present, “if someone has to actually do something about a pending crisis, whether it be humanitarian crises in the Balkans or WMD proliferation in the Mideast, there is really only one credible option. The United States”¹²⁸ But as the United States bankrupts itself and destroys its military in a senseless war in Iraq, this may change; *sic transit gloria mundi*.

However, though the United States will increasingly lack the budgetary means and political will to police the world, it will likely not be replaced by Europe. Hoping or fearing a strong united Europe is at present unrealistic. European imperialism is a paper tiger. Europe cannot contribute anything meaningful to “the war on terror” because (a) it has nothing to contribute, and (b) even if it did, the “war on terror” is not winnable. Instead of asking how to stop suicide bombers, we should ask ourselves whether they can be stopped at all. If we want to stop terrorism, we ought to ask why it starts. If poverty causes war and trade ends poverty, then the best way to end terrorism is to end poverty by opening trade.¹²⁹

C. NORMATIVE RECOMENDATIONS

Given European disunity and lack of means some suggest that transatlantic relations should focus U.S. attention on security issues and European attention on development¹³⁰ because “the European Union ‘speaks softly and carries a big carrot.’”¹³¹ Thus, “[i]t has become fashionable to argue for the continuation of a ‘good cop, bad cop’ approach, with the European Union sweet-talking the terrorists and dictators, whilst the United States and NATO hover menacingly in the background threatening apocalyptic intervention.”¹³² If that is the contribution that Europe can make to a more peaceful and prosperous world then:

the Union should seek to develop its security and defense policy by relying upon the constitutional idiosyncrasies of its current structure acknowledge the need for new challenges to be addressed on the basis of a variety of legal instruments that would transcend traditional legal

127. Muschwig, *supra* note 25, at 21.

128. Ward, *supra* note 2, at 52.

129. Kevin J. Fandl, *Terrorism, Development & Trade: Winning the War on Terror Without the War*, 19 AM. U. INT’L L. REV. 587, 630 (2004).

130. Ward, *supra* note 2, at 38.

131. *Id.*

132. *Id.* at 53.

categorizations and whose combined effect would enhance the stature of the EU. Therefore, the economic aspects of security should be brought to the center . . . and dealt with as a matter of priority on the basis of the sophisticated, multi-layered approach advocated by the Commission.¹³³

IX. CONCLUSION

It is clear that, at present, Europe lacks both the will and the means to present a credible threat to U.S. foreign policy. Even if it did, it would have neither an economic nor ideological reason to do so. At the same time, Europe does have numerous instruments at its disposal to exert pressure or assistance on foreign governments. Thus, we can speak in a meaningful sense of an effective European foreign policy despite the failure in Yugoslavia, for the CFSP was a reaction to the failure of the EC in Yugoslavia, just as the Euro was a reaction to the “stagflation” of the 1970s. The Euro has proven itself, and the CFSP will, with time, increasingly enable Europe to contribute to building a stable and prosperous world.

133. Koutrakos, *supra* note 29, at 95.

