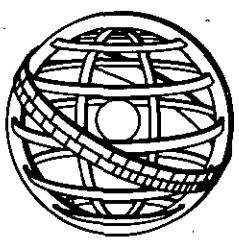
SEMINARIO SULLA PREPARAZIONE DELLA CONFERENZA DI REVISIONE DEL TRATTATO DI MAASTRICHT

ROMA, 9-10/XI/1995



IAI

SEMINARIO SULLA PREPARAZIONE DELLA CONFERENZA DI REVISIONE DEL TRATTATO DI MAASTRICHT

Istituto affari internazionali
Circolo diplomatico
Roma, 9-10/XI//1995

a. Programma
b. Partecipanti
1. "Proposal for a TEPSA report on priorities and strategy for the reform of the Maastricht Treaty"/ Gianni Bonvicini
2. "Quelques reflexions sur la différenciation dans l'Union européenne"/ Jean-Victor Louis
3. "Does CFSP really make a difference?"/ Alvaro Vasconcelos (paper presented at the conference "The future of the European constitution: perspectives on the implementation and revision of Maastricht", College of Europe, Trans European Policy Studies Association, Brugge, 23-24/VI/1995)

(a)

Istituto Affari Internazionali

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Programma

Seminario sulla preparazione della Conferenza di Revisione
del Trattato di Maastricht

Giovedì, 9 novembre 1995

mattina: ore 10.00 Sede: **Istituto Diplomatico**

Apertura seminario "le prospettive della conferenza
di Revisione"
a) lo stato del negoziato: Silvio Fagiolo, rappresentante Gruppo di Riflessione
b) criteri e principi del processo di revisione istituzionale: Gianni Bonvicini, direttore IAI

pomeriggio: ore 15.00 Sede: **IAI**

"Le priorità della Germania per l'integrazione dell'Unione Europea":
Mathias Jopp, direttore Institut für Europäische Politik, Bonn

Venerdì, 10 novembre 1995

Sede: **IAI**

mattina: ore 10.00

"La differenziazione: un nuovo concetto di integrazione": Jean-Victor Louis, professore, Università Libera, Bruxelles

buffet

pomeriggio: ore 14.30

"Il ruolo internazionale dell'Unione Europea: politica estera e di sicurezza":
Alvaro Vasconcelos, Direttore IEEI, Lisbona

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(b)

CENTRO ALTI STUDI PER LA DIFESA
Istituto Alti Studi Per La Difesa

Elenco Del Personale Partecipante Alle Conferenze Dell' Istituto Diplomatico Presso I.A.I.

Giovedì 9 Nov. ore 15.00

Gen.B.A. Daniele TEI
Col.CC. Giulio CASTELLANI
C.V. Giovanni MARESCA
C.V. Ernesto MULIERE
1°Dir.Dr. Michele MURAS

Venerdì 10 Nov. ore 14.30

Col. Biagio ABRATE
C.V. Ernesto MULIERE
Col. Guri PASHA
T.Col. Imre SALLAI

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PROPOSAL FOR A TEPSA REPORT ON PRIORITIES AND STRATEGY FOR THE REFORM OF THE MAASTRICHT TREATY

by Gianni Bonvicini

Draft - do not quote

The today EU crisis is not just the outcome of a deficiency in the institutional set up. Institutions are not neutral with respect to the environment in which they operate; on the contrary, they tend to shape it with their procedures, laws and operating ability. At the same time, the environment (both domestic and international) determines the suitability of existing institutions and influences the form of the new ones set up to dominate present and future events. And in fact, in the present times other basic issues, apart from institutions, are on the agenda: "the horizontal and vertical dimension of policy making and the geographical scope of the Union, raising the very question of European identity and the final European vocation" (Wessels, International Affairs 70, 3 - 1994).

In this light some additional considerations should be drown:

1. A permanent process of institutional adaptation.

The next Revision Conference will not solve the whole range of institutional and political problems that are on the table. It will be part of a continuous process for reforming that will mark the next years.

2. The choice of a well defined target.

Nevertheless, although if limited, the way in which the next Reform of the Treaty will be approached is going to determine the future direction of the EU and of its institutional character.

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3. **A coherent view of the various aspects of the process of european integration (policies + institutions).**

Therefore, in view of the Conference for Revision of the Maastricht Treaty, the fixing of a set of criteria for the long term is more important than the punctual suggestion of Treaty's modifications (or, in other words, it constitutes the necessary precondition). The main questions, whose answer will determine everything else, pertain to the institutional framework (whether it is strengthened or not). In other words, the problem is how to deal with the following issues moving from the current institutional framework on:

- the general nature of the integration process: how far do Europeans want to go on with the integration process and how much national sovereignty are they ready to concede. How can the European system be democratised, therefore more open to citizens' participation.
- the maintenance of a functioning and effective decision-making system, not just for "domestic" economic affairs but also for a more responsible European presence in the world
- the nature of relations with other candidates for EU admission (the issue of future enlargement).

4. **The vital need for public support.**

Regain the support of public opinion to the process of european integration. In fact the most important and unexpected fact with regard to Maastricht has been **the collapse of public support** of the Treaty, in particular, and of the concept of integration, in general. It was not just the first Danish refusal and the scarce electoral support in the French referendum which caused concern, but the general decline in the once widespread interest for the creation of an ad hoc supranational Europe. Add to these factors a subtle argument, supported by many politicians and intellectuals, which asserts that true **democracy lies only at the national level**, where Parliaments and political parties better protect the rights of individuals against the technocratic bureaucracy of Brussels, so distant from the social needs of people. Through this way of reasoning, the strict linkage which actually exists between integration and democracy is hidden and appears less evident; to deny the substantial democratic character of a voluntary integration among states and people, as a way of directing and controlling the effects of international interdependence, means threatening the very basis of one of the most relevant postwar phenomena constituted by the various forms of supranational cooperation.

As a matter of fact some of the strategic elements suggested above were present in 1985 at the time of the first reforming of the Rome Treaty and had helped to turn the **SEA** into a success story.

- The first was the decision taken by the Council of Ministers and the Commission to link enlargement of the Community to its deepening. Ratification of the SEA took place at the same time as the entry into the Community of Spain and Portugal, thus avoiding a repetition of the errors made in 1973, when widening was undertaken without provisions for deepening; that is, contemporaneous reform of decision-making structures took place.

- Another element which contributed to the achievement of consensus in Luxembourg in 1985 was the "package deal" strategy: rather than searching for agreement on individual measures of policy or institutional change, discussion centred on a set of policies and institutional improvements. In fact, in addition to approximately 300 directives on the completion of the internal market, the Commission suggested the introduction of some procedures streamlining decision making, a majority vote on most of the matters proposed. This mix of policies and procedures turned out to be a very dynamic factor and led to the swift implementation of most directives not requiring unanimity.

- A third element, perhaps less apparent but no less important, was the fact that this reform sprang more from the "force" and perceptions of European society than from the goodwill of its political leaders. The 1992 deadline served as a rallying point in the economic and business worlds and, more generally, in the citizenry concerned with assessing what impact the date would have on various sectors of the economic and social life. Not even the launching of the EMS in 1978 generated the same kind of expectations and consensus in European society. Basically, the real supporters of 1992 were the people involved in business, in banking, etc. - the citizens; the politicians, on the contrary, were fearful of losing further terrain to European sovereignty.

In the light of the above considerations the next Revision Conference will have at the same time:
- to address the deficiencies of the Treaty of Maastricht;
- and to fix the basis for a longlasting strategy towards a Europe over year 2.000.

A. ADAPTING THE TREATY OF MAASTRICHT.

1. **Rationalise the system.**

First of all it is necessary to reduce the number of different procedures (Wessels calculates at least 23 procedures laid down into the Treaty); adopt more transparent procedures inside the Union's organs; diminish the risk of blockages. Generally speaking a rationalisation of the whole system is needed.

The second need is that of following the **principle of "institutional consistency"**, that

is maintaining a strict decision-making linkage among the three pillars. The present inconsistency is badly affecting the decision-making credibility. A strengthening of the trend towards a progressive communitarization of the institutional procedures in the second and third pillar; for the second and third pillar qualitative majority voting has to become the normal rule; a need for a machinery capable of responding effectively to the new security and military engagements; the completion of a real "european citizen open territory" and the full protection of human rights. A direct involvement of the Court of Justice is needed for both pillars.

Finally, rationalisation has also to do with the launching of few, simple and clear messages sent to a public opinion far distant from the complexity of EU institutional machinery. Under this point of view, a just technical reforming of the Treaty will not gain the interest of a sceptical public opinion. Some powerful ideas are needed. In absence of them a new round of ratification procedures will risk to produce a number of bad surprises.

2. **Democratise the system.**

Another aspect has to be taken into consideration when we deal with the "perceptive" factor: the growing amount of legislation produced by Brussels. With the completion of the internal market and the plan for full economic union common legislation will inevitably have to limit progressively the room for manoeuvre and the autonomous decision-making power of member states. As a result, the Union will become increasingly responsible to its citizens. This raises two main problems:

- the first regards the democratic deficit, that is, the low level of legitimacy of the present Union decision-making process. Thus the powers of control and co-legislation of the European Parliament must also be increased. In other words the co-decision procedure has to become the major decision-making rule, at least for community's affairs.

- the second, those who are in search of stability, equity and security must be shown that the process of integration is the right answer. Thus, it is important to provide a political solution to the requests (especially those coming from the Eastern Countries) to be full members of the European Union; to guarantee small and weak states a reasonably equal status in the decision-making process.

More in general, if we want to reestablish the link between integration and democracy, we need: the extension of the qualified majority voting procedure to all social and economic legislation; increase the powers of control and co-legislation of the European Parliament; a clearer linkage between European electoral representation and the protection of individual interests at European Union level through a greater degree of competencies and power attributed to the Parliament; a larger role attributed to the

Court of Justice.

3. **Make the system efficient (governing capacity).**

The very first concern is about the governing capacity of the Union, with the extension of the qualified majority voting procedure to all social and economic legislation to streamline the decision making procedure. But governing means also maitaining the consistency among the three pillars: therefore procedures and organs have to be adapted to a "consistent" way of managing the whole of Union's affairs.

The second problem is the relationship between integration and subsidiarity; adopt the political and institutional mechanisms which will provide clear decisions about the appropriate level for the new and old competencies; a better distinction between the different levels of competencies, although it will be wise to accept a regime "des responsabilités partagées" in the place of exclusive competencies (Louis, European Movement, 1995), as dictated by the theory of cooperative federalism; finally, clarification of competencies is needed in order to create fair relations between the European Parliament and National Parliament and to avoid competition on the legitimacy gap.

B. PREPARE THE FUTURE.

In the post '89 European political and security environment the enlargement of the Union takes on a different dimension: contrary to the strategy which was pursued with the EFTA countries, it calls for a new concept of the policy of widening which has to date served simplistic and pragmatic ends. From now on, it will assume a strategic character, as general political and security (as well as military) considerations can no longer be overlooked. This means that a purely mechanical adaptation of the present institutional procedures, as is being done today with EFTA countries, will not be sufficient to match the general political interest of the Union, as explained in the preceding paragraphs. There is therefore a need for new radical institutional changes.

1. **Rebalancing the system.**

Rebalancing the process of integration from economic to political matters. Give priority to the reinforcement of pillar II and III. A precondition for improved prospects of the application of the above mentioned criteria of rationalisation, democratisation and governing ability is a strong political will to rebalance the process of European integration in the direction of foreign policy and defence by putting less emphasis on economic integration (which has been considered a priority since the establishment of

the Community); politics must be brought into the forefront once again.

2. **Differentiation and institutional homogeneity.**

The real issue behind the stage will be differentiation and how to apply it to the present institutional framework.
Two possibilities can be considered: either differentiation within the Treaty or differentiation outside the EU (but making it compatible with the EU).
The first solution appears the most appropriate to fulfil our criteria. Create a coherent and homogeneous institutional base for all present and future members, as "a common institutional platform". Although a fairly complex institutional system involving a large number of actors at different government level will remain unavoidable (Wessels), a common and homogeneous institutional basis will be necessary precondition for any institutional improvement.
On this common institutional base it is possible to foresee forms of differentiations which will allow **a single group of countries** (and not more than **one group** in order to avoid "l'Europe à-la-carte") to apply the whole of Union's policies and institutional procedures.
In fact, today many accept the idea that the current stage of European integration would require some further steps and that those **countries "willing and able"** to make such steps should not be prevented by others to move ahead.
The problem is how to form this group. A first criteria should be that of giving priority to those member states "willing" to participate to new forms of stricter integration. The second to give the "able" countries the full advantages and competences inside the group, while the others "willing" but not "able" might be part of the group without exerting fully their share of decision power (e.g. partial voting power inside the Council) for a transition period.
Finally, differentiation should not be a source of discrimination with those countries nor willing nor able to participate to the single group: this is why an homogeneous institutional basis is necessary. In particular, while in the Council member states not participating should be prevented to vote on policies within the area of exclusion, in the Commission and the European Parliament, however, voting restrictions should not be allowed, since they are institutions not representing the member states as such.

3. **Adopt EMU model for the whole of the institutional system.**

Following our considerations on the criteria for differentiation, what should be studied is the possibility of transferring (with the necessary adaptations) the institutional three stages model of EMU to the other pillars and to the whole Union in order to allow a single group of countries to proceed more quickly. What we mean it is that possible hypothesis of "core Europe" should be prescribed by the Treaty itself. And, especially, that the "core" should be first political and then economic. As we have just said

priority should be given to those member state "willing" to give up sovereignty in all fields and then "able" to implement the necessary requirements. Something similar to what had happened with the signing of the Maastricht Treaty and with the "political" acceptance of the "three stage" model of EMU by a large number of coutries, some of them probably unable to match the necessary requirements in due time.

Quelques réflexions sur la différenciation dans l'Union européenne

par Jean-Victor LOUIS, Professeur à l'Université Libre de Bruxelles, Vice-Président du Groupe d'Etudes Politiques Européennes

Le thème de l'intégration différenciée n'est pas nouveau. A l'Europe à la carte de Willy Brandt, le rapport Tindemans de 1975 opposait un schéma de différenciation qu'il énonçait en ces termes :

"Il faut pouvoir admettre que

- dans le cadre communautaire d'une conception d'ensemble de l'Union européenne...

- et sur la base d'un programme d'action établi dans un domaine déterminé par les institutions communes et admis quant à son principe par tous

1) Les Etats qui sont en mesure de progresser ont le devoir d'aller de l'avant,

2) Les Etats qui ont des motifs que le Conseil, sur proposition de la Commission, reconnaît comme objectivement valables de ne pas progresser ne le font pas,

- tout en recevant des autres Etats, l'aide et l'assistance qu'il est possible de leur donner afin qu'ils soient en mesure de rejoindre les autres

- et en participant au sein des institutions communes à l'évaluation des résultats obtenus dans le domaine considéré.

Il ne s'agit pas ici d'une Europe à la carte : l'accord de tous sur le but final à atteindre en commun lie chacun, ce n'est que l'exécution qui est échelonnée dans le temps."[1]

En écho, dix ans plus tard, le Comité Dooge recommandait l'utilisation de la méthode de différenciation de la règle communautaire "dans des cas exceptionnels", à condition que cette différenciation soit limitée dans le temps, fondée uniquement sur des considérations économiques et sociales et respecte le principe de l'unité budgétaire"[2].

La doctrine Tindemans inspirait aussi les travaux d'Eberhard Grabitz[3], mais il proposait le développement des catégories nouvelles d' "actions communes particulières" et de

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[1] Cité par J.P. JACQUÉ, "L'intégration différenciée de lege ferenda", in *L'intégration différenciée*, 1986, p. 19-20.

[2] Cité *ibid.*, p. 21-22.

[3] *Abgestufte Integration. Eine Alternative zum herkömmlichen Integrationskonzept*, 1984, cité par E. GRABITZ, *loc.cit.*, (n.1), p. 30.

"droit communautaire particulier", comme suite à une modification des traités en ce sens. Il concevait aussi l'insertion de la possibilité d'une formule d'intégration différenciée dans un futur traité d'Union européenne[4].

Quels étaient les objectifs poursuivis par l'introduction dans les traités communautaires ou dans un futur traité d'Union, de formules d'intégration différenciée ?

Il s'agissait d'éviter que la diversité des situations des Etats membres ne soit un obstacle au progrès et que les choses se fassent en dehors des traités selon la méthode intergouvernementale[5].

E. Grabitz soulignait cependant que si la différenciation était possible dans de nombreux domaines couverts par les traités actuels ou futurs, ce n'était pas le cas en ce qui concernait, écrivait-il , "l'attribution au Parlement européen d'un pouvoir de co-décision en matière législative et budgétaire"[6]. Il espérait cependant que les Etats hésitants accepteraient plus facilement de consentir à l'octroi de ces pouvoirs au Parlement européen s'ils avaient la possibilité de ne pas être obligés de participer, dans l'une ou l'autre matière, à d'autres étapes d'intégration.

Les auteurs s'accordaient pour reconnaître que tous les domaines de l'intégration ne se prêtaient pas ou pas au même degré, à une différenciation.

Ch. Timmermans distinguait entre ce qu'il appelait l' "orde beleid" (la discipline du marché intérieur), le "procesbeleid" (les politiques communes) et l' "aktie- of project gericht beleid" (actions communes) couvrant ainsi la palette des méthodes d'intégration négative et positive[7]. Le noyau dur du marché commun (la sphère des grandes libertés) ne se prête pas à la différenciation non plus que les règles communes (concurrence) pour E. Grabitz, qui évoque la possibilité d'une progression échelonnée voire des règles non uniformes pour les politiques communes. Les dispositions en matière de recherche et développement dans l'Acte unique étaient citées comme un exemple de différenciation admissible, le caractère communautaire des programmes partiels découlant de l'adoption à la majorité par le Conseil (avec la participation des Etats concernés), l'obligation de diffusion des connaissances et le droit d'accès des autres Etats membres auxdits programmes pouvant reposer sur des montages financiers ad hoc.

L'Acte unique européen montrait cependant combien étaient fragiles les limites fixées aux formules de différenciation en permettant l'octroi de dérogations dans le champ même du marché intérieur, après harmonisation (art. 100 A, § 4). Ainsi, des formules de dérogation aux

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[4] *Ibid.*, p. 43-45.
[5] *Ibid.*, p. 21.
[6] *Ibid.*, p. 45.
[7] In *"Gedifferentieerde integratie"*, Asser Instituut, La Haye, 1985, p. 49.

grandes libertés consacrées par le traité étaient admises dans des hypothèses où les protagonistes de l'intégration différenciée ne les auraient sans doute pas envisagées. En outre, l'insertion de l'article 30 relatif à la coopération politique présentait certes une importance non négligeable en donnant une base juridique à des engagements jusque là purement politique. Elle accolait cependant une forme de coopération purement intergouvernementale au processus d'intégration communautaire, consacrant l'hétérogénéité des méthodes appliquées dans ce que le traité de Maastricht allait appeler l'Union européenne. Dès ce moment apparaissait la diversité des situations des Etats membres dans le domaine de la sécurité au regard de l'UEO et de l'Alliance atlantique.

Le souci d'éviter que la collaboration des Etats ne prenne le chemin de la coopération intergouvernementale, en préservant des facultés de différenciation, était écarté en raison de la spécificité de la matière (politique étrangère) mais aussi des réticences observées même chez les plus "européens" des Etats, à accepter une discipline communautaire dans ce domaine.

Le traité sur l'Union européenne, en s'engageant plus avant dans la voie de l'Union politique, a montré l'ampleur du problème de la différenciation. Les prises de position relatives à la future Conférence intergouvernementale ont fait apparaître des conceptions très différentes de la voie à suivre par l'Union européenne.

Les postulats sur lesquels se basaient les théories de l'intégration différenciée ont été mis en cause par la réalité et par le traité de Maastricht lui-même.

Quels étaient ces postulats ?

1. L'ensemble des Etats membres de la C.E. acceptent les objectifs de la construction européenne et la méthode progressive de leur réalisation.

2. Les dérogations consenties tiennent compte d'une situation objective, économique, sociale ou physique.

3. En principe, les dérogations sont temporaires. Si elles ne le sont pas, c'est en raison de facteurs qui échappent à la volonté de l'Etat qui en fait l'objet.

Au regard de ces postulats, le traité de Maastricht consacre des formules orthodoxes de différenciation. C'est le cas, souvent commenté, des statuts de dérogation de l'article 109 K et du protocole sur les statuts du SEBC, en ce qui concerne la 3e phase de l'Union économique et monétaire. Les Etats membres qui ne remplissent pas les conditions nécessaires pour l'adoption d'une monnaie unique font l'objet d'une dérogation. Tous les deux ans ou à leur demande, leur situation fait l'objet d'un examen. Un certain nombre d'articles du traité ne s'appliquent pas à eux

et leurs droits de vote au Conseil sont suspendus pour les décisions visées par ces articles. Leurs banques centrales participent au SEBC mais de nombreux articles des Statuts ne s'appliquent pas à elles. Les gouverneurs de ces banques centrales ne participent pas au Conseil des gouverneurs mais siègent avec leurs collègues au Conseil général de la BCE, organe temporaire de concertation de la collectivité des banques centrales participant ou non à l'Union monétaire.

Radicalement différents sont les statuts d'exemption octroyés au Royaume-Uni et au Danemark (même si techniquement ce dernier bénéficie d'une dérogation). Ces deux pays ne sont, en effet, tenus de passer à la 3e phase de l'UEM que s'ils ont l'intention de le faire. Ils peuvent notifier à tout moment cette intention. Certes, ces exemptions sont fondamentalement conçues comme temporaires. Elles n'auraient pas été octroyées si la conviction n'était pas telle. Comme le relevait déjà E. Grabitz, le succès appelle le succès[8]. Mais il n'y a pas de totale certitude à cet égard.

Le protocole social à onze, couvert par un accord à douze, est, lui aussi, conçu sans limite dans le temps. La modestie de son contenu et la conviction de son caractère *de facto* temporaire ont, sans doute, rendu possible son acceptation par les onze autres Etats membres. En outre, sans volet social, ceux-ci considéraient que l'approbation du traité risquait de se heurter à des difficultés considérables au Parlement européen et dans certains parlements nationaux.

Dans le débat récent, le problème de la différenciation s'est confondu avec celui relatif à la possibilité de la constitution d'un noyau dur ou de cercles concentriques ou encore de la distinction entre l'Europe de l'espace et celle de la puissance (V. Giscard d'Estaing).

Les réflexions qui suivent se référeront à cette problématique.

On examinera ainsi successivement, "Différenciation et acquis communautaire", "différenciation et unité du système institutionnel", "différenciation et élimination progressive des dérogations", "différenciation et garantie de l'ordre juridique communautaire".

1. Différenciation et acquis communautaire

Le Conseil européen de Copenhague s'adressant essentiellement en juin 1993 aux futurs adhérents d'Europe centrale et orientale a rappelé le principe de l'acceptation de l'acquis communautaire et des objectifs de l'Union par les candidats à l'adhésion.

Les trois Etats qui ont adhéré au 1er janvier 1995 ont accepté cet acquis. Ils n'ont pas demandé ni obtenu de dérogation comparable à celles octroyées au Royaume-Uni et au Danemark. Leur

[8] *Loc.cit.*, p. 45.

situation face aux traités est identique à celle des partenaires ayant accepté le degré maximal d'obligation.

Cette constatation optimiste doit être nuancée par le fait que d'une part, les dispositions du titre V (PESC) et du titre VI (coopération en matière de justice et dans les affaires intérieures) du traité de Maastricht se bornent à fixer un cadre institutionnel et juridique peu contraignant pour des actions futures dont le contenu doit être défini à l'unanimité et que d'autre part, les objectifs mêmes de l'Union européenne, sa conception fondamentale et ses méthodes font l'objet de contestations par un Etat membre au moins, partisan avéré de formules de coopération intergouvernementale de préférence à celles d'intégration.

Ainsi se révèle tant la faiblesse d'une adhésion à des principes en l'absence d'instruments effectifs pour leur mise en oeuvre que la difficulté d'orienter la réforme nécessaire en vue de l'élargissement à défaut d'une vision commune sur les buts et les moyens de l'intégration.

La conception qui préconise la création de plusieurs cercles où se réalisent entre certains Etats une collaboration plus poussée, selon le cas, en matière monétaire ou de défense par exemple, vise à pallier le handicap provenant des différences de priorités et de situations entre les Etats membres. Cette conception nous paraît cependant présenter des inconvénients majeurs.

Elle nie les rapports de complémentarité qui existent entre les composantes de l'Union. Ainsi, néglige-t-on parfois le lien entre la consolidation du marché intérieur et la réalisation de l'Union économique et monétaire, stade le plus avancé de l'intégration économique, ou perd-on de vue la relation entre politique de sécurité, politique commerciale et union monétaire. On affecte de confondre la situation des Etats qui, ne pouvant pas être dans le peloton de tête pour des raisons objectives, s'efforcent de supprimer cet handicap et celle des Etats qui refusent d'en être en se fondant sur leur perception de l'intérêt national. En d'autres termes, la différence entre l'Europe à la carte et l'Europe à plusieurs cercles est très subtile. Elle s'accommode aussi de formules de coopération intergouvernementales qui ont les faveurs des adversaires des "transferts de souveraineté".

En effet, on l'a noté, l'adhésion à des objectifs sans l'acceptation des moyens efficaces pour les réaliser est insuffisante. En d'autres termes, l' "Europe de la puissance", selon M. Giscard d'Estaing ne sera telle que si est accepté le principe de l'évolution nécessaire des techniques de la coopération intergouvernementale vers les méthodes communautaires, en tenant certes compte de la spécificité du domaine considéré (sécurité, défense). En matière de défense, l'expérience montre toutefois qu'à défaut de se soumettre à une puissance hégémonique, des transferts de souveraineté sont inévitables. Les refuser par principe revient à s'opposer à une défense commune européenne.

La mise en cause des objectifs sans limite dans le temps et le rejet des méthodes communautaires sont, l'un et l'autre, incompatibles avec l'octroi de la qualité de membre de l'Union et le maintien dans celle-ci.

Certes, la limite entre mise en oeuvre différée de tel ou tel point de l'acquis communautaire ou de l'Union pour des raisons objectives d'adaptation de l'ordre juridique ou de spécificité de la situation économique ou sociale, d'une part et l'octroi de dérogations ne trouvant leur justification que dans le but d'obtenir le consentement du futur adhérent ou de l'Etat membre en cause sur, respectivement, les conditions d'adhésion ou une réforme globale des traité, d'autre part, cette limite est parfois délicate à discerner. Elle autorise un certain pragmatisme. Des exceptions, pures et dures, du type de celles reconnues au Danemark et au Royaume-Uni posent, en revanche, de façon claire, le problème de la vocation des Etats qui en bénéficient à continuer à être membres de l'Union européenne.

2. Différenciation et cadre institutionnel unique

L'un des mérites du traité sur l'Union européenne est d'avoir affirmé le principe du cadre institutionnel unique de l'Union (article C).

Cela implique que l'action communautaire comme la coopération intergouvernementale reposent sur les mêmes institutions[9]. Cette formule correspond à une préoccupation majeure des auteurs qui ont proposé des schémas d'intégration différenciée.

Ce principe devrait être préservé, même si comme dans le traité de Maastricht, les Etats pourraient se voir reconnaître des droits différents selon leur degré de participation à telle ou telle politique. C'est déjà le cas pour la politique sociale en ce qui concerne le Royaume-Uni. Cela sera aussi vrai pour la participation au Système européen de banques centrales, des Etats avec dérogation (article 109 K).

La privation du droit de vote au Conseil est une atteinte au principe de l'égalité des droits des Etats qui constitue assurément un principe constitutionnel de la Communauté européenne ainsi que la Cour l'a dit lorsqu'il s'agit d'une politique commune (cfr. avis 1-76 de la Cour de justice) à propos de la politique des transports mais il s'agira bien de nouvelles politiques communes dans le domaine monétaire et de change ou dans celui de la politique étrangère et de sécurité. Le traité peut cependant consacrer de telles formules, parce que le degré différent d'engagement trouve logiquement sa sanction dans la reconnaissance de droits atténués. En

[9] On notera toutefois que la Cour de justice n'intervient pas, en principe, dans les domaines des 2e et 3e piliers, sauf pour établir les limites entre compétence communautaire et coopération ou si et dans la mesure où une convention conclue dans le cadre du 3e pilier lui octroie des compétences.

effet, la reconnaissance d'une voix délibérante aux Etats ne participant pas à une politique commune présenterait un risque pour la réalisation de celle-ci - voire engendrerait des conflits d'intérêts - plus important que l'atteinte au principe de l'égalité des Etats membres qu'une participation amoindrie entraîne. En outre, cette atteinte ne constituerait pas une discrimination puisqu'elle reposerait sur une différence objective de situation. La réduction des droits doit cependant s'accompagner, pour être conforme au principe de solidarité et de loyauté fédérale, à la base de la construction communautaire, de mécanismes qui permettent à l'Etat non participant de rejoindre le peloton de tête, sa situation étant revue périodiquement ou à sa demande, comme dans le cas des dérogations propres à l'UEM. On y reviendra. Si des mécanismes financiers propres aux Etats qui participent à la politique commune sont concevables, la réalité de la participation à un destin partagé implique l'accès des Etats, qui ne participent pas, à des formes d'assistance mutuelle, pas nécessairement financières, permettant leur intégration future.

En ce qui concerne le Parlement et la Commission, on souligne souvent l'absence de flexibilité de ces institutions. L'Etat n'y est pas représenté en tant que tel. Ne serait-ce pas "nationaliser" ces institutions indépendantes que de refuser le droit de vote aux membres de ces institutions qui ont la nationalité d'une Etat ayant un régime dérogatoire ? En ce qui concerne la mise en oeuvre du protocole social, les parlementaires et les commissaires britanniques ne voient pas leurs droits réduits.

Cette situation est-elle justifiée ?

A cet égard, il nous semble qu'une distinction doit, ici aussi, être établie. Si la différenciation est une technique qui permet une participation échelonnée et progressive à une politique commune de la part d'Etats membres qui acceptent l'objectif poursuivi, il ne nous apparaît pas conforme aux principes fondamentaux de l'ordre juridique communautaire que les nationaux de cet Etat se voient privés de leurs droits de vote à la Commission et au Parlement, dans la même mesure où on peut concevoir qu'ils le soient au Conseil[10] institution où s'arbitrent les intérêts des Etats. Si, en revanche, la différenciation est rendue nécessaire par le refus de certains Etats d'adhérer aux objectifs poursuivis et que leur participation dépende de leur seule volonté, une réflexion s'impose sur la continuité de la participation de ces Etats - et non pas seulement sur le vote au sein des institutions - en fonction de l'importance des domaines concernés.

L'appartenance à l'Union comporte un socle de droits et d'obligations relevant du marché intérieur, des politiques communes, y inclus la monnaie et la PESC. Ce n'est que si une clarification maximale amenant à la non participation à l'Union des Etats qui n'adhèrent pas à ces objectifs, fondements de l'Union, était impossible - au nom du pragmatisme - qu'il serait

[10] La Cour de justice ne devrait pas poser de problèmes en toute hypothèse. On n'imagine pas qu'un juge soit obligé de se désister parce que l'Etat dont il est national aurait un statut dérogatoire.

permis aux Etats désireux d'aller de l'avant, de préconiser et d'obtenir une solution impliquant une césure au sein de l'Union entre Etats participants et Etats non participants, qui se retrouverait dans chacune des institutions politiques. Une telle situation serait grandement instable et présagerait, sans doute, l'éclatement de l'Union.

Une telle vision ne pourrait-elle pas être considérée comme dramatique ? N'y a-t-il pas de précédents dans l'histoire de l'unification européenne où l'on s'est accommodé de telles différences ?

A propos d'une différenciation par cercles à l'intérieur d'une Union européenne à laquelle chacun participe, on avance, en effet, des précédents tirés de l'histoire récente de l'unification et de la coopération européennes et de certaines expériences constitutionnelles.

Ainsi, il est vrai que les Communautés elles-mêmes ont à l'origine débuté par la création d'un groupement régional au sein du Conseil de l'Europe et le professeur Jacqué le rappelait en 1985, "le système européen pris dans son ensemble est par nature un système différencié"[11]. Mais l'éminent auteur ajoutait qu'il convenait de distinguer une différenciation, appelée par lui *de facto*, et une intégration différenciée "où l'on envisage d'appliquer la méthode communautaire dans le cadre des compétences communautaires, actuelles ou de compétences nouvelles attribuées à la Communauté...". Il n'y a pas de problème majeur, et il y a, en revanche, certainement des aspects positifs à la coexistence du forum des Etats européens qu'est le Conseil de l'Europe avec l'Union européenne. Des expériences limitées à deux ou trois Etats et appelées à résoudre des problèmes de proximité (Benelux, UEBL) ont été des laboratoires d'intégration légitimés par les traités communautaires (Traité CE, article 233). D'autres, en matière de sécurité ont, à divers moments de l'après-deuxième guerre mondiale et de l'après-guerre froide, symbolisé la volonté d'alliances et d'actions communes européennes (UEO, Eurocorps). Les progrès de l'Union devront intégrer ces éléments dans une communauté de défense. D'autres encore ont voulu pallier les effets de l'impossibilité de progresser à Douze (Schengen) mais, ici aussi, la vocation à l'intégration dans l'Union est inéluctable parce que l'intergouvernementalisme, s'agissant de surcroît des droits des personnes, est d'autant plus contraire aux principes fondateurs de l'ordre juridique communautaire (qui requiert un contrôle juridictionnel et un contrôle politique) que les actions menées visent à réaliser des objectifs proprement communautaires (en particulier, la libre circulation des personnes).

On mentionne aussi des précédents tirés de constitutions anciennes ou contemporaines. Le professeur Grabitz citait à cet égard les articles 7 et 28 de la Constitution de 1871 du Reich allemand. Selon cette constitution, des Etats tels la Bavière, le Wurtemberg et le Pays de Bade avaient gardé des droits souverains dans certains domaines, plus importants pour la Bavière que

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11 *Loc.cit.*, p. 19.

pour les deux autres membres cités de la Fédération. Au Reichstag, en cas de vote sur des lois concernant l'un de ces droits réservés, les députés du Reichstag originaires des Etats fédérés mentionnés n'avaient pas le droit de vote, non plus que les représentants des Etats fédérés au Bundesrat[12].

Le professeur Jacqué évoquait, pour sa part, la clause d'amendement de la Constitution canadienne. Selon cet auteur, ladite Constitution prévoit que, lorsqu'une révision porte sur la compétence législative, le droit de propriété ou "tous les autres droits ou privilèges d'une législature ou d'un gouvernement provincial", la modification reste sans effet pour une province en cas d'opposition de la majorité des députés de celle-ci. Une juste compensation financière est versée à la province si la révision porte sur l'éducation, la culture ou est relative à un transfert de compétences législatives au Parlement fédéral[13].

Dans le cas de la Constitution du Reich allemand, il s'agit de ménager des exceptions à un régime d'intégration complète pour tenir compte de situations historiques propres à certains Etats fédérés. Dans l'exemple canadien, il s'agit d'éviter par une formule pragmatique le risque de sécession dans une fédération fragile. Le socle commun l'emporte cependant sur les divisions, dans les deux hypothèses citées.

En ce qui concerne l'Union européenne, des formules de non-participation analogues à celles tirées des exemples constitutionnels précités, ne peuvent être justifiées qu'au titre d'autodéfense à l'égard des obstacles mis par certains à la réalisation des objectifs de l'Union et, en définitive, à la philosophie même de celle-ci.

C'est assurément cette préoccupation qui inspire l'article 46 du projet Herman de constitution de l'Union européenne élaboré au sein du Parlement européen. Selon cette disposition

"Les Etats membres qui le souhaitent peuvent adopter entre eux des dispositions leur permettant d'aller plus loin et plus vite que les autres dans la voie de l'intégration européenne, à la double condition que cette avancée reste toujours ouverte à chacun des Etats membres qui voudraient s'y joindre, et que les dispositions qu'ils prennent restent compatibles avec les objectifs de l'Union et les principes de sa Constitution.

Ils peuvent notamment, pour les matières relevant des titres V et VI du traité sur l'Union européenne, prendre d'autres dispositions, qui n'engagent qu'eux.

Les membres du Parlement européen, du Conseil, de la Commision qui relèvent des autres Etats membres s'abstiennent lors des délibérations et des votes relatifs aux actes pris en vertu de ces dispositions."

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12 Voy. *op.cit.*, p. 40-41.

13 *Ibid.*, p. 23-24.

Contrairement aux accords de Schengen ou à la clause dite Benelux et UEBL (traité CE, art. 233) et comme dans le cas du protocole social ou de l'Union monétaire, les Etats qui vont "plus loin et plus vite que les autres" utilisent les institutions.

Mais contrairement au protocole social annexé au traité de Maastricht, selon lequel le Royaume-Uni s'abstiendra de participer aux délibérations et aux votes au sein du seul Conseil, les trois institutions sont visées par l'article 46. Bien que cela ne soit pas précisé expressément, on peut interpréter l'alinéa 2 de cette disposition comme permettant dans l'esprit de son auteur, un budget séparé pour de telles actions.

La disposition ne mentionne que les titres V (PESC) et VI (Justice et affaires intérieures) du traité de Maastricht, mais ce ne sont que des exemples. Ceux-ci concernent cependant délibérément des politiques nouvelles. Le marché intérieur n'est pas visé.

Il est prévu que l' "avancée" doit rester ouverte à chacun des Etats membres qui voudraient s'y joindre et que les dispositions que prennent les Etats allant plus loin et plus vite restent compatibles avec les objectifs de l'Union. Il aurait été préférable de prévoir que ces actions doivent viser à la réalisation des objectifs de celle-ci, puisqu'il s'agit de la seule justification à cette entorse aux principes régissant le fonctionnement des institutions.

Nous pensons aussi que ces actions accélérées ne devraient porter que sur des politiques nouvelles et non pas se manifester dans tout le champ des objectifs du traité.

Nous considérons aussi qu'une différenciation du type de celle envisagée par le projet Herman ne pourrait être mise en oeuvre que si une majorité des Etats membres représentant une majorité significative (deux tiers ?) des populations était désireuse "d'aller de l'avant plus vite". Il conviendrait cependant de laisser inchangées les solutions prévues par le traité en matière monétaire.

Compte tenu de la cassure qu'impliquerait la mise en oeuvre de formules institutionnelles du type de celles préconisées par le projet Herman, on peut se demander l'intérêt qu'il y a à rendre de telles situations inévitables. N'est-il pas préférable de requérir un consentement des Etats membres de l'Union sur ce qui constitue ses objectifs essentiels ? et tirer les conclusions, sur le plan de leur participation, de refus éventuels ? Est-il possible de requérir la fin - à terme - des "opting out" ?

3. Différenciation et élimination progressive des dérogations

Si l'on fait abstraction des exemptions consenties au Royaume-Uni et au Danemark à propos de la 3e phase de l'UEM[14], la philosophie du régime de différenciation à la base du statut de dérogation repose sur la volonté de la participation de tous les Etats membres à l'Union monétaire. On a rappelé que cette volonté se manifeste notamment par le fait que les banques centrales de tous les Etats membres seront partie intégrante du SEBC, fût-ce avec des droits réduits, quelle que soit leur position à l'égard de la monnaie unique.

Quels enseignements peut-on tirer de ce modèle pour d'autres domaines, en particulier, la politique de sécurité, la politique de défense et la défense commune ?

Une différence fondamentale réside dans le fait que le statut de dérogation à l'égard de la participation à la 3e phase de l'UEM est octroyé parce qu'en fonction d'une appréciation fondée sur des critères objectifs, un Etat n'est pas considéré comme remplissant les conditions nécessaires pour l'adoption d'une monnaie unique. Certes, d'une part un vote est nécessaire pour décider de l'état de préparation de l'Etat en cause (art. 109 J, paragraphes 3 et 4) et d'autre part, l'octroi du statut de dérogation résulte d'une décision du Conseil prise à l'unanimité (art. 109 K, paragraphe 1er) mais le protocole sur le passage à la 3e phase de l'UEM souligne le caractère irréversible de la marche vers l'UEM, la volonté que la Communauté entre rapidement dans la 3e phase et, dès lors, le fait qu'aucun Etat membre n'empêchera l'entrée dans la 3e phase. S'il n'y a pas automatisme dans le passage à l'Union monétaire (même lors du "second tour" après le 31 décembre 1997), il y a lieu de lire conjointement l'article 109 J et le protocole sur le passage à la 3e phase de l'UEM, comme exprimant le maximum de volonté politique compatible avec le respect de critères économiques, de voir se réaliser l'UEM.

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[14] La lecture du protocole relatif au Danemark révèle qui si cet Etat fait connaître son intention de ne pas participer à la 3e phase de l'UEM - ce qu'il a fait, comme suite à la décision du Conseil européen d'Edimbourg, de décembre 1992, au moment de sa ratification du traité de Maastricht - la situation de cet Etat sera celle d'un Etat avec dérogation. Ceci montre clairement que, dans l'esprit des auteurs du traité, le régime d'exception ne pouvait qu'être temporaire. On remarquera aussi que, dans le protocole relatif au Royaume-Uni, les nombreuses dérogations prévues aux points 3 à 9, ne s'appliqueront que si cet Etat décide de ne pas participer à l'Union monétaire, ce qu'il n'a pas fait puisque son gouvernement veut se réserver la décision du "if and when" il fera ce choix. A cela, on objectera peut-être qu'il s'agit d'une interprétation trop juridique d'un texte étonnamment rédigé.

Le statut de dérogation apparaît ainsi comme une période de rattrapage devant permettre à l'Etat de respecter les critères de convergence. Cela suppose de sa part une attitude volontariste, qui se traduit par l'adoption de politiques macroéconomiques adéquates mais la seule volonté de l'Etat ne suffit pas et elle ne peut, en tout cas, réussir d'un seul coup, à redresser une situation des finances publiques ou de l'inflation parfois très compromise.

Dans le domaine de la PESC, et en particulier pour les aspects liés à la sécurité, la participation de chacun des Etats membres dépend davantage d'un choix individuel de l'Etat que de la réalisation de critères objectifs. C'est une décision politique de l'Etat en cause qui est à la base de la participation à l'UEO; c'est une autre décision politique qui doit être prise en cas de recours à la force armée en Europe ou dans le monde. Si l'on veut bien admettre qu'à moyen ou long terme, l'appartenance à l'Union supposera une attitude commune en ce qui concerne les alliances et les engagements qu'elles comportent (cfr. Traité de Bruxelles, art. 5 : obligation d'assistance réciproque aux frontières), on s'aperçoit qu'au départ de facteurs différents : degré de préparation économique d'une part, volonté politique, de l'autre, on pourrait envisager d'encadrer la progression vers une PESC, vraiment commune, s'étendant aux aspects de la défense, par des étapes comparables à celles prévues dans le domaine de l'Union monétaire. La perspective du maintien - sans limitation dans le temps - de degrés d'engagement variables par cinq Etats membres de l'Union actuelle[15] et peut-être davantage par la suite est incompatible avec la réalisation équilibrée et l'égalité de droits et de devoirs inhérentes à la construction de l'Union politique. Progressivement, tous les Etats devraient appartenir aux mêmes alliances et la possibilité de ne pas participer à certaines actions devrait être limitée aux cas de recours à la force en dehors du continent, dans des hypothèses ne relevant pas de la légitime défense (missions d'assistance à la demande des Nations Unies, par exemple). Les actions ne devraient pas être bloquées par le veto de l'un ou de l'autre Etat, quitte à ce que certains puissent s'abstenir de participer à leur mise en oeuvre.

Périodiquement, pendant la période transitoire, la situation de chacun des Etats membres et sa contribution à la sécurité de l'Union devraient être revues avec l'objectif d'une participation sans réserve à une date pré-déterminée ou à fixer par le Conseil dans sa composition des chefs d'Etat ou de gouvernement avant une date indiquée dans le traité.

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[15] En vain objecterait-on que trois d'entre eux sont entrés dans l'Union en tant qu'Etats pratiquant à des degrés plus ou moins affirmés, une politique de neutralité. Aucune réserve formelle n'a été faite par ces Etats ni ne leur a été accordée au sujet des engagements et des perspectives de la PESC.

Le maintien de dérogations devrait faire l'objet d'un examen collectif sur la base de rapports établis par la Commission et la cellule d'analyse et de prévision à prévoir dans le domaine de la PESC, à supposer que celle-ci ne soit pas intégrée dans les services de la Commission.

Toutes les dérogations consenties le cas échéant à tel ou tel Etat membre devrait faire l'objet d'un semblable examen, sur rapport de la Commission, en vue de leur suppression aussi rapide que possible et, au plus tard, dans le délai prévu, de préférence par le traité.

4. Différenciation et garantie de l'ordre juridique communautaire

Il a été soutenu à propos de l'accord à Onze annexé au protocole social, que les principes arrêtés par la Cour dans l'interprétation de cet accord ne rentraient pas dans l'acquis communautaire "étant donné que la Cour statue en tant qu'institution de la Communauté des Onze" (lire aujourd'hui des quatorze)[16]. Dans notre hypothèse - qui est celle de l'accord social aujourd'hui - où les Etats "allant de l'avant plus vite" représentent une majorité très importante des Etats et des populations, nous considérons que les règles arrêtées par les institutions de l'Union et la jurisprudence font partie de l'acquis.

Nous ne pensons pas non plus que la Cour aura tendance à donner une interprétation restrictive aux compétences de l'Union dans le domaine de l'Union économique et monétaire au stade de la 3e phase si tous les Etats membres n'y participent pas en même temps, et cela, pour éviter de "compromettre la cohésion du droit communautaire"[17]. La Cour devra donner le maximum d'effectivité à la mise en oeuvre des objectifs énoncés par le traité, même si, comme celui-ci en a prévu l'hypothèse, tous les Etats ne participent pas, dès le départ, à leur réalisation.

Nous considérons que l'intervention de la Cour est un élément fondamental de la légitimation de l'action plus rapide des Etats membres qui veulent aller de l'avant. Une différenciation se situant hors du cadre institutionnel et excluant en particulier le rôle de la Cour est inconciliable avec la nécessité d'inscrire l'action différenciée dans le champ de l'Union sans cesse plus étroite fondée sur l'application progressive à tous les secteurs de compétence, des règles et mécanismes communautaires. C'est à la Cour qu'il appartient de distinguer parmi les affaires dont elle est saisie, les questions justiciables des autres. Sa jurisprudence montre que cette distinction lui est familière. Des exclusions a priori, comme celles que l'on observe dans les

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16 D. HANF, "Les différenciations dans le traité de Maastricht sur l'Union européenne : modèles pour l'intégration future ?" in, *La différenciation dans l'union européenne*, *op.cit.*, p. 26. On notera que cet auteur ne met pas en cause la compétence de la Cour pour statuer à propos de l'interprétation et de la mise en oeuvre dudit accord.

17 *Ibid.*

titres V et VI du traité de Maastricht sont contraires aux exigences d'une Communauté de droit, telles que la Cour les a mises en exergue à diverses reprises (cfr. sur l'importance du contrôle juridictionnel, l'avis n° 1-91 de la Cour sur l'accord E.E.E.).

On peut imaginer que des formules de différenciation doivent être utilisées en raison de l'obstruction de certains Etats membres. Nous avons évoqué à ce sujet l'idée qu'elles pouvaient relever de la légitime défense. On ne saurait toutefois se dissimuler que, dans une Union européenne, plus diverse encore que l'Union actuelle, des évolutions politiques dans tel ou tel Etat membre pourraient rendre le maintien de sa présence dans l'Union insupportable pour ses partenaires. Ne convient-il pas, dès lors, de réfléchir à la possibilité d'expulsion d'un Etat membre ? Il ne fait pas de doute que dans l'état actuel du droit communautaire, une telle possibilité n'existe pas. Elle répugne à la conception qui depuis 1950 voit dans la participation à la Communauté, l'expression d'un destin désormais partagé. Les réformateurs les plus audacieux ont hésité à prôner la solution radicale de l'expulsion. Ainsi, le projet de traité d'Union européenne du Parlement européen de 1984 (dit projet Spinelli) n'avait-il pas, très consciemment, limité les possibilités de sanction à l'égard d'un Etat à la suspension du droit de participer aux institutions et organes où l'Etat est représenté comme tel (en pratique, le Conseil et le COREPER) en cas de violation grave et persistante du traité ou des droits fondamentaux (art. 44) ? L'idée était, en effet, que le processus d'union est irréversible et que l'on ne peut pénaliser un peuple en raison de l'action de ses dirigeants. C'est apparemment le point de vue du gouvernement belge[18].

Aujourd'hui, le traité sur l'Union européenne énonce à l'article F que les systèmes de gouvernement des Etats membres sont fondés sur les principes démocratiques. Cette disposition confirme que le respect de ces principes est une condition de l'adhésion, ainsi que cela résultait déjà de plusieurs prises de position et de la pratique du Conseil européen et des institutions de la Communauté. L'article F signifie aussi que le respect des principes démocratiques est une condition du maintien de l'appartenance. Toutefois, cette obligation n'est pas sanctionnée. Ne faut-il pas remédier à cette lacune en prévoyant, bien entendu, les possibilités de recours et une procédure respectueuse des droits de l'Etat concerné ?

D'autres réclament, comme le fait l'European Policy Form dans son projet de constitution, la reconnaissance aux Etats membres d'un droit de retrait qu'ils pourraient exercer quand bon leur semble. Nous pensons qu'il est difficile de ne pas évoquer la possibilité de retrait lors de la Conférence intergouvernementale mais nous ne pourrions admettre l'exercice de ce droit qu'à

[18] Voy. les "Lignes de force du programme du Gouvernement fédéral", 19 juin 1995, où est envisagée la création d'un "mécanisme permettant d'imposer des sanctions, y compris la suspension de l'adhésion".

l'occasion d'une modification qualitative des engagements souscrits, à la suite d'une révision de la charte-constitution. Le principe de l'article 240 du traité CE selon lequel le traité a une durée illimitée a été interprété par la majorité de la doctrine comme excluant, en droit communautaire, la légitimité du droit de retrait individuel. Il n'est pas possible de jeter par dessus bord une des caractéristiques fondamentales de l'ordre juridique communautaire : son irréversibilité. L'octroi de la possibilité de retrait à ceux des Etats qui n'accepteraient pas une révision constitutionnelle apportant un changement qualitatif à la charte fondamentale - sur le plan des objectifs ou de la méthode - va de pair avec l'introduction du principe majoritaire (renforcé) pour de telles révisions. L'exigence de l'unanimité paralyserait, en effet, toute adaptation de la charte de l'Union.

A ceux qui considéreraient que la possibilité de retrait accentuerait le caractère international de l'Union et la différencierait encore davantage d'un Etat, on pourrait faire remarquer d'une part, que, sans même évoquer les cas de séparation dramatiques, le Monde contemporain connaît des exemples de partitions d'Etat à l'amiable (cfr. scission de la Tchécoslovaquie, problèmes récurrents du Québec qui auraient pu aboutir à l'indépendance de cette Province du Canada) et d'autre part, que le retrait permettrait précisément aux autres Etats membres de poursuivre leur intégration progressive. C'est au nom de ce droit fondamental exercé par une majorité significative que l'on pourrait reconnaître le droit de sécession aux Etats membres qui ne veulent pas s'associer à une révision constitutionnelle, comportant un changement qualitatif dans la voie de l'intégration.

La non-participation est, en effet, la forme la plus radicale de la différenciation. Dans le projet de traité d'Union européenne de 1984, il avait été prévu que les Etats qui avaient ratifié, s'ils représentaient une majorité des deux tiers pouvaient mettre en vigueur entre eux le traité d'Union et conclure avec les Etats de la minorité un accord qui préserverait les droits acquis par ces Etats en vertu des traités existants. C'est évidemment la solution la plus claire et qui évite les inévitables contorsions juridiques nécessaires à la réalisation de formules de différenciation au sein de l'Union, dès lors que le désaccord porte sur les objectifs mêmes de celle-ci et ses méthodes d'action.

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L'AVENIR DE LA CONSTITUTION EUROPEENNE
Perspectives sur la mise en oeuvre et la révision de Maastricht
(23-24 juin 1995)

THE FUTURE OF THE EUROPEAN CONSTITUTION
Perspectives on the Implementation and Revision of Maastricht
(23-24 June 1995)

FOREIGN AND SECURITY POLICY

DOES CFSP REALLY MAKE A DIFFERENCE ?

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DOES CFSP REALLY MAKE A DIFFERENCE?

Álvaro de Vasconcelos[1]

As a result of profound change both in the European continent and its neighbouring regions, far greater demands are being made on a coherent and cohesive external action of the European Union, be it in support of democratic transition, in crisis prevention or conflict resolution. As a result of relatively recent developments in many parts of the world, on the other hand, both the European Union and its member states have become involved in a number of complicated peacekeeping and humanitarian missions.

Although they create new challenges, developments over the past few years – especially in what concerns the 'democratic wave' and the various efforts towards strengthening regional integration and cooperation – also create new opportunities for cooperation and facilitate the affirmation of the European Union as a major world player. As European political cooperation was turned into a common foreign and security policy, the objective of the Treaty on European Union was to provide the European Union with an instrument that would permit it to act outside the scope of a merely economic external policy and to do so with increased visibility.

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[1] Listing and description of joint actions, common positions and declarations organised by Pedro Courela, junior research assistant at the IEEI.

Making things visible, however, requires their previous existence. Political marketing alone will not suffice in the absence of coherent action. An assessment of what CFSP has been able to accomplish so far since its inception in November 1993, relying especially on what has been achieved through common positions and common actions, and paying particular attention to the role of the Western European Union in this context, will hopefully help determine whether the European Union has been able or not to decisively influence the issues which are deemed central to European security. We will also look at the role it has played in a number of regional issues in which the Union and its member states have become involved. Priorities for future action in order to fully implement the TEU and also to reform it will make up the concluding section.

The underlying options

Both in terms of priority security issues and geographical areas, CFSP has kept in line with the orientations set forth by the European Council meeting in Lisbon, in June 1992.[1] Indeed the priority areas defined (central and eastern Europe, North Africa, the Middle East) coincide with those areas in which most experts identify the main problems to European security and hence the main challenges foreign and security policy of the European Union and its member states should confront.[2]

Declarations and common positions issued and joint actions undertaken have more or less covered these areas, with the notable exception of the Maghreb, i.e. the Algerian crisis, although there was in fact a common position on Libya. The Euro-Mediterranean conference in Barcelona, for which no joint action or common position was adopted, is expected to develop a European policy towards the region.

South Africa was already a priority within EPC. This joint action provides an example of the effort the European Union is making to take advantage of the changed international environment and acquire a political status comparable to its ranking as trade partner and a donor in the region. Africa was indeed the only continent (if we consider the Middle East as a strategic 'prolongement' of North Africa) in which joint actions were undertaken. Haiti is the sole exception in common positions in this respect.

The fact that no common position was defined either towards Russia or the United States has to be listed on the side of CFSP's liabilities.

Brief comments on CFSP common positions and joint actions

Since the Treaty on European Union came into force, the Council has adopted ten common positions and decided to undertake sixteen joint actions. The latter really amount to nine: Bosnia Herzegovina (two: a contribution to the multilateral humanitarian effort and administration of Mostar); support to political transition processes: Russia (electoral observers), and support to democratic transition towards a multi-racial system in South Africa; Pact for Stability; Middle East (in support of the peace process). Three further joint actions were established in the security field: Non-Proliferation Treaty; anti-personnel mines; dual-use goods.

The joint actions undertaken are rather varied in scope, human and financial resources committed and time-length: from simply despatching electoral observers to a complex diplomatic exercise such as the Pact for Stability, an integrated exercise in the Middle East, or long-term commitments like humanitarian aid to Bosnia and the administration of Mostar. Funding joint actions was always a problem. The actions where the political element was most present were, on the other hand, those for which less funding was made available.

Common positions adopted concern seven different issues. Economic sanctions and reductions imposed on trade (including temporary suspension of same) come first: Libya, Sudan, Haiti and the former Yugoslavia, followed by a number of priorities and goals of the Union set forth through common positions: Rwanda, Ukraine, Burundi. Aside from any assessment on their relevance, the contrast in numbers between common positions and declarations immediately points to the fact that declarations were the rule and positions the exception. In other words, the 'declaratory' tradition of EPC was pursued under CFSP. It still dominates an institution that remains rather more inward- than outward-looking. (Number of declarations issued between November 1993 and 16 June 1995: 165).

Joint actions adopted so far did not put to full use the new possibilities of CFSP in contrast with EPC: that is, majority voting, step aside and Commission's initiative. The sole exception was the joint action on dual-purpose goods, in which majority voting at a further stage was approved.

In all instances, joint actions were decided upon on member states's initiative, particularly the presidency's, and in one case as a result of the work of CFSP work groups. Russia, the Middle East and former Yugoslavia under the Belgian presidency's initiative, the Stability Pact (formerly known as Balladur Plan) is a French initiative. Joint security actions are mainly due to the German presidency, Belgium, France, Sweden, Denmark and Great Britain. Their funding, on the other hand, came largely from the community budget. As far as implementation is concerned, the Commission played an important role in its areas of responsibility,

namely in complementary measures. The European Parliament's interference was minimal.

How effective are joint actions?

From an overall assessment of declarations, positions and actions (see annex for listing and description), it is evident that the European Union chiefly sought to act in crisis prevention lato sensu (Stability Pact and priorities for the Ukraine), and especially in consolidating processes that were already under way, and this has been done chiefly through economic instruments. As far as the resolution or management of crisis which are still far from being resolved is concerned, the Union remains marginal or at best ineffective.

Joint actions were indeed undertaken where they were most needed, according to the general priorities defined in 1992 (with the notable exception of Algeria). However, their scope and their effectiveness fell terribly short of matching the challenges they were supposed to confront.

The Pact on Stability in Europe

This joint action clearly falls into the scope of crisis prevention. Although its full impact can barely be anticipated, both its conception and its development correspond to the main European security issue: preventing the eruption of aggressive nationalism, which finds fertile ground in ethnic or border disputes, especially in countries which will presumably be in five years time members of the European Union. In this light, the partners to this pact (Visegrad Four, plus the Baltic states - Latvia, Lithuania and Estonia) were required to sign agreements on borders and rights of ethnic minorities as a pre-condition for being considered as prospective candidates to EU membership. Another step in the right direction was the fact that existing transborder cooperation projects at community level were 'elevated' to the dignity of foreign policy issues. The Pact comprises 100 new and existing agreements and arrangements, including a bilateral treaty between Slovakia and Hungary to guarantee the rights of 600,000 ethnic Hungarians in Slovakia. It has not yet ben possible to conclude a treaty between Romania and Hungary, although negotiations to that end have been progressing. Progress was also made towards the signature of an accord between Russia and the Baltic states in what concerns minority rights. Although the central European countries expressed concerns that further complications and delays were to be expected, the stance was maintained that the agreements under the Pact on Stability were a pre-condition for future membership of the Union. In this context, an important issue that remains to be dealt with is the follow-on of the

implementation of these accords. The OSCE is the depositary of the accords, but it is obvious that their implementation will also have to be monitored by the European Union or at least in conjunction with the Union.

Supporting the Middle East peace process

Contributing to the peace process and bolstering the Palestinian Authority is the main purpose of this joint action. The latter is to be achieved through pouring in an extra 10 million ecus primarily destined to create a Palestinian police force on top of the 500 million previously agreed from community programmes. Present aid and assistance programmes make the European Union the major donor. The Palestinians consider the EU action as an essential contribution, as they see it, towards building a Palestinian state. However, the Union is unable to fully carry out its own objectives, because it is unable to influence the process decisively: the participation of the Union and the degree of its influence over the peace process and in particular Israeli-Arab negotiations is but marginal. It has had no say in the political negotiations between Syria and Israel, and the leading political actor continues to be the United States. There is little the European Union has been able to do – pour in economic support, preside over the 'Regional Economic Developing Group' and, last but not least, remain the main trading partner of the countries in the region – to help the fact that the United States remain the decisive political actor in the whole region.

And even if the EU has discreetly been trying to push the peace process forward within is network of bilateral agreements with the countries in the region (and occasionally putting pressure on Israel, including at the Security Council level, in connection with the Jewish settlements in occupied territories, using the trade agreements as leverage), this has been done with little visibility.

This joint action is ambitious in its scope, and integrates economic, political and security dimensions. In order that its goals may be entirely fulfilled, however, a stronger political presence of member states seems to be required.

Former Yugoslavia

Humanitarian aid to Bosnia-Herzegovina. This is a typical case of defective preparation. Little thought seems to have been given to whether the means were available to actually carry out this joint action. Its relevance and effectiveness are heavily compromised by the inability of the European Union to force humanitarian aid through the routes the Bosnian Serbs have systematically been closing. This task is incumbent upon the Unprofor, and the relevant aspect here, from an EU point of view, is that the WEU was not asked at an early stage to take part in convoying the humanitarian aid. Although it was decided in November 1993,

support to the convoying of humanitarian aid was never actually implemented in the face of sustained attacks of the supply routes by the Bosnian Serbs and this objective was unofficially dropped. More importantly, the EU had already given up leading the diplomatic efforts to solve the Bosnian crisis, and was replaced by the five-nation contact group. The multinational force currently being deployed in Bosnia to support Unprofor in the wake of the hostage crisis, mostly composed of British and French troops, is under Franco-British command. Again, the WEU was left out, even if the backbone of the force is from European countries. The need to get the troops to Bosnia forthwith was certainly taken into account, but also Britain's opposition to adding another 'hat' to the process. Funding for the multinational force is sought from the United Nations, not the European Union.

Administration of Mostar. Taken belatedly, after heavy fighting was allowed to resume, but still quite significant especially in the sense that it facilitates the Bosnian Croats relationship with the Bosnian government. This was the first time the WEU was asked to take part in the implementation of a EU decision.

The main conclusion to be drawn from both joint actions adopted and the efforts undertaken by the EU and its members, is that it remains ill-suited to decisively intervene in conflict resolution. Not essentially through lack of means or institutional constraints, but through lack of political will for a much more effective (not least cost-effective) intervention. Minimal consensus, as opposed to agreeing on a common analysis of the situation from which the EU's interest in the region could be meaningfully defined, does not allow for effective action.

Russian parliamentary elections

Monitoring of the Russian parliamentary elections was the first joint action decided by the Council. It has been criticised as a perfect example of lack of 'ambition'. In fact, it would have been unnecessary to adopt a joint action for EU member states to take part in the international operation set up to monitor the Russian election. The EU has taken part in similar efforts set up for Belarus and Mozambique without having adopted a joint action to that effect.

South Africa

The EU's joint action was certainly not decisive to the outcome of the South African process, which continues to depend mostly on the action of internal actors, nor was it meant to be. This action was important because it permitted to EU members, who had long been divided over South Africa in the past, to present a common front in support of the South African transition process,

neutralising any attempt to 'play' certain European countries against others. In view of destabilising attempts on the part of extremist groups, this was of course important.

According to independent analysts, there was excellent coordination of EU election observers, and the Commission is playing a very important role in the EU joint action in South Africa, which is being conducted with considerable efficacy both in its political and economic aspects. Economic support to South Africa's constitutional transition process (total budget of 500 million ecus, 125 million in 1995), involving a considerable number of NGOs especially active in education, is considered to have an important effect.[3]

This joint action, with its economic support dimension, provides an example of what the European Union is best equipped to do: provide assistance, mainly economic, to processes which are already on their way to successful completion, owing to the fact that there is a stable situation and a credible regional interlocutor and on top of that the country concerned is an important partner of the Union in terms of trade.

The European Union has established itself as an actor on its own (separate from its member countries) in South Africa, within a region – Subsaharan Africa – where the 'backyard' approach on the part of the former colonial powers is still the rule.

On the other hand, the joint action in South Africa led the EU to establish an active dialogue with other international organisations such as the UN. The dialogue established with the countries in the region should be emphasised in particular as it was considered vital for the success of both the joint action and the broader transition process. The EU met with SADC in Berlin to discuss regional cooperation and South Africa's place in existing schemes. This approach actually corresponds to the EU's increasing tendency to make dialogue with regional and sub-regional organisations a priority, which also helps to bolster the latter's role in the mediation of conflict resolution or transition away from conflict.

Security

Dual-use goods. Consisting of imposing export controls on dual-use goods, this joint action could be of great relevance since foreign trade is a domain in which the European Union is a major world actor. On the other hand, this action is half-way between the first and the second pillar. It typically pertains to foreign trade, and so a community regulation to the same effect had to be adopted simultaneously with the Council CFSP decision. The list of dual-use goods, however, which is included in the Council's decision, can only be altered through unanimous voting in the CFSP framework. It is interesting to note that this joint action followed an initiative taken by the Commission to guarantee the free circulation of dual-use goods within the single market.

NPT. This case brings to the fore the often difficult distinction between common positions and joint actions. The purpose of the Council decision was to bind the member states party to the Nuclear Non-Proliferation Treaty to a common position which they already shared, and to join their diplomatic efforts to bring third countries agree to the indefinite prorogation of the Treaty. Commission sources reported success in relation to one particular country.

Anti-personnel mines. This issue is particularly relevant in African states who are emerging from protracted wars where mines were extensively used. Cambodia, Afghanistan and Angola are cases in point. The joint action consists of three different aspects: common moratorium on mine exports, joint participation in the international conference to review the 1980 Convention, and a contribution to the UN-led multilateral effort. Specific EU actions may also be undertaken, which the WEU may be asked to perform. As in similar cases, as the Council decision re-states, unanimous voting will be required. It is interesting to note that the British have in the meantime made it clear that this does not imply that the WEU will automatically accept.

Common positions

Common positions adopted so far can be roughly divided into three categories: those dealing with sanctions, either as a result of UN resolutions (Libya, Haiti, Bosnian Serbs, and Serbia and Montenegro) or of EU decisions (Sudan, military embargo); those dealing with a broad definition of the context of humanitarian aid (Rwanda, Burundi) and finally those dealing with actual EU priorities for a given country or region (Ukraine).

Common positions towards Rwanda and Burundi should have been adopted earlier. They were however necessary to put EU humanitarian aid into the broader picture of EU priorities. But they will remain ineffective unless member states, the United Nations, OAU are able to find the means to stop the ethnic massacres.

Common positions regarding economic sanctions brought nothing new to EU policy. Economic sanctions had been imposed on Rhodesia in the sixties, long before even EPC had been set up.

The effects of economic sanctions, moreover, are open to much debate these days, except in what concerns military embargoes and exports of goods with a direct impact in military build-up (v.g. energy).

The most significant and common position concerns the Ukraine. The EU affirms its continued support to democratic transition, independence and territorial integrity of the country and sets forth a set of priorities related both to the first pillar (partnership and cooperation agreements) and the international

action of member states. A common position along similar lines concerning Russia is being prepared which should be adopted in the course of 1995.

Together with the Pact on Stability in Europe, the common position adopted for the Ukraine contains important elements for the definition of a genuine common and foreign security policy.

WEU and the European Union

In the last couple of years, the WEU has essentially concentrated on reforming itself. The siege of the organisation moved from London to Brussels, and the Permanent Council and the planning cell were 'upgraded'.

From an operational point of view, however, the WEU has been almost completely absent from EU external action. The exceptions are the continuation of the air-naval operations in the Danube and the Adriatic, i.e. enforcement of the embargo on former Yugoslavia, and the sole new mission was related with the policing of Mostar.

At ministerial level, the WEU Council has taken part in the current debate on the reform of the Treaty on European Union and the WEU's institutional relationship with the European Union and Nato. France, Italy and Spain (to be joined by Portugal) decided the joint Mediterranean land and maritime force they are establishing is to be made answerable as a priority to WEU.[4] This priority status accorded to WEU should be noted as a step forwards in the direction of a European defence identity.

Relationship between CFSP and national foreign policies

At its present stage, CFSP continues to be largely an 'addition' to or an 'outgrowth' of national foreign policies. And as a consequence, in what concerns European security, the Union's role tends to be overshadowed by the role played by certain member states.

Paradoxically, the EU as such has been active in regions which were until now the 'backyard' of given member states (this being the case in North Africa and parts of Subsaharan Africa). Apparently, France is beginning to realise that the Algerian crisis can only be dealt with in a multilateral framework. As a consequence, other member states have in the meantime become much more interested in the Mediterranean, particularly Germany. In Subsaharan Africa, France has sought European legitimacy in addition to that conferred by the UN for its operation in Rwanda.[5] France even sought, but failed to obtain, the WEU's support.

Portugal proposed a joint action for Mozambique, which met with Britain's opposition.

In what concerns South America, Spain and Portugal have repeatedly tried, and to a certain extent succeeded, in making the EU and all of its member states take part in the initiatives towards Mercosul and its member countries. Initiatives towards Mercosul and other regional groupings are to a large extent community initiatives in the economic cooperation sphere, where the Commission plays a central role; a singificant political dimension remains to be added.

CFSP: a painful exercise?

The European Commission's report on the functioning of the TEU states that CFSP is at its present stage, a disappointing exercise.[6] Not only because of the inconsistencies of the TEU coupled with the restrictive interpretation of its provisions, but also owing to the continued lack of coherence between foreign policy and foreign economic policy (precisely one of the perceived flaws CFSP was supposed to overcome) and, not least, to the fact that differing interests between member states continue to spell paralysis.

The Council secretariat is slightly less pessimistic. The instruments are there, and they have been useful every time the political will was there to use them. The institutional merger established by the TEU has not as yet taken place, and conflicting responsibilities between the political committee and the Coreper only makes the decision making process and coherence more difficult.

The European Parliament makes a much more critical assessment of CFSP. Paralysis and lack of coherence are principally due to the three-pillar compromise, which is to blame for the fact that community institutions have but a marginal or no role at all in CFSP.[7]

On balance, CFSP has been a rather painful exercise so far, especially owing to the complicated and slow decision mechanisms applicable. Moreover, unanimity is having a perverse effect on community activities. Via both common positions and joint actions, particularly as far as economic sanctions are concerned, unanimity is being extended into community affairs. This explains the Commission's concerns to the effect that instead of seeing a mild degree of 'supranationalisation' creeping into CFSP, it is the first pillar that in some respects is becoming 'inter-governmentalised'.

This perverse aspect becomes all the more important since EU action tends to become more and more integrated, i.e. taking on both an economic and a political dimension. The existing confusion will then become greater between the first and the second pillar

every time decisions with direct implications for community affairs are taken within the framework of CFSP. As mentioned above, this has already been the case with both economic sanctions and dual-use goods.

The European Commission's report complains about the procedural complexities involved in articulating CFSP and 'pure and simple' community matters. However, this can hardly be avoided, except in the remote case of almost entire communitarisation of the second pillar. In any case, if 'inter-governmentalisation' is a real danger to coherent, integrated action, procedural complexities seem to be a small price to pay for a correct balance to be achieved both between political and economic elements in the EU's external action and, no less important, between the European Community and its member states.

If coherence and efficacy is the aim, them common positions and joint actions will increasingly have to combine economic and political, including security and defence aspects.

This becomes blatantly obvious even when one looks at development cooperation and humanitarian assistance (the bulk, no less in budgetary terms, of the EU's external action since CFSP's inception). At present, it is conveyed to many countries and regions in a chaotic political and social situation, not infrequently verging on civil war. As a rule, the EU has not proven to be up to the task of decisively influencing, either bilaterally or within the framework of the United Nations, the course of events so as to resolve the crises to which EU humanitarian aid is channelled. As a result, the time-length of humanitarian actions becomes greater (and so does their cost) while at the same time little is done to extricate the tumor, i.e. the real causes of a given crisis.

A reasonable degree of coherence and efficacy, therefore, has to be kept at all costs, otherwise community policy as a whole will suffer. In order to do so, it is not only necessary to enhance the role of the Commission but that the latter should use its powers of initiative in CFSP.

The revision of Maastricht

Those who make a positive global assessment of CFSP say it is certainly a step forward in relation to the essentially declaratory EPC policy. Step by step, significant progress will eventually be achieved. This was broadly the Mastricht approach which accounts for the elaborately ambiguous language used to describe the sequential relationship between CFSP, a common defence policy and maybe a common defence.

The question to ask, however, is whether the present European and world landscape permits a step-by-step approach without inflicting mortal wounds on the whole European process. Both the

former Yugoslavia and Algeria would seem to thoroughly disprove the 'gradualist' thesis.

In the former Yugoslavia, either military action is taken through WEU, ideally in collaboration with the United States, or the common actions decreed will have virtually no effect at all in the future course of events.

In the Western Mediterranean, the Algerian crisis calls for a far greater political commitment on the part of the European Union. The association agreements currently being negotiated with Morocco and ready for signature with Tunisia, debt relief arrangements and so forth, are welcome developments but they do not suffice. It is necessary to lead the Algerian government into negotiating a political transition with opposition parties, otherwise there will be no permanent solution to the crisis and no alleviation of the considerable pain and suffering it is causing among civilians.

As we have mentioned, since November 1993, the European Union continues to act largely like a civilian power, or a trade bloc, as it did before. The impact of its policies in areas of crisis is minimal. Wherever its pre-crisis influence was not decisive, as in the Middle East, the consequences are not particularly serious. Conversely, where decisive action had to be taken by the European Union since no other power was in a position to do so (again, former Yugoslavia and Algeria are cases in point), then its failure has terrible consequences.

The question of defence

CFSP is beset by both political and institutional problems. Political obstacles are roughly the same that have prevented the development of a common defence policy so far or more meaningful agreements and actions to be decided within the WEU after CFSP came about.

At the same time, WEU member states were involved in significant military actions, at times in parallel with CFSP joint actions, particularly the two permanent members of the UN Security Council, France and Britain.

More than Britain's chronic opposition, it is Germany's inability to act in defence-related issues, particularly at a time when it is leading the reform of the Union, that is hindering significant progress. Germany's participation in the humanitarian operation in Somalia has done little to help build even a national consensus on the future participation of German military personnel in peace operations outside Europe.[8]

The development of the military dimension of the European Union's external action will hardly be European if Germany stays out

altogether. The CDU-CSU coalition is pressing for the development of a European defence policy, which it deems the right framework for Germany to be able to take up its responsibilities in European security. In this light, the full integration of the WEU into the European Union is considered indispensable. This is certainly not Britain's perception. It hardly appears to be the French perspective so far. France seems keen on balancing Germany's economic predominance against France's military interventionism, and is also concerned with the fact that without further reform the integration of WEU in the European Union would mean allowing veto power to be used by members who are opposed to a European defence identity.

The present trend, clearly demonstrated in the case of the former Yugoslavia, not only in the way the multinational support force was set up, but also in the replacement of the European Union by a contact group, may lead to the formation of a directoire in foreign and security policy, which would act independently of the European Union.

Were a de jure or de facto directoire to be formed, European integration would have suffered a severe blow from which it might never fully recover. Would the European Union be able to survive a 'back-to-the-balance-of-powers' situation?

Sub-groupings within the EU are also emerging in relation to the Mediterranean. Southern countries, more deeply concerned with the worsening situation in North Africa, are pushing for increased cooperation with the Maghreb countries and Egypt. And the fact remains that initiatives such as the ailing Five+Five and the more recent Mediterranean Forum have not succeeded in involving the European Union as such, which is crucial, but merely the southern Five.

Particular interests of a member state or a group of member states for a given region or issue should be regarded as a contribution to the development of the European Union. Provided, of course, that contribution is integrated in the overall concerns and policies of the European Union.

The first and the second pillar: Where does coherence stand?

Unless the reform of the TEU fully clarifies the relationship between the first pillar and CFSP, the foreseeable consequence will be a certain degree of 'inter-governmentalisation' of the first pillar, as noted above, especially through the spill-over of unanimity into community affairs, and a reinforcement of the powers of the Council.

Since CFSP's inception, economic sanctions became dependent on Council CFSP decisions. Even if it is stated in the Treaty that majority voting is to be applied to economic sanctions resulting

from common positions or joint actions (article 228A), in reality a previous unanimous decision has now become necessary, contrary to what happened before CFSP. The effects have already been felt, for instance, in what concerns the scope of sanctions against Haiti.

Confusion also arises in joint actions which have an economic dimension, as the above example of dual-purpose goods, and in budgetary issues. Most joint actions are not funded by the member states but from the community budget. This is a source of tension between the Council and the European Parliament which is trying to use its budgetary control powers to enhance its own role in CFSP. To make it all more difficult, the Court of Justice is powerless in CFSP matters.

At the present stage, CFSP may therefore be used as a tool by member states who wish to 'circumvent' the majority rules which apply to issues in the realm of foreign trade policy. This has in turn forced the Commission to act with utmost caution and explains why it has never used its powers of initiative in CFSP. It will continue to refrain from initiating decisions as long as matters can intrude into the first pillar. The Commission is now preparing an initiative in relation to human rights.

As far as the Mediterranean policy is concerned, the Commission has kept matters firmly within the first pillar. The Euro-Mediterranean conference in Barcelona has not given rise to a common position or a joint action, it is a community initiative.

The right way to deal with the institutional problems arisen out of CFSP does not seem to be either 'inter-governmentalising' foreign economic policy or foregoing political and security instruments. The first consequence of the latter would of course be that EU initiatives would remain predominantly within the trade or at best economic sphere even when the objectives to be achieved are of a primarily political nature.

The solution would seem to lie in the adoption of the concept of **integrated action**. Majority voting in accordance with community rules would apply in all CFSP issues with first pillar implications (such as sanctions, for example). On the other hand, CFSP mechanisms must be reformed so as to permit qualified majority voting after a unanimous decision has been taken by the Council to the effect that one given issue was eligible for a joint action or a common position. Matters with clear defence implications should be left out of this procedural reform and continue to be decided upon unanimously, whilst at the same time the stepping aside formula would be consistently applied to non-WEU members. This would not bar non-WEU members from supporting or even taking part in ensuing actions.

An unseen foreign policy?

One of the striking features of EU joint actions is their lack of political 'ambition', as if the EU was satisfied with playing a minor role in the major present-day security issues in the European continent and worldwide. This minor role is not commensurate with the resources committed nor does it match the importance and the visibility of the Union's development cooperation and trade policies. Third countries, in central and eastern Europe, in North Africa, in Subsaharan Africa, in Latin American look upon the Union as a major partner, whose support is instrumental to the consolidation of ongoing democratic transitions or an incentive to regional integration processes. In the context of relations betwwen Europe and the United States, including the transatlantic security partnership, it is also essential that the European Union develops its CFSP dimension. The Union's foreign policy, however, through lack of political instruments and virtual absence of security instruments, is perceived as not matching its external economic role. Europeans often deplore the lack of *visibility* of CFSP. It seems obvious that visibility will heavily depend on *efficacy*.

It is also obvious that the credibility of the European Union as a whole suffers with the manifest lack of political will that is behind the present *disappointing stage* of CFSP. Central European countries, for instance, seem to put membership of Nato before membership of the Union, as far as political relevance is concerned. In former Yugoslavia, not only the international credibility of the European Union has suffered, but also domestic public support. The resulting *malaise* has in turn generating Euro-scepticism and Euro-pessimism across the member states.

European leaders are hiding behind what they claim to be the prevailing feelings in their own countries to justify their own lack of political will. A variety of polls, however, seems to show clearly that the majority of the European publics and significant sections of the elites are agreed to the effect that the Union should be playing a much more decisive (and therefore visible) role in foreign and security policy issues.

Political will and determination will not arise merely out of improved institutional arrangements. But a few modifications may improve efficiency, and therefore increase the visibility of the Union's largely unseen foreign and security policy, while at the same time increasing the European citizenry's capacity to influence CFSP. Setting up a policy planning staff, which would work closely with the Council and the Commission, would be an important step towards formulating CFSP initiatives which would tend to reflect the Union's interest as a whole.

Follow up of joint actions and visibility need not diminish the role of the presidency, from larger or smaller countries. Rather, the issue seems to recommend a reinforcement of the Council

secretariat. Appointing a leading European figure' as CFSP secretary general could also be envisaged.

Summary

After briefly looking at the common positions and joint actions adopted so far, a number of findings can be summarised which may be a useful contribution to a broader assessment of CFSP which will have to take primarily into account the kind of challenges (both internal and external) the European Union is currently facing.

1. CFSP remains essentially at the declaratory stage.

2. CFSP has concentrated mainly on actions typical of a civilian power (humanitarian aid and supporting political transition processes, basically through economic instruments).

3. The EU has largely failed wherever its action would have been decisive either to prevent or solve even humanitarian crises at an early stage (former Yugoslavia, Rwanda).

4. The distinction between common positions and joint actions remains unclear.

5. Both common positions and joint actions actually corresponded in most cases to integrated actions, with a strong first pillar component and an almost invisible component of the de facto fourth pillar, the WEU (Mostar policing, and possibly taking part in de-mining activities).

6. Although pointing in the right direction, integrated actions cause the first and the second pillar to overlap. In resolving the institutional entanglement, specific procedures will have to be agreed avoiding 'inter-governmentalisation' of the first pillar.

7. The European Commission and a number of member states are not enthusiastic about joint actions, on account of the complicated procedures required by double unanimity requirement and seem to prefer looser arrangements.

8. With the important exception of the Pact on Stability in Europe, CFSP is a framework for reacting to events rather than for acting to influence their course. One of the reasons is the fact that the Council secretariat has to depend on member states' information and has no analysis and planning capabilities of its own. The latter would certainly help form a common vision, in line with the interest of the Union as a whole.

9. Lack of efficiency and of visibility obviously go together. A central body with supervising powers seems to be needed, especially to coordinate integrated actions and implement them jointly with the Commission.

10. The European Parliament and the national parliaments have no role whatsoever in forging consensus on foreign and security policy matters.

11. Following up on joint actions, especially in what concerns guaranteeing that resulting arrangements come into effect and progress achieved is sustainable, should be envisaged.

12. The budgetary question has to be addressed. A community budget line should be established for joint actions, including a special fund for emergencies, to which all member states should be 'net contributors'.

Notes

1. Report on CFSP, Conclusions of the presidency, Lisbon European Council, June 1992, Appendix 1.

2. See for example Karl Kaiser, "Challenges and Contingencies for European defence policy", in Lawrence Martin and John Roper (eds.), *Towards a Common Defence Policy* (Paris: WEU/ISS, 1995).

3. For a full assessment of the EU's action in South Africa, see Martin Holland, *The European Union 'Joint Action' and South Africa* (Brussels: Centre for European Policy Studies, 1994).

4. Ministers ... noted ... these forces would be declared "forces answerable to WEU", that would be employed as a priority in this framework, that they could likewise be employed in the framework of Nato... (WEU Council of Ministers, 15 May 1995. Lisbon Declaration, paragraph 5).

5. European Council meeting in Corfu, June 1994.

6. Rapport sur le fonctionnement du Traité sur l'Union européenne (présenté par la Commission), SEC(95)731 final, Bruxelles, mai 1995.

7. Parlamento Europeu, Relatório sobre o funcionamento do Tratado da União Europeia na perspectiva da Conferência Intergovernamental de 1996 – a realização e o desenvolvimento da União (A4-0102/95/Parte I.B, 12 May 1995).

8. Ebenhausen's Winrich Kuhne extensively reported on the disastrous participation of German troops in the UN operation in Somalia. This was the first ever time German non-combat troops were deployed outside Europe under a UN mandate.

ANNEX

JOINT ACTIONS

Ex-Yugoslavia

a) Support for the convoying of humanitarian aid in Bosnia-Herzegovina

Council decisions: 93/603/CFSP 8.11.93 (Official Journal n° L. 286 20.11.93); 93/729/CFSP 20.12.93 (Official Journal n° L.339); 94/158/CFSP 7.3.94 (Official Journal n° L.70 12.3.94); 94/789/CFSP 12.12.94 (prorogation) (Official Journal n° L. 326 17.12.94)

Goal: increase EU humanitarian aid to Bosnia-Herzegovina; to support the convoying of the international humanitarian aid in Bosnia Herzegovina, through the identification, reconstruction and preservation of supply routes. The aid is essentially controlled by ECHO, assisted in Bosnia Herzegovina by UN organisations, such as the UNHCR.

Duration: Since the 8th of November 1993, the support to the convoying of humanitarian aid has been successively prorogued. The decision is applicable until the 31st of December 1995

Budget: The sum of the humanitarian aid totals till 30.9.1994 48.30 million ecu (24.15 millions from the Community budget, part IILB and the other half from the member-states). The Commission is responsible for the management of the Community funding.

b) EU's administration of Mostar

Council Decisions: 94/308/CFSP 16.5.94 (Official Journal n° L.134 30.5.94); 94/510/CFSP 27.7.94 (Official Journal n° L. 205 8.8.94); 94/790/CFSP 12.12.94 (Official Journal n° L.326 17.12.94) (prorogation)

Goal: to contribute to the creation of a durable and multi-ethnic administration of the city; to contribute to the effort of reconstruction of the city's infrastructures (mainly water and electricity systems and rebuilding of the destructed bridges that used to link the two sides of the city.
The WEU also contributed with a police force to guarantee the security of the EU's mission

Duration: The EU administration was set up on the 23rd of July 1994. This mission is supposed to be finished in two years time

Budget: 32 million ecu in 1994, 17 of which from the member states. The part covered by the Community budget was taken from the CFSP budget line. In the 1995

community budget, 60 million ecu are destined to Mostar and an additional 20 million have been approved by the EP for the reconstruction of the destroyed Mostar hospital.

Russian parliamentary elections

Council decision 93/604/CFSP 20.11.93 (Official Journal n° L.286 20.11.93)

Goal: contribute to the international effort of supervision of the December 1993 Russian parliamentary elections

Number of personnel involved: The European Union observers joined the OSCE mission, totalling 500 observers to the Russian elections; the EU's mission consisted of experts and diplomats of the Twelve, representatives of the Commission and a delegation of the European Parliament

Budget: All the expenses of the special unit for the co-ordination of the EU's mission were administrative expenses; the member states involved were responsible for the expenses with their own observers

South Africa

Council Decision 93/678/CFSP 6.12.93 (Official Journal n° L.316/54 17.12.93)

Goal: to support the international mission of preparation and observation of the general elections in April 1994; support of the political and economic transition process through a special assistance programme

Number of personnel involved in the elections assistance: 312 observers (24 from each member state and from the Commission)

Duration: The first part of this joint action ended in April 1994. The assistance programme is conducted by the Commission and is scheduled to be completed in 1999.

Budget: The member states were responsible for the expenses with the observers; the special assistance programme for South Africa amounts to 500 million ecus from the Community budget.

Pact on Stability in Europe

Council Decision 93/728/CFSP 20.12.1993 (Official Journal n° L. 339 31.12.1993); - Council Decision 94/367/CFSP 14.6.1994 (prorogation) (Official Journal n° L. 165 1.7.1994)

Goal: to make possible the negotiation of a good-neighbourhood conduct code that regulates borders and ethnic minorities problems between central and eastern Europe countries.

The Council decision also makes a reference to projects financed by the PHARE programme for economic reconstruction in Central and Eastern Europe. The responsibility for these projects belongs to the Commission.

Countries and international organisations involved: The participating states in this first Paris conference were Poland, the Czech Republic, Slovakia, Hungary, Bulgaria, Romania, Lithuania, Estonia, Latvia, Albania, Belarus, Ukraine, Moldavia, Russia, Slovenia and the Council of the Baltic Sea States; the EU and its member states, the OSCE, the Council of Europe, the WEU, NATO and the United Nations

Duration: The Pact on Stability Opening Conference took place in Paris on the 20th and 21st of May 1994; The Pact on Stability Final Conference was held also in Paris on the 20th and 21st of March 1995. Between the two conferences, the countries involved held several meetings in Brussels, Copenhagen, Vienna and Bonn, where very general political problems were discussed.

Budget: all the expenses related to the conferences organised outside EU institutions are considered administrative expenses, therefore covered by the Community budget

Middle East Peace Process

Council Decision 94/276/CFSP 19.4.1994 (Official Journal n° L.119 7.5.94); Council regulations (CE) n° 1734/94 and 1735/94 11.7.94 (Official Journal n° L.182 16.7.94)

Goal: participation in the international agreements to maintain peace in the region; work towards the consolidation of the democracy; contribute to the definition of the future relations among Middle East countries; keep its role in the "Regional Economic Development Working Group"; to follow closely the problem of the Israeli settlers; to provide economic assistance to the Occupied Territories; help the process of creating a Palestinian police force; protection of the Palestinians in the Occupied Territories as established by Security Council resolution 904 (1994); participate in the international supervision and observation mission to the coming elections in the Occupied Territories.

Budget: global assistance of 500 million ecus (this aid is not included in the Council decision); 10 million ecus (from the communitary budget) to the creation of the Palestinian police force

Treaty on nuclear non-proliferation

Council Decision 94/509/CFSP 25.7.94 (Official Journal n° L.205 8.8.1994)

Goal: to present a common approach vis-à-vis the indefinite and unconditional prorogation of the nuclear Non-Proliferation Treaty ; to make a diplomatic effort to convince the higher possible number of states that are not yet part of this treaty do adhere to it and to participate in the final working sessions of the preparatory committee ; to study the possibility of assisting third countries who need to take specific procedures in order to respect the agreed obligations imposed by the treaty.

Budget: no operational expenses are previewed

Dual-use goods

Council decision 94/942/CFSP (Official Journal n° L 367 31.12.1994 and Official Journal n° L 90 21.4.1995); Council decision 95/127/PESC 10.4.1995 (modification) (Official Journal n° L 90/2 21.4.1995); Council decision 95/128/PESC 10.4.1995 (modification) (Official Journal n° L. 90/3 21.4.1995); Council regulation (CE) n° 3381/94 19.12.1994 (Official Journal n° L367 31.12.1994); Council regulation (CE) n° 837/95 10.4.1995 (modification) (Official Journal n° L 90/1 21.4.1995)

Goal: to make possible the free circulation of dual-use goods inside the Union; to control their exports to third countries. The joint action is integrated on the Council regulation on the control of the exporting of dual-use goods (goods that may be used either for civilian, military or terrorist purposes). This regulation makes possible the free circulation of these goods inside the Union and at the same time deals with the problem of their export to third countries. The regulation also includes a list of which goods should be controlled and which third countries EU member states cannot export dual-use goods to. There is also a list of countries which only need a simplified exporting procedure (Australia, Canada, USA, Norway and Switzerland).

The regulation will enter into to force on the 1st of July 1995

Anti-personnel mines

Council decision 95/170/PESC 12.5.1995 (Official Journal n° L. 115/1 22.5.1995)

Goal: to contribute for the fight against the spread and use of personnel mines; to have a concerted position in the Conference on the revision of the 1980 Convention that prohibits or limits the use of certain conventional weapons. The action will include three main aspects: 1) a common moratorium on the export of such mines; 2) preparation of the Conference on the revision of the 1980 Convention; 3) EU contribution for the international actions of de-mining.
If necessary, the WEU will be associated to the specific actions decided by the Council concerning de-mining operations

Budget: in its contribution for the international efforts of de-mining, the EU will contribute with 160 thousand ecu from the community budget for the international effort of de-mining and with 3 million ecu for the voluntary UN fund for de-mining assistance

COMMON POSITIONS

Libya

Council Decision 93/614/PESC 22.11.1993 (Official Journal n° L.295/7 30.11.1993)

Subject: reduction of the economic relations with Libya, according to the Security Council resolution n° 883 (93)

Sudan

Council Decision 94/165/PESC 15.3.1995 (Official Journal n° L 75/1 17.3.1994)

Subject: embargo on arms, ammunitions and military equipment to Sudan

Haiti

Council Decision 94/315/PESC 30.5.1994 (Official Journal n° L. 139/10 2.6.1994)

Subject: reduction of the economic relations with Haiti, according to the Security Council resolution n° 917 and to the Council's regulation n° 1263/94 30.5.1994. The regulation forbids any flights from member states to Haiti or vice-versa and all imports or exports to Haiti. This regulation was revoked by the Council's regulation n° 2543/94 19.10.1994

Council Decision 94/681/PESC 14.10.1994 (Official Journal n° L.271/3 21.10.1994)

Subject: Termination of the reduction of the economic relations with Haiti

Ex-Yugoslavia

Council Decision 94/672/PESC 10.10.1994 (Official Journal n° L. 266/10 15.10.1994)

Subject: reduction of the economic and financial relations with the parts of Bosnia-Herzegovina controlled by the Bosnian Serbs, according to the Security Council resolution n° 942 (94)

Council Decision 49/673/PESC 10.10.1994 (Official Journal n° L. 266/11 15.10.94)

Subject: suspension of certain trade restrictions with the Federal Republic of Yugoslavia (Serbia and Montenegro), according to Security Council resolution n° 943 (94)

Council Decision 95/150/PESC 28.4.1995 (Official Journal n° 99/2 29.4.1995)

Subject: prorogation of the suspension of certain trade restrictions with the Federal Republic of Yugoslavia (Serbia and Montenegro), according to the Security Council resolutions n° 943 (94), n° 970 (94) and n° 988 (95)

Rwanda

Council Decision 94/697/PESC 20.10.1994 (Official Journal n° L. 283/1 29.10.1994)

Subject: objectives and priorities of the EU towards Rwanda. These objectives and priorities are: humanitarian aid to the refugees; short term measures of recuperation in the most important areas, such as electricity, water, education, health; co-operation for development with Rwanda; aid to Rwanda neighbouring countries that suffered with the refugee crisis

Ukraine

Council Decision 94/779/PESC 28.11.1994 (Official Journal n° L. 313/1 6.12.1994)

Subject: priorities and objectives towards the Ukraine. These are: - to develop a strong political relationship with the Ukraine and to increase the co-operation between the EU and the Ukraine; - to support then democratic development of the Ukraine; - to support the economic reforms based on the agreement with the IMF and to set forward as soon as possible the partnership and co-operation agreement; to continue to support the process of nuclear disarmament and to guarantee the Ukraine's adhesion to the NPT as a state with no nuclear weapons; - to support Ukraine's participation in the Pact on Stability in Europe as a neighbouring country; to support the efforts of OSCE in Crimea; - to promote the EU/G7 plan of nuclear security and reform in the energy sector, which will lead, namely, to the closing of the Chernobyl plant

Burundi

24.3.1995

Subject: Priorities of the EU towards Burundi: -to support the organisation of a national debate including all components of Burundi's nation; - to support the mission of human rights experts under the control of the UNHCHR; - to contribute to the reconstruction of the State and to the strengthening of the judicial system. Other aspects can be developed in a supplementary common position.

DECLARATIONS

1993

N°	Subject	Date
102.	Ecomsa Mandate	04.11.93
103.	Nagorno-Karabakh	09.11.93
104.	Negotiations Kempton Park	18.11.93
105.	Congo	18.11.93
106.	Nigeria	18.1193
107.	Judicial Procedure at Tiraspol	25.11.93
108.	Yemen	25.11.93
109.	Philippines	26.11.93
110.	India and Pakistan	30.11.93
111.	Georgia	30.11.93
112.	Human Rights	11.12.93
113.	Former Yugoslavia	11.12.93
114.	Russia - Elections	16.12.93
115.	India	20.12.93
116.	Kazakhstan	22.12.93

1994

N°	Subject	Date
1.	Congo	12.01.94
2.	Azerbaijan	17.01.94
3.	Agreement USA/Russia/Ukraine	18.01.94
4.	Bosnia-Herzegovina	21.01.94
5.	Yemen	31.01.94
6.	Lesotho	03.02.94
7.	Afghanistan	07.02.94
8.	Russia	07.02.94
9.	Ukraine	07.02.94
10.	Sarajevo	07.02.94
11.	Burundi	11.02.94
12.	Nomination of Ayala Lasso for the UN	21.02.94
13.	Sudan	21.02.94
14.	Yemen	24.02.94
15.	Hebron	26.02.94
16.	Nigeria and Cameroon	28.02.94
17.	Togo	28.02.94
18.	Namibia	02.03.94
19.	South Africa	02.03.94
20.	Skrunda	03.03.94
21.	Somalia	04.03.94
22.	Middle East	08.03.94

23. Adhesion of Kazakistan to NPT	09.03.94
24. Afghanistan	17.03.94
25. Baltic States	18.03.94
26. Liberia	22.03.94
27. Togo	23.03.94
28. Moldova	24.03.94
29. Burundi	25.03.94
30. Friendship Treaty with Lithuania	30.03.94
31. Turkey - Human Rights	31.03.94
32. North Korea - Nuclear Question	31.03.94
33. South Africa	07.04.94
34. Israel	08.04.94
35. Rwanda and Burundi	12.04.94
36. Rwanda	18.04.94
37. Bosnia-Herzegovina	19.04.94
38. Ukraine	19.04.94
39. Georgia	22.04.94
40. South Africa	22.04.94
41. Rwanda	25.04.94
42. Uganda	25.04.94
43. Estonia	03.05.94
44. Gaza - Jerico	04.05.94
45. Rwanda	06.05.94
46. South Africa	06.05.94
47. Agreements Latvia / Russia	10.05.94
48. Yemen	06.05.94
49. Guatemala	11.05.94
50. Rwanda	16.05.94
51. Tajiskan	17.05.94
52. Crimea	22.05.94
53. South Africa	27.05.94
54. Malawi	27.05.94
55. Haiti	27.05.94
56. Agreement Croats / Serbs / Muslims	10.06.94
57. Mostar	15.06.94
58. Latvian Citizenship	21.06.94
59. Ethiopia	24.06.94
60. Nigeria - Arrest of Moshaad Abiola	30.06.94
61. Angola	30.06.94
62. Guatemala	07.07.94
63 Visit of Arafat to Gaza and Jericho	07.07.94
64. Former Yugoslavia	18.07.94
65. East Timor	18.07.94
66. Yemen	19.07.94
67. Cancelled	
68. Rwanda	22.07.94
69. Guinea-Bissau - Elections	22.07.94
70. Gambia	25.07.94
71. Meeting Hussein Rabin	26.07.94
72. Burundi	27.07.94

73. Zaire	27.07.94
74. Tadjikistan	28.07.94
75. Relations Russia- Baltic States	28.07.94
76. Accession of Kirghistan to NPT	29.07.94
77. High-Karabakh	15.09.94
78. Lesotho	24.08.94
79. Nigeria	25.08.94
80. Withdrawal troops former USSR from Latvia and Estonia	31.08.94
81. High-Karabakh	15.09.94
82. Lesotho	16.09.94
83. Haiti	19.09.94
84. Algeria	26.09.04
85. Burundi	05.10.94
86. Iraq	11.10.94
87. Gambia	13.10.94
88. Haiti	15.10.94
89. Israel	20.10.94
90. Jordan / Israel	26.10.94
91. Mozambique	27.10.94
92. Niger	27.10.94
93. Sudan	31.10.94
94. Sao Tome and Principe	03.11.94
95. Gambia	03.11.94
96. Angola	03.11.94
97. Mozambique	21.11.94
98. Chile / Argentina - concerning Laguna del Desierto	12.11.94
99. Indonesia - Condemnation of Muchtar Pakpahan	
100. Angola	22.11.94
101. Meeting of the APEC Leaders	23.11.94
102. Moldova	29.11.94
103. Adhesion of Ukraine to NPT	30.11.94
104. Sri Lanka	29.11.94
105. Moldova	28.11.94
106. Rwanda	28.11.94
107. Ukraine - adhesion to NPT	08.12.94
108. Turkey	09.12.94
109. Former Yugoslavia	10.12.94
110. Namibia - Elections	14.12.94
111. Negotiations Lithuania / Russia - Military transit to Kaliningrad	22.11.94

1995

Nº	Subject	Date
1.	Palestinian Territories	05.01.95
2.	Chechnya	17.01.95

3. Somalia	20.01.95
4. Netanya	23.01.95
5. Algeria	23.01.95
6. Former Yugoslavia	23.01.95
7. Chechnya	23.01.95
8. Adhesion of Algeria to NPT	30.01.94
9. Sri Lanka	30.01.95
10. Afghanistan	30.01.95
11. Ecuador / Peru - border conflict	01.02.95
12. Criminal assault in Algeria	01.02.95
13. Cairo Summit	06.02.95
14. Former Yugoslavia	06.02.95
15. Chechnya	06.02.95
16. Niger - elections	07.02.95
17. Labour Union leader Pakpahan	13.02.94
18. Salman Rushdie	13.02.95
19. Sierra Leone	14.02.95
20. Release of OMONIA members	15.02.95
21. Angola	21.02.95
.... Northern Ireland	22.02.95
22. Adhesion of Argentina to NPT	23.02.95
23. Pakistan	28.02.95
24. South China Sea	02.03.95
25. North Korea	03.03.95
Burma	13.03.95
Gambia	21.03.95
Kazakistan	21.03.95
Burundi	21.03.95
Tchetchnia	03.04.95
Turkey/Iraq	05.04.95
Kazakhstan	07.04.95
Russia	12.04.95
USA (Oklahoma City)	20.04.95
Chechnya	20.04.95
Sri Lanka	24.04.95
Rwanda	25.04.95
Turkey	11.05.95
Angola	11.05.95
Israel	15.05.95
Sierra Leone	19.05.95
Sri Lanka	30.05.95
Chile (adhesion to NPT)	15.06.95
South Africa	16.06.95

Totals and percentage of declarations per region/subject
1 November 1993 - 16 June 1995

	Total	%
Sub-Saharan Africa:	44	26.67%
Russia and the former Soviet Republics (including the Baltic States):	29	17.58%
Middle East:	26	15.76%
Former Yugoslavia:	9	5.45%
NPT:	8	4.85%
Latin America:	4	2.42%
Caribbean:	3	1.82%
Maghreb:	3	1.82%
Human Rights:	3	1.82%
United Nations:	1	0.61%
Northern Ireland:	1	0.61%