

FORNET Plenary Meeting
24 April 2004, Brussels

***Is coherent unitary action a suitable theoretical benchmark
for external action in the enlarged EU?***

Introductory remarks (draft notes)

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During the last decade, introducing more flexibility into the European integration process has become a recurrent debate. Despite the existence of several "Europes" (EMU, Schengen regime,...), the early CFSP was provided with few elements of flexibility after Amsterdam and Nice. Today, moving forward to more institutional flexibility is no longer avoidable, for at least two reasons.

On the one hand, the Iraqi crisis highlighted the difficulty for EU members to reach unity on the biggest foreign policy issues, thus jeopardizing international security – the situation being dramatically worsened with the prospect of Enlargement. Between the so-called 'old' and 'new' Europe, though consensus existed on the objectives, large divergences remained regarding threat assessment and relevant means to tackle it. As Carl Bildt notes, *'Early 2003 was probably the low point in modern times for the ambitions of the European Union as a global actor in the field of foreign affairs and security. Not only were views among key member countries very divided, but it was also obvious that practically no one tried to use the mechanism of the EU to try to bridge the divisions'*¹. Though the Fifteen and the applicant countries have recently drawn nearer on a large number of issues, EU members might have to deal with structural divergences after the Enlargement has been completed, especially as European relations with the US seem to remain the last taboo of the CFSP.

Does that mean coherent unitary action is no longer an option for external action in the enlarged EU? The answer naturally depends on the meaning of 'coherent unitary action'. But as far as the CFSP is a pragmatic and incremental process, providing it with only one exclusive theoretical benchmark is the effective recipe towards either paralysis or inefficiency.

On the other hand, next to the Enlargement process, and despite the serious diplomatic crisis on Iraq, a consensus has been built these five past years between all EU member states about one aspect of the future of the EU: the European Union has to gain the weight it deserves as an international actor. The Balkan conflicts triggered a movement that the Kosovo crisis accelerated, by highlighting the necessity, for the EU, to assume its part in dealing with security and defence issues.

¹ Carl Bildt, in 'One year on: lessons from Iraq', *Chaillot Paper* 68, Paris, Institute for Security Studies, March 2004, p. 23.

In this double prospect, it is now imperative for Europeans to develop flexibility mechanisms *inside the treaty*. In other words: everything but ‘ad hocism’ (ad hoc processes). The initiatives taking place outside the framework of the EU entail malign effects. Firstly, they weaken the credibility and the cohesion of the EU; secondly they complicate the institutional framework; and finally they are detrimental to the EU members interest, which are unable to take advantage of the ‘politics of scale’ provided by the EU on the international scene. An illustration of the EU’s wish for coherence is the reinsertion in the EU framework of the 29 April 2003 initiative (in return for some arrangements), after the dissolution of the WEU.

External action?

EU external action contains several dimensions, which should soon be assembled under an unique title in the future constitutional treaty. It is mainly constituted by CFSP (which includes ESDP), common commercial policy, cooperation with third countries and humanitarian aid, and external aspects of Justice and Home Affairs. The latter are important levers of the European foreign policy, while the former designs guidelines for the whole EU external action.

This multidimensional feature of the EU external action has progressively engendered a ‘structural foreign Policy’²: by developing the political dimension of the external economic relations of the European Community, its member states have turned the EU into a real ‘soft power’, able to reshape its international environment. But the main problem of this structural foreign policy also stems from its cross-pillar aspects: strong coordination between the EU decisional bodies is required to avoid the ‘danger of fragmentation’ which could lead to inefficiency.

In this view, to what extent is flexibility necessary to conciliate consistency/coherence and efficiency in the external action of the EU? As the second pillar – following its intergovernmental logic – appears to be the most demanding on flexibility, shouldn’t CFSP constitute the first place to be provided with such mechanisms?

Consistency versus chaos, coherence versus weakness

While ‘consistency’ requires absence of contradiction and compatibility, ‘coherence’ means positive connections or synergy³. Following article 3 TEU, the need for *consistency* (in the English text) or *coherence* (in the French version) has to be ensured by the Council and the Commission. Consistency between member states and inside the EU has increased over the past years, but coherence still has to grow both vertically and horizontally: coordination of the member states foreign policies is on its way, although a cacophony sometimes surrounding certain questions (see Italian EU presidency towards Russia), and mechanisms favouring synergy are developing (double hat of the EU foreign minister, restrictive measures). But if EU external action is incompatible with member states policies or complementarity is

² Stephan Keukeleire, ‘Au-delà de la PESC: la politique étrangère structurelle de l’Union européenne’, in *Annuaire français de relations internationales*, Bruxelles, Bruylant, 2001, pp. 536-551.

³ Antonio Missiroli, ‘European Security Policy: The Challenge of Coherence’, in *European Foreign Affairs Review*, 6, The Hague, Kluwer Law International, 2001, p. 182.

unexploited, the external action of the EU will be deeply weakened. In contrast, coherence can be more or less developed but its level remains determined by the scope of EU external action, as is its added value.

While the whole spectrum of the EU external action demands strong horizontal coherence, the success of CFSP, in its diplomatic and military aspects, demands at least vertical consistency, and the highest possible degree of vertical coherence. When credibility is at stake in power relations (through coercive diplomacy for instance), coherence is a necessary condition for success: the working of deterrence mechanisms vis-à-vis a targeted state is supposed to convey strong cohesion. This cohesion, *plus* an enhanced coordination between Europeans, is also central to counter terrorism – as reminded the recent nomination of a European coordinator in the fight against terror. In the field of ESDP, the adoption of the European Security Strategy also reflects the wish of the Europeans to eventually move towards more coherence.

However, the compliance with coherence in EU external action does not automatically imply unitary action, i.e. the action of all member states. Divergence occurred frequently during European Political Cooperation, but the ‘derogations’ negotiated by certain member states regarding economic sanctions didn’t prevent European unity behind a common goal, nor the consistency of their action. In the field of ESDP, the diversity of the member states also pleads for more flexibility. The challenge is to conciliate the need for coherence and the need for flexibility: if all member states don’t have to act, how to ensure that the EU acts unitarily?

Unity versus flexibility?

Flexibility can be defined as a set of ‘institutional rules whereby member states do not all have the same rights and obligations in certain policy areas’⁴.

The question whether flexibility mechanisms had to be introduced in CFSP was raised by the 1996 IGC and again in 2000, but the results were quite timid. The Treaty of Amsterdam introduced the principle of ‘constructive abstention’ in the second pillar, leaving to other domains the ‘enhanced cooperations’ originally intended for the CFSP. The Treaty of Nice then limited enhanced cooperations in CFSP to ‘the implementation of a joint action or a common position’ and excluded ESDP.

Meanwhile, ESDP has *de facto* developed following an informal flexibility principle. Firstly, armaments cooperation has been developed outside of the EU framework. The same logic has ruled the development of EU autonomous military capabilities, the Helsinki Headline Goal being realized thanks to the European forces catalogue set up on voluntary basis. In the area of crisis management EU operations have so far been extremely diversified, in terms of means (civil and/or military), capabilities (with or without NATO) and participation (unanimous, reduced, involving third parties, with or without lead or frame nation).

⁴ Antonio Missiroli, ‘CFSP, defence and flexibility’, *Chaillot Paper* 38, Paris, Institute for Security Studies, February 2000, pp. 3-4.

The new provisions of the draft constitutional treaty reflect the will of the member states to codify this matter of fact: the ability to ‘entrust the implementation of a task to a group of member states having the necessary capability and desire to undertake’ it (Article III-211); the creation of an EU agency ‘in the field of defence capabilities development, research, acquisition and armaments’ (Article III-212); the possibility for member states to set up (permanent) ‘structured cooperation’ (Article III-213) might open the door to institutional flexibility.

It does not seem necessary that in case of common actions, all member states have to take part in an action that only interests parts of them and for which only several possess the required capabilities. If CFSP has to remain common, the action decided in its framework could be undertaken by the ‘able and willing’ if complying with the ‘open door’ principle.

Able and Willing? Major states? A directorate?

Although the idea of setting a directorate in the field of CFSP worries most of the EU member states, they generally take advantage of informal directorates actions in the field of EU integration, as well as on specific policy issues, demonstrated last autumn in the non-proliferation negotiations with Iran.

While diplomatic and military aspects of crisis management are more likely to be dealt with by a small number of states, is there a case for a directorate? The divergences between the major states of the EU and the foremost difficulty to define a ‘major’ state plead for ‘moving’ directorates rather than for a regular one. It is important to enable the member states that are more willing and more able on certain specific foreign policy issues to play a key role.⁵ In the case of directorates, efficiency demands flexibility.

EU does not have to act at 25, but 25 have to decide

The consequences of the new provisions contained in the draft constitutional treaty might affect the development of ESDP, by inducing more differentiation, more specialisation. The set up of enhanced and structured cooperation in the field of CFSP could allow European integration to be furthered at a faster pace, notably through a spill-over effect. Such encouraging measures, in addition of some constraints, are likely to generate convergence in the long term. However, to turn flexibility into a benchmark for external action entails a danger in terms of European cohesion – identity – and solidarity. Therefore, elements of institutional flexibility must remain limited and selective.

But the limitations and selectivity of flexibility mechanisms could also generate dysfunctions. The difficulty of introducing flexibility in the EU external action doesn’t seem to stem from action as much as decision-making process. Following the draft constitutional treaty, the triggering of flexibility mechanisms that entrust a group of member states with a EU mission,

⁵ See Stephan Keukeleire, ‘Directorates in the CFSP/CESDP of the European Union : A Plea for ‘Restricted Crisis Management Groups’’, in *European Foreign Affairs Review*, 6, The Hague, Kluwer Law International, 2001, pp. 75-101 ; Hans Stark, ‘Paris, Berlin et Londres : vers l’émergence d’un directoire européen ?’, in *Politique étrangère*, 4, Paris, Institut français des relations internationales, 2002, pp. 967-982.

or enhanced or structured cooperation, importantly remains conditional on a unanimous decision. Intergovernmental logic rules, only lessened by the possibility of ‘constructive’ abstention and of qualified majority voting (QMV) in certain cases – which could be spread by the Council.

Do we move towards an external action model ‘EU doesn’t have to act at 25, but 25 have to agree’? In what measure does this action model differ from the ‘coherent unitary action’ one? Is this one more suitable for external action in an enlarged EU or does it eventually lead to paralysis? Does the coherence principle really imply unity in deciding actions? In other words, does the compliance with coherence demand unitary decisions, possibly eased by a ‘constructive’ abstention, or could QMV assure the EU with the support of all member states, even those reluctant to it? At any rate, the way the flexibility issue is dealt with reflects the vision of both the future of European integration and the kind of CFSP the member states want to favour.

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