Chapter 23

European foreign and defence policy

23.1. The European Commission and the transition to the common foreign and security policy

The common foreign and security policy (CFSP) entered into force on 1 November 1993. It succeeded the European political cooperation (EPC) introduced by the Davignon report in 1970, complemented by the Copenhagen (1973) and London (1981) reports, and enshrined in the institutional framework by the Single European Act (SEA) of 1986. The SEA established in legal form, for the first time, texts that until then had been purely political in nature. However, the codification of diplomatic practices that had been developing since 1970 was not always reflected in any substantial progress, apart from the creation of an EPC secretariat ([1]). According to one of the founders of the EPC, subsequently a European Commissioner ([2]), the EPC had certainly grown from a 'puny child' to become 'officially an adolescent', but enshrining it in a legal text did not automatically mean that the Member States' commitments would cease to be mere political statements of intent and become more like obligations similar to those set out in the Treaty of Rome. The EPC remained a kind of intergovernmental cooperation, albeit reinforced in terms of its basis, permanence and operating frequency once incorporated into the SEA, but still ad hoc in nature with regard to the European Community (EC) structure. However, close links with the latter meant that the Commission and the presidency, both located at the intersection of the two

([1]) The relevant provisions of the SEA on political cooperation are to be found in Article 30.

([2]) Preface by Étienne Davignon to the second edition of the work by Schoutheete, P. (de), *La Coopération politique européenne*, 'Europe' collection, Vol. 6, second edition, Nathan, Paris, 1986, p. 3.

The Maastricht Treaty made the common foreign and security policy the second pillar of the European Union, maintaining the intergovernmental nature of European political cooperation that had previously existed on an informal basis.

processes, had to strive for consistency in the EC's overarching external relations ([1]). The SEA merely reworded an objective that the EPC had had ever since its inception. Nevertheless, the Commission objected to the establishment of an EPC secretariat, considering it to be a superfluous parallel intergovernmental body at odds with the desired consistency in the EC's external action ([2]). Even before the SEA was negotiated Jacques Delors had publicly signalled his disapproval of it.

> '*It is absolutely vital to maintain the unity of the Community institutions. The Commission is not opposed to the EPC secretariat for superficial reasons: but you cannot have a European Union and, at the same time, create the basis for schizophrenia between the two pillars of the Community*' ([3]).

This declaration gave a foretaste of the Commission's subsequent tone when it came to the CFSP.

For the Commission the matter had already been settled by the London report, which enshrined its presence at all levels of the EPC. Developments in the 1980s demonstrated the relevance of this presence when international crises called for the use of economic sanctions by the EC. These crises tested the responsiveness of the EPC, and often called for the Ten, the Twelve and then the Fifteen Member States, always supported by the Commission, to use economic instruments for foreign policy ends. A link was established between the Community

([1]) See Article 30(5) of the SEA.

([2]) The European Community meant not only the European Economic Community (EEC), but also the European Coal and Steel Community and all that their Member States do together in the field of foreign policy. Once the Maastricht Treaty entered into force the term 'European Community' was no longer used as an unofficial name for designating a many-faceted European player, but rather as a term used for the former EEC, to take into account its non-economic powers. In other words, as of 1 November 1993 the qualities of the concept of the European Community were incorporated into the concept of European Union.

([3]) Interview in *Stern*, reported in *Le Monde*, 4 June 1985. Étienne Davignon, for his part, having been both a policy director-general in a national ministry and a European Commissioner, considered it unavoidable that governments would be present if not dominant in the area of the EPC/CFSP: interview with Étienne Davignon, 3 May 2016. This was also the case for Jim Cloos, who had had a 'mixed' career: interview with Jim Cloos, 4 July 2016.

structure, symbolised by the Commission, and the intergovernmental dynamic of the Member States. However, in 1987 doubts remained about the best way to adopt Community economic sanctions. This was the Commission's first concern in the context of the EPC. The debate that arose on that occasion would be settled formally by the Maastricht Treaty, which would also put to rest two other questions that had concerned the Commission since the opening of the Intergovernmental Conference (IGC) on Political Union: the appropriate institutional architecture for the establishment of the EU (legal personality for the EU? pillared structure? more unified institutional structure?) and the nature and scope of the future CFSP and its link with Community action.

It is an understatement to say that the ultimate responses of the Heads of State or Government in Maastricht at the end of 1991 were not in line with the views of the Commission and, in particular, its President. Jacques Delors did not hesitate to criticise a work that he did not intend to endorse ([1]). However, several proposals on political union issued by the Commission at the time of the IGC continued to be discussed, and later on some of them ended up in the Amsterdam or Lisbon Treaties.

The aim of this chapter is therefore to define the role, hopes and disappointments of the Commission with regard to what could be described as the transition to the CFSP. A first section deals with the almost 'theological' question of how to adopt Community economic sanctions, which initially antagonised certain Member States but with regard to which the Commission expressed its views and later its preferences. South Africa, emblematic of the time, was a case in point. The interesting aspect of the South Africa question was that the Commission would come to play an ever more essential role. The next two sections will look at two connected issues: the export of dual-use items and the arms trade. In the fourth section consideration will be given to the Commission's role as guardian of the treaties in the highly politicised context of the conflict between Greece and the former Yugoslav Republic of Macedonia. Russia is the subject of the fifth section. Indeed, in parallel with enlargement and the Yugoslav problem, relations between the EU and Russia constituted a highpoint in the 1990s with respect to the Commission's interactions with the Council, notably in the context of the CFSP. A final, more general section looks at the intricate negotiations on political union so as to analyse the Commission's options on the institutional architecture and the place of the CFSP within it, comparing them with the results achieved at Maastricht and Amsterdam.

The Commission, European political cooperation and the link with the Community using coercive measures, as illustrated by the struggle against apartheid in South Africa

Incorporating the Commission within the EPC was not only a concession by the intergovernmentalists to the Community dynamic. It also marked a certain pragmatism, as the Member States wished to use the economic weight of the Community for their political ends. How could trade relations with a non-member country be realigned without the presence of the body holding exclusive powers in the area of trade policy, the only body able to propose rules organising this change in a uniform way? Ever since the 1980s the question had arisen in various cases, and sanctions against South Africa, as the apartheid regime became increasingly repressive, were a case in point following the adoption of the SEA.

([1]) Jacques Delors said as much in the *Nouvel Économiste* (25 March 1994) in a kind of preliminary review of his time in office: 'I can claim responsibility for the 1992 objective, the Single European Act, the reform of the structural policies and their funding or the report on economic and monetary union, but Maastricht was not my work, but rather the creation of the governments'. These words, focusing on the CFSP, were echoed in interviews with Jacques Delors on 16 January 2016 and 20 June 2017.

For certain 'dogmatic' Member States [1], taking a Community approach to the adoption of economic sanctions against a non-member country was a solution they found hard to stomach in principle. It was important for them to make a clear distinction between Community affairs and the prerogatives of the EPC, and thus to adopt any economic sanctions agreed within the intergovernmental framework of political cooperation via national legal instruments. Essentially, the 'dogmatic' Member States were not questioning the principle of the sanctions but rather the intervention of the Community [2]. However, the provisions of the common commercial policy based on Article 113 of the Treaty establishing the European Economic Community, in force at that time, ensured rapid and uniform application and therefore had the benefit of avoiding a situation in which an agreement between foreign ministers on measures to be taken was emptied of substance by certain national parliaments [3]. That is why the Commission recommended this solution when it was required to take a view [4].

Under the influence of more 'pragmatic' Member States [5], solutions were found whereby the Community framework was used while, at the same time, the sensitivities of those who were naturally opposed to this approach were managed. A consensus was gradually reached whereby the decision to apply sanctions would be made intergovernmentally even if, to ensure uniform application, the Member States would agree to adopt Community-wide measures, which would explicitly make reference to the deliberations under the EPC in their explanatory memorandum. This decision-making primacy of the intergovernmental method over the Community method in the area of economic sanctions exercised for political ends would subsequently be enshrined in the Treaty on European Union, which, in the bridges it established between its first and second pillars, prioritised intergovernmental decision-making while stipulating the need for Community implementation [6]. The Maastricht Treaty thus dealt definitively with the 'theological' question, where certain false starts had led to delays and hesitation with regard to the use of Community instruments to support restrictive policies initiated by the EPC.

The Community form — the guarantee of identical, collective implementation — was the Commission's motivation. Jacques Delors, for example, deplored the way that the coercive measures against South Africa had mixed Community provisions and intergovernmental measures. He made a case for his more integrated vision of the CFSP in the EU context, more of which later. Speaking to the European Parliament in June 1991, he said the following:

(1) Denmark mainly, along with France, although with the arrival of François Mitterrand as President in 1981 the latter significantly backtracked on this 'dogmatism'.

(2) This was, for example, Denmark's attitude during the Falklands crisis.

(3) This was the reason that Leo Tindemans, Belgian Foreign Minister at that time, was in favour of the Community approach to the economic sanctions against South Africa decided on in 1986: '... Belgium ..., until recently, was always opposed to the imposition of economic sanctions. Not for ideological or political reasons but because we do not believe in their effectiveness. Until now, there has always been a competitor willing to do what you did not want to do yourself ... I have always made the point that Community-level action is needed, ... because as soon as some Member States do not apply the same measures as others you will need to establish border controls, import and export licences and so on ..., in other words, under those conditions there would be no more single market.' Interview on French-speaking Belgian public radio (RTBF) on 17 September 1986.

(4) We could, for example, quote Claus-Dieter Ehlermann, Director-General of the Commission's Legal Service at that time, discussing doctrine: Ehlermann, C.-D., 'The scope of Article 113 of the EEC Treaty', in Teitgen, P.-H., *Études de droit des Communautés européennes — Mélanges offerts à Pierre-Henri Teitgen*, Éditions A. Pedone, Paris, 1984, pp. 145-169; Ehlermann, C.-D., 'Communautés européennes et sanctions internationales — Une réponse à J. Verhoeven', *Revue belge de droit international*, No 1, Bruylant, Brussels, 1984-1985, pp. 96-112; or Commissioner Étienne Davignon, speaking in this vein to the European Parliament on 21 April 1982, stating in particular that 'this is the only guarantee that these measures will be applied in the spirit of solidarity in which they were intended ... There can be no solidarity without an identical approach in the implementation of measures adopted at Community level': 'Session 1982-1983 — verbatim report of the proceedings of 19 to 23 April 1982', *Annex to the Official Journal of the European Communities: Debates of the European Parliament*, No 1-284, p. 147.

(5) These included both Member States traditionally in favour of far-reaching European integration, such as the Benelux countries, and those such as the United Kingdom that were more reserved about integration but still keen to give real substance to political cooperation, at least where its own national interests coincided with those of the EPC.

(6) See the Treaty of Maastricht, Article 228a for goods and Article 73a for financial assets.

Archbishop Desmond Tutu (left) was welcomed to the European Commission by Claude Cheysson (right) on 18 April 1988, before attending the annual general assembly of non-governmental organisations working in the field of development.

'I take the view that it is impossible to build a wall separating foreign policy from foreign economic policy and development aid policy. Why? I will give you a recent example. On Monday, I received Mr Mandela. He came to complain that he had not been consulted before the sanctions against South Africa were lifted. Ladies and gentlemen, which sanctions? Those imposed by the Community itself or those imposed by political cooperation? Who knows? That is why we maintain our proposal that there should be a bloc, more or less ambitious … so that a single body, the Council of Ministers or the European Parliament in the context of its consultative powers, should deal with the subject of South Africa in its entirety … Otherwise, this schizophrenic situation will persist, and we will see a growing grey zone in which no decisions are made' [1].

The situation was, in fact, both more simple and more complicated than Jacques Delors described: certainly, the principle that the sanctions, whatever their nature, should be lifted had been decided. But, while the intergovernmental restrictions had been lifted immediately, the Community sanctions took a little while longer because of differences of opinion between the Member States, even though the Commission itself, through its Vice-President Frans Andriessen, had declared that it was in favour of lifting the measures so that it could replace means of coercion with economic incentives intended to support South Africa's now irreversible democratic transition. Furthermore, the Commission was already administering the Community programme

(1) 'Session 1991-1992 — verbatim report of the proceedings of 10 to 14 June 1991', *Annex to the Official Journal of the European Communities: Debates of the European Parliament*, No 3-406, 12 June 1991, p. 179.

of assistance for the victims of apartheid that was delivered via non-governmental channels ([1]).

Ad hoc coercive measures to manage the export of dual-use goods

Another episode shows how, at the end of the 1980s, the Commission launched a practice that gradually established itself — that of controls on the export of dual-use (civilian and military) goods. The question came to the fore in the context of the Iran–Iraq conflict. In 1984 rumours abounded that the Iraqi army was using chemical weapons ([2]). The Ten decided to impose controls on the export of certain products that could be used to make chemical weapons to be delivered, directly or indirectly, to the warring countries. This concern had been discussed in the context of the EPC on 9 April 1984. Consequently, the Commission had presented a proposal for a regulation based on the common trade policy. However, the Council did not adopt the measures because certain Member States were already applying controls on the export of chemical weapons, while others were preparing to do so, meaning that all that was needed was to coordinate the legislation in this area. Yet it was clear that the 'technical' difficulty was designed to conceal the differences between the Member States on how to respond to the Commission's proposal. Far from being unanimously welcomed, the proposal in particular had not met with the approval of France, the Member State holding the presidency at that time. The issue included a security dimension in which the French government did not wish to see the Commission intervene ([3]). France was not the only Member State to take the view that measures of that kind were not part of the Community's remit. Greece and Denmark had followed suit. Other Member States, however, backed the Commission, claiming that the matter fell within the Community's exclusive competence. For this reason the Permanent Representatives Committee (Coreper) had been asked to examine the issue of competence posed by this type of measure with regard to the treaty. Mothballed for almost 5 years, the Commission's proposal was resurrected in 1989 to serve as the basis for the Council regulation concerning the export of certain chemical products ([4]). The situation changed following the Paris Conference on Chemical Weapons held from 7 to 11 January 1989. The EPC decided on 14 February that it was appropriate to control the export of certain chemical products ([5]). Defined by the foreign ministers under the EPC, the arrangements for these controls were the subject of an EEC regulation under which the export of a certain number of sensitive chemical products would, in any event, require prior authorisation that had to be issued by the competent authorities of the Member States. The text opened with a long preamble, outlining the essential role of the EPC in the decision to resort to such a regulation. The Member States also guarded against any future attempt at exclusive Community management of this issue by stipulating that the EPC would continue to be involved ([6]). All legislation on dual-use goods would be based on the same principle: the list of goods would be drawn up by the EPC/CFSP, while the arrangements for the controls would be implemented by the Community.

([1]) The first proposals to lift the Community measures were debated in the College at the initiative of Commissioner Andriessen on 26 March 1991 and submitted the following day, but were not adopted until January 1992: HAEC, COM(91), Minutes No 1053, second part, meeting of 26 March 1991. See also a former director at the Commission, well versed in the EPC and then the CFSP: Nuttall, S. J., 'The Commission — The struggle for legitimacy', in Hill, C. (ed.), *The actors in Europe's foreign policy*, Routledge, Abingdon, 1996, p. 140.

([2]) It should be noted that, as of 5 September 1983, Iraq was accusing Iran of the same.

([3]) See *Agence Europe*, No 3850, 16 May 1984.

([4]) Council Regulation (EEC) No 428/89 of 20 February 1989 (OJ L 50, 22.2.1989, p. 1).

([5]) In addition to the Paris Conference, another factor pushed the Twelve, in particular the Federal Republic of Germany, to revisit the idea of Community controls on the export of chemical products. It was suspected that Libya was making chemical weapons, with the complicity of certain West German companies, under the cover of a mysterious 'pharmaceuticals' plant in Rabta. See Nuttall, S. J., *European political co-operation*, Clarendon Press, Oxford, 1992, pp. 266-267.

([6]) See in particular recitals 5 and 6 of Regulation (EEC) No 428/89.

At the Noordwijk informal European summit on 23 May 1997 the Heads of State or Government confirmed their wish to conclude the intergovernmental conference at the Amsterdam European Council and, in particular, to tackle the subject of the CFSP. Group photograph, from left to right, first row: John Bruton, Prime Minister of Ireland; Poul Nyrup Rasmussen, Prime Minister of Denmark; Jean-Luc Dehaene, Prime Minister of Belgium; António Guterres, Prime Minister of Portugal; Jacques Santer, President of the Commission; Helmut Kohl, Federal Chancellor of Germany; Jacques Chirac, President of France; Wim Kok, Prime Minister of the Netherlands and Acting President of the Council; Tony Blair, Prime Minister of the United Kingdom; Jean-Claude Juncker, Prime Minister of Luxembourg; José María Aznar, Prime Minister of Spain; and Abel Matutes, Spanish Minister for Foreign Affairs.

Attempts by the Commission to manage the arms trade

Flushed with this success, after the signature of the Maastricht Treaty the Commission wished to extend the powers of the Community over an area that, until then, had been a national matter: the arms trade. Before the adoption of the EU Treaty, embargoes on weapons, munitions or other military material, the principle of which had been decided in the context of the EPC/CFSP, had never been applied by Community legislation. This was the result of a broadly shared interpretation of Article 223 of the Treaty establishing the European Economic Community, retained in the EU Treaty. It appeared that the Member States had signed up without too much difficulty to the idea that the arms trade should be a national rather than a Community matter, as the article implied [1].

Starting in the 1990s, however, various attempts were made to affirm the Community nature of war materials exports. During the IGC on Political Union the idea was floated of drafting an Article 223a to the EC Treaty, to complement Article 228a, relating explicitly to a Community embargo on armaments. However, the negotiations ended without the EU Treaty having been amended in

(1) Article 223 of the Treaty establishing the European Economic Community stipulated in particular that 'Any Member State may take the measures which it considers necessary for the protection of the essential interests of its security, and which are connected with the production of or trade in arms, ammunition and war material; such measures shall not, however, prejudice conditions of competition in the Common Market in respect of products not intended for specifically military purposes.'

that way [1]. In 1992 the Commission attempted to get its way by including United Nations provisions concerning an embargo on military material in its proposal for a regulation on the imposition of sanctions against Libya [2]. But these provisions did not meet with the approval of the Member States and did not reach the final text of Regulation (EEC) No 945/92. Finally, much to the disappointment of the Commission, which considered it a heresy [3], the Council did not consider, following the entry into force of the EU Treaty, that Article 228a of the EC Treaty could be extended to cover the export of arms and munitions. As they had been established by a common position of the CFSP, strategic measures of that kind still had to be applied by individual states [4].

(1) See, in this regard, Cloos, J. et al., *Le traité de Maastricht — Genèse, analyse, commentaires*, Bruylant, Brussels, 1993, pp. 362-365.

(2) See COM(92) 142, 7 April 1992, 'Proposal for a Council regulation (EEC) preventing the trade in certain goods and services between the Community and Libya'. The explanatory memorandum of the proposal stated in particular that the regulation was intended to implement the Security Council resolution on the sale of weapons and military equipment.

(3) Kuijper, P. J., 'Trade sanctions, security and human rights and commercial policy', in Maresceau, M. (ed.), *The European Community's commercial policy after 1992: The legal dimension*, Martinus Nijhoff, Dordrecht, 1993, pp. 404-405: Pieter Jan Kuijper, a member of the Commission's Legal Service, claimed that: 'Although the Member States, because of Article 223, remain in a position where they can take individual and disparate measures, it would seem that as soon as they take a joint action or a common position (within the meaning of the treaty on a common foreign and security policy) on arms export controls, they will have to carry that out by Community act; a coordinated intergovernmental implementation is excluded. The terms of Article 228A do not leave any margin of interpretation here. Moreover, implementation of intergovernmental policies by intergovernmental measures in cases where such a clear link with Community mechanisms has been established as in Article 228A, would constitute the beginning of a very dangerous undermining of the Community pillar of the European Union by the intergovernmental pillar.' See also interview with Pieter Jan Kuijper, 23 March 2017, in which, without returning to this exact question, we see how the interested party always defended the interests of the Community against the CFSP.

(4) See for example Council Decision 94/165/CFSP of 15 March 1994 (OJ L 75, 17.3.1994, p. 1), because of suspicions linking the regime in Khartoum to international terrorism, even if this motivation did not appear as such in the text of the CFSP common position.

The Commission, the common foreign and security policy and Greece, and their response to the former Yugoslav Republic of Macedonia

Another Commission contribution to the issue of coercive measures arose in the context of the Yugoslav crisis, when Greece unilaterally adopted an embargo against the former Yugoslav Republic of Macedonia in February 1994. To do this, Greece invoked a long-standing derogation, under Article 224 of the EC Treaty, providing for the taking of exceptional measures by a state, in particular in the event of war or 'serious international tension constituting a threat of war'. Greece deemed that it was threatened by the former Yugoslav Republic of Macedonia, which had taken the name of one of its provinces and one of its symbols for its flag. The Commission took the view that Greece was deliberately misrepresenting the EC Treaty. Following the failure of attempts to bring about a political solution to the dispute between Athens and Skopje, the European executive decided to refer the matter to the Court of Justice of the European Communities. Ultimately the Court of Justice ruled only in interlocutory proceedings [5], and the Commission abandoned the case without waiting for a final ruling, having obtained a political compromise between the protagonists.

It is nevertheless interesting to look at the arguments advanced by Brussels. The Commission raised the issue of the compatibility of such measures with Community law and invited Athens to justify its conduct. Over the course of a pre-litigation phase lasting more than 2 months the authorities in Brussels attempted to demonstrate to Greece that it was not in a state of 'serious international tension constituting a threat of war', as Athens claimed, and that its attitude was infringing the general Community rules on imports and exports and specific

(5) Order of 29 June 1994 in Case C-120/94 R, *Commission* v *Greece* (ECR 1994, p. I-3037).

rules relating to the former Yugoslav Republic of Macedonia. The Commission also put forward an argument of fact: the damage to the legitimate interests of many Community exporters whose lorries and goods were blocked in Greece, not to mention delays due to the systematic checking of the food aid sent by non-governmental organisations to the former Yugoslav Republic of Macedonia via Greece. To break the impasse, and this is the most interesting point, the Commission proposed submitting the matter to a CFSP debate in order to establish whether there really was a case of 'serious international tension constituting a threat of war' or 'serious internal disturbance affecting the maintenance of law and order' in Greece. Following the discussion of this subject at the General Affairs Council in Ioannina, on 27 March 1994, the Commission concluded that neither of the two hypotheses was met. It was therefore decided to submit a request to the Court of Justice, as the possibilities for political recourse had largely been exhausted. We can see here the Commission's wish to bring together all the dimensions of the EU's external action and to consider the CFSP as a place for the examination of disputes in the event of an international situation affecting a Member State. It was also surprising to see the Commission taking the legal route when the logic of both the CFSP and the issue itself suggested that the optimum route would be diplomatic negotiation between Member States or via a US mediator, which is what ultimately happened. Yet in this case too, as in the cases of dual-use goods and the arms trade, the Commission's position was consistent — the Community approach was to be favoured.

Cooperation and tensions with the new Russia

The fall of the Berlin Wall, the end of communism in central and eastern Europe and the collapse of the Soviet Union provided the Commission with a new role, in particular via Phare (the programme of aid to central and east European countries) and the Tacis (technical assistance to the Commonwealth of Independent States) programme. Russia, always an enigmatic case, had to be handled properly. Fortunately, the Commission could boast of a certain degree of expertise in this regard, recognised by the Member States (1). Jacques Delors, in particular, had a knowledge of the Soviet Union and Russia that the governments, and certain members of the G7, intended to use (2).

A first interesting episode took place as Russia was emerging from the still-smoking ruins of the Soviet Union. In order to implement an enormous food-aid programme worth ECU 500 million, the brainchild of Helmut Kohl and François Mitterrand, what Michael Emerson considered (before the term was coined) as a European security and defence policy had to be set up (3). The Commission representative in Moscow was supported by service personnel from 10 or so Member States in implementing and administering this huge aid programme. Of course the important thing, subsequently, was the conclusion of the partnership and cooperation agreement with Russia, which would not enter into force until 1997. The CFSP would continue to play a role during the internal crises in Russia between 1993 and 1999.

In late 1993 the Russian President was received in Brussels, including by Jacques Delors (4). At the same time, one of the first CFSP projects was being implemented in Russia to support the organisation and supervision of an electoral process (5). Despite Boris Yeltsin's firm action to put down the revolt by

(1) Interview with Jacques Delors, 16 January 2016.
(2) Interviews with Jacques Delors, 16 January 2016 and 25 February 2016; and with Bernhard Zepter, 29 May 2017, highlighting that US President Bill Clinton in person sought the views of the Commission President concerning Russia during his visits to Washington in 1994.
(3) Interview with Michael Emerson, 13 July 2017.
(4) HAEU, Jacques Delors Fonds (JD) 1841, 'Visit by Boris Yeltsin, President of the Russian Federation', Brussels, 9 December 1993.
(5) Council Decision 93/604/CFSP of 9 November 1993 (OJ L 286, 20.11.1993, p. 3).

On 18 July 1997 President Jacques Santer (centre) and Hans van den Broek, Commissioner for External Relations with the Countries of Central and Eastern Europe and the CFSP (right), gave a joint press conference with Russian Prime Minister Viktor Chernomyrdin (left). Both parties expressed their wish to deepen and strengthen their relations.

the Russian parliament several weeks previously, the tone was one of conciliation [1]. The aim was for the transformation of Russia to be a success and for the partnership and cooperation agreement to be concluded. Despite the behaviour of Moscow there was strong agreement between the Commission and the Member States, in the new context of the CFSP, on the need to stabilise Yeltsin's Russia. Both sides seemed to benefit: this first common operation of the CFSP was an opportunity for it to prove its effectiveness, and at the same time it gave Yeltsin the opportunity to restore a democratic image that had been tarnished by the events of September-October 1993, culminating in the assault on the Russian parliament.

The situation became even more sensitive with the crises in Chechnya starting in 1994-1995, and the use of violence by Moscow to manage it. The EU initially postponed signature of the interim agreement that was supposed to precede the entry into force of the partnership and cooperation agreement. The interim agreement had been given the green light on 29 December 1994, but the subject was debated by the College of Commissioners as of 4 January 1995 in the context of the CFSP [2]. The Commission wished to see its prerogative to propose this kind of agreement for signature respected, but Commissioner van den Broek suggested that nothing should be signed without prior consultation with the presidency and the Member States. Most of his colleagues, including heavyweights such as Sir Leon Brittan and Karel Van Miert, followed his lead, but frequent disagreements on Russia remained, for example the well-argued reticence of the Greek Commissioner Ioannis Paleokrassas, who was well

(1) HAEU, JD-1841.

(2) HAEC, PV(95), Minutes No 1229, second part, meeting of 4 January 1995; PV(95), Minutes No 1230, second part, meeting of 11 January 1995.

informed about the internal situation in Russia and did not wish to see the economic transition placed in jeopardy. Jacques Delors took the opportunity to criticise the CFSP's modus operandi, deeming it too dependent on the current presidency, which had not thought fit to even hold a General Affairs Council to discuss this important issue. That said, the Commission's doubts were shared by the other institutions, and the agreement was not actually signed until 17 July 1995, both as a mark of appreciation for Moscow's cooperation in Bosnia and Herzegovina and with a view to an end to the crisis in Chechnya ([1]).

Over that year the Commission not only presented a communication and a strategy on relations with Russia, but also drew up a draft position of the CFSP on the same subject ([2]). This draft position was never finalised, and it was not until the new possibilities created by the Treaty of Amsterdam became available that a CFSP strategy saw the light of day in May 1999, with the Commission having been involved in its development ([3]). Nevertheless, beyond the text itself, doubts remained about the added value of such an instrument. Romano Prodi, for example, did not consider the CFSP strategy to be an institutional innovation that the Commission could benefit from ([4]).

Around the turn of the millennium, with the return of the Chechen question, the EU found itself confronted with a 'terrible dilemma', according to the then Commissioner for External Relations, Chris Patten ([5]). Should it jeopardise its relations with Russia because of the Chechnya crisis, in order to exert political pressure, at the risk of isolating Russia in vain? Or, on the contrary, should it maintain its relations while using the channel of institutional political dialogue to try to persuade Russia of the merits of restraint? Under pressure from their respective publics, the Heads of State or Government of the Fifteen were faced at the Helsinki European Council with the dilemma of how to continue to do nothing to jeopardise relations with the Russians while giving the impression of exerting pressure. The EU made a big display of taking a number of temporary measures, dreamed up jointly by the Council and the Commission, such as suspending benefits in the commercial sector or via the Tacis programme ([6]). Relations with the future President Vladimir Putin were thus largely maintained.

The Commission and a vision of the CFSP vis-à-vis the Member States

Schizophrenia: that was the spectre that haunted Jacques Delors and had to be overcome when the IGC on Political Union drew up its plans for the structure of the future EU. The Commission President's words quoted above on the EPC secretariat or the sanctions against South Africa already indicated his concern: avoiding conflict between the Community method and an intergovernmental process, in particular in the area of foreign policy; not merging everything in the future EU's foreign policy but trying to achieve eventual convergence.

([1]) In this matter, the Commission's ongoing concern related to the impact of these decisions on public opinion and the European Parliament, which was itself very concerned about Chechnya. At the time of making the decision to sign the interim agreement, Hans van den Broek expected to feel Parliament's ire. HAEC, PV(95), Minutes No 1253, second part, meeting of 21 June 1995.

([2]) COM(95) 223 final, 31 May 1995, 'The European Union and Russia: the future relationship'.

([3]) HAEC, BAC 532/2007/192, SI(99) 430, 'Note for the attention of members of the Commission on the summary report of the second meeting of the EU–Russia Co-operation Council (Brussels, 17 May 1999)', 18 May 1999; and HAEC, BAC 532/2007/124, SI(99) 230, 'Note for the attention of members of the Commission on the 1824th meeting of Coreper II (Brussels, 17-18 March 1999) — Russia: EU common strategy', 18 March 1999.

([4]) Interview with Romano Prodi, 1 April 2016.

([5]) See speech by Chris Patten to the European Parliament on 17 November 1999: Commission press release Speech/99/166, Christopher Patten, 'Declaration on Chechnya', Strasbourg, 17 November 1999: http://europa.eu/rapid/press-release_SPEECH-99-166_en.htm?locale=EN

([6]) Signature of a pending scientific and technological agreement would be suspended for around half a year; an amount of food aid not spent in 1999 would not be carried forward to 2000; the generalised system of preferences would not be extended to other products; and, finally, the Tacis programme for Russia would be refocused on actions to promote democratic values, humanitarian assistance and the development of civil-society networks.

As Günter Burghardt ([1]) emphasised, the Commission did not see itself as yet another Member State, but rather saw its task as supporting the Community framework for making and implementing foreign policy decisions. And the Commission was right to be concerned when the Luxembourg Presidency of the first half of 1991 proposed a structure for the EU similar to a Greek temple, with three separate pillars simply joined by a single institutional framework and a vague convergence of objectives. It was clear from then on that powers and decision-making procedures would vary greatly between the Community pillar and the intergovernmental pillars, including that of the CFSP. Moreover, bridges between the pillars to allow joint actions such as economic sanctions were not a step forward, according to the Commission; they were merely self-evident. This structure did not correspond to the inclusive approach proposed for reasons of efficiency to the IGC, which sought to gather together all the different aspects of the Community's external relations under the umbrella term of 'common external policy'. From the outset the consistency of the future European Union's external relations was clear from the Commission's proposal: 'The common external policy shall cover the common foreign and security policy, external economic policy and development cooperation policy as well as external relations in the other areas falling under the Union responsibility. In the conduct of this policy, the Union shall seek to promote democracy, the rule of law and respect for human rights' ([2]).

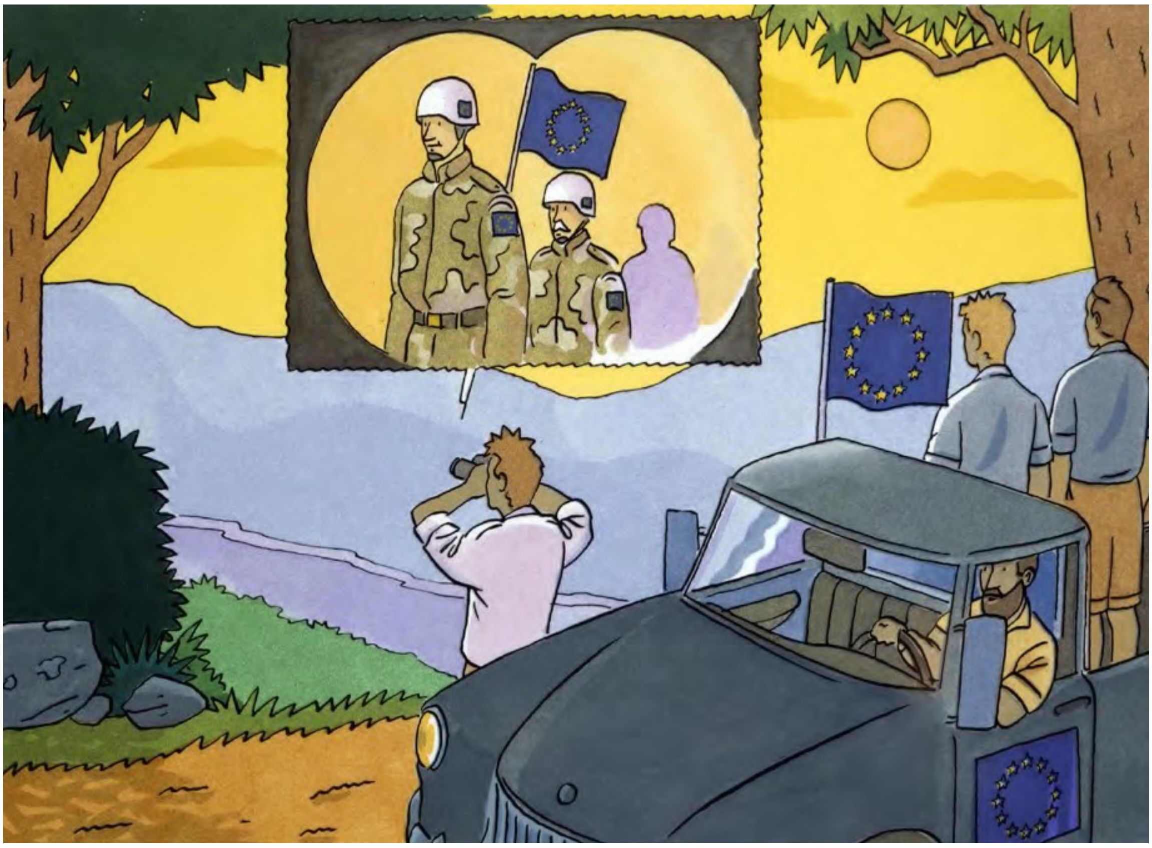
With this inclusive definition the Commission was certainly not moving towards the utopia of full communitarisation of external action, as the European Council remained the driving force behind the CFSP. But the measures envisaged in the rest of the document injected elements of the Community method into its operation. The Commission continued to expand its role, to the detriment of the Member States, and it was banking on the CFSP being managed by a qualified majority in the Council after areas of action had been identified by the latter unanimously. This was too much for the Member States, and their responses to the Commission document ranged from reticent to downright hostile. Some also wondered why the Commission had decided to present a contribution on the CFSP separately rather than liaising with the Luxembourg Presidency to reshape the draft that would be presented to the IGC a month later. The Brussels text had been put together by François Lamoureux, Jacques Delors's deputy head of cabinet at that time, and, whatever his intentions, it gave the impression of a Commission takeover. This led to a hardening of attitudes among the Member States, and the document was never seriously considered by the IGC ([3]).

As far as the CFSP was concerned, the challenge for the Commission was twofold: to move the intergovernmental process towards the Community method and to relaunch the idea of a European defence project. This challenge was motivated by disappointments during the Gulf crisis and then the Gulf War, the first real post-Cold War crisis throwing into sharp relief the limits of the EPC that bipolarity had masked hitherto. At the start of 1991 the Commission had been trying to preserve the unity of the Twelve while, at the same time, encouraging Washington to take the diplomatic route and persuade Saddam Hussein of the regional benefits that might be secured were he to

([1]) Interview with Günter Burghardt, 20 July 2017. On the role of the Commission, there was a continuity of opinion in DG IA from the time of the SEA until new possibilities were opened up by the Treaty of Amsterdam. See HAEC, BAC 532/2007 192 and BAC 532/2007 124.

([2]) SEC(91) 500, 15 May 1991, 'Intergovernmental conferences: contributions by the Commission', *Bulletin of the European Communities Supplement*, No 2, 1991.

([3]) See also Nuttall, S. J., *European foreign policy*, Oxford University Press, Oxford, 2000, pp. 158-161. The author, a former Commission director, shed some light on the exact nature of the document with regard to the sometimes excessive criticism of it. He admitted however that its general tone and certain provisions could have given the impression of arrogance on the part of the Commission. This was confirmed in the interview with Jim Cloos, 5 April 2016: the perception was that the Commission had wanted to go over the head of the Luxembourg Presidency, and the result was that the text on foreign policy was rejected after less than an hour of discussion in the IGC.



Imagining 'the Europe of tomorrow', this European Commission illustration of 1997 showed the idea of a political union with a European army.

withdraw from Kuwait ([1]). However, this was to no avail. During the IGC the sheer impossibility of managing the implosion of Yugoslavia militarily highlighted the need for a breakthrough so as not to be seen as trailing behind the events. Nevertheless, the result achieved at Maastricht was meagre: the CFSP remained essentially intergovernmental, and the idea of a European defence force had to make do with a breakthrough in principle and a long-term declaration of intent, which could have looked like a way of procrastinating.

Jacques Delors claimed to have realised at a very early stage that the Commission's position was unlikely to succeed. He realised this on 27 April 1991 at a Gymnich-style meeting of foreign ministers ([2]) in Mondorf-les-Bains in Luxembourg. At that meeting four founding members launched the idea of a joint military force, on the initiative of Hans-Dietrich Genscher, the German Foreign Minister, joined by his Belgian, French and Italian colleagues Mark Eyskens, Roland Dumas and Gianni De Michelis. The Luxembourg Foreign Minister Jacques Poos, chairing the meeting, welcomed the proposal but noted the 'Atlanticist' opposition of Denmark, the Netherlands, Portugal and the United Kingdom,

([1]) See also the discussions within the College, running up against the limits of the Community's situation as it tried to influence the crisis, faced with the position of the United States. HAEC, COM(91), Minutes No 1042, second part, meeting of 9 January 1991.

([2]) An informal meeting of foreign ministers organised once every 6 months, taking its name from the castle where the first such meeting was held in 1974.

while the other Member States remained undecided. At that time relations between the future EU, or perhaps the Western European Union, and NATO were dividing the Member States into two camps: those who saw them as a zero-sum game that the EU would win and NATO lose; and those who thought that they complemented each other (collective defence would always be NATO's role, but the EU would be able to contribute to collective security). This difference of opinion created an impasse. It was therefore decided not to pursue a common military force for the time being, even if the final text of the Maastricht Treaty did not exclude the possibility in the future ([1]).

The President of the Commission justified the struggle against potential institutional 'schizophrenia' by evoking continuity with the SEA: it was important to maintain unity in the European project by means of consistency in the EU's architecture. At the time of the SEA the Commission had achieved its aim of having a single, unique legal act to amend the Treaty of Rome that included intergovernmental provisions on the European Council and the EPC. Therefore, without having pushed for it, contrary to what some thought ([2]), the Commission welcomed the Dutch Presidency abandoning the idea of the three-columned Greek temple in favour of an institutional structure similar to a tree with a solid common trunk but with branches developing at different rates. In reality a structure of that kind had already been proposed by the Commission in Dresden in June 1991. It had been welcomed by seven Member States and clearly opposed by three. Nevertheless, the Dutch initiative of September 1991 gave the impression of ignoring the previous work of the IGC and ended in a fiasco: the idea of the 'institutional tree' was barely supported by anyone, except Belgium and the Commission, and was consigned to the scrap heap on a famous 'Black Monday' of the Dutch Presidency, on 30 September 1991 ([3]).

Ultimately what the Commission objected to was that the CFSP, as it would appear in the Maastricht Treaty, was something of a fantasy compared to its grand title of 'common foreign and security policy'. In formal terms President Delors was right: the term used was a promise that could never be kept. The great problem with the 'common foreign and security policy' was the excessive ambition its name suggested and its fundamental ambiguity. The term 'common policy' suggested that this was an area in which the Community had significant or even exclusive competence (such as the common agricultural policy or the common trade policy), while the CFSP was nothing more than the aggregated result of intergovernmental cooperation. In this case, 'common policy' did not mean a single or exclusive policy, but rather a systematic pooling of competence in order to generate cooperation. The wording was therefore misleading as it did not deliver what was implied — the CFSP, because that is what we must call it, covered both intergovernmental cooperation and the desired, but always uncertain, result thereof. The terms used thus prejudiced the outcome of the dynamic they were intended to describe. The more modest description 'European foreign policy' corresponded better to the reality of the

([1]) See also Delors, J. and Arnaud, J.-L., *Mémoires*, Plon, Paris, 2004, pp. 355-356; interviews with Jacques Delors, 16 January 2016 and 25 February 2016.

([2]) 'Some people thought that the Commission had been talked round by the Dutch to their proposal. Nothing could be further from the truth, but this rumour damaged our arguments and our defence of the tree and its branches' (Delors and Arnaud, *Mémoires*, p. 360). This claim by the President of the Commission was somewhat contradicted by David O'Sullivan, who highlighted the encouragement given by the Commission to the Dutch for their chosen institutional form: interview with David O'Sullivan, 8 September 2016.

([3]) 'Black Monday' is the name given to the fateful day when the Dutch were forced to withdraw their preliminary draft EU treaty to return to a text prepared by Luxembourg during its presidency in the first half of 1991.

procedure [1]. A great deal of ink has already been expended highlighting this dichotomy between the ambitions described and the tools developed to achieve them, or in other words denouncing the insufficiency and inappropriateness of the resources granted compared to the lauded aims. It was without doubt Jacques Delors who best summed up the difficulty while recalling what, in his view, would have been a pragmatic solution:

> '*Talking about a common foreign policy is certainly seductive, but too ambitious for our ancient nations and their capacity to act together, given their traditions, their relations and their geopolitical situation. The realistic alternative was to say that each time the common good was threatened, the European Council would decide by common action … In other words, a Formula 1 racing car with a lawnmower engine under the bonnet*' [2].

The Commission President wanted, in a way, to apply to the CFSP the old adage according to which to be ambitious you also have to be modest and pragmatic and not take refuge in illusions, because the perfect is the enemy of the good. But his prescience was not restricted to that — by raising expectations that were impossible to meet, the governments of the Member States were, in his view: 'sowing the seeds of disappointment and indifference among European citizens as Europe demonstrated its impotence in the face of the tragedies that unfolded in the former Yugoslavia and certain African countries' [3].

Nevertheless, some of the Commission's ideas were taken up again in Amsterdam during the revision of the EU Treaty, notably the ideas of constructive abstention for the CFSP and of making the European Council the decision-making forum for any move towards a European defence capability. However, the appointment of a Secretary-General/High Representative for the CFSP raised the spectre of competition with the Commission, a problem which would rear its head over the years to come [4].

Tanguy de Wilde d'Estmael

(1) The ambassador Philippe de Schoutheete, Permanent Representative of Belgium to the Communities until 1997 and personal representative of the Belgian Foreign Affairs Minister during the negotiation of the 'political union' part of the EU Treaty, also noted, the day after the signature of the text in Maastricht, that, 'when it came to foreign policy, advocates of the status quo had largely won out': 'Exposé introductif sur l'union politique', in *L'Union européenne après Maastricht — Journée d'études*, ULB/GEPE, Brussels, 21 February 1992, p. 26. Four years later (interview in *La Libre Belgique* on 13 March 1996) he said that: 'We begged for more than a year for someone to explain to us the difference between the common foreign and security policy and political cooperation. No one ever explained it because the initiators did not know themselves. For political reasons they gave it a highfaluting name, but the ministers knew themselves that the structure was incapable of producing a common foreign policy.'

(2) *L'Express*, 22 September 1994.

(3) Delors and Arnaud, *Mémoires*, p. 361.

(4) Interviews with Romano Prodi, 1 April 2016; and David O'Sullivan, 8 September 2016.