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Summary

The emergence of intergovernmental modes of governance in CFSP represents the background against which processes of change and transformation may be assessed. Thus, the paper describes the initial steps of institutionalisation of European Political Cooperation (EPC), then focuses on the creation of CFSP, in order to analyse the driving forces, the key motivations and the crucial conditions for the establishment of intergovernmental governing modes, as well as the dynamics of change and reform which led to a redefinition of basic institutional and procedural provisions.

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1. Modes of Governance in EPC and CFSP: More than Intergovernmentalism?

Studies on European Political Cooperation (EPC) and on the Common Foreign and Security Policy (CFSP) have been characterised by a growing interest in theoretical questions over the last years (Bretherton/Vogler 1999; Smith 2001; Tonra 2001; Schmalz 2004; Wagner/Hellmann 2003). When academic analysis of EPC started in the 1970s and 1980s, there was a rather low degree of fascination for theoretical and conceptual issues (Allen/Wallace 1978; de Schoutheete 1980; 1986; Nuttall 1992). Ever since, literature on European foreign policy has become a booming industry, particularly since the 1990s (White 2004; Zielonka 1998, Nuttall 2000; Hill and Smith 2000; Regelsberger, Schoutheete and Wessels 1998) A growing number of contributions describe, analyse and assess the EU's foreign policy system, its interplay with the external environment and the conceptual framing of the Union's international role, focussing to a large extent – albeit not exclusively – on the Common Foreign and Security Policy (CFSP). In this growing corpus of literature, is still rather difficult to find a consensus about how a European foreign policy can be defined, and which the shaping factors are.

The rationalist-constructivist debate has added new impetus to the theoretical analysis of European foreign policy. The juxtaposition of intergovernmentalism against supranationalism has been rejected by a growing number of scholars, giving way to a conceptualisation of CFSP as a European form of governance in foreign policy: “EFP (European Foreign Policy, U.D.) as a system of foreign policymaking is a collective enterprise through which national actors conduct partly common, partly separate international actions” (Ginsberg 2001: 32). Many authors regard CFSP as a system that has gone well beyond classical intergovernmentalist patterns of decision-making, heading toward a “transgovernmental” mode of governance which could be described as a way of decision-making marked by regular and familiar contacts among the governmental actors of CFSP, based upon a coordination reflex and a high degree of trust which has been built up among them over the years (Schmalz 2004). CFSP is increasingly seen as shaped by processes of “Europeanisation” (White 2004: 20f.; Ginsberg 2001: 37ff), “Brusselisation” (White 2004: 21; Regelsberger and Wessels 2003; Allen 1998) or “institutionalisation” (M.E. Smith 2004: 17ff.) of actors that have traditionally not belonged to the framework of the EU. Still, these developments have not produced a European supranational authority in security and defence matters, but were built on the institutional logics of cooperation which had started with the European Political Cooperation (EPC) (Schoutheete 1986; Pijpers, Regelsberger and Wessels 1988; Nuttall 1990).

However, in CFSP there is so far no broader academic debate about “new” modes of governance, or about ‘innovative’ elements in decision-making – except for the introduction of flexibility as a n option offering a way out of the impasse created by the potentially paralysing effect of unanimity and the impossibility of introducing qualified majority voting (Diedrichs and Jopp, 2003). In this context, modes of governance in EPC and CFSP have been reviewed, trying to find additional patterns that go beyond the classical notion of intergovernmentalism which was traditionally used for capturing decision-making in EPC/CFSP (Smith 2004; 2001; Tonra 2001). Thus, meanwhile a higher degree of differentiation has been reached in the study of EU foreign policy, emphasising formal and informal rules, customs, soft law, or socialization processes, which all convey the impression that governance in EPC/CFSP is far from being driven merely by national interest and dominated by consensus in decision-making.

This analysis tries to investigate the process of *emergence* of governing modes in the EU's Common Foreign and Security Policy, trying to describe the creation of European foreign pol-

icy in the 1970s, the basic rationale and the key trends of its evolution. The key questions will be:

- What factors can be accounted for the establishment of European Political Cooperation (EPC) in the 1970s, marking the beginning of a foreign and security policy?
- Which mode(s) of governance may be identified in this area? In particular it will be of interest to find out whether there is more than intergovernmentalism to be observed.
- Which basic trends and dynamics can be identified describing patterns of the development of EPC/CFSP?
- Have new modes of governance emerged in EPC/CFSP at certain critical junctures?

Thus, the paper will contribute to a first assessment of governing modes in the EU's foreign and security policy. It will serve as a basis for further investigations into the evolution of governance in EPC/CFSP, trying to identify the key factors that shape the further course of action in this policy area.

2. The Emergence of Foreign Policy Governance: EPC as a Starting Point

2.1 EPC as the Run-up to CFSP: Shaping Modes of Governance

Long before the EU'S Common Foreign and Security Policy (CFSP) came formally into being, the member states had developed modes of interaction in the framework of the European Political Cooperation (de Schoutheete 1980); and even EPC did not start from scratch, but could make use of the reliable and well-defined rules and practices of diplomatic intercourse which the members of the member states' foreign policy services were all well familiar with. The European Communities had already seen earlier attempts at creating a federalised political community including a European defence in the shape of the European Defence Community (EDC) (Duke 2000), as well as the Gaullist Fouchet plans of the early 1960s which were trying to build an intergovernmental framework of inter-state contacts covering also foreign and security policy; both models had failed due to the lack of consensus within and among the member states (de Schoutheete 1980: 18ff.). Still, these historical examples reveal the high degree of contention that marked the creation of a European foreign policy, torn between federalist and intergovernmentalist aspirations.

In a pragmatic and modest sense, EPC's objective was defined as constituting a process for the creation of a community of information, then of views and ultimately of action, the latter being the most difficult and cumbersome exercise (de Schoutheete 1986: 49). This formula often repeated in the literature serves rather as a rough description of the functional features of EPC, but leaves open a number of crucial questions.

The establishment of the European Political Cooperation in the early seventies became possible because any determination of the "finalité" of foreign policy cooperation was basically avoided, focusing on the pragmatic cooperation among the diplomats and ministers of the member states. Thus, a particular set of rules and procedures, formally and informally, but not Treaty-based, were created in order to organise regular contacts among the member states for deliberation and discussion of issues related to foreign and security policy (Smith 2001; Tonra 2001). At the time, East-West relations and the process of security and cooperation in Europe leading to the Helsinki Final Act in 1975 were high on the agenda, as was the Middle East conflict and the Israeli-Arab conflict (de Schoutheete 1980: 29).

These conditions facilitated the emergence of an exclusive atmosphere among the diplomats participating in European Political Cooperation; helpful was the fact that their business was strictly separated from Community affairs, as it allowed the actors in EPC to shape the rules of their interaction without fearing institutional contagion from the Communities. This separation responded to a twofold demand: at the political level, it was particularly France that rejected any supranational temptations in EPC, loyal to the Gaullist inspiration (Nuttall 1997: 19). At the diplomatic level, the actors of EPC were eager to underline their special track of interaction, where the EC institutions did not interfere in the ‘orthodox’ way. This led to tensions between different institutional actors, like COREPER and Political Committee, over the question of who was primarily in charge of EPC business.

The creation of a European voice in foreign policy was driven by a series of factors and forces, each of which reveals a particular logic (Nuttall 1992; de Schoutheete 1986; Regelsberger 2004):

- the functional need for expanding the scope of EC policy-making driven by the completion of the customs union and the establishment of a common external tariff;
- the growing perception of commonality among the member states as a result of dense and intensive interactions within the European Communities;
- the increasing number of international contacts and formalized forms of dialogue by the EC and the need to provide a political framework and orientation to numerous external relationships;
- the demand for a European profile within the East West conflict that had moved to a period of détente and mutual arrangements among the superpowers;
- the interests of key member states to use the EC for a more global role between the superpowers and to enhance thus national influence via Brussels.

Thus, the impetus for the emergence of EPC came from internal as well as external factors. It responded thus to a demand for more consistency among the member states without entering the framework of institutions created by the EC.

2.2 Laying the Ground for EPC: The EPC Reports and Beyond

EPC was able to grow and to develop its own institutional and procedural profile in the shadow of the European Communities and their well-structured institutional set-up (Pijpers/Regelsberger/Wessels 1988). The need for more formally defining some rules of the game became apparent and led to the adoption of the Davignon Report in 1970, the Copenhagen Report in 1973 and the London report in 1980. These three documents, far from representing any legally binding commitment, provided the basis for what should be inscribed into the Single European Act in 1986, and mainly also made it also into the Treaty of Maastricht in 1992.

The Luxembourg report took up the task formulated by the Hague Summit and stressed the common ground in values and principles to which all EU member states subscribed. The creation of foreign policy coordination was also regarded as a step in the fulfilment of the political dimension of the integration process, which should complement the economic aspects of unification (Luxembourg Report 1970). In contrast, the Copenhagen and the London reports put the emphasis of the procedural and institutional expansion and differentiation of EPC, which increasingly grew out of age during the 1970s (Copenhagen Report 1973; London Report 1980). Still, it remains to be stressed that EPC was not only conceived and built up as an exercise in efficient coordination, but to the same extent appeared as a process of adoption and

internalisation of common norms and principles, and as an answer to the need for a European voice in foreign policy.

The literature on EPC has traditionally stressed the lean institutional structure of EPC, its missing legal base, and the interest of the member states to segregate EPC business from Community affairs. To a large extent the procedural and institutional mechanisms of EPC dominated the analysis and debate in the academic and political world. As Ben Tonra points out, the creation of EPC was designed as a starting point for creating a “stronger political identity” (Tonra 2001: 2), paving the way for deepening the integration process. In this regard, EPC had a double relevance for the Communities. It represented the emergence of co-operation in a specific policy area – diplomatic, foreign and security policies – and also was seen as an acronym capturing the political dimension of the integration process. These two spheres of relevance were not always neatly separated; until today they remain a particular feature of the EU’s CFSP and ESDP.

At the time, the belief in the *political dimension* of the integration process, which was expected to follow with from the economic paths with a strong and irresistible logics, provided a key impetus for the formulation of EPC. Furthermore, there was the explicit aspiration by the member states as provided in the Copenhagen Report of 1973 to organise a *new kind of international relations*: “What is involved in fact is a new procedure in international relations and an original European contribution to the technique of arriving at concerted action” (Copenhagen Report 1973). The peculiar European vision of both the substance and the procedure of foreign policy coordination constituted a long-term objective, representing the ambition to deliver more than usual and familiar diplomatic contacts, without crossing the border of communitarised policy-making. The early success and the swift progress in establishing the first formal mechanism for foreign policy concertation, encouraged the member governments to look for further ways of enhancing and enriching EPC. From the Copenhagen Report also results the practice of taking stock of EPC, where achievements and failures were reported and appreciated. The impression prevailed that success was much more impressive than failure. The London Report in 1980 ratified a number of institutional habits and innovations which had already been introduced into EPC on the basis of pragmatic agreements, like the working groups which had been set up to prepare and implement decisions in EPC at civil servant level.

Table 1: The EPC Reports in Comparison

	Luxembourg Report – 1970	Copenhagen Report – 1973	London Report – 1981
Rationale for Political Cooperation	<p>Reference to the Hague Summit Declaration 1969</p> <p>In line with the spirit of the Preambles to the Treaties of Paris and Rome, tangible form should be given to the will for a political union;</p> <p>Implementation of the common policies being introduced or already in force requires corresponding developments in the specifically political sphere, so as to bring nearer the day when Europe can speak with one voice</p> <p>Europe must prepare itself to discharge the imperative world duties entailed by its greater cohesion and increasing role</p> <p>Additionally, “current developments” in the European Communities make it necessary for the Member States to step up their political cooperation and, in the initial stage, to provide themselves with ways and means of harmonizing their views in the field of international politics.</p> <p>The Ministers therefore felt that foreign policy concertation should be the object of the first practical endeavours to demonstrate to all that Europe has a political vocation.</p> <p>The Ministers are, in fact, convinced that progress here would be calculated to promote the development of the Communities and give Europeans a keener awareness of their common responsibility.</p>	<p>New procedure in international relations and an original European contribution to the technique of arriving at concerted action.</p> <p>Belief in the usefulness of concerted action by means of direct contacts between senior officials;</p> <p>Europe needs to establish its position in the world as a distinct entity, especially in international negotiations which are likely to have a decisive influence on the international equilibrium and on the future of the European Community</p>	<p>EC and member states are increasingly seen as a coherent force in international relations.</p> <p>EPC answers a real need felt by Member states for a closer unity in this area.</p> <p>Further integration will be beneficial to a more effective coordination in the field of foreign policy and will expand the range of instruments at the disposal of the Ten.</p> <p>In period of increased world tension and uncertainty the need for a coherent and united approach to international affairs by the members of the European Community is greater than ever.</p> <p>The Ten are still far from playing a role in the world appropriate to their combined influence; they should increasingly shape events and not merely react to them.</p> <p>Ministers renew their commitment to implement fully the reports of Luxembourg and Copenhagen</p>
Objectives	<p>At the Hague summit, the heads of state and government confirmed the “common conviction that Europe composed of States which, in spite of their different national characteristics, are united in their essential interests, assured of its internal cohesion, true to its friendly relations with outside countries, conscious of the role it has to play in promoting the</p>	<p>to ensure, by means of regular consultations and exchanges of information, improved mutual understanding as regards the main problems of international relations;</p> <p>to strengthen solidarity between Governments by promoting the harmonization of their views and the alignment of their positions and, wher-</p>	

	Luxembourg Report – 1970	Copenhagen Report – 1973	London Report – 1981
	<p>relaxation of international tension and the rapprochement among all peoples, and first and foremost among those of the entire European continent, is indispensable if a mainspring of development, progress and culture, world equilibrium and peace is to be preserved".</p> <p>responsibilities incumbent on the united Europe by reason of its economic development, industrial power and standard of living</p> <p>A united Europe should be based on a common heritage of respect for the liberty and rights of man and bring together democratic States with freely elected parliaments.</p>	<p>ever it appears possible and desirable, joint action.</p>	
Guiding Principles for EPC	<p>Mutual understanding: exchanging information and consulting regularly</p> <p>Solidarity: harmonization of views, concertation of attitudes and joint action</p> <p>Governments will consult each other on all important foreign policy questions concerning European interests where the adoption of a common position is necessary or desirable to seek common policies on practical problems.</p> <p>On these questions as general rule: No taking up of final positions without prior consultation with partners.</p>	<p>Governments will consult each other on all important foreign policy questions concerning European interests where the adoption of a common position is necessary or desirable to seek common policies on practical problems.</p> <p>On these questions as general rule: No taking up of final positions without prior consultation with partners.</p>	<p>Give due prominence to common positions, by means of appropriate references in national statements on foreign policy questions.</p> <p>Not merely a common attitude but joint action, which has always been an objective of European political cooperation, should be increasingly within the capacity of the Ten.</p>
Institutions			
Ministerial meetings	<p>Foreign Ministers: 1 every 6 months.</p> <p>Replaced by Heads of State or Government if necessary.</p>	<p>Foreign Ministers: 4 times every year, more if necessary.</p>	<p>Formal meetings</p> <p>Only items of major importance.</p> <p>Concentrate on matters for decision. (either precise recommendations or clearly defined options)</p> <p>Declarations of ministerial meetings and the European Council should name posts in third countries where the local representative of the Ten will draw the declaration to the attention of the host government.</p> <p>Informal (Gymnich-type) meetings</p> <p>Confidential</p>
Political Committee	<p>Heads of political departments.</p> <p>4 every year.</p> <p>Preparation of Ministerial meetings and carrying</p>	<p>Political Directors.</p> <p>as required.</p> <p>Preparation of ministerial meetings and carrying</p>	<p>One of the central organs of European political cooperation</p> <p>Preparation of discussions at ministerial level.</p>

	Luxembourg Report – 1970	Copenhagen Report – 1973	London Report – 1981
Commission	out tasks entrusted to it by the Ministers. May set up Working Parties. consultation if European Communities are affected	out tasks entrusted to them by the Ministers. invited to make known its views	Operation of working groups which report on matters of current interest. fully associated with political cooperation, at all levels.
Council		Information by the Presidency on agreed conclusions which have a bearing on the EC. May request studies on certain political aspects.	
European Parliament	Members of the Political Affairs Committee of the EP: 6-monthly informal meetings with Ministers. Discussion on subjects of consultations in FPC.	Political Committee of the EP: four colloquies each year with Ministers Once a year, a communication on progress made in the field of political co-operation by the Presidency	Statement to Parliament after a meeting of the European Council which will include political cooperation subjects discussed at the meeting. Informal meetings between ministers and the leaders of the different political groups in EP Presidency Speeches
Group of ‘Correspondents’	Each State will appoint one of its foreign affairs officials as the correspondent of his counterparts in the other countries ¹	Correspondents will be charged with following the implementation of political co-operation and of studying problems of organization and general nature. Preparation of work of the Political Committee for certain matters.	Identify those working group reports which are not likely to require substantive discussion in the Political Committee.
Working Parties		Senior officials of the Ministries of Foreign Affairs. as required, temporarily only	Working groups' reports should include summary of points which will require decisions Partners' comments on the oral reports of working groups should concentrate on points of substance and not of drafting.
Medium and long term studies		Either by working parties or by a permanent analysis and research group	Such studies should wherever possible be undertaken by existing working groups.
Role of Embassies of Member Countries within the Community		Consultation One staff member for contacts with the Foreign Ministry of their country of residence.	Useful practice of regular meetings between the nine Heads of Mission and the political director of the host government has developed.
Presidency		Implementation of conclusions adopted at meetings of Ministers and of the Political Committee. Proposes, on its own initiative or on that of an-	May meet individual representatives of third countries in order to discuss certain matters of particular interest to the country in question.

¹ Established as Group of Correspondents in the Copenhagen report

	Luxembourg Report – 1970	Copenhagen Report – 1973	London Report – 1981
		<p>other State, consultation at an appropriate level May meet the Ambassadors of the Member States in order to inform them of the progress of the work of political co-operation. Administrative assistance may therefore be provided by other Member States for specific tasks. Establishment of a communications system between foreign ministry departments</p>	<p>Will be assisted by a small team of officials seconded from preceding and succeeding presidencies in order to reduce workload.</p>
Working Procedures			
Confidentiality			<p>Certain delicate matters need to be handled in a way which guarantees that confidentiality is maintained</p>
Relationship between the Work of the Political Co-operation Machinery and that carried out within the framework of the EC		<p>Political Co-operation machinery: intergovernmental level Activities of the institutions of the Community: juridical commitments in the Treaty of Rome</p>	<p>The Ten will provide for EPC meetings on the occasion of Foreign Affairs Councils. The Presidency will ensure coordination of discussion of Community and political cooperation aspects of questions.</p>
Role of Embassies in third countries / Heads of mission; Offices of INGOs		<p>Notification when necessary Information on the occasion of important visits</p>	<p>Heads of Mission of the Ten in a country which expresses the desire for closer contacts with EPC may meet representatives of that country in order to hear its views and to explain the position of the Ten. Maintain the practice of meetings between Heads of Mission of the Ten Participation of the Head of Mission at political cooperation meetings. Political Committee welcomes joint reports from Heads of Missions of the Ten.</p>
Crisis procedures			<p>Political Committee or ministerial meeting within forty-eight hours at the request of three Member States. Same procedure in third countries at the level of Heads of Mission. Working groups are encouraged to analyse areas of potential crisis</p>

2.3 From EPC to CFSP: New Emerging Modes?

2.3.1 Phases of EPC development

According to Simon Nuttall (1997: 20ff.), the development of EPC can be divided into four phases: the first ranged from 1970 to the mid-seventies and was characterised by successful cooperation among the government and a settling of the new procedures and institutions.² Not only had the ministers found their role, but also the Political Committee, the Working Groups, the European Correspondents and COREU had proven their efficiency and effectiveness.

From the mid-1970s until the early 1980s, EPC entered into a period of stagnation, characterised by international crises (e.g. the Soviet occupation of Afghanistan), and by institutional stalemate, caused by lacking political interest from the key member states to boost political integration in the EC (Nuttall 1997: 21). The London Report, intended to inject a fresh dynamics to EPC, rather confirmed established practice, while the Genscher-Colombo initiative 1981 watered down into the Solemn Declaration of Stuttgart (1983). The fundamental change of the international situation, where the period of détente became obsolete, can be regarded as a crucial factor for the problems EPC had to face.

From 1982 onwards, EPC entered a period of renewed activity; the impulse came from the international system. Martial law in Poland, the Argentine occupation of the Falklands, or the conflict in Central America provided numerous opportunities for the Eleven at the time to assert their international profile (Nuttall 1997: 21f.). At the same time, the combined use of EPC and Community instruments became an attractive option in different ways. In the case of Argentina, political solidarity of the member states with the United Kingdom was backed by a trade embargo against the South American country, bringing EC instruments into a direct de facto relationship with EPC. In the case of Central America, where in 1984 the San José Dialogue was inaugurated, political dialogue with international partners was supported by a scheme of substantial development cooperation measures. The highlight of the third phase lied in the conclusion of the Single European Act, which for the first time endowed EPC with an official legal status, although outside the Community framework. In substance, the SEA confirmed most of the institutional and procedural practice developed in the past 15 years, it took over literally elements from the reports, and kept loyal to the basic political and institutional rationale of EPC, which remained fundamentally intergovernmental (Nuttall 1997: 21-22).

The fourth and final phase of EPC came between 1989 and the Treaty of Maastricht, where the historic upheavals caused serious problems to which EPC was unable to answer effectively. German unification was dealt with outside this framework, major international crises like the first Gulf war, the split of Yugoslavia (Edwards 1997) or the disintegration of the Soviet Union, were detrimental to the idea of a European foreign policy.

This phase model of EPC looks rather conventional based upon the output, but it contains an important insight into the shaping factors: the dynamics triggered by the inter-relation between EPC and the Community system, and the role of the external environment, the impact of crises on EU Foreign Policy and the structural problems to respond to major international events.

² See also Barbé 2000: 109ff. with a slightly different time frame.

2.3.2 The Institutionalisation of EU Foreign Policy: More than Intergovernmentalism?

EPC started as an exercise in coordinated foreign policy, governed by the rules of diplomatic intercourse, and became increasingly supplemented by new structures of interaction in Brussels and the national capitals. One of the striking results was the differentiation taking place in the national foreign ministries, leading to special posts for civil servants dealing with EPC. The political directors acquired particular importance in running EPC business, as well as the European correspondents and the COREU network (de Schoutheete 1986; Regelsberger 2004).

From the start, the development of EPC can be characterised by a dynamics that led to a strengthening of the formal quality of the process. In this context, Michael E. Smith identifies a trend towards “legalisation” which he defines as a process in which rules or standards of behaviour in a social setting are clarified, codified and invested with the status of law (Smith 2001: 81), representing a type of institutionalisation, which itself in a broader sense refers to the development of expectations of behaviour (Smith 2001: 82). While EPC has been endowed with a Treaty base only with the conclusion of the Single European Act (Ifestos 1987), the first years of operation reflected the emergence of a kind of customary law: “[...] EPC increasingly functioned as a body of soft law before acquiring full legal status with the SEA. Its officials conducted their relations according to improvised habits which became an increasingly binding set of rules; thus over time, soft law matured into hard law” (Smith 2001: 83). He assumes that actors in EPC behaved according to certain rules and norms which they perceived as legally valid, proving “that European legal integration can also proceed through intergovernmental (or, more appropriately, transgovernmental) interactions, and not just those taking place at the summit level during intergovernmental conferences or treaty negotiations” (Smith 2001: 84).

The idea of legalisation in the sense of progress towards legal bindingness of social and political behaviour provides an important supplement to the conceptualisation of EPC/CFSP as an intergovernmental process neatly separated from the supranational structures of the Communities. Although Smith’s use of the term could be criticised for suggesting a too rigid and systematic approach which in this ideal-type form never existed, it sheds light on the peculiar features of foreign policy coordination which has always been more than diplomatic ad-hocery among national governments, deciding voluntarily whether or not they wish to respect the rules or not enshrined in their common effort for defining a European voice in international politics.

Two levels of interaction are distinguished: the summit-level legalisation which according to Smith stalled from the mid-1970s until the 1980s, and the process of emergence of informal customs which later matured into written rules (Smith 2001: 87): “As EC governments could not agree at this time to establish and codify their own procedural rules for EPC, these eventually developed as working habits in behind-the-scenes discussions among regular EPC participants” (Smith 2001: 87). The most important of these habits have been confidentiality, consensus and consultation. In addition to these norms, the value of reputation was widely appreciated among the partners, leading to solutions beyond the lowest common denominator level: “These fundamental norms or customs (among others), practised and reinforced in a dense transgovernmental network of experts, gradually gave substance to the EPC process” (Smith 2001: 87).

The dynamics of EPC resulted thus less from the formal text adopted, but from the need for implementation and operationalisation at the administrative level, which was taken over by diplomats and civil servants in between the summits or ministerial meetings, and which led to the densification of transgovernmental networks in EPC.

In parallel, a growing rapprochement between EPC and the EC became evident in a number of institutional details which were designed to lead to better coordination. Thus, the Copenhagen Report provided for the Commission to be contacted on EPC matters that affected the European Communities (Tonra 2001: 2). The London report went a step further by stating that the Commission would in general be fully integrated in the conduct of EPC, making it officially a player in the process, which de facto it had already become in the years before.

3. The Creation of CFSP: A New Stage in the Development of EU Governance

3.1 From EPC to CFSP: Continuity and Change

As Michael Smith stipulates, “(t)he transgovernmental EPC network, the coutumier, the increased linkages between EPC and the EC, and the limited though significant involvement of the ECJ laid the groundwork for the most important phase of legalization of European foreign policy: raising its status to that of an international treaty“ (Smith 2001: 94).

The demand for translating EPC into a more coherent, effective and legitimate policy structure increased considerably in the 1980s. The reasons were multiple (Diedrichs 1996):

- the dynamic evolution of the European Community triggered off by the Single European Act (Ifestos 1987; de Ruyt 1986), the Single Market programme and the introduction of majority voting in the Council called for a closer link to foreign policy cooperation, avoiding a split of the integration process;
- success of EPC since the mid-1980s, like the growing use of group-to-group dialogue (Edwards/Regelsberger 1990) created a positive pressure for further steps, enhancing the scope of action
- member states tried to build up a stronger European role in foreign and security policy as a response to the end of the Cold War and the new challenges to international security.

When the Common Foreign and Security Policy (CFSP) came into existence with the entry into force of the Treaty of Maastricht, the modes of decision-making and interaction in this policy domain were already well-defined and successfully working (Regelsberger 2003). Still, a “new threshold” (Tonra 2001: 3) in EU foreign policy cooperation was reached. Although there was no radical change in the mode of governance, the legal base had fundamentally been altered; the establishment of an enhanced institutional and procedural framework for what had been foreign policy cooperation among the member states of the European Communities meant in the first place that new potentials and perspectives could be activated, but it had a rather modest impact on the daily routines and the deep-rooted practices in Europe's diplomatic community.

Intergovernmentalism was less a well-defined conceptual approach, but much more corresponded to the political practice among the member governments of dealing with each other. In the negotiations to the Treaty of Maastricht, the experience of “Black Monday” when the Dutch Presidency dramatically failed to replace the Three-Pillar-Approach by a Community-based model, reflected the lack of federal aspirations at the level of the member governments, and also indicated that the Three-Pillar-structure which had initially been so heavily criticised, would represent a feasible formula (Laursen/Vanhoonacker 1992; Diedrichs 1996).

The following features of CFSP in comparison to EPC are of crucial importance:

- the formal “legalisation” (Smith 2001) of foreign policy cooperation within the framework of the Treaties, including the single institutional framework, with the European Council and the Council as the key bodies;
- a certain “scope enlargement” of CFSP, in particular by covering security policy and by introducing closer relations with the WEU as an integral part of the process of European integration;
- the expansion and differentiation of legal instruments, which should include – beneath declarations – joint actions and common positions. These were de facto already existent under EPC, but received a more systematic structure.
- a differentiation of procedures in the sense of defining a possibility for majority voting, while consensus remained the rule.

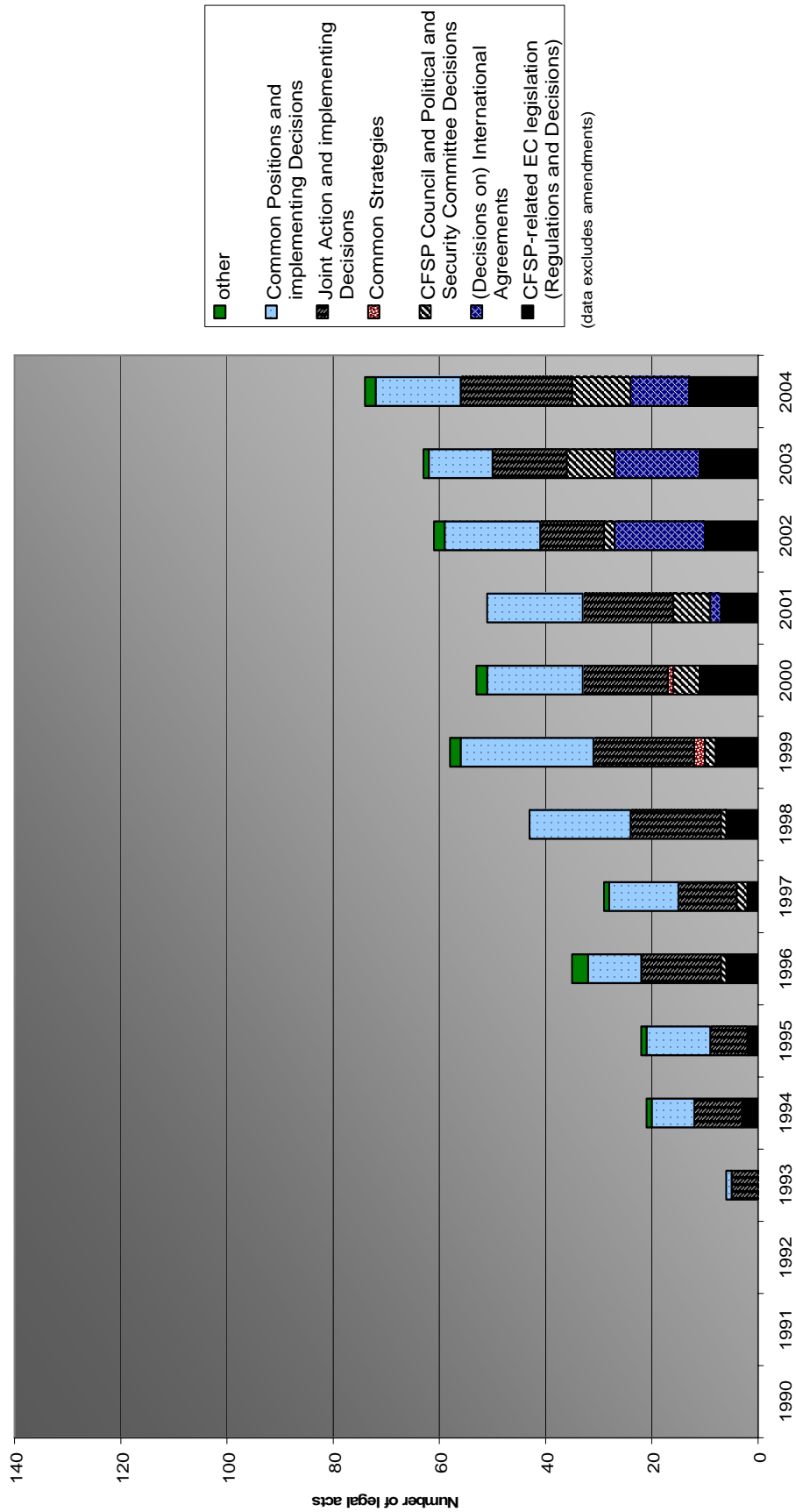
After having described the major factors that accounted for the emergence of CFSP, it is now necessary to assess the importance of decision-making procedures and the patterns of interaction. CFSP provides an excellent example of the importance to distinguish between decision-making procedure and mode of governance, the latter being more comprehensive than the former. The legal provisions are rather parsimonious and clear. Consensus is the rule, i.e. every member government is expected to agree to a decision before it can be taken. On the other hand, the style of interaction is highly influenced by the rules of diplomatic intercourse and marked by a considerable degree of collegiality, informal practice and confidentiality.

3.2 CFSP Governance since Maastricht: the legal, the living and the looming constitution

After the coming into force of the Treaty of Maastricht, the institutional reform debate on CFSP did not come to an end. There was continuing pressure for further reform, mainly under the label of efficiency, effectiveness and legitimacy (Regelsberger 2004: 13ff.). The perspective of enlargement was increasingly regarded as a catalyst for major procedural and institutional modifications. In the end, the result of the Treaty reforms lied in a modification of the set-up of CFSP without changing its basic face. The creation of the High Representative for CFSP and the introduction of constructive abstention for decision-making, and of common strategies as a new instruments in the Treaty of Amsterdam (1997), in the end led to a perfection of a “rationalised intergovernmentalism” (Wessels 1998), which tried to improve the working of the mechanism of CFSP, without altering its nature.

In parallel, the implementation of the Treaty on European Union revealed an intensive use of its provisions by the EU. In particular joint actions and common positions belong to the usual repertoire of CFSP, while after 2001 also agreements with third countries have become increasingly important. These reflect the growing activities of the EU in the field of crisis-management, where the Union invites third countries to participate in crisis-management operations.

Table 2: Legal Output in CFSP 1993-2004



The debates on the EU Constitution have revealed the potential for further institutional and procedural reform existent in CFSP/ESDP. Had ratification not failed, it would have brought a number of important changes (Wessels 2004; Diedrichs/Jopp 2005; Jopp/Regelsberger 2003):

- further legal densification of CFSP, closer relations between EP, Commission and Council;
- higher consistency between EC and CFSP by opening the possibility of resorting to the EC in the case of economic sanctions as a result from foreign policy decisions;
- increased institutional coherence and effectiveness through the creation of the Foreign Minister of the EU, and a common external service;
- more potential for flexibility in CFSP and ESDP, e.g. by structured cooperation;
- a differentiation of procedures and mechanisms for decision-making

Although the Constitutional Treaty failed in the referenda in France and the Netherlands, some ideas contained in it remain on the agenda and will probably nourish the reform debate in the future. It remains to be seen however, in which way these elements will be taken up by the member governments. The model of a Convention for Treaty revisions might enhance the chances for success.

3.3 The Impact of the European Security and Defence Policy (ESDP): New Modes of Governance in European Foreign and Security Policy?

ESDP has grown out of a long-term historical process which started in the 1950s, but the decisive ignition for creating military structures and capabilities that would be available to the European Union came from the meeting between French President Chirac and British Prime Minister Blair, at St. Malo, in December 1998 (Deighton 2002: 720). The Franco-British summit's famous formula, that the EU should possess a 'capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in response to international crises', was regarded as a breakthrough given British resistance to a military role for the European Union in previous years (Howorth 2001) considerable differences still remained between Paris and London concerning the precise nature, scope and design of the project. Whilst for France, ESDP represented a chance to render the EU more autonomous from NATO and the U.S. in terms of military operations, the British government viewed ESDP as a tool to keep NATO alive by increasing Europe's weight in military burden-sharing and by improving its military capabilities.

At the European Council of Helsinki in December 1999, the military dimension of ESDP was more precisely defined by the agreement that the member states should be able, by 2003, to 'deploy within 60 days and sustain for at least one year military forces of up to 50,000 to 60,000 persons capable of the full range of Petersberg tasks.

In institutional terms, new actors gained importance in the Brussels arena; to some observers, ESDP confirmed the process of 'Brusselization' (Regelsberger 2004: 121) of actors who traditionally have not belonged to the framework of the EU. Flexible modes of governance, allowing a group of countries to move ahead without waiting for the rest of the member states, was heavily discussed among the member states but their inclusion into the Treaties was blocked at the negotiations on the Treaty of Nice due to the resistance by some governments (Diedrichs/Jopp 2004). Flexibility within the Treaty could be a measure to prevent some EU countries from more closely cooperating outside the legal framework of the Union, totally out of reach for the other members. Against this background, it is of great interest to assess the recent reforms agreed upon in the context of the debate on the future of Europe.

The ESDP has been a key issue in the debate over the future of Europe which led to the signature of the ‘Treaty establishing a Constitution for Europe’ by the heads of state and government in Rome, on October 29, 2004. The intense discussions within the Convention plenary, in its working groups and in the subsequent intergovernmental conference, reflected the high degree of relevance of the issue, but also the controversy in which the traditional fault-lines in the European security debate lie.

The creation of the European Security and Defence Policy added new impetus and new elements to the debate about CFSP. First, ESDP was an extra-Treaty child, not based upon the explicit will to enhance the existing legal framework, but rather born out of the pragmatism with which the UK and France wanted to endow the EU with military means, while avoiding a major clash in NATO (Howorth 2001; Deighton 2002; Diedrichs 2005). It was only step by step in an incremental manner that the ESDP became more closely related to the CFSP institutional framework. But ESDP did not get simply absorbed by CFSP, or the other way round, it kept an image of its own, and developed modes of governance which were different from CFSP in some areas. The arrival of military personnel in the ‘couloirs du pouvoir’ represented a breach with the past; officers brought in their style of handling issues, being mainly used to NATO interaction patterns, not to the sometimes lengthy and cumbersome discussions and negotiations at the EU levels. Nationality did matter, as the controversial decisions over the first chairman of the EUMC and the EUMS documented, but in a different way. It was the military and strategic cultures which counted more than national interests as such.

- The military “hard core” of ESDP is legally highly fragile and uncertain; pledges by the member states have no binding legal force, i.e. they are formally free to deliver; still, ESDP relies upon these commitments as the backbone of its crisis-management capacities.
- Decisions in ESDP on a military operation are the result of a complex interplay between EU legal acts (Joint Actions adopted by the Council), national decisions to deploy troops or other staff/material, if required third parties’ involvement in the running of the operation, like NATO in the case of a “Berlin Plus”-mission, and non-member countries which may be invited to participate in a mission.
- Flexibility is already a reality in daily life of ESDP, and it will remain an important trend in the future. Flexible forms of decision-making and participation in operations may represent a solution to the tension between keeping unanimity, and ensuring effectiveness.
- External embedment is crucial for ESDP to work; without NATO assets and resources ESDP would not be able to implement a major operation.
- Intergovernmentalism is the dominant feature of decision-making, but again it is embedded in a dense network of contacts that lead into a ‘transgovernmental’ direction.
- The Defence Agency will introduce new forms of interaction in ESDP; while officially an intergovernmental agency, it will have close relations with national experts and the Commission, particularly in the area research.

4. The Emergence of Governing Modes in CFSP: Final Considerations

The assessment of the role and importance of governing modes in EPC/CFSP relies heavily upon the theoretical standpoint. A number of assumptions may be made in this regard.

From an intergovernmentalist point of view, the basic trend since the creation of EPC has never been reversed or fundamentally changed. EPC as well as CFSP are intergovernmental spheres of action, and they will probably remain so in the foreseeable future (Pijpers 1990; Link 2002). From this perspective, the described processes of legalisation, institutionalisation

or Brusselisation would not even be denied or put into question, they would simply not be taken as an indicator for a fundamental change. In this sense, nothing really new under the sun would be observed. Even the notion of transgovernmentalism may not be rejected, as it refers primarily to the administrative and not to the political level of interaction.

Major international crises regularly prove that despite the described processes of institutionalisation are comparatively weak and fragile so as to shape EU foreign policy modes (Hill 2003; 2004).

From a constructivist point of view, which puts the emphasis on socialisation dynamics within a network of contacts in EPC/CFSP, it is also hard to find clear-cut landmarks. With the creation of EPC, a process of increasing socialisation has been triggered off which has fundamentally influenced national foreign policy (Schmalz 2004) and contributed to the emergence of a foreign policy mode of governance, that is marked by intensive contacts and inter-relations among diplomats (Tonra 2001; Schmalz 2004). This trend may have been intensified, although there is still a tension between different systems of identification, but in the end there is little leeway for dramatic reversals. So what a constructivist approach would probably sustain is that CFSP represents the emergence of a new mode of inter-state relations, different from classical diplomacy, and that this trend is ongoing since the early 1970s.

It is rather in the field of institutionalist approaches where change and turning points are most welcome. Thus Wessels (2004) identifies a process of “ratchet fusion” that started in EPC with intergovernmental cooperation outside the Treaty framework, but then reached a new plateau with the formal inclusion in the single institutional framework of the Treaty on European Union; ever since, more binding forms of cooperation have been developed: “In each IGC [...] the ‘Masters of the Treaty’ have regularly revised the legal constitution upwards on a ladder with ever more refined modes of intergovernmental governance from soft to harder variations” (Wessels 2004: 47).

pranational foreign policy governance including majority decisions, sanctions for non-compliance, or structures of a European army, would represent a next substantial steps.

In sum, the emergence of governing modes in CFSP implied the creation of a new framework for diplomatic interaction and foreign policy formulation, whose innovative feature resulted less from the decision-making procedures at ministerial level, but from the dense contacts, relations and interactions on different levels of foreign policy activity. Second, although the basic structure of EPC/CFSP was and remains intergovernmental, it reveals a number of points of contact with the EC framework. While formally neatly separated, both spheres of interaction have been politically interrelated.

Still, the key question is whether there is sufficient reason for talking about new modes of governance in these areas. Basically, intergovernmentalism/transgovernmentalism remains intact, but most of the dynamics for the future might come from a field which few observers might have expected some time ago: the ESDP. ESDP could result in a dynamic engine for CFSP, generating more innovative solutions in terms of connections between EC and CFSP, or with regard to flexible modes of decision-making and participation. It remains to be seen whether ESDP will even without the Constitutional Treaty continue to be a most attractive field of research in EU foreign policy.

Table 3: The Development of Rules, Procedures and Institutional Provisions in EPC and CFSP in the Treaties (including the Treaty for a Constitution for Europe)

	TCE	Treaty of Nice	Treaty of Amsterdam	Treaty of Maastricht	Single European Act
Objectives	<p>Part I, Title I, Art. 2 para. 4</p> <p>In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the UN Charter.</p> <p>Part I, Title V, Art. 40</p> <p>Development of mutual political solidarity</p> <p>Convergence of Member States' actions</p> <p>Part III, Title V, Chapter I</p> <p>Democracy, the rule of law, human rights, fundamental freedoms, respect for human dignity, the principles</p>	<p>Title I, Art. 2 TEU</p> <p>The Union shall assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17.</p> <p>Title V, Art. 11 (ex-Art. J1)</p> <p>to safeguard the common values, fundamental integrity of the Union</p> <p>to strengthen the security of the Union in all ways</p> <p>to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter to promote international</p>	<p>Title I, Art. 2 TEU</p> <p>The Union shall assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17.</p> <p>Title V, Art. 11 (ex-Art. J1)</p> <p>to safeguard the common values, fundamental interests and independence of the Union</p> <p>Title V, Art. 17</p> <p>The progressive framing of a common defence policy will be supported by cooperation between them in the field of armaments</p> <p>Humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peacemaking.</p>	<p>Title I, Art. B TEU</p> <p>The Union shall assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence</p> <p>Title V, Art. J. 1 (2)</p> <p>to safeguard the common values, fundamental interests and independence of the Union</p> <p>to strengthen the security of the Union and its Member States in all ways</p> <p>to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter to promote international cooperation</p>	<p>Title III, Art. 30 SEA</p> <p>endeavour jointly to formulate and implement a European foreign policy</p> <p>Development of a European identity in external policy matters.</p> <p>The external policies of the European Community and the policies agreed in European Political Co-operation must be consistent.</p>

	TCE	Treaty of Nice	Treaty of Amsterdam	Treaty of Maastricht	Single European Act
	of equality and solidarity, respect for the principles of the United Nations Charter and international law. safeguard the Unions' values, fundamental interests, security, independence and integrity preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the UN Charter promote an international system based on stronger multilateral cooperation and good global governance ensure consistency between the different areas of its external action and between these and its other policies.	cooperation to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.		to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms	
Legal base	Part I, Chapter I, Art. 3, Chapter II, Title V, Art. 39 Part I, Chapter III, Art. 43 Part III, Chapter II, Art. 195-215 Part III, Chapter III, Art. 322-329	Title V, Art. 11-28 TEU Title VII, Art. 43-45 TEU	Title V, Art. 11-28 TEU	Title V, art. J.1-J.11 TEU Art. 137, 138, 139-142, 147, 150-153, 157-163, 217 TEC shall apply to the provisions relating to the areas referred to in this Title	Title III, Art. 30 SEA
Institutional Structure	European Council External Relations Council President of the European Council European Minister for Foreign Affairs Political and Security	Political and Security Committee shall monitor the international situation in the areas covered by the CFSP Council may authorise the Committee, for the purpose	European Council Council of Ministers (take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines	European Council Council of Ministers (take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines	The Ministers for Foreign Affairs and a member of the Commission shall meet at least four times a year, also on the occasion of meetings of the Council of the European Communities.

	TCE	Treaty of Nice	Treaty of Amsterdam	Treaty of Maastricht	Single European Act
	Committee Commission European Parliament	and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation	adopted by the European Council; recommends Common Strategies to European Council Political Committee Secretary General and High Representative for CFSP (assists Presidency) Commission European Parliament	adopted by the European Council; recommends Common Strategies to European Council Presidency Political Committee Commission European Parliament (informed by the Presidency and the Commission of the development of the Union's foreign and security policy)	Political Committee (impetus, continuity, preparation) The Presidency (initiating action and co-ordinating and representing the positions of the Member States in management of Political Co-operation) European Correspondents' Group (monitoring the implementation of European Political Co-operation and studying general organizational problems) Working Groups The Commission shall be fully associated European Parliament regularly informed
Instruments and Resources	General Guidelines Decisions Actions Positions Implementation of Actions and Positions	Principles and General Guidelines Common Strategies Common Actions Common Positions	Principles and General Guidelines Common Strategies Common Actions Common Positions	Principles and General Guidelines Common Actions Common Positions	Common Positions Political dialogue with third countries
Procedures	Unanimity 'Constructive' abstention Majority voting Enhanced Cooperation Structured Cooperation Closer Cooperation	Unanimity 'Constructive' abstention Majority voting Enhanced Cooperation shall relate to implementation of a joint action or a common position, and not relate to matters having military or defence implications.	Unanimity 'Constructive' abstention Majority voting (following preceding unanimity)	Unanimity Limited possibilities for majority voting	Consultations Co-ordination of national positions

Interinstitutional Division of Labour	TCE	Treaty of Nice	Treaty of Amsterdam	Treaty of Maastricht	Single European Act
	<p>European Council responsible for General Guidelines Council decides on Actions and Decisions Minister for Foreign Affairs has right to initiate legislation, presides the Foreign Affairs Council and acts as Vice-President of the Commission Commission has non-exclusive right of initiative European Parliament is being informed and consulted and shall hold debates on CFSP and ESDP</p>	<p>European Council shall define the principles of and general guidelines for the CFSP European Council decides on Common Strategies Council decides on Common Actions and Positions Council may, whenever it deems it necessary, appoint a special representative Secretary General and High Representative of CFSP ensure that the EP and all members of the Council are kept fully informed of the implementation of enhanced cooperation EP participates in decisions on operational expenditure of CFSP WEU has been removed from the treaty provisions, EU takes over crisis management operations</p>	<p>European Council (Impetus, Principles and General Guidelines) The Secretary-General of the Council, High Representative for the CFSP, shall assist the Council in matters coming within the scope of CFSP, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties. Commission has non-exclusive right of initiative, takes part in Troika WEU is an integral part of the development of the Union; elaborate and implement decisions and actions of the Union which have defence implications New Troika (High Representative, Commission, Presidency)</p>	<p>European Council (Impetus, Principles and General Guidelines) WEU: integral part of the development of the Union; elaborate and implement decisions and actions of the Union which have defence implications Presidency (represent the Union in matters coming within the common foreign and security policy; responsible for the implementation of common measures; Commission shall be fully associated in these tasks) Commission has non-exclusive right of initiative, takes part in Troika Troika (present and next Presidency + Commission) Consultation of the European Parliament on the main aspects and the basic choices; EP can ask questions, make recommendations, hold an annual debate Cooperation of the diplomatic and consular missions of the Member States and the Commission Delegations</p>	<p>The High Contracting Parties undertake to inform and consult each other on any foreign policy matters of general interest so as to ensure that their combined influence is exercised as effectively as possible through co-ordination, the convergence of their positions and the implementation of joint action. Consultations Common principles and objectives are gradually developed and defined</p>

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