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**Crisis of Transatlantic Relations:  
NATO and the Future European Security and Defense Identity  
(ESDI)**

Mamedov Muschwig\*  
Translated by Carmen Klein

**I. Introduction**

The 20th Century has been one of the bloodiest in history, because we have failed again and again to prevent conflicts. The Munich Convention of 1938 was presumably one of the most humiliating examples of this incapacity. In recent times, probably the civil war in Former Yugoslavia has been a further illustration of the failure of a diplomacy of deterrence. Further bloodshed was prevented only by a fast intervention of NATO.<sup>1</sup>

It is fair to say that the 20th Century began on the day that Gavrilo Princip murdered the Austrian archduke Franz Ferdinand in Sarajevo and thereby triggered the beginning of the First World War. It is one of the great ironies of history that at the end of the same century in the same city the same nationalistic passions unleashed and caused the death of thousands of Bosnians who had been suffering already for a long time.

However, there has also been a spectacular example of successful conflict prevention: the Cold War. Due to the equilibrium of terror, due to the reliability and credibility of NATO deterrence and due to the existence of nuclear weapons, East and West threateningly faced each other only for half a century. The Superpowers terminated their confrontation after the collapse of communism and the desegregation of the Soviet Union—without the use of a single bullet.

One decade after the Wall's fall, the overall concept of the Cold War, the bipolarity of East and West, has not yet vanished from the transatlantic relations between Europe and the U.S. On one hand the past continues to have an effect on NATO's extension to the East, in particular with regard to the new members' motives for joining NATO.

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<sup>1</sup> See M. Eyskens, *Konfliktverhinderung und europäische Verteidigung – Wie kann Europa Konflikte verhindern?* The Philip Morris Institute for Public Policy Research, Nov. 1997.

On the other hand, the past is but a memory as Russia is a member of the North Atlantic Cooperation Council. Being the most important institutional transatlantic pillar, NATO finds itself in an ambivalent situation: On the one hand it allies itself with the former satellites of the former Soviet Union, on the other hand it yields to Russia's vehement courting by gradually integrating Russia into the structure of the North Atlantic Alliance.

However, the war in Chechnya imposed a burden on the relations between Russia and the Western Allies. NATO and the European Union continued their practical cooperation with Russia to a large extent and limited themselves to the verbal condemnation of the warfare as well as to the demand to search for a peaceful solution of the conflict.

With regard to transatlantic relations, the Europeans were particularly concerned about the American plans of a National Missile Defense (NMD). Whereas the Americans reassured to make the decision on the missile defense system contingent on its feasibility and the costs as well as on its alliance and arms control compatibility.

Presently, transatlantic relations are experiencing a renaissance, since—in light of the severe economic and financial crisis in Eastern Asia and Russia—Europe stands as America's only sturdy economic and trade partner. America and Europe also depend on each other with respect to security policies. The Europeans could accomplish the military pacification of former Yugoslavia only in cooperation with the Americans. In addition, the war in Kosovo demonstrated again that Europe is only capable of limited action with regard to its foreign and security policies and that it is far from steadily speaking with one voice or even acting uniformly. Furthermore, Europe and America work on a large transatlantic economic trade area. By use of the common currency, the European Union will become an even more attractive partner—and simultaneously a stronger competitor—for the Americans. The prospect of extension to the east and the hope for Russia's economic and democratic development unify the Europeans and the Americans in their goals relating to Europe and their foreign policy.

From the British-French Summit in Saint-Malo and the Cologne and Helsinki European Councils to the Feira European Council, an extremely positive and historically important development occurred with regard to the stabilization of the Common European Security and Defense Policy (CESDP). This development was sustained by the broad consent between the Member States to finally draw practical conclusions

with respect to the security political dimension of the European integration after decades of defense policy abstinence.<sup>2</sup>

My note scrutinizes the problems with reference to this subject. In the first section, I try to describe the prerequisites of a European Security and Defense Policy and I address the processes in the Balkans. In the second section, I try to illustrate the development of the ESDI with respect to the European Nice Council. In the third section, I discuss developments of the Common Foreign and Security Policy (CFSP) after Nice.

## **II. Necessity for the European Security and Defense Identity (ESDI)**

In former times it was called “burden sharing”, today it is called “European Security and Defense Identity” (ESDI). The principle issue is adjusting the predominance of the United States in the area of military co-operation. There commences a hectic drive: No conference passes off without resolutions in favor of the stabilization of European defense. The deficits are specified more candidly than ever before: Strategic intelligence, strategic transportability and leadership skills are the three main objectives; numerous smaller ones could be added. At the same time the instruments are sharpened, new EU committees are created and the integration of the WEU and the European Union is considered.

One should not fool himself: Instruments that could enable a purely European action are actually already sufficiently in existence. What is missing is the equipment within the specified areas. However, equipment is expensive. In 1999, the NATO Secretaries of Defense stated in their autumn conference communiqué that the rise of the gross national product in the alliance’s member states does not result in an according increase of the defense budgets. This communiqué was composed for each secretary’s business practice rather than for NATO’s practice. NATO Secretary-General Lord Robertson put it this way:

The security political prerequisites have to be formulated in such a way that the Ministers of Finance understand them. It is certainly correct to vividly pursue for the first time the approach to spend the money available in such an intelligent way as to obtain as much security in return as possible. This includes that material is procured in international cooperation to a larger extent than the past, as aspired in the case of the

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<sup>2</sup> See M. Jopp, *Gemeinsame Europäische Sicherheits- und Verteidigungspolitik*, Jahrbuch der Europäischen Integration 243 (1999/2000).

new transport aircraft. As a positive side effect this could lead to the development of joint task forces such as a European transport command. On the long-term basis, a European army could emerge from these forces, a second column after the Euro representing the vision of a European Federal State.<sup>3</sup>

#### **A. Historical Continuities: The Role of the United States in Europe**

Until the entry of the United States into World War I, European-American relations were characterized by bilateral relations between the U.S. and respective European states. Only toward the end of the 19<sup>th</sup> Century did the Americans begin to focus more on Europe.

During the First World War, the United States appeared for the first time as a European order-keeping power. The United States unassertively entered the war against Germany only as an “associate” power, not as an ally of Germany’s war opponents. The participation of the Americans in the Second World War, however, was of a different quality. Without the U.S. involvement, the European continent could not have been relieved. After the war, the U.S. became the leading power of the West. Due to its economic and military potential as well as its economic interests and the precarious security situation in light of expansionistic efforts of the Soviet Union, the U.S. dominated transatlantic relations until the end of the Cold War.

A Europe that represents common interests to the outward world exists only since 1945 and since the beginning of the Cold War. After the end of the Second World War it quickly became clear that—in the face of the expansive and aggressive foreign policy of the Kremlin—Americans and Europeans could not drop back again into isolationist action patterns governed by competition amongst themselves. Yet the history of wars and disputes even before the First World War had already contributed to a consciousness of the need for a cooperative and peaceful organization and for a structural arrangement of the different national interests in Europe. In the years after 1945, the United States pushed for Western European integration, which thereby almost became a condition for the assistance provided by the Marshall Plan.<sup>4</sup>

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<sup>3</sup> See C. Rolf, *Europäische Sicherheits- und Verteidigungsidentität, Kommentar 2000*, available at <<http://www.soldat-und-technik.de/kommentar0001.htm>>.

<sup>4</sup> See Ash & Garton, *Europe’s Endangered Liberal Order*, 2 FOREIGN AFFAIRS 54 (1998).

The American Foreign and European Policies were by far not only reactive, but conceived as a response to the threat to the western interests by the communist states in the world. The strategic adjustment of economic and military resources in the international area of conflict caused by the Cold War was also based on a dominant economic-political-ideological component. For Dean Acheson, George Marshall and other American foreign policy protagonists and planners, the establishment of a liberal market system represented an important objective of strategic postwar planning, whereas the efforts for entering the European markets resulted from this headline goal, which crucially determined the relation to the European unification efforts since 1945.<sup>5</sup> Only as a result of the role of the superpower, America, as the benevolent hegemon in Europe and by suspending the need for the European states to respectively influence economic advantages and military balance of power among themselves for their own benefit, economic revival, institutional and political integration and peace in Western Europe could be secured.<sup>6</sup> The entire American post Second-World-War policy towards the Soviet Union—from containment to détente—stood in the general context of aiming at the establishment of a liberal international economic system. Additionally, the security policy towards the Warsaw Pact had also a function relating to domestic affairs, namely to legitimize the financial and military resources necessary for the super-ordinate target of a liberal international economic system before Congress and the public.

During the process of European integration, the Americans occasionally evinced ambivalent attitudes toward the establishment of a potential competitor in trade and international economy. At large, however, America supported the economic and political integration of Europe. The core of the European integration project was and is the historical reconciliation between France and Germany. From the Coal and Steel Community to the last preliminary stage, the entry into force of the Monetary Union on January 1, 1999, the development of European integration has always also contained an aspect of the political integration of Germany. The fall of the Berlin Wall in the year 1989 made it very quickly apparent that a comprehensive political, cultural and national security-oriented reorganization would have to take place on the European continent.

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<sup>5</sup> See B.C. Schwarz, *“Cold War” Continuities: US Economics and Security Strategy Towards Europe* 82-104 (Ted Galen Ed., London 1995).

<sup>6</sup> See B. C. Schwarz at 86.

Germany, its European partners and allies, and the Americans were aware of the fact that a reunification of the two German states could only be achieved with the cooperation of all parties directly involved and concerned as well as of the German partners. America played the central role in the diplomatic activities and negotiations concerning the German unification in the year 1990. In closest cooperation with Germany, the USA merged England and France into the process, calmed down Eastern neighboring countries such as Poland, and induced the Soviet Union by a diplomatic masterstroke to agree to the German unification and to the comprehensive retreat from Germany.

In light of the dramatic political changes in Europe, the EEC and the USA adopted the Transatlantic Declaration in 1990. This document provided for regular consultations on all political levels as well as for bi-annual meetings among the American President, the Commission and the President of the European Council. The Transatlantic Declaration thereby caused an intensification of communication and a mutual insurance of common political values and objectives. It lacked, however, an important goal of many protagonists who wanted to see the transatlantic relations supported by common efforts and actions of practical policy. This weak point soon became obvious. Additionally, since the beginning of the nineties, the awareness that the pending world-political developments and global economic modifications would still require a closer and more intensive cooperation grew on both sides of the Atlantic. The first result of this recognition was the adoption of the New Transatlantic Agenda in Madrid in December 1995. Thus, a new qualitative phase of transatlantic cooperation was initiated, which in the view of the Europeans—and particularly supported by Germany—should result in a transatlantic free trade area (TAFTA). Europeans believe that TAFTA, in connection with a close coordination of concerns and contents of EU and U.S. foreign policy, is the politically necessary concretion of the transatlantic partnership for the diffusion of future problems.<sup>7</sup>

### **B. Europe – Economic Heavyweight, Political Lightweight?**

The initiation of this process will enable the European Union to take full responsibility for the entire spectrum of tasks of conflict prevention and crisis management. Why is this so important? During the last forty years the European Union became one of the world's most

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<sup>7</sup> See W. Weidenfeld, *Kulturbruch mit Amerika? Das Ende transatlantischer Selbstverständlichkeit* (Gütersloh 1996).

challenging, most complex and most progressive examples of regional integration. The European Union is now the largest trading block of the world and one of the most important protagonists within the full spectrum of global, financial and economic aspects.<sup>8</sup>

Globalization and increasing interdependence signify that the rest of the world can no longer be viewed exclusively from the perspective of economic objectives. Globalization has brought about a whole number of transnational challenges, of which many were completely unknown a generation ago. The dangers of terrorism, international drug trafficking, money laundering, the spread of AIDS: all this confronts the European Union Member States with new "globalized" problems and new responsibilities. The tough development of the Common Foreign and Security Policy (CFSP) since the Treaty of Maastricht has only provided limited means as responses to these challenges.

But a CFSP without tools is an empty shell. The European Union successfully uses its economic importance for the support of its political goals. It does this in the context of WTO negotiations, in supporting economic reconstruction or as a worldwide leader of development policy. One objection to the EU approach is that these economical instruments can still be further developed and more efficiently furnished; however, they nevertheless represent without doubt a strong point of the EU policies. What the European Union needs to do in order to assert its influence in the world is to supplement these instruments by adding a security capacity. With regard to the extension of the Union and in light of the new challenges of the next century, the European Union has to adjust to taking more responsibility for regional security. This applies in particular to the adjacent regions in which the Union is directly interested.

How to explain the European Union's reluctance to take on a larger role in world politics, one that corresponds to its global importance? Why did the European Union fail so often during international crises? Why has the Common Foreign and Security Policy of the Union been criticized in the press as well as in scientific literature as representing a system of "procedure as policy surrogate?" How can it be that the Treaty of Maastricht so clearly defines the targets of the CFSP and yet it remains so unclear on how these goals should be reached? The simple response is that the requisite political will for the relevant steps is missing. Difficulties abound in attempting to put together a coherent

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<sup>8</sup> See J. Solana, *Die GESVP- Das Integrationsprojekt der nächsten Dekade*, INTEGRATION 2 (1/2000).



European Foreign Policy for fifteen Member States, each with different traditions and interests with regard to foreign policy.

Obviously, the Member States have common interests, which should also be jointly defended. Those interests do not only consist of the increase of the European gross domestic product, but also exist on a political level. In this area, the European Union has a common obligation to promote the proliferation of universally effective human rights, freedom and democracy. These are values which appeared to have almost been lost in the first half of this century, but whose vitality, however, remained unbroken in the second half of the 20th century. The implementation of these rights has contributed to the lasting success of the European Union.<sup>9</sup>

Whenever necessary, the European Union must be prepared to use all legitimate means in order to project security and stability beyond its boundaries. In addition, the European Union has to be capable of representing the values of humanitarian solidarity and compliance with human rights where the life of entire peoples depends on auxiliary efforts, because they have been victimized by natural disasters or crises caused by human beings.<sup>10</sup>

The fragmentation of decision-making processes with regard to foreign policy, both within Member States and among international institutions is virtually a prescription for lack of coherence. The solution to this problem is to begin efforts toward a joint strategy; the goal is a long-term concept. This is one way by which the influence and collective power of the EU can be mobilized in the name of common values. This does not mean that Member States should not have their national interests in mind, but that common interests can often better be realized by joint efforts.

Compliance with human rights, also in the relations among states, will curb excessive nationalistic tendencies. Since the French Revolution, citizens who have lived in a constitutional state have not taken the law into their own hands. Instead, the defense of citizens' legitimate interests is guaranteed by the existence of a cohesive legal procedure. A similar development becomes visible in the relations among states, where multilateral diplomatic and legal mechanisms gradually replace the right of the individual state to use coercive force to implement its rights.

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<sup>9</sup> See C. Patten, *Die Zukunft der ESVP und die Rolle der Europäischen Kommission*, INTEGRATION 8 (1/2000).

<sup>10</sup> See J. Solana at 2.

Past experience contradicts the notion of a community of sovereign states where everyone has the individual right to defend his legitimate national interests within multilateral mechanisms like the UN. Instead, it appears there is a trend pointing towards a powerful international community. This development, however, depends on the organization of the community. Here, the future role of the United Nations is of special interest: the creation of international courts which can effectively punish crimes against humanity, the establishment of a system of preventive diplomacy and the implementation of striking sanctions against countries that have violated human rights show a development policy and a democratization of the political structures.

Currently, the question of the striking power of UN missions leads to some particularly thorny problems. UN members finance large multilateral peace missions only reluctantly. Above all, the peacemaking missions of the international community are highly controversial, particularly if human lives are at stake. The notion of a right to humanitarian intervention, even of an obligation of such intervention, has become widely accepted worldwide, not only as a theoretical principle, but as a basis for actual local operations such as in Bosnia, Rwanda, East Timor and Somalia. However, in this area, there is still much to be done, as evidenced by the tragedies in Bosnia, Kambodscha and Rwanda.

In order to avoid such events in the future, the international community has made an effort to decipher its operational potential and the effect thereof. So far, the European Union's appearance in the world arena has been characterized by a lack of striking power, coherence and reputation. As such, Europe may be characterized as an economic giant, a political dwarf and a military worm. Not once has the European Union succeeded in attaining the status of a superpower—not in the Near East or in Africa, nor in Former Yugoslavia, and not even in Cyprus. In all these cases, Europe was helplessly stranded.<sup>11</sup>

### **C. The Lessons Learned from the Balkans**

The European Union has much to contribute to the avoidance and termination of conflicts. It has the power and the influence, and—due to the UN Charter—the Union has the necessary action framework at its disposal. If the EU wants to do more than it has so far, then it needs a military division whose function would be the resolution of conflicts outside of the community. This institution would ultimately vest the EU with the necessary military power, if, in the case of a state of emergency, the United States in an exceptional event denied NATO permission to

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<sup>11</sup> See M. Eyskens at 27.

act. The closer a conflict occurs to the boundaries of the EU, the higher are the chances of an effective Common Foreign and Security Policy (CFSP).

Of crucial importance for such a CFSP is a mechanism that creates consensus, provides for procedures to converge the different opinions of the individual Member States and which ultimately permits the 15, or soon 20, independent nations to articulate themselves as a unit and take action accordingly. In light of the contradictory opinions within most international organizations, a hard core of relatively wealthy nations would represent an inestimable advantage for effective decision making. In addition, they would signify a serious counterweight in relation to the otherwise undoubtedly dominant position of the United States.

Much of what the EU has already achieved in the field of foreign policy is undermined by the constant complaints of some Members. Those critics desire the United States of Europe with their own Minister of Foreign Affairs, who would only be responsible to its directly elected president or prime minister. Therefore, a minority of those who would like to enforce such an integrated model of European unification seems to also have an interest in discrediting the achievements of the European Union and in repeatedly pointing to failures in the past and in the present. This negative propaganda becomes nowhere more obvious than in the devaluation of the European Union's missions in the Balkans and in the praise for the role of the Americans, whose failure was just as serious as ours.

The fact is, however, that the contribution of EU members to conflict prevention in the Balkans—mainly by way of development of the CFSP—is without real alternative. In the face of the human lives which were sacrificed in the service of the UN, in light of the number of soldiers in the UN and NATO armed forces, the costs of humanitarian aid or negotiations and the use of resources, the European Union undertook huge, lasting efforts. If the European Union regrets not being able to successfully restore peace in Former Yugoslavia as the United States of Europe, then it queries its own history and geography: In two World Wars, large EU Member States faced each other in the Balkans. Against this backdrop, sending their own troops into the crisis area was still considered “inappropriate” for Germany and Italy between 1991 and 1994.

The fateful mistake by the European Union's diplomacy regarding the behavior of the EU towards Former Yugoslavia was made very early, namely on July, 13, 1991, when the unilateral Slovenian and Croatian Declarations of independence dated back only a few days. The

remaining eleven Member States rejected a document prepared by the Dutch government, which suggested a study of whether there was an option to enable an agreement on border modifications between the Yugoslav republics. The fact that these internal boundaries were immediately accepted as internationally binding deprived many Serbs of the hope of rejoining Yugoslavia and ultimately proved to be a diplomatic disaster.<sup>12</sup>

The second mistake was in the European Union imposing itself upon the parties as the only mediator within the Yugoslavian conflict, excluding the United Nations from the process and ultimately granting the UN a negotiation role only after ample resistance.<sup>13</sup> In many parts of the Brussels administration and in Washington the UN is still criticized today.

Despite these mistakes, particularly after the Kosovo crisis, it became obvious that in order to meet its goals the EU would need both military and non-military means. Even though the military dimension is frequently of crucial importance, the non-military dimension also plays a central role. The character of conflicts has changed radically during this bloody century: While in World War I, 85 per cent of the victims were soldiers and only 15 per cent were civilians, this ratio has almost been inverted. With the interdependence of societies increasing, factors such as economic aids, the free flow of information and unconstrained communication gain more and more importance with regard to conflict management and conflict prevention. Therefore, the European Union must avail itself of the entire spectrum of instruments including military and non-military measures.

The EU experience in the Balkans supports this view. Early efforts of the European Union to contain the conflict in Former Yugoslavia failed due to the lack of political will and courageous actions. Later contributions to the restoration of peace and to the reconstruction of those shattered states also did not have the desired effect. One part of the problem existed in the lack of reactivity, a circumstance which ultimately undermines the reliability of a protagonist.

That is exactly what happened in October 1993 during the negotiations for joint EU action for humanitarian assistance to Bosnia and Herzegovina. The Council spent four months discussing whether the operation would be covered by the community budget or whether it

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<sup>12</sup> See D. Owen, *Eine wirksame GASP für die Zukunft*, The Philip Morris Institute for Public Policy-Research, *Wie kann Europa Konflikte verhindern?* 33 (Nov. 1997).

<sup>13</sup> See D. Owen at 33.

should be covered by the national budgets of the Member States. In the meantime, winter ended and the population rejected the humanitarian assistance that was finally granted.

Better results are necessary. The EU response in Kosovo has signaled new start, demonstrating that small, fast, appropriate operations are often more successful than large scale actions which ultimately arrive too late. Citizens correctly expect the European Union to take an active role in conflict prevention or that it at least is able to master the conflicts in its own backyard.<sup>14</sup> Thus, it is hardly amazing that "Brussels" is criticized, if the European Union is not capable of protecting fundamental human rights in the heart of Europe.

Frankly, the mistakes are simply too expensive. If the European Union does not play a pro-active role in world politics, then it will face enormous costs resulting from refugee aid, mine clearance and—after the end of a conflict—reconstruction assistance. This is without even mentioning the horrific losses of human lives and the welfare costs that accrue where the European Union has not acted or not acted in time. Instead of fighting the fires, the EU should rather focus on the causes of the fires. The European Union has to find ways to use its economic influence strategically in such a manner as to prevent the emergence of fires or to at least diffuse them immediately after having emerged. What Europe needs is not only to master crisis management, but likewise to formulate a policy of conflict prevention. To this end, the Member States have clearly detected the advantages of collective action—wherever it appears suitable—in relation to unilateral measures. This is the existential purpose of the European Union. In cooperation with other states the costs and risks linked to an operation are by far smaller, and the collective power of the European Union is larger than the sum of its individual parts.

### **III. The Development of the ESDI and Its Relation to NATO**

#### **A. The Regulation of the CFSP by the Treaty of Amsterdam**

Articles 11 to 28 of the Treaty of Amsterdam Amending the Treaty on European Union<sup>15</sup> tie in with European Political Cooperation

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<sup>14</sup> See C. Patten at 9.

<sup>15</sup> TREATY OF AMSTERDAM AMENDING THE TREATY ON EUROPEAN UNION, THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES AND CERTAIN RELATED

(EPC) within the field of Foreign and Security Policy. From the perspective of international law, this cooperation had been introduced as binding on the parties by the ratification of the Single European Act (SEA) of 1986. Likewise, Article 16 of the Treaty of Amsterdam requires mutual information and consultation among the Member States in the Council of Ministers on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action.<sup>16</sup>

However, due to the fact that the Union is not a subject of international law, from a legal perspective the Member States remain the exclusive source of authority with regard to the Union's foreign and security policy. In the context of the CFSP the European Council occupies the leading function. On Common Foreign and Security Policy, the Council of the EU takes "the decisions necessary for defining and implementing this policy, on the basis of general guidelines defined by the European Council."<sup>17</sup> The Presidency shall consult the European Parliament "on the main aspects and the basic choices"<sup>18</sup> of the Common Foreign and Security Policy. The European Parliament may ask questions of the Council or make recommendations to it. The Commission has to be fully integrated in the work on the CFSP. Generally, the measures on Common and Foreign Policy are not justiciable and thus can not be the basis for an action in a court of justice. If the Member States in the context of the CFSP fail to fulfill their membership obligations arising out of Art. 10 para. 2 EC Treaty, treaty violation proceedings pursuant to Art. 226 EC are possible.

According to Article 13 paragraph 1, the European Council defines "the principles of and general guidelines for the common foreign and security policy." Only on the basis of these general guidelines the Council of Ministers of the Union may become active regarding the CFSP, in particular adopting joint actions and common positions.<sup>19</sup> As specification of targets of foreign and security policy, the general guidelines of the European Council are mandatory for the Council of Ministers of the Union. Accordingly, the European Council has to grant

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ACTS, Oct. 2, 1997, O.J. (C 340) 1 (1997) [hereinafter TREATY OF AMSTERDAM].

<sup>16</sup> TREATY OF AMSTERDAM art. 16.

<sup>17</sup> *Id.* at art. 13 para. 3.

<sup>18</sup> *Id.* at art. 21.

<sup>19</sup> See C. Koenig, A. Haratsch, *Europarecht*, 3. AUFL. 297, (Tübingen 2000).

the Council of the EU substantial leeway to specify the means of implementation.

Under Article 13, paragraph 2, the European Council decides on "common strategies" to be implemented by the Union in areas where the Member States have important interests in common. Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States. While general guidelines defined by the European Council relating to the goals of the Common Foreign and Security Policy are mandatory so that the Council has to meet those guidelines in choosing appropriate means for adopting joint actions, the common strategies shall indicate not only their objectives and duration, but additionally the means to be made available to the Union. In principal, the community budget covers the expenses.

Pursuant to Article 15, paragraph 1, the Council of Ministers of the Union can adopt common positions. Those positions "define the approach of the Union to a particular matter of a geographical or thematic nature."<sup>20</sup> Common positions serve primarily to coordinate the foreign policies of the Member States. They are a means of implementing the common strategies adopted by the European Council. The common positions are adopted by the Member States in order to coordinate their actions in international organizations and at international conferences. There, the Presidency represents the common positions of the Union. If, as in the UN Security Council, only particular Member States are permanent members (so far only Great Britain and France), those states are under the obligation of appropriately representing the positions of the Union.

Under Article 15, the Member States "ensure that their national policies conform to the common positions."<sup>21</sup> Therefore, this means of action is partly only awarded a politically binding effect. As far as no common position has been accomplished, the Member States may take unilateral or bilateral measures of foreign and security policy. However, pursuant to Article 16, the Member States remain obligated to participate in the information and consultation in the Council of Ministers of the European Union in order to coordinate their procedures.

While Article 30 of the SEA granted every Member State the right to query the concerted actions within the European Political Cooperation at any time—even without a previous formal and joint avoidance—the EU Treaty designates a procedure and a legal basis for joint actions which are binding on the Member States with regard to their

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<sup>20</sup> TREATY OF AMSTERDAM art. 15 para. 1.

<sup>21</sup> *Id.*

statements and their actions. Joint actions address “specific situations where operational action by the Union is deemed to be required.”<sup>22</sup> The Council of the EU bears the strategic responsibility during the implementation of joint actions. In case of “a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions.”<sup>23</sup> According to Article 14 paragraph 2, “the joint action shall stand” as long as the Council has not taken action.

In all events, in cases of “imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action.”<sup>24</sup> If one of the Member States takes such measures, it shall inform the Council immediately. The Council can adapt necessary measures for an appropriate solution at time. In addition, if a Member State encounters any major difficulties in implementing a joint action, it shall refer them to the Council.

According to Article 23, decisions on Common Foreign and Security Policy are taken by the Council acting unanimously. “By derogation from the provisions of paragraph 1, the Council shall act by qualified majority: (1) when adopting joint actions, common positions or taking any other decision on the basis of a common strategy; (2) when adopting any decision implementing a joint action or a common position.”<sup>25</sup>

The Council of the EU may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity. Only regarding procedural questions may a decision be taken by the majority of the members of the Council.

In accordance with Article 23, abstaining in a vote where decision by unanimity is required does not prevent the adoption of a decision. However, a decision subject to one of the states abstaining is only binding on this state as long as it does not make a formal declaration to not be obligated to implement the decided measure.

Paragraph 2 of Article 23 provides that “the votes of the members of the Council shall be weighted in accordance with Article 205 paragraph 2 of the Treaty establishing the European Community.”<sup>26</sup>

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<sup>22</sup> *Id.* at art. 14 para. 1.

<sup>23</sup> *Id.* at art. 14 para. 2.

<sup>24</sup> *Id.* at art. 14 para. 6.

<sup>25</sup> *Id.* at art. 23 (2).

<sup>26</sup> *Id.*



To this end, Article 23, paragraph 2 provides for a quorum where the adoption of a decision requires “at least 62 votes in favor, cast by at least 10 members” of the European Union. It has to be noted that this paragraph categorically excludes majority decisions for adopting “decisions having military or defense implications”; here, the principle of strict unanimity applies already on the level of the Council of Ministers, not only on the highest level of the Heads of State or Government in the European Council.

Article 24 authorizes the Council of the European Union to conclude an agreement with one or more States or international organizations in implementation of the Common Foreign and Security Policy. “Such agreements shall be concluded by the Council acting unanimously on a recommendation from the Presidency.”<sup>27</sup> However, the provisions of Articles 24 and 38 of the Treaty on the European Union and agreements concluded pursuant to these articles do not transfer or delegate competences of the Member States to the European Union.

This explanation in accordance with the rules of international law counteracts on one hand the assertion of an implied conferment of legal personality to the EU. On the other hand, this explanation clarifies the intergovernmental proportions of allocation. The Council concludes the agreements in implementation of the Common Foreign and Security Policy only in representation of the Member States—whereas not for the European Union itself.

The Presidency of the Council is integrated into a so-called TROIKA. With regard to the internal and external representation and the implementation of decisions the Presidency is assisted by the Secretary-General of the Council who is in the position of a High Representative for the CFSP. If necessary, support is also provided by the Member State that presides over the succeeding Council. In accordance with Article 18, paragraph 5, the Council can appoint “a special representative with a mandate in relation to particular policy issues” if the Council considers this necessary.

In comparison to the old TROIKA the participation of the High Representative for the CFSP in the new TROIKA ensures—apart from the participation of the Commission—the necessary working continuity. This working continuity, institutionalized in the person of the High Representative for the CFSP, is underpinned by the tasks that are assigned to him by Article 26. The High Representative contributes particularly to “the formulation, preparation and implementation of

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<sup>27</sup> *Id.* at art. 24.

political decisions”<sup>28</sup> and—if necessary—on request of the Presidency to “conducting political dialogue with third parties.”<sup>29</sup>

The institution of a policy planning and early warning unit has not been included in the CFSP title of the EU Treaty. Last but not least in order to enable pragmatic modification adjustments apart from the formal procedure of a treaty revision, the institution of a policy planning and early warning unit has only been included in form of a declaration in the Final Act of the Treaty of Amsterdam. In light of the strictly intergovernmental character of the CFSP, references in the declaration as to foreign and security policy interests of the Union are to be understood as imperative to respect the national identities of the Member States and their position as exclusive body of authority within the area of CFSP.

In contrast to the Treaty of Maastricht—which alluded to an implementation of a common defense policy “in the long run”—Article 17 paragraph 1 now designates the gradual stipulation thereof. A common defense is however only possible inasmuch as the European Council decides to implement it and in so far as the Member States ratify this decision in accordance with their constitutional provision.<sup>30</sup>

The Treaty of Amsterdam intensifies the possibilities for a recourse to the WEU, which had already been designed in the Treaty of Maastricht<sup>31</sup> as “access to an operational capability.”<sup>32</sup> Only in the mid-eighties began a phase of political revival of the WEU, which obtained the importance of a European pillar of NATO. The European Union can engage the WEU for the elaboration and implementation of its defense policy decisions and actions. The so-called “Petersberg tasks” that have been determined by the Council of Ministers of the WEU in 1992 represent the main focus of the Common Defense Policy. The “Petersberg tasks,” which have been incorporated into Article 17 paragraph 2 of the Treaty of Amsterdam, cover humanitarian functions and rescue missions, peacekeeping tasks as well as combat missions in crisis management including peace-building measures.<sup>33</sup>

Article 17, paragraph 3 awards the European Council the authority of defining the general guidelines also regarding the WEU. Nevertheless, the WEU still remains a subject of international law on its

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<sup>28</sup> *Id.* at art. 26.

<sup>29</sup> *Id.*

<sup>30</sup> See C. Koenig, A. Haratsch at 304.

<sup>31</sup> TREATY ESTABLISHING THE EUROPEAN COMMUNITY, Nov. 10, 1997, O.J. (C 340) 3 (1997) [hereinafter EC TREATY].

<sup>32</sup> *Id.* at art. 17 para. 1.

<sup>33</sup> *Id.*

own. In the context of the Common Defense Policy the European Union honors the existing obligations of those Member States which at the same time are contracting parties of NATO.

### **B. Resolutions of Helsinki and Important Results for the Future ESDI**

Finland assumed the Presidency of the Council on July 1, 1999, and worked briskly on the tasks for further development of the CSFP assigned by the Cologne Summit. The Finnish Council Presidency was particularly suitable to mediate in relation to the doubts of the other states that are not bound by treaty and those that hold a neutral position. Furthermore, with the support of these states the Presidency succeeded in placing emphasis on the area of civil crisis management. The specifications for the benchmark figures that were agreed upon in Helsinki relating to military crisis management certainly derived from an intensive consultation process between the four large Member States France, Germany, Great Britain and Italy, as well as from the first meeting of the Secretaries of State and Defense in the context of the General Council.

In Helsinki, the European Council emphasized "its determination to develop an autonomous capacity to take decisions and, where NATO as a whole is not engaged, to launch and conduct EU-led military operations in response to international crises."<sup>34</sup> For this purpose, the European Council agreed upon a headline goal, according to which the Member States by voluntary cooperation have to become ready by the year 2003 "to deploy within 60 days and sustain for at least 1 year military forces of up to 50,000-60,000 persons capable of the full range of Petersberg tasks."<sup>35</sup>

Additionally, the European Council accepted the report of the Finnish Council Presidency regarding the military aspects of the CESDP. According to this report, "collective capability goals in the fields of command and control, intelligence and strategic transport"<sup>36</sup> have to be developed, because the survey and inspection of the European capabilities by the WEU discovered serious weaknesses particularly

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<sup>34</sup> *Presidential Conclusions*, Helsinki European Council, 10 and 11 December 1999, para. 27.

<sup>35</sup> *See id.* at para. 28.

<sup>36</sup> *Presidential Conclusions*, Helsinki European Council, 10 and 11 December 1999, Annex I to Annex IV: Presidency Progress Report to the Helsinki European Council on Strengthening the Common European Policy on Security and Defence, Introduction.

within these areas.<sup>37</sup> Furthermore, the Council decided that “new political and military bodies will be established within the Council to enable the Union to take decisions on EU-led Petersberg operations and to ensure, under the authority of the Council, the necessary political control and strategic direction of such operations”<sup>38</sup> and that “[p]rinciples for cooperation with non-EU European NATO members” (Turkey, Norway, Iceland, Poland, Hungary, Czech Republic) and other European partners in EU-led military crisis management will be agreed, without prejudice to the Union’s decision-making autonomy.”<sup>39</sup>

Although the number of armed forces to be provided by the European Union appears not excessively high, the Member States still commit themselves to make more soldiers available than they have at their crisis management command at present. In addition, they will have to equip the twofold or threefold number of armed forces in downgraded standby level in order to enable a deployment of at least one year by rotation.

It was stressed clearly that the armed forces available to the European Union are not linked to the creation of an integrated “European Army”. Hardly any one of the Member States was ready for such a project, and this would also have encountered a massive opposition on the side of the American allies. Moreover, the armed forces elements that are joined ad hoc in case of need shall be deployed exclusively for crisis management, while the collective defense remains reserved for NATO. This was one condition *sine qua non* not only to calm NATO but in particular also to obtain the consent for the entire project of the neutral Member States and the Member States not bound by treaty.<sup>40</sup>

Helsinki was the beginning of a coherent and pragmatic European response. Insofar, the Commission as initiator of the Community Policy and as its manager pursued five targets: (1) To be actively involved in the design of policy within all pillars of the European Union; (2) To take on executive functions in those areas, where it possesses contractual authority; (3) To improve its ability for the fast implementation of decisions; (4) To increase the contribution of the Community policies within the area of conflict prevention and finally, (5) To ensure the industrial basis for a reliable security and defense policy.

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<sup>37</sup> *See id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *See M. Jopp at 245.*

Where the Commission prepares suggestions for the Council in the context of the first pillar of the Treaty of Amsterdam, there is an intensive search for a Community interest. On the other hand, within the area of decision making of the CFSP practically no such preparatory phase exists. The Common Strategies, which were created as new instrument of the CFSP, represent an attempt to face this weakness. However, there is a long way to go in order to achieve a substantial harmonization between the perceptions of national and European interests. By nature, this is even more difficult to implement in crisis situations and in light of potential conflicts.

Even if the parties correspond with regard to the assessment of a potential conflict, the problem still exists to decide as to when and how to intervene. Preventive diplomacy focuses all too often on situations, where a violent conflict is already probable or where its outbreak is imminent. Then, strategies to face the acute threat are contrived. Such strategies may contribute crucially to avert the outbreak of aggression at short notice. However, it is not likely that these reach the roots of the conflict. Long-term prevention, which aims at the structural causes of a conflict, can include for example measures for the promotion of democracy, "good governance" and human rights. This could be achieved for example by economic aids and the satisfaction of fundamental needs (health, welfare, lodging etc.). Further measures would concern the promotion of political and economic cooperation on a regional level as well as networking by trade and other forms of transnational exchange. This could include incentives for the reform of the juridical system and of the security forces or for the protection of the environment, in order to achieve a sustainable economic policy.<sup>41</sup>

The Union has developed a whole arsenal of sanctions and restrictive measures. These measures reach from the restriction of visitations and diplomatic contacts to the suspension of assistance and trade privileges up to complete sanctions or embargoes that paralyze the trade, block the traffic and freeze capital investments as well as capital transfers.

Finally, the support of human rights, democracy and a functioning juridical system has to be mentioned. The compliance with human rights forms one of the corner pillars of the European Union. It is expressly embodied in the contract. It can be seriously affirmed that the Common Foreign Policy is compatible with these targets—not at all because human rights are a European discovery, or because the European Union requests a monopoly on their observance. Human rights are

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<sup>41</sup> See C. Patten at 12.

universal. The promotion of human rights and democratic values is a useful venture, both in economic and strategic respect. The political-economic nature of numerous fields of activity of the European Union explains how important Community Policies are as instruments of conflict prevention and how necessary it is to integrate them into broader strategies. Here, the Commission is needed. However, the goals and intentions of the EU in all these areas have to be clearly determined.

The European Union needs clear targets for non-military actions, in order to complete those within the military area. Presently, a comprehensive inventory of the non-military instruments of the Member States and the European Union is created. It represents a first basis for the efforts within this important area.

- Within the area of **humanitarian assistance** the European Union has already joint capacities at its command: through ECHO exists a constant instrument of coordination for emergency assistance, disaster relief, as well as logistic support;
- Now, the European Union has to establish the equivalent for the area of **emergency and rescue services**: The basic operational readiness, the supply of logistics, search and rescue capacities, the security of the population, radiation protection. Specific objectives in each of these areas have to be defined.
- Just as this, the European Union has to determine the same numerical strength of **civil and military police forces** which it can mobilize for training and for relocation in the context of special missions. In Helsinki, the heads of government already agreed on a target passage for the relocation of troops. This has to be completed by an appropriate guideline for paramilitary and police forces;
- A further important area is **mine clearing and deactivation of mines**: Here, the European Union has to be capable of a rapid deployment of mine clearing operation commands, in order to grant assistance to mine victims as fast as possible. Furthermore, the research within the area of sensor and detector technology must be intensified. Perhaps that does not sound too exciting; however, if the European Union wants to fulfill the task that it is called upon, this is also an important target;
- In Kosovo the European Union has recognized that still more action is required in the area of **conflict post-processing review and reconstruction**. Additionally, the European Union must be able to coordinate and mobilize resources. This central function includes measures concerning demilitarization, the so-called "micro

disarmament", support of the organization of a civil society and the like;

- The promotion of **human rights and democracy** should likewise rely on clearly defined resources. In addition, the European Union needs observers, who watch over the compliance with human rights, selection observers, media advisors and experts of different fields of activity for the creation of institutions;
- Finally, the European Union should be clear as to its targets and have a conception of which type of assistance it can offer, if a conflict offers leeway for mediation, an arbitral tribunal, investigations or certain confidence-building measures.

An effective European policy requires a strongly improved coordination. The Helsinki European Council identified this and assigned the next Presidency to resume the work within the area of the coordination of non-military crisis management in order to complete the military structures. Council and Commission have to cooperate closely in order to achieve a stronger coherence within those policy areas in which the European Union shares extensive responsibilities.

A further large challenge in designing a reliable CSFP is its continuity. The Council Presidency of the European Union changes every six months and with it the responsibility to represent the Union in affairs of the CSFP. The appointment of Javier Solana as High Representative and his function to support the Presidency is thus crucial for the stabilization of the CSFP on the highest political level. The Commission inheres an important role and responsibility to jointly ensure a coherent external representation of the Community. Approximately 160 states are accredited to the EEC. In most of these states only the representations of the European Commission are a permanent component of the TROIKA. The 128 delegations of the Commission contribute to the profile of the European Union in many parts of the world where a coherent Union policy is expected and appreciated. Through the function they fulfill, the delegations receive a special status within the area of the diplomacy of the European Union.

First of all, Helsinki signified the beginning of a new phase in the rapid development of a European Security and Defense Policy. However, further important decisions regarding the role of the European Union as well as of the Commission were still pending. Agreements had to be reached as to the participation in the design, adoption as well as implementation of decisions; this applied in particular to the European NATO members, that do not belong to the European Union, as well as to

those states that are Member States of the EU but not of NATO, and in addition also to those states that support the policy of the union.

Second, whichever decisions the European Union may take, it will always affect its NATO allies. The Union has to ensure that their concerns are fully and completely taken into consideration. The NATO allies do not raise so many reservations against the success of a CSDP, but rather against the risk of its failure. Therefore, it is in everyone's interest that the common policy actually functions.

For this purpose the European Union has to develop to a certain extent a culture of cooperation and coordination, and this not only within the European Union, but jointly with its most important partners in the context of other larger international fora. Within those international organizations which are active in the area of conflict prevention and crisis management, the Union has to engage likewise with a substantial and purposeful policy: This concerns in particular the United Nations, the Organization for Security and Cooperation in Europe and the Council of Europe. For the Commission and the Member States of the European Union it was of vital interest to use in this manner their individual and collective resources for the defense of specifically European interests.<sup>42</sup>

Third, due to its formal authority, its experience and its budget authorities the Commission played quite a role within the European security and defense policy.

Fourth, the Community's contribution to the design of the basic framework conditions of the Security and Defense Policy (the Commission's role as an initiator of proposals in the areas of research policy, domestic market and sourcing, its role as catalyst on the way to a larger convergence of the defense industries—an almost essential basis for the CESDP) is of central importance. Beyond that, the contribution is of central importance to the arms markets, where the improvement of the competitive position of the European armaments industry is at stake; the same applies to the trade with armament goods. The Member States of the European Union import seven times more armament goods from the USA than they export. Each Member State has its own relevant import regulations. Here pooling appears inevitable and almost essential.

Fifth, the stronger role of the Union in the area of conflict prevention indicates that it encourages the people and the societies they live in to take on reforms, and that it supports them in their efforts on the way to economic prosperity and "good governance". Ultimately, the targets of the Union have to be clearly articulated and transferred resolutely.

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<sup>42</sup> See C. Patten at 16.



### C. The ESDI in Relation to NATO

The years since the unification of Germany and the political change in Eastern Europe are influenced by America's and Europe's search for new concepts with regard to foreign policy and for responses to international developments that increasingly appear too complex. America's alleged foreign policy disorientation is disapproved of in a dramatic way. A position statement issued by the "Commission for America's National Interests" criticized the unclear ad-hoc-policy of the Clinton administration and deduced from it a potential threat to fortune, the values and even the existence of America.<sup>43</sup> Within these and comparable American considerations Europe and the alliance with the European states always play an important role. As central concerns the political-military alliance with the European partners, the security of the partner countries and the preservation of the American leadership—also in the military field—are mentioned. However, the majority of the remaining targets and tasks, as for example the prevention of the proliferation of nuclear weapons, likewise requires a long term strategic cooperation with the European Union and with the European NATO partners.

The United States government assigns European-American relations a central role in the foreign policy target catalog. The then national security advisor of the American president, Samuel R. Berger, identified six strategic targets<sup>44</sup> of American foreign policy in a speech in March 1997:

1. Work on an undivided, democratic and peaceful Europe;
2. Organization of a strong stable Asian-Pacific community;
3. Promotion of America as crucial power for the peace in the world;
4. Establishment of a stronghold against transnational security challenges;
5. Creation of jobs by establishing a more open commercial system;
6. Retention of a strong military, which avails of the necessary means for the fulfillment of the mentioned tasks.

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<sup>43</sup> See A REPORT FROM THE COMMISSION ON AMERICA'S NATIONAL INTERESTS (Cambridge 1996).

<sup>44</sup> See Berger, Samuel R., Speech before the Centre for Strategic and International Studies, Washington (March 27, 1997) in: *Amerikadienst*, April 9, issued by: United States Information Service, Bonn 1997.

Despite these—only at first sight unambiguous—objectives, America is still on the search for a foreign policy strategy that finds the correct balance between the poles of an inwardly oriented unilateralism—that sometimes shows isolationist tendencies—and a global power policy that is oriented towards national interests.<sup>45</sup>

If the American-Europe Security Policy is regarded under the aspect of the superior foreign policy line of the Clinton Administration, i.e. the founding and expansion of an open world trade system constructed upon democracies that are oriented towards free markets, then it becomes clear that the United States will also in the future seek to play a leading role on the European continent. Contrariwise, the Europeans have realized at the latest since their failure in Bosnia and the example of the Kosovo conflict that they have to have a common interest in a continued presence and a long-term commitment of the United States on the European continent.

The attempts of France to repel the American influence in Europe, which were also revealed by the specific role of the Frenchmen within the discussions on reforms and targets of NATO, are specifically problematic for the Germans who maintain with both, the Frenchmen and the Americans, particularly close relations and who consider a continued and strong commitment of the United States in Europe as condition *sine qua non* of their foreign policy.<sup>46</sup>

The foreign and security political profile of the European Union does not correspond to that of a state.<sup>47</sup> The economic and bureaucratic complexity of integration of the European Union does not have a counterpart within the areas of foreign and security policies. The transatlantic relations are rather structured by a multiplicity of organizations and bilateral patterns of relations, whose core represents NATO. The attempt of the European states to speak with one voice and act jointly has a long history in the course of the integration process.

The motives to build up a CFSP were and are still of various kind. The increasing self-confidence of the European NATO states in light of the increasing economic success of the European Union, the need to solve regional European problems themselves and to not only appear as junior partner of the superpower United States, special national

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<sup>45</sup> See POSEN, BARRY, AND ROSS, *COMPETING U.S. GRAND STRATEGIES* 100-34 (Lieber, Robert J. Ed. 1997).

<sup>46</sup> See insofar Moisiv and Dominique, *The Trouble with France*, 3 Foreign Affairs --, 94-104 (1998).

<sup>47</sup> See ALGIERI, FRANCO, *DIE REFORM DER GASP- ANLEITUNG ZU BEGRENZTEM GEMEINSAMEN HANDELN* 87-118 (Werner Hrsg., Gütersloh 1998).

interests outside of the NATO competences and not least the French efforts to obtain a leading role have frequently led to irritations between the transatlantic partners. In addition, during the Cold War the European NATO states preserved fears concerning bilateral agreements between the two superpowers, the US and the Soviet Union.

Europe tried to face the structural dilemma of having to coordinate a multiplicity of—often conflicting—national interests to represent a joint determined attitude towards the USA by founding a common foreign policy. Already in 1970, France understood the organization of an independent European identity with regard to foreign policy within the EPC as a conscious attempt of a delimitation toward the United States. A German thrust was required to inform the transatlantic partner USA promptly in each case about activities of the Community with regard to foreign policy. At first, the member states treated the question of the inclusion of the security and defense policy into the EPC extremely controversially and finally tacitly excluded it, in order not to touch on NATO competences and not to burden the transatlantic alliance.

In the seventies and eighties, fears of the European NATO partners as to a bilateralism between the U.S. and the Soviet Union at expense of the Europeans as well as to the reliability of the American nuclear screen for Europe became audible. The transatlantic partnership was never free from cause of conflicts. Even on the acme of the Soviet threat towards Western Europe severe conflicts regarding the European and American foreign policy involvement in countries and regions like Palestine, Suez and Viet Nam characterized the relations between the U.S. and the European NATO states.<sup>48</sup> There were differences also concerning the deployment of intermediate range missiles (NATO's "double decision"). Quasi permanently, the allies discussed the question of the costs of the American troop deployment. All in all, however, the North Atlantic partnership proved as stable foundation and the most important pillar of the bipolar international structure.

The disappearance of the danger of a nuclear world war between the superpowers and the fact that the possibility of a comprehensive conventional war between West and East Europe had become inconceivable in a period less than a decade have—in connection with the increasingly social, economic and technical globalization—let the classical security policy of the Cold War become void. The threat to the West derives no longer from an over-powerful opponent, but from a

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<sup>48</sup> See KAHLER & MILES, REVISION UND VORAUSSCHAU: HISTORISCHE INTERPRETATION UND DIE ZUKUNFT DER TRANSATLANTISCHEN BEZIEHUNGEN 37 (Gütersloh 1995).

military, power-political vacuum and from a latent instability in Eastern Europe where at the same time the new democracies are still lacking economic stability.<sup>49</sup> The reorientation of NATO including the opening to the East and the cooperation with Russia shall aim at the creation of a security order that comprises Europe entirely, including Russia. In addition, it shall prevent the development of gray areas and dividing lines.

This also includes the signing of the Founding Act and the installation of a Joint Council with Russia. At the same time “the new NATO understands itself as an organization whose political readiness and military capacity for intervening shall give stability to the changed Europe”.<sup>50</sup> In the context of the summit of the 19 NATO states on the occasion of the 50<sup>th</sup> anniversary of the alliance’s existence (April 23-25, 1999) in Washington, a summit communiqué and the new strategic concept were adopted. Contents and targets are the readiness of NATO to take on tasks within the range of crisis management and crisis prevention under UN and OSCE mandate. Further elements are, among others, the action plan for membership, an initiative for the stabilization of the alliance’s interoperability as well as the reevaluation of the role of the European Union within NATO by designing a European Security and Defense Identity.

Europeans and Americans jointly promote the process of integration and opening of the West in relation to the new Eastern European democracies. This opening process is embedded into an overall approach that includes the NATO-Russia-Founding Act, the NATO-Ukraine-Charter as well as the Euro-Atlantic Partnership Council. Russia was offered disarmament negotiations, economic aid, acknowledgment as equal participant in the summit of the leading industrial nations and a politically, but not legally, binding agreement on the regulation of the relations with NATO.

America and Europe adjust to new and different challenges in security policy matters. U.S. President Clinton signed a new directive for the atomic target planning of the United States in November 1997.<sup>51</sup> Accordingly, the U.S. should now be no more able to lead and win a comprehensive nuclear war, but should be capable of providing for a reliable deterrence of “rogue states.” At present, countries such as Iraq, Iran, the Sudan and Afghanistan fall within this category. The extension of NATO to the East has several coherent target dimensions, which also

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<sup>49</sup> See Link and Werner at 143.

<sup>50</sup> Feldmeyer & Karl, *Die alte und die neue NATO*, FAZ (May 6, 1998).

<sup>51</sup> See Wieland & Leo, *Clintons neue Atomstrategie*, FAZ (December 29, 1997).

contain the security and promotion of the young Eastern European democracies. The NATO and European Union membership for Poland, the Czech Republic and Hungary shall provide the people not only with prosperity and security, but shall also lead to the organization of a civil society, stabilization of the free-market economy, democratization as well as the rule of law.<sup>52</sup>

In December 1997, NATO agreed on a new command structure. France approved it likewise, even though under the reservation that Europe had to be represented more strongly in the command structure. According to Paris, the post of the Commander-in-Chief Allied Forces, Southern Europe (CINCSOUTH) in Naples, which is occupied by a U.S. general, shall be taken over by a European. However, this has so far been rejected by the Americans. Since France left the integrated command structure in the year 1966, there are frequent dissensions of the Frenchmen with the Americans. Above all, Paris has its own opinion on the role of the WEU as security political institution in Europe. The Frenchmen led a "quasi-theological controversy" about functions and orientation of the WEU in relation to NATO.<sup>53</sup> According to the representation of former Federal Minister of Foreign Affairs Klaus Kinkel, the Europeans see the WEU as an axis between the European Union and NATO, which shall enable a more efficient crisis management in Europe in the future.

With regard to security policy there are a whole series of controversies as well concerning strategic as also personnel and tactic issues. They do not, however, touch on the alliance as such or on its core self-conception. The concerns towards a further European integration and towards the organization of a European security identity that had been brought forward in the beginning of the nineties by US President Bush and his Secretary of State, George Baker, have been replaced by a positive evaluation and according support in the meantime.<sup>54</sup> The Americans wish for a significantly stronger involvement of the Europeans in the field of security policy.

In Europe, there is also criticism as to the American role and ideas concerning the form of future partnership. The critics find fault the

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<sup>52</sup> See Zoellick & Robert, *NATO's Next Mission*, 87-95 Weidenfeld, Werner (Hrsg), *Creating Partnership - The Future of Transatlantic Relations. The Bellevue-Meetings II*, (Gütersloh 1997).

<sup>53</sup> See Hoffmann & Stanley, *The United States and Western Europe*, 81 (Lieber).

<sup>54</sup> See Frankenberger & Klaus-Dieter, *Zivilmacht oder Weltmacht*, 8 FAZ (November 1997).

different strategic security and foreign political target projections of the partners as well as the entirely different respective self-conception. The Americans are blamed for weakening NATO's independence and for trying to make it more and more subject to the American global power interests.<sup>55</sup> America's demands as global order authority and only military superpower implicate the provision and maintenance of military potentials that also have to be co-funded by Europe. Political involvements and strategies necessary for this have to be added; however, right now those appear hardly compatible with a Common European Foreign Policy.

According to the decisions of Helsinki, there are several new military and political bodies that must be founded until the end of the year 2000.

- A standing **Political and Security Committee (PSC)** in Brussels which consists of national representatives (high government officials or diplomats), addresses all questions of the CFSP and acts under "supervision of the Council" in the case of military operations;
- A **Military Committee (MC)** consistent of military delegates of the Member States' Chiefs of Defense which convene in certain intervals on the level of the Chiefs of Staff, which advises the PSC in military questions and whose president (a four star general) participates in the council session if necessary;
- A **European Military Staff (MS)**, which is primarily in charge of the situation assessment and strategic planning.<sup>56</sup>

As the decisions regarding the structures were to be made only at the end of the year 2000 in Nice, it was agreed to create so-called interim bodies from March 2000 on, whereas the interim PSC first works under the direction of the Political Committee. The Council Secretariat is initially only compounded by a handful of military experts of the Member States who shall form the nucleus for the Council's later military staff consisting of approximately 150 military experts. The difficulty of the EU Member States to agree upon the final structure and function of these new bodies underlines the sensitivity of the issue.

In an unspectacular way but with rapid speed, the Portuguese Presidency dedicated itself to the promotion of the Common European Security and Defense Policy (CESDP). After an open exchange of ideas in the General Council on January 24, where particularly the Nordic

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<sup>55</sup> See Schmidt & Hans-Joachim, *Folgenreicher Stillstand*, 10 FAZ (Juni. 1998).

<sup>56</sup> See Jopp at 245.

Member States, Germany, Luxemburg and the Netherlands demonstrated a clear interest in the composition of mechanisms of civil crisis management and also where the regional delimitation of possible military mission options to the European continent was addressed, the Council already created the interim bodies on February 14. Starting on March 1, these new bodies began to elaborate on the various aspects of the CESDP under close cooperation with the High Representative for the CFSP, Javier Solana, who was assigned to additionally occupy the office of the Secretary-General of the WEU in November 1999.

Substantial impulses for a concretion of the military dimension emanated from the informal meeting of the European Union Secretaries of Defense in Sintra (February 2000), as well as from a meeting of the Chiefs of Defense and the sessions of the Secretaries of State and Defense in the context of the General Council on March 20 and June 13. The extraordinary meeting of the European Council in Lisbon, to which the Portuguese Presidency had submitted a short interim report on the CESDP, primarily discussed aspects of the relations with NATO and with the European NATO members that are not members of the EU as well as the relations with the candidates for accession to the EU.<sup>57</sup> Whereas in particular Greece and France stressed the need for perpetuating the EU's autonomy as to the structure of these relations, Denmark, Finland, the Netherlands and Great Britain pushed for rights of participation of the other states within the CESDP as extensive as possible. On their summit in Mainz (June 9, 2000), Germany and France determined their proceeding within the development of the CESDP, stressed to the public the strong interest in the European Union as security political protagonist and opted with view to the central military weaknesses of the Europeans for the building of the airbus A 400M as military large capacity transport aircraft and for the development of an independent satellite tracking system.<sup>58</sup>

Briefly before the summit in Feira, a council committee for civil crisis management took up its work. Originally, it seemed as if specifically this dimension of the CESDP became a domain of the Commission. Commissioner Christopher Patten had asserted according claims and had announced extensive activities. After all, a coordination mechanism for the cooperation with the Commission was created in the Council's General Secretariat. Additionally, the Council identified

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<sup>57</sup> *Id.*

<sup>58</sup> See Presseberichterstattung über den deutsch-französischen Gipfel in Mainz in der Frankfurter Allgemeinen Zeitung und der Süddeutschen Zeitung vom 9.6.2000.

priorities as to civil crisis management (humanitarian assistance, stabilization of the rule of law, stabilization of civilian administrations, rescue services, disaster control) and had concrete targets for the crisis missions of police forces compiled.

The Feira European Council (June 19-20, 2000) underscored the will of the European Union states to be able within the context of the voluntary cooperation to make 5000 police officers available for civil crisis management and to have 1000 policemen come into operation within 30 days until the year 2003<sup>59</sup> (3300 policemen are presently already deployed in the mission in Albania and in Former Yugoslavia). Regarding the consultations with "third states", there was an agreement that during the interim period that lasted until Nice there should be an intensified political dialog in form of special meetings with the six European NATO states that do not belong to the European Union. In this connection, as also with regard to the principles concerning the consultation and cooperation with NATO, the full autonomy of the European Union in the adoption of decisions was stressed and furthermore the principle of equality emphasized. Concretely, four ad-hoc working groups were suggested for the cooperation with NATO relating to the following sectors: safety standards applicable to classified documents, development of military ability targets, modalities of the access of the European Union to NATO resources, definition of permanent arrangements with NATO. Regarding the question of contract modifications due to the new political and military bodies the Portuguese Presidency recommended a further examination until the summit in Nice.

The relation to NATO did not by any means develop in an unproblematic way. While the development of the ESDP has been supported on the official level in all NATO communiqués since the Washington Summit in 1999 under the condition that the principles of transparency, consultation and non-discrimination are taken into account by the NATO states, a skeptical attitude is widely spread in the NATO headquarters in Brussels. The joint exercise with the WEU (CMX/CRISEX 2000),<sup>60</sup> which tested the utilization of NATO means by the Europeans, has been sensed as a "culture shock" within parts of NATO. Likewise, the prospect of an integration of neutral states and states not bound by the pact into the cooperation between the European Union and NATO, does not invoke undivided acceptance. The EU's

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<sup>59</sup> See *Presidential Conclusions*, Feira European Council, 19-20 June 2000, para. 11.

<sup>60</sup> See Porto-Declaration, WEU Council of Ministers 15-16 May 2000, Porto, Atlantic Document Nr.111, 23.5.2000, para. 5.



tendency towards representing an institutional carpenter's workshop is being criticized. Therefore, NATO officials and representatives of the U.S. administration measure the sincerity of the CESDP based on whether it really succeeds to establish military abilities and to achieve the headline goals until 2003. Particularly until spring 2000, the missing transparency as to the institutional development promoted within the European Union was criticized. Indeed, there was no institutionalized contact at least until the joint establishment of the ad-hoc bodies with NATO in the summer of 2000 except for the weekly informal breakfast meetings of the Secretary-Generals of both organizations.

However, it has to be taken into consideration that since no later than spring 2000 a certain interconnection with NATO exists relating to personnel. Thus, most military delegates for example come from NATO and carry a "double hat". Moreover, meetings with the Deputy NATO Commander-in-Chief are intended in the context of the interim military committee in order to elaborate on the headline goals and military capability targets. Furthermore, the interim committee maintains also a guideline task force in which NATO experts participate. Additionally, in analogy to the tradition of the past joint meetings of the Permanent Councils of NATO and WEU, a first session has taken place already in September 2000.

The skepticism within NATO is partly reflected in the ambivalent attitude of the USA. On the highest political level the CESDP is supported; at the same time, however, Secretary of State Madeleine Albright made it clear already in October 1998 that the European processes may not lead to the decoupling of NATO, to duplicating lines of command or to the discrimination of European NATO partners that do not belong to the European Union.<sup>61</sup> The reason for these three imperatives are the American concerns relating to a loss of control and influence as well as fears regarding a possible consolidation of a EU core within NATO.<sup>62</sup>

At large, the basic American attitude will also in the upcoming years rather be a "Yes, but." Moreover, in the opinion of high NATO officials and American security experts there is still a period of five, if not ten, years needed until the CESDP will be fully operative. Therefore,

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<sup>61</sup> See Madeleine Albright, *The Right Balance will secure NATO's Future*, FINANCIAL TIMES (London), July 10, 1998.

<sup>62</sup> See Stanley R. Sloan, *The United States and European Defence*, Chaillot Papers 39, Institute for Security Studies, Western European Union, Paris, April 2000, at 14-19.

a longer period of recurring turbulences and resentments in the transatlantic relation is yet to anticipate.

Contrary to American fears, the CESDP could however rapidly become too dependent on NATO. On the one hand, for years the Union has to rely on the recourse to means and capabilities of NATO in order to implement complex military operations. Therefore, the resort option preferred by Great Britain, the Netherlands, Germany and Italy requires the organization of well functioning close political and military-operational relations with NATO. If NATO means are to be utilized, an additional consensus decision in the Atlantic Council is needed, which in the long run ensures the USA of a "*droit de regard*" with respect to European actions. On the other hand the incompatibility of the memberships of NATO and the European Union plays an important role. Since the WEU, whose functions are in the majority assumed by the European Union, granted large rights of participation to Turkey, Norway, Iceland, Poland, the Czech Republic and Hungary, the U.S. and the group of these six states expect the same of the European Union. The actual problem concentrates on Turkey, which postulates an inclusion in the EU decision-making process and thus mandates a revision of the political dialog offered by the European Union with regard to the defense sector. How serious threats of a Turkish blockade policy have to be taken in the Atlantic Council will depend on the further perspective of an accession to the European Union.

Despite the dissatisfaction with the consultation arrangements of Feira, after some hesitation, Turkey did agree to the formation of the four ad-hoc groups in order not to endanger the unity of NATO and to live up to its own new status as a candidate for accession to the European Union. The attempt to urge for a partial membership in the CFSP pillar by reaching through the CESDP back-door is certainly obvious. However, this weak point in the construction of the CESDP might still remain, as long as American policy does not exert pressure toward an opening of the CFSP pillar. By all means, crucial for the development of the CESDP is the constant effort for communication and reinsurance with the U.S. and on the other hand to design the dialog with the group of the six states in a way that a smooth utilization of NATO means is possible if necessary.

#### **IV. The Treaty of Nice: Results Concerning the CFSP**

When the results of Nice are presented, a double distinction should be made. On the one hand, it must be taken into consideration that CFSP issues were discussed only regarding Articles 23 and 24 of the Treaty of Amsterdam. Article 23, paragraph 2, which concerns the appointment of special representatives for the CFSP, was amended in

order to designate the possibility of a decision made by a qualified majority with regard to a joint action and to the appointment of a special representative in accordance with Article 18. Article 24, which concerns the conclusion of international agreements within the area of the CFSP as well as Justice and Home Affairs, has been fundamentally replaced, in order to require the qualified majority of the Council for the implementation of a joint action or a common position. However, unanimity is required if the agreement covers the acceptance of internal decisions. This means that the new Treaty completely ignores the European Parliament at the time of the conclusion of agreements on the government level including CFSP.

On the other hand, parallel discussions were led in the Council for General Affairs in order to prepare the Nice Summit. The report of the French Council Presidency contained guidelines regarding the necessity for modifications of the Treaties. The respective results were:

- Article 17 EU was amended, i.e. the reference to the ultimate integration of the WEU into the Union was deleted;
- Article 25 EU regarding the role of the Political and Security Committee now establishes the possibility for the Council to authorize this Committee to make relevant decisions concerning political monitoring and strategic management;
- A declaration on the European Security and Defense Policy within the appendix to the Final Act of the Intergovernmental Conference records that within the course of the year 2001 and at the latest during its meeting in Laeken/Brussels the European Council will take a decision on the basis of the existing treaty provisions in order to enable the Union to rapidly become operational. The entry into force of the Treaty of Nice is therefore no prerequisite for this.

Furthermore, the Treaty of Nice extends the range of application of enhanced cooperation within the area of the CFSP (second pillar). This is a step forward in comparison to the past situation; however, a number of important problems remain unresolved. First, the range of application remains too limited, it will rest reduced to the implementation of joint measures and common positions and will not be expanded to the Security and Defense Policy. Second, the approval procedure represents a regress compared with the procedure pursuant to the first pillar, and most notably, a real democratic supervision in form of a consultation of the EP has not been designated. Third, the Council takes its decision on the basis of the vote of the qualified majority; each member state, however, has a veto right.

In accordance with the request of the EP all but one references to the WTO in the modified Art. 17 EU were deleted. This article determines that the CFSP will also contain the gradual development of a Common Defense Policy. Nevertheless, all Council decisions taken since the entry into force of the Amsterdam Treaty (Cologne, Helsinki, Feira and Nice) refer to the military and civil instruments necessary for compliance with the Petersberg missions. *Defense policy as such remains a national issue.* The "Petersberg missions" (humanitarian and rescue actions, peacekeeping missions as well as missions of armed forces during crisis management including peace building measures) were included in Article 17, paragraph 2 of the Treaty of Amsterdam and become thereby part of the CFSP/CESDP.

It had already been decided in Helsinki that the Member States which voluntarily cooperate in EU-led operations have to be able until 2003 to make available armed forces of up to 50,000-60,000 men within 60 days. Furthermore, it was determined that new political and military bodies are assembled within the Council so that in accordance with the decisions of Nice the following committees will be gradually constituted: (a) a permanent Political and Security Committee; (b) the Military Committee and (c) the Military Staff.

The report of the Council Presidency adopted in Nice explains regarding the CESDP that the development of an autonomous ability of decision making and the preparation and implementation of EU-led military actions in response to international crises, where NATO does not intervene as a whole, will enable the EU to implement the entire spectrum of the Petersberg missions in accordance with the definition of the Treaty of Amsterdam and that this does not signify the organization of a European army. *Thus, NATO remains the basis for the collective defense of its members.*

During the Feira European Council, four priority sectors were determined (law enforcement, stabilization of the rule of law, stabilization of civil administration and civil defense) within which the Union has to develop its abilities for crisis management by civil means both in the framework of UN and OSCE operations and within European Union initiatives. The adoption of the regulation creating a crisis reaction mechanism on February 26, 2001, has been a first and extremely important step forward. With this step, the civil capability of the European Union regarding a rapid and efficient intervention in crisis situations in third countries is to be strengthened. In addition, the mechanism will provide the necessary flexibility to mobilize rapidly available instruments of the Community.

## V. Conclusion

In contrast to the EPC (European Political Cooperation) of the seventies and CFSP of the nineties, it now appears as if the involved Europeans for the first time meant what they said. It adds to the reliability that the old blockades cannot take place any longer. Only those are participating that are willing and able to put a strong foreign policy into practice and to place soldiers in the field.

The rapid task force that is planned has the strength of a NATO corps—50,000 to 60,000 men, including Air Forces and a naval component. The task force shall be established by the end of the year 2002, shall be operational in each case within two months and shall endure a mission of one year's length. The latter, however, requires that the suitable missions are found. This cannot and should not be the classic NATO case which Article V of the North Atlantic Treaty describes: common defense of an attack directed toward the territory of a NATO partner. There is no binding information as to the geographical range. In principle, the range is unlimited.

However, the NATO-ESDI dividing lines are drawn, and the Europeans will be in extraordinary need of NATO help and American assistance in the areas of command, control, communication and information. Something similar applies to transportation by sea and air. This assistance, however, the U.S. will by no means grant unconditionally.<sup>63</sup>

What the Europeans demand from themselves remains further limited. But one suspects that in the bitter reality the boundaries are flowing, that the ambition of the French and the British outreaches that of the Germans and that at this point intra-European conflicts might appear. The British want the European defense not to take place without them in the context of the "euro corps" composed of German, French, Belgian and Spanish units. They rather want to introduce their strategic leadership abilities and their special relation with the USA into Europe, particularly in the area of intelligence.

France views the ESDI as a chance to pull the other Europeans into a Gaullist direction. The Germans want to save what there is still to be saved of the Political Union, and feel a strategic backlog. There is also a particular chance of conflicts with the Americans. In due form, they have given their blessing to the ESDI and have promised to grant assistance if necessary. However, the rudiment of a strategic dissent is already present. For such operations will arise from which the Americans

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<sup>63</sup> See M. Stürmer, *ESDI ist ein Balanceakt für Europäer und Amerikaner*, at <http://www.welt.de/daten/2000/02/05/0205au150577.htx>.

stay away, be it because of their irrelevance—then it may be good —, be it because of serious differences—then it is dangerous—or be it also, because the U.S. is otherwise engaged.

In fact, the only remaining superpower—the U.S.—aims high, literally with rocket defense and metaphorically with a revolution of the military, the high-tech mega project of the battlefield that is completely controlled by intelligence and long-range weapons. However, at the same time the abilities of conventional warfare are decreasing, as pointed out in the latest report of the Center for Strategic and International Studies in Washington. The U.S. is a maritime world power, and commitments in the heart of far away continents are neither in their tradition nor in their national interest.

First and last, it was this skeptical analysis of the strategic coherence which induced the British in 1998 to extend their unconditional “NATO first” concept, which traces back to the Second World War and the beginning of the Cold War. Europeans and Americans are to become indispensable partners for each other. However, this requires an equilibrium that so far has never existed. Because during the Cold War—and since then by no means less—NATO has been predominantly determined by American leadership, strategy and technical superiority.

This imbalance, however, is based less on American hegemony attempts and more on European interests in strategic assistance. In the time of the Soviet threat the Europeans wanted under no circumstances to give the signal to the USA that they could master the situation alone if necessary. Since that time, the Europeans—France and the United Kingdom represent an exception—have comfortably installed themselves underneath this protective shield. Insufficient defense budgets, outdated equipment and old-fashioned armed forces structures have resulted from this situation.

However, in the past also the Americans were not by any means unconditionally in favor of a strong “European pillar”. On the other hand, President John F. Kennedy had already required this four decades ago. Henry Kissinger wanted something similar in the “year of Europe” in 1973. Washington looked for strategic and material discharge. The motive was “burden sharing,” or load distribution.

For the British government, the ESDI was not by any means only dictated by security interests. As Great Britain will still stay away for a couple of years from the core project of Europe, the common currency, it was in the British interest to demonstrate and bring in the country’s strengths. The European partners spotted for their part the chance to use the pragmatic British concept of the ESDI to overcome the interwoven

disorder of the institutions, the incongruence of NATO and the European Union, the European Union and WEU.

The ESDI will demand from both sides, Europeans and Americans, to make the effort that Lord Robertson has described: to ride two horses at the same time. This contradicts the laws of physics; however, not those of statesmanship.<sup>64</sup>

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<sup>64</sup> See M. Stürmer, *ESDI ist ein Balanceakt für Europäer und Amerikaner*, at <http://www.welt.de/daten/2000/02/05/0205au150577.htm>.