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European Political Cooperation and the Benefits of a European Community Foreign Policy: A Case Study of the EC's Response to the Persian Gulf Crisis

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I. INTRODUCTION

Historically, the European nations have exercised their foreign affairs powers according to their own national agendas. While the European Community ("EC") Member States largely continue to act in this manner, the world has witnessed, in the last thirty years, the infancy of a European unification movement in foreign affairs. The most recent example of this movement arises in the Single European Act ("SEA" or the "Act"),¹ which became effective July 1, 1987. The SEA represents the fusion of the treaty amending the three existing EC treaties and the treaty codifying the mechanism known as European Political Cooperation ("EPC").²

This Article advocates the expansion of the EC's role in foreign affairs. This Article first discusses the structure of the SEA as it relates to EPC. Second, it examines Member States' obligations as established by the SEA and how they change under EPC. Next, this Article presents a case study of the EC's response to Iraq's recent invasion of Kuwait. This illustrates the importance of the EC's speaking with one voice in foreign affairs. Finally, this Article enu-

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1. See TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY] May 25, 1957, 298 U.N.T.S. 11 (as amended 1987). The Act was signed by all twelve Member States by February of 1986, but was not effective until July 1, 1987.

2. Eric Stein, *European Foreign Affairs and the Single European Act of 1986*, 23 INT'L LAW. 977, 980 (1989). Professor Stein suggests that the name of the Act alone is a symbolic gesture of unity, since it fuses these documents into a workable whole. *Id.*

merates the benefits of enlarging the EC's role in foreign affairs through EPC.

II. THE SINGLE EUROPEAN ACT AND EUROPEAN POLITICAL COOPERATION

A. *EPC's Structure Under the SEA: A Roadmap to Unification*

Notwithstanding the dichotomy of the SEA, there is unity in its dual goals. As mentioned, the SEA amended existing treaties and formalized EPC. The SEA intentionally separated the European Communities from EPC. The SEA's goals find unity, however, in its Preamble which speaks of "the [Member States] will to . . . transform relations as a whole among States into a European Union."³

Title I, which states that "[t]he European Communities and European Political Co-operation shall have as their objective to contribute together to making concrete progress towards European unity,"⁴ espouses a European union. The selection of these words alone suggests an explicit return to the original vision of an organic European whole. The focus is once again on the achievement of a common identity and a true European community, and not on the individual Member State and its preoccupation with idiosyncratic sovereign concerns.

Titles II and III of the Act further highlight the pronounced dialectic of unity and separation of the SEA. Title II amends the existing treaties but does not implicate the EPC.⁵ Title III, on the other hand, deals exclusively with the EPC, ensuring that the entire EPC process operates outside the scope of the EC legal order.⁶ To this same end, Article 31 of Title IV specifically excludes EPC from the jurisdiction of the European Court of Justice.⁷

B. *EPC Obligations Under the SEA*

The SEA enumerates certain foreign affairs obligations under which the Member States must operate. Article 30 sections (1) through (12) of the SEA reflect the first legal commitment to the con-

3. EEC TREATY pmbi.

4. *Id.* tit. I.

5. *Id.* tit. II.

6. *Id.* tit. III. Jules Lonbay, *The Single European Act*, 11 B.C. INT'L & COMP. L. REV. 31, 56 (1988). See also Hans-Joachim Glaesner, *The Single European Act: Attempt at an Appraisal*, 10 FORDHAM INT'L L.J. 446, 451 (1987).

7. EEC TREATY tit. IV.

cept of a European foreign policy.⁸ Article 30(1) sets forth the objective of EPC: "to endeavor jointly to formulate and implement a European foreign policy."⁹ The EC should attain this goal through information exchange, consultation, the adoption of common positions, and joint action.¹⁰ Additionally, subparagraph (c) of Article 30(2) imposes an obligation on the High Contracting Parties to "take full account" of the positions of others and "give due consideration" to "common European positions."¹¹ By using the word "shall," the SEA commands Member States to perform these duties. Further, the Member States "shall ensure that common principles and objectives are gradually developed and defined" and that such common positions "shall constitute a point of reference for the policies of the High Contracting Parties."¹² Also noteworthy is the obligation to consult on "any foreign policy matters of general interest."¹³

Meanwhile, Article 30(2)(d) sets forth an important negative obligation of the Member States: they "shall endeavor to avoid any action or position which impairs their effectiveness as a cohesive force."¹⁴ This provision mandates that Member States refrain from positions or actions that would undermine a common European position in foreign affairs. Several provisions of Title III further concern the interaction between EPC and the European Community institutions.¹⁵ Most notably, Article 30(5) establishes that the external policies of the EC and the EPC "must be consistent."¹⁶ This same provision vests the responsibility for such consistency with the Presidency and the Commission jointly.¹⁷

Finally, Article 30(10) provides for one of the more novel features of Title III. It establishes a Secretariat, based in Brussels, to "assist the Presidency in preparing and implementing the activities of

8. See Simon Nuttal, *European Political Co-operation and the Single European Act*, 5 Y.B. EUR. L. 203, 209 (1986).

9. EEC TREATY art. 30(1).

10. *Id.* art. 30(2).

11. *Id.* art. 30(2)(c). The EC probably used the term "High Contracting Parties" instead of "Member States" throughout Article (30) of the SEA to signify and highlight the separateness of the SEA in accordance with the existing treaties on the one hand, and EPC on the other. See Stein, *supra* note 2, at 982.

12. EEC TREATY art. 30(2)(c).

13. *Id.* art. 30(2)(a) (emphasis added).

14. *Id.* art. 30(2)(d).

15. *Id.* tit. III; see also Lonbay, *supra* note 6, at 56-57; Glaesner, *supra* note 6, at 451.

16. EEC TREATY art. 30(5).

17. *Id.*

European Political Cooperation."¹⁸ Finally, Article 30(12) provides for review to consider possible revision of Title III five years after SEA's enactment.¹⁹ This review date coincides with the target year for integration of the European single market, 1992.²⁰

C. Changes in EPC in the Wake of the SEA

EPC was established in 1970 and operated until 1986 without any structured framework or legal basis.²¹ The SEA changed this in 1986 by legitimizing an EPC that now involves legal obligations.²² Thus, the most significant aspect of the SEA is that it elevates the structure and process of the EPC to the level of treaty commitments.²³ One important change in EPC is the SEA's establishment of the European Council as a legal body.²⁴ Title I, Article 2 of the Act provides, "the European Council shall bring together the Heads of State of Government of the Member States and the President of the Commission of the European Communities."²⁵ Moreover, the SEA has greatly enhanced the role of the Commission of the European Communities ("Commission") in EPC. The SEA charges the Commission with the shared responsibility of maintaining consistency between EPC policies and the EC's external policies.²⁶

In light of the obligations and changes in EPC caused by the SEA, the EC has taken a forward stride in its commitment to a European foreign policy. The two striking obligations which form the crux of this new EPC program are "to agree positively to attempt a common policy and agree negatively to avoid any unilateral policies which might diminish the standing of the Community."²⁷ Therefore, while Title III of the SEA does not require that the Member States in fact reach a common foreign policy, it does require that they affirmatively

18. *Id.* art. 30(10).

19. *Id.* art. 30(12).

20. *See generally* Stein, *supra* note 2.

21. Panayiotis Ifestos, *European Political Cooperation (EPC): Its Evolution From 1970 to 1986, and the Single European Act*, 11 J. EUR. INTEGRATION 47, 49-50 (1987).

22. *Id.*

23. Daniel T. Murphy, *European Political Cooperation After the Single European Act: The Future of Foreign Affairs in the European Communities*, 12 B.C. INT'L & COMP. L. REV. 335, 337 (1989).

24. EEC TREATY art. 2.

25. *Id.*

26. *See supra* note 16 and accompanying text.

27. Murphy, *supra* note 23, at 348.

“endeavor” to achieve this end.²⁸

In short, as to EC foreign affairs, the SEA's most powerful mandate to Member States is that they consult and exchange information. This provides a forum for dialogue which may independently serve to reduce jealousies and mistrust among Member States when dealing with issues of national sovereignty. Some may argue that the SEA's treatment of EPC merely recognizes existing informal practices. However, the more plausible interpretation is that the SEA's institutionalization of EPC, with its attendant obligations, represents substantial progress in European foreign affairs unity.²⁹

III. A CASE STUDY: THE EC'S RESPONSE TO IRAQ'S INVASION OF KUWAIT

The Gulf crisis illustrates how these common foreign policy goals have actually fared in practice. Iraq's August 2, 1990 invasion of Kuwait sent the world into a political and economic tailspin. On August 6, 1990, the United Nations Security Council voted in favor of imposing a sweeping trade embargo against Iraq and occupied Kuwait.³⁰ On that same day, then United States President George Bush declared a national emergency and ordered United States forces to Saudi Arabia to defend against Iraqi attack. This made “Operation Desert Shield” a household term³¹ and Iraqi President Saddam Hussein only increased the cries of world outrage by annexing Kuwait on August 8, 1990.³²

Some evidence exists that the twelve EC members reacted in a unified fashion, albeit at the initiative of others. The Member States joined together to aid the United States in imposing broad trade sanctions.³³ These sanctions included the suspension of Iraq's preferred trade status with the EC, a ban on oil imports from Iraq and Kuwait, an arms embargo, the suspension of all military, technical, and scientific trade with Iraq and a freeze on Iraqi assets.³⁴

28. Stuart S. Malawer, *Foreign Policy & Treaty Power of the European Community*, 16 VA. B. ASS'N J. 15, 17 (Summer 1990).

29. See George A. Bermann, *The Single European Act: A New Constitution for the Community?*, 27 COLUM. J. TRANSNAT'L L. 529, 564 (1989).

30. *U.S. Sends Forces to Saudi Arabia; Iraq Annexes Kuwait; U.N. Imposes Sanctions; U.S.-Iraq War Fears Rise*, FACTS ON FILE, WORLD NEWS DIGEST, Aug. 10, 1990, at A1:581, available in LEXIS, Nexis Library, Facts File.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

The EC displayed unity at an emergency meeting on August 10, 1990. The EC foreign ministers warned Iraqi President Saddam Hussein that if harm befell any EC citizen, "it would provoke a unified response."³⁵ They also underlined the intention to retain diplomatic presence in Iraq and Kuwait, despite Iraqi objections.³⁶ This show of unity in EC foreign policy, however, eroded as the Gulf crisis progressed. In short, the EC may have failed its most recent test of political unity.

Because the EC has allegedly "talked in the name of Europe, but thought in terms of an American shield,"³⁷ its recognition as a capable foreign policy-making body is questionable. For example, in moments of common danger, Britain sides with the United States.³⁸ Former British Prime Minister Margaret Thatcher looked more toward the United States than her fellow EC members in gauging the British response to the Gulf crisis.

Another example of the divergent EC response to the Iraq crisis, and one that commanded substantial media attention, was French President Francois Mitterrand's initiative. President Mitterrand, in a speech before the United Nations General Assembly, proposed a four-stage process to resolve the Middle East tensions.³⁹ This maneuver met with fierce criticism from the rest of the EC.

This unfortunate episode, perhaps more than any other single factor, muffled a unified EC voice in the Gulf crisis.⁴⁰ It also highlighted an inherent problem of EC political unity, the divisive force of national concerns. France itself supplied Iraq with most of the sophisticated arms that the French, United States, British and other troops faced in the Gulf.⁴¹ Additionally, in light of President Mitterrand's statement and the subsequent selective release by Saddam Hussein of nine French hostages, France was on the defensive against its neighbors.⁴² France claimed that its statement was gravely misunder-

35. Nicholas Kotch, *Western Europe Steps Up Anti-Iraq Moves*, REUTER LIBR. REP., Aug. 21, 1990, available in LEXIS, Nexis Library, LBYRPT File.

36. *Id.*

37. *America's Unpaid Debt*, DAILY TELEGRAPH, Aug. 26, 1990, at 18.

38. *Id.*

39. Douglas Hamilton, *France Says No To Negotiations, No Soft Options Offered To Iraq*, REUTER LIBR. REP., Oct. 1, 1990, available in LEXIS, Nexis Library, LBYRPT file.

40. Rone Tempest, *Europeans Have Much To Lose In The Gulf Puzzle; France, Which Has Pinned Its Mideast Policy On Baghdad For Two Decades, Probably Has The Most At Stake In The Region*, L.A. TIMES, Sept. 4, 1990, at H1.

41. *Id.*

42. See Hamilton, *supra* note 39.

stood. Some interpreted President Mitterrand's statement as a call for negotiations with President Hussein in return for his consideration of a withdrawal from Kuwait. French presidential spokesman Hubert Vedrine clarified that President Mitterrand intended an offer to negotiate upon actual withdrawal from Kuwait.⁴³

If Member States continue to take a wholly nationalized stance in foreign affairs, as France did, the goal of European unification will constantly be undermined and will ultimately fail. Perhaps the best that can be said about this situation is that when the EC truly forms a unified foreign policy, no one of its parts will be in the position, as France was, to be driven by "short-sighted business interests in earning a quick franc."⁴⁴

IV. THE BENEFITS TO THE EUROPEAN COMMUNITY OF AN EXPANDED FOREIGN AFFAIRS COMPETENCE

A primary hindrance to the EC's foreign policy is that the Member States view any step toward enhancing collective power as a corresponding diminution in their individual power.⁴⁵ The Member States are apprehensive about this apparent threat to traditional sovereign power. The time has arrived, however, for each Member State to loosen its jealous grip on individualized foreign affairs policies and to yield to the greater EC interests. The approaching single market will fuse economic, social, and legal interests. This new interdependence may render the idea of a "national" foreign policy concern a notion of the past. This results because, out of necessity, the Member States must divorce themselves from divisive policies lest the EC "evolve into an economic giant and a foreign policy pygmy."⁴⁶

The SEA's legitimization of EPC has set the stage for rapid progress by providing a careful and cooperative framework for a single EC voice in foreign affairs. Although EPC is a strictly intergovernmental mechanism that relies upon the consensus of all Member States,⁴⁷ it encourages consensus. Now, more than ever, the EC must

43. *Id.* See also Tempest, *supra* note 40, at H1.

44. See Hamilton, *supra* note 39.

45. Another hindrance to EC foreign policy unity is the existence of the North Atlantic Treaty Organization ("NATO"). NATO's Secretary-General, Manfred Woerner, has commented that he would welcome the EC's assumption of greater foreign policy and defense responsibility, but if this usurped NATO's role, it could threaten Europe's ties with the United States. See Peter Guilford, *Warning to EC on Pact Role*, THE TIMES (London), Sept. 21, 1990.

46. Bruce Stokes, *Continental Shift*, 22 NAT'L J. 1996, 1996 (1990).

47. SCHWARZE, TOWARDS A EUROPEAN FOREIGN POLICY—LEGAL ASPECTS, TOWARDS A EUROPEAN FOREIGN POLICY 76-77 (J. de Vree et al. eds., 1987).

realize the benefits of this opportunity.

First, and most importantly, the European single market renders any formal separation between economic and foreign policies dysfunctional and obsolete.⁴⁸ The single market will result in virtual economic interdependence of the Member States.⁴⁹ No Member State can continue to develop individual external policies when its economy becomes one-twelfth of a whole. European integration mandates a common foreign policy stance. A Member State can no longer engage in unilateral action without contemplating the effect on all Member States. This is not merely a matter of obligation under Article 30 of the SEA, but one of self-interest. A threat to one Member State in a single market context is a threat to the unit as a whole.

Second, with an expanded EC role in foreign policy, the EC can take advantage of and build upon the various special relationships that have already developed between individual Member States and third countries. For example, the United Kingdom has a close relationship with the United States; Greece, given its stage of economic development, maintains ties with many less developed countries; and Spain and Portugal have strong ties with both Latin American and Third World countries.⁵⁰

Additionally, a unified EC will render a third country less capable of manipulating one of the Member States in a polarizing fashion. Indeed, Saddam Hussein may have accomplished such manipulation when he announced the release of all French hostages on October 23, 1990, to the exclusion of other nationals.⁵¹ An EC foreign policy would make this type of tactic less feasible.

Further, an enlarged foreign affairs competence would allow the EC to become an active, rather than a reactive, force. The goal of EPC, in essence, is to encourage the EC to gradually develop common principles and objectives. When crisis develops, the lack of an affirmative EC position may lead to inconsistent reactions among Member States, as was seen in the Gulf War. With a well-reasoned, common foreign policy already established, however, decisions will be made on the basis of a solid foundation. This would reduce the likelihood of a

48. Note, *A Community Within the Community: Prospects for Foreign Policy Integration in the European Community*, 103 HARV. L. REV. 1066, 1075 (1990).

49. *Id.*

50. ROY H. GINSBERG, FOREIGN POLICY ACTIONS OF THE EUROPEAN COMMUNITY 160 (1989).

51. Edward Cody, *Iraq Frees 14 Americans, Says All French Can Go*, WASH. POST, Oct. 24, 1990, at A1.

reflexive reaction in the heat of a crisis. It would also catapult the EC into crisis management, instead of a scramble for an appropriate initial response.⁵²

Moreover, a set EC foreign policy could arguably diffuse a situation and prevent a crisis from developing. That is, a set and predictable policy may be the EC's best protective strategy in world affairs. If the EC speaks with one strong voice instead of twelve it will, of its own unified force, be a powerful sculptor of foreign affairs. With the rest of the world and future terrorists aware of the announced EC stance, they will surely consider the ramifications before acting.

Finally, it is only through unity that the EC will realize its strength in the international arena. The 1992 integration of its economic interests in a single market dictates that the EC act efficiently by pooling its resources, both monetary and political. A common EC foreign policy will command far more attention and result in greater influence than could any single Member State on its own.

V. CONCLUSION

The SEA and its treatment of EPC represents a great contribution to the vision of a unified Europe in the area of foreign policy. Its framework calls only for consultation, taking into account the positions of others and endeavoring to develop common European positions. The SEA lends the EPC a flexibility that is so critical in the developmental stages of this program.⁵³ Anything more rigid before completion of the single market would arrest such a program before it had the opportunity to flourish.

52. Reinhardt Rummel, *Speaking with One Voice - And Beyond*, in *EUROPEAN POLITICAL COOPERATION IN THE 1980s* 122-23 (Alfred Pijpers et al. eds., 1988).

53. Barry E. Carter, *A Code of Conduct for EC-US relations* (1988), reprinted in *THE EXTERNAL RELATIONS OF THE EUROPEAN COMMUNITY, IN PARTICULAR EC-US RELATIONS, CONTRIBUTIONS TO AN INTERNATIONAL COLLOQUIUM ORGANIZED BY THE EUROPEAN POLICY UNIT OF THE EUROPEAN UNIVERSITY INSTITUTE, FLORENCE, ITALY, 26-27 MAY 1988* (Jurgen Schwarze ed., 1989). Professor Carter discusses the strategies and tactics which will facilitate optimum progress in improving US-EC relations. One such strategy is to minimize formal legal arrangements, particularly at the early stages of such an effort, thereby maintaining the flexibility so critical to its success.

