

MEDIATING INTERNATIONAL CONFLICTS: CAN THE EUROPEAN UNION DO
IT EFFECTIVELY?

Institutional Reform and its Impact on the Wars in the
Former Yugoslavia between 1991-2001

A THESIS
SUBMITTED TO THE
STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES
AT THE STANFORD LAW SCHOOL,
STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
MASTER OF THE SCIENCE OF LAW

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May 2001

ABSTRACT

Exactly ten years ago the first war broke out in the Balkans with Slovenia's declaration of independence. One decade later this region on the doorstep of Europe has not yet found stability. To the contrary, today a violent ethnic dispute endangers Macedonia's security and its economic development. The fact that conflicts occur and the international community is often incapable of preventing large-scale wars makes the study and analysis of international conflicts very challenging.

I chose the European Union as one of the most powerful actors on the international scene to find out what the difficulties of such an institution are with respect to conflict management.

This paper will thus analyze the effectiveness of the European Union to intervene in the wars in the Balkans. I will argue that in 1991 the Union was not yet ready for an efficient and effective crisis management. This was the case, because the legal structure did not provide the necessary powers for the Member States to take appropriate action. The major constraints were, therefore, inherent to its institutional nature. I will illustrate these problems with the wars in the Former Yugoslavia. Gradually, from war to war and from new legal structure to new legal structure the Union evolved and as a positive result became more effective. Nevertheless, the processes of reform is slow,

and I will elaborate the institutional inefficiencies that still impede rapid action in 2001.

The methodology I used is based on extensive literature in the areas of European Union and the CFSP in particular, of general conflict resolution and international mediation as well as on the wars in Yugoslavia. Because of the tragic actuality of my paper, I also analyzed newspaper articles in order to follow the conflict in Macedonia.

I will conclude with recommendations for future reforms and hope to see them implemented soon.

ACKNOWLEDGEMENTS

First, I wish to thank the faculty of Stanford Law School, particularly my advisors Jonathan Greenberg and Piet van Slot. They were available whenever I needed them and their comments were enriching and important for the evolution of my thesis. It was a wonderful experience studying here.

I also wish to thank the Fulbright Commission, without this support both financially as bureaucratically I would not have been able to pursue the SPILS. The same thanks go to the Austrian Ministry for Science, Culture and Education for its grant.

Moreover, I owe my parents my respect and gratitude for enabling me the best education possible and always supporting me to achieve my goals.

Special thanks also to my JD editor Jeffrey Gould.

Finally, I wish to express my thankfulness to my best friends who were there when I needed them, especially Dani Lackner who travelled all the way from Europe to surprise me. Through her mere presence she helped me in a difficult stage of the research and writing process. This also goes to Oliver Conze, who made the study breaks very enjoyable.

A sunny Californian Thank You to everyone!

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INTRODUCTION

In 2001 Tito's federal system in Yugoslavia, where the six republics Serbia, Croatia, Bosnia-Herzegovina, Slovenia, Macedonia and Montenegro including the two autonomous regions of Kosovo and Vojvodina coexisted peacefully, has ceased to exist. With the eruption of the crisis in Macedonia this year the Balkans are still a theater of war.

Europe decided to intervene, but its way of managing those ethnic and international conflicts, gives way to criticism throughout the world, mostly stirred up by the United States. James Baker was not reluctant to show how glad he was that in 1991 the Europeans themselves claimed being capable of handling the evolving war in Slovenia.¹ Since then the European Community (EC) and thereafter the European Union (EU)² had the chance to proof whether it was able to successfully solve conflicts or not.

In this paper I will analyze the evolution of the common foreign and security policy of the European Union with respect to effective international conflict resolution in the Balkans. Can the European Union successfully intervene in the resolution of conflicts, and if not, what

¹ JAMES A. BAKER, III, THE POLITICS OF DIPLOMACY 436 (1995).

² With the entering into force of the Treaty of Maastricht in November 1993 the structure and denomination changed from the three European Communities (European Economic Community - EEC, European Community for Steel and Coal - ECSC, and the Community for Atomic Energy - Euratom) to one European Union.

are the reasons for failures and how can institutional reform prevent negative outcomes?

The first part is the snap-shot of four dates between 1991 and 2001. These dates correspond to the years in which institutional reforms took place. Each snap-shot includes four chapters. First, I will demonstrate the legal structure in the foreign policy field of the European Community/EU, highlighting the powers the Member States had at each of these four given moments. The aim is to provide the reader with a point of departure. From there I will analyze the limitations and weakness of the legal structure. These constraints may hinder effective conflict resolution and initiate new changes. In the third section I will make a case study. Each of these studies will serve as an illustration to the effectiveness of European intervention given the respective powers of the treaties. The test cases are selected according to the respective date of legal reform in the Union. Therefore, I will analyze the wars of Slovenia and Croatia together with the actions possible under the legal structure of 1991. The next date will be 1993 when the Treaty of Maastricht (TEU) entered into force and the war in Bosnia-Herzegovina was raging. The reforms in 1998 in Amsterdam correspond to the breaking out of the conflict in Kosovo, and most recently, I will finish with an analysis of Macedonia and the changes the Treaty of Nice regime might generate.

Although these comparisons are based on one particular year, I will always give some background information in order to help the reader to understand the context of the conflicts in the Balkans. To this end, I will sometimes have to go back in history, beyond the chosen date of analysis. However, the focus of the case study will be between the respective two reform dates.

In the second part of the thesis I will set out the framework for the analysis of the two main issues: EU's foreign and security policy reform and conflict resolution in the Former Yugoslavia. This framework is shaped like an not-ending process of change. I will elaborate the various factors that influence this process. Thereafter, I will conclude with the lessons that can be learned from the 4 snap-shots in the first part and the analytical framework to deal with international conflicts more effectively in the future. Future implications and policy recommendations will be in the last chapter of this paper.

PART 1

I. EC 1991

A. THE LEGAL STRUCTURE OF THE FOREIGN POLICY: POWERS/CAPABILITIES

In 1991 the European Communities comprised 12 Member States of the Western European hemisphere.³ They were composed of three communities: the European Economic Community (EEC), the Euratom and the European Community for Steel and Coal (ECSC).⁴

The main objective resulting from the three constituting treaties was economic integration. Although ECSC and Euratom were limited those specific economic fields, the EC had broader objectives. First and foremost it sought to eliminate trade restrictions as well as obstacles to the free movement of goods, services, persons and capital in order to create a common market. This required the national legal systems to be subordinated to the EC laws to fulfill that goal.⁵ Nevertheless, the enlarged scale of EC objectives did not involve common policies in the field of foreign relations, much less in the area of international conflict resolution.

If the Europeans got involved in international crises, such as the Libya crisis of 1986, for the most part Member

³ Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands Portugal, Spain, and the UK.

⁴ Those three Communities were established 1950 and 1957 and marked the beginning of European integration.

⁵ The notion of "supremacy of EC Law over National Law" is applied by the European Court of Justice (ECJ) which ruled in the famous case Costa vs. ENEL in 1964 that "the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, [...]". Case 6/64, Flaminio Costa vs. ENEL, 1964 E.C.R. 585.

States held bilateral negotiations among them in order to identify their actions.⁶ Collective procedure was limited, but nevertheless the institutional structure of the EC had established a forum for joint deliberations. This forum was the European Political Cooperation (EPC). What is known as the EPC took its starting point at the 1969 The Hague Heads of State and Government meeting.⁷ But only with the Single European Act of 1986⁸ did the EPC finally receive a legal framework.⁹ Nevertheless this framework still bore a clear distinction between the external relations of the European Community, those were centered on commercial issues, and political foreign affairs.¹⁰

Yet for the first time these two entities were combined in the same treaty, hence also the name: *Single European Act*. Characteristic for this legal framework was its focus on cooperation rather than integration in the sphere of foreign policy. The obligations that could be

⁶ In a comparison of three case studies Neill Winn concludes that the dominant form of consultation within the European Community was bilateral. The EPC only served as a "back-up channel" for collective information gathering. See Neill Winn, *European Crisis Management in the 1980's*, in EUROPEAN APPROACHES TO CRISIS MANAGEMENT 107, 124 (Knud Eric Jorgensen ed., 1997).

⁷ John J. Kavanagh, *Attempting to Run Before Learning to Walk: Problems of the EU's Common Foreign and Security Policy*, 20 B.C. INT'L & COMP. L. REV. 353, 355 (1997); Bernhard Schloh, *The Presidency of the Council of the European Union*, 25 SYRACUSE J. INT'L L. & COM. 93, 115 (1998).

⁸ Single European Act, O.J. L 169/1 (1987).

⁹ See *supra* note 8, Art. 30 SEA provides this framework.

¹⁰ This distinction is explicitly stated in Title IV of SEA which deals with "general and final provisions". It excludes Title III - European Cooperation in the sphere of foreign policy - from the application of the EC provisions. This implies that the decision-making process within the institutional regime inherent to the EC (Commission, Parliament, Court of Justice, Council) differs entirely from that of the intergovernmental decisions of EPC. See PANAYIOTIS IFESTOS, EUROPEAN POLITICAL COOPERATION: TOWARDS A FRAMEWORK OF SUPRANATIONAL DIPLOMACY? 353 (1987).

derived from the Single European Act were obligations under public international law instead of obligations under Community law. EPC's intergovernmental nature prevailed.

Powers:

In 1991 the Member States' power to make their own foreign policy according to their national interests remained unrestricted. Formulations such as Member States "shall endeavor jointly to formulate and implement a European foreign policy" were mere recommendations, but did not amount to legally binding obligations on their part.¹¹

Under the regime of the EPC the Member States thus had no real powers, because the provisions for decision-making did not require implementation.¹² Moreover, the absence of rules regarding specific instruments further emphasized the low degree of commitment. Joint actions hence depended on the will of the Member States to coordinate their policy. Therefore, the powers established under the SEA were rather possibilities for European Cooperation in the sphere of foreign policy than real powers.

Nevertheless, the procedure established in the SEA explicitly stated these possibilities of decision-making. Information and consultations among the Member States should precede decisions on their final position. Once Member States find a common position, this position should

¹¹ See *supra* note 8, Art. 30 SEA paragraph 1.

¹² Thorsten Stein, *The Allocation of Competences: Foreign Relations Between the European Union and the Federal Republic of Germany*, 53 SMU L. REV. 505, 510 (2000).

constitute "a point of reference" for their national policies.¹³

The possible actions in the foreign policy field in 1991 were all diplomatic efforts that the Member States could agree on.¹⁴ This of course bore the caveat that no one was legally bound to this action, hence diminishing its value.

Consequently, the Member States used regulations of the EEC regime. In particular the provisions about common commercial policy and the more specific regulations about trade sanctions widen the possible actions in the international sphere.¹⁵ In exercise of their national competence in foreign policy Member States had recourse to a Community measure.¹⁶ This could also lead to a common procedure between the two regimes. For example, in the case of Art. 113 TEC joint action added political significance to the imposing of economic sanctions.¹⁷

Paragraph 5 of Art. 30 SEA encompassed an important issue regarding this duality of action. It provided for the first time in a treaty regime for consistency between the

¹³ See *supra* note 8, Art. 30 SEA paragraph 2.

¹⁴ An example is the establishment of the ECMM (European Community Monitoring Mission) which was agreed upon in July 1991 by the Member States. See *infra* note 30.

¹⁵ Art. 113 Treaty establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11. (The numbering was changed to Art. 133 by the amendments adopted with the Treaty of Amsterdam.)

¹⁶ Case C-124/95 *The Queen, ex parte Centro-Com Srl v HM Treasury and Bank of England* [1997] ECR I-81, paragraph 28.

¹⁷ Bonvicini refers to the 1982 crisis of the Falkland Islands, when Europe decided to impose sanctions against Argentine. Gianni Bonvicini, *Mechanisms and Procedures of EPC: More than Traditional Diplomacy?*, in *EUROPEAN POLITICAL COOPERATION IN THE 1980s: A COMMON FOREIGN POLICY FOR WESTERN EUROPE?* 49, 65 (Alfred Pijpers et al. eds., 1988).

foreign policies of the European Communities and the EPC. Consistency is defined as "coherent behavior" to pursue a single objective resulting in an "uncontradictory foreign policy".¹⁸ Yet, a strict division between the two regimes was inherent to the SEA, leading to sometimes parallel actions within the same area.

Finally, the EPC had no common military powers. Art. 30(6) stated that Member States shall not impede close cooperation with the WEU.¹⁹ However, its relevance was limited as not all the Member States were parties to the WEU and the implementation of this provision was not guaranteed.

On the other hand, the Treaty of Rome, establishing the EEC, regulated unilateral actions. It provided that each Member State was permitted to take the necessary measures to protect its security interests and to "adopt necessary measures in the event of substantial internal disturbances, of serious international tension or in the event of war".²⁰

¹⁸ Krenzler and Schneider also differentiate between a vertical consistency and a horizontal consistency. The first is between the Union and the Member States, the latter between the EC's external relations and the CFSP. (Please note, that this distinction refers to the time after the Treaty of the European Union, the concept nevertheless is also applicable to the time before.) Horst-Günter Krenzler & Henning C. Schneider, *The Question of Consistency*, in FOREIGN POLICY OF THE EUROPEAN UNION: FROM EPC TO CFSP AND BEYOND 133, 134 (Elfriede Regelsberger et al. eds., 1997).

¹⁹ The Western European Union originates from the Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defense [Oct. 23, 1954, 211 U.N.T.S. 342] creating an international organization with the aim of establishing a defensive military alliance comprised only of European nations.

²⁰ Art. 224 Treaty of Rome, Treaty Establishing the European Community, Mar. 25, 1975, 298 U.N.T.S. 11.

Nevertheless, common action in the security field was not in sight.

Summarizing the powers of the Member States within the legal system of a common foreign policy: there were no real powers, because they were based on consensus of the Member States without legally binding force. Therefore the Member States good will for common action determined the possibilities in that field.

B. THE LEGAL STRUCTURE OF THE FOREIGN POLICY: CONSTRAINTS

As of 1991 the legal structure of the EPC bore many constraints, that hindered efficient policy-making.

First, the EPC was intergovernmental and thus the decision-making power was vested in the respective governments of the Member States. The Member States moreover should "refrain from impeding the formation of a consensus".²¹

In order to reach such a consensus, they were encouraged to consult each other on any foreign policy matter of general interest prior to a final decision by any one of them. Although Art. 30/2 (C) SEA also required them to consider the positions of the other parties and to be aware of the "desirability of adopting and implementing common European positions", each of their final decisions ultimately corresponded to their national interests. In the

²¹ See *supra* note 8, Art. 30 SEA paragraph 3 (C).

event of conflicting national interests, it followed that no common policy could exist. Thus, the EPC can only work effectively to the extent that Member States had compatible or complimentary interests.

Having this in mind, it is clear that arriving at an agreement for foreign policy action was twelve-times more difficult and improbable for the Member States, than it was for the United States. Consequently implementation, if at all, required a significantly longer time frame and unless quick consensus about the actions was found, impeded immediate and rapid reaction to evolving crises. From the standpoint of their respective institutional structures, the European Communities therefore had a more limited capacity to intervene in international conflicts than the United States.

Second, and as a result of EPC's intergovernmental structure, the decision-making process faced inefficiency, because Member States had to decide whether they wished to implement their national interests or suspend them in order to reach a common European policy. This dilemma generally led to strategic conduct and thus to the pursuit of the national interests at stake to the detriment of common policy.

Third, the provisions of Art. 30 SEA did not provide for implementation and lacked legally binding force. As long as the Member States did not have an obligation to

work towards the realization of a common foreign policy, they could easily opt out, and hinder the process of building and maintaining a consensus with respect to their foreign policy objectives.

Fourth, the EPC lacked efficient instruments for implementation. No mechanism could be found in the legal regime of the EPC that would establish a mode of action. Member States therefore either had to use their unilateral mechanisms - diplomacy, financial assistance, sending business missions etc. - or had to fall back on the instruments provided for under the European Community regime. The EC in 1991 basically offered trade measures and foreign aid with regard to foreign policy.²²

Another aspect of Europe's limited capabilities in stopping a war stemmed from the fact that in 1991 no efficient joint military force or defense system existed.

Coercive intervention in civil wars serves the goal of peacemaking or peace-keeping.²³ An effective and powerful military force provides important leverage, because its threat has deterrent effects on the disputing parties. Therefore, the reality on the ground can be changed drastically, and thus shape the outcome towards an ultimate settlement.²⁴

²² Eberhard Rhein, *The Community's External Reach*, in *TOWARDS A POLITICAL UNION: PLANNING A COMMON FOREIGN AND SECURITY POLICY IN THE EUROPEAN COMMUNITY* 37, 43 (Reinhard Rummel ed., 1992).

²³ See *infra*, note 155 and the accompanying text.

²⁴ Lake and Rothchild analyze external intervention in ethnic conflicts. LAKE & ROTHCHILD, *ETHNIC FEARS AND GLOBAL ENGAGEMENT: THE INTERNATIONAL*

Although Art. 30.6 SEA included closer co-operation on questions of European Security and simultaneously referred to the framework of the Western European Union (WEU),²⁵ no priority was given to this issue and the WEU played only a minor role up until the 1990's.²⁶ This was due to its subordination under NATO.²⁷

Thus, the capacity of the EC in 1991 to employ military measures for purposes of deterrence and of having a more powerful tool at hand while mediating international conflicts, was subordinated to NATO and hence closely linked to the policy of the United States. From a European point of view this deficiency amounted to an institutional constraint limiting the possibilities of effective common foreign policy.

C. CASE STUDY SLOVENIA/CROATIA

Yugoslavia 1991. How did Europe, in light of the powers and constraints outlined above, respond to the evolving crises in Yugoslavia?

First, I will focus on actions under the regime of the EPC in an attempt to bring about a ceasefire in Slovenia and prevent further escalation. Second, I will analyze the

SPREAD AND MANAGEMENT OF ETHNIC CONFLICT 38 (Institute on Global Conflict and Cooperation, Policy Paper No. 20, 1996).

²⁵ In order not to jeopardize relations to the United States and NATO, Art. 1 calls upon the Member States to reduce any kind of duplication of the work of other economic organizations to a minimum.

²⁶ For a chronology of the Western European Union see: <http://www.weu.int/eng/about.html>.

²⁷ Cheryl Swack, *Building a Bridge for Defense: The European Union's Common Foreign and Security Policy*, 6 Y.B. INT'L L. 3, 19 (1997/1998).

problems inherent to Croatia's declaration of independence. In particular, Germany's reaction demonstrates the difficulties in agreeing to a common foreign policy if national interests prevail.

The EC was optimistic it could handle the crisis. Although in the first half of 1991 Europe supported the federation of Yugoslavia, because it feared secessionist tendencies could have a spill-over effect to Russia or other parts of Europe.²⁸ To foster this interest Jacques Poos and the then President of the European Commission Jacques Delors, traveled to Belgrade with 4 billion USD at their disposal.²⁹ At that early stage, Europe was aware of the dangerous impact a further destabilized country on the edge of civil war would have.

But the money could not stop the nationalistic tendencies and the Republics of Slovenia and Croatia declared independence from Yugoslavia. The Yugoslav Federal Parliament refused to acknowledge these declarations and subsequently JNA (Yugoslav National Army) units were deployed in Slovenia and fighting broke out. The EC decided to intervene and convened negotiations combining representatives of the federal government as well as

²⁸ Alan Cafruny, *The European Union and the war in the former Yugoslavia: the failure of collective diplomacy*, in *THE UNION AND THE WORLD: THE POLITICAL ECONOMY OF A COMMON EUROPEAN FOREIGN POLICY* 133, 135 (Alan Cafruny & Patrick Peters eds., 1998).

²⁹ The 4 billion USD aid were intended for the preservation of federal Yugoslavia and combined with an association agreement offered by the EC. In this agreement the EC clearly declared that it would not provide political or economic support to breakaway republics.

Slovenia and Croatia at one table. Those mediators were sent via the EPC.

The result of this first mediation with European involvement was the Brioni Declaration of 8 July. It stopped the fighting between Slovenian troops and the JNA (Yugoslav National Army), Slobodan Milosevic agreed to a withdrawal of the troops from the JNA and Slovenian and Croatian declarations of independence were suspended for three months. Additionally the European Community Monitoring Mission (ECMM) was established.³⁰ This body comprised unarmed civilian and military observers, who were located to report about the withdrawal of the JNA from Slovenia. As the conflict spread these unbiased and impartial monitors had to be deployed throughout the Balkans.³¹

To be sure, the EC claimed success in effectively ending the war in Slovenia. Yet, the facts on the ground showed that Milosevic had no overarching interest in Slovenia remaining part of Yugoslavia, because its ethnic geography was the most homogenous with basically no Serbian minorities. As a result, Slovenia was not a priority in Milosevic's plan of creating one state combining all Serbs.

³⁰ On 22 December 2000 the ECMM was renamed into the European Union Monitor Mission in a Joint Action adopted by the Council of the European Union. (Joint Action 2000/811/CFSP). See <http://ue.eu.int/pesc/ecmm/index.htm>

³¹ Currently observers are present in Albania, Bosnia-Herzegovina, Croatia, General Republic of Yugoslavia (Montenegro and Kosovo) and Former Yugoslav Republic of Macedonia.

This short paragraph about Slovenia already illustrates the efforts Europeans undertook at the beginning of the crisis to prevent war. Despite their limited powers for common foreign policies, the Member States agreed to send mediators to negotiate with the leaders. They subsequently also sent monitors to Slovenia and Croatia.

The financial aid offered as leverage was one of the Community based actions.³²

Croatia also proclaimed independence from Yugoslavia in June 1991. Milosevic broke the ceasefire signed at the Brioni Accord to relocate his troops for an attack against Croatia.³³ In contrast to Slovenia, ethnicity played an important role in Croatia, because of Serb communities living within the Croatian border. These Croatian Serbs considered themselves as Serbian nationals and Serbia as their home country. Serbs accused the Croatian authorities of taking up arms against their minority groups situated in Croatia and claimed they were acting in self-defense to protect their legitimate national and civil rights.³⁴

³² The Second Financial Protocol on aid. See Geoffrey Edwards, *European Responses to the Yugoslav Crisis: An Interim Assessment*, in TOWARD POLITICAL UNION 165, 169 (Reinhardt Rummel ed., 1992).

³³ These first attacks were launched in the Krajina and its capitol Knin, a region populated with Croatian Serbs, and where Serb militias even proclaimed a "Republic of Serbian Krajina".

³⁴ Marc Weller, *Current Development: The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, 86 AM. J. INT'L L. 569, 574 (1992).

This can be seen as the classic example of a security dilemma in an intrastate war.³⁵ A security dilemma arises between two groups/ethnicities in one state. One side takes up arms, and this mere fact creates fear and the wish for self-defense among the other ethnic community. The problem is, that the original reason for the arming of one group is unclear to the other one. Consequently, the latter has two options, either to arm or not. To be sure, this strategic decision very much depends on the perceptions and biases that are dominant within this group. But in case of fear, no rational decision will be taken. The arming of the second group is therefore most likely, irrespective of the reasons for the initial taking up of weapons by the first group. However, from the point of view of the first group this incapability of decision-making by the adversary should always be considered in advance. The probability that the own resort to preemptive use of force - even if for the same reason of fear and self-defense - will produce the same behavior in the other group, and thus lead to violent confrontations. Violent confrontations that were originally sought to prevent.

The European Community again decided to intervene. Although military intervention was considered an option for the EC, with the objective of setting up buffer-zones

³⁵ A description of the security dilemma in ethnic conflicts is provided by LAKE & ROTHCHILD, *see supra* note 24, at 16.

between the warring factions of Serbs and Croats, it was unlikely that these governments would have given their approval to such involvement.³⁶ This disapproval stemmed from the fact that international intervention was regarded as interfering in internal affairs and a breach of sovereignty.

However, it is striking that the most influential and powerful European countries gave their consent to the use of force as a last resort.³⁷ The German foreign minister Hans-Dietrich Genscher said that either the CSCE or the WEU ought to step in "if the deployment of a European peace-keeping force is considered by all parties useful for an easing of tensions and is demanded by them".³⁸

The framework for such military intervention would most likely have been the Western European Union. But due to lack of experience and the fact that not all of EC's member states were parties to the WEU its power was limited. Therefore the level of intervention would also be kept to a minimum, and was referred to as "interposition" force.³⁹ Without the official legitimization by the

³⁶ The governments of Luxembourg and the Netherlands came up with the idea of launching a military intervention. For a further elaboration see *infra* next page. Sonja Lucarelli, *Europe's Response to the Yugoslav Imbroglio*, in *EUROPEAN APPROACHES IN CRISIS MANAGEMENT* 35, 38-40 (Knud Erik Jorgensen ed., 1997).

³⁷ Although taking a more cautious approach also the British government finally favored this possibility, along with France and Germany's consent. Philip Johnston, *Britain rejects military role in Yugoslavia*, *THE DAILY TELEGRAPH*, August 3, 1991, at 9.

³⁸ Rene Biagi, *AGENCE FRANCE PRESS*, Belgrade, August 2, 1991, at News.

³⁹ "Interposition forces" hinder conflicting parties of fighting each other, by separating them through these forces presence. Sarah Helm &

governments of Croatia and Serbia this project was deemed inadvisable. Genscher suggested that an early recognition of Croatia's independence would have made an intervention possible, because of the international dimension that would have been added to this civil war.⁴⁰ The EC focused on non-coercive measures again, after having declined this path.

During the summer of 1991 the situation deteriorated and fighting increased in the Croatian territory between Serb paramilitaries and the Croatian National Guard. The Serb paramilitaries were backed up by the troops of JNA and many villages in the Krajina Republic were taken.⁴¹ Since no agreement could be reached by the Europeans to intervene coercively, the EC thus convened a Peace Conference in September 1991 on the future of Yugoslavia in The Hague. The Member States agreed to this conference, which was conducted under the auspices of former British Foreign Secretary Lord Carrington, within the regime of EPC.⁴² His efforts during the next month led first to a statement that provided for the prospective recognition of independence of all those republics wishing it.⁴³ This was seen as first

Marcus Tanner, *EC troops set for role in Yugoslavia*, INDEPENDENT, August 3, 1991, at 1.

⁴⁰ MICHAEL E. BROWN, *THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICTS* (1996).

⁴¹ The liberation of the village of Kijevo in late August 1991 and its inherent ethnic cleansing marks the unofficial war that the JNA declared on Croatian president Tudjman.

⁴² The EPC convened on July 3, 1991, to decide about the Conference on the Future of Yugoslavia.

⁴³ A framework was agreed upon that would provide the necessary conditions for the acknowledgment of independence. It comprised the following three points: (1) A loose association of alliance of sovereign or independent republics; (2) Adequate arrangements to be made for the protection of minorities, including human rights

success, because Milosevic and Tudjman had agreed to the further elaboration of this framework. Lord Carrington forced the drafting of an arrangement for a general settlement that focused on the possibility for the creation of sovereign and independent republics for those that wanted it. Under this framework, the republics would form a free association, and mechanisms for the protection of human rights and special minority rights were also envisaged.

As ambitious as these "Arrangements for a General Settlement" might have been, Serbia finally did not accept, and voted against it.⁴⁴ Its objection stemmed from the fact that the recognition of a unilateral secession of any of the republics was considered legal under this settlement which was not in Serbia's interest. Furthermore, as mentioned before, Serbia wanted to combine all Serbs in one nation and moreover, still claimed the status of being the sole successor of the federal republic of Yugoslavia.⁴⁵ Milosevic also opposed the plan because he had fears regarding the impacts these secessionist tendencies would have on Kosovo. Kosovo's ethnic geography comprised 90% Albanians and less than 10% Serbs. As the "Arrangements

guarantees and possibly special status for certain areas; (3) No unilateral changes in borders.

⁴⁴ Surprisingly, Montenegro did not vote along with Serbia in the first place, but to the contrary, favored the Carrington Plan. Montenegro's president Bulatovic tough found himself between two seats. He was influenced by a European designed development project, to give money as economic aid to the country. On the other side he was under political threat of Milosevic.

⁴⁵ LAURA SILBER & ALLAN LITTLE, YUGOSLAVIA: DEATH OF A NATION 192 (1997).

for a General Settlement" applied to the whole territorial extension of the six republics, Kosovo would be included as well, and Milosevic would have to guarantee the same standard of rights to the Kosovar-Albanians as he was claiming for Serbs in the Croatian and Bosnian-Herzegovina territory. Because Kosovo never had the status of a republic and was not explicitly mentioned in the "Arrangements for a General Settlement". Therefore, Kosovo lacked the right to declare independence. The provisions nevertheless affected Kosovo in as much as it was part of the republic of Serbia.

Milosevic openly used Serb nationalism to legitimize the seizing of Croatian territory. Therefore his intention to negotiate truly for the achievement of peace was doubted.⁴⁶ Milosevic's unwillingness to agree to Carrington's proposal was a set-back in EC's mediation attempts. But immediately thereafter, the Hague Peace Conference shifted its focus to the still pending and increasingly important problem of recognizing the various declarations of independence. Therefore, the Badinter Commission was established and charged with making recommendations on this topic.⁴⁷

⁴⁶ Alan Hanson, *Croatian Independence from Yugoslavia, 1991-1992*, in *WORDS OVER WAR: MEDIATION AND ARBITRATION TO PREVENT DEADLY CONFLICT* 76, 82 (Melanie C. Greenberg et al. eds., 2000).

⁴⁷ This Arbitration Commission was named after its chairman Robert Badinter and was composed of two members appointed by the former Yugoslav federal presidency and three members appointed by the EC and its member states.

In the meantime Germany officially announced its strong support for a prompt recognition of Croatia and Slovenia.⁴⁸ In December 1991, at the Maastricht Inter-Governmental Conference of the EC, where the final negotiations for the creation of the European Union were concluded, Genscher announced Germany's unilateral recognition of independence of these two countries and sought to persuade the other members of the EC to concur. Lord Carrington vehemently opposed this action, remarking that the "Agreements to a General Settlement" in its first paragraph provided for the declaration of independence, but linked it to an overall constitutional and comprehensive settlement. Additionally, he warned the foreign Ministers of the danger to the overall peace process, which he saw dwindling after such individual action. His major concern related to the equal treatment that would have to be given to the other republics as well. Hence, if Bosnia-Herzegovina wanted independence too, no objections could be made then.⁴⁹

Mainly national interests of the other member states were the deciding factor for their ultimate agreement with

⁴⁸ The reason for Germany's single-handed proceeding was foremost the possible international intervention, once these countries were sovereign nations. Germany's support also derived from the close relationship it had held to Croatia, also given the fact that many Gastarbeiter (foreign workers) from Croatia found jobs in Germany. In a letter to the UN-Secretary General dated December 13, 1991, Genscher moreover points out to the fear of further escalation of the use of force by the JNA which would construe a refusal of recognition as a validation of its policy of conquest. See *supra* note 34, at 587.

⁴⁹ Carrington was also aware of the inevitable civil war that this behavior would lead to.

Germany. Britain, for example, wanted special treatment in relation to the European Monetary Union, which was about to be established within the treaty regime of Maastricht, and therefore needed the consent of Germany. The difficulty of this action lay in that it proceeded too rapidly, thereby showing disrespect for the recommendations of the Badinter Commission that were still forthcoming and finally submitted January 10, 1992. According to the criteria and the respective findings of the latter, recognition could only be granted to Slovenia and Macedonia. With regard to Croatia it declared reservations due to its treatment of Serbs in the Krajina. Thus the EC finally recognized Croatia contravening the decision of the Arbitration Commission, a Commission that was established and led under its own chairmanship.⁵⁰

Lord Carrington's plan did not succeed and the Peace Conference was declared a failure and officially closed in August 1992.

Susan Woodward in her attempt to spread responsibility for the outbreak of wars in the Balkans focused especially on Germany's reaction and behavior in the question of recognizing Croatian independence. She argued that the early recognition by Germany violated the still to be expected ruling of the Badinter Commission. Moreover, it created incentive to the other republics to request

⁵⁰ See *supra* note 28, at 37.

independence as well, which ultimately led to the war in Bosnia-Herzegovina.⁵¹

Germany's point of view and its defense were the following: First, Germany was not responsible for the disintegration of Yugoslavia by fall 1991, because it was brought about by the leaders of the former Yugoslav republics themselves. Milosevic's sought to establish a Greater Serbia and did not hold onto the integrity of all the six republics. This quest caused the break-up, because other leaders did not want to be forced into a state under Serbian hegemony. Neither Germany nor any other EC Member State could have prevented that. Second, Michael Libal counters Woodward's argument on the Badinter Commission. In his view, Germany took the decision one week after the EC foreign ministers had given their agreement, and thus did not act without the back up of the Community. Furthermore, the results of the Badinter Commission indicated that Croatia did fulfill the requirements although only under a reservation.⁵²

I do agree that the break-up of Yugoslavia was due to the power games played by the leaders of the former Yugoslavian republics. Not even Milosevic claimed for an integrated Yugoslav state, but wanted control over a state combining all Serb nationals in it. Nevertheless, Germany's pushing for recognition could not be circumvented by

⁵¹ SUSAN L. WOODWARD, *BALKAN TRAGEDY* 279 (1995).

⁵² Michael Libal expressing his personal view in an *Review of SUSAN L. WOODWARD: BALKAN TRAGEDY* (1995).

arguing that the actual recognition took place after the EC meeting. Member States in the EC did not and still do not have the same political powers. Without a doubt Germany's influence and size contributed to its role as powerholder. It could - if not explicitly than at least implicitly - force the other Member States towards an agreement, and thus pursue its own national interests.

D. CONCLUSION

Germany had national self-interest in the recognition of Croatia. For manifold reasons Germany decided to go its own way. Among those were anti-Serbian public opinion; solidarity towards the many Croatian "guest-workers" who lived in Germany - even religion played a role. Bavaria, Germany's largest "Bundesland" or federal region, holds a vast majority of Catholics, who supported their Croatian "co-religionists".

Germany was in a powerful position and therefore could even persuade France and Britain to agree. Tactical or strategic behavior, of course, helps in pursuing national interests. However, Germany also would have recognized Croatia unilaterally without the final consent of the EC ministers.

The fight for Croatian independence illustrates the weakness of a non-binding regime in the area of foreign

policy, but at the same time bears a challenge for the future to overcome these difficulties.

II. EU 1993 (Maastricht)

A. THE LEGAL STRUCTURE OF THE FOREIGN POLICY: POWERS/CAPABILITIES

The 1991 negotiations in Maastricht about the future of Europe resulted in the Treaty on European Union⁵³ that in November 1993 entered into force establishing the European Union.⁵⁴ Its formal structure has been the center of debate, but the most common and persistent metaphor of the EU is a temple, based on the idea that it combines under its capital various pillars. The capital contains the general provisions applicable to the entire Union. The three pillars might be grouped as follows: first, the three European communities: the European Community (EC), newly renamed after having dropped its "middle-name" Economic, the Euratom and the European Community for Steel and Coal (ECSC).⁵⁵ In addition, the Common Foreign and Security Policy (CFSP) forms the second pillar and the Justice and Home Affairs (JHA) constitutes the third.

Clearly, the CFSP evolved as successor of the EPC and will be the focus of this subchapter. Among the crucial objectives of the CFSP were the promotion of international

⁵³ Treaty on European Union amending Treaty Establishing the European Economic Community [hereinafter TEU], Feb. 7, 1992, O.J. (C224).

⁵⁴ Geoffrey Edwards, *Common Foreign Security Policy*, 13 Y.B. EUR. L. 497, 497 (1993).

⁵⁵ Those three Communities were established 1950 and 1957 and marked the beginning of European integration.

cooperation, the strengthening of the security of the Union and the preservation of peace according to the principles of the United Nations Charter.

The means to pursue this aim were defined in Article J.2, whose most important provisions include the adoption of joint actions and common positions.⁵⁶ Although the TEU upheld CFSP's intergovernmental character, the introduction of these two instruments should make it easier for each Member State to align their national policy with the decisions of the Union.⁵⁷

Powers:

Stemming from these two instruments were the powers of the Member States in the new framework of the CFSP to take action.

Common positions differed from the possibilities under the SEA in as much as in 1993 Member States not only "shall ensure that their national policies conform to the common position", but also were bound by them.

Joint actions were a tool that commits the Member States in the positions they adopted and in carrying out this policy. In order to reach a joint action three major steps had to be undertaken.⁵⁸ First, the European Council⁵⁹ defined general guidelines for the adoption of a joint

⁵⁶ See *supra* note 53, Art. J.2. TEU.

⁵⁷ See *supra* note 18, at.139.

⁵⁸ See *supra* note 53, Art. J.3. TEU.

⁵⁹ The European Council is formed by heads of state and government and the president of the Commission. It convenes at least once every six months with the aim of setting priorities and giving broad guidelines for EU policies, including those of the CFSP.

action. Second, the Council unanimously decided whether the matter defined in the guidelines should actually become a joint action. Finally, the process of implementation was coordinated, indicating the kind of measures that were used.

Although Community law was not applicable to CFSP, organs of the Community pillar were involved in the latter's decision-making process. This constituted a higher level of cooperation and consistency between EC actions and CFSP joint actions than was the case under the SEA. However, the powers in the field of external relations were dealt with simultaneously under the two regimes. The TEU attempted to mitigate this double structure by fostering consistency between the EC framework of common commercial and financial policies and the CFSP framework of a common foreign policy.⁶⁰

The possibility of common military action has been augmented since the SEA. The Treaty of Maastricht reactivated the WEU. With the creation of the CFSP the Union's principle purpose became "to assert its identity on the international scene, in particular through the implementation of a common foreign and defense policy,

⁶⁰ See *supra* note 53, Art. C TEU reads as follows: "The European Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives [...]. The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers."

which might in time lead to a common defense."⁶¹ E contrario, this meant that no common defense existed as of this date. But the Treaty also provided the main objectives in the security field. These included "to strengthen the security of the Union and its Member States in all ways", and "to preserve peace and strengthen international security [...]".⁶²

According to Art. J.4.2 TEU the implementation of these objectives was placed within the scope of the WEU's competencies.

Of specific interest and worth mentioning in the field of security powers of the EU were the so-called Petersberg Tasks.

The European Union adopted the Petersberg Declaration on June 19, 1992.⁶³ This declaration was the critical element in the decision to develop the WEU as the defense arm of the European Union. It also focused on strengthening the European pillar of the Atlantic Alliance (NATO). The major tasks that were defined in the Petersberg Declaration and were therefore known as the Petersberg Tasks combine: (1) humanitarian and rescue tasks, (2) peacekeeping tasks, and (3) tasks of combat forces in crisis management, including peacemaking.

⁶¹ See *supra* note 53, Art. B TEU.

⁶² See *supra* note 53, Art. J.1. TEU.

⁶³ See *supra* note 27, at 30; EUROPEAN SECURITY INSTITUTIONS: READY FOR THE TWENTY-FIRST CENTURY? 36 (publ. by Institute for Foreign Policy Analysis, 2000).

Coming back to the role the EU Member States had, it must be noted that armed forces of the WEU Member States will act under the command of the WEU to pursue these tasks. Yet, the decision whether to participate in a specific operation lay in the sole competence of the Member State according to their respective constitution.⁶⁴

B. THE LEGAL STRUCTURE OF THE FOREIGN POLICY: CONSTRAINTS

The weaknesses of this legal structure can be divided into two groups. First, there were problems of internal inefficiency. This group dealt with shortcomings in the decision-making process leading to a protracted reaction time to international crises. The result of these internal inefficiencies formed the second group, which was the problem of external effectiveness. How can the Union have greater capacity in the external relations area?

As far as internal inefficiency was concerned, they were caused by the flaws of the newly introduced joint actions and common positions, limiting the Member States powers to act.

Although joint actions could be implemented by a qualified majority vote, the actual decision whether to vote by qualified majority or not had to be taken unanimously.⁶⁵ Reaching an agreement among all Member States

⁶⁴ See *supra* note 12, at 512.

⁶⁵ When the Council takes a decision by qualified majority the votes are weighted according to the size of each Member State. They rank

at one point or another was therefore necessary and often time consuming. On the other hand, if Member States found consensus about a common declaration this generally implied that the effectiveness of such a declaration had been compromised by ambiguous formulations that allowed each country to mould the declaration to its own national interest.⁶⁶

Another downside of joint actions stemmed from the fact that they lacked effective enforcement mechanisms. Although their new binding character greatly increased their legitimacy vis-à-vis EPC joint actions, they continued to be mired in similar inefficiencies. With regard to the decision-making instruments, most of the difficulties apparent at times of the EPC had not been surmounted yet.

The second set of issues touched on the ineffectiveness of EU intervention on the international scene as result of these internal institutional shortcomings.

Here, the concept of consistency came into play. The duplication of work hindered the Union's strength in international affairs and its credibility as an effective actor. Another reason for inconsistency stemmed from discontinuity in its leadership. The Presidency of the

between 2 and 10 votes. For the adoption of a decision 62 votes out of a total of 87 are required.

⁶⁶ Elfriede Regelsberger & Wolfgang Wessels, *The CFSP Institutions and Procedures: A Third Way for the Second Pillar*, 1 EUR. FOREIGN AFF. REV. 29, 35 (1996).

European Union alternated every six months from one Foreign Minister to another. This apparently led to a lack of continuity for the international scene, i.e. other nation states, international or regional organizations.

The lack of financial provisions for the operation of CFSP contributed to the unclear division between the two regimes. Art. J.11 outlined the responsibility of the Community budget to financially take care of CFSP matters. This implied the involvement of Community institutions in the decision process of CFSP issues, which was actually not planned given CFSP's intergovernmental character.⁶⁷

Lastly, the still anemic security and defense structure left the EU without a real chance of coercive intervention and therefore the use of military leverage. Also the fact that three (former) neutral states acceded to the Union in 1995⁶⁸ did not help the evolution of the WEU as a common defense instrument.

C. CASE STUDY BOSNIA-HERZEGOVINA

Resulting from the war in Croatia and the problems about its recognition at the end of 1991, Bosnia-Herzegovina held a referendum for independence in February 1992 which was appreciated by nearly the entire population. 99,4 % voted in favor, but this does not include the

⁶⁷ Arnhild and David Spence, *The CFSP from Maastricht to Amsterdam, in FOREIGN AND SECURITY POLICY IN THE EUROPEAN UNION* 43, 47 (Kjell A. Eliassen ed., 1998).

⁶⁸ Those neutral states were Austria, Finland and Sweden.

Bosnian Serbs who boycotted the referendum. But the actual percentage was sufficient to fulfill the 2/3-majority requirement of the Badinter Commission. Sovereignty gave them hope for international intervention according to the UN-Charter, and would furthermore de-legitimize the Bosnian Serbs.⁶⁹ The EC recognized Bosnia-Herzegovina early in April, this time according to the findings of the Badinter Commission. This referendum was required by the Badinter Commission in order to make sure that the minorities would get a chance of raising their voice.⁷⁰ At the time of the findings of the Commission in January 1992 this referendum had not yet been held, which led to the refusal of the granting of recognition by the Commission.⁷¹ By the time the EC recognized Bosnia-Herzegovina in April, the referendum was already held and thus EC's action was in accordance with the ruling of the Badinter Commission.

Immediately after the EC's recognition of Bosnian independence, heavy fighting broke out. Izetbegovic asked the UN, EC and CSCE for help. Interestingly, Cyrus Vance, the UN envoy on Yugoslavia said, "only the implementation of a European Community peace plan could halt the

⁶⁹ Melanie C. Greenberg & Margaret E. McGuinness, *From Lisbon to Dayton: Bosnia*, in *WORDS OVER WAR: MEDIATION AND ARBITRATION TO PREVENT DEADLY CONFLICT* 35, 45-47 (Melanie C. Greenberg et al. eds., 2000).

⁷⁰ The Arbitration Commission put special emphasis on the guarantee of the *uti possidetis* or self-determination principle. The Commission defined this principle within a minority or human rights framework and not as a mere right to independence. Ethnic communities were thus entitled to loosen or separate their ties to the newly established state, but could not claim territory for secession.

⁷¹ See supra note 34, at 592-593.

escalating war in Bosnia-Herzegovina".⁷² But one of the most recent truces that had been brokered by EC-representative Cutilleiro did not hold.

What had become known as the Carrington-Cutilleiro Plan or Lisbon Agreement, amounted to another failure. It started out well, when on March 18, the political leaders of Muslims, Croats and Serbs signed the EC-brokered agreement under which Bosnia-Herzegovina would become an independent state consisting of three ethnic constituencies. This served as a basis for the next negotiation round in Lisbon.⁷³ But already then it was apparent that the consensus was deceptive. For the Muslim population this agreement meant partition into three ethnically defined entities. Therefore, only a few days later, Bosnian president Izetbegovic declared the rejection of the plan. He repudiated the agreement, because of fear of ethnic cleansing, which ironically is precisely what happened.

Although thus far the EC was the most intensively involved international actor on the Balkans its successes were minor. And this did not change with the rapid increase of violence and the explosion into a large-scale war.

⁷² Victoria Stegic, *Army enters Sarajevo; Vance says EC plan is "only solution"*, AGENCE FRANCE PRESSE, April 15, 1992, at News.

⁷³ Jonathan S. Landay, *Progress made toward Bosnia-Herzegovina agreement*, UNITED PRESS INTERNATIONAL, March 18, 1992, at International.

As of 1993 the European Union entered into existence and with it the common foreign and security policy. Yet, the United Nations became stronger involved at the same time.

On the ground, Serbs and Croats had agreed to a partition of Bosnia-Herzegovina, but the Muslims fought for a united state. The joint UN and EU plan elaborated by Vance and Owen suggested ten autonomous provinces first and foremost designed by ethnic factors to protect Bosnia's sovereignty. On the other hand, they sought to please Serb and Croatian demands by guaranteeing wide autonomy to the provincial governments. Although criticism was raised on all sides, the plan was only rejected by the Bosnian Serbs whose territorial gain reached during the war would have been reduced and the Serb cantons were not connected to Serbia.

The literature about Milosevic's role and strategy is divided. Greenberg and McGuinness argue that he pretended goodwill and that he would be voting for the adoption of the plan, whereas assuring the Bosnian Serbs that this plan would never be implemented.⁷⁴ In contrast, Charles Lane interpreted Milosevic behavior as favoring the Vance-Owen plan because he feared international sanctions and intervention. Lane further argues that the rejection of the plan fell within the sole responsibility of Bosnian Serb

⁷⁴ See *supra* note 69, at 49.

army leader General Mladic's, who did not want to give up the territorial gain.⁷⁵

Irrespective of what Milosevic's strategy might have been, I doubt the ultimate success of the Vance-Owen plan. It was a compromise, but none of the disputing parties were in favor of it. The peril of justifying ethnic cleansing which was inherent to the plan by granting territories to the oppressors endangered a lasting peace and could not have produced stability in the region.

1994 marks the year in which it became obvious that mainly because of lack of military force the Europeans were incapable of ending the war. On the ground hostilities increased, the massacre of Sarajevo's marketplace and attacks on Gorazde are few examples. As a result the Contact Group was formed, comprising the foreign ministers of France, Germany, Russia, UK, US plus representatives of the EU and UN. The centerpiece of this diplomacy was the establishment of a federation between Muslims and Croats. The peace plan developed in the Contact Group provided for the retaining of Bosnia's international borders but divide the country into the Federation (51 per cent of the territory) and Bosnian Serbs (49 per cent). The fate of this plan paralleled that of the Vance-Owen plan. The Bosnian Serbs rejected it.

⁷⁵ Charles Lane, *Dateline Bosnia: Beyond Pale* (May 31, 1993), in *THE BLACK BOOK OF BOSNIA* 86, 87 (Nader Mousavizadeh ed., 1995).

Again the situation deteriorated with the seizure of control of UN "safe-haven" Srebrenica in July 1994 by Bosnian Serbs. NATO thereafter used air force against Serb targets. Violence increased on both sides, but due to combined forces of Croatia and Bosnia coupled with the support of NATO left the Bosnian Serb infrastructure damaged. This situation put pressure on Milosevic to cooperate towards a peace agreement.

The Dayton Peace Agreement, signed in Ohio in November 1995, finally halted the war and the U.S. claims this success as their exclusive victory. Although Richard Holbrook's efforts to negotiate and mediate led to a settlement of the conflict, it would be unfair to negate the impact European attempts had in bringing about this ultimate solution.

Now, I will give specific examples of joint actions that make clear the constraints of the legal structure given by the Treaty of the European Union.

First, I will talk about the joint action on convoying of humanitarian aid to Bosnia-Herzegovina.⁷⁶ This particular case shows the difficulties in figuring out the financial responsibility of implementing the action. Although the European Council had come to a decision efficiently, the problems in implementing it lead to a delay. This was

⁷⁶ Joint Action 93/729/CFSP, L 286, November 20, 1993.

caused by the Council that needed four months to come to an agreement. Finally, the cost was split between the Community budget and the Member States. However, by the time the decision was implemented, winter was over and the need for immediate humanitarian aid remote.⁷⁷

This evidences the need for both internal efficiency and external effectiveness of successful intervention.

Another joint action, which illustrates some constraints of the CFSP centers on the city of Mostar. The city of Mostar united all three ethnicities each of them claiming their right over the city. In 1994, after a US-brokered agreement between the Bosnian Muslims and Croats, a EU administration was proclaimed. The main objectives were to restore the basic infrastructure as well as political and social reunification. Remarkably, for the first time a joint action integrated the WEU. The WEU should organize and monitor a joint Bosnian/Croatian police force.

But the fighting could not be stopped and the EU lacked leverage to bring about a halt to these violent outbursts. Moreover, the command structure between the WEU and the EU was not sorted out in advance. Consequently, the local police did not respect EU authority.

The underlying problem evidences the flaws in the legal structure, which does not provide adequate

⁷⁷ See *supra* note 67, at 52.

enforcement mechanisms. In addition, the joint action was adopted without proper assessment of the facts on the ground.

A more successful joint action with a broader focus point dealt with stability in the whole region. It sought to solve the border and minority disputes between countries of Central and Eastern Europe. A substantial part of the successful cooperation among those countries can be attributed to their quest for accession to the Union. Moreover, national interests of the Member States converged which made a common decision easier.

This action implies EU's effort to preventive action towards conflict management.

D. CONCLUSION

Considering the EU's foreign and security policy from 1993 onwards, I would like to summarize the existing weakness for this period. Such weakness derives from an inefficient decision-making process, from the lack of adequate implementation measures, the inconsistency between EC and CFSP regimes in dealing with foreign policy and the resulting lack of effectiveness and visibility of EU's actions on the international scene.

These constraints of the CFSP legal structure under the TEU as it was adopted in Maastricht made the further

evolution of the foreign and security policy field necessary.

III. EU 1998 (Amsterdam)

A. THE LEGAL STRUCTURE OF THE FOREIGN POLICY: POWERS/CAPABILITIES

The Treaty of Amsterdam adopted the Treaty of the European Union and the Treaty of the European Community. The numbering of Articles changed completely.⁷⁸

Two years prior to the signing of the Treaty negotiations started, reflecting the urgent need for reform sensed by the Member States on various issues culminating at the Intergovernmental Conference (IGC) of 1996. Among those issues was the EU 's external policy. Aspirations might have been too high, because the results reached are little more than a review of the provisions set out in the Treaty of Maastricht.⁷⁹ Nevertheless, some new power was attached to the common foreign policy of the Union, such as a more effective decision-making procedure and clear rules concerning the instruments for taking action.⁸⁰

Powers:

Art. 12 TEU comprises these instruments that determine the legal powers of the Member States in the field of

⁷⁸ TEU Articles changed from capital letters to numbers. If I am referring to TEU Articles from now on, I mean the TEU after the amendments incorporated by the Treaty of Amsterdam: Treaty on European Union, O.J. C 340/2 (1997).

⁷⁹ Armin von Bogdandy, *The European Union as a Supranational Federation: A Conceptual Attempt in the Light of the Amsterdam Treaty*, 6 COLUM. J. EUR. L. 27, 27 (2000).

⁸⁰ Those new powers can be deduced from Art. 11 TEU which incorporates the objectives of CFSP. See, Michel Petite, *European Integration and the Amsterdam Treaty*, ST. LOUISE-WARSAW TRANS'L L J. 87, 106 (1999).

foreign policy. Aside from the already established joint actions and common positions, it introduces common strategies.⁸¹ In this process the European Council plays the principal role by taking decisions in form of common strategies "where the Member States have important interests in common"⁸². Member States are required to set out their objectives, the duration and financial means of this joint strategy. With this innovation, the states sought to overcome the ineffectiveness inherent to the preceding legal structure.

The provisions dealing with joint actions were refined in order to have more comprehensive and operational guidelines.⁸³

To increase the actual powers of the Member States in making decisions the Treaty of Amsterdam sought to find a solution to the prevailing unanimity problem. By strengthening the possibility of qualified majority voting and introducing constructive abstention Member States are more likely to come to an agreement and therefore take action at all.

Constructive abstention - regulated in Art. 23 (1) TEU - enables Member States that cannot vote in favor of a provision because of political or national reasons to

⁸¹ See *supra* note 78 , at Art. 12 TEU (ex J.2)

⁸² See *supra* note 78 , at Art. 13 TEU

⁸³ For example, Art. 14(1) TEU (ex J.4.1) provides that "joint action shall address specific situations where operational action by the Union is deemed to be required". This Article seeks to limit the involvement of the European Commission in financial matters. See *supra* note 78 , at Art. 14(1) TEU

nevertheless prevent the adoption of that decision by abstaining from the vote.⁸⁴ Having abstained, the Member State is not bound to implement this specific decision, but it has to acknowledge its obligatory character for the Union. The only limitation of this rule is that the number of Member States having recourse to constructive abstention may not exceed more than one third.⁸⁵

Paragraph 2 of Art. 23 TEU establishes the general possibility of derogation of the principle of unanimity. The Council has the right to act by qualified majority if it adopts joint actions, common positions or other decisions on the basis of an agreed common strategy. The same holds true for their implementation.

In October 1999 the former Secretary General of NATO Javier Solana was assigned the role of High Representative for the CFSP, a new position introduced by the TEU⁸⁶. Aiming at a more coherent foreign policy he is acting on behalf of the Council and conducts political dialogue with third parties. The creation of a "Mr. CFSP", as he also is often referred to⁸⁷, is one step towards a uniform diplomatic

⁸⁴ Franklin Dehousse, *After Amsterdam: A Report on the Common Foreign and Security Policy of the European Union*, 9 EUR. J. INT'L L. 525, 533 (1998).

⁸⁵ See *supra* note 78, at Art. 23(1) TEU.

⁸⁶ Art. 26 TEU states the objective of the High Representative, who "shall assist the Council in matters coming within the scope of the CFSP in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third countries". See *supra* note 78, at Art. 26 TEU.

⁸⁷ As early as June 1995 the term "Mr./Ms. CFSP" was introduced at the IGC in Messina, Italy. In the final report of the Reflection Group

representation. Although Solana's reputation in the international community as political and diplomatic authority might be undoubted, bringing a new actor onto the yet crowded stage will possibly lead to more confusion rather than transparency.⁸⁸ This can be evidenced by the following facts. First, the High Representative for CFSP acts at the same time as Secretary General of the Council, diminishing therefore his independence and overloading him with administrative work. Second, the smaller Member States may feel that their interests will be less heard and thus less represented.⁸⁹

Another set of powers is connected to the representation of the EU to the international arena. The crucial aspect of external effectiveness of any kind of action in the management of conflicts had to be addressed by the ToA.

Thus, the High Representative for CFSP is supposed to assist the Presidency, which is the main representative body of the Union's foreign relations, and to bring consistency to this field. This is deemed necessary because Member States hold the Presidency on a rotating basis for

this expression is used to find a solution for the Union's problem of lack of stability and continuity in its external relations. At this point, nevertheless, the exact personification of the CFSP was yet unclear. [Http://europa.eu.int/en/agenda/igc-home/eu-doc/reflect/final.html](http://europa.eu.int/en/agenda/igc-home/eu-doc/reflect/final.html) Reflection Group's Report (Dec. 5, 1995).

⁸⁸ See *supra* note 84, at 534.

⁸⁹ Jörg Monar, *The European Union's Foreign Affairs System after the Treaty of Amsterdam: A 'Strengthened Capacity for External Action'?*, 2 EUR. FOREIGN AFF. REV. 413, 423 (1997).

six month each. So far the Troika⁹⁰ - consisting of 3 Member States, the one holding the current Presidency plus the preceding and the following - has been the only instrument to secure stability.

Accurate information is seminal to keep misjudgments to a minimum. To facilitate work for the High Representative for CFSP a Policy Planning and Early Warning Unit (PPEWU) was established in accordance with Declaration 6 included in the Final Act. Its principal goal is to efficiently react to developments in the global sphere. The following tasks have been defined: monitoring and analyzing developments in areas relevant to the CFSP; identifying areas on which the CFSP could focus in future; providing timely assessments and early warning of events, potential political crises and situations that might have significant repercussions on the CFSP; and producing policy option papers for the Council. The PPEWU is subordinated to the Secretary-General of the Council and therefore strengthening the latter's role by simultaneously taking influence away from the Presidency and the Commission.⁹¹

Military powers were again on the agenda and underwent some changes. With the reforms after Amsterdam the Petersberg Tasks have been explicitly included in Art. 17 of the TEU.

⁹⁰ Art. 203 TEC. The Troika is not a treaty organ, but it represents both the Community and the Union when a show of political unity is required.

⁹¹ See *supra* note 84, at 532.

Of importance in the further development of the European Union's military and non-military crisis management capabilities were the European Councils held in Cologne and Helsinki. It was made clear that the European Council was conceived as an autonomous (i.e., independent of NATO actions) modus operandi for conducting EU-led military operations in response to international crises. Among the major objectives, which have been laid out are the option for the Member States to deploy military forces of up to 60,000 persons within 60 days and sustain for at least 1 year. This goal has to be achieved by 2003 and should be used for the implementation of the whole range of Petersberg Tasks. Moreover, enhanced co-operation between NATO and EU as well as a non-military crisis management mechanism will be established to coordinate the various civilian means.⁹²

B. THE LEGAL STRUCTURE OF THE FOREIGN POLICY: CONSTRAINTS

The Treaty of Amsterdam empowered the European Union by giving it new and more precise instruments. To be sure, this enlarged its capacity to act. But new mechanisms often imply new constraints.

First, the introduction of common strategies bears restrictions. The treaty does not explicitly provide

⁹² Doc/99/16, para. 25-29, Presidency Conclusions Helsinki European Council, December 10 and 11, 1999.

binding effect on the Member States, thus leaving a range of interpretations and room for ineffectiveness.⁹³

The introduction of qualified majority as a step away from the sometimes inefficient requirement of unanimity is also limited in its relevance. Any of the members of the Council can still veto the adoption of a decision to be taken by qualified majority by stating "reasons of national policy"⁹⁴ and thus impede the vote. The matter can then, upon request by qualified majority, be referred to the European Council for unanimous decision;⁹⁵ however, the question remains how frequently Member States will make use of this possibility and thus impede the establishment of a common strategy.

This also has direct impact on the efficiency of the Union's crisis management, because once a conflict arises, immediate action is required. Therefore, if redress to the European Council is made necessary by a veto of one of the Member States, a prompt strategy is doubtful.⁹⁶

Second, although Solana's reputation in the international community as political and diplomatic authority might be undoubted, bringing a new actor onto the yet crowded stage will possibly lead to more confusion rather than transparency.⁹⁷ This can be evidenced by the

⁹³ See *supra* note 89, at 426.

⁹⁴ See *supra* note 78, at Art. 23(2) TEU

⁹⁵ Note that decision concerning military or defense issues are not subject to this rule.

⁹⁶ See *supra* note 84, at 533.

⁹⁷ See *supra* note 84, at 534.

following facts. First, the High Representative for CFSP acts at the same time as Secretary General of the Council, diminishing therefore his independence and overloading him with administrative work. Second, the smaller Member States may feel that their interests will be less heard and thus less represented.⁹⁸

Consequently, introducing one persistent interlocutor⁹⁹ seems like a viable solution, but opens a door to another problem. Throughout his first year of work Solana was permanently confronted with a conflict about competences between the Commissioner for External Relations (Chris Patten) and himself representing the CFSP of the European Union.¹⁰⁰ This reflects the general observation of unclear delimitations throughout the Union's foreign policy.

Third, the attached Policy and Planning Unit is not working efficiently yet. No documents can be found about works in progress. The reason might be the difficulty in accessing confidential information of the Member States to base its reports and warnings on. A further enlarging Union may even exacerbate this problem.¹⁰¹

⁹⁸ See supra note 89, at 423.

⁹⁹ The High Representative is nominated for a period of 5 years.

¹⁰⁰ Press reported constant mockeries between Solana, representing the CFSP, and Patten, representing the Commission. This conflict is mostly about the lack of a clear cut of competencies between these two resorts. News articles also evidence the personal character between the two high officials. *Patten beklagt schlechtes Krisenmanagement*, FRANKFURTER ALLGEMEINE ZEITUNG, November 30, 2000. Dirk Koch, *Alle gegen jeden*, DER SPIEGEL ONLINE, 27/2000.

www.spiegel.de/spiegel/0,1518,83365,00html

¹⁰¹ See supra note 89, at 417.

C. CASE STUDY KOSOVO

Kosovo remained un-discussed in the Dayton Peace Agreement of 1995. Kosovo only appears in the Dayton Agreement in connection with the lifting of the sanctions against Yugoslavia and its corresponding membership in international organizations. This would only be granted, if Yugoslavia not only verbally declared, but also implemented the reestablishment of Kosovo's autonomy.¹⁰² Kosovo's autonomy was established in the Yugoslav Constitution of 1974. The difference to the status of a republic was that provinces like Kosovo could not declare their partition from the federation. Milosevic came to rise in the late 1980's and openly supported the Serbs living in Kosovo, which by 1990 led to the revocation of Kosovo's autonomy. The objective was to change the ethnic composition of Kosovo. Albanian's started a resistance movement; the LDK (League for a Democratic Kosovo) was established and led by the intellectual Rugova. This led to a parallel state apparatus or shadow government. But in reality this government caused difficulties, and the after 5 years this situation of uncertainty and duplicity became worse. Furthermore in 1997 the Albanian state system and institutions collapsed, impacting the deterioration in Kosovo. The KLA (Kosovo Liberation Army) gained influence,

¹⁰² Dayton Peace Accord

the Serbian government however declared it to be a terrorist organization.

Again, I will focus on the specific European Union interventions to see whether within the last years it has learned its lessons.

Early in 1998 violence started to spread as response to the international reluctance to recognize Kosovo-Albanian independence. The Contact Group, after its involvement in the solution of the Bosnian war from 1994 onwards, responded to the crisis in Kosovo with a joint declaration. It aimed at the immediate opening of dialogues between the disputing parties, forced the Serbian government to withdraw its troops within the next 10 days and proposed the presence of international monitoring organizations. Despite disagreement among the different countries that formed the contact group about the kind of leverage that should be used, the Serbian government refused to accept international organizations coming into Kosovo, claiming it was a purely 'internal' affair. Milosevic legitimized his position by holding a referendum. In April 1998 94,7 % voted against foreign dominated intervention in the solution of the Kosovo crisis.¹⁰³ Kosovo's ethnic Albanians, who repeatedly refused to meet with a Serbian government delegation unless foreign representatives were

¹⁰³ WOLFGANG PETRITSCH ET AL., KOSOVO-KOSOVA: MYTHEN, DATEN, FAKTEN 219 (1999).

present, boycotted the referendum.¹⁰⁴ As fighting progressed, efforts to mediate between the Kosovo Liberation Army and the Serb government increased. Russia's President Yeltsin, who had an amicable relationship with Serbia, reached an agreement with Milosevic, who grudgingly accepted the entrance of international humanitarian organizations into the region committed to the continuation of peace-talks with the Kosovo-Albanian leader Rugova.

With the shift of the EU-presidency to Austria on July 1, the involvement increased. The EU, U.S. and Russia formed the Kosovo Diplomatic Observation Mission (KDOM) to monitor and document the events in the province, but it also brokered a ceasefire between the KLA and Serb troops.¹⁰⁵ Nevertheless, urgent action was required as the humanitarian catastrophe developed and thousands of refugees fled the region. Only months later the EU nominated Wolfgang Petritsch as the EU-special envoy to coordinate humanitarian aid sponsored by the Union. Cooperation with US-special envoy Chris Hill followed, who already was looking for peaceful solutions to the conflict.¹⁰⁶

¹⁰⁴ *Serbians give massive 'no' to foreign mediation Kosovo*, AGENCE FRANCE PRESSE, April 24, 1998, at International News.

¹⁰⁵ The European component of KDOM was based on the ECMM established in 1991. See *supra* note 30 and note 31.

¹⁰⁶ In an informal interview I had with then EU-special envoy for Kosovo Wolfgang Petritsch on January 2, 2001, he confessed that only after U.S. pressure did the European Union finally give a mandate for a special envoy. Compared to the U.S. well established team, Petritsch had to choose his own staff consisting only of two assistants. Their actions were based on a rather "common sense-approach". See *infra* the German notes of the interview in Appendix A.

The EU declaration on a comprehensive approach to Kosovo¹⁰⁷ emphasized the urgent necessity of a dialogue between the disputing parties, especially asking the Kosovo Albanian leadership to be well represented in these negotiations. The EU also requested the parties to respect UN Resolutions 1199 and 1203. Moreover, the EU declared its support of both the OSCE Kosovo Verification Mission (KVM) as well as NATO's air verification mission. It also states the attempt of contributing in the implementation of confidence building measures among the various communities in Kosovo.

The subsequent attempts of EU and US special envoys to draft a declaration for an agreement failed. The main reason for the failure was the disarray on the side of Kosovo Albanians. Representatives of the "Government of the Republic of Kosovo" had nominated a negotiation team. This team, however, did not comprise representatives of the opposition which had close ties to the KLA. The KLA thus claimed that the officially nominated team lacked legitimization.¹⁰⁸

¹⁰⁷ Declaration by the European Union on a comprehensive approach to Kosovo, October 26, 1998.

¹⁰⁸ For a good comparison between the different positions see *supra* note 103, at 248-250. The summarized positions were as follows: The position of the government included that the Republic of Kosovo had to be an autonomous entity, indicating the population's right to independence after the dissolution of Yugoslavia. A transitional contract need not provide this status, but at least grant the right to self-determination immediately. Furthermore, Kosovo had to be a multiethnic state in which parliamentary democracy and the equality of all citizens was guaranteed.

In January, after further escalation of violent incidents in the region,¹⁰⁹ the Contact Group met in London with the disputing parties, pressuring them towards a political solution of the crisis. EU special envoy Petritsch shaped this meeting by formulating the Basic Elements, which were accepted despite US resistance, at the conference as "Non-Negotiable Principles" of the Contact Group. Those Elements formed the basis for the following negotiations. The Contact Group's foreign ministers decided to put a final halt to the humanitarian catastrophes and urged the parties to attend the "Dayton-like" setting of negotiations at Chateau Rambouillet in France. The time limit was set to one week with possible extension of another week. The invitations to the negotiation-teams comprised a provision threatening the use of force in case of non-compliance. NATO troops were thus prepared to launch a war in the event that the negotiations were unsuccessful.

The inclusion of this provision is probably the most contested in the whole history of the Balkan wars. Once this threat was on the table, the move back was inadvisable. The credibility of the international community and within the community the credibility of the European

KLA's vision of a peace treaty had to include an actual date as to when the Albanian population would be granted the right to self-determination. The ultimate outcome of this treaty also would be an referendum in order to let Albanians decide whether they wanted to stay within the Yugoslavian federation or not. They suggested to pressure Milosevic to accept this referendum

¹⁰⁹ One of these cruel incidents was the massacre of Racak on January 15, 1999, where 45 Albanian civilians were killed. *Kosovo: Empörung über Massaker an 45 Albanern*, BERLINER ZEITUNG, January 17, 1999.

Union was at stake. European leverage mostly depended on sanctions against Yugoslavia. Those sanctions also forbade the Yugoslav airline JAT from flying to the Member States of the EU. Furthermore, the EU produced a document titled "EU incentives and deterrents for the Kosovo political process: FRY".¹¹⁰ This document comprises Incentives and Deterrents for both the FRY and the Kosovo Albanians. For example, FRY incentives were: explicit inclusion of Serb-populated areas into EU assistance to Kosovo; progressive relaxation of Kosovo related sanctions regime; prospects of the FRY being allowed to participate fully in more international organizations. Deterrents mentioned in the document were: progressive tightening of the existing Kosovo related sanctions regime; considering new measures (visa ban, etc.); freezing of all financial assets in EU Member States. On the Kosovo Albanian side the incentives included: clear commitment of the EU to substantial autonomy for Kosovo, reconstruction and humanitarian aid. The deterrents for the Kosovo negotiation team were: action to stop financial aid to Kosovo (KLA); international presence in Albania and Macedonia to stop flow of weapons; non renewal of visa, and the denomination of the KLA as terrorist organization.

The outcome of the Rambouillet conference included an agreement about the progress that was made in the

¹¹⁰ See *supra* note 103, at 276-277.

discussion about Kosovo's autonomy. Nevertheless nothing could be signed at that moment, but the parties agreed to a follow-up meeting in Paris. This was also necessary, because the rules about implementation have not been negotiated upon during Rambouillet.

Marc Weller analyzed the Rambouillet talks and concluded that in terms of substance progress could be noticed as to the fact that "the Kosovo agreement avoided the need to reconcile propositions which are essentially irreconcilable". In this case self-determination vs. territorial unity were not solved, but an interim and less pragmatic solution was sought.¹¹¹

In Richard Goldstone's assessment in the Kosovo Report he drew the conclusion that the diplomatic efforts to resolve the crisis were flawed because of various tensions. Among these he argues were the multiple agendas which led to an inefficient process; moreover, the international community was not capable of dealing with Milosevic and therefore believed that the threat of use of force was the only way. This however, led to the actual use of force as a matter of credibility on the part of the international community. He furthermore agreed with Weller in as much as a lasting peace through negotiations was rather unlikely due to an irreconcilable chasm between the parties.

¹¹¹ Marc Weller, *The Rambouillet conference on Kosovo*, 75 INT'L AFFAIRS 211, 249 (2/1999).

In my opinion Rambouillet itself did not succeed in bringing a diplomatic solution to the crisis in Kosovo, because it was too superficial. Although an agreement on substantial autonomy of Kosovo could be reached the exact implementation was left open, especially Appendix B about the Status of Multi-National Military Implementation Force was not addressed. This Appendix granted NATO among others immunity, free passage and free imports and exports in order to implement the political agreement. The lack of not addressing this crucial issue of implementation was a major flaw in the Rambouillet peace process, because without consent about implementation the political agreement was less valuable and operational. Leaving difficult subjects to a later time, was thus an impediment to a solution and also amounted to ineffectiveness.

Until the follow-up conference in Paris could convene, the disputing parties had time to rethink their positions. On March 15, 1999 Petritsch opened the talks and presumed that the political part about Kosovo's autonomy had been agreed upon leaving only the implementation to discuss. However, in the mean time Serbs had put into doubt this prior agreement, and denied a discussion about the implementation part unless the political part would be reopened. Although the Kosovo Albanian's signed the Rambouillet agreement three days later, Milosevic refused.

He felt betrayed by Rambouillet and furthermore denied the facts on the ground like the number of refugees.

The Paris Follow-on Talks amounted to the failure of joint diplomatic efforts to solve the conflict. The ultimate result were the earlier announced NATO airstrikes that lasted for 78 days.

D. CONCLUSION

Concluding this section about the period from the signing of the Treaty of Amsterdam until the Kosovo crisis of 1998/1999, it is evident that European Union efforts to successfully engage in conflict resolution were not sufficient.

The reasons can for example be found in the slow process of electing a European special representative. This is inherent to the general lack of early warning unit. Despite its geographical proximity to the crisis, the EU did not pay sufficient attention to the ongoing escalation of conflict in Kosovo.

Concerning the Rambouillet conference itself and the various diplomatic efforts, it is doubtful whether an agreement could have been reached given the reluctance of Milosevic even to send high officials. The threat of use of

force caused a further dilemma.¹¹² Although it helped bringing the FRY to the negotiation table, it simultaneously gave the KLA a secure bargaining chip. They even seemed to be waiting for air strikes.

Therefore, incorrect assessments by all mediators involved led to an ineffective approach towards conflict resolution that ultimately failed to prevent the outbreak of hostilities.

IV. EU 2001 (Nice)

A. THE LEGAL STRUCTURE OF THE FOREIGN POLICY: POWERS/CAPABILITIES

February 26, 2001 the Treaty of Nice¹¹³ was signed, amending the TEU and the Treaty of Amsterdam. Additionally, it has incorporated the Protocol on the enlargement of the European Union, focusing on the institutional problems faced by this process.

Since the establishment of the post of High Representative of the CFSP and its subsequent problems concerning the division of powers between the Community action in the external policy field and the CFSP action, progress has been made. The signing of a joint document by the two representatives, Solana and Patten, at the Intergovernmental Conference (IGC) in Nice in December 2000 illustrates the form such progress has taken. fact that

¹¹² See *The Kosovo Report: Conflict - International Response - Lessons Learned*, Independent International Commission on Kosovo, 152 (2000).

¹¹³ Treaty of Nice, O.J. C 80/01 (2001). The ratification of the Treaty will approximately need another 18 months.

This joint report is entitled "Improving the Coherence and Effectiveness of the European Union Action in the Field of Conflict Prevention."¹¹⁴

With this document, both representatives aim at coordinating their respective instruments and powers at hand in order to achieve a more efficient conflict management system. The report addresses both long-term and short-term goals and recommendations.

Furthermore, the European Union declares the promotion of stability and the empowering of international security worldwide as its fundamental objective. It also constitutes conflict prevention as one of its most important external policy challenges.

This shift in objectives and establishment of effective intervention in non-military conflict resolution as new goal gives hope that the appropriate and necessary steps for implementation will soon be realized.

Powers

This trend is also reflected in the actual amendment of the Treaty of Nice. The most important aspect with regard to the foreign policy of the Union and its effectiveness is the insertion of Art. 27a - 27e TEU. They aim at enhanced cooperation to serve the interests of the Union, especially the assertion of its identity on the

¹¹⁴ *Improving the Coherence and Effectiveness of the European Union Action in the Field of Conflict Prevention*, a Report presented to the Nice European Council by the Secretary General/High Representative and the Commission, Press Release Nr: 033/00, Nice, Dec. 8, 2000.

international scene. The Art. 27a also provides for respect of the consistency of the CFSP, the powers of the European Community and of the "consistency between all the Union's policies and its external activities." Enhanced cooperation applies to the implementation of joint actions as well as common positions, but does not relate to actions of a military or defense nature. If Member States intend to establish such enhanced cooperation, the High Representative for the CFSP shall ensure that the European Parliament and the Council are informed of this implementation.

These provisions attempt to foster consistency both among the Member States as well as between the Member States vis-à-vis the European Community. Art. 27d sets out timelines in order to prevent delays and thus to be more efficient.

The concept of enhanced cooperation also gives the European Union more credibility as an actor on the international scene.

On 22 December 2000, the ECMM was renamed the European Union Monitor Mission in a Joint Action adopted by the Council of the European Union.¹¹⁵ The EUMM reports to the Council through the Secretary General/High Representative Javier Solana. The important change that accompanies the renaming is that the EUMM can no longer be considered an

¹¹⁵ Joint Action 2000/811/CFSP.

instrument of the Member States; rather it is described as an instrument of the EU's Common Foreign and Security Policy.

With regard to security and defense the Nice European Council adopted the Report on the European security and defense policy. This report by the Presidency provides for the development of a military capacity, permanent military structures and the incorporation of the crisis management functions of WEU.¹¹⁶

However, Art. 17 TEU was amended and the provisions dealing with the relations between the WEU and the EU were dismissed.

Additional power was granted to the renamed Political and Security Committee.¹¹⁷ Aside from its objective of monitoring the international situation in CFSP matters, it shall also exercise "political control and strategic direction of crisis management operations."¹¹⁸

Generally, when we are talking about the powers of the EU in foreign relations, there is an increasing trend towards combining all the instruments available within the different pillar structures and frameworks. Those different

¹¹⁶ Memorandum to the Members of the Commission, Summary of the Treaty of Nice, Brussels, January 18, 2001 [SEC (2001) 99]. See also <http://europa.eu.int/igc2000/>.

¹¹⁷ See *supra* note 113, at Art. 25 TEU. This entity used to be called Political Committee and comprises Political Directors from the Foreign Ministries. The PoCo already prepared for EPC meetings of the Foreign Ministers, and was incorporated into the Treaty system in Maastricht for the first time.

¹¹⁸ See *id.* at Art. 25 newly inserted subparagraph 2. The Committee may be authorized by the Council to take the according decisions. (subparagraph 3).

regimes have consented to working together to achieve the aim of making the Union more efficient and effective in dealing with international conflicts.

B. THE LEGAL STRUCTURE OF THE FOREIGN POLICY: CONSTRAINTS

The Treaty of Nice and its amendments does not significantly augment the scope of possible action by the EU and the Member States in the field of foreign. The novelties outlined under section IV.A. do not introduce new instruments for action. Yet they attempt to enhance consistency, coherence and cooperation in the development of a common foreign policy.

The question of constraints is thus not notably different from the regime provided for under the Treaty of Amsterdam.

Most striking in the field of international conflict management is the lack of an efficient early warning unit, which the Treaty has not addressed. . However, as the case of Macedonia will show preventive actions are applied more effectively than ten years ago, but this is due to political will and not to the legal framework.

Members of the European Parliament also criticize the lack of information flow between the European Institutions.¹¹⁹ This impedes rapid reaction.

¹¹⁹ Solana Says Macedonian Constitution Must Change, EUROPEAN REPORT, March 31, 2001, at Section No. 2581.

C. CASE STUDY MACEDONIA

Unfortunately, the problem of instability in the Balkans has not found an end in 2001. Macedonia serves as the best test case for how the European Union deals with international conflicts at the beginning of the new century.

Until 2000 the story of Macedonia was a story of success.¹²⁰ The country itself borders states with a high conflict potential such as Serbia and its autonomous region Kosovo. That makes Macedonia prone to ethnically based spillover effects. Why did this country of 2 million people among who one third is Albanian Macedonian, reject war so effectively? And in the light of the most recent events from February until May 2001, when violence broke out in the parts around the city of Tetovo, how did the EU intervene to help prevent an escalation of the crisis?

The time has come for Europe to place a greater emphasis on foreign policy, especially in light of the disengagement of the U.S. that can be evidenced throughout the world. The EU fills the gap that the U.S. is about to leave behind. Richard Holbrooke does not believe in a yet strengthened and efficient Europe. In his view, to prevent

¹²⁰ ALICE ACKERMANN, MAKING PEACE PREVAIL: PREVENTING VIOLENT CONFLICT IN MACEDONIA 4 (2000). Alice Ackermann wrote this book prior to the recent escalation of the crisis, thus speaking of success. Nevertheless she limits the notion of success to "relative success". In doing so she clearly points to the possibility of outbreaks of hostilities in a multiethnic state, either by spillover effects from neighboring countries or from within the FRYOM.

a war in Macedonia "Washington should have a high-level emissary, clearly representing the Bush administration, alongside the European Union's Javier Solana. At present, by leaving diplomacy almost entirely in European hands, Washington risks repeating the mistake of 1991 - early neglect, followed by war."¹²¹

However, history seems to be reversed: Brussels is calling Washington for action. Solana told U.S. State Secretary: "We can manage, but you should visit too."¹²²

During the first months of the crisis (February and March 2001) EU's involvement in order to prevent the outbreak of a war gave rise to positive responses. Macedonian's minister of foreign affairs, Srgjan Kerim, for example, stated that Europe spoke with one voice and that was effective.¹²³ The internal-EU debate concerning the parties' respective competences for interventions was sorted out for this particular conflict. Solana entered into shuttle diplomacy traveling to Skopje and Tetovo on a frequent basis and offering his, and thus the EU's, support. Patten likewise attended these meetings as well as

¹²¹ Richard Holbrooke, *U.S. has Work to do in Balkans*, THE SEATTLE POST-INTELLIGENCER, Apr. 11, 2001, at p. B4.

¹²² Ian Black, *Comment & Analysis: Inside Europe: Schmoozing the Balkans*, THE GUARDIAN (LONDON), Apr. 9, 2001, at p. 17. The US edition of The Economist of May 31, 2001 states that "no senior American official has been to Skopje". *Working Out the World*, THE ECONOMIST, U.S. EDITION, May 31, 2001, at United States.

¹²³ Judy Dempsey, *EU's Accord with Macedonia could be model for Balkans*, FINANCIAL TIMES (LONDON), April 10, 2001, at Europe p.9.

the current president of the EU, Swedish foreign minister Anna Lindh.¹²⁴

This increased effort shows an actual shift in the priorities and objectives of the European Union towards the resolution of international conflict that was lacking in 1991. It also highlights the diminished tension between Solana and Patten over the allocation of responsibilities.

¹²⁵

Solana's visits were an effective diplomatic instrument in helping the EU prevent a further escalation of the conflict in Macedonia.¹²⁶ Despite Macedonian president Trajkovski's strict opposition to having Solana mediate the conflict, he welcomed the support of the EU.

The most effective leverage the Union could provide to foster the peace process was the prospect of accession to the European Union for Macedonia. Throughout the dissolution of Yugoslavia, Macedonia always kept close ties

¹²⁴ The press often refers to this trio as "Troika", as having one representative from the EC, one from the EU and the current president. Nevertheless, this should not be confused with the troika consisting of the previous, present and future country holding the presidency. *Die EU greift Mazedonien unter die Arme "Potentieller Beitrittskandidat"*, FRANKFURTER ALLGEMEINE ZEITUNG, Apr. 10, 2001, at Politik p.1.

¹²⁵ Nevertheless, there are institutional reformists suggesting the merger of these two positions. *External Relations: Patten outlines Commission's Conflict Prevention Moves*, EUROPEAN REPORT, April 12, 2001, at Section No. 2584.

¹²⁶ EU diplomats account the success in easing ethnic tensions in Macedonia as reflection of a new effectiveness of the Unions common foreign and security policy. But not only EU internal officials are optimistic. Macedonian Foreign Minister Kerim talks about successful European actions and explicitly stating that Solana and Patten had proved to being "an effective team in Macedonia". Shada Islam, *With new pact, EU claims victory in easing Macedonia's ethnic troubles*, DEUTSCHE PRESSE-AGENTUR, BC CYCLE, April 9, 2001, at International News.

to Europe stated its interest in working towards joining the EU.¹²⁷

The result of employing of this powerful diplomatic tool was the first Stabilization and Association Agreement between the EU and Macedonia.¹²⁸

This Agreement serves various goals: First, Macedonia is granted a "European perspective" as potential candidate for accession. Second, an asymmetrical "free trade zone" shall be established.¹²⁹

In return, Macedonia agreed to ensure the granting of minority rights to Albanians and to open the first Albanian university on Macedonian territory in Tetovo.¹³⁰

This conditionality on behalf of the EU was already set up prior to the signing of the SAA. Solana initiated the "European Committee", a committee aiming at bringing representatives of all ethnicities of Macedonia to an open discussion about institutional reform. But the issues are unlimited. Kerim even suggested that rewriting Macedonia's

¹²⁷ Ackermann sees the reason for this rather unique approach in the behavior of political elites. Contrary to other Balkan nations Macedonia's leadership understood the importance of overcoming history and its stirring up of nationalistic tendencies. Politicians often use these historical myths to gain broad support among the people. This was not the case in Macedonia. Ackermann concludes that moving toward a more European identity by knitting close ties to its institutions can be held accountable for the prevention of larger outbreaks of violence. See *supra* note 120, at 98-100.

¹²⁸ The Stabilization and Association Agreement with the former Yugoslav Republic of Macedonia was signed in Luxembourg, April 9, 2001.

¹²⁹ Within ten years a free trade zone between the EU and Macedonia shall be established. The procedure will be asymmetrical in the sense that the EU already opened its markets to Macedonian imports last year, whereas Macedonia will do so step-by-step and gradually open up to EU imports. *Mazedonien rueckt naeher an die EU*, NEUE ZUERCHER ZEITUNG, April 10, 2001, at Ausland p. 2.

¹³⁰ *Macedonia One Step Closer to Brussels*, EUROPEAN REPORT, April 12, 2001, at Section No. 2584.

constitutional preamble to recognize ethnic minority rights would be an option. However, the Union set up a timeline until June 2001 to see results of these inter-ethnic debates.

Solana and Patten both emphasized their mission's role in helping and setting frameworks for workable solutions rather than as conflict mediation per se.

Unfortunately, while writing this thesis, the situation changed to the worse again. After a month of peace a new escalation took place leading to attacks between Albanian guerrillas in the Macedonian government.

Today, the latter finds itself on the brink of declaring war. Violence and retaliation on both sides fuel the conflict and let the question about international intervention come up again.

The European Union's engagement still centers around frequent diplomatic visits by CFSP High Commissioner Solana. He is offering support for the government and Macedonia's territorial integrity and firmly condemns violence. The message he is delivering is also a call for dialogue to avert escalation of the strife.¹³¹ Although two months earlier he denounced being a mediator in the conflict, Solana also talked to Slav and ethnic-Albanian

¹³¹ *Kaempfe in Mazedonien dauern an*, FRANKFURTER ALLGEMEINE ZEITUNG, May 6, 2001, at Politik p.6.

political leaders in order to facilitate a consensus during his last visit.¹³²

NATO's Secretary General Robertson also delivers a message. He declares that the KFOR troops in neighboring Kosovo will monitor the province's border with Macedonia. Cooperation will be established between these NATO troops and those of Macedonia.

In analyzing the ongoing eruption of violence the difficulties of managing ethnically based conflicts become apparent. Although according to Ackermann the story of Macedonia up until 2000 could have been seen as "relative success", in 2001 it has to deal with a stalemate. International interventions other than through diplomatic channels need justification, which as of today under international law cannot be found. Diplomacy on the other hand faces limits as to its force, because the real players are the leaders of the political groups. In case of ethnic leaders the task of solving the conflict becomes even more difficult: These leaders often misuse nationalistic and populist rhetoric to convince and spur the population. International actors cannot efficiently erase such tendencies. Therefore, their role seems limited to supporting and facilitating agreements and additionally making use of leverage.

¹³² EU, NATO officials condemn Violence in Macedonia, EFE NEWS SERVICE, May 7, 2001.

The EU plays has been playing this role during the last months, but it still should think of possible improvements.

D. CONCLUSION

Despite few changes in the legal structure brought about by the Treaty of Nice, European Union's intervention ten years after the wars in Slovenia and Croatia was considerably more effective.

Europe finally was able to speak with a unitary voice. This voice gained further credibility on the international scene as European Union powers and Community powers were united to prevent a war in Macedonia.

Nevertheless, this goal could only be obtained because Macedonia was open or ready for a possible accession to the EU, which gave the Union a powerful bargaining chip.

PART 2

I. Analytical Frameworks

I will divide the analytical framework into two parts. First, I will set out the framework for an analysis of institutional reform and the evolution of the European Union with regard to foreign policy during the period of the Balkan wars. Second, I will establish a framework for

the analysis of European intervention in international conflicts. I will then apply these frameworks to the context elaborated in Part 1.

A. INSTITUTIONAL REFORM AND EVOLUTION

The study of the European Union is a study about constant reform and evolution. The Union grew from six countries comprising the Coal and Steel Community seeking harmonization to an important player on the international scene and an economic power. As a first step toward analyzing it we need to look at the process of institutional reform.

Institutional reform has an inherent tendency of change. Basically this change can be divided to four groups: institutional formation, institutional development, deinstitutionalization, and reinstitutionalization.¹³³ The kind of change applicable to my analysis of the European Union in the foreign and security policy field is that of institutional development. It represents continuation of the institution and change with its structure, as opposed to institutional formation which focuses on the institutionalization of behavior. Deinstitutionalization implies the dissolution of an institution, which is not

¹³³ These categories were introduced for example by Paul J. DiMaggio, *Interest and Agency in Institutional Theory*, in *INSTITUTIONAL PATTERNS AND ORGANIZATIONS* 3-22 (L. G. Zucker ed., 1988) and Ronald L. Jepperson, *Institutions, Institutional Effects, and Institutionalism*, in *THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS* 143, 152 (Walter W. Powell & Paul J. DiMaggio eds., 1991).

applicable to the European Union, because despite ongoing and rather frequent reform, it has not ceased to exist. Finally, reinstitutionalization can best be described as exiting from one institution into the form of another.

Therefore, if I speak of institutional change in regard to the European Union I always imply an institutional development.

Interaction-oriented approach

In setting out the analytical framework I focus on an interaction-oriented approach. This approach is characterized by an analysis of the interactions among policy makers and how these actions favor or impede the implementation of institutional reform.¹³⁴ This approach as I will lay it out has two dimensions. First, strategic interactions among actors lead to reforms in the institution. Second, the institution determines the possible actions by its legal structure.

In the case of the European Union I am therefore analyzing the role the Member States of the Union as "interactors" play in shaping institutional changes.

¹³⁴ Fritz W. Scharpf applies a parallel approach. He differentiates between a problem-oriented policy research and interaction-oriented policy research in order to analyze institutions. The problem-oriented approach on the other side is applied to study the causes and nature of problems that institutions are expected to resolve. He argues that both approaches offer interesting research possibilities to explain institutions. See Fritz W. Scharpf, *Institutions in Comparative Policy Research*, MAX PLANCK INSTITUTE FOR THE STUDY OF SOCIETIES, Cologne, Working Paper vol. 00/3, 1, 1 (2000).

On one hand, Member States interact and influence the reforms by constantly adopting the treaty regime according to their joint and complementary objectives as well as their independent and often competing national interests. In other words, I explain institutional change as the outcome of strategic interactions among the Member States.

The way the European Union functions affects the possible interactions among the Member States as policy makers. The legal structure as it stands therefore determines the actors' powers and capabilities at any given moment. According to this framework, institutional evolution is characterized by reciprocal interaction between the Member States as actors and the Union as institution.

External Factors

At the same time, external influences must not be marginalized for their impact on generating reforms. External factors are factors that lie outside the scope and legal structure of the institution. An example for the latter are the eruption of any kind of political crises that makes apparent the inefficiencies and constraints of this structure. Wars therefore often serve as a starting point and initial step for institutional change. Moreover, focusing on the interaction-oriented approach, actors' behavior in wars defines the need for reform too. I will

therefore analyze the impact of ineffective intervention in more detail.

Ronald L. Jepperson reaches the same conclusion about how exogenous factors lead to the development of institutions. He refers to "exogenous shocks" that force institutional change by "thwarting the successful completion of reproductive procedures".¹³⁵ Thus, according to his view, reproducing institutional patterns induces change.

In the European Union foreign policy context the Balkan wars played this role during the 1990's, by making evident the urgent need for efficient and effective policy making within its legal structure. External factors not only include the political will of the Member States to initiate these institutional changes, but also factors that lie outside of the European Union. The combination of the interaction-oriented approach with external impacts forms the basis for analyzing the institutional transformation of the European Union in the foreign policy arena.

The application of this framework to the explanation of the development of a common foreign and security policy during the last decade - provided in Part 1 - contributes to the understanding of what kind of effective solutions to international crises can be achieved in the future.

¹³⁵ Ronald L. Jepperson, *see supra* note 133, at 153.

1. Legal Structure

The starting point of the present analysis is the legal structure of the European Union in the year 1991. This year marks the beginning of a series of Balkan wars which were fought in the subsequent decade. This legal structure is part of the institution and determines the possibilities and powers the Member States have at each given moment.

In the case of the European Union its main objectives changed over these years. The direct result of these changing objectives are constraints or weaknesses in the actual system for dealing with these new goals. Therefore, adaptations in the legal structure were made when these became apparent, but they often took time before the Member States could agree to the new directions and how to overcome these limitations.

As can be evidenced from Part 1, institutional change on the scale of EU organization takes considerable time. Already in the early years of the creation of the European Communities Jean Monnet talked about the Europe of "small steps".¹³⁶ He referred to a long-lasting process of reaching

¹³⁶ Jean Monnet, *Economic Integration: New Forms of Partnership*, Carnegie Endowment For International Peace, *Perspectives On Peace, 1910-1960*, at 97-107 (1960). In this essay, Jean Monnet argues that "the common market for coal and steel was only the first limited step to unity, but it created the conditions which made others possible." Id. at 101.

the final goal of European integration. In another attempt to explain the direction of integration the formula "Union as process" was used.¹³⁷

More recently, the High Commissioner for Bosnia-Herzegovina, Wolfgang Petritsch, described the slow pace with which the common foreign and security policy was moving forward. He expressed it by referring to negative examples in the past by saying: "From always too little, too slow, from failure to failure the development of the common foreign policy managed to steadily move forward".¹³⁸ However, he also mentioned that as long as the direction is considered to be the right one, it is worth taking the time. By "right direction" he meant reaching the ultimate goal of efficiency and effectiveness.

Compared to other institutions like the United Nations, the European Union is constantly renewing itself. The Charter of the United Nations has not once been reformed or amended since its ratification. In contrast, the constituting Treaties of the EU underwent many changes during the last 50 years. First and foremost, the European Council is held responsible for this evolution. At least once every 6 months the heads of state or government of the Member States meet to define the direction of where the

¹³⁷ Ulrich Everling, *Reflections on the Structure of the European Union*, 29 COMMON MKT. L. REV. 1053, 1060 (1992).

¹³⁸ Wolfgang Petritsch, recorded in an informal talk with the author, Vienna, January 2, 2001. See the German notes of the interview in Appendix A.

Union is going and how to reach this goal. The TEU establishes this direction as follows: "The European Council shall provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof."¹³⁹ After convening at several Council meetings the quest for reform culminates in the ratification of a new treaty.

As noted in Part 1 major changes are therefore reflected in the amendments of the constituting Treaties. With the amendments brought about by the Treaty of Nice this happened for the third time in the last decade.

The driving factor for these changes is the discrepancy between the legal framework of the Union's foreign and security policy and the actual powers that the Member States needed to effectively engage in the solution of the Yugoslav wars is.

Nevertheless, this framework suggests a reactive approach towards institutional reform, because change is sought as a reaction to deficiencies in the legal structure and international crises and contingencies.

The interaction oriented approach which I applied throughout Part 1 focuses primarily on the Member States. They are the beneficiaries of the system, because they are granted the powers to act and establish a common foreign

¹³⁹ See *supra* note 113, at Art. 4 TEU.

policy according to the legal system. Therefore, the legal system affects them directly in marking the possible scale of actions.

However the Member States face a dilemma. On one hand, they represent their national governments, but on the other hand their aim is to reach a common foreign and security policy. This dilemma makes negotiations about the decision-making rules very difficult.

2. Constraints

The second step in analyzing the institutional reform of the Union's common foreign and security policy is to crystallize the weaknesses of the legal structure. These weaknesses impose impediments to efficient and effective action by the Member States. Either those gaps become apparent in the daily working process or an external crisis requires action that cannot be pursued as a result of the constraints in the system.

As soon as the deficiency in the institutional structure becomes a real obstacle to establishing a common foreign and security policy in order to effectively intervene in international conflicts, the next step to attempt a reform will take place.

In a way, this describes a natural and gradual process, which guarantees the evolution of the European Union and can be evidenced by the reforms that took place

in the last decade. As shown in Part 1, every war in the Balkans made the constraints in the legal system of that time apparent, and often led to failed European interventions, which I will explain in more detail in the next section. Therefore, the deficiencies that caused the incapability of the Member States to handle these crises, showed the necessity for each respective reform.

B. INTERNATIONAL CONFLICT RESOLUTION

The second analytical framework addresses the EU's capacity to resolve international conflicts.

A traditional understanding of international conflict is a conflict between two or more sovereign states. However, at the beginning of the 21st century internal conflicts outnumbered by far the number of such interstate conflicts.¹⁴⁰ The basic condition that leads to internal conflicts is characterized by the existence of different groups in a country with similar interests and the goal to prevent the other group from pursuing this interest. Civil wars thus deal with power distribution between those groups, which are fighting, competing for the same resources and/or power positions.

Internal conflicts are disputes that have a domestic aspect and are mostly caused by ethnic tensions in the

¹⁴⁰ JANIE LEATHERMAN ET AL., *BREAKING CYCLES OF VIOLENCE: CONFLICT PREVENTION OF INTRASTATE CRISES* 3 (1999); see also *An Introduction to United Nations Peacekeeping, Chapter 1: An evolving technique*.
<http://www.un.org/Depts/dpko/dpko/intro/1.htm>

country, with spillover effects to neighboring states. The large part of internal disputes therefore has the potential of turning into an international one, because of this inherent threat of large-scale cross-border effects.

Lake and Rothchild define two ways in which ethnic wars spread to turn into international conflicts: diffusion and escalation.¹⁴¹ First, diffusion is generated if ethnic conflict in one state increases the probability of escalation in another state. Second, escalation occurs when foreign belligerents enter the internal conflict of a state.

In the case of the former Yugoslavia the concept of diffusion applies better. Refugees are forced to cross international borders. This often produces spill-over effects and also alters the ethnic geography of the states involved. Another problem occurs if groups in one state witness ethnic mobilization among their kin group in another country. Consequently, this may lead to the formation or strengthening of their own political groups in order to become more active in their fight for resources (such as political power or equal rights with other citizens). Ethnic agitation in one country thus increases the possibility of creating a snowball or balloon effect in neighboring countries. Political leaders play an important

¹⁴¹ See *supra* note 24 at 38.

role in triggering these effects, by resorting to nationalistic propaganda.

For all these reasons internal conflicts have become an international dimension, as Michael Brown claims.¹⁴² It follows from there that by international conflict - as I use this term throughout my paper - I mean a dispute that arises within the borders of a country, but spreads over to another country.

The distinction between intra- and interstate conflicts is also relevant for the kind of intervention that will take place and its conditions. The principle of sovereignty is difficult to circumvent and therefore creates greater hindrances to legal interventions in intrastate or civil wars than interstate conflicts.

However, if the intrastate war spreads over and involves other nations, an intervention by the international community (the European Union) does not breach the principle of sovereignty.

Conflict resolution always deals with success or failure. I will define what I understand by successful intervention.

Marieke Kleiboer, who addresses the notion of international mediation success generally, by looking at the current literature in this area, categorizes the analysts into three sections: First, those who avoid the

¹⁴² Michael E. Brown, *Introduction to THE INTERNATIONAL DIMENSIONS OF INTERNAL CONFLICT* 1,1 (Michael E. Brown ed., 1996).

definition of success at all. The second group sets out clear criteria. Unless these are met, the intervention failed. And the third group consists of authors, who define mediation success as effectiveness.¹⁴³

As elaborated in the analytical framework, I define success according to internal efficiency and external effectiveness. Only if these two prerequisites are met, can an international institution like the European Union successfully engage in the resolution of international conflicts.

I also argue along the third of Kleiboer's groups, because success should not solely be defined by looking at the outcome. This result oriented approach only examines the question: "What do we want to accomplish", but ignores the question of "what can we actually achieve". Nevertheless, success must be measured according to some criteria. Therefore, the actual powers of the actors have to be taken into account as crucial factor for the determination of the possible result that can be reached. Those capabilities are determined by the underlying objectives. Kriesberg makes a similar point stating that success and failure relate to the ever-shifting objectives.¹⁴⁴ If, because of various barriers¹⁴⁵ the

¹⁴³ Marieke Kleiboer, *Understanding Success and Failure of International Mediation*, 40(2) J. Conflict Resol. 360, 361-362 (1996).

¹⁴⁴ Louis Kriesberg, *Varieties of Mediating Activities and Mediators in International Relations*, in *RESOLVING INTERNATIONAL CONFLICTS: THEORY AND PRACTICE OF MEDIATION* 219 (Bercovitch ed., 1996).

capabilities are limited, it is not adequate to jump directly to the conclusion of failed actions.

The framework for an analysis of the European Union and its efforts to effectively intervene in the wars in the Balkans during the last decade takes off where the first part of my analysis about the institutional reform ended.

I will focus on the constraints in the legal structure which exist at each given time and analyze how these weaknesses hinder a more effective intervention on behalf of the Member States of the EU in resolving the crises in the former Yugoslavia.

These constraints in the legal structure create hurdles to overcome, hurdles that stem from institutional shortcomings (i.e. the legal structure itself) as well as from insufficient bodies to provide analytical assessment of international crises in the European Union. Also related are those barriers that are of strategic nature. I will explain those possible hindrances to conflict resolution in more detail, and apply them to the test cases of the Balkans.

Douglass C. North's analysis of institutions and institutional change also includes constraints.

"Institutions include any form of constraint that human

¹⁴⁵ Conflict resolution often faces barriers, barriers which originate from various reasons. They are categorized into sections like: institutional barriers, analytical barriers, psychological barriers or organizational barriers. The leading literature is Barriers to Conflict Resolution (Kenneth J. Arrow et al. eds., 1995).

beings devise to shape human interaction".¹⁴⁶ He puts the individual in the center, by defining constraints as limitation in each person's behavior. Moreover, he divides constraints into formal and informal ones. Accordingly, formal constraints consist of written rules, whereas informal constraints supplement the first and typically are unwritten codes of conduct. In his analysis institutions impose these constraints on the individuals, forming the framework within which human interaction takes place and therefore limiting the individual's choices. This approach is closely related to a social scientist theory, because human beings and their individual choices are the focal points in looking at institutions.

In my analysis I apply the concept of constraints differently. Although the interaction-oriented approach I am using relates to North's analysis, I do not look at the individual and the societal impact of institutions. Rather I define constraints as loopholes in the legal framework of the institution, loopholes that require reform from the relevant actors to overcome these constraints. I therefore do not take the limits imposed by and inherent in the constraints for granted, but see them as barriers to more efficient and effective behavior. The important difference is that I center my thesis around the question of how these constraints can be overcome.

¹⁴⁶ DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE, 4 (1990).

In the study of conflict resolution Kenneth Arrow, Robert Mnookin et al. set out a useful analysis of the concept of barriers.¹⁴⁷ They can be categorized into: institutional barriers, analytical barriers, psychological barriers or organizational barriers. The various sections in which the study is divided demonstrate an interdisciplinary approach. Conflict resolution thus addresses barriers which originate from various reasons. To be sure this framework does not stop at elaborating what the hindrances are, but goes beyond them. It incorporates the possible ways that a mediator or third party can engage in the process of surmounting these constraints. The idea of having mediators intervene in overcoming impasses especially pays off in cases of psychological barriers.¹⁴⁸

1. Institutional barriers

In connection with the framework set up for the analysis of institutional reform, the structure of institutions also shapes the outcome of conflict resolution. The legal structure enables or prevents

¹⁴⁷ BARRIERS TO CONFLICT RESOLUTION (Kenneth J. Arrow et al. eds., 1995).

¹⁴⁸ Because I will not be analyzing the psychological barriers in this thesis, but rather focus on institutional, strategic and analytical constraints, I will not get into further detail. However, mediators play an important role in helping the parties to overcome moments of mistrust and encourage confidence-building measures. Problems of reactive devaluation, meaning the opposition against a proposal of the adversary party simply because of distrust that no favorable offer could come from the opposing party, can be limited, because mediators can propose something on their own behalf. Therefore, they lift the notion of negative biases towards the other negotiation team.

actions, and also gives individuals a forum for these actions.

The major problems I encountered in analyzing the European Union's policy regarding conflict resolution from an institutional perspective have their basis in internal inefficiency and external ineffectiveness.¹⁴⁹ Regelsberger and Wessels use a third dimension besides internal efficiency and external effectiveness in order to measure institutional performance. This third issue is the "legitimacy in the eyes of the political class and EU citizens involving a broad democratic support." However, for my analytical framework I do not consider the legitimacy of the European Union as a crucial problem. History shows that the people of the Union did not question its legitimacy with respect to common foreign and security policy; rather, they, as well as scholars and academics, did criticize the lack of efficiency and effectiveness in dealing with the wars in the former Yugoslavia.

Internal Efficiency and External Effectiveness

Internal inefficiency and external ineffectiveness lay the cornerstones for failed interventions. I will therefore relate the constraints that erect barriers to conflict resolution in either one of those two categories. I argue that both of these flaws have to be overcome in order to

¹⁴⁹ Elfriede Regelsberger & Wolfgang Wessels, *The CFSP Institutions and Procedures: A Third Way for the Second Pillar*, 1 EUR. FOREIGN AFF. REV. 29, 30 (1996).

pave the road for a successful intervention on behalf of the Union in international conflicts such as those in the Balkans.

Internal efficiency is necessary for making useful and adequate decisions within an appropriate time frame. The time constraints become apparent given the difficulties the European Union faces in combining fifteen national interests and elaborating one joint action or common policy, especially when crises evolve. Moreover, the unanimity rule and its evolution during the last ten years negatively impacts internal efficiency. Decisions in the foreign and common policy needed to be unanimous. In 1997, the Treaty of Amsterdam slightly improved the decision making process by introducing the possibility of qualified majority voting.¹⁵⁰ Furthermore, a lack of clear rules about decision-making and particularly their implementation creates a barrier to efficiency.

External effectiveness on the other hand, also includes various concepts. First, effectiveness always deals with taking actions that fulfill their goal with the least possible cost.¹⁵¹ Second, effectiveness requires consistency. Consistency, as discussed above, is defined as "coherent behavior" in pursuing a single objective

¹⁵⁰ For a detailed elaboration see texts in Part 1, especially section III. A. about the Treaty of Amsterdam.

¹⁵¹ See *supra* note 149, at 30.

resulting in an "uncontradictory foreign policy".¹⁵² Third, the notion of effectiveness also incorporates persuasiveness, coercion or leverage.¹⁵³

The last three mechanisms are in particular important, because they are the tools for achieving greater effectiveness. This is clearly directed towards the Union's external relations, because it aims at making EU internal actions more effective vis-à-vis third states.

Mediators have to decide which kind or combination of leverage is best suited to each conflict in order to either prevent a further escalation or to get the parties to the negotiating table.¹⁵⁴ Applying these methods effectively could obviate the need for a (coercive or non-coercive) intervention.

Alexander L. George elaborates this approach in depth, talking about the "Theory of Coercive Diplomacy." In his definition he combines all three elements: The idea behind coercive diplomacy is "to back one's demand on an adversary with threat of punishment for noncompliance that he will

¹⁵² See *supra* note 18, at 134.

¹⁵³ Melanie C. Greenberg et al., *Introduction: Background an Analytical Perspective*, in *WORDS OVER WAR: MEDIATION AND ARBITRATION TO PREVENT DEADLY CONFLICT* 1, 7 (Melanie C. Greenberg et al eds., 2000).

¹⁵⁴ In the African context Donald Rothchild explores the incentives mediator's should use to help overcome the stalemates internal ethnic wars create. Although the general aspects about what mediation should accomplish are also applicable to the wars on the Balkan, the political situation in African states differ and make a comparison difficult. Explaining this last statement further, I argue that although the problems inherent to ethnic conflicts, such as ethnic mobilization agitated by extremist leaders, are similar, the military regimes in most African states and the lesser interest for the European Union to get involved, make analogies imprecise. See DONALD ROTHCHILD, *MANAGING ETHNIC CONFLICT IN AFRICA: PRESSURES AND INCENTIVES FOR COOPERATION*, 243-264 (1997).

consider credible and potent enough to persuade him to comply with the demand."¹⁵⁵ He therefore offers an alternative to the reliance on military action by persuading a party to stop the aggression.

Although this concept is generally convincing, it does not pay enough attention to the fact that power is necessary in order to effectively threaten a party. This power derives from the possibility to not only threaten a party, but also to be actually capable of exercising this threat if necessary. Otherwise the action would not fulfill its goal and the mediating party would lose credibility. Therefore, the mediating party needs an operational system of powers. Economic sanctions are one example, but a functioning military force than can be deployed rapidly undoubtedly offers the best threat.

In the context of the European Union I therefore argue, that George's concept of coercive diplomacy would still only make sense, if an operational security and defense system were established. As long as Europe is dependent on NATO, which is fundamentally influenced by the United States it lacks independent credibility. As elaborated in Part 1, the lack of clear legal rules impeded a more powerful appearance in managing international conflicts.

¹⁵⁵ ALEXANDER L. GEORGE, FOREIGN PERSUASION: COERCIVE DIPLOMACY AS AN ALTERNATIVE TO WAR 4 (1993).

Nevertheless, the reason for ineffectiveness in this regard often has its root in an institutional constraint. This constraint establishes an institutional barrier, and makes conflict resolution for the European Union a challenge.

To further explain how this fits into my analytical framework of institutional reform and effective conflict resolution, I will stay with the above-mentioned example.

The lack of military force, which plays a significant role in establishing credibility, cannot be ignored. The use of force is an instrument capable of producing threat to disputing parties. In order to be used effectively, the institutional legal structure has to establish these powers for the Member States. The prior complete lack of a common security structure within the EC/EU constituted a considerable weakness and at the same time a barrier to effective conflict resolution. This is the case, because the European Union could neither use coercive diplomacy nor intervene militarily in the Balkan wars due to this lack in the institutional and legal structure.

This example further illustrates the intertwining character of the two analytical frameworks I establish. The frameworks correlate, because the evolution of the common military and security structure within the Union evidences the ongoing institutional reforms. The EU's evolution from an institutional structure lacking a purely European

defense system to one endowed with the increasing powers established for the Western European Union to a Union with a Common European Policy on Security and Defense (CEPSD) marks an "all-inclusive and evolutionary process."¹⁵⁶

Constraints that exist at one given time are overcome through reforms creating a new legal structure and with this new regime new weaknesses appear which need to be addressed in the next round of reforms. This constant repetition guarantees the further development of institutions.

Another important instrument the EC/EU has at hand to exercise threat are sanctions, both economic and financial. In order to reach more effectiveness and credibility the treaty regime concerning sanctions was altered during the last ten years. This reform was generated because economic and financial sanctions fall within the scope of the legal regime of the Community as opposed to the Union's CFSP regime. After the creation of the European Union and its common foreign and security policy Member States wanted to use sanctions as political or diplomatic mechanisms within the framework of CFSP too. This need demonstrates the overlapping nature of sanctions, economic in substance, but applied to pursue political ends.

One solution to the question whether EC law or the regulations of the CFSP are applicable is included in the

¹⁵⁶ Asteris Pliakos, *The Common European Policy on Security and Defense: Some Considerations Relating to its Constitutional Identity*, COLUMB. J. EUR. L. 275, 277 (Fall 2000).

treaty regime. Art. 301 TEC stipulates that the Council of the European Union shall take the necessary urgent measures in accordance with the provisions of the TEU relating to the CFSP.¹⁵⁷ However, the right to propose the interruption or reduction of economic sanctions remains with the Commission. This clear division of powers thus indicates, that the political decision-making process is the one laid out in Title V TEU, the implementation of the economical issues engenders a Community competence.¹⁵⁸ This example not only shows the explicit division of competences between the CFSP and the EC provided by Art. 301, but also the supremacy of CFSP decision-making over the Community's. The stronger influence of the former can also be evidenced by the fact that Art. 301 even requires a prior act of the CFSP.

Nevertheless, this clear division of power cannot be found throughout the treaty regime. Therefore, consistency between the Communities' legislation and the legislation of the European Union must be coordinated. Otherwise, the work and outcome of the Union would be duplicated and thus less effective on the international scene.

The progress made by the Member States in pushing towards more consistency in the field of foreign relations

¹⁵⁷ For example an embargo against the Federal Republic of Yugoslavia was decided upon by the Common Position 1999/273/CFSP of 23 April 1999. This was followed by the EC Regulation No. 900/1999 of 29 April 1999 that dealt with the economic issues.

¹⁵⁸ Ramses A. Wessel, *The Inside Looking Out: Consistency and Delimitation in EU External Relations*, 37 COMMON MKT. L. REV. 1135, 1159 (2000).

can be evidenced by the fact that enhanced cooperation was included in the treaty regime of CFSP. Nevertheless, the gap between Community and EU competences is not yet bridged and needs to be addressed in future reforms.

2. Strategic Barriers

The concept of strategic barriers focuses on how different interests and the necessary actions to pursue them is based on and distorted by strategic behavior.

Self-interested actors¹⁵⁹ face barriers to an efficient outcome in their negotiations, because they often find themselves in a "negotiator's dilemma".¹⁶⁰ This dilemma encompasses the difficult decision between pursuing one's own interests or trying to obtain what is best for all the parties. This means either to gain a larger portion of the bargaining object, for example the realization of national policies irrespective of its possible detrimental effects on a European level, or to cooperate in order to create a "bigger pie".¹⁶¹ Therefore, cooperation may lead to a common policy for all Member States of the EU, resulting in the benefit of having broader legitimacy. Especially when it

¹⁵⁹ In this context again I talk of states as actors in the international sphere.

¹⁶⁰ The "negotiator's dilemma", foremost analyzed by Lax and Sebenius, derives from the broader concept of the prisoner's dilemma. The prisoner's dilemma analyzes strategic behavior by two parties. Each one has the choice of either cooperating or defecting. Although each party has a dominant strategy to defect, the best outcome however is reached if both parties trust each other and cooperate.

¹⁶¹ Kenneth Arrow et.al, see *supra* note 147, at 9.

comes to national interest, state actors apply strategic conduct to pursue these interests.

Institutional theory also focuses on international regimes. International regimes are multilateral agreements of states to regulate their relations with other states within a particular issue area.¹⁶² Nation-states are regarded as self-interested maximizers of their own utility and have incentives to enter into a regime to increase their welfare. If these institutions were not overall beneficial to the single state, they would not be created, because states would not adhere to a system that is limiting its powers without possible substantial gain.

In the case of the European Union, I apply this concept to the Member States, who are the self-interested actors. Despite their national interests they agreed to join this supranational institution in order to promote cooperation. As the Union developed they also agreed to a common foreign and security policy, where cooperation is more difficult due to their history as strong individual (often imperialistic) states. Giving up elements of this power to an international regime therefore has to give them other benefits. These benefits are for example the stronger and more credible appearance on the international scene, in particular as a counterbalance to the United States.

¹⁶² Paul J. DiMaggio & Walter W. Powell, *Introduction to: THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS*, 1,6-7 (Paul J. DiMaggio & Walter W. Powell eds. 1991).

Yet, Member States have their own national interest and coordinating them with others can lead to difficulties, if those interests are not held in common.

A scale of possible interests includes: (1) competing interests, (2) complementary interests and (3) joint interests. The difficulty in reaching cooperation among the Member States for the establishment of a common foreign policy decreases from (1) to (3).

Competing interests among the Member States create an impediment to efficient intra-institutional decision-making, because prolonged negotiations are required for the adoption of a common policy and it is even possible that no agreement will be reached at all. The problem has its origin in the intergovernmental character of CFSP. National governments have to agree to take a joint action. Reaching this agreement is therefore subject to negotiations among the Member States, who face the dilemma mentioned above.

If Member States have complementary interests concerning the adoption of a joint action, negotiations are more likely to achieve desirable results for all parties. Although it sounds logical that complementary interests can be combined in one common policy, the problem becomes how to create value for all parties.¹⁶³ According to Mnookin, creating value involves reaching a deal that makes all the parties better off than they would have been without

¹⁶³ ROBERT H. MNOOKIN ET AL., BEYOND WINNING - NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES, 12 (2000).

agreement or at least makes one party better off without detrimental effects for the other side.

Member States will try to handle as many substantive issues as possible in light of their respective national government's mandate. The difficulty lies in how one can pursue national interests if all Member States have to arrive at a common foreign and security policy. Strategic interactions and power plays become apparent.

The best example of nationality-based strategic negotiation in the context of the Balkan wars during the last decade is the recognition of Croatian independence.

Germany's national interests led it to assume the leading role in pushing for recognition. Although critics warned of the detrimental effect this action could have for the rest of Yugoslavia, other Member States like the United Kingdom or France finally decided to accept Germany's path. National interests thus prevented the optimal result for all Member States, as well as the Balkan countries, of course, namely peace. Instead, Member States strategically voted to pursue their respective national interests.¹⁶⁴

Enhanced cooperation among the self-interested actors is the best way to overcome this barrier and provide a way out of the negotiator's dilemma. Although single actors sometimes seem to have a dominant strategy in only looking

¹⁶⁴ For a detailed explanation of the various national interests involved please see part 1. Britain, for example, wanted special treatment in relation to the European Monetary Union, which was about to be established within the treaty regime of Maastricht, and therefore needed the consent of Germany.

for a realization of their own interests, the complete situation can be positively altered for the whole international community if cooperation towards a joint gain can be accomplished.¹⁶⁵

3. Analytical Barriers

The lack of adequate analytical assessment of international conflicts leads to misguided actions based on limited information. Conflicts have so many dimensions and myriad factors influence possible outcomes.¹⁶⁶ A proper assessment of these factors is therefore seminal to effective conflict resolution.

Especially in the case of the EU where 15 Member States have to take a joint decision, internal efficiency as well as external effectiveness requires early awareness of international problems. Throughout the past ten years institutional reform also centered around the creation of an early warning and policy planning unit. However, in 2001 this goal has not yet been accomplished, thus perpetuating existing barriers to dealing with conflict.

Conclusion

¹⁶⁵ For a deeper analysis of the Prisoner's dilemma and the "power of cooperation" see ROBERT M. AXELROD, *THE EVOLUTION OF COOPERATION* (1984).

¹⁶⁶ Michael E. Brown gives a very elaborate introduction about the underlying factors and causes of internal conflicts. They are divided into four main categories: structural factors, political factors, economic/social factors and cultural/perceptual factors. See note 142.

I elaborated this analytical framework to help understand how the common foreign and security policy of the European Union evolved and how its legal structure influences the outcome of conflict resolution in the Balkans.

Summary

The chart combines and illustrates the different elements and factors I analyzed. The current legal structure is the point of departure. It contains the powers of the Member States to act in the field of international conflict resolution. To be successful, the legal regime of the foreign and security policy also has to provide internal efficiency and external effectiveness. Any flaws in the system will result in barriers to international conflict resolution. These barriers make evident the inherent limitations of the legal structure.

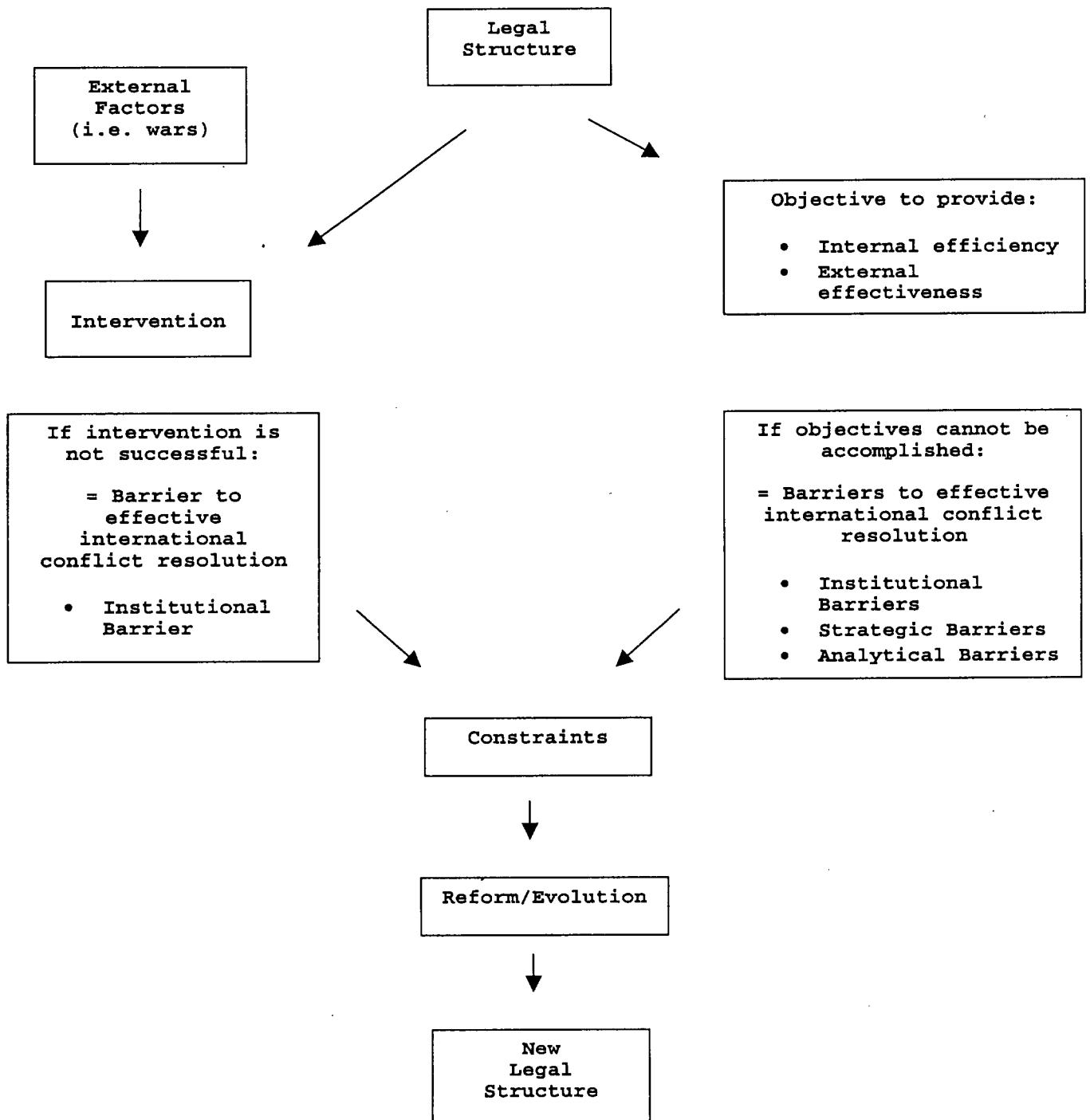
On the other hand, the legal structure also provides the necessary rules for interventions. As described above, if these rules are insufficient to reach a successful outcome, the limitations of the legal structure become apparent.

Reform is thus initiated by constraints in the legal structure. Moreover, external factors indirectly initiate reforms, because they solicit action and involvement by the Member States.

A new legal structure will be generated in order to overcome the deficiencies in the old structure and the barriers to conflict resolution that these deficiencies had created.

ANALYTICAL FRAMEWORK

for the evolution of EU's common foreign and security
policy in the light of effective international conflict
resolution



II. Lessons Learned

According to the structure I laid out in the Analytical Framework, I will also divide this part about lessons learned into two main fields. First, I will elaborate upon my findings about institutional reform and the evolution of the European Union with regard to foreign policy between 1991 and 2001. Second, I will draw lessons from the wars in the former Yugoslavia. I will put special emphasis on how changes in the legal structure had impact on actions taken by the Member States of the EU and, finally, on how those actions influenced the outcome.

This section will, therefore, help answer the following question: "how can the European Union successfully intervene in international conflicts?"

C. INSTITUTIONAL REFORM AND EVOLUTION

Institutional reform in the European Union is a steady and non-ending process. In the last decade, the Member States made three amendments to the constituting treaties. This frequency is unique compared to other institutions where reforms take place rarely. I found out that the reason for the Union's constant need for adaptation lies in its objectives. A distinction between the Unions external objectives and its process-inherent objectives has to be drawn:

(1) On the one hand the European Union changes its objectives according to the political will of the Member States, because they decide in the European Council about the future direction of the Union. In the period between 1991 and 2001 a shift in the common foreign and security sector can be evidenced. In 1991 Europe was still working on the creation of a Union as the next step towards the realization of an internal market and, therefore, did not focus on international conflict resolution.

The wars in the Balkans are the best example of an "exogenous shock" that showed the Member States the urgent need for a shift in objective toward enhanced conflict resolution.¹⁶⁷ Also the insufficiency of the legal structure became apparent with the breakout of violent conflict at Europe's doorstep and the subsequent problems the European Community had to face in dealing with these conflicts. Member States lacked the necessary power to become effectively involved in the solution or termination of international disputes. But with the changing legal structure, new constraints and weaknesses were experienced. More and more the Union developed and conflict resolution became a new objective in the common foreign and security policy.

¹⁶⁷ See *supra* note 133, at 153, and the text accompanying note 135, where the impact of external factors is discussed.

From the present analysis of this evolution, two directions should be distinguished: military and non-military mechanisms.

At first, the focus was on the development of a joint military force. This development was requested as early as the 1990s as an attempt to become more independent of U.S.-dominated NATO. Although close cooperation between the WEU and NATO existed, Europe sought to create a purely Europe-dominated defense and security arm to respond to violent conflicts in an effective way. This process of creating an autonomous EU rapid reaction force that could enable the Union to launch and conduct EU-led military operations has not yet come to an end. However, the implementation of the Common European Defense and Security Policy marks the next step forward. But as can be evidenced throughout the institutional evolution, constraints and doubts already exist. For example, there is the question of which conditions the EU may or may not act an emergent crisis.¹⁶⁸ Establishing rules of engagement will be necessary to guarantee the legitimization of possible EU involvement. Arbitrariness could, thereby, be prevented.

The focus on non-military intervention for conflict management came second in priority. Up until now, no treaty provision has been incorporated into the regime of the CFSP

¹⁶⁸ Assembly of WEU, *The Implementation of the Common European Security and Defence Policy and WEU's future role - reply to the annual report of the Council*, Document C/1720, November 15, 2000, see <http://assembly.weu.int/eng/reports/1720c.htm> at p. 8.

with regard to international mediation. The efforts undertaken by the EC/EU representatives—mostly the foreign ministers of the country having the Presidency—or special envoys to broker peace agreements were conducted on a non-regulated basis. Wolfgang Petritsch, one of the three leading mediators at the Rambouillet conference, had received a mandate without any recommendations or limitations as to what his powers and political interests would be. Petritsch also had to organize his own team for the negotiation and stated that, looking at this process from a professional point of view, it became evident that there was no working system and no legal structure behind it.¹⁶⁹ Even after the reforms of the Treaty of the European Union in 1993 and the Treaty of Amsterdam in 1997, the possibilities for a structured and well-organized mediation were under-developed. Therefore, in 1999 after the failed Kosovo peace negotiations, there was a need to shift the focus toward non-military crisis management.

(2) On the other hand the Union's internal objective is to provide legal rules that guarantee efficient and effective crisis management. During the last decade, this attempt was the subject of many reforms regarding the decision-making procedures in particular. The external effectiveness was also advanced further, as evidenced by

¹⁶⁹ Wolfgang Petritsch, informal talk, see note 106.

the fact that the High Representative for CFSP, Solana, represents the Member States vis-à-vis other nations. This innovation has paid off in the recent conflict of Macedonia, where Solana's visits and talks have conveyed the message of a really unified Europe. Nevertheless, these internal objectives have not reached completely and further initiatives will have to be taken.

In this paper, I have elaborated the step-by-step evolution of the European Union and its pillars.¹⁷⁰ This gradual evolution has the advantage steady institutional growth and shifts which are not too radical. But there is still the possibility for making this process more efficient by taking a slower pace until an amendment to the treaty regime has been made, and, therefore, preventing the immediate occurrence of loopholes in the legal structure.

In conclusion, I would like to point out that although the constraints in the legal structure of the CFSP in 2001 are similar in form to the constraints in 1991 (i.e. national interest vs. joint action, consistency, lack of operating military force), they also had positive effects. The European Union was able to establish greater legitimization as an actor on the international scene in trying to prevent conflicts.

¹⁷⁰ For the elaboration of the "step-by-step" evolution of the European Union, see the corresponding text from note 136 to note 138.

D. INTERNATIONAL CONFLICT RESOLUTION

This analysis of the European intervention to manage conflicts in the last decade in the former Yugoslavia has shown whether these interventions were successful.

As mentioned in the analytical framework, I do not understand success as purely outcome-oriented, but I define it as effective action toward the resolution of conflict according to the capabilities of the European Union.¹⁷¹

The wars in the Balkans have been characterized by ethnic tensions and can, therefore, be considered ethnic wars. Because of their imminent spillover effect to neighboring countries, the stability of the whole region was in danger and international action was not only a right but a duty.¹⁷² At the same time, international intervention bears many problems which make effective action difficult. In particular the internal political situations of individual countries have to be taken into account because ethnically oriented political leaders have been crucial in solving the conflicts. The effectiveness of international action, thus, depends on a careful assessment of the underlying factors of the dispute in order to increase the knowledge of the possible problems that might occur. However, the lesson learned from this study is that the effectiveness of non-coercive intervention and mediation in

¹⁷¹ For the elaboration of this issue, see *supra* text accompanying notes 143-145.

¹⁷² For the elaboration of the spreading of ethnic conflict and Yugoslavia, see *supra* text accompanying note 141.

particular, depends on the existence of an operational military force. Nevertheless, in order to prevent highly disputed military interventions like the one in Kosovo, clear rules of engagement are indispensable. These rules should determine the exact procedure from decision-making to execution.

In a discussion about successful conflict resolution, William Zartman's theory on the "ripeness of conflicts" cannot be ignored. He argues that interventions are ineffective as long as the conflicts have not "ripened". This moment is reached when it:

"is associated with two different sorts of intensity - called here plateaus and the precipice - which produce different sorts of pressure - called respectively deadlocks and deadlines. A plateau and its deadlock begin when one side is unable to achieve its aims, to resolve the problem, or to win the conflict by itself, and they are completed when the other side arrives at a similar perception. Each party must begin to feel uncomfortable in the costly dead-end into which it has gotten itself. A plateau must be perceived by both not as a momentary resting ground, but as a hurting stalemate, a flat, unpleasant terrain stretching

into the future, providing no later possibilities for decisive escalation or for graceful escape".¹⁷³

Applied to the former Yugoslavia, this argument would mean that as long as both parties (especially the stronger one) have not reached the point of "mutually hurting stalemate" failure is most likely. All European efforts would have been predestined to fail until Serbia felt threatened by NATO's military attack.

Melanie Greenberg and Margaret McGuinness apply another concept of ripeness to Bosnia—not the disputing parties but the interveners decided when the conflict was ripe for intervention and, according to them, this moment was reached because of atrocities portrayed by the media.¹⁷⁴

I am skeptical about the whole principle of "ripeness" because its methodological relevance for conflict resolution seems limited due to its ex post approach. After a conflict is resolved, we can analyze and probably find moments of time where an earlier intervention would have helped. But this does not serve policy-makers and mediators during the actual moment of crisis. Lessons learned might be useful for dealing with a future dispute but, as analogies, they have to be treated with extreme caution. This benefit is only of minor relevance.

¹⁷³ I. WILLIAM ZARTMAN, *RIPE FOR RESOLUTION: CONFLICT AND INTERVENTION IN AFRICA*, 268 (1989).

¹⁷⁴ See *supra* note 69, at 71.

Moreover, the concept is weak, because it promises a guarantee that if you find the right moment to intervene, you will succeed. Unfortunately, this is not realistic in complicated and multifaceted conflicts like ethnic wars.

III. Future implications and Policy recommendations

A. INSTITUTIONAL REFORM AND EVOLUTION

On May 1, 2001, German Chancellor Gerhard Schröder proposed a plan to "remake" the European Union.¹⁷⁵ The plan calls for creating a more powerful European government. This will inevitably stir up national governments about giving up their sovereignty and power to the EU level. About the subject of foreign policy and defense, Schröder also announced that European authority would increase. He was not more specific on that point which indicates, on its own, the controversy about reforms in this field.

To be sure, restructuring the European Union entirely will take several years and the process of enlargement will increase the complexity even further. However, the development in the CFSP should not come to a halt. It should continue as a gradual evolution even if it is in small steps.

The future of conflict resolution in the European Union and the improvement of civilian intervention capacities has become a new objective. Finally, it is now

¹⁷⁵ Edmund L. Andrews, *Germans Offer Plan to Remake European Union*, THE NEW YORK TIMES, May 1, 2001.

on the agenda. It is important for the future that the Commission for external affairs and the Common Foreign Security Policy work together to prevent duplication. The division of powers between these two regimes has not yet been solved and it needs to be addressed for the same reason.¹⁷⁶

B. INTERNATIONAL CONFLICT RESOLUTION

The future of international conflict resolution in the European Union in 2001 is brighter than it was in 1991, because the Commission and the CFSP are working together and they are heavily engaged with this topic.¹⁷⁷

From what I discovered in the course of research for this paper, the main constraint in the system as it exists today is the lack of an effective early warning unit. The creation of such a unit would contribute to a more proactive approach towards conflict resolution. It would also help to prevent international conflicts, because it would provide data on current events in the crisis-ridden region. Therefore, a proper analysis of the underlying political, economic, and structural factors would be indispensable if the Union wants to be capable of dealing with ethnic conflicts.

¹⁷⁶ I will deal with the substantial part of the improvement of EU's civilian intervention capacities under Section B. of this chapter.

¹⁷⁷ European Commission, *Communication from the Commission on Conflict Prevention* [COM(2001) 211], Brussels, May 11, 2001.

Cooperation between the Commission and the CFSP is even more important and needs to be emphasized. The instruments of both regimes have to be consistent and effective.

Besides the already launched reform in security and defense, I would also suggest fostering international mediation capacities. I recommend a panel of professional mediators, who can quickly be sent to an evolving dispute. The European Union should establish this panel according to geographical criteria – one panel for each region the Union has an interest in. The number of mediators on each panel might also vary according to priority regions. The mediators should be recruited from all Member States. They should be trained in negotiation and mediation. Furthermore, the panel should provide international legal advisors and research assistants. The latter should ideally be working for the early warning unit where analyses about different conflict regions and underlying factors will be made. Cooperation in this field would also prevent duplicative work and higher costs in human resources.

From a financial perspective, the European Union should direct and invest money in effective conflict prevention projects. These funds would support aid and co-operation programs to stabilize conflict-ridden regions. Preventive action is less expensive post-conflict reconstruction. Therefore, it should be an essential

interest of the EU to redirect financial aid to
preventative action.

APPENDIX

**This appendix is a transcript of an interview I had with the
High Representative of the International Community for Bosnia
and Herzegovina, Dr. Wolfgang Petritsch.**

The notes are in German and not edited. However, I am more than happy to provide an English translation if requested.

**Dr. Wolfgang Petritsch Gesprächsaufzeichnungen vom 2.1.2001 im
Café Landtmann**

Special Envoy und ECMM

...gemeinsame Aktion der Mitgliedsstaaten, da wird dann in einem Dokument festgelegt, was das Mandat dieses special envoy ist. Dieser special envoy berichtet dann auch immer dem Aussenministerrat und macht die CORRES, das ist die Art der Kommunikation zwischen den MS der EU, entgeht an alle, automatisch, wenn man was zu berichten hat, in erster Linie die Praesidentschaft, aber die berichtet regelmässig ueber alle Ereignisse, an denen sie teilnimmt als Praesidentschaft und darueber hinaus jeder, wenn's mal was gibt, z.B wenn Aussenminister eine Reise macht, dann wird das als Information an die anderen 14 geschickt. (halbseitiger Bericht). Special envoy hat auch noch das recht in Zusammenarbeit mit der Praesidentschaft, ich weiss jetzt nicht, moeglicher Weise wird sich hier was aendern, dass die special envoys dann Solana unterstehen, genauso wie ECMM (European Commission Monitoring Mission), die entstand 1990/91 im Zusammenhang mit der Jugoslawienkrise v.a mit dem Konflikt in Slovenien. Das sind Beobachter, die Berichte schreiben ueber die Situation on the ground, die waren bisher,

und MS haben dann immer freiwillig ihre Beitraege geleistet, und also Leute sekundiert, und diese ECMM wird jetzt Solana unterstellt, um ihm ein Instrument zu geben.

Sachlich begruendet, da z.B. Patten die Aussenvertretungen hat, so wie quasi die EU Botschaften und Solana hat das nicht, kann aber natuerlich darauf zurueckkommen.

Die genauen Funktionen muss man da noch nachschauen.

Das Hauptproblem ist, dass die Aussenpolitik intergouvernmental ist, und nicht integriert ist so wie die Wirtschaftspolitik, und dadurch entsteht eine Spannung, die sicherlich noch laenger anhalten wird, bis man das auch dann interveniert, ich glaube nicht, dass das so rasch gehen wird.

Eben, es verwischt sich, Angelegenheiten der 3. Saeule sind schon in die 1. abgewandert, wie bald das dann auch bei der Aussenpolitik der Fall sein wird, wird man sehen

Ich nehme an, es wird schritt fuer schritt ausgehoelt werden, und andere Bereiche uebergeben werden, jetzt im Zusammenhang mit dieser 60.000 Mann Krisentruppe.

Dann haengt das von der jeweiligen Staerke der Praesidentschaft ab, wie weit sie das weiterfuehrt und Initiativen setzt.

Praesidentschaft im Verhaeltnis zu 3. Staaten, alle 6 Monate Aenderung, Posten des Solana um mehr Transparenz zu schaffen

Troika, Solana ist immer dabei, wenn ein Aussenminister oder Regierungschef in ein Krisengebiet reist, er wird auch extra

geschickt, aber das ist immer irgendwie eine sehr komplexer Prozess, wie z.B. im Nahen Osten wo weder Patten noch Solana eine Rolle spielt. In Europa selbst hat sich's geaendert, da haengsts sehr von Personen ab, aber ich habe bei mir selber gesehen, dass man sich jede Freiheit nehmen kann, man ist voellig unkontrolliert, man spricht im Namen der EU aber man hat kein aktives Feedback, das ist das grosse Problem, mit wem soll man reden, man spricht mit der Praesidentschaft, ich hab Oesterreich gehabt, und dann waehrend Rambouilet Deutschland, da hats dann relative klare Absprachen gegeben, aber gleichzeitig eine grosse Freiheit fuer mich, was ich halt fuer richtig gehalten habe.

Grosses Problem ist das personelle Back-up, das man nicht hat. Ich habe mir dann 2 Leute genommen, hab im grossen und ganzen alle meine Dinge selber gemacht, es klingt zwar gut: special envoy der EU, und dann sitzt man in der Kontakt Gruppe dort und hat einen Mitarbeiter und dann kommen die Amerikaner, und der special envoy fuer den Kosovo hat dann 10 Leute hinter sich, wie das mit dem Chris Hill war, da sieht man schon die Unterschiede. Die Gewichtung und dann die Faehigkeit Initiativen zu setzen und dadurch zu beeinflussen, das kann man nur, wenn man Leute hat, die nachdenken koennen. Was aber auch nicht immer das einzige ist. Bei den Amerikanern hat eine grosse Buerokratisierung stattgefunden, die haben einen relativ grossen Apparat, der aber auch nicht das produziert, was er koennte, sozusagen Quantitaet steht nicht vor Qualitaet der Produktivitaet.

Ich dachte, dass diejenigen, die als Vermittler fuer die EU in diesem Fall auftreten, schon genauere Richtlinien haben, die durch MS festgelegt sind, wie sie verhandeln sollen.

Ja, das ist genau 10 Zeilen lang, das koennen Sie dann nachlesen in der Gemeinsamen Aktion steht das drin, aber ganz allgemein. Mehr geht's um konkrete Initiativen und Schritte, darum geht's dann in der Praesidentschaft. Da kommt es natuerlich dann wieder darauf an, wer die Praesidentschaft innehat, sehr wenig Kontinuitaet, der special envoy bleibt laenger als eine Praesidentschaft, man erlebt dadurch verschiedene Arten wie berichtet wird, Analysen oder nur Beschreibungen, da ist es sehr amateurhaft, und individuell von den einzelnen Initiativen und Vorstellungen abhaengig, auch sogar einzelner Menschen.

Wie entscheidet die Eu, wen sie schickt, das ist doch eine rein politische Frage.

Ja, das ist eine Entscheidung der Aussenminister, in meinem Fall haben sich die Amerikaner im Okt. 1998 mokiert, dass der Konflikt im Kosovo eskaliert, und dass sie einen special envoy haben, den ehem. Botschafter fuer Macedonien, Chris Hill, der Plaene vorgelegt hat, und Europaer praktisch nichts tun, und daraufhin hatte, in NY bei der UN Generalversammlung, die EU die Idee einen special envoy zu ernennen, und hat sich dann auf mich geeinigt, nachdem ich in der Praesidentschaft schon recht aktiv war. Das wurde dann formalisiert. Im Maerz 1999 wurde es dann eigentlich erst formalisiert, als praktisch Rambouillet schon vorbei war, und klar war, dass der Konflikt eine andere

Qualitaet annehmen wird. Das zeigt, wie lange also so ein Prozess dauert, bis irgendeine Entscheidung getroffen wird. Ich konnte wohl schon arbeiten, aber es war keinerlei Festlegung auf irgendwas, kann mich erinnern, Papiere produziert, was man brauchen koennte. Mein Team in Rambouillet hab ich einfach so selber zusammengestellt Absolut amateurhaft. Wenn man das nach strikten professionellen Kriterien nehmen wuerde, dann ist das keine Aktion gewesen wo man sagen koennte, dass da ein System dahinter waere, das spiegelt auch die Situation in der EU wider. Die Praesidentschaft schaut eben hauptsaechlich auf natioinale Ebene, und so Fragen wie Kosovo gehoeren dazu, man will sich nicht blamieren, aber das man deshalb jetzt weiss ich was macht, oder einen eigenen Apparat

Was halten Sie von der Idee ein Panel von 5 Mediatoren, die ausgebildet sind, internationale Verhandlungen zu fuehren etc, die dann punktuell eingesetzt werden koennen.

Ich sehe das als eine gute Idee, das muss sich um Solana entwickeln. Man muss das aber realistisch sehen, denn das hat weitreichende Konsequenzen bis hin zum diplomatischen Apparat. Das noch nicht geloeste Problem zwischen Kommission und Rat und der jeweiligen Praesidentschaft. Ob das einmal geloest wird, weiss ich nicht, das ist sicherlich so etwas wie ein gordischer Knoten, man kann die Kommission in den Aussenbeziehungen runter fahren, was zu einer Nationalisierung der Gemeinschaft, bedeutet die Kommission zu entmachten, und mehr Richtung Rat zu gehen. Aber ich glaube, dass die Entwicklung der Aussenpolitik entspricht der Entwicklung der ganzen EU, von immer zu langsam

und zu wenig, von Scheitern zu Scheitern sich doch nach vorn entwickelt, und definitiv nicht ausgerüstet ist fuer akut ausbrechende Konflikte wie Kosovo und insgesamt Jugoslawien nach 1990. Heute habe ich schon den Eindruck, dass sich da in Bosnien,

Die amerikanische Politik stuetzt sich staerker auf traditionelle Machtmittel wie Intervention insgesamt, ob jetzt militaerisch oder politisch, waehrend auf der europaeischen Seite, eher ein langsamer nicht militaerischer approach vorhanden ist, der auch bestimmt ist von der politik im jeweiligen land, aber doch mit dem selben wegziel, diese region in die naehe von Europa zu holen. Mit nationalen interessen verbunden, da glaube ich wird sich im SO Europa staerker nach der Demokratisierung, die zum ersten mal in allen staaten da, wird sich der nicht militaerische teil der internationalen beziehungen oder intervention durchsetzen. Waehrend in Nah ost das in die andere richtung laeuft, im moment zumindest, aber vor der haustuere europas werden die europaer in den naechsten jahren staerkern einfluss gewinnen, weil die miltaerischen Fragen nicht mehr relevant sind, die strategischen schon, weil sich der Raum aus US Sicht, im Zusammenhang in Richtung Nahe Osten, Tuerkei Entwicklung in Richtung Russland richten, aber in der Reparatur dieser Schaeden sind heute va im Mittelpunkt Statebuilding, ich sag bewusst nicht nationbuilding, weil das bei uns eine andere bedeutung hat, dazu gehoert in erster linie die beseitigung dieser weak governance, good governance das steht eigentliih im mittelpunkt, strukturell Veraenderungen im aufbau und oeffentliche strukturen, verwaltung, gerichtsbarkeit, ru le of law, kommt mehr und mehr in den vordergrund. Ich sehe

das immer mehr, kommt in den vordergrund, in bosnien hab ich das von anfang an als hauptproblem analysiert, damals aber noch im schlagschatten der unmittelbaren kriegsgefahr von serbien und milosevic. Meiner meinung nach verlagert sich das staerker in zivile, diplomatische politische Intervention, in einem sehr starken wirtschaftlichen hintergrunde. Der wirtschaftlich Hintergrund wird unterschaezt, weil noch zu wenig analysiert ist, was die rolle des freien marktes ist. Naemlich direkt und voellig unreflektiert und unkritisch importiert werden, im Globalisierungszeitalter scheren sich Firmen nicht darum, was es fuer lokale gewachsene struktur oder tradition gibt, sondern da kommt die marktwirtschaft, ob man die sozial oder frei nennt, und transportiert damit werte, und schafft ein xxx fuer die Wirtschaft und damit auch fuer soziale und politische entwicklungen, in so fern in diesem sinn muesste man mediation auch sehr stark diese Aspekte beruecksichtigen und miteinbeziehen.

Ich seh das an meiner arbeit, wo man sich in bosnien zu lange auf die frage konzentriert hat der ethnizitaet und des Nationalismus, und die auch noch verschiedene faerbungen haben, weil man aus OE oder DT sieht nationalismus mit Natsoz assoziiert, in anderen laendern wie frankreich wird das anders gesehen. In serbien war Nationalismus immer eine staatsbildende kraft, und dh schon verschiedene ideen und konzepte, staerker vom wirtschaftlichen her zu sehen, ohne eine gesellschaftspolitische position aus den augen zu verlieren, aber grundlagen schaffen: state building und dann als wesentlicher teil davon die wirtschaft so ordnen, dass sie funktionieren kann und sich auch in die weltwirtschaft

integrieren kann. Da mache ich viel staerker privatisierung und mehr mit governance beginnen, aus der sicht der strukturellen und institutionellen fragen das zu sehen.

Da mache ich vor allem Telekommunikation, wobei interessant ist zu sehen, dass immer noch 5 Jahre nach Dayton, es immer noch drei ethnische definierte telekommunikation provider gibt.

Serbisch, Kroatisch und bosnisch. Diese sind klar territorial beschraenkt, und haben monopole in die man nicht hinein kann.

Wir haben das bis jetzt eher ignoriert, und gesagt seid nett zueinander, vertragt euch wieder, tuts halt so wie wir

wirtschaft machen, aber das funktioniert nicht, da muss man tatsachen schaffen, reparations behoeerde zu etablieren, und den

3 providern eine frequenz fuer ganze land zu geben, damit wettbewerb schaffen, und -ich nenne das funktionelle

integration- das wirkt ueber das faktum, dass die preise runtergehen, der groesste nationalist wird bei der billigeren

comp einsteigen, man schafft vom kunden her bessere

voraussetzungen fuer ein aufeinander zugehen, und dadurch

wiederum eine gewisse voraussetzung fuer reconsiliation, fuer eine die idee eines gesamtstaates, die dort nicht akzeptiert

wird. Z,b, mediation (was wir machen ist intervention) in situationen, wo man nicht so hineingeht wie nach bosnien,

muesste diese aspekte sehr stark analysieren und dann schauen,

was da los ist, warum sind bestimmte fortschritte nicht

moeglich, weil die verschiedenen interessen da sind, von einer

gruppe, die vorgibt national zu sein, und das glaub ich, ist

wichtig zu beruecksichtigen in der frage die sie behandeln.

Wie weit spielt die OSZE eine Rolle?

Die OSZE hat va menschenrechte und rule of law, minderheitenrechte, ganz wichtig im bereich von SO europa stellt das ein „first ever“ da. Rechtsstaatlichkeit gabs nie, das recht war immer auf der seite des maechtigen. Sehr starke wirkungen.unbewusst. Im kosovo konflikt , zuerst haben die serben die albaner unterdrueckt, und als die albaner dann mit hilfe der NATO oben waren, haben sie mit genau den selben methoden des mordes und des terrors die serben unterdrueckt. Warum? Weil sie in der selben region, in der selben tradition sozialisiert worden sind. Und auch die albaner, ich bin ueberzeugt, dass nicht die Ethnie eine Rolle spielt, sondern die sozialen und oekonomischen bedingungen, die dort herrschen. Das sind so wichtige ansaetze, die unterschaezt werden, diplomatie kann nicht alles sein, aber auch, historische kontinuitaeten muessen erkannt werden, das war ueberraschend, dass z.B. in einem dorf die polizei kam und 11 von 12 maennern ermordete, nachher ging alles so weiter wie vorher, das wurde wie eine unwetterkatastrophe gesehen. Der staat kommt ueber einen, deshalb gibt es auch, die rebellierung ist auch von den juengeren gekommen, nicht von den aelteren, es gibt keine empoeung, die gerichtet ist, es gab Leid, man hat geklagt, aber es war wie schicksal, zu erkennen, wie wichtig das ist, und die politiker sind fuer euch da, der staat ist fuer euch da, er hat euch zu dienen, das klingt sehr oberlehrerhaft, ist aber ganz wichtig, policy 101, als teil eines versuches die dinge zu veraendern.

geschichte und vertreibungen. In 20ern offiziell bevoelkerungsaustausch zwischen griechen und tuerken, bei uns

viel staerker als im zusammenhang mit dem 2 WK gesehen, vertreibung der sudetendeutschen. Diese sachen werden staerker als unrecht aufgefallen, erst als die im westen waren, ist es aufgefallen, dort gibt's das nicht, dort ist das normal gewesen, deshalb auch von milosevic und lokalpolitik nicht als krieg grund angesehen, das deshalb vom westen ein militaerischer krieg ausgebrochen ist, war unvorstellbar. Als auch wieder eine klarere analyse. Rule of law wird nicht als etwas abaenderbares gesehen, gerichtsurteile werden dort so kritisiert, ja klar, das ist ein serbe, drum wird das so gesehen, als recht gesprochen, alles abwandelbar, machtbedingt abaenderbar, trennung von macht und recht, .

Heidelberger institut fuer konfliktforschung, Demokratien nie kriege gegueinander gefuehrt. Demokratiebildung wichtig.

Zwischen Demokratien noch nie ein Krieg gefuehrt worden, stimmt in der Absolutheit natuerlich nicht, aber haengt wohl auch damit zusammen, dass es noch nicht so viele demokratien gegeben hat. Klarer weise geht es in die Richtung, von allgemein anerkannten Regeln, beachtung von regeln, unglaublich wichtig, kann man nur verstehen, so wie wir, wir hatten verschiedene verfassungen in den letzten 100 jahren, in amerika oder GB verstehen sie das nicht, ich halte mich an eine regel, solange sie mir dient, aber nicht, wenn sie sich gegen mich richtet. Solche ueberlegungen sind ganz wichtig, um einen konflikt in seinen fruehen dimensionen zu verstehen. Und dann viele loesungen zu praesentieren.

Tipps fuer verhandlung oder case to case?

Learning by doing, wie man dann in einer gewissen situation handelt, man macht, ohne dass man das was wir in rambouillet gemacht haben, verhandlungen sind mir ein bisschen hahnebuechen. So etwas wie common sense ist eigentlich ausschlaggebend, aber doch problematisch. Chris hill, europaer haben weniger erfahrung, aber amis kochen auch nur mit wasser, grosses potential noch an vorhanden, professionalisierung. Die ganzen bereiche, wo man systematischer darauf vorbereiten muesste, nicht so sehr an eine technik gebunden, schon auch, aber mit tiefer kenntnis der situation.

Als check braucht man leute, die von aussen in eine situation eintreten, sodass man dann bestimmte voraussetzungen nicht hinterfragt, sondern als gegeben annimmt. Aber das meiste, was wir gemacht haben, ist das Zusammenwirken so verschiedener oft widerstrebender kraefte. Wird sehr stark hinterfragt, durch gegeneinander entsteht moeglichkeit sachen zu diskutieren. Der zeitfaktor spielt auch eine rolle, wie schnell so ein konflikt eskalieren kann. Unglaublich, wie rasch das geht, in der akuten phase, in der phase davor wie im kosovo, die lange gedauert hat, mit maerz 1998 und dem massaker von prekac bekam das eine andere dimension, innerhalb eines jahres hatte man dann full range vom international gesehen null bis hin zur NATO intervention, war ganz deutlich.

Zu den Verhandlungen, es ging auf einmal immer schneller, immer schneller, hill und er sind herumgefahren, wie shuttle diplomacy.

Um 2 uhr frueh hab ich mit meinen mitarbeitern einen papier geschrieben mit den punkten, die wichtig sind, und die amis wollten mit ihrer sache weiterfahren, ich hab aber schon vorher bei den europaern vorgefuehlt, und die franzosen waren irrsinnig begeistert, wohl auch, weil alles was gegen die Amerikaner ist, fuer sie gut ist, dann in der contact group vorgebracht, als non-negotiable, ich meinte aber, leute, das muessen wir noch mal analysieren, und prompt war ein punkt bzgl. Territorial unity and sovereignty dabei, wir haben aber geschrieben gehabt: territorial integrity of yugoslavia bleibt, und alle haben das uebersehen, auch die russen, und das war dann die grundlage fuer rambouillet, und ploetzlich kommen die russen drauf, und sagen aber wieso ist da keine souveraenitaet erwaeht. Es stand eh 3 mal drin, aber die serben kamen immer wieder darauf zurueck, in der kurzen zeit der vorbereitungen passieren eben solche fehler. Wie die konferrenz beschlossen wurde, war das einfach vollkommene ueberforderung. Der russe ist dann erst dazugekommen, ein paar tage spaeter aufgetaucht, interne probleme.

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