Towards a post-national foreign and security policy?

By

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Abstract

Much of the empirical work on the European Union's Common Foreign and Security Policy suggests that there is something "more" going on in this field than what we might expect if we rely on traditional realist or more sophisticated rational choice perspectives in our analyses. However, it is not always clear what these empirical observations add up to in terms of how we should conceptualise the EU's foreign policy and the processes that take place within it. This paper specifies two alternative ways of conceptualizing European foreign policy and makes a preliminary assessment of their empirical relevance. The first of these conceptions outlines the EU as primarily identity-based. Here foreign policy would be geared towards ensuring the sustainability of a particular *European* community. The second conception would depict the EU as a rights-based entity, concerned with promoting certain binding and constraining principles not only inside the EU but also in the international system at large.

Introduction

As recognised by the Laeken European Council, the European Union stands at a crossroads. There is considerable uncertainty as to what type of entity the EU will become, as to what kind of order is emerging in Europe and several possibilities arise. Three ideal-types of the emerging European order can be identified.[2] Firstly, the EU might be on its way to be reduced to a mere "problem solving entity" based on economic citizenship. Here, membership would be derived from its discernible benefits and the purpose of the organisation would be to promote the material interests of the member states. Secondly, the EU might be moving towards a "value-based community" premised on social and cultural citizenship. From such a perspective the EU would be a geographically delimited entity seeking to revitalise traditions, mores and memories of whatever common European values and affiliations there are in order to forge a *we-feeling* as a basis for integration. A third possibility would be that the EU is moving towards a "rights-based post-national union" based on a full-fledged political citizenship. Public support would here have as its motivation a constitutional patriotism, which emanates from a set of legally entrenched fundamental rights and democratic procedures that are deeply entrenched in the "collective psyche" of Europeans and in the institutional framework of the European Union.

The main purpose of this paper is to discuss to which of these images of the EU the Common Foreign and Security Policy (CFSP) speaks. Often, answers to questions about the emerging European order are sought by analysing the building and reforming of the EU's overall institutions. However, when it comes to identifying the nature of the EU it is not enough to look at its emerging governance structures and its basic, overarching institutional features. We must also look more closely at developments in particular policy-fields. Different actors have different interests, visions and values that they wish to project onto the European level, different ideas about what the EU ought to be about. The importance and relevance of these different interests, values and visions might become more visible through analyses of how different policy-issues are conceived of and incorporated into the EU. Often, it is here, in the processes of determining what should be done with regard to concrete policy-issues and areas, that the fundamental features of the EU are actually defined. Thus, analysing the

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[2] This is based on *Citizenship and democratic legitimacy in the European Union*, RTD Proposal submitted in response to Call IHP-KA1-2001-1. Key Action: "Improving the socio-economic knowledge Base". See also Eriksen and Fossum (2004).

principal reasons for including particular policy-issues, as well as the reasons for particular policy-decisions might contribute to a better understanding of what kind of order is emerging in Europe.

The question of foreign and security policy, as it is defined in the second pillar of the EU, is particularly interesting in this regard because expectations that member states will move beyond national sovereignty in this policy-issue are low. The CFSP is in many ways the "hard-case" for those expecting that the EU will move beyond mere problem-solving. The very nature of foreign and security policy is by many considered alien to supranationalism. In other words, to many, the answer to the question of which image of the EU the CFSP speaks to is self-evident. What is more, cooperation in foreign and security policy within the EU is chiefly confined to a separate pillar, where decision-making procedures differ from those in the Community pillar in several and crucial ways.[3] Hence, the predominant perception of the foreign policy field within the EU is that it would speak to the first image of the EU as a "problem-solving entity" with little onus on collective tasks and obligations beyond the interests and preferences of the member states and where the output is accordingly limited. However, this might not be the whole story. Discussions about creating foreign and security policy have been a central part of the agenda of European integration since the early 1950s, and since the early 1970s a gradual building of common intuitions, positions and policies has taken place. If it is the case that there are so few discernable results from cooperation in foreign and security policy, why then do the member states spend so much time attempting to organise and define this policy? Why do they not concentrate their efforts on those issue areas where the benefits are clear and evident? Such questions gain importance against the backdrop of the work of the Convention on the Future of Europe where not only one, but two working groups focused on issues related to foreign and security policy, and where the issue of increased majority voting in this issue-area was discussed to the very end.

In order to discuss to which of the above images the CFPS speaks, it is however necessary to work out more precisely what kind of "foreign and security policy" one might expect according to each of them. Hence, in this paper I have sought to work out three analytically distinct conceptions of the EU's foreign policy based on the problem-solving, value-based

and rights based images of the EU as a whole. In working out these three conceptions I have focused on three core indicators:

1) the institutional structure of the common foreign policy;

2) the legitimacy-basis of the common foreign policy; and

3) the conception of international relations on which collective foreign policy initiatives (towards states outside the EU) might rely.

Based on the first image of the EU, the principal hypothesis would be that the emphasis on developing a common European foreign and security policy is the result of an expectation of long or medium term gains of such cooperation for individual member states, that outweigh any short term costs involved in building cooperation in this policy-field. However, given the potential reservations to this problem-solving image of the CFSP, two alternative hypotheses that speak to the second and the third image of the EU are also being considered. Hence, consistent with the second image of the EU, the hypothesis will be that the desire for a "truly" value-based community would also require a common foreign and security policy, whose purpose would be to ensure and protect the sustainability of the European community. Finally, consistent with the third image of the EU, we would expect that efforts to build a CFSP would be mobilised by a concern for promoting certain binding and constraining principles, also at the international stage.

In the first part of this paper the principal hypothesis is discussed in more detail. What might a "problem-solving" foreign and security policy look like? Based on the conclusions of this analysis, I discuss, with reference to some empirical examples, to what extent this might be a plausible image of the EU's common foreign and security policy? Subsequently a similar discussion is developed based on the second and third hypothesis. Is it so that even with regard to a "hard case" such a foreign and security policy, where national sovereignty and national interests are considered to be most difficult to curb, developments point in a different direction than towards the EU as a problem-solving entity? Indicators that there is something else going on in this policy-area might be particularly significant in terms of discussing what kind of order is emerging in Europe.

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[3] There are of course strong arguments in favour of defining European foreign policy as something more than what is done inside the second pillar of the EU. Thus, it is in order to focus on the "hard case" that the discussion

Problem-solving in foreign and security policy

As noted in the introduction conventional wisdom and the predominant view of the CFSP conveyed in the academic literature would suggest that the CFSP speaks to the first image of the EU as a "problem-solving" entity. There are several reasons why this is so. Perhaps most important is the fact that in foreign and security policy the national veto is fiercely protected and the supranational institutions (the European Parliament, the Commission and the Court) have no, or only limited, influence. This emphasis on the primacy of national interests could be considered the cause for example of the breakdown of European cooperation over the war in Iraq. The obligation to consult that is in principle part of the rules and norms of the CFSP-framework was simply ignored by the signatories of the so-called "letter of the eight" that supported the position of the United States' government when this obligation was considered a hindrance for the expression of what those states considered to be in their particular interest.[4] Hence, this seems to confirm the principal hypothesis, linked to the image of the EU as a problem-solving entity, that cooperation will only take place on foreign and security issues where discernable benefits of such cooperation would be visible, and that when such benefits are not in evidence, member states will chose to go their own ways (i.e. to defect), or cooperate within other fora.

In more precise terms, what kind of institutional structure and decision-making processes would we expect a problem-solving entity to have in foreign and security policy? What would be the legitimacy-basis for such a policy and what kind of perspective on international relations would its policy-initiatives be based upon?

The image of the EU as a problem-solving entity rests on particular theoretical assumptions about the nature of political processes and actor rationality. At the core is the definition of actors as utility-maximisers. Actors are considered as rational in the sense that they seek to maximise their own interests. Following from this, politics is considered to be the outcome of adverse self-interested behaviour. Furthermore, the underlying scientific position of this perspective emphasises material structures rather than normative or social structures. Actors are conceived of as monological and consider that "...other people are just external, objective

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here is limited to the second pillar.
[4] Of course, to many this was not a matter of interests at all but of values or principles, but that is not how it would be seen in this perspective.

facts of reality, on the line with material things, only with the distinctive quality that they carry out strategic actions too." (Eriksen and Weigård 1997: 221). In international relations it is the state that is considered to be the relevant actor-category and these assumptions about rationality are transferred to this unit. The sovereignty of the state and its wish to remain autonomous are taken as given. The expectation is that even though states may seek to establish decision-making processes and institutions that allow them to maximise utility in a particular sector or on a particular issue, they will always seek arrangements that allow them to maintain or enhance their autonomy. Hence a core expectation will be that states will mostly chose to establish *intergovernmental institutional* arrangements rather than supranational ones. Such institutional arrangements would allow states to maintain their autonomy yet at the same time reduce the costs of cooperation when this would be considered beneficial to state interests.

One might however imagine different forms of intergovernmental arrangements, or attribute more or less importance to collective institutions in the bargaining process that leads to their establishment. In the literature on international relations, there is disagreement between neo-realists and neo-liberal institutionalists on this issue. Whereas the former have little faith in the role of collective institutions the latter attribute considerable importance to institutions as an instrument for reducing transaction costs. Applied to the EU it has thus been suggested that one might expect a certain willingness from states to "pool" or "delegate" power in order to ensure credible commitments from other actors (Moravscik 1998). Delegation or pooling might, according to this perspective, chiefly take place in "issue areas where joint gains are high and distributional conflicts are moderate, and where there is uncertainty about future decisions" (Ibid p.75). Furthermore, one would expect governments to commit themselves to collective institutions in policy areas where this would commit other governments to policies that are favoured by "key domestic constituencies", or perhaps to pre-commit the government to policies that are unpopular with domestic constituencies that do not support the government. Finally, the expectation would be that governments would be "nesting specific decisions inside a set of larger decisions reached by unanimity" (Ibid p. 76) The fundamental assumption of actor rationality is however maintained also in this neo-liberal institutionalist perspective and the emphasis on states' ability to, or preference for, control of institutional developments is not reduced or weakened. As Risse has argued 'neo-liberal institutionalism should not be regarded as part of the liberal paradigm. This 'co-operation under anarchy'

perspective shares all realist core assumptions, but disagrees with structural realists on the likelihood of international co-operation among self-interested actors' (Risse-Kappen 1995). Hence, with regard to the type of institutional arrangements, it seems reasonable to argue that this perspective would consider intergovernmental institutional arrangements more likely than supranational ones.

The question of the value- or legitimacy basis of the foreign policy conceived of as problem-solving would probably not be considered particularly relevant, as this would be enshrined in the nation-state. Given that all power is considered to remain with the state, other sources of legitimacy than the ones produced domestically would not be required. With regard to the intergovernmental unit, focus would be on the extent to which joint problem-solving would be more effective in terms of maximising the specific interests of each individual member state than what individual, national problem-solving might do. As long as such effectiveness would be in evidence, further requirements for legitimation would most likely not be considered important.

Finally, with regard to the perspective on international relations, interstate conflict is a natural ingredient. This is so not only with regard to relations between member states, but also with regard to these states' collective relations with "third states" i. e. in the international system. In such a system, there is no focus on justice or on fair distribution. Decisions will reflect the will of the strongest. This means that the perspective on international relations that might underpin the initiatives of a "problem-solving foreign policy" at best would be inspired by a concern for ensuring stability within the established Westphalian system through a balance of power. However, different scholars have different expectations with regard to the strategies that states would choose in an anarchical international system. Hence, whereas some would emphasise that actors would seek security through an international balance of power, others would expect that states' rational calculations would lead them to act offensively to acquire more power than others (Mearsheimer 2001). Neo-liberal institutionalists, on their part would expect the CFSP to put a greater emphasis on cooperative regimes also in the international system; however, such regimes would not challenge its fundamental nature. Hence, all the above perspectives share the assumption that states have no choice in an anarchical international system other than to act as if they were power hungry. Furthermore, they share a

focus on great powers as the relevant players, as well as the emphasis on rules and norms as the product of the interest of the most powerful and as constructed to serve them efficiently.

In sum, foreign and security policy within a problem-solving entity would be formulated with the help of *intergovernmental institutions* (within which decisions are made through processes of bargaining). There is *no need for direct legitimation* of the choices made in foreign and security policy, as all power remains with the nation-state and normative or legitimacy questions are considered to be confined to the domestic political sphere. Finally, with regard to the perspective of such an entity on international relations, it would at best be that there is a need to ensure stability within the established, anarchical, Westphalian, system through a *balance of power*.

To what extent can such an image be said to be satisfactory in terms of capturing the core elements of the EU's Common Foreign and Security Policy?

Empirical relevance

To many, a principal characteristic of the EU's foreign and security policy is indecisiveness and ineffectiveness. Little is happening in the field of foreign and security policy within the EU it is argued. In fact the very existence of a common European foreign and security policy is questioned. However, to what extent do such analyses become a self-fulfilling prophecy? If there is no alternative conception of cooperation on the table, certain dimensions of the empirical reality might be "lost" or their importance or relevance might be ruled out. To what extent is for example the argument that it is not really meaningful to talk about a common foreign and security policy within the EU, and that it only exists on paper and has no real substance, simply a reflection of a particular view of what kind of "actions" or "initiatives" are relevant in international politics? That is, might there be a theoretical bias to such studies? It is possible that the conception of EU foreign policy as "problem-solving" and the theoretical assumptions that this conception relies upon, says much, or perhaps more, about what is *not* possible in this field, than what *is* possible in terms of integration and cooperation in foreign and security policy. To be more concrete: What become particularly visible, and understandable, from this perspective are the limitations to this policy area in situations of international crises, whereas day-to-day policy-making and potential incremental change might slide out of focus.

Another general comment to the perspective outlined above might be that its relevance or applicability to foreign and security policy is limited, given that there are few concrete material gains in foreign and security policy. There are obvious exceptions to this, for example with regard to building and sustaining a military capability and national intelligence network, as well as with regard to the building and sustaining of a national defence industry.[5] Here, the material gains are clear and the possibility of rationally calculating gains or losses entailed by different choices is clear. However, this is not a relevant argument for rejecting this approach because rather than material economic gains, "utility" can be defined either in terms of increased international influence or in terms of increased (territorial) security. In order to ensure the relevance of this perspective for analysis of foreign and security policy "utility" needs to be operationalised in a different way, - not as "economic gains", but as "international influence" or "increased (territorial) security".

The most important question for this paper is to what extent the three indicators related to the conception of EU foreign policy as "problem-solving" fit with what we know about the CFSP? At first sight, the fit seems to be fairly good. This is particularly so with regard to the *institutional structures*. Despite the Commission's persistent efforts to take over as much as possible of the foreign policy "dossier" and to put its personal mark on the EU's relations with the rest of the world, member states retain their national veto and have built institutions to facilitate the process of cooperation in which they retain control, instead of delegating power to the Commission.

However, a number of empirical observations suggest that something "more" is going on within this intergovernmental structure than what might be captured through a focus on Member states' fixed preferences defined as a desire for increased international influence or increased (territorial) security (Torreblanca 2001, Tonra 2001, Aggestam 1999, Pijpers 1996, Allen 1998, Howorth 2000). It is perhaps in particular the assumption of the rational choice

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[5] One might also add that from a purely utilitarian perspective one might on some issues actually expect more than a pooling of sovereignty. In fact, on the issues of the defence industry or intelligence, it would no doubt be more cost-effective to have a European army than maintaining national military forces. Indeed, such arguments are occasionally heard in the EU, although they are not the most predominant. However, this would entail abandoning the autonomy of the individual units. Thus, "effectiveness" in this perspective is defined as "more effective than what it might be to conduct only a national foreign and security policy" (the gain of the common foreign and security policy might be higher than the gain of a national policy). This does however raise the question of whether or not there are certain assumptions about mutually recognised norms built into this perspective that it cannot fully explain.

perspective of the stability of preferences within an intergovernmental framework that is challenged by this literature. Several authors suggest that the CFSP seems to have a certain transformatory capacity vis à vis national foreign policies. Here it is suggested that it is not only the strategies of the member states that have changed, but that their perception of what types of problems and issues that are relevant and of what is the appropriate way to resolve them that has evolved (Torreblanca 2001, Tonra 2001, Smith 2000, Aggestam 1999, Pijpers 1996). Furthermore some write about processes of "Brusselsisation" (Allen 1998) or "Brussels-based intergovernmentalism" (Howorth 2000) in the CFSP. By this they suggest that although national governments are still formally in control of foreign policy, in practice, much of the foreign policy making process has been moved to Brussels, thus making it more difficult for national ministries to fully control what is being decided. These observations imply that although the first indicator seems to be strongly confirmed by what we know about the CFSP, there might be moves in a different direction and towards something that might be more difficult to explain with the theoretical tools that this conception of the CFSP relies upon. The institutional arrangement may not be merely intergovernmental.

With regard to the *legitimacy-basis* of the foreign and security policy, there is substantial evidence that the problem-solving conception fits with what we know about the CFSP. The lack of democratic control of the foreign policy process at the EU-level is well documented. Although the European Parliament is active in terms of producing statements and documenting its views on international issues, it has a very limited role in the actual making of foreign and security policy.[6] Some would however argue that the issue of democratic legitimacy in foreign and security policy is not as relevant or important in the nation-state context either, due to the particular nature of foreign policy as opposed to domestic policy. Hence, the crucial "test" to this indicator might be evidence of common identity, rather than of procedures that ensure democratic control. However, also here, the evidence does at first sight appear to be in the negative, as the EU is composed of a number of nation-states with different historical experiences and cultural reference points. One reservation can be made to this: if we compare the EU's arguments and reasons for enlargement to Central and Eastern Europe and the arguments and reasons for enlargement to Turkey, a difference occurs. In the case of the former, there are systematic references to a common European heritage and a

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[6] This might change if the suggestion from the Convention of using the EU's budget also to finance initiatives in foreign policy is accepted by the member states.

European family, whereas such references are absent with regard to the latter (Sjursen 2002). This might suggest that there are elements of a perception of common identity in place. It would still, however be necessary to show that this comes into play also in foreign and security policy and not only on the issue of enlargement.

Finally, with regard to the *perspective on international relations*, this is perhaps where the evidence with regard to the image of the EU as a problem solving entity is the weakest. It is increasingly argued that the EU and its CFSP has a particular impact and plays a particular role in the international system that distinguishes it from other international actors, and that this role in essence is characterised by an effort to transform international relations or to strengthen those dimensions of the international system that contribute to constrain power politics (Rosencrance 1998, Aggestam 2000, Ménendez 2003, Manners 2002, Sjursen 2003). Observations of such a policy could be considered to be a reflection of the limited achievements of the foreign policy cooperation of a problem-solving entity such as the EU might be. Kagan for example has argued that it is because the EU does not have the resources to use force that it espouses Kantian ideals in its relations with the rest of the world (Kagan 2003). The problem with Kagan's argument is however that he does not investigate any alternative hypothesis. He does not consider the possibility that an emphasis on other instruments than military force may be based on a normative assessment of the appropriateness of the use of such instruments, rather than on their availability.[7]

At a more general level it can be argued that with regard to the relevance of a problem-solving conception of the CFPS what is at stake is not only the existence of a "rest category" of empirical observations that do not seem to "fit" completely. Rather, the issue might be that parts of the empirical world of inter-state interaction are sliced off before the analysis begins, hence a theoretical bias. In fact, in order to achieve agreement to undertake efforts to seek collective problem-solving in the first place, a considerable level of understanding between the actors is necessary. They must agree on the object of their dispute as well as have a similar understanding of how to measure the power potentials that determine the outcome of the bargaining process, i.e. the compromise. Finally, they must have some, minimal, shared

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[7] On a different note it might be added that the lack of "political will" and/or ability to implement its ambitions in security and defence is perhaps not the only problem for the CFSP. The desire of the US to prevent such policies from actually materialising has also increasingly become a challenge. Hence, the EU's ambitions to take

normative framework. Otherwise it will not be possible for them to agree that the results are valid and to ensure that all parties put them into practice. Many authors have argued that in order to understand how these "prior" understandings come about, we may need a different conception of actor rationality and political processes than the one provided for by rational choice theories (Müller 2001: 163; Eriksen 2003). The bargaining process that leads to a compromise in the distribution of costs and benefits, is only one part of the process of cooperation between states. This would also suggest then that in order to properly capture why we see these efforts to build a common foreign and security policy, we cannot limit ourselves to this perspective.

Beyond strategic rationality?

The above discussion suggests that it might be worth taking a closer look at the two alternative hypotheses outlined in the introduction and that speak to the second and third images of the EU (the EU as a value-based community or as a rights-based post-national union). Whereas the second hypothesis would suggest that a common foreign and security policy would be established mainly to ensure and protect the sustainability of a particular community with a particular European identity, the third hypothesis would suggest that the efforts to build the CFSP could be understood as the expression of a concern for promoting certain principles not only inside the EU but also at the international stage. These two hypotheses rest on different theoretical assumptions about the nature of political processes and about actor rationality from the ones that are relied upon in the first image.

Central to both hypotheses is the conception of actors as communicatively rational and not only as strategic. This conception contends that actors are considered rational when they are able to justify and explain their actions in relation to intersubjectively valid norms, that is norms that cannot be reasonably rejected in a rational debate, and not only when they seek to maximise their own interests (Eriksen and Weigård 2003).[8] There is in other words an explicit emphasis on language in this perspective that we do not find in the rational choice approach. This builds on Jürgen Habermas' theory of "speech acts" and communicative action. Habermas considers that our communication through linguistic expressions – "speech acts" –

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over NATO's operations in Bosnia appears to have been hampered as much by disagreement within the EU as by the United States.
[8] See also Habermas' discourse principle, discussed in Eriksen and Weigård (2003: 147) and based on Habermas (1996: 107).

"play a central role in regulating and reproducing forms of social life and the identities of actors." (Cronin and de Greiff 1998: X) The process of argumentation is considered to be the crucial mechanism of social coordination. Arguably this is so also in a rational choice perspective. The actors may not always be mute in a bargaining process, such processes obviously entail exchanges of information between actors, however, the type of information that is conveyed in a bargaining process is different (Heath 2001). Here it is mainly a matter of signalling preferences that are backed by threats and promises, whereas the definition of actors as communicatively rational suggests that they are also capable of providing reasons for particular choices and that others are in turn capable of assessing the validity of those reasons. This opens up for the *theoretical* possibility of an agreement between actors that is based on an understanding supported by mutually acceptable or identical reasons, rather than individual utility calculations.

This perspective is similar to rational choice analysis in the sense that they are both action theoretical approaches. Social phenomena are in other words considered to be products of interaction between individuals. However, rather than focusing on monological actors with fixed preferences the theory of communicative action focuses on dialogical actors "...who co-ordinate their plans through argumentation, aimed at reaching mutual agreement." (Eriksen and Weigård 1997: 221). In addition to the concept of actors as strategic and oriented towards realising self-interest, we have then a conception of actors as understanding oriented and seeking to reach agreement with other actors through argumentation. Here it is posited "... that co-operation comes about when the process of reason-giving generates a capacity for change of viewpoints." (Eriksen and Fossum 2000: 257).

The reasons for a particular policy choice could be material gain, but they could also be formulated with reference to an actor's sense of identity or understanding of the common good. This is the form of justification that we would expect in the value-based foreign policy. From this perspective communicative processes are context-bound; they are only possible in collectivities that have "thick" sense of identity. In such collectivities the relevant form of justification would be referring to what the appropriate conduct is given the particular identity of the particular community in question.

Furthermore, actors could explain their actions with reference to principles that, all things considered, can be recognised as 'just' by all parties, irrespective of their particular interests,

perceptions of the 'good life' or cultural identity. This would be the form of justification that one would expect in a rights-based foreign policy. Whereas the concern for material gains could be accounted for through a rational choice perspective, answers to questions regarding "who we are" (identity-questions) or what is the right conduct from a moral perspective are more difficult to reconstruct from such premises. Consequently, this conception of actors as communicatively rational might help us in particular to bring the potential communal and/or normative dimension in the Common Foreign and Security Policy out more clearly (Sjursen 2004).

This conception of actors as understanding oriented and thus able to shift from a purely self-regarding to an other-regarding mode of interaction is not the same thing as a conception of actors as altruistic. Rather the actor is conceived of as having "…the ability to critically reflect on her own understandings of reality, interests, preferences, and maxims of behaviour; to estimate the consequences for other actors should she decide to pursue her own interests; and to participate in a discourse with others regarding the interpretation of interest and norms for the coordination of behaviour and interaction." (Lose 2001: 185) This opens up not only for the possibility of a change of preferences as a result of interaction and communication, but also for the possibility that actors agree to certain decisions even if it goes against their own material interest.

Indicators of a value-based or a rights based foreign policy

What kind of expectations might we have then of the institutional arrangements in a value-based and a rights-based foreign and security policy? What would be the legitimacy basis for such foreign and security policies and what kind of perspective on international relations would their policy-initiatives be based upon?

Institutional arrangements

If we start with the *rights-based* foreign policy, it follows from the definition of actors as communicatively rational and understanding oriented that they will be capable of agreeing to establish institutions and rules for interaction that are mutually binding and that may constrain their ability to promote particular interests. The mobilising factor for the establishment of such institutions or rules would be the joint conviction of the actors involved that they would provide the best way, or the best procedures, for solving common problems. It is perhaps less

obvious whether or not this perspective would lead to expectations of supranational or, rather, intergovernmental institutions and international governance (Bohman 1999). However, the most likely option would probably be *supranationalism*, defined as the establishment of a mutually binding legal arrangement –connected to sanctions - between the actors. Such mutually binding institutions would be necessary in order to ensure collective action, which is to take away the motives for actors not to comply with common rules. They sanction non-compliance; hence make it less costly to act in a morally adequate way. Without mutually binding legal norms, there is always a risk of defection and a concern that some actors contribute more than what they receive (whereas others are free riders). In order to avoid such risks common rules are necessary. Here, the rational choice perspective might agree with the communicative perspective – however it diverges on the potential for actors to actually come to agreement on common rules. Furthermore, the two perspectives differ on the reasons why actors might agree in the first place, as well as comply once they have come to an agreement. Whereas the rational choice perspective would expect agreement only if rational utility calculations of each individual actor suggest that agreement is beneficial, the communicative perspective assumes that agreement is possible on the basis of the better argument. In the aftermath, then, the legal agreement is maintained not only because of its ultimate ability to force actors to comply but because it is considered legitimate – it is considered to provide fair terms of cooperation for all actors involved. Regardless of their material resources they are subjected to the same duties and have the same rights. The law is considered to have a moral element that makes it possible to obey it based on a moral assessment about what is fair, or what is in the interest of the common good (Eriksen and Weigård 2003). It ensures a fair process of decision-making.

With regard to a *value-based* image the consensus that would provide the basis for compliance is limited as it is based upon a we-feeling, a sense of common identity and the idea of special obligations to fellow members within the unit. Allegiance to a common foreign and security policy would be the result of a sense of common destiny and a clear distinction between what is European as opposed to other human collectives. In such a unit, supranational institutions would be unproblematic, indeed a necessary requirement for a foreign and security policy that would have as its task to protect and sustain the collective "us" and "our" particular way of life from other units in the international system.

Legitimacy basis

With regard to the legitimacy basis for a value-based and a rights based image, there would also be differences. In both cases however, the democratic checks and balances of the member states would not be a sufficient source of legitimacy, as both conceptions are considered to entail a degree of supranationality. In the case of a *value based* conception, one would rely on the sense of solidarity as the principal sources of legitimacy for the foreign and security policy. The requirements for democratic checks and balances would perhaps be less strong, as the need for a common foreign and security policy would be justified in terms of defending and protecting a particular life-form from potential threats and intrusions. The value- or identity-based conception does not as such presuppose democracy. It is only if the community in question endorses democratic principles as a constitutive part of their common identity that democratic legitimacy would be expected. Hence, one might expect a certain requirement of consistency between the particular understanding of the characteristics of a particular entity and the policy-choices made. To many, such a perspective might be particularly relevant with regard to foreign and security policy. Indeed, it is sometimes argued that particularly with regard to issues that pertain to national security, openness and democratic accountability can be problematic, and efficiency requirements are more important. Physical survival –national sovereignty - is what is ultimately considered to be at stake, and is thus considered to take primacy over requirements for democratic checks and balances.[9] This is reflected also in the national constitutions of some states in the sense that foreign and security policy is often considered to be the prerogative of the executive and the decision to go to war is sometimes even almost exclusively in the hands of this branch. National parliaments on the whole spend less time scrutinising foreign policy issues than traditional domestic political matters. The advocates of the limited need to democratic controls and procedures in foreign and security policy seem in fact to lean not only on criteria of efficiency but also on assumptions of cultural and ethnic cohesion within a nation-state. Questions of foreign policy are often framed in terms of "us" and "them", most likely in an attempt at making it legitimate and appropriate to expect a reflex of solidarity and unity of purpose that does not require the same kind of democratic checks and balances as those issues that pertain only to relations within the collective "us".

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[9] This is of course problematic from a normative perspective, but that is not the issue here.

With regard to the legitimacy basis for a *rights-based* conception of foreign and security policy it would, as noted, also need to draw on something else than the domestic political processes in the member states, due to its supranational elements. However, it would not in the same way as in a value-based entity be possible to expect an automatic sense of solidarity and support for a common foreign and security policy due to a common identity. A rights-based common foreign and security policy would need to be accountable to a wide variety of interests and perspectives. In order to ensure such accountability a broad public debate, where all those affected could in principle be heard, would be required. This presupposes a European public sphere as well as legally entrenched rights of citizenship at the supranational level, not only at the national level.

Finally, what kind of perspective on international relations would we expect in a rights based and a value based foreign policy?

Perspective on international relations

With regard to the *value-based* foreign policy, the similarities might be stronger with the problem-solving foreign policy than with the rights-based one. In both cases the perspective would rest on a sense of competition and potential for conflict with other actors. In a problem solving entity this would take the form of a perceived need for protecting self-interests in an anarchical international system whereas in the case of the latter it would be a matter of protecting specific values and a particular way of life. As already noted, with regard to the foreign policies of states, it is often the case that the questions of protecting particular interests and a particular identity are rolled into one. This is very well illustrated if we consider the concept of "national interest", which is constantly used by national foreign policy-makers to justify what they do. Although of the existence of a clearly identifiable national interest is in many cases an illusion, the implicit assumption of the existence of such a national interest lurks behind many analyses and discussions of foreign policy.[10] Hence, some might consider it artificial to draw an analytical distinction between an interest-based and identity based foreign policy. And in terms of the perspective on international relations, the difference is likely to be small: in the case of a value-based foreign policy the emphasis is likely to be on the world perceived in categories of "us" and "them", and organised in

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[10] Or, to quote a former state secretary in the Norwegian Ministry foreign affairs, "the national interest is something you invent on your way to the airport".

accordance with particular cultural understandings of differences and similarities. However, in concrete cases, foreign policy choices might differ according to whether the identity aspect or the interest dimension is the dominant one.

With regard to the perspective or understanding of international relations that one might expect in a *rights-based* foreign policy on the other hand, this would differ quite radically from that in a problem-solving foreign policy. In the former it is reasonable to expect that the emphasis would be on the cosmopolitan elements in the international system and on the need to further strengthen these. The emphasis would be on overcoming power politics, rather than on contributing to the power political "game" through the strengthening of existing (perceived) balances of power or establishing a new balance of power. More concretely, this would mean a focus on multilateral institutions and the need for a strengthening of international law. The onus would be on arrangements that would bind actors also at the international level and put (legal) constraints on the ability of actors to pursue self interested behaviour and exercise power for their own material or political gain. However, a rights-based foreign policy would not only emphasise the value of international law but also the importance of a re-orientation of international law towards a strengthening of the status of human rights. It is on the basis of human rights that a supranational legal structure can be established. Hence, one might expect that a search for a redefinition of state sovereignty that would allow for a certain reconciliation between the principle of external sovereignty, which in practice can lead to the acceptance of tyranny, and the principles of human rights, would be a central part of this perspective on international relations. New developments such as the establishment of the International Criminal Court would be an example of the kind of initiatives that a rights-based foreign policy would put emphasis on.

Beyond problem-solving?

To what extent, if at all, do the things we know about the EU's foreign and security policy fit with the image of a value-based and/or a rights-based foreign policy as outlined above? Do these images fare better than the problem-solving image of EU foreign policy, and, in particular, do they speak to those observations about the CFSP that were not captured, or less well captured, by the problem-solving image?

Intuitively, the answer would be that such images of foreign policy have little empirical relevance. We are not used to think or talk about foreign policies in terms that explicitly highlight their normative dimension. Practitioners who do so are at best considered naïve and lacking in knowledge about the "realities" of international politics, at worst dangerous idealists, promoting moral principles without regard for political and cultural particularities. With regard to political scientists who emphasise such dimensions, they are suspected of uncritically accepting the arguments of cynical policy-makers who hide their real agendas behind rhetorical statements about the importance of rights and values. The arguments in favour of rejecting the empirical relevance of a value-based or rights-based conception of European foreign policy are further strengthened by the fact that the institutional structure of the CFSP remains intergovernmental and that in both a value-based and a rights-based foreign policy we would expect intergovernmentalism to be overcome, or at least supplemented by other institutional arrangements. Even the outcome of the European Convention on the Future of Europe seems to confirm that intergovernmentalism is firmly entrenched in European foreign, security and defence policy.

However, as already noted earlier in the paper, there are some indicators of change with regard to this first indicator of *institutional arrangements*. Although these are not translated into formal institutional structures, they do seem to point to a development in practice towards, if not supranationalism, then something that goes beyond intergovernmentalism. In order to theoretically account for these developments, the conception of actors as communicatively rational might help (Sjursen 2003). As noted above, this perspective makes it possible to theoretically conceive of actors that are capable of changing their perspective and their preferences, and not only their strategy (in order to more effectively maximise given preferences). Hence, the transformatory capacity of the CFSP vis à vis national foreign policies that was pointed to earlier in this paper might be better accounted for through this perspective. This is equally so if we consider the processes of "Brusselsisation" or the development of "Brussels-based intergovernmentalism", which also suggests a de facto move in the direction of supranationalism. These observations also imply that participation in collective institutions affect foreign policy-makers and the way they define policy-challenges and formulate proposals to resolve them. Furthermore, several studies indicate that the existence of clearly distinguishable national preferences has become less obvious. Conceiving of a process in which preferences are defined through a process of interaction with

representatives of other states, as suggested in these studies, comes closer to the concept of communicative rationality and of actors "...who co-ordinate their plans through argumentation, aimed at reaching mutual agreement." (Eriksen and Weigård: 2003). That the obligation to consult all other parties that (according to observers such as Nuttall 2000) has become the standard in the CFSP - even though it is obviously not always respected - is another observation that can be better accounted for by the communicate rationality perspective.

With regard to the *legitimacy basis*, we have already noted that there seems to be substantial evidence to support the problem solving image of the EU's foreign and security policy and little to support the rights-based image. This is so, in particular if we define "all interested parties" as we have done here as the European citizens rather than the member states. There is little evidence, so far, of a European public space in foreign policy. One exception would be the public response in Europe to the United States war in Iraq. However, this was not translated into a common policy at the European level.[11]

Does the image of the EU's foreign and security policy as value-based fare any better in regard to the issue of legitimacy basis? Interestingly, here, when the then US Secretary of State Henry Kissinger, fearful of European discussions of establishing closer cooperation in foreign policy within the EC, launched what he called the Year of Europe, in an attempt to strengthen transatlantic relations, the response of the European Community was to issue in July 1973, the Copenhagen declaration on European identity. Whilst stressing the importance of the United States' nuclear umbrella for Europe, the Declaration states not only the importance of equality between the United States and Europe but also transatlantic dimension should not affect the then Nine (EC member states) determination to establish themselves as a distinct and original entity.[12] The way in which the issue of participation in the ESDP for non-EU NATO members has been dealt with is perhaps also an illustration of the existence of a sense of a common EU-identity. The arguments that the EU presented for excluding these states from full participation in ESDP decision-making rely on a clear idea of insiders and the

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[11] It is of course possible that this is partly due to the fact that such a question has not been systematically investigated in studies of European foreign policy. For the beginning of a discussion on this question see Mary Martin "Talking Europe on the world stage". Paper presented at the ECPR Workshop in Edinburgh, March 2003.
[12] Declaration on European Identity by the Nine Foreign Ministers, Copenhagen, 14 December 1973. Printed in Hill and Smith (2000) pp. 92-97.

outsiders. The decision on inclusion or exclusion is not described as a matter of costs and benefits to the EU, but as a matter of principle. Full participation in the decision-making processes related to security and defence policy is only granted those states that are members of the European Union. The fact that non-EU NATO members commit military personnel to the EU's headline goals does not provide rights of participation in decision-making. However, the argument is not couched in terms of culture and identity, but rather in formal legal terms, thus again the basis for arguing that this indicates a common ethical, cultural identity basis is not particularly strong. This also goes for the Declaration on European Identity in which it the diversity of cultures within the framework of a common European civilization is stressed.[13]

Finally, with regard to the *perspective on international relations*, are the value-based or rights-based images of a European foreign and security policy matched by empirical observations? The discussion here will focus on the rights-based conception, as it has already been suggested that the value-based one would not differ very much from a problem-solving foreign policy. Here it would seem that there is more support for the rights-based image of EU foreign policy than on the two other indicators. The emphasis in much of the literature on the EU's external role is put not only the EU having an impact on the international system but having a particular impact on it. This suggests that the perspective on the international system is different from the one we would expect in a problem-solving entity as well as a value-based entity and that this perspective would be more similar to what one would expect from a the rights-based entity. Several authors (Maull 2000, Manners 2002, Rosencrance 1998 and Aggestam 2000) suggest that the EU's foreign policy has a normative dimension that is difficult to understand based on a cost-benefit calculation. This is clearly so with regard to enlargement, where the political criteria for membership have been crucial in terms of deciding which states are eligible for membership (Sedelmeier 2000, Sjursen 2002). However there is also evidence of such concern in the EU's foreign policy more broadly. As Ian Manners shows in his study of the EU's campaign for the abolition of the death penalty, the EU "has played an important, if not crucial, role in bringing about abolition" (Manners 2002: 248). Manners here points to the EU' activities not only towards countries that have been or seek to become members of the EU, but also to states who would not have this ambition. Furthermore, protection of human rights is included as an important goal in the European

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[13] Ibid, para 2.

Union's development policy. This has, amongst other things, led to a human rights clause becoming standard content of all trade agreements established with third countries since 1992 (Menéndez 2004). Even more important perhaps is the EU's particular approach in its pursuit of human rights, which is characterised by a strong emphasis on diplomatic instruments and economic aid. As Smith argues: "…the EU still clearly prefers positive civilian to coercive military measures (Smith 2003: 111). This is also visible in the EU's security strategy, where the emphasis is clearly on "preventive engagement", diplomatic action and multilateralism are highlighted as cornerstones of the EU's approach to international security.

Conclusion

The purpose of this paper has been threefold. Firstly, it has sought to open up for additional perspectives on EU foreign policy to the realist/intergovernmentalist. Secondly, it has sought to contribute to specify more clearly what kind of theoretical underpinnings such alternative perspectives might have. Thirdly, it has sought to start a discussion about what such alternative perspectives of the EU's foreign and security policy might mean in more concrete terms. In order to do this, three analytically distinct conceptions of the EU's foreign policy based on the problem-solving, value-based and rights based images of the EU have been developed. Furthermore, I have pointed to some core characteristics of the EU's foreign policy that might suggest whether or not these conceptions have some empirical relevance.

It is common knowledge that the conceptual strategies we use allow us to see some things very clearly whereas others are if not excluded then at least underplayed. In order to draw out such dimensions an alternative conceptual strategy is necessary. The particular dimensions that are lost with existing tools may in the end turn out not to be particularly important in empirical terms, however, the theoretical possibility that they are important must at least be worked out in order for us to investigate this. In this case, it looks as if developing alternative understandings might be worthwhile. Although much of what we know about the CFPS can no doubt be understood with the help of the tools available in rational choice approaches, there does seem to be some gaps. This is particularly so with regard to the perspective of the EU on the international system and the strong emphasis on norms and principles in the EU's foreign policy initiatives. However, also with regard to the process of decision-making, and the nature of the institutional arrangements, there might be some developments that could be better accounted for by relying on something in addition to the rational choice perspective.

The fundamental puzzle is to understand how informal cooperation on foreign policy has been institutionalised and formalised in legal agreements about the duty to consult. These agreements set clear standards of behaviour, and although hard sanctions for lack of compliance do not exist, there may be a social cost following from non-compliance.

The aim has not been to 'test' the empirical relevance of the different conceptions of the EU's foreign policy in any systematic way and much further empirical research is required. Likewise, much is still left to do with regard to further specifying the conditions under which processes of communicative inter- action might be expected, as well as with regard to developing empirical indicators of such interaction. However, some work is already done on this issue. In fact, studies of the integration process in the European Union (EU) increasingly suggest that analyses might benefit from the insights provided by the theory of communicative action developed by Jürgen Habermas (1981). They often share the belief that European integration cannot be understood exclusively as the result of bargains that reflect the relative power of actors with fixed preferences and that so-called rationalist theories of co-operation should take into consideration that processes of communication that are more than mere exchanges of threats and promises may have an impact on collective decision making in the EU. Such proposals have been presented most systematically in the literature on comitology in the EU, where it is argued that the so-called comitology committees transform governance from intergovernmental bargaining to supranational deliberation (Joerges and Neyer, 1997 a and b). However, this perspective is increasingly applied also to broader issues in the European integration process (Risse-Kappen, 1996; Eriksen and Fossum, 2000; Sjursen, 2002; Eriksen and Fossum, 2003; Neyer, 2003; Jacobsson and Vifell, 2003; Gehring, 2003) and in some cases also to international relations more broadly (Loose, 2001; Müller, 2001; and Risse, 2000). In the study of European foreign, security and defence, the role of communicative processes and the possibility that actors coordinate their action through arguments and deliberation is rarely considered. This is not so surprising, particularly if we focus on security and defence: security policy has traditionally been considered to be about the use of military force. Thus, one would not expect much room for communicative processes. Nevertheless, I have tried to suggest in this paper that there might be good reasons to alter this practice.

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