Attempting to Run Before Learning to Walk: Problems of the EU’s Common Foreign and Security Policy

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Attempting to Run Before Learning to Walk: Problems of the EU’s Common Foreign and Security Policy

INTRODUCTION

“This is Europe’s hour,” boasted Luxembourg’s foreign minister Jacques Poos as he boarded a plane headed for the disintegrating Yugoslavia in June 1991.1 The concept of a common foreign and security policy (CFSP) for the members of the European Union (EU) was looked upon with great expectations in the wake of the Western success in the then recently concluded Gulf War.2 Over the course of the past five years, however, the weaknesses and inadequacies of the CFSP, which was codified in the 1992 Treaty on European Union (Maastricht Treaty), have become readily apparent.3 Frustration and inaction have replaced the high hopes that accompanied Mr. Poos on his trip to what is now the “former Yugoslavia.”4 The EU began the Inter-Governmental Conference (IGC) on the revision of the Maastricht Treaty in March 1996,5 with the ruins of its Bosnia policy smoldering around it.6

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2 See id.
4 See A Long Hour, supra note 1, at 48.
6 See The Search for Peace in the Balkans: A Primer, N.Y. Times, Nov. 1, 1995, at A11 [hereinafter The Search for Peace]. At Germany’s urging, the EU recognized the former Yugoslav republics of Croatia and Slovenia in January 1992 and Bosnia in April 1992, resulting in a vicious Serb offensive. See id. The EU then made numerous unsuccessful diplomatic efforts to bring peace to the region, and several Members committed peacekeeping troops, many of which were taken hostage by the Bosnian Serbs in April 1994 and May 1995. See id. Beginning in April 1994 with
The EU’s Bosnia policy, while only one of numerous failures of the CFSP, provides the clearest indication of the many fundamental structural and legal problems that plague the CFSP.\(^7\) Instead of taking joint actions in foreign policy as outlined in Title V of the Maastricht Treaty, the EU has been effectively relegated to issuing toothless statements on major foreign policy issues.\(^8\) In addition to problems of identifying common interests and charting a clear course in a unified foreign policy, the EU faces numerous practical problems that have arisen from the CFSP provisions of the Maastricht Treaty.\(^9\) The ambiguous nature of the CFSP provisions of the Treaty has left questions about the tools available to implement the policy; particular roles of the European Council, Parliament and Commission; powers of the EU itself as opposed to powers of Member States; unanimity in policy-making; development of a common security policy and neutrality of Member States; and funding for joint actions.\(^10\)

Part I of this Note provides a history of the EU’s attempts to develop a common foreign and security policy dating back to the 1950s. Part II discusses the unique structural aspects of the CFSP. Part III analyzes how the above-mentioned problems impede the effective development of the CFSP. This Note concludes that the EU must first achieve a confluence of interests among its members and clarify ambiguities in

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\(^8\) See EC Treaty art. J.3; *A Long Hour*, supra note 1, at 48. In a response to one of the rare cases in which the EU acted jointly, the European Parliament criticized Member States in December 1996 for failing to support the EU administrator in the Bosnian city of Mostar with the necessary financial and enforcement tools. See *EU Failed to Support Mostar Administrator, EP Says*, Reuter Eur. Community Rep., Dec. 13, 1996, *available in* LEXIS, World Library, Allwld File. The Parliament said that the Maastricht Treaty was not sufficiently clear in its guidance for joint actions by Member States. See id.


the Maastricht Treaty before it can have a truly "common" foreign and security policy.

I. HISTORY OF ATTEMPTS TO DEVELOP A COMMON FOREIGN AND SECURITY POLICY

Early attempts at foreign and security policy integration among Western European states began in the early 1950s with efforts by six governments to establish a European Defense Community.\(^\text{11}\) The attempt failed to pass the French National Assembly and was subsequently abandoned by the other states.\(^\text{12}\) A less ambitious but more successful attempt at formal European Community cooperation in the area of foreign policy began in 1969 in response to the numerous superpower crises of the period.\(^\text{13}\)

The Hague Heads of State and Government meeting of 1969 inaugurated European Political Cooperation (EPC), which over the next decade was transformed into a somewhat recognizable foreign policy.\(^\text{14}\) EPC occurred in an inter-governmental manner dependent on unanimous consent and outside the purview of the Treaty of Rome.\(^\text{15}\) At the outset, EPC was not intended to be a legalistic institution, but rather a "pragmatic enterprise" which lacked institutional structure and formal obligations normally associated with Community policies.\(^\text{16}\)

EPC finally received a formal treaty-base in the 1986 Single European Act.\(^\text{17}\) This new legal base for the EPC, however, did not eliminate the legal distinction between the Community and the EPC.\(^\text{18}\) Retaining its status as an "extra-Community" activity, the EPC could only draw on the powers provided in the 1986 Single European Act.\(^\text{19}\)

\(^\text{11}\) See Reinhardt Rummel, Western European Cooperation in Foreign and Security Policy, 531 ANNALS AM. ACAD. POL. & SOC. SCI. 112, 114 (1994).

\(^\text{12}\) See id.

\(^\text{13}\) See HOLLAND, supra note 9, at 118. Tensions between the United States and the U.S.S.R. were high because of the Vietnam War, the Arab-Israeli "Six-Day War" of 1967, and the Soviet-led crushing of the "Prague Spring" reforms in Czechoslovakia in 1968.

\(^\text{14}\) See id.

\(^\text{15}\) See id.

\(^\text{16}\) See id.

\(^\text{17}\) See Douglas Hurd, Developing the Common Foreign and Security Policy, 70 INT’L AFF. 421, 422 (1994).

\(^\text{18}\) See HOLLAND, supra note 9, at 121.

\(^\text{19}\) See id.
Two decades of EPC had indeed seen a degree of convergence in foreign policy, with an increase in both the depth and the breadth of coordination.\(^{20}\) By the end of the 1980s the intergovernmental structure of the EPC had been clearly defined.\(^{21}\) The EC Presidency represented the Community in all international relations; in this task the Presidency was assisted by the EPC Secretariat.\(^{22}\) The Commission was "fully associated" and served as the "thirteenth" party participant (in addition to the twelve member states) in EPC decision-making, which continued to be governed by consensus.\(^{23}\) Finally, the European Parliament was kept informed of EPC business but remained peripheral to the process of EPC.\(^{24}\)

Two decades of EPC had also been sufficient time for flaws to become visible: the consensus requirement was onerous and the results modest.\(^{25}\) Furthermore, the fall of communism in Eastern Europe and the reunification of Germany called for a stronger leadership role for the EU and the reform of EPC.\(^{26}\) The foreign policy mechanism of the EU was thus refined in the Maastricht Treaty, signed in February 1992, to ensure that a European voice would continue to be heard on foreign policy in the rapidly changing post-Cold War world.\(^{27}\)

Article J.1(2) of the Maastricht Treaty outlines foreign policy and security goals and includes "safeguard[ing] the common values" of the Union, "preserv[ing] peace and strengthen[ing] international security" and "develop[ing] and consolidat[ing] democracy and the rule of law."\(^{28}\) The goals are to be realized through enhanced and systematic cooperation among the Member States, leading to "joint action in areas in which the Member States have important interests in common."\(^{29}\) The CFSP provisions in the Treaty also call for consultations within the Council on topics of general interest and require national foreign policies to conform to common positions taken by the EU.\(^{30}\)

\(^{20}\) See Hurd, supra note 17, at 422.

\(^{21}\) See Holland, supra note 9, at 122.

\(^{22}\) See id.

\(^{23}\) See id.

\(^{24}\) See id. at 122–23.

\(^{25}\) See id. at 123.

\(^{26}\) See Holland, supra note 9, at 123.


\(^{28}\) Id. art. J.1(2).

\(^{29}\) Id. art. J.1(3).

\(^{30}\) See id. art. J.2(1)–(2).
The most radical shift in the foreign policy-making apparatus is the provision for developing and executing the common foreign policy. The European Council (Council) shall decide which matters should be the subject of joint action and, when adopting the joint action, define those matters on which decisions are to be taken by qualified majority. In a concession toward the sovereignty concerns of Member States, the Treaty allows for the possibility of states abstaining from joint action with Council approval provided that the abstention does not impair the overall effectiveness of the action.

Important issues that are conspicuously absent or inadequately addressed in the Treaty’s CFSP provisions include security policy, guidelines on foreign policy tools available to implement the CFSP and, more importantly, sources and methods for funding this implementation. The future security policy of the EU is one of the most contentious issues of the CFSP. Article J.4 addresses this issue in a vague manner with a pledge that it will “respect” the NATO obligations of certain Member States and a request that the Western European Union (WEU) act as the defense arm of the EU. There is no mention in the Treaty’s security provisions of the role and duties of neutral states such as Ireland and new members Austria, Sweden, and Finland, which now constitute a substantial bloc of the fifteen Member States.

II. Unique Structural Features of the CFSP

Despite the great fanfare surrounding the establishment of the CFSP, the policy represents little more than a modest step forward for the EU. The CFSP remains an intergovernmental process, outside of the regular EU system. The CFSP is, however, somewhat unique, because while it is legally separate from the EU, policy is developed with varying

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31 See id. art. J.3(1)-(2).
32 See EC Treaty art. J.3(1)-(2).
33 See id. art. J.3(7).
34 See id. arts. J.4, J.11(2).
35 See A Long Hour, supra note 1, at 49.
36 See EC Treaty art. J.4(2)-(4). All NATO members of the EU (except Denmark) belong to the WEU. See A Long Hour, supra note 1, at 49. Ireland, Austria, Sweden, and Finland claim to be “neutral” and are not members of NATO or the WEU. Id.
39 See id.
degrees of participation by the EU’s supranational institutions such as the Council, the Commission and the European Parliament.\textsuperscript{40}

Noticeably absent from the CFSP process is the European Court of Justice (ECJ), which was not granted jurisdiction over any of the issues relating to Title V of the Maastricht Treaty.\textsuperscript{41} Instead, the Member States, acting through the Council under Article J.1, are responsible for ensuring that each supports the “Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.”\textsuperscript{42} The only way in which the ECJ would be able to decide matters with foreign policy implications is when a provision from one of the Community treaties is at issue.\textsuperscript{43}

The jurisdiction of the ECJ is spelled out in Article L of the Maastricht Treaty, which gives it jurisdiction over various provisions of the Treaty, but not over the CFSP in Title V.\textsuperscript{44} The ECJ does, however, have jurisdiction over Article M, which safeguards the EU treaties from being affected by provisions of the Maastricht Treaty, including the CFSP in Title V.\textsuperscript{45} Thus, the Court can and must police the borderline between the EU and the “extra-Union” CFSP.\textsuperscript{46}

The absence of the ECJ from the CFSP process reflects the desire of Member States that the CFSP remain under political rather than judicial control.\textsuperscript{47} The Council, composed of Heads of States or Government, defines the principles of and general guidelines for the CFSP.\textsuperscript{48} The Council of Ministers takes decisions for defining and implementing the CFSP on the basis of the guidelines established by the Council.\textsuperscript{49} The concentration of decision-making power in one single institution such as the Council allows for swift action and consistency.\textsuperscript{50}

\textsuperscript{41} See id.; see also EC TREATY arts. J-J.11.
\textsuperscript{42} EC TREATY art. J.1(4); see Edwards, Political Cooperation, supra note 38, at 644.
\textsuperscript{44} See EC TREATY art. L; M.R. Eaton, Common Foreign and Security Policy, in LEGAL ISSUES OF THE MAASTRICHT TREATY, supra note 43, at 215, 221.
\textsuperscript{45} See EC TREATY art. M; Eaton, supra note 44, at 221.
\textsuperscript{46} See Eaton, supra note 44, at 221.
\textsuperscript{48} See EC TREATY art. J.8(1).
\textsuperscript{49} See id. art. J.8(2).
\textsuperscript{50} See Neuwahl, supra note 43, at 239.
As the Council has been assigned the Commission's usual role of initiating and forming policy for the CFSP, the Commission must share the right of initiation with Member States. The Maastricht Treaty also stipulates that the Commission is to be "fully associated with the work carried out in the CFSP field." The Commission does have the potential to play a valuable supporting role in the CFSP by ensuring a consistent approach between external policy within the Union sphere, such as foreign aid and trade, and the "extra-Union" CFSP.

It is the role of the European Parliament (Parliament) that is most limited under the CFSP. Parliament had wanted to be the body to approve the "important interests in common" that would be defined by the Council, define the CFSP, monitor its application, and control a right of veto over the use of force. Instead, it was given the right to be consulted on the main aspects of the CFSP and the right to be kept informed of the development of foreign and security policy. Parliament is therefore not involved in the decision-making process in any substantial manner. Former British Foreign Minister Douglas Hurd sees this role as quite appropriate, reflecting the inter-governmental nature of the CFSP: "[t]he European Parliament should be kept informed about CFSP business, but governments must be answerable first and foremost to their national parliaments for the foreign policy decisions they take."

The inter-governmental nature of the CFSP alleviates the concerns about the "democratic deficit" that currently plagues other EU institutions. Member States, however, still desire the option to exercise their sovereignty and act on an individual basis when particular national interests are at stake that are not shared by other Member States. The

51 See EC Treaty art. J.8(3).
52 Id. art. J.9.
53 See Hurd, supra note 17, at 424–25. In this capacity, the Commission will be able to prevent embarrassing mishaps such the granting of foreign aid to governments sanctioned for human rights atrocities under the CFSP. See id.
54 See Neuwahl, supra note 43, at 242.
55 Id.
57 See Hurd, supra note 17, at 425.
58 Id.
60 See Hurd, supra note 17, at 423.
Maastricht Treaty's CFSP provisions allow states to pursue national action in cases where the Council has chosen not to define a common position. 61 For example, British negotiations with the Chinese over the future of Hong Kong would thus be permitted. 62 Member States may also, upon Council approval, excuse themselves from joint action provided that such decisions do "not run counter to the objectives of the joint action or impair its effectiveness." 63 

Problems with the CFSP are more likely to occur when a state has a perceived national interest and prevents the Council from developing a common position favored by other Member States. 64 As the Council must decide and implement all major policy action by unanimity, one state may delay the process by casting a veto. 65 Greece, for instance, has been able to prevent the establishment of closer ties between the EU and Macedonia because it claims that the name "Macedonia" implies that the former Yugoslav republic has designs on Greek territory. 66 It is obvious that commitment to a common policy is most difficult where Member States are internally divided or politically vulnerable, as has often been the case over the former Yugoslavia. 67 Unfortunately, these difficult issues are the issues that most desperately need direction from the EU.

III. IMPEDIMENTS TO AN EFFECTIVE CFSP

A. The Unanimity Requirement

The EU's feeble response to the crisis in the Balkans is a testament to the fact that internal squabbling and an insistence on unanimity leads to the lowest common denominator or to gridlock. 68 The EU statement of 29 May 1995, issued in response to the taking of hostages

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61 See EC Treaty art. J.2; Edwards, Political Cooperation, supra note 38, at 645.
62 See Hurd, supra note 17, at 423.
63 EC Treaty art. J.3(7); see Holland, supra note 9, at 127.
64 See A Long Hour, supra note 1, at 49.
65 See EC Treaty art. J.8(2).
66 See A Long Hour, supra note 1, at 48.
67 See Edwards, Political Cooperation, supra note 38, at 645. Other examples include the inability of Member States to develop effective common positions on the Middle East peace process, the division of Cyprus and disputes between Greece and Turkey in general. See EU: A Look Behind the News—A Common EU Foreign Policy Will Not Spring Up Simply, Reuter Textline-Agence Eur., July 25, 1996, available in LEXIS, World Library, Allwld File.
by Bosnian Serb forces, is characteristically weak. It states, in relevant part:

The European Union expresses its very grave concern at the worsening of the situation in Bosnia-Herzegovina and profoundly regrets its victims.

It voices its indignation at the deliberate shelling of the civilian population and at the odious hostage taking of United Nations soldiers and observers. The European Union firmly condemns the attitude of the Bosnian Serbs and warns them of the consequences they might face....

It calls for the Bosnian Serbs to cease the shelling and for the immediate and unconditional release of the United Nations soldiers detained and threatened by them.

It is pure folly on the part of the EU to release an innocuous statement such as this with any expectation that it will compel action. The impotency of this message exposes the internal disarray that exists among EU Member States with conflicting interests in foreign policy. It is these conflicting interests that prevent the EU from issuing stronger, more compelling statements and continue to impair the effectiveness of the CFSP.

The problem presented by these conflicts is magnified by the provision of the CFSP requiring that decisions are made by unanimity, as one member’s reservations can derail a consensus among the other fourteen. Champions of the EU’s CFSP may point to “successes” in other areas, such as the unlimited extension of the Nuclear Non-Proliferation Treaty (NPT), as evidence of accomplishment despite the unanimity requirement. Unanimous agreement on non-contentious issues such as the NPT, where the policy path is obvious, however, is a remarkably minor achievement. It is possible for decisions on joint action to be taken on a qualified majority basis, but only after a unanimous decision to do so. In general, joint action on foreign policy will require unanimity unless economic measures are envisaged, in which

“Lowest common denominator” means the strongest policy on which each Member State, all with differing interests, is willing to support. See id.


70 Id.

71 See EC TREATY art. 18(2).

72 See Speech by Hoyer, supra note 68.

73 See EC TREATY arts. J.8(2), J.3(2); Cremona, supra note 47, at 256. Issues with defense
case the Council will act by qualified majority under the Maastricht Treaty.74

Further enlargement of the EU will exacerbate the problem of reaching a consensus as the entrance of applicants from Eastern and Central Europe could push membership to eighteen, well beyond the twelve members that existed when the Maastricht Treaty was signed in 1992.75 Advocates of majority voting claim that as the application of the majority principle to internal issues was able to overcome the “Eurosclerosis” of the early 1980s, the use of qualified majority voting in foreign policy would break the gridlock that has characterized the CFSP.76 At present, however, Britain, France and Greece are unwilling to part with their ability to veto EU action under the current unanimity system.77

B. Lack of Coordination and Clarity

While hampered by the unanimity requirement, the CFSP is unique from its EPC predecessor in the sense that it provides for joint action by Member States.78 There are, however, inadequate provisions in the Maastricht Treaty addressing the arduous task of coordinating that action and the possible forms that it might take.79 A professional staff within the Council would provide the means to analyze, define, pro-

74 See Cremona, supra note 47, at 256. The power to take economic measures in foreign policy was not granted under the CFSP (which is inter-governmental in nature) and thus remains within the internal structure of the EU. See id.

75 European Union membership was expanded to 15 on January 1, 1995, with the admission of Austria, Sweden and Finland. The most likely candidates for further expansion are the Czech Republic, Hungary, and Slovenia. See Roy Denman, Central and East European Candidates Will Have to Do Better, INT’L HERALD TRIB., Nov. 1, 1995, available in LEXIS, World Library, Allwld File.

76 See Speech by Hoyer, supra note 68. The term “Eurosclerosis” was coined in the early 1980s to describe the period of sluggishness in the development of the EU when all issues, however minor, languished until all Member States could agree. See The Business of Europe, THE ECONOMIST, Dec. 7, 1991, at 63, 63. The 1986 Single European Act introduced qualified majority voting and allowed for the passage of measures with less than unanimity, thus accelerating the drive toward a single market in Europe. See id.

77 See A Long Hour, supra note 1, at 49. In late 1996, France showed some flexibility on this matter, backing an increased use of qualified majority voting in the Council of Ministers “as far as possible.” Joint Franco-German Initiative, supra note 5.

78 See EC TREATY art. J.3.

79 See id.
pose and coordinate foreign policy, just as the Commission does for internal policies. In December 1996, in an effort to give the CFSP an external face, French and German leaders proposed the appointment of a high-ranking policy figure to represent the EU in foreign affairs. This individual would be designated by common agreement among the Member States and would be responsible to the Council. A central planning body or high-ranking policy figure would improve coordination among disparate elements and promote much-needed clarity in foreign policy.

Due in part to the lack of guidance and coordination, the EU's floundering common foreign policy has been characterized by weak joint statements, rather than by the joint action called for under the Maastricht Treaty. The form that joint action may take is not specified, but the Council is given the necessary decision-making powers "on the basis of general guidelines adopted by the European Council" in order to ensure "the unity, consistency and effectiveness of action by the Union." A wide variety of actions should then be permissible if the absence of specific guidelines on the instruments available to carry out the common policy is understood to mean that all foreign policy instruments normally available to individual sovereign states would also be available to the EU as a whole.

Financial aid, cooperation agreements, and codes of conduct have all been used as non-military foreign policy tools in the past with varying degrees of effectiveness, but sanctions have proven to be the most effective and most commonly used instrument. The legal basis for sanctions, however, does not stem from the Maastricht Treaty, but rather Articles 113, 223, 224, and 235 of the Treaty of Rome. The lack

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81 See Joint Franco-German Initiative, supra note 5.
82 See id.
83 See id.; Taylor, supra note 80.
84 See EC TREATY art. J.3.; A Long Hour, supra note 1, at 48.
85 EC TREATY art. J.8(2).
86 See Holland, supra note 9, at 128.
87 See id.
88 See id. Article 113, which addresses commercial policy, was utilized to invoke sanctions against Iran and the Soviet Union in 1980. See id. Article 223 was employed for the 1980 arms embargo against Iran, while Article 224 was invoked under crisis conditions relating to the Falklands War. See id. at 128–29. Article 235 is the most flexible, allowing the Council, acting unanimously, to take 'appropriate measures' to realize any treaty objective. See Holland, supra note 9, at 129.
of provisions in the Maastricht Treaty for this type of action will result in conflict between the EU and Member States as CFSP is intergovernmental in nature, while sanctions, because of their economic nature, fall under the control of the internal EU structure.\textsuperscript{89} The legal basis under which sanctions are invoked is fundamental to their success and credibility as a foreign policy tool.\textsuperscript{90} Clear provisions for the imposition of sanctions would serve to improve both the credibility and effectiveness of the CFSP.

C. Undeveloped Security Policy

The issue that would provide the most benefit and credibility to the EU's CFSP is also one of the most contentious: a common security policy. The lack of a military capability to support its common policy has hobbled the EU in the former Yugoslavia and forced it to rely on NATO (and therefore the United States) as an enforcement mechanism.\textsuperscript{91} The CFSP includes provisions for a common security policy that are intended to lead to the framing of a common defense policy, which might eventually lead to a common defense.\textsuperscript{92}

The Maastricht Treaty makes an important distinction between security and defense issues.\textsuperscript{93} Defense is considered to be any matter relating to the deployment of troops, while other issues such as non-proliferation fall under the security heading.\textsuperscript{94} The CFSP acknowledges the NATO obligations of its various members and pledges that the CFSP will be compatible with the common security and defense policy established within that framework.\textsuperscript{95} Action in the defense area is to be handled by the European pillar of NATO, the Western European Union (WEU), rather than through the Council.\textsuperscript{96}

In the Maastricht Treaty, the EU "requests the WEU, which is an integral part of the Union, to elaborate and implement decisions which have defense implications."\textsuperscript{97} It can be understood that if cooperation on political and economic aspects of security are not being addressed by the WEU, the procedures set forth in article J.3 may be

\textsuperscript{89} See id.
\textsuperscript{90} See id.
\textsuperscript{91} See The Search for Peace, supra note 6.
\textsuperscript{92} See EC Treaty art. J.4(1).
\textsuperscript{93} See id.; Hurd, supra note 17, at 426.
\textsuperscript{94} See Hurd, supra note 17, at 426.
\textsuperscript{95} See EC Treaty art. J.4(4).
\textsuperscript{96} See Cremona, supra note 47, at 252.
\textsuperscript{97} EC Treaty art. J.4(2)
used.98 While the phrasing of the WEU’s role in CFSP is ambiguous, it anticipates a larger future role for the WEU.99 In December 1996, France and Germany pushed for the inclusion of language in the revised Maastricht Treaty arising from the IGC, stating the goal of “gradually integrating the WEU into the European Union” on a specific schedule.100

The merger of the WEU and EU, while providing the EU with a means to carry out peacekeeping and humanitarian operations, would leave Denmark and neutral Member States in a quandary.101 Because neutrality and WEU membership are incompatible, these states are faced with three options: observer status at WEU, the possibility of taking on certain WEU humanitarian and rescue peacekeeping and crisis management tasks, or full WEU membership.102 Ireland has stated that it will present to its people in a referendum the outcome of any negotiations that would involve Ireland’s participation in a common defense policy, thereby ensuring that its neutral status is unchanged unless the Irish people decide otherwise.103

D. Budgeting Procedure

The possibility that the EU would undertake joint action necessarily raised the issue of the financial base of the CFSP.104 The CFSP addresses this issue in a cursory manner in the last section of the last article of the CFSP, assigning administrative costs to the Community budget while leaving the assignment of operating costs unresolved.105 Not surprisingly, an issue that was contentious enough to be included in

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98 See id. arts. J.3, J.4(3).
99 See id. art. J.4(2).
100 See Joint Franco-German Initiative, supra note 5; see also Angus MacKinnon, EU Leaders Seek to Avert Crisis Over Maastricht II, AGENCE FRANCE PRESSE, Sept. 21, 1995, available in LEXIS, World Library, Allwld File. The expiration of the WEU Treaty in 1998 presents an opportunity for merging the organization with the EU. See MacKinnon, supra.
101 See id.; see also supra note 36 and accompanying text.
103 See Mitchell, supra note 102.
104 See Edwards, Common Policy, supra note 7, at 500.
105 See EC Treaty art. J.11(2).
the Treaty without being resolved remains that way five years later. The Treaty offers two “payment plans” for the Council to choose from, either charging operating expenses to the regular Community budget or charging expenditures to Member States in accordance with a scale to be determined.

The option of charging expenditures to the individual states stems from the fact that actions taken under CFSP are actions of the states. This plan is supported by the British because of fears that the European Parliament will use its powers under internal EU budgeting rules to change decisions made by the Member States under the CFSP. Despite the inter-governmental nature of the CFSP, this issue could appear before the ECJ because of its effect on EU institutions and the budget.

Mindful of this potential clash with Parliament, the vast majority of other Member States continue to favor financing CFSP directly from the EU budget so as to avoid disagreements over financing for each particular joint action and the distribution of the financial burden. In 1995, CFSP was reincorporated into the EU budget under protest from some Member States. As financing for CFSP remains a contested issue, it will continue to be debated during the current IGC and, perhaps, beyond.

**CONCLUSION**

Member states should use the opportunity presented by the Inter-Governmental Conference to strengthen the obvious weaknesses of the

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107 See EC TREATY art. J.11(2).
111 See *Community Financing*, supra note 109. The contentious debate arising from the question of financing for operations in Bosnia is a prime example. See id.
113 See Edwards, *Common Policy*, supra note 7, at 500. Italy presented a proposal at the IGC in November 1996 in which operational spending for the CFSP would be drawn from the Community budget unless the Council decides by qualified majority in a particular case to shift the burden to the Member States. See IGC/Italy—Proposals of Amendments on CFSP, Reuter Textline-Agence Eur., Nov. 5, 1996, *available in* LEXIS, World Library, Allwld File. Presently, unanimity is necessary to spend money from the Community budget. See id.
CFSP. Agreeing on a single method of financing would be a positive step which probably could be accomplished with a simple guarantee by the Parliament not to change CFSP budget items agreed upon by the Member States. Members should move to appoint a representative for foreign affairs and establish a small planning staff under the Council to assist in the necessary policy coordination that is currently lacking. Efforts should also be made to more clearly codify the potential forms of joint action and provide the legal framework within the CFSP through which they may be implemented. The legal basis for the use of valuable tools such as sanctions should therefore exist under the CFSP rather than solely under the Treaty of Rome.

The larger issues of unanimity voting and security policy lack such simple solutions and raise doubts about the fundamental viability of the CFSP. The struggle over unanimity will continue because of the difficult balance between retaining some degree of national sovereignty in the foreign policy arena and the desire to obtain a workable system for devising and implementing a common foreign policy. Similarly, the debate on security policy and the incompatibility of neutral states with NATO and WEU members turns on the degree to which states wish to commit themselves to a supranational body and relinquish the sovereign right of states to determine their own security policy.

British Foreign Secretary Malcolm Rifkind has stated that a common policy “implies an identity of interests” and “we have not got it yet, nor are we likely to in the foreseeable future.” Contrary to Foreign Minister Poos’ statement, this is not yet “Europe’s hour.” The EU must continue its efforts to bring national policies on foreign affairs closer together, while strengthening institutions and clarifying ambiguities in the CFSP provisions of the Maastricht Treaty. Until the EU reaches the point where interests coincide, however, it must proceed slowly and gain competence in less contentious areas before attempting to tackle larger ones such as Bosnia with empty promises.

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115 See A Long Hour, supra note 1, at 48.