

An Instrumental Analysis of the European Union's Capability to Act in Conflict Response

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ABSTRACT

Since its origins, the European Union has striven to be an actor on the international scene and a player in conflict management. Yet the EU's lack of activity cannot be justified by a mere lack of capacities. The EU counts with numerous political, economic, and, since 2003, civil and military instruments that should allow it to provide a comprehensive conflict response. This publication consists of a description of these instruments and an analysis of the final use that the Union makes of them in the different stages of a conflict. Examples will show us the EU's main weaknesses in providing a comprehensive and timely response when a conflict breaks out.

RESUM

Des dels seus orígens, la Unió Europea ha volgut ser un actor en l'escena internacional i en la gestió de conflictes. Malgrat aquesta voluntat, la falta d'acció de la Unió no pot justificar-se per una manca de capacitats. La UE compta amb instruments polítics, econòmics i, des de 2003, també instruments civils i militars que haurien de permetre-li reaccionar davant qualsevol tipus de conflicte. Aquesta publicació consisteix en una descripció i en una anàlisi de l'ús que la Unió fa, finalment, d'aquests instruments. Diferents exemples permeten veure quines són les principals limitacions amb què la Unió es troba a l'hora de donar una resposta puntual i coherent tan bon punt un conflicte explota.

RESUMEN

Desde sus orígenes, la Unión Europea ha deseado ser un actor en la escena internacional y en la gestión de conflictos. A pesar de esta voluntad, la falta de acción de la Unión no puede justificarse por la falta de medios. La UE cuenta con instrumentos políticos, económicos y, desde 2003, civiles y militares que deberían permitirle reaccionar ante cualquier tipo de conflicto. Esta publicación consiste en una descripción de estos instrumentos y en un análisis del uso final que la Unión hace de ellos. Diferentes ejemplos permiten ver cuáles son las limitaciones de la Unión en el momento de dar una respuesta puntual y coherente ante la explosión de un conflicto.

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PREFACE

"As a union of 25 states with over 450 million people producing a quarter of the world's Gross National Product (GNP), the European Union is inevitably a global player... it should be ready to share in the responsibility for global security and in building a better world". These words from the European Security Strategy (*A Secure Europe in a Better World*), adopted by the European Council (Brussels, 12 December 2003), seem to remind us of Europeans' sense of commitment to conflict response in the world.

Will a 25-member Europe be able to assume responsibility for global security? Does the EU have the instruments needed to handle international conflicts? Nowadays, these and other questions are continually being asked. This is why this publication, *An Instrumental Analysis of the European Union's Capability to Act in Conflict Response* has, in my opinion, two main virtues: its timeliness and its necessity.

The timeliness of this publication is strictly related to the European Union's agenda. The latest European Council mentioned above has been considered by public opinion in general as the Council of constitutional fiasco, but also the Council that has been responsible for taking an important step forward in the field of the Union's international presence (adoption of the European Security Strategy, establishment of an agency in the area of military capabilities). Since Brussels 2003, the European Union is better prepared to handle its tasks in the field of conflict response. With or without a constitution, the EU seems to be convinced of the need to "arm" itself (metaphorically or not) in order to contribute to resolving regional conflicts and, above all, according to the Security Strategy, to contribute to the rehabilitation of the "failed states".

This publication is also necessary. Its main topic, the role of the European Union in the area of conflict management, has not yet been closely examined in rigorous academic projects. This work by Débora Miralles, junior researcher from the Observatory of European Foreign Policy (IUEE) team, without a doubt constitutes a remarkable contribution to categorising the EU instruments in the area of conflict response.

The fact that this publication, which has significant academic value, has been developed by a junior researcher is a cause for pride for the Observatory, whose main purpose is to create a sound team of young researchers. This publication adds up to of one the most important research, publication and dissemination projects led by the team (<http://www.uab.es/iuee>) in the last two years. The quality of the work has turned the Observatory into an international centre of reference. This is why since 2003 the Observatory has formed part of the FORNET web (Foreign Policy Governance in Europe), made up of 25 European research centres and financed by the European Union's Fifth Framework

Programme. Among its objectives, FORNET aims to train young researchers in a crucial area for the future development of the European Union: its international presence. The work done by Débora Miralles, summarised in this publication, completely fulfils this objective.

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Director of the Observatory of European Foreign Policy

Bellaterra, 12 January 2004

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ACRONYMS

ACP	Africa, the Caribbean and Pacific
ALA	Asia and Latin America
CAP	Common Agricultural Policy
CFSP	Common Foreign and Security Policy
CIE	Community of Independent States
CSCE	Conference on Security and Cooperation in Europe
CSP	Country Strategy Papers
DCP	Development Cooperation Policy
DIPECHO	ECHO Disaster Preparedness
EC	European Community
ECHO	European Community Humanitarian Office
ECOWAS	Economic Community of West African States
ECPC	European Civil Peace Corps
EDF	European Development Fund
EEC	European Economic Community
ESDP	European Security and Defence Policy
EU	European Union
EUMM	European Union Monitoring Mission
EUPM	European Union Police Mission
FYROM	Former Yugoslav Republic of Macedonia
ICG	International Crisis Group
IFOR	International Force for Yugoslavia
IGC	Intergovernmental Conference
ILO	International Labour Organisation
IPTF	International Police Task Force
KFOR	Kosovo Force
MEP	Member of the European Parliament
Mercosur	Southern Common Market
NATO	North Atlantic Treaty Organisation
OUA	Organisation of African Unity
OECD	Organisation for Economic Cooperation and Development
OSCE	Organisation for Security and Cooperation in Europe
PCA	Partnership and Cooperation Agreement
PSC	Political and Security Committee
RRF	Rapid Reaction Force

RRM	Rapid Reaction Mechanism
SADC	Southern African Development Community
SEA	Single European Act
SFOR	Stabilisation Force in Bosnia and Herzegovina
SITCEN	Situation Centre
SPDC	State Peace and Development Council
TEC	Treaty of the European Community
TEU	Treaty of the European Union
UN	United Nations
UNDP	United Nations Development Programme
UNFICYP	United Nations Peacekeeping Force in Cyprus
UNIFIL	United Nations Interim Force in Lebanon
UNMEE	United Nations Mission in Ethiopia and Eritrea
UNPROFOR	United Nations Protection Force
WEU	Western European Union
WTO	World Trade Organisation

INTRODUCTION

Since its origins, the European Union (EU) has striven to be an actor on the international scene and a player in conflict management. In fact, there is no doubt that the objectives set forth in the Treaties are those to be fulfilled by an international actor.

Article 11 of the Treaty of the European Union (TEU) synthesises the objectives of the Union in relation to the Common Foreign and Security Policy (CFSP): to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter; to strengthen the security of the Union in all ways; to preserve peace and strengthen international security; to promote international cooperation; to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

The very last objective of article 11 TEU coincides with one of the main objectives of the European Community's external policy, and, more concretely, with its development policy (as set forth in article 177 of the Treaty of the European Community): to contribute to the general objective of developing and consolidating democracy and the rule of law, and to respect human rights and fundamental freedoms, in the context of the commitments and objectives approved in the context of the United Nations and other competent international organisations.

However, the EU has repeatedly been criticised for not fulfilling these objectives, for reacting rather than contributing to prevention, and for lacking the necessary coherence in its external actions in order to provide an effective response before, during and after a conflict.

Yet the EU's lack of activity cannot be justified by a mere lack of capacities. The EU has a large number of political, economic, and since 2003 civil and military instruments that should allow it to provide a comprehensive response to a conflict. This publication consists of a detailed analysis of all the first and second pillar instruments available to the Union to be activated should a conflict take place: agreements, cooperation programmes, humanitarian aid, the rapid reaction mechanism, political dialogue and diplomacy, political statements, observation and fact-finding missions, the Policy Planning and Early Warning Unit, cooperation among Member States in the field of armament, the Rapid Reaction Force and the Civil Crisis Mechanism.

The analysis also includes three *sui generis* instruments, that is to say, instruments unique to the EU through which the Union can exert influence on third countries: 1) accession to the EU or the lure of membership, 2) support for regional integration, and 3) the intensified neighbour strategy recently brought into action with the Commission's "Wider Europe" communication.

Categorising the instruments has been one of the most difficult tasks of this publication. In the end, I have decided to differentiate them depending on their nature: Community or intergovernmental. I have expressly avoided legal categorisation since this would have complicated the goal of setting forth a practical list of EU instruments. This is why, for example, I do not deal with joint actions, common positions or common strategies as instruments but rather as mechanisms to activate other instruments. Yet another clarification: in some cases, because of their similar nature, I have grouped instruments according to their purported goals; such is the case with cooperation programmes and financial aid or cooperation in the field of armament.

Although third pillar instruments (fight against organized crime, drug trafficking and money laundering, police cooperation in borders, extradition agreements, etc.) could also, in some cases, be used as foreign policy instruments, they are not dealt with in this project because of their still too limited power to act on or influence third countries.

Together with the description of each of its instruments, there is also an attempt to analyse the "conflict response" capability of the European Union, in other words, the final and factual use that the Union makes of its instruments in the different stages of a conflict¹:

Early warning, aimed to identify at the earliest possible stage situations that could produce conflict; *pre- and post-conflict peace-building*, action to be carried out before a conflict has erupted or to prevent its recurrence; *preventive diplomacy* referring to negotiation, mediation or conciliation methods to be applied before a dispute has crossed the threshold into armed conflict; *preventive deployment* implying the involvement of military or police, and possibly civilian, personnel with the intention of preventing a dispute (or, in some cases, emerging threat) escalating into armed conflict; *peacemaking* involving the same range of methods used by preventive diplomacy but applied after a dispute has crossed the threshold into armed conflict; *peacekeeping* involving the deployment of military or police, and frequently civilian, personnel to assist in the implementation of agreements reached between governments or parties who have been engaged in conflict.; and *peace enforcement* implying a threat or use of military force, in pursuit of peaceful objectives, in response to conflicts or other major security crisis.

Linking EU instruments with these conflict stages seems, at first glance, quite an easy job. However, the assumption that every available instrument can be set into action when needed brings us to false conclusions about the EU's capacity to act. Examples will show us that although the Union has developed political, economic, civil and military instruments to fulfil the objectives set forth in its

¹ As described by the United Nations (UN Charter, the Agenda for Peace, Brahimi Report), and the OSCE (Helsinki Report).

treaties, it is still unable to provide a comprehensive and timely response when a conflict breaks out.

The annexes to this publication deserve special attention. They summarise some of the most complex parts of this study: Annex I presents the instruments from each pillar (with the exception of third pillar instruments) for conflict response. Annex II sets forth the conflict response cycle and the EU instruments that are theoretically available to be activated at each of the stages of conflict and annex III, in contrast to annex II, exposes the actual operability of each of these EU instruments.

This publication is a summary of part of my dissertation written in the framework of my doctoral studies on international relations and European integration at the Universitat Autònoma de Barcelona. Without doubt, this dissertation owns its existence to my participation in the Observatory of European Foreign Policy of the *Institut Universitari d'Estudis Europeus* at the same university and the work that it has undertaken since its creation in the year 2001, which has definitely influenced my way of understanding and analysing EU foreign policy. In this sense, I need to give very special thanks to Professor Esther Barbé, Director of both the Observatory and my dissertation, for her key comments during the development of the dissertation and for having supported me in its publication.

I would like to thank the support by the two members of the tribunal, Dr Raül Romeva and Dr Alfonso González Bondia, for the comments and suggestions they provided, all of which have been taken into account in this publication. I also feel obliged to make a special mention of the entire team at the Observatory and thank them for the vast knowledge I acquire at our regular meetings.

I have also had the support of the Patronat Català Pro Europa, the institution where I work and where I am in charge of EU external relations and enlargement. My five-year experience at the Patronat has allowed me to acquire general knowledge on the EU and first-hand contact with the European institutions. Maria Alberich deserves special mention for having helped me develop the annexes.

In spite of distance unconditional support has been there all along. This is why I also want to thank J. A. Koeneman.



1. THE EUROPEAN UNION'S INSTRUMENTS FOR CONFLICT RESPONSE

The role of the European Union on the international scene depends in great measure on the quality and efficiency of its instruments. The following pages present a detailed description of the first and second pillar instruments of the European Union available for conflict prevention and crisis management, as well as three kinds of *sui generis* instruments at the Union's disposal to exercise influence on third countries.

1.1. The European Union's *sui generis* instruments for conflict response

Sui generis instruments are EU idiosyncratic pre-conflict peace-building instruments through which third countries come into closer contact with the Union by being able to benefit from its "integrative advantages". So far, the EU has three instruments of this kind: the prospect of accession to the EU, support for regional integration, and the EU's recent Wider Europe neighbour policy.

1.1.1. The prospect of accession to the European Union

The prospect of accession is a *sui generis* EU instrument for conflict prevention in the long term. According to article 49 of the TEU, "*any European State which respects the principles set out in Article 6.¹² may become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members*".

This article subjects candidates wishing to become members to three conditions: 1) they must be able to demonstrate that they are democratic states based on the same principles as the rest of the Member States; 2) they must belong to Europe, even if its geographic limits have yet to be determined³ and; 3) they must be accepted unanimously by all Member States.

By applying conditions to those countries wishing to become Member States, the European Union can lead to their democratisation by making accession conditioned upon the fulfilment of basic democratic principles. According to Munuera, "*the lure of membership* can help to prevent conflicts outside the EU's

² They are: liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.

³ Morocco's request for accession has been rejected on this basis.

borders by suggesting the advantages of good behaviour to eager candidates and by giving the EU leverage where they do not take the hint⁴.

The success of this power of attraction has been proved in the consolidation of democracy in Greece, Spain and Portugal⁵, and it is expected to prove so in Eastern Europe as well, where candidate countries are already undertaking major economic and political reforms⁶.

The large number of candidacies obliged the European Union, for the first time after four enlargements, to develop its own system to measure the readiness of the candidate countries to become members and be able to justify, if necessary, their delay in the accession negotiations. In this way, the European Union wished to ensure that every condition was being fulfilled and that no undemocratic elements were allowed into the Union that could later lead to conflict.

This system was first established in 1993 at the European Council held in Copenhagen⁷, where Member States decided that a candidate country would be ready for accession once it fulfilled the three following criteria: 1) it was a stable democracy which respected human rights, the rule of law, and the protection of minorities⁸; 2) it had a functioning market economy able to cope with the competitive forces of the European Union; and 3) it adopted the common rules, standards and policies that make up the body of EU law (also known as the *acquis communautaire*).

Almost ten years later, at the Copenhagen European Council held in December 2002, the Member States agreed that ten of the thirteen candidate countries (Cyprus, Malta, Estonia, Latvia, Lithuania, the Czech Republic, Hungary, Poland, Slovenia and Slovakia) had carried out the necessary measures to fulfil the three 1993 Copenhagen criteria and were prepared to be full Member States as of 1 May 2004. In general terms, then, the European Union positively assessed the advances carried out by these countries and deemed that they had acquired the necessary democratic bases to prevent the appearance of future conflicts.

⁴ Munuera, G., *Preventing Armed Conflict in Europe: Lessons from Recent Experience*, Chaillot Paper 15-16, ISS, 1994, p.91.

⁵ The three were not eligible for membership until they launched democratisation. The April 1978 European Council of Copenhagen (the first of the three Copenhagen Councils we are going to visit), declared that "respect and maintenance of representative democracy and human rights in each Member State are essential elements of membership in the European Communities". For more information about applying conditionality see: Smith, K., "The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?", in *European Foreign Affairs Review*, 3, Issue 2, 1998, pp 253-274.

⁶ Smith, K., *The Making of EU Foreign Policy. The Case of Eastern Europe*, 1999, p 88.

⁷ Although some forms of this system had already existed before, it had not yet been made official.

⁸ It was not until the entry into force of the Treaty of Amsterdam in May 1999 that this political criterion defined at Copenhagen was essentially enshrined as a constitutional principle in article 6.1. of the consolidated Treaty of the European Union.

Although the Copenhagen criteria have generally been strictly maintained, important decisions have been taken by the European Council that have allowed a certain degree of flexibility. Flexibility in the Copenhagen criteria has acted as a "carrot" by giving concrete countries the time or the political impetus needed to accelerate the required changes. Let us analyse two examples:

1. Turkey's candidacy had been repeatedly rejected for not fulfilling the "democratic" condition. Unlike Morocco, the geographic criteria had never been used as a reason to reject Turkey from the EU club, although this is still a matter of debate.

Far from fulfilling the Copenhagen criteria, the December 1999 European Council of Helsinki finally granted Turkey the status of candidate. Important reasons were linked to this decision: the improvement of bilateral relations with Greece (since the arrival of the Simitis government, and particularly after the popular solidarity generated by the 1999 earthquakes), the victory of leftist parties in most EU Member States, the decision not to execute the Kurdish leader Ocalan, and the EU's dependence on NATO assets in order to develop a European Security and Defence Policy (Turkey being a member of the Alliance).

Turkey, for its part, pledged to undertake some reforms⁹ and immediately presented a *Turkish National Programme for the Adoption of the Acquis*¹⁰ where it pledged:

"as of 2001, to speed up the ongoing work on political, administrative and judicial reforms and duly convey its legislative proposals to the Turkish Grand National Assembly (... with) the goal to strengthen, on the basis of Turkey's international commitments and EU standards, the provisions of the Constitution and other legislation to promote freedom; provide for a more participatory democracy with additional safeguards; reinforce the balance of powers and competences between State organs, and enhance the rule of law. In the context of the reform process regarding democracy and human rights, the review of the Constitution will have priority. (...) The Turkish Government will closely monitor progress in the country in the areas of human rights, democracy and the rule of law, regularly evaluate the work underway for harmonization with the EU acquis, and take all necessary measures to speed up the ongoing work. In addition, legal and administrative measures will be introduced in the short or medium term regarding individual rights and freedoms, the freedom of thought and expression, the freedom of association and peaceful assembly, civil society, the Judiciary, pre-trial detention and detention conditions in prisons, the fight against torture,

⁹ For complete information about EU-Turkish relations see *Dossier: EU-Turkish Relations* at the website of the Observatori de Política Exterior:

http://selene.uab.es/_cs_iuee/catala/obs/m_investigacion.html

¹⁰ Secretariat General for EU Affairs, *National Programme for the Adoption of the Acquis*, Republic of Turkey, Ankara, 2000.

human rights violations, training of law-enforcement personnel and other civil servants on human rights issues, regional disparities”.

In this sense, it can be said that the 1999 decision to relax the political criteria of Copenhagen and allow Turkey to gain the status of candidate in Helsinki has encouraged the introduction of fundamental reforms in the country. In October 2001 a major constitutional reform was introduced aimed at strengthening guarantees in the field of human rights and fundamental freedoms and restricting the grounds for capital punishment, which has been progressively lifted. In the reform package passed in June 2003 (coinciding with the Thessalonica European Council), Turkey granted more rights to the Kurdish minority, a human rights issue that the EU has identified as a major obstacle to membership.

The December 2002 European Council of Copenhagen applied further conditionality towards Turkey. Although negotiations are not yet underway, the European Union pledged to review the possibility of initiating negotiations in 2004. In exchange, Turkey was obliged to reconsider its blocking of the EU-NATO collaboration agreement and Turkey was pressured for a resolution of the Cypriot conflict. Indeed, the solution to this conflict is already becoming a precondition for its accession.

2. The beginning of negotiations was conditioned on the candidate countries' fulfilling the two first Copenhagen criteria, the political and the economic criteria. Only Cyprus, Estonia, Slovenia, the Czech Republic, Hungary and Poland were given the green light to start negotiations in 1998, while the rest of the candidate countries had to wait and continue introducing internal reforms.

When Romano Prodi became President of the Commission in 1999, he decided to change this accession strategy because he believed that the lack of negotiations with the second group of candidate countries (Malta, Latvia, Lithuania, Bulgaria, Romania and Slovakia) was slowing down their internal pace of reforms.

In the December 1999 European Council of Helsinki, the Member States accepted his proposal to relax the conditions for starting negotiations and allow countries to negotiate once they fulfilled, at the very least, the Copenhagen political criteria and showed the commitment to fulfil the economic criteria in the near future.

By relaxing the condition that blocked the initiation of negotiations, the EU gave a “carrot” to the candidate countries that had been left behind in 1998, especially in the cases of Bulgaria and Romania. Without a doubt, the flexibility shown by the European Union has led to an acceleration of the reforms in these countries with regard to their democratisation and the protection of human rights¹¹.

¹¹ There have been important reforms such as, for example, in relation to Roma minority rights (especially in countries like Hungary or Slovakia), the judiciary and the police, the prison systems

It is important to point out, though, that the EU has not successfully made use of this “membership-leverage” to consolidate the unification of Cyprus before it becomes a member of the EU. In the 1999 European Council of Helsinki, the EU already stated that the accession of the island of Cyprus would be possible, even if there was no agreement on the island’s reunification before the accession date. By making this concession, the fifteen Member States lost their fundamental instrument for pressuring both parties¹².

Although the lure of EU membership seems to be an important instrument to condition third countries, this instrument also has two main limitations, one geographic and one temporary in nature.

The EU cannot enlarge forever nor can accession be considered a flawless instrument. The EU cannot influence developments outside its territories, as is foreseen by article 49 of the TEU, which makes it difficult to justify the candidacies of countries such as Turkey.

Besides, according to Karen Smith¹³, “the offer of membership is a foreign policy tool nearing its sell-by date”. If membership is to be an efficient instrument, it should be granted in the relatively near future. Otherwise, as Munuera¹⁴ asserts, it might produce frustration or what Barbé has called “accession fatigue”¹⁵. It is thus necessary to find ways of providing countries earmarked for membership with gradual but effective integration.

During the negotiations, candidate countries have continuously insisted on setting a date for accession. Having a date would have helped national governments justify to their public the financial effort made by their countries in order to carry out the reforms required by the Union. However, throughout the negotiation process the EU was reluctant to give an accession date, since it believed that if there was a commitment for a certain date, candidate countries could relax their pace of reforms. No accession date was made official until the negotiation packet was totally concluded. Had the integration process lasted a little longer, the lack of an accession date might have had negative effects on the referenda.

and the political parties. For more information on the changes made by the candidate countries see the enlargement newsletters published quarterly by the Patronat Català Pro Europa and available on its website (<http://www.infoeuropa.org>).

¹² Barbé, E. (ed.), “Impacte politicoinstitucional”, in Patronat Català Pro Europa, *L’ampliació de la Unió Europea: Efectes a Catalunya. Llibre Blanc del Patronat*, Patronat Català Pro Europa, Barcelona, November 2003, pp. 111-112.

¹³ For a complete analysis of the EU policy towards Central and Eastern Europe in light of the enlargement, see Karen Smith, *The Making of EU...*, op. cit.

¹⁴ Munuera, G., *Preventing armed conflict in...* op. cit., p. 62.

¹⁵ Barbé, E. (ed.), “Impacte politicoinstitucional”, in Patronat Català Pro Europa, *L’ampliació de la Unió...*, op. cit., p. 140.

1.1.2. Regional integration

Although support for regional integration cannot be considered to be an instrument exclusive to the EU, the export of the Community model of multilateral, inter-state relations to third countries might be considered so. According to Ehrhart and Schnabel, "owing, at least in part, to the success of the EU, there has been growing political recognition of the benefits of regional and sub-regional groupings and initiatives, they can exert stabilising effects by contributing to confidence building between former adversaries by demonstrating the possibility of non-zero-sum cooperation between quarrelling states, by favouring bottom-up participation of different social groups, and by bridging the gap between efforts at international, state and sub-state levels to address transnational threats to human, national and international security"¹⁶.

By supporting regional integration and building trade links among the countries, the EU encourages states to reduce political tension, increase their economic interdependence and create greater mutual trust among them. This integration, however, can only be valued successfully in the cases where the regional integration has taken place close to the European Union and when the countries in the region have been able, by their regional integration, to directly or indirectly benefit from this proximity. This has been the case of the Balkans, the Mediterranean countries and the central and eastern European countries.

Stability pacts are the best example of to what degree the European Union is able to contribute to conflict prevention by promoting good neighbourly relations and exporting the Community model to countries in a given region.

The stability pact for the central and eastern European countries, a French proposal presented to the Copenhagen summit on 21 and 22 June 1993, was planned to give the eastern European countries a forum in which to settle potential sources of conflict. It was not concerned with countries in open conflict, rather it was intended to promote good neighbourly relations and encourage countries to consolidate their borders and resolve the problems of national minorities that arise.

The inaugural conference was held in Paris on 26 and 27 May 1994¹⁷. The conference agreed to set up two regional round tables, one for the Baltic region and another for all the other eastern European countries, to be chaired by the EU. These round tables were to identify projects to further good neighbourly relations in areas such as regional cross-border cooperation, minority matters,

¹⁶ Ehrhart, H.G., Schnabel, A., "EU Conflict Prevention in the Balkans: The Royaumont Process and Beyond", in Cross, P.; Guenola, R. (eds.), *Conflict Prevention Policy of the European Union. Recent Engagements, Future Instruments*, CPN Yearbook 1998/1999, p.55.

¹⁷ On 20 December, the Council approved the first joint action in the framework of the CFSP under which the EU would convene the inaugural conference.

cultural and economic cooperation and the environment¹⁸. The pact, consisting of a declaration and over 100 agreements included by the participants, was then adopted by the members of the OSCE on 20 and 21 March 1995. The final declaration stated:

"We undertake to combine our efforts to ensure stability in Europe. A stable Europe is one in which peoples democratically express their will, in which human rights, including those of persons belonging to national minorities, are respected, in which equal and sovereign states cooperate across frontiers and develop among themselves good-neighbourly relations".

In this sense, as it is argued by Smith, regional cooperation became a condition for subsequent accession to the EU, since new long-term accessions would only be considered under the express condition that those countries first settle, in the framework of the preparatory conference, the problems liable to threaten European stability¹⁹.

Something quite similar is happening nowadays with the stabilisation and association process for south-eastern Europe (Croatia, Albania, Serbia and Montenegro, the Former Republic of Macedonia and Bosnia-Herzegovina). The 24 November 2000 Zagreb Summit set the seal on the stabilisation and association process by gaining the region's agreement to behave towards each other and work with each other in a manner comparable to the relationship that now exists between the EU Member States. The establishment of a network of close contractual relationships (conventions on regional cooperation) were thus necessary²⁰.

It was expected that the desire of the five countries to become members of the EU would be enough to stimulate reforms and solve internal conflicts. However, the situation of fragility in south-eastern Europe has made it necessary to complement the pre-accession strategy with a proximity policy which includes the potential of regional cooperation on the one hand, and diplomatic pressure and military action (through the ESDP) to solve internal problems on the other²¹.

The EU's Mediterranean relations also include an explicit regional dimension encouraging the development of intra-regional initiatives and cooperation in the three chapters defined in the 1995 Barcelona Euro-Mediterranean Conference:

the political and security chapter, the economic and financial chapter, and the social, cultural and human chapter.

¹⁸ Karen Smith, *The Making of EU...*, op. cit., p 158.

¹⁹ *Ibid.*, p 156.

²⁰ Directorate General for External Relations:

http://europa.eu.int/comm/external_relations/see/actions/sap.htm, 6/6/2003.

²¹ Barbé, E. (ed.), "Impacte politicoinstitucional", in Patronat Català Pro Europa, *L'ampliació de la Unió...*, op. cit., p. 139.

Regional trade and integration is a recognised objective of the EU's Mediterranean policy because of the positive effects on regional political and economic stability that should result from the creation of a larger Mediterranean market (a customs union should be effective by 2010), and also the stabilisation brought about by cooperation among these countries. The Mediterranean countries are already being encouraged, through the Free Trade Agreements and the Association Agreements, to approximate their legislation to that of the internal market.

However, the results of "exporting" regional integration models are obviously not that successful when the "lure of accession" is not there. In these cases, the Union lacks the ability to impose strict conditions, and third countries relax in fulfilling their commitments.

1.1.3. Wider Europe: "The lure of neighbourhood"

In an attempt to "enlarge" the EU's power of attraction to those countries without prospects for membership and hence "enlarge" the area of peace and stability and contribute to conflict prevention in a larger area, the December 2002 European Council of Copenhagen asserted that the Union should take the opportunity offered by enlargement to enhance relations with its neighbours on the basis of shared values: democracy, respect for human rights and rule of law, as set out within the EU's Charter of Fundamental Rights.

On 11 March 2003, the Commission adopted the communication *Wider Europe-Neighbourhood: A New Framework for Relations with Eastern and Southern Neighbours*²² which set out a new framework for relations with the EU's new eastern and southern neighbours once the enlargement has taken place (some of them being already neighbours of the Union): Russia, the western NISs (the Ukraine, Moldova and Belarus) and the southern Mediterranean countries (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the Palestinian Authority, Syria, Tunisia).

According to Barbé²³, with this new "voisinage" policy, the EU tries to prevent neighbouring countries without the prospect of accession from developing a feeling of exclusion by creating a new "in between" space where these countries feel comfortable by being the EU's essential partners. However, it is obvious that with the exclusion of the southern Caucasus from this initiative, there still will be some countries feeling "excluded", especially if this exclusion is to be interpreted as a way of setting the European Union's limits on the continent.

²² COM (2003) 104 final.

²³ Barbé, E. (ed.), "Impacte politicoinstitucional", in Patronat Català Pro Europa, *L'ampliació de la Unió...*, op. cit., p. 145.

By benefiting from some of the privileges of the EU's internal market (further integration and liberalisation to promote the free movement of persons, goods, services and capital), these countries should contribute to the creation of a large area of stability. To this purpose, the communication introduces a new kind of neighbourhood agreement that should be built on the already-existing contractual relations and supplement them where the EU and the neighbouring country have moved beyond the existing framework, taking on new entitlements and obligations²⁴.

Because of their different nature, countries included in this strategy, have very different contractual relations with the EU (most partners from the Mediterranean have free trade agreements, some have associate status with differing degrees of scope and depth, and countries from the former Soviet Republic have partnership and cooperation agreements). It is then difficult to guess how the new agreements will be implemented successfully so that they reach a degree of deepening which has not yet been achieved with the existing contractual frameworks (as might be the case of Libya, for example, which has no contractual relations with the EU because it does not accept the Barcelona Process's *acquis* but is included in the Wider Europe strategy).

There is yet one more element for discussion. The Wider Europe strategy includes action plans which could, according to the communication, eventually replace the already-existing common strategies. The fact that common strategies²⁵ have so far been shown to not be of much use, and the difficulties in making coherent use of the EU instruments when implementing them, poses some doubts as to the ultimate success of these action plans and the strategy as a whole²⁶.

1.2. The European Community's instruments for conflict response

First pillar instruments allow very limited action and their nature is basically preventive (pre- and post-conflict peace-building). However, in order to condition the behaviour of third countries and be able to influence in the stages of peacemaking, the Union can make a positive (negotiation of an agreement,

²⁴ COM (2003) 104 final, p. 17.

²⁵ To be effective, Wider Europe action plans should avoid what Solana signalled as the main failures of Common Strategies, "they are too broadly defined to be effective, lacked clear priorities and were vague since they had been written for public consumption", Secretary General and High Representative of the European Union, Common Strategies Report, 21.12.2000.

²⁶ Aware of the importance of neighbouring relations and the need to create this *Wider Europe*, the European Convention included an article in the draft Constitution that provided a legal basis for this new kind of relation. More specifically, proposed article I-57 states: "*The Union shall develop a special relationship with neighbouring States, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation*".

promise some financial aid) or a negative (delay or postpone the signature of an agreement, suspend a co-operation programme) use of its instruments.

1.2.1. Agreements

While agreements constitute the basis for the relationship between the Community and any third country, they should also be the main instrument for negotiation and conditionality when a conflict breaks out and allow the Union to provide a quick response.

Agreements are very different in nature. Their main difference is one of quality, from those that provide a legal framework only for trade, to association agreements that set up a much closer relationship or even foresee the accession of a country to the European Union.

The Treaty of the European Union gives the Community the power to reach agreements on relations with other international organisations (articles 302-304 TEC), conclude association or partnership agreements with third countries (article 310), and negotiate and sign agreements on trade policy (article 133)²⁷.

The decision to open negotiations with third countries in order to reach an agreement is frequently a political one. The EU often holds out the promise of such agreements if the country concerned meets certain political and economic conditions. Sometimes agreements also act as compensation for some positioning in the international scene or political support to a country. The content of agreements, schedules of trade liberalisation, the intensity and scope of economic cooperation, and provisions for political dialogue further reflect EU approval (in February 1997, the EU signed a trade and cooperation agreement with provisions for political dialogue with the Palestinian Authority²⁸). In this sense, it can be stated that political considerations “spill over” into the Community's external economic relations.

According to the nature of the relations contracted between the European Community and third countries, agreements have different legal bases²⁹.

²⁷ Smith, K., “The Instruments of European Foreign Policy”, in Zielonka, J. (ed.), *Paradoxes of European Foreign Policy*, The Robert Schumann Centre, 1998, p.69.

²⁸ *Ibid.*, p. 83.

²⁹ The name given to an agreement does in an of itself enable one to understand its content and limits. Only an in-depth analysis of the negotiation with the third country enables us to understand the idiosyncrasy of each agreement. For further information see Esther Zapater, *El fundamento jurídico de la actuación exterior de las Comunidades Europeas en el ámbito de la cooperación energética internacional*, Doctoral thesis, Universidad Autònoma de Barcelona, 2000, p. 310.

Table 1. Types of agreements

Type of agreement	Legal basis	Conflict response capability	Countries
Trade	Art. 133 TEC (previously 113)	Trade	Armenia
Trade and economic cooperation	Art. 133 and 308 TEC (previously 235)	Liberalisation of trade exchanges. Most favoured nation clause	Argentina, Uruguay
Development cooperation	Art. 133 and 181 TEC. Prior to the TEU's entry into force, art. 181 was replaced by 235	Fight against the root causes of conflict.	India, Pakistan
Cooperation and Partnership	Multiple ³⁰	Used in transition economies and restructuring processes. Consolidation of a stable and pluralistic democracy based on the rule of law and a market economy.	Russia and CIS
Association agreements ACP Euro-Mediterranean Europe Stabilisation and Association	Art. 310 TEC (previously 238)	Human rights and democracy in exchange for privileged neighbour relationships. Prospect of accession.	ACP Mediterranean Central and Eastern European countries Balkans

Agreements with third countries are proof of the evolution of the European Community itself. Agreements have developed by increasing their number of clauses, from mere trade cooperation agreements to partnership or association agreements, including reciprocal conditions. In this way, the European Union has increased its power to condition the behaviour of a third country by introducing clauses that allow for the respect of human rights or sanctions for the agreement if this clause is not respected.

The basic **trade cooperation agreement** is an efficient means to generate resources necessary for self-sustained development and create interdependence at an international level. Preferential access to developed countries' markets contributes to their development as well as to their integration in the world economy by acting as an engine of economic growth and poverty reduction. The Community has exclusive competence for the common trade policy as contained in article 133 TEC. This has its origins in the requirement for the Community to take responsibility for the external consequences of its internal policy to establish a customs union.

³⁰ For example, in the case of the Cooperation and Partnership Agreement with the Russian Federation, the legal base are TEC articles 54 (modified by the Treaty of Amsterdam and currently article 44), 57 (currently 47), 66 (currently 55), 73C (currently 57), 75 (currently 71), 84 (currently 80), 99 (currently 93), 100 (currently 94), 113 (currently 133), 235 (currently 308) and 228 (currently 300).

Trade and economic cooperation agreements enlarge the trade basis of agreements, and hence, the liberalisation of trade exchanges to a variety of sectors. This obliged the use of a dual legal basis constituted by articles 133 TEC (commercial policy) and 308 TEC³¹ (flexibility clause), which allowed agreements to be reached in these areas if they were necessary to attain Community objectives.

The appearance of this new type of agreement allowed a new form of extended economic cooperation to emerge, including transports, industry, the environment, energy, banking or insurance as well. Logically, the sectors taken into account depended on the economic situation of the country. The combination of articles 133 and 308 was very commonly used to establish relations with countries in two main geographic areas: Asia and Latin America³²

While there was no development policy in the framework of the Community, trade and economic cooperation agreements were also used to establish a Community policy for development cooperation (once again based on articles 133 and 308). By co-operating in all areas related to trade (sanitary and phytosanitary measures, health standards, etc.) the European Community enhanced the capacity of developing countries to handle all these issues and thereby remove unintended obstacles to developing countries' exports.

Some examples of this were the agreements signed with Pakistan in July 1985, which built on the 1976 trade cooperation agreement, and the trade and economic cooperation agreement signed with India on 23 June 1981 based on the trade agreement signed in 1973.

It was not until the entry into force of the Maastricht Treaty that article 181 for **development cooperation** policy was brought into being. This new article provided a legal basis for those agreements that included a development dimension.

Agreements of this type were again signed, for example, with Pakistan, with negotiations starting in December 1996, although the agreement was not signed until 24 November 2001, or the 1994 agreement signed with India.

These new agreements made development cooperation official by maintaining the trade and economic issues. They emphasised the democratic foundation of the cooperation and set economic and social development as the main objectives of the agreement³³.

³¹ "If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously, on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures."

³² Zapater, E., *El fundamento jurídico de...*, op. cit., p. 319.

³³ *Ibid.*, p. 357.

Cooperation and partnership agreements appeared as an answer to the need to establish a concrete contractual link with a geographic area in which, after certain political events, the already existing agreements were not enough. This is the kind of agreement signed with the Russian Federation and the Asian republics from the former Soviet Union.

In the case of Russia, the European Union immediately recognised the importance of this country for the peace and stability of the European continent. This is why the main objective of the Union was, on the one hand, to promote a pluralistic and stable democracy, based on the rule of law and founded on a market economy and, on the other, to develop mutual cooperation that allowed both the European Union and Russia to face common challenges on the continent.

For most of the independent republics in central Asia, these agreements also represented an opportunity to reaffirm their capacity as international actors and their presence in international organisations³⁴.

These agreements include mechanisms to initiate political dialogue among the parties that paves the way for deeper cooperation. Economic, cultural and legal cooperation are also taken into account. Based on proximity, the agreements provide the basis for these countries to do everything possible to make their legislation compatible with that of the Community³⁵.

Association agreements, as is stated in article 310 TEC, are those reached by the Community with one or more states or international organisations involving reciprocal rights and obligations, common action and special procedures.

However, according to Zapater, article 310 is not easily interpreted, and it is difficult to reach a clear conclusion about what kind of agreements can be reached on this legal basis. K. Lenaerts believes that in international law, "the term 'association' is used to refer to a type of legal relation between subjects of international law, where a third State or international organization is affiliated to the aims and/or the functioning of an international organization without becoming a full member of the latter"³⁶.

In agreement with this assertion, Zapater believes this type of legal relation to be a highly useful instrument for enabling a flexible relationship among subjects of international law by allowing the possibility of making their relationship closer through, for example, the possibility of accession.

³⁴ Ibid., p. 371-373.

³⁵ Ibid., p. 378-379.

³⁶ Lenaerts, K; De Smijter, E., "The European Community's Treaty-Making Competence", *YEL*, 1996, p. 16, cited by Zapater, E., *El fundamento jurídico de...*, op. cit., p. 389.

We can say, then, that article 310 is an instrument used by the European Community to establish privileged relations with specific geographic areas. The choice of the benefiting country or group of countries is based on geo-strategic reasons, in which the combination of political and economic aspects is of great importance.

There are presently five geographic areas benefiting from such association agreements: the countries from the African, Caribbean and Pacific (ACP); the Mediterranean countries, the central and eastern European countries, and the Balkan countries.

The democratic clause and sanction possibilities included in these agreements have resulted from their own evolution.

The **democratic clause** is a quite recent invention of the European Union. In the beginning of the Community's relations with third countries, conditionality was not taken into account. The Community's development aid was supposed to be non-political. This is why the first two Lomé Conventions (1975-1980) did not make any reference to human rights whatsoever.

After the atrocities of Idi Amin in Uganda in the mid-1970s, the Community agreed that measures should be taken if an ACP state systematically violated fundamental human rights, and at the Community's insistence, the Lomé III agreement (1985-1990) contained a joint declaration reiterating that human dignity was an essential objective of development. The European Parliament, which had become an active promoter of the conditionality norm, still criticised this limited approach to human rights³⁷.

The promotion of human rights and democratic principles found its first reference in article 5 of the IV Lomé Convention, signed in 1989. In this way, the European Community and its Member States tangibly demonstrated their commitment to human rights in their relations with third countries.

References gradually began to appear in cooperation agreements with other third countries, such as those in Latin America, defining respect for democratic principles and human rights as one of the foundations of the parties' relations. This was the case with the 1990 framework agreement on trade and economic cooperation with Argentina, the 1991 framework cooperation agreement with Chile, and the 1992 agreements with Paraguay and Uruguay.

However, neither the democratic clause in the early cooperation agreements (also called basis-clause) nor article 5 of the IV Lomé Convention were a

³⁷ Karen, S., "The Use of Political...", op. cit., p. 259.

sufficient legal basis on which to found an effective and rapid response in the event of violations of the fundamental rights³⁸.

On 28 November 1991, the Development Cooperation Council agreed that the considerations of human rights and democracy should be important elements in the Community's relations with developing countries, but in the event of grave and persistent human rights violations or serious interruptions of democratic processes, the Community and Member States would consider appropriate responses in light of the circumstance, guided by objective, equitable criteria.

The Maastricht Treaty, signed in 1992, already reflected the extent to which considerations of human rights and democracy were supposed to influence the EU's foreign relations. These concepts were introduced in the preamble and as a part of both the CFSP's objectives and the new provisions on development cooperation³⁹. In addition, new article 228a TEC allowed for the interruption or reduction of economic relations with third countries following a common position or joint action (see 1.3.3.).

Agreements signed after 1992 included, in addition to the human rights clause, a new **essential clause** which stated that respect for democratic principles and human rights inspired the internal and external policies of the European Union and constituted an essential element of the agreement. This new terminology, based on the Vienna Convention on the Rights of the Treaties, dated 23 May 1969, allowed for a partial or complete suspension of the agreement in the event of persistent human rights violations⁴⁰.

However, the introduction of these references did not provide a clear legal basis for suspending or denouncing agreements in cases of serious human rights violations or interruptions of the democratic process⁴¹.

On 29 May 1995, the Council agreed that all agreements with third countries would contain a **suspension mechanism** in addition to the essential elements clause, enabling the Community to react in the event of violations of essential elements of the agreements, particularly human rights and democratic principles⁴². From that moment on, the Community had the means to condition, delay or sanction the signature of an agreement with a third country until the fulfilment of political criteria. Article 300 of the Amsterdam Treaty included this suspension mechanism.

³⁸ Pi, M., "Los derechos humanos en la acción exterior de la Unión Europea", in, Barbé, E. (coord.), *Política Exterior Europea*, 2000, p. 88.

³⁹ Smith, K., "The Use of Political...", op. cit., p. 262-263.

⁴⁰ Pi, M., "Los derechos humanos en...", in Barbé, E. (coord.), *Política Exterior Europea*, op. cit., p. 90.

⁴¹ COM (95) 216.

⁴² Smith, K., "The Use of Political..." op. cit., p. 264.

With this mechanism, then, if there is a violation of the essential elements of the agreements, a partial or total suspension of aid should be set in motion to encourage a cessation of hostilities and political dialogue. However, the EU has proved to be quite reluctant to use its economic leverage for political purposes. Member States often disagree because of bilateral trade interests, the fear of isolating those states that most need aid, the fear of generating instability, and the fact that the EU cannot exercise influence if it has no ties to the country concerned.⁴³ This is very common in the case of developing countries, where suspension of aid should undergo an in-depth case-by-case assessment. Any measure involving the freezing or suspension of aid has to be applied taking into account the number of people who might be victims of the suspension⁴⁴.

Some analysts believe that the EU has not been making use of its power as a civil force to exert pressure on Turkey in opportune moments. For example, the 1974 occupation of northern Cyprus by the Turkish military led to neither the application of sanctions nor the suspension of agreements with Turkey, and the unilateral proclamation, in 1983, of the Northern Turkish Republic of Cyprus did not prevent some European countries from signing agreements with this entity⁴⁵. A more recent example of this lack of assertiveness can be found in the case of Israel. In 2002, the European Parliament asked the Council to suspend the Association Agreement with Israel signed in June 2000, which provided for commercial preferences in exchange for fulfilling the democratic clause. The Council could not reach the necessary unanimity to introduce the sanction (the EU is Israel's most important trading partner)⁴⁶. Furthermore, the fact that Israel declared that the freezing of the agreement was to be considered a "declaration of war"⁴⁷ was considered negative by many Member States, which believed that this reduced the EU's already limited negotiating capability in the crisis.

Whereas the suspension of an agreement should be used by the Union to impose certain conditions, agreements can also be used as a reward for those countries that have behaved according to European principles during a conflict or have made a commitment to a certain number of conditions. An example of this is the Trade and Cooperation Agreement with Iran, which the EU viewed as an instrument for promoting dialogue with the Islamic Republic after the 11 September crisis⁴⁸.

⁴³ Smith, K., "The Instruments of European...", in Zielonka, J. (ed.), *Paradoxes of European Foreign...*, op. cit., p. 76-77.

⁴⁴ COM (1999) 240 final, p. 4.

⁴⁵ Barbé, E. (ed.), "Impacte politicoinstitucional", in Patronat Català Pro Europa, *L'ampliació de la Unió...*, op. cit., p. 124.

⁴⁶ Agence Europe No. 8190, 12/4/2002, p. 4.

⁴⁷ El País, 10/4/2002.

⁴⁸ The negotiations on the agreement, which was in the pipeline long before 11 September, received fresh impetus through the need, from the EU's point of view, to bind Iran firmly into the anti-terrorist coalition. The European Commission received its negotiation mandate for developing closer relations with Iran from the Council of the EU on 7 February 2001. The intended agreement would include a political component covering issues such as human rights, democracy and terrorism. The finalisation of the agreement, though, was to be subject to continued

1.2.2. Cooperation programmes and financial assistance

The inventory of instruments applied to prevent a conflict also includes the allocation of financial assistance in the framework of development policy and other bilateral, regional or horizontal cooperation programmes.

In its communication on conflict prevention⁴⁹, the Commission stated that “**development cooperation** policy and other **cooperation programmes** provide, without a doubt, the most powerful instruments at the Community's disposal for treating the root causes of conflict”⁵⁰. These programmes allow the EU to take genuinely long-term and integrated approaches to create, restore or consolidate structural stability in countries at risk. This involves achieving sustainable economic development, democracy and respect for human rights, viable political structures and healthy environmental and social conditions, with the capacity to manage change without the need to resort to conflict⁵¹.

The European Community's external assistance programmes (PHARE, for the eastern European countries; TACIS, for the Russian Federation and the Community of Independent States; ALA, for Asia and Latin America; CARDS for the south-eastern European countries; and MEDA for the Mediterranean countries) total some 5 thousand million euro yearly in addition to the European Development Fund resources for the African, Caribbean and Pacific countries (13 billion euro under the 9th EDF between 2000-2007).

Geographic programmes are very much related to the agreements signed with the area of attention and assist in the fulfilment of their objectives. In some cases, though, the assistance programmes appeared before the agreements were signed (as is the case of PHARE, TACIS, and the EDF), and they were used to reach the negotiated agreement. Sometimes a third country has an agreement but no special financial instrument and benefits from global contributions, such as development cooperation aid outside the ACP countries.

More specifically, development assistance is a very important long-term conflict prevention tool to fight against the root causes of conflict, in particular by addressing the underlying development factors in conflict and focusing on opportunities to help prevent violent conflicts at an early stage.

monitoring of Iranian progress in the fields of political, economic and social reform. International Crisis Group, *EU Crisis Response Capabilities: An Update*, Issues Briefing, Brussels, 29 April 2002, p.4.

⁴⁹ COM (2001) 211 final

⁵⁰ Poverty, economic stagnation, uneven distribution of resources, weak social structures, undemocratic governance, systematic discrimination, oppression of the rights of minorities, the destabilising effects of refugee flows, ethnic antagonisms, religious and cultural intolerance, social injustice, the proliferation of small arms, drug trafficking, illicit diamond trade, trafficking in people, environmental degradation, trans-national crime, the spread of AIDS and other diseases.

⁵¹ COM (2001) 211 final, p. 9-10.

Apart from these main geographic programmes, there are other small budgetary lines of a much more horizontal nature but that are specialised in supporting human rights, democratisation, good governance and conflict prevention. Under chapter B7-70, entitled “**European Initiative for Democracy and Human Rights**”, the EC brings together a series of budget headings specifically dealing with the promotion of human rights⁵².

This annual budget line should allow the EU (as much as 7 million euros can help) to respond to urgent and unforeseen needs such as conflict resolution initiatives as well as to human rights and democratisation priorities at a country level through micro-projects. The added value of EIDHR compared to other EC instruments should be its complementariness, that is, the fact that it can be used without the host government's consent. Besides, EIDHR should be an essential complement to the EU's CFSP objectives in the areas of democracy and human rights since it provides, for some regions, the only legal basis for certain activities (e.g. election observation).

One of the most important instruments for conflict prevention financed under the European Initiative for Democracy and Human Rights is **election observation and monitoring**. In the past, development cooperation, human rights and CFSP budget lines have all been used to fund election observation. There was no consistency in the choice of the budgetary instrument, despite the fact that this choice had important institutional consequences. While election assistance had always been pursued under the first pillar, election observation was a borderline case, falling under either the first or second pillar⁵³. Following the adoption of the two new human rights regulations, it was decided that the decision to both provide election assistance and send EU observers was to be taken in the first pillar, on the basis of Commission proposals.

⁵² The legal basis for these activities are two regulations (975/1999 and 976/1999) adopted on 29 April 1999. With the two regulations, the EU laid down the procedures for the implementation of Community operations which, within the framework of Community development cooperation policy (Regulation 975/1999) or other than development cooperation (Regulation 976/1999), contribute (with a total amount of 260 and 150 million euro for the period 1999-2004) to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries.

⁵³ COM (2000) 191 final.

Table 2. European Community projects to be financed under Regulations 975/1999 and 976/1999

<p>Promotion and defence of human rights and fundamental freedoms</p>	<p>Promoting and protecting civil and political rights Promoting and protecting economic, social and cultural rights Promoting and protecting human rights of those discriminated against or suffering from poverty or disadvantage Supporting minorities, ethnic groups and indigenous people Supporting local, national, regional or international institutions involved in the protection or defence of human rights Supporting rehabilitation centres for torture victims and for organisations offering help to victims of human rights abuses Supporting education, training and awareness raising in the area of human rights Supporting actions to monitor human rights, including the training of observers Promoting fundamental freedoms Promoting equality of opportunity and non-discriminatory practices, in particular the freedom of opinion, expression and conscience, and the right to use one's own language</p>
<p>Support for the process of democratisation</p>	<p>Promoting and strengthening the rule of law, humane prison systems, independence of the judiciary, constitutional and legislative reform, abolishment of death penalty Promoting separation of powers Promoting pluralism at the political and civil levels, independent and responsible media, respect for the rights of freedom of association and assembly Promoting good governance, prevention and the combat against corruption Promoting equal participation of men and women in civil society, economic life and politics Supporting electoral processes Supporting separate civilian and military functions</p>
<p>Support for measures to promote respect for human rights and democratisation by preventing conflict and dealing with its consequences</p>	<p>Supporting capacity building, including the establishment of local early warning systems Supporting measures aimed at balancing opportunities and at bridging existing dividing lines among different identity groups Supporting measures facilitating peaceful reconciliation of group interests Promoting international humanitarian law and its observance Supporting international, regional or local organisations, including NGOs, involved in preventing, resolving and dealing with the consequences of conflict, including support for establishing ad hoc international criminal tribunals and setting up a permanent international criminal court</p>

The European Community also dedicates small budget lines to finance projects aimed at dealing with **cross-cutting issues**, to find effective and appropriate ways to address the causes of tension and violent conflict: drugs, small arms, access to and management of natural resources, environmental degradation, communicable diseases, massive population flows, human trafficking and private sector interests in unstable areas⁵⁴. A good example of this is the financing of projects whose main objective is to reduce the unregulated availability of small arms in areas of conflict or potential conflict by promoting strict export controls and safe and environmentally responsible destruction of surplus weapons, measures which limit the demand for the illegal use of small arms in areas of conflict, and measures to help affected governments deal with all aspects of this problem.

⁵⁴ COM (2000) 212 final, p. 20.

In the EU Programme for the Prevention of Violent Conflicts⁵⁵, presented to the Gothenburg European Council in June 2001, the Council asked the Commission to ensure that its development cooperation policy and other cooperation programmes be more clearly focused on dealing with cross-cutting issues in order to address the root causes of conflicts in a comprehensive way.

Community programmes and financial aid can be considered pre- and post-conflict peace-building as well as peacemaking instruments since the Union has the capability to impose conditions on the country receiving the aid, which should become an effective lever to exert direct influence on the conduct of governments.

Sanctioning of programmes has been introduced, parallel to the sanction clause in the agreements, in the Council regulations that create them. Although the possibility of sanctioning did not appear in the first PHARE programme, it did with its first revision. Council Regulation No. 99/2000 concerning the provision of assistance to eastern Europe and central Asia (the TACIS programme)⁵⁶, states that "such assistance will be fully effective only in the context of progress towards free and open democratic societies that respect human rights, minority rights and the rights of the indigenous people, and towards market-oriented economic systems". Article 16 of the regulation adds that "when an essential element for the continuation of cooperation through assistance is missing, in particular in cases of violations of democratic principles and human rights, the Council may, on a proposal from the Commission, acting by qualified majority, decide upon appropriate measures concerning assistance to a partner State".

However, a sanction was not applied in the case of Chechnya. The diversity of the assistance and the countries benefiting from it makes it difficult for the Union to reach an agreement to block a cooperation programme, since Community aid is very often linked to a country's development and the benefit of its citizens.

The planning of European Community activities, and hence, finance for a third country for a specific period of time, are summarised in its **Country Strategy Papers** (CSPs).

Based on the Gothenburg recommendations⁵⁷, CSP are being currently reviewed to increase their conflict prevention dimension. In this sense, new Country Strategy Papers should include a detailed analysis of the conflict potentiality of a country and include long-term peace-building measures in order to deal with the root causes of conflict⁵⁸.

⁵⁵ European Union Programme for the Prevention of Violent Conflicts, Nr. 9537/1/01, Gothenburg European Council, 15-16 June 2001.

⁵⁶ Council Regulation (EC, EURATOM) No. 99/2000, OJEC L12/1, 18/1/2000.

⁵⁷ Conclusions adopted by the Gothenburg European Council, 15 and 16 June 2001.

⁵⁸ COM (2001) 211 final.

When planning assistance, the Commission should take into account the conflict potentiality of the country and finance measures aimed at fighting them. This

measure should be used to develop a unified and more focussed strategy of priorities and break with the habit of producing endless shopping lists of new priorities⁵⁹.

Strategy Papers may also be regional in nature and provide a strategic framework within which EC assistance to multi-country activities is provided for a period of time. This is the case, for example, of the TACIS Regional Cooperation Strategy Paper, adopted by the Commission on 27 December 2001, which sets out EC cooperation objectives, policy response and priority fields of cooperation on a multi-country or cross-border basis, specific cross-border aspects and other sub-regional issues. The Regional Strategy Papers for Central America, South Eastern Europe, the Andean Community, the Euro-Mediterranean Partnership or Latin America work in a similar fashion.

To feed the Country Strategy Papers so that they include all information related to early warning on possible conflicts, the European Commission has developed a **checklist for root causes of conflict/early warning indicators**, carried out by Commission desk officers and EC delegations for more than 120 countries with the objective of increasing awareness within the EU decision-making forums of the problems of those countries/regions with the highest assessed risk of an outbreak, continuation or re-emergence of conflict, as well as to heighten the efforts to ensure EU policies contribute to conflict prevention.

The European Community also sponsors **Conflict Prevention Assessment Missions** to assess the potential for conflict in specific countries. The main objectives of such missions, of which there were four in year 2002 (to Sri Lanka in August, the South Pacific in June, Indonesia in March, and Nepal in January), were to identify both long-term measures that can be included in Community Programmes by focussing on specific factors, and short-term activities which would more appropriately be carried out by the EU Rapid Reaction Mechanism (see 1.2.4.).

As a whole, the mission takes a comprehensive approach covering a range of sectors in assessing opportunities for European Community assistance to conflict prevention. In addition, it provides a number of recommendations for the European Commission and suggestions as to how the Commission's Country Strategy Paper towards these countries should be revised. For example, the assessment mission to Indonesia, which was financed through the European Community development cooperation programme, supported the already existing Country Strategy Papers but it proposed that the EC take a long-term approach

⁵⁹ Everts, S., *Shaping a Credible EU Foreign Policy*, London, Centre for European Reform, February 2002, p. 8.

towards this country and develop sufficient capacity to be able to manage a programme in this area⁶⁰.

1.2.3. Humanitarian aid

After a crisis has broken out, humanitarian aid often becomes the first substantial source of Community financing in the regions concerned. Due to the absence of other instruments, the European Community Humanitarian Office (ECHO) is being called on more and more often to finance post-conflict programmes outside the remit emergency aid⁶¹.

EC Regulation no. 1257/96 authorises the principles and procedures for EU humanitarian aid⁶². However, **ECHO** was already established by a Commission decision on 6 November 1991 in the aftermath of the Kurdish refugee crisis that followed the Gulf War and with the Yugoslav crisis looming, with the objective of improving internal co-ordination and efficiency in the delivery of emergency humanitarian aid. The Commission especially wanted to improve liaisons with Member States and NGOs operating in the field on emergency humanitarian matters.

ECHO became fully operational in 1993, and was initially given the task of providing only non-food humanitarian aid solely in emergencies. This mandate expanded, however, to include emergency food aid in 1994.

As stated by the International Crisis Group (ICG), in the mid-1990s ECHO began to be criticised for poor management, long delays in disbursements of funds, insufficient control of its partner organisations, and lack of rigour in analysis, project management and evaluation⁶³.

In an attempt to avoid the increasing overlap and confusion between ECHO political and purely humanitarian responses, Member States issued a declaration in Madrid in 1995 in which they agreed to: recognise the independence and impartiality of humanitarian assistance; allocate greater resources to those forgotten crises not receiving media attention; and resolve crises rather than fall back on humanitarian activities as a substitute for political action.

The Madrid declaration argued that emergency humanitarian aid had to be perceived as being impartially allocated, without geographic bias and insulated from political considerations. Unlike development assistance, it should not be tied to political conditionality or political projects, and it should not be delayed while

⁶⁰ European Commission, *Report of the EC Conflict Prevention Assessment Mission in Indonesia*, Conflict Prevention and Crisis Management Unit, March 2002.

⁶¹ COM (2000) 212 final, p. 22.

⁶² Council Regulation EC No. 1257/96, OJEC L163/1, 2/7/1996.

⁶³ International Crisis Group, *The European Humanitarian Aid Office ECHO: Crisis Response in the Grey Lane*, ICG Issues Briefing, Brussels, 26/6/2001, p. 6.

external actors seek agreement on an appropriate political response to the crisis⁶⁴.

The contents of this Declaration were included in the new 1996 ECHO Regulation together with an attempt to temporarily limit the assistance: "humanitarian assistance may be a prerequisite for development or reconstruction work and must therefore cover the full duration of a crisis and its aftermath". In this context, "it may include an element of short-term rehabilitation aimed at facilitating the arrival of relief, preventing any worsening in the impact of the crisis and starting to help those affected regain a minimum level of self-sufficiency".

Furthermore, the new regulation also made special reference to the impartiality of humanitarian assistance, which should be aimed at relieving human suffering without "discrimination on the grounds of race, ethnic group, religion, sex, age, nationality or political affiliation and must not be guided by, or subject to, political considerations". The regulation required EU agencies involved in humanitarian aid to respect, preserve and encourage the impartiality and neutrality of humanitarian NGOs and take decisions solely according to the victim's needs and interests.

The regulation gave a very broad scope to possible forms of EU humanitarian aid, as broad a scope as the word "humanitarian" allows. The list of possible objectives of EU humanitarian aid in the regulation includes the following:

1. Saving and preserving life during emergencies and their immediate aftermath;
2. Aid and relief to people suffering from long lasting crises, especially those arising from violent conflict;
3. Transport of aid and (non-military) protection of humanitarian aid and workers;
4. Short-term rehabilitation and reconstruction with a view to facilitating the arrival of relief, preventing the impact of the crisis from worsening and starting to help those affected regain a minimum level of self-sufficiency;
5. Response to population movements (refugees, displaced people or returnees) and implementation of schemes to assist repatriation to the country of origin and resettlement wherever the conditions laid down in current international agreements are in place;
6. Preparedness for risks of natural disasters or comparable exceptional circumstances and use a suitable rapid early warning and intervention system; and
7. Support of civil operations to protect victims of violence⁶⁵.

⁶⁴ Ibid., p. 9.

⁶⁵ Ibid., p. 2.

Financial aid might also be used to finance: 1) preparatory and feasibility studies for humanitarian operations and the assessment of humanitarian projects and plans; 2) operations to monitor humanitarian projects and plans; 3) training schemes; 4) measures to increase public awareness; 5) measures to strengthen the Community's co-ordination with Member States and other donors; 6) technical assistance; and 7) humanitarian mine-clearance operations.

According to the ICG, the 1996 Council regulation left its day-to-day mission and activities significantly open to interpretation. Under the supervision of Commissioner Emma Bonino (1994-1999), ECHO funded activities such as documenting war crimes in Kosovo or supporting an international criminal court, which many would not regard as a part of its core mandate, thus meaning that Bonino pushed for a broad interpretation.

In June 2000 the European Parliament's Foreign Affairs Committee called for a "stop to the increased politicisation of humanitarian assistance" because such aid should address the effects of neither a crisis nor its causes⁶⁶.

Thus, in 2001 the Commission presented the communication "Linking Relief, Rehabilitation and Development"⁶⁷, in which it concluded that ECHO should focus on its core mandate, that is to say, life-saving operations in emergencies which aimed for the earliest possible outcome while other EC programmes would carry out assistance to countries where there was no humanitarian emergency⁶⁸.

The first consequence of this communication was the need to create a long-term planning structure outside of ECHO responsible for actions in the grey zone, that is, between humanitarian assistance and development cooperation programmes. The new element that allowed a transition between the two stages was a new Rehabilitation and Reconstruction programme (within development cooperation) specially devoted to those countries that had suffered from severe destruction from a war⁶⁹. As we shall see in the following section, a new Rapid Reaction Mechanism was also created in 2001 to help cover this grey zone.

The regulation on EU humanitarian aid does not prevent ECHO from taking pre-conflict peace-building objectives into account. It certainly provides for so-called protection activities, which could potentially involve advocacy in favour of specific groups at risks, such as refugees, prisoners, women and minority populations.

⁶⁶ European Parliament, *Conclusions of the Committee of Foreign Affairs, Human Rights, Common Security and Defence Policy, forwarded to the Committee on Development and Cooperation, on the Communication from the Commission on Assessment and Future of Community Humanitarian Activities*, Committee on Development Cooperation, PE 286.789, 28 June 2000, A5-0191/2000.

⁶⁷ COM (2001) 153 final.

⁶⁸ International Crisis Group, *The European Humanitarian Aid...*, op. cit., p. 10.

⁶⁹ *Ibid.*, p. 9.

To improve its action in pre-conflict situations (which shall be distinguished from EU policy action in support of human rights), ECHO created a disaster preparedness programme called **DIPECHO** whose mandate was based on the following goals: 1) to save and preserve life during and after emergencies created by both natural and man-made disasters; 2) to provide the necessary assistance and relief to people affected by long-term crises such as civil wars; 3) to finance both the transportation of assistance and the efforts to ensure it reaches the needy; 4) to assist refugees or displaced persons, either in their country or in the region where they have resettled, or help them to re-establish themselves upon returning home; 5) to carry out short-term rehabilitation and reconstruction work to help disaster victims reach a minimum level of self-sufficiency; and 6) to ensure disaster preparedness, including early warning systems, and funding disaster prevention in high-risk regions⁷⁰.

As a part of this "conflict preparedness", in 2001 ECHO published its first strategy papers in which it established general guidelines, defined programming principles, and made commitments to certain geographic priorities⁷¹. In its 2003 Aid Strategy, ECHO has once again made a commitment to intervene in the areas where the greatest humanitarian needs had been identified; pay specific attention to forgotten crisis and forgotten needs; and promote quality humanitarian aid through systematically mainstreaming cross-cutting issues into its operations⁷².

1.2.4. Rapid Reaction Mechanism

The **Rapid Reaction Mechanism** (RRM)⁷³, launched in February 2001, is a recent addition to the EC's crisis management toolbox. In practice, it should differentiate from the instruments treated above in that when the aims of aid and cooperation programmes and the conditions for their implementation might be jeopardised or directly affected by the emergence of situations of crisis or conflict, the RRM should allow the provision of finance to support EU activities to be accelerated, contributions to operations run by other international organisations, and funding for NGO activities. It is expected to be a fast-disbursing funding mechanism designed to provide quick-impact stabilisers to help assuage the economic consequences of violent crises, and thus to facilitate crisis management.

The RRM, based on article 308 TEC, builds upon all the existing Community legal instruments we have dealt with above, yet it must be capable of avoiding their procedural, budgetary and geographic limits, some of the reasons for their

⁷⁰ DIPECHO: <http://www.disaster-info.net/dipecho/mandate.html>, 5/5/2003.

⁷¹ The 2001 priority regions included the Balkans, the Great Lakes and the Horn of Africa, and countries and regions with protracted humanitarian crises such as the northern Caucasus, Afghanistan and Colombia.

⁷² European Commission Humanitarian Aid Office, *ECHO Aid Strategy 2003*, p. 14.

⁷³ Council Regulation EC No. 381/2001, OJEC L57/5, 26/2/2001.

inadequacy in urgent situations. The RRM should, for the short lapse of time of 6 months, untie the bindings restraining the Community instruments and release their potential and focus where urgent conditions require quick action. The Community instruments will, in turn, remain the key to any possible follow-up measure that might be required after the initial emergency operation has elapsed.

As an instrument to be applied also in the grey zone, a dividing line has been drawn between the scope of this facility and the regulation concerning humanitarian aid. While humanitarian action is focused on the individual in that it seeks to preserve life and relieve human suffering, interventions under the RRM should be aimed instead at the preservation or reestablishment of the civil structures needed for political, social and economic stability.

Despite this apparent clarity, article 2 of the regulation establishing the Rapid Reaction Mechanism states that the new mechanism may be combined with ECHO action if appropriate⁷⁴. Exactly what the distinctions drawn in the communiqué between ECHO and the RRM are is still to be tested. Commission units involved in implementing policy under the Rapid Reaction Mechanism regulation and ECHO will certainly need to coordinate with each other if EU policies are to be coherent⁷⁵. Moreover, in order to facilitate synergy between operations, the Commission is obliged to ensure close coordination between actions taken under the RRM and the activities of EU Member States and regional and international organisations.

In the case of Afghanistan, 2.5 million euro was made available to make possible the immediate functioning of the interim administration via a payment under the Rapid Reaction Mechanism to the United Nations Development Fund. The Rapid Reaction Mechanism also allowed immediate funding for mine clearance programmes, support to the public service information broadcasting and detailed needs assessments. In addition, humanitarian assistance was provided by ECHO, and a quick impact package of 57.5 million euro was adopted covering support to public administrations, rural recovery, mine action, urban infrastructure, information and on-going assessment⁷⁶.

The RRM may be deployed either at the request of the UN or the OSCE or autonomously. The early institutional steps taken in the action plan included the creation of a coordinating mechanism in the Council Secretariat to organise coordination between the Council and the Commission (Crisis Management Unit in the Directorate General for External Relations) and to manage a database project intended to facilitate the identification of resources with the inventories, as

⁷⁴ European Parliament, *Instruments of Conflict Prevention and Civilian Crisis Management Available to the European Union*, DG Research, Briefing note n. 1/2001, pp. 4-5

⁷⁵ International Crisis Group, *The European Humanitarian Aid...*, op. cit., pp. 11-12.

⁷⁶ Directorate General External Relations,
http://europa.eu.int/comm/external_relations/cpcm/cp/casea.htm, 6/6/2003.

well as a study on the RRM's specific targets. It was also agreed that a special financial arrangement – a Rapid Reaction Fund – would be set up in order to enable the EU to launch urgent civilian operations.

Much less consuming than the Commission's regular aid procedures, the RRM was used five times in 2001: twice in Macedonia, once each in Afghanistan and in the Democratic Republic of Congo, and once to finance a mission to decide how to programme conflict prevention actions in Indonesia, Nepal and the Pacific⁷⁷. The first time it was used was in the Former Yugoslav Republic of Macedonia (FYROM) in March 2001 and it was concerned with the houses destroyed or damaged by the fighting in the areas of Tetovo and Skopska Crna Gora. In October 2001, the Commission adopted a decision to finance a Confidence Building Program for the FYROM, including the use of RRM funds. The 10.3 million euro budget for this action was conditional on full ratification of all the amendments to the FYROM Constitution, as well as a new law on local government, as requested in the August 2001 Ohrid agreement. The Commission was also asked to extend to the FYROM the mandate of the European Agency for Reconstruction for Kosovo and Yugoslavia⁷⁸.

In the Great Lakes, the Commission committed 2 million euro under the RRM in addition to a prior European Development Fund instalment to support the Inter-Congolese Dialogue, to launch preparatory actions for the reintegration of child soldiers and to support independent media and other confidence building initiatives⁷⁹.

1.3. Common Foreign and Security Policy instruments for conflict response

Common strategies, common positions and joint actions can be analysed as legal instruments of the EU's CFSP (articles 13, 14 and 15 of the TEU).

The Treaty of the European Union states that joint actions address specific situations where operational action by the EU is considered necessary, and common positions define the EU's approach to a particular matter. Decisions to make use of instruments tend to be either common positions or joint actions⁸⁰. Joint actions, for example, include sending election observers to third countries, while common positions, for example, announce economic sanctions. The

⁷⁷ International Crisis Group, *EU Crisis Response Capabilities...*, 2002, op. cit., p. 11.

⁷⁸ Piana, C., "The EU's Decision-Making Process in the Common Foreign and Security Policy: The Case of the Former Yugoslav Republic of Macedonia", *European Foreign Affairs Review*, 7, 2002, p. 215.

⁷⁹ Directorate General External Relations:
http://europa.eu.int/comm/external_relations/cpcm/cp/casegl.htm, 10/6/2003.

⁸⁰ Smith, K., "The Instruments of European...", in Zielonka, J. (ed.), *Paradoxes of European Foreign...*, op. cit., p. 68.

Member States are to ensure that their policies conform to common positions and are bound to follow joint actions, a firmer obligation than hitherto recognised. As far as common strategies are concerned, their main aim is to set objectives for and increase the effectiveness of EU actions through enhancing the overall coherence of the Union's policy towards a region or country. Again, their activation depends on the adoption of joint actions or common positions, which justifies the fact that they should be analysed as mechanisms instead of as instruments.

According to Karen Smith, though, neither the common positions nor the joint actions are instruments *per se* but they are better viewed as mechanisms for making decisions to use other foreign policy instruments.

In this publication, in agreement with Karen Smith, joint actions, common positions and common strategies are not analysed as instruments but rather as mechanisms needed to activate other EU instruments.

1.3.1. Political dialogue and diplomacy

The European Union holds **political dialogue** with a large number of countries or groups of countries on questions of international policy. It counts with more than 45,000 diplomats; over 150 states have established diplomatic missions to the EU in Brussels; and 180 Commission delegations have been set up in third countries and at international organisation headquarters (OECD, OSCE, UN, WTO). Furthermore, article 20 of the TEU requires delegations and Member States' diplomatic missions to "co-operate in ensuring that the common positions and joint actions adopted by the Council are complied with and implemented".

Meetings, over 200 every year, take place at all levels: heads of state, ministers, political directors, senior officials and experts. The European Union can be represented at them by the Presidency (assisted by the High Representative for the CFSP), by the High Representative alone at the request of the Presidency, or by the Troika (Presidency assisted by the High Representative for the CFSP and the Commission and, where appropriate, the upcoming Presidency), or (in a limited number of cases) by Member States' delegates and the Commission representative.

Declarations make political dialogue official by giving public expression to a European Union position, request or expectation vis-à-vis a third country or an international issue. This instrument makes it possible to react very quickly to incidents and state the Union's point of view. There are two types of declarations: a declaration by the EU, in which the Council meets and adopts a position, and a declaration by the Presidency on behalf of the EU, in which the Council does not meet⁸¹. While a declaration by the Presidency very conveniently permits a real

⁸¹ International Crisis Group, *EU Crisis Response Capability. Institutions and Processes for Conflict Prevention and Management*, Report no. 2, Brussels, June 2001, p. 39.

time EU response without need to convene a meeting, the Presidency is expected to conduct expeditious consultations before utilising this instrument, at least in any potentially controversial case.

In the June 2003 EU declaration by the Presidency on behalf of the European Union on Cuba, the EU stated its concern about the continuing flagrant violation of human rights and of fundamental freedoms of members of the Cuban opposition, and of independent journalists being deprived of their freedom for having expressed their opinions freely, and once again called on the Cuban authorities to immediately release all political prisoners. With the declaration, the EU unanimously decided to activate diplomatic sanctions (see 1.3.3)⁸².

In other cases, declarations are used to congratulate or express EU satisfaction, as was the case when the President of Argentina, Nestor Kirchner, won the elections⁸³, or to express support for parties or governments at the opening of negotiations, such as the 16 May 2003 declaration towards the government of Nepal and the Maoists⁸⁴.

Démarches differ from declarations in that they are confidential and are undertaken vis-à-vis third countries by the Presidency or the Troika on behalf of the European Union. Generally speaking, their purpose is to resolve matters relating to human rights, democracy or humanitarian action with the state in question. In 2001 and 2002, the EU carried out 28 démarches on the issue of the death penalty in accordance with the EU Guidelines on the Death Penalty in many countries, among them the US – at both state and federal level – the Palestinian Authority, Lebanon, Malaysia, Japan, Guinea, Sri Lanka, Botswana, China, Bangladesh, Pakistan, Iran, Saudi Arabia, Indonesia and Nigeria.

Although declarations are used to present a unified European Union towards an international affair, it is often the case that the Union's integrated political dialogue stops at this stage, since divergent positions among Member States and institutions in relation to a conflict make it difficult to go on speaking with a single voice. As we have recently seen in the cases of September 11 or the Iraq conflict, Member States hardly "inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action", as it is stated in article 16 TEU. Instead, national interests prevail and lead to the creation of directorates⁸⁵.

⁸² Declaration on Cuba by the Presidency on behalf of the European Union, 9961/03, Brussels, 5/6/2003.

⁸³ Declaration by the Presidency, on behalf of the European Union, on the presidential elections in Argentina, 9417/03, Brussels, 19/5/2003.

⁸⁴ Declaration by the Presidency, on behalf of the European Union, on the opening of negotiations between the government of Nepal and the Maoists, 9443/03, Brussels, 16/5/2003.

⁸⁵ A detailed analysis on the reactions of the European Union and its Member States after the 11 September attacks and the Iraq conflict can be viewed at the website of the Observatory of European Foreign Policy, http://selene.uab.es/cs_iuee/catala/obs/m_investigacion.html

The creation of directorates reflects Member States' lack of political will to find a common position within the framework of a supranational CFSP, especially in those cases in which security elements and interests with third countries are relevant. Furthermore, according to Stephan Keukeleire, the creation of directorates within the CFSP follows from the pressure from other countries and international organisations, especially the USA, which do not view the rotating Presidency (and its consequences, like the Troika) to be the best *modus operandi* for responding to the needs and expectations of these international players.⁸⁶

In its 2001 communication on conflict prevention, the Commission states that, in order to be successful "political dialogue clearly needs to be more focussed, time-flexible and more robust than is often the case at present. For this to happen, however, the EU must be capable of reaching a timely agreement on its policy and position upstream taking due account of the situation on the ground, the expectations, fears and likely resolve of each party, and crucially, how determined the EU itself really is to exert influence"⁸⁷.

This is not at all an easy task. In June 2003, for example, only a couple of weeks before Italy took up the chair of the European Council, Silvio Berlusconi decided to vote against a common position on Iraq, which put the brakes on the EU's common front in the Middle East peace process. During a trip to the region, the Italian Prime Minister and former Foreign Minister refused to visit Yasser Arafat, breaking ranks with his European counterparts. Mahmoud Abbas, the newly appointed Palestinian Prime Minister, consequently refused to meet with his Italian counterpart⁸⁸.

Within political dialogue, and, more concretely, in relation to mediation and negotiation, **Special Representatives** are key EU's instruments for peacemaking and post-conflict peace-building. They play an important role in ensuring the co-ordination of UN and other international organisations with EU policies, keeping the EU institutions and Member States informed, and assisting in harmonising diverging positions among EU Member States and in developing EU strategies⁸⁹.

The Amsterdam Treaty standardised the practice allowing the Council to appoint Special Representatives with a mandate on particular policy issues. Several have been appointed since the Maastricht Treaty established the CFSP: Marc Otte (Middle East); Aldo Ajello (African Great Lakes), Alexis Brouhns (Former Republic of Macedonia), Francesc Vendrell (Afghanistan), Lord Ashdown (Bosnia and Herzegovina) and Heikki Talvitie (South Caucasus).

⁸⁶ Keukeleire, S., "Directorates in the CFSP/CESDP of the EU", *European Foreign Affairs Review*, 2001, p. 84.

⁸⁷ COM (2001) 211 final, p. 23

⁸⁸ EUObserver, <http://www.euobserver.com/index.phtml?aid=11729>, 16/6/2003

⁸⁹ COM (1999) 240 final, p. 4.

Through a joint action, the Council provides clear lines of responsibility and limits the coordination and consistency of the mandate of the Special Representative of the European Union external action in the area. Since their main objectives are to contribute to the implementation of the Union's policy in a specific location, they are responsible for an important number of tasks that they fulfil as diplomats and mediators.

The Special Representative is responsible for political dialogue and diplomacy between the EU and the country concerned, as well as for ensuring the continuation of the EU presence in the region. In the case of the Afghanistan crisis, for example, one of the main roles of the Special Representative, Francesc Vendrell, has been to advise on the progress of the Bonn process, in particular in the creation of a broad-based, gender-sensitive, multi-ethnic and fully representative government committed to peace with Afghanistan's neighbours; the preparation of a new constitution; the preparation of general elections scheduled for 2004; respect for human rights, democratic principles, the rule of law, minorities, women and children; fostering participation by women in public administration and society; facilitation of humanitarian assistance; and the reform of the security sector⁹⁰.

The reactive nature of the Union has not yet allowed Special Representatives to be deployed before a conflict breaks out, although there is no doubt that they could play an important role in pre-conflict peace-building situations. In its communication on Conflict Prevention, the Commission made two references to Special Representatives: 1) the need for them to have a more powerful and much clearer mandate and be empowered to adopt a firm position on the situation covered by the terms of their mandate; and 2) the need for them to be used more effectively as mediators and also be available for short-term, six-month-missions.

These goals have already been taken into account to a certain extent with regard to the EU Special Representative appointed for the South Caucasus in 2003, who was already given a much clearer mandate in relation to conflict prevention⁹¹. More specifically, the tasks mandated to the Special Representative Heikki Talvities include "to contribute to the prevention of conflicts, and to prepare the return of peace to the region, including through recommendations for action related to civil society and rehabilitation of territories without prejudice to the Commission's responsibilities under the EC Treaty".

⁹⁰ Council Joint Action (2002/961/CFSP), OJEC L334, 11/12/2002.

⁹¹ Council Joint Action (2003/496/CFSP), OJEC L169/74, 8/7/2003.

Table 3. European Union Special Representatives

Special Representative	Location	Joint Action	Mandate
Aldo Ajello	African Great Lakes	2000/792/CFSP	To actively contribute to a final settlement of the conflict in the Democratic Republic of Congo and the conflict in Burundi; to pay particular attention to the regional dimension of the two conflicts; to ensure the continued presence of the EU on the ground and in international forums; and to contribute to a consistent, sustainable and responsible EU policy in the African Great Lakes Region.
Miguel Ángel Moratinos ⁹²	Middle East	2000/794/CFSP	To establish close contact with all the parties concerned, first and foremost with Israelis and Palestinians but also with other states in the region — Syria, Lebanon, Jordan and Egypt; and to contribute to peace.
Alexis Brouhns ⁹³	Former Yugoslav Republic of Macedonia	2001/760/CFSP	To establish and maintain close contact with the government of FYROM and with the parties involved in the political process; to offer the EU's advice and facilitation in the political process; to ensure coordination of the international community's efforts; and to closely follow and report on security and inter-ethnic issues and liaise with all relevant bodies to that end.
Francesc Vendrell	Afghanistan	2001/875/CFSP	To contribute to the full implementation of the Bonn Agreement and the UN Resolutions; to encourage positive contributions from regional actors and neighbouring countries to the peace process and thereby contribute to the consolidation of the Afghan state; and to support the pivotal role played by the UN.
Erhard Busek	Stability Pact for South-eastern Europe	2001/915/CFSP	To promote achievement of the Pact's objectives; to chair the South-eastern Europe Regional Table; to maintain close contact with all participants and facilitating states, organisations and institutions with a view to fostering regional cooperation and enhancing regional ownership; to promote the role of the EU in the pact and ensure complementarity between the work of the Pact and the Stabilisation and Association Process; to keep the working methods and structures of the Pact under review.
Lord Ashdown	Bosnia and Herzegovina	2002/211/CFSP	To maintain an overview of the whole range of activities in the field of the rule of law and in that context provide advice to the Secretary General/High Representative (SG/HR) and the Commission as necessary.
Heikki Talvitie	South Caucasus	2003/496/CFSP	To develop contacts with governments, parliaments, the judiciary and civil society in the region; to encourage Armenia, Azerbaijan and Georgia to cooperate on regional matters of common interest (terrorism, organised crime, etc.); to contribute to the prevention of conflicts and to prepare for the return of peace to the region; and to assist in conflict resolution in cooperation with UN and OSCE.

⁹² In July 14 2003 Marc Otte replaced Miguel Ángel Moratinos, who had occupied the post from 1996 to 2003, as Special Representative for the Middle East.

⁹³ Since January 28 2004 Søren Jessen-Petersen replaces Alexis Brouhns as Special Representative for the Former Yugoslav Republic of Macedonia.

1.3.2. Observation and fact-finding missions

The primary objective of the **observation and fact-finding missions** is to contribute through its activities (information gathering and analysis), in line with instructions from the Secretary General/High Representative and the Council, to an effective formulation of the European Union policy towards a specific area. The mission is tasked primarily by the Secretary General/High Representative (SG/HR), but the Council may also initiate specific tasking in coordination with the SG/HR and in consultation with the Commission.

Monitoring missions are mostly post-conflict peace-building instruments with the primary objective of contributing to the effective formulation of the EU policy towards one area. Missions also play an important role in confidence building in the context of the stabilisation policy conducted by the Union in the region⁹⁴.

The most important of these mission led by the EU has been the European Union Monitoring Missions (EUMM) for the Western Balkans⁹⁵. The particular focus of the EUMM is to monitor political and security developments, as well as border monitoring, inter-ethnic issues and refugee returns, and to contribute through its activities to early warning and confidence building measures. The Mission, which reports to the Council through the SG/HR, must also coordinate its activities with the relevant international organisations in the western Balkans.

There are also other kinds of missions worth mentioning. In 1998, the Council adopted a joint action⁹⁶ to send a mission of forensic experts to impartially and independently examine sites of alleged civilian killings in Kosovo. The costs of this mission were financed by the European Communities budget.

In May 2001, a mission was appointed in Togo on behalf of the European Union⁹⁷. Its main purposes were to mediate between each of the Togolese parties, to encourage them in good faith and with respect for human rights to implement the provisions of the Framework Agreement, so as to create the political conditions for a dialogue permitting the proper conduct of the general elections and conciliation in Togolese political life. This mission was placed under

⁹⁴ In this section, election observer missions carried out by the European Union have been purposefully avoided because, as we have seen in the part devoted to cooperation programmes and budgetary lines, election observer missions fall under the first pillar European Initiative for Democracy and Human Rights.

⁹⁵ Council Joint Action (2002/921/CFSP), OJEC L321/51, 26/11/2002. The Mission is the current form of a predecessor established by the EC (ECMM) in 1991 to report on political, economic and humanitarian developments in the former Yugoslavia (including Croatia, Bosnia and the Former Yugoslav Republic of Macedonia) and Albania. On 22 December 2000 the Council of the European Union adopted a Joint Action (2000/811/CFSP) in which the ECMM became the European Union Monitoring Mission (EUMM).

⁹⁶ Council Joint Action (98/736/CFSP), OJEC, L 354/3, 30/12/1998.

⁹⁷ Council Decision (2001/375/CFSP), OJEC L132/7, 5/5/2001.

the authority of the Presidency of the Council of the European Union, assisted by the SG/HR of the EU and the Commission.

The European Union has also supported UN and OSCE missions, mostly through financial support in the form of grants. An example of this is the EU's contribution towards strengthening the capacity of the Georgian authorities to support and protect the OSCE observer mission on the border of Georgia with the Ingush and Chechen Republics of the Russian Federation. In this case, the Commission reached a financing agreement with the OSCE on the use of the EU financial support. The grant covered the procurement of items selected by the OSCE according to the needs of the Georgian authorities⁹⁸.

1.3.3. Sanctions

Sanctions are one of the EU's main instruments to pressure countries to defuse crises or adopt a certain course of action. Whether applied selectively or comprehensively, sanctions constitute the EU's most important instrument of crisis management currently available⁹⁹.

Since the European Political Cooperation (EPC), the Union has the capacity to impose joint **diplomatic sanctions**, such as by withdrawing ambassadors, expelling military personnel in third country representations, suspending high-level contacts, suspending official visits, imposing visa restrictions or selective travel bans. These constitute ways of showing political discontentment. Since such measures are often applied to political leaders instead of the civilian population, they provide a smart instrument that only affects those to whom they are targeted¹⁰⁰.

A recent example is the aforementioned June 2003 decision of the European Union to impose several diplomatic sanctions against Cuba¹⁰¹, such as limiting bilateral high-level governmental visits, lowering the profile of Member States' participation in cultural events, inviting Cuban dissidents to national-day celebrations, and proceeding to a re-evaluation of the EU common position. In March, the EU had just opened a new office in Cuba in the hopes of improving relations between Cuba and the EU¹⁰².

Diplomatic sanctions (adopted through a common position) also concern restrictive measures preventing persons related to certain conflicts from entering into or travelling through the territories of the Member States, except when the trip is justified on the grounds of urgent humanitarian need, and from attending intergovernmental meetings where a political dialogue that directly promotes

⁹⁸ Council Joint Action (2002/373/CFSP), OJEC L134/1, 22/5/2002.

⁹⁹ European Union in the US, *European Union Sanctions Applied to Non-Member Countries*, <http://www.eurunion.org/legislat/Sanctions.html>, 23/10/2003

¹⁰⁰ European Parliament, *Instruments of Conflict Prevention...*, op. cit., p.12.

¹⁰¹ Declaration by the Presidency, on behalf of the European Union, on Cuba, op. cit.

¹⁰² EUObserver, <http://www.euobserver.com>, 6/6/2003.

democracy, human rights and the rule of law is being conducted. On some occasions, the EU also encourages third states to adopt restrictive measures similar to those adopted in its own common position.

Apart from diplomatic sanctions, the EU's economic weight makes it possible the application of **commercial and economic sanctions** (different to the suspension mechanisms included in agreements or cooperations programmes, see 1.2.1. and 1.2.2.). The Maastricht Treaty codified the procedures for imposing them. Article 228a TEC (currently article 301) provided for the interruption or reduction of economic relations with third countries following a common position or joint action adopted unanimously to that effect in the CFSP¹⁰³. Importantly, article 228a covered all economic relations, not just trade (restrictions on imports and/or exports) and the provision of services. Common Position 2003/495/CFSP on Iraq prohibits, for example, the trade in articles of Iraqi cultural heritage¹⁰⁴.

However, the procedure foreseen by article 301 leaves the final decision to the particular interests of the states, since in the CFSP framework decisions to adopt a common position are taken unanimously. This means important intergovernmental influence in the process of decision-making and hence, a strong condition towards the institutional procedures envisaged by the European Community Treaty¹⁰⁵.

On the other hand, however, the fact that common positions or joint actions need a Council Regulation to be implemented when they deal with an area in the Community's jurisdiction enhances the Commission's role in the process. In other words, once a political decision to adopt economic sanctions has been made in the framework of CFSP, the Commission is responsible for preparing and implementing the sanctions¹⁰⁶. Measures falling under Member State's competence must then be implemented by Member States' domestic legal provisions.

The Council is also allowed to impose **sanctions** with respect to **capital movements and payments** under article 73g TEC (currently article 60)¹⁰⁷. These financial measures are often targeted to punish specific individuals by freezing their personal funds abroad. Funds have been frozen, for example, to associated

¹⁰³ Article 301 TEC: "*Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary measures. The Council shall act by qualified majority on a proposal from the Commission.*"

¹⁰⁴ Council Common Position (2003/495/CFSP), OJEC L169, 8/7/2003.

¹⁰⁵ Pi, M., "Los derechos humanos en...", in Barbé, E. (coord.), *Política Exterior Europea*, op. cit., p. 97.

¹⁰⁶ European Parliament, *Instruments of Conflict Prevention...*, op. cit., p. 12

¹⁰⁷ According to article 60 TCE, *if, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.*

Taliban groups, individuals, undertakings and entities in 2002 with Common position 2002/402/CFSP coupled with Council Regulation EC 881/2002¹⁰⁸.

In its 2001 Communication on conflict prevention, the Commission evaluated the impact of sanctions as disappointing thanks to poor design and poor enforcement, "it has been a question of too little, too late"¹⁰⁹.

The reluctance shown by Member States to use coercion and the inconsistent use of sticks and carrots, states Smith, can bring to light serious inconsistencies in the EU's approach and lessen its influence. It is often the case that, while CFSP declarations condemn a state's behaviour, trade concessions and aid flows may remain unaffected¹¹⁰.

Furthermore, in order to ensure a coherent approach and maximum impact of the EU's policy, any decision to suspend Community aid should be accompanied by similar action by EU Member States with regard to their bilateral aid¹¹¹. Member State's individual interests and the lack of benchmarks to assess when such sanctions should be applied, are the main reasons for such inconsistency.

In addition to sanctions, **arms embargoes**, as a non-military instrument of crisis management, are often used to stop the flow of arms to conflictive areas. The motivation for arms embargoes is often more humanitarian than punitive, and they are often associated with explicitly coercive measures such as economic sanctions.

From 1973 to 1992, Member States used the informal foreign policy coordination process, the European Political Cooperation, to develop a common approach and generally agreed that arms embargoes mandated by the United Nations should be respected. Nowadays, arms embargoes are adopted by a common position specifying the kind of material covered by the embargo and the conditions for its implementation. Occasionally, under the aegis of the Council of Ministers, Member States issue declarations to impose such embargoes.

Arms embargoes and restrictions on arm exports generally fall under the Member States' exclusive jurisdiction, according to article 296 TEC¹¹². This means that EU institutions lack formal powers to influence the Member States' policies in this area.

¹⁰⁸ Council Common Position (2002/402/CFSP), OJEC L139, 29/5/2002, and Council Regulation EC no 881/2002, OJEC L139, 29/5/2002.

¹⁰⁹ COM (2001) 211 final, p. 23-24.

¹¹⁰ Smith, K., "The Instruments of European...", in Zielonka, J., (ed.), *Paradoxes of European Foreign...*, op. cit., p. 77.

¹¹¹ COM (1999) 240 final, p. 5.

¹¹² According to Article 296 TCE, *any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.*

1.3.4. Policy Planning and Early Warning

The belief that if the Common Foreign and Security Policy was to be effective, it required earlier and more far-reaching analyses of external developments in the long, medium and short term so that decisions taken under the CFSP were underpinned, therefore, by more reliable briefings, available to all the Member States of the Union, led to the idea of setting up a **Policy Planning and Early Warning Unit** under the CFSP, now known as the Policy Unit.

As provided for in a declaration attached to the Amsterdam Treaty¹¹³, the Policy Planning and Early Warning Unit was established within the Council Secretariat to report to the SG/HR and to also work with the Commission to ensure coherence with EU trade and development policies. Its mandate includes:

1. Monitoring and analysing developments in areas relevant to CFSP;
2. Providing assessments of the Union's foreign and security policy interests and identifying areas where the CFSP should focus in the future;
3. Providing timely assessments and early warning of events or situations which may have significant repercussions for the Union's foreign and security policy, including potential political crises; and
4. Producing policy options papers to be presented under the responsibility of the Presidency as a contribution to policy formulation in the Council, which may contain analyses, recommendations and strategies for the CFSP.

The Unit's staff (about 25 people) is drawn from the Council Secretariat, one representative from the Commission and 15 diplomats (one from each Member State) who act as liaisons between the EU and the Member States' foreign ministries. Member States are obliged to assist the policy planning process by providing to the fullest extent possible relevant information, including confidential information, to the Policy Unit.

The coherence of the Common Foreign and Security Policy depends on how Member States react to international developments. Past experience has shown that if reactions are not coordinated, the position of the European Union and its Member States on the international scene is weakened. Joint analyses of international issues and their impact and pooling information should help the Union produce effective reactions to international developments.

However, the flaws of the Policy Planning and Early Warning Unit are twofold. On the one hand, Member States are quite reluctant to fulfil the obligation of providing the most relevant information available to them, especially when this information is considered confidential. On the other hand, and according to the ICG, because of its limited budget, the Policy Unit is rather developing into an extended personal cabinet for Javier Solana instead of having the early warning

¹¹³ Declaration No. 6 on the establishment of a Policy Planning and Early Warning Unit, Treaty of the European Union signed in Amsterdam in June 1997.

function it has been assigned in official documents. Early warning, the ICG states, does not simply consist of alerting policy makers to a potential problem, but having the time and resources to devise appropriate policy responses. This has probably been, the ICG goes on, "an inevitable and necessary development, given the few resources assigned to Solana and the Council relative to the tasks"¹¹⁴.

To assist it in its tasks of monitoring developments and providing early warning assessment, the Policy Unit established a **Situation Centre** (SITCEN), part of a joint civilian-military crisis management centre formed by juxtaposition of the civilian policy unit and the military situation centre.

In conditions appropriate for crisis management, the Situation Centre directly supports the Political and Security Committee and the Military Committee. The centre assesses all available information in a timely fashion to alert the High Representative to looming conflicts. When necessary, an *ad hoc* Crisis Cell can then be formed to coordinate EU crisis management with the EU Commission and the EU Presidency. The SITCEN simultaneously stays in contact with the situation rooms at the North Atlantic Treaty Organisation, the Organisation for Security and Cooperation in Europe, and the United Nations. In conflict situations, liaison personnel from these organisations will participate in the EU Crisis Cell in order to optimise the flow of information between the actors.

The Situation Centre is to support the Union's decision-making by providing material resulting from the analysis of satellite imagery and collateral data, including aerial imagery, as appropriate. Accordingly, with this mission the Centre can provide information to the Union, the Member States, the Commission, third states and international organisations in support of the following activities, amongst others: 1) general security surveillance; 2) Petersberg tasks; 3) treaty verification; 4) arms and proliferation control; 5) maritime surveillance; and 6) environmental monitoring (including both natural and man-induced disasters).

The Centre provides early warning of potential crises and gives advance notice to the decision-makers to carry out diplomatic, economic and humanitarian measures, and to prepare generic plans for intervention actions. In this way, risks can be assessed before they turn into threats. When crises become inevitable, the information obtained from space can contribute to the management of crisis and conflicts and to support civilian-military operations¹¹⁵.

However, the EU's SITCEN is not comparable to its NATO counterpart and certainly not to the corresponding institutions at state level in terms of personnel, technical support, or access to intelligence.

¹¹⁴ International Crisis Group, *EU Crisis Response Capability...*, 2001, op. cit., p. 28.

¹¹⁵ EU Satellite Centre: Research and Development, http://www.eusc.org/html/centre_research_development.html, 8/2/2003.

The Situation Centre receives information from the **Satellite Imaging Centre** at Torrejon. On 10 November 2000, the Council agreed to set up a Satellite Centre within the EU, operational since 1 January 2002, which incorporated the relevant features of the existing Western European Union structures. The Satellite Centre¹¹⁶ is an essential instrument for early warning and crisis monitoring within the CFSP, and particularly the ESDP, under the supervision of the Political and Security Committee and the operational direction of the Secretary General.

1.3.5. Control in the field of armament

There are three main instruments available to the EU that allow a certain degree of control in the field of armament: 1) the Code of Conduct on arms exports; 2) the regulation setting up a Community regime for the control of exports of dual-use goods; and 3) the Council joint action to combat the destabilising accumulation and spread of small arms and light weapons in different regions. While the first of these is political in nature, the other two are legally binding instruments which, albeit with some limitations, set some obligations for Member States. None of these three instruments is useful for tackling the problem of illicit arms trafficking.

Based on the concerns expressed at the European Councils of Luxembourg 1991 and Lisbon 1992 with regard to the accumulation of conventional armament in certain regions of the world and the need to control arms exports from the Union, Member States adopted eight non-binding criteria that had to be taken into consideration prior to arms sales to third countries: respect for international commitments; respect for human rights, the situation of the receiving country; the national security of Member States; the conduct of the purchasing country, the possibility that the arms could be resold to another third country; and the technical and economic situation of the country¹¹⁷.

The accession of Sweden, Finland and Austria to the EU increased the debate on the importance of more coherent and global arms control in the EU. However, it was not until 1998 that France and Great Britain presented a joint proposal for a **European Code of Conduct** (under the British Presidency of the EU). The European Parliament congratulated the initiative and expected the Council to pass it as a common position to be implemented through joint actions. The Code, based on the eight non-binding criteria adopted in the European Councils of Luxembourg and Lisbon mentioned above, set common criteria governing arms sales to third countries, especially developing ones, in an attempt to prevent conflicts by restricting arms exports to areas where they would

¹¹⁶ Council Joint Action (2001/555/CFSP), OJEC L200/5, 25/7/2001.

¹¹⁷ Romeva, Raül, *Control de les exportacions d'armes convencionals a la postguerra Freda. El cas dels estats membres de la Unió Europea*, Dissertation, Universitat Autònoma de Barcelona, 1999, pp. 106-107.

be likely to increase tension and where existing economic resources might be redirected from development to arms purchases¹¹⁸.

Finally, because of disagreements among the Member States on some parts of the Code, it was adopted in June 1998 as a Council declaration in the framework of the CFSP. This implied that any decision related to the Code would have to be adopted by unanimity, and hence that the Code was only politically binding¹¹⁹.

The fact that the Code was not conceived as legally binding implies that the European Court of Justice cannot review the Member States' decisions in this area. The effectiveness of the code is further undermined by the lack of public (parliamentary) scrutiny and the resultant lack of transparency in monitoring the Code. Furthermore, it is not possible for Member States to use it as a basis for legally challenging a licensing decision.

Since 1992, the European Commission has been calling for **regulation of the exports of dual-use goods** (goods which can be used for both civil and military purposes) to both strengthen export controls to third countries, and to allow a better functioning of the free movement of goods and the internal market, and hence to improve the international competitiveness of European industry¹²⁰.

In a communication, the Commission called for the creation of common lists of dual-use goods, destinations and guidelines as elements for an effective control system, although decisions concerning the content of these lists would be strategic in nature and consequently fall within the competences of the Member States.

In 1994, the Member States finally agreed on Council Regulation 3381/94¹²¹, based on article 113 TEC, which entered into force in 1995 together with a decision¹²² that included the lists of technologies and destinations accepted. This allowed for a distinction between Community competences (annexes to the regulation were a Community competence) and the intergovernmental framework (decisions on the annexes were taken unanimously within the framework of the CFSP)¹²³.

In June 2000, the European Council adopted a new dual use regulation¹²⁴ setting up a Community regime for the control of exports of dual use items and

¹¹⁸ European Council, *EU Code of Conduct on Arms Exports: Reflections on the third annual review*, November 2001.

¹¹⁹ *Ibid.*, 111.

¹²⁰ COM/92/317 final, OJEC C-253, 30/09/1992.

¹²¹ Council Regulation no. EC 3381/94, OJEC L-367/1, 31/12/94.

¹²² Council Decision 94/942/CFSP, OJEC L-367/8, 31/12/94.

¹²³ For a detailed analysis on this regulation see Romeva, Raül, *Control de les exportacions...*, *op. cit.*.

¹²⁴ Council Regulation no. EC 1334/2000, OJEC L-159, 30/06/2000

technology that builds on the previous regime, but it is now based completely on article 133 of the EC Treaty relating to the Common Commercial Policy.

With the Council joint action on 12 July 2002¹²⁵, the EU called for a commitment from EU Member States **to combat the destabilising accumulation and spread of small arms and light weapons** in different regions.

The main goal of this joint action, implemented by different Council decisions (Mozambique, Albania, Cambodia, South Ossetia, Latin America and the Caribbean) is to build consensus in the relevant international forums and in a regional context¹²⁶ for a commitment by all Member States (and also the associated states in central and eastern Europe and Cyprus that have aligned themselves to the joint action) to import and hold small arms only for their legitimate security needs.

In this sense, these decisions allow the EU to adopt measures for specific countries for assistance to peacekeeping forces, the collection of weapons and their transport to storage sites for destruction, training activities for customs and police officials from the countries concerned, the creation of databases on the accumulation of small arms and light weapons to for the customs and police services of the countries concerned, and so forth.

¹²⁵ Council Joint Action (2002/589/CFSP), OJEC L191/1, 19/7/2002. This joint action repealed Joint action 1999/34/CFSP and the EU Programme on illicit trafficking in conventional arms adopted on June 1997. This programme called upon EU Member States to strengthen their efforts against illicit trafficking in arms on and through their territories. Special attention is reserved for countries in post-conflict situations and in situations of low security and instability.

¹²⁶ UN Programme of Action and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition; OSCE Document on Small Arms and Light Weapons; West African Small Arms Moratorium, Wassenaar Arrangement, Southern African Development Community, and the Euro-Atlantic Partnership Council Ad Hoc Working Group on NATO initiatives to combat the small arms problem.

Table 4. Joint actions to combat the destabilising accumulation and spread of small arms and light weapons in different regions

Mozambique ¹²⁷	With this decision, the EU contributed to the location, collection and destruction of weapons in Mozambique through joint cross-border operations between the South African Police and the Mozambique Police. The EU provided 200,000 euro to support the South African Police Service, which was acting as an implementing agency, in the acquisition of fuel, air support, explosives and accessories as well as ration packs and daily allowances.
Albania ¹²⁸	500,000 euro was allocated to the disarmament component of the UN Department for Disarmament Affairs and the UN Development Programme pilot project. Furthermore, 820,000 euro have been given to NATO for its Maintenance and Supply Agency project aimed at consolidating and demilitarising surplus small arms and light weapons ammunition.
Cambodia ¹²⁹	With this decision, the EU contributed 5,000,000 euro to promoting the control, collection and destruction of weapons in Cambodia. This project was conducted in close cooperation with the government of Cambodia.
South Ossetia ¹³⁰	A total of 90,000 euro was given to the local police forces for a programme aimed at providing them with equipment for collecting and destroying small arms and light weapons.
Latin America and the Caribbean ¹³¹	In this case, the 345,000 euro contribution went to the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean and consisted of helping it in its training activities for customs and police officials by means of appropriate instruction, and in its project of making available equipment that permits the creation of databases on the accumulation of small arms and light weapons.

1.3.6. Rapid Reaction Force

Since 1999, the EU has been developing new military instruments that should increase the Union's coercive capacity and allow for greater participation by the Union in international conflicts.

According to Gilles, Bertram and Grant in early 1998, the development of these military instruments came from Blair's wish for Britain to become an actively engaged member of the European Union. Since his government had decided not to seek membership in the single currency during his first term, self-exclusion made it hard for Britain to play the leading role he desired. Blair needed to find an area in which the British could exert leadership as much as France and Germany did, and defence was the obvious choice¹³².

However, the authors also agree on the fact that the British Prime Minister was driven by a practical concern to improve the way in which the EU conducted its

¹²⁷ Council Decision (1999/845/CFSP), OJEC L326/73, 18/12/1999.

¹²⁸ Council Decision (1999/320/CFSP), OJEC L123/12, 13/5/1999; Council Decision (2003/276/CFSP), L99/60, 17/4/2003.

¹²⁹ Council Decision (1999/730/CFSP), OJEC L294/5, 16/11/1999.

¹³⁰ Council Decision (2000/803/CFSP), OJEC L326/1, 22/12/2000.

¹³¹ Council Decision (2001/200/CFSP), OJEC L72/1, 14/3/2001.

¹³² Andréani, G., Bertram, Ch., Grant, Ch., *Europe's Military Revolution*, Centre for European Reform, 2001, p. 9.

foreign policy. The Kosovo fiasco convinced Blair that Europe on its own was not capable of doing much simply because of its lack of military capabilities and its inability to get its act together. The three-month bombing campaign highlighted – once again – the Europeans' inability to fight a sustained strategic campaign without help from the United States. This thinking led the British government to agree with the Franco-German argument that the EU should take over most of the West European Union.¹³³

The first official push for this change came at the Franco-British meeting at Saint-Malo in December 1998, where Britain agreed for the first time to participate in the development of a defence policy within the Union capable of autonomous action, backed by credible military forces, the means to decide to use them and a readiness to do so, in order to respond to international crises. So that the EU could take action when the whole of NATO was not engaged, the Union had to be given appropriate structures and a capacity for analysing situations, sources of intelligence, and a capability for relevant strategic planning, without unnecessary duplication.

Since these two countries had been at opposite ends of the spectrum on European defence, their agreements in Saint-Malo surprised their European partners. Thus, after the Saint-Malo declaration, first Germany and then the other Member States threw their weight behind the British-French initiative¹³⁴.

At the Helsinki European Council meeting in December 1999, the EU Member States set themselves a capability target known as the Headline Goal, largely based on the experience gained with IFOR in Bosnia-Herzegovina. It required EU Member States to be able to deploy 50,000-60,000 troops within 60 days, to be sustainable for one year, starting in January 2003. The EU-led force, the **Rapid Reaction Force**, was to be assembled in response to a crisis and would last only for the duration of the crisis. The Member States themselves would decide whether, when, and how to contribute troops. The self-sustaining force was to include the command, control and intelligence capabilities and logistics, and the air and naval assets required to carry out the full spectrum of Petersberg tasks: humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking¹³⁵.

Three new military structures were created by the Nice Summit in December 2000: the Political and Security Committee (PSC), responsible for the political control and strategic direction; the Military Committee, giving military advice to the PSC and directing the work of the third structure, the Military Staff, responsible for monitoring political developments, assisting with strategic planning and liaising with national and multinational military headquarters.

¹³³ *Ibid.*, p. 11.

¹³⁴ *Ibid.*, p. 12.

¹³⁵ Missiroli, A., "Ploughshares into Swords? Euros for European Defence", in *European Foreign Affairs Review*, 2003, p. 30.

The Laeken European Council in December 2001 adopted the "Declaration on Operational Capability", which stated that "through the continuing development of the ESDP, the strengthening of its capabilities, both civil and military, and the creation of the appropriate EU structures, the EU (was) now able to conduct some crisis-management operations". Hence, the Union should be able to take on progressively more demanding operations, as the assets and capabilities at its disposal continue to develop¹³⁶.

This declaration, though, limited the Union's capability of action to post-conflict peace-building and peacekeeping missions. As it is later stated in the same document, substantial progress still needs to be made "to enable the European Union to carry out crisis-management operations over the whole range of Petersberg tasks, including operations which are the most demanding in the terms of breadth, period of deployment and complexity".

At that point, progress was basically dependent on reaching security arrangements with NATO that would allow the EU to undertake the more complex Petersberg tasks¹³⁷. In December 2002, just after the European Council of Copenhagen, the EU reached an agreement with NATO on a framework for permanent relations. The North Atlantic Council agreed to adopt a series of decisions with a view to maintaining a close and transparent relationship with the EU and supporting EU-led operations in which the Alliance as a whole was not engaged militarily, in accordance with the decisions taken at the Washington Summit. These decisions would allow the EU access to NATO planning capabilities for EU-led operations as well as the involvement of non-EU European allies in EU-led operations using NATO assets¹³⁸.

In a statement dated 13 December 2002 the Secretary General of the EU stated that NATO and the EU had taken a major step forward in putting into effect the strategic partnership between the two organisations¹³⁹. Allies were now determined to speedily conclude the detailed arrangements for implementing each of the Berlin+ elements.

These agreements allowed the Union to carry out its first led military operation which consisted of replacing the NATO military forces in the Former Yugoslav Republic of Macedonia on 31 March 2003¹⁴⁰. More specifically, and as it was stated in the joint action implementing the European Union military operation, the Union's task was meant to contribute to the overall peace implementation as well as to the achievements of the Union's overall policy in the region, notably the

¹³⁶ Annex II to the Presidency Conclusions, European Council of Laeken, 14-15 December 2001.

¹³⁷ Duke, S., "CESDP and the EU Response to 11 September: Identifying the Weakest Link", *European Foreign Affairs Review*, 2002, p. 159.

¹³⁸ Remarks by Javier Solana, EU High Representative for the CFSP following the agreement on the establishment of EU-NATO permanent arrangements, S0240/02, Brussels, 16 December 2002.

¹³⁹ Statement by the Secretary General of NATO, Press Release (2002) 140, 13 December 2002.

¹⁴⁰ Council of the European Union, <http://ue.eu.int/arym/>, 7/7/2003.

stabilisation and association process¹⁴¹. The Union's mission was taking place at the post-conflict peace-building stage of the conflict.

Although there was no peace enforcement foreseen, defence implications of this mission were reflected by the fact that Danish soldiers that were in the area under the aegis of the NATO went back to their country once EU forces had replaced the NATO mission. Even though the EU mission could be carried out only once arrangements with NATO were completed upon the release of Alliance assets and capabilities for the EU military operations, Denmark still made use of article 6 of the Protocol annexed to the Treaty of the European Union in which it is established that Denmark does not participate in the development and implementation of decisions and actions of the European Union which have defence implications.

On 12 June 2003, the Council adopted a decision on the launching of a European Union operation in the Democratic Republic of Congo, called ARTEMIS. This mission was the first autonomous EU-led military operation, without access to NATO means or capabilities and conducted in accordance with the mandate set out in United Nations Security Council Resolution 1484/2003. This resolution authorised the deployment, until 1 September 2003, of an interim emergency multinational force in Bunia to reinforce the United Nations Organisation Mission in the Congo with the objective of contributing to the stabilisation of security conditions and the improvement in the humanitarian situation in Bunia (peacekeeping). Besides, the mission had the goals of ensuring the protection of the airport and of the internally displaced persons in the camps in Bunia and, if the situation required it, contributing to the safety of the civilian population, United Nations personnel and the humanitarian presence in the town¹⁴².

In a joint press release at the Council of Ministers in Brussels on 13 June 2003, Aldo Ajello, Special Representative for the Great Lakes, gave a positive assessment of the mission since it had brought the fights under control to a certain degree and had gained commitments from Congo, Uganda and Rwanda to allow the free movement of humanitarian aid and to bring those responsible for the massacres to justice.

However, the mission was more limited than it first seemed. It is interesting to note here that the EU force was not allowed to act outside the airport of Bunia and the refugees camps. Beyond 50 km from the airport or the refugee camps, the EU mission was only allowed to monitor by aeroplane, which limited the mission in terms of time and space and raised doubts as to its effectiveness.

¹⁴¹ Council Joint Action (2003/92/CFSP), OJEU L34/26, 11/2/2003.

¹⁴² Press Release, "EU launches the Artemis military operation in the Democratic Republic of Congo", S0131/03, Brussels, 12 June 2002.

1.3.7. Civil Crisis Mechanism

At the beginning of the debate on the ESDP, countries such as the United Kingdom and France were only interested in the military or defence aspects, while the Scandinavian EU members especially feared a militarisation of the EU and asked for the introduction of a civil force. Germany, which was holding the Presidency of the Union during the first half of 1999, adopted a mediating role and mentioned it (only in passing) in the core documents of the European Council of Cologne.

Despite the Cologne European Council's reference to non-military crisis response tools, the background of a civil instrument may be traced to a proposal by MEP Alexander Langer of the Green Group in the EP to establish a European Civil Peace Corps (ECPC)¹⁴³.

A reference to the ECPC was included in a resolution by the EP concerning its position on the reform of TEU in the 1996 Intergovernmental Conference¹⁴⁴, and on 10 February 1999, the Parliament adopted a recommendation to the Council on establishing the Civil Peace Corps¹⁴⁵. In its recommendation, the Parliament acknowledged the need for the EU to be able to address an increasing number of intra- and inter-state conflicts with growing international, political, economic and ecological and military implications after the end of the Cold War.

In accordance with a comprehensive peace-building approach, the aim of the ECPC proposal was to enlarge the scope of the Union's policy towards violent conflicts by focussing on pre- and post-conflict peace-building. As a consequence, the proposal envisaged a wide range of measures in fields such as mediation; confidence building among the parties of a conflict; the disarmament, demobilisation and reintegration of former combatants; support for displaced persons and refugees; human rights monitoring; election monitoring; and humanitarian aid. A mandate by the United Nations or the Organisation for Security and Cooperation in Europe or by other regional organisations, the consent of the parties to a conflict, as well as the existence of a ceasefire agreement were considered preconditions for the deployment of the ECPC¹⁴⁶.

Despite the EP recommendation and existing EU instruments on conflict prevention and management, the institutional development of civilian crisis management in the EU was not addressed until the Helsinki European Council,

¹⁴³ European Parliament, *Instruments of Conflict Prevention...*, op. cit., p.3.

¹⁴⁴ European Parliament, *Resolution on the functioning of the Treaty of the European Union with a view to the 1996 Intergovernmental Conference – Implementation and Development of the Union*, 17 May 1995, p. 58.

¹⁴⁵ European Parliament, *Recommendation on the establishment of a European Civil Peace Corps*, 10 February 1999, p. 164.

¹⁴⁶ European Parliament, *Instruments of Conflict Prevention...*, op. cit., p.4.

which introduced an Action Plan intended to strengthen the civilian aspect of crisis management under CESDP. This development was strongly influenced by the Member States' experience in the Kosovo crisis, which had prompted them to generate a capacity to contribute effectively (and, thus, rapidly) to crisis management using both military and non-military means.

Shortly before Helsinki, the Council had already drawn up inventories of non-military crisis management instruments available in the Member States and the Union in order to have an overview of existing capabilities. This inventory included the Member States' instruments according to: civil police; humanitarian assistance; emergency and rescue services; mine clearance; reconstruction and post-conflict rehabilitation; support for human rights; democracy institution-building and media; fact-finding, mediation, arbitration, confidence-building; and others¹⁴⁷.

At Santa Maria de Feira in June 2000, the Union agreed to complement the military Rapid Reaction Force with a **Civil Crisis Mechanism** which would act in the four priority areas: police, strengthening the rule of law, strengthening of civilian administration and civil protection. Action in the police field has assumed a paramount role in the improvement of civil capabilities.

Civil police: Following the same method developed for the military sphere, Member States also agreed in January 1, 2003 on a headline goal of 5,000 police officers to be deployed on international missions across the range of crisis prevention and crisis management operations and in response to specific needs at different stages of these operations¹⁴⁸. The Member States decided that the deployable police force should be able to implement operations and missions of police advice, training and monitoring as well as executive policing. Police operations could thus be launched to prevent the outbreak of conflicts, to restore law and order in immediate post-conflict situations, and to support local police, including the resumption of responsibility for the maintenance of law and order in the case of a substitution mission.

Strengthening the rule of law: This related to assistance with reorganising judicial and penal systems. First, strengthening the rule of law is necessary to ensure that the achievements of successful policing are supported by appropriate and well-functioning judicial and penal institutions (courts and prisons). Second, an international police presence also facilitates institution building and the rule of law. Reinforcing the rule of law in third countries requires EU Member States to establish a capacity to deploy judges, prosecutors and other legal and penal experts to post-conflict settings and requires the EU to support the reconstruction

¹⁴⁷ Council of the European Union, *Non-military crisis response instruments available in EU Member States*, 12323/99, Brussels, 24 November 1999,

¹⁴⁸ Appendix 4 of Annex 1 to the Presidency conclusions of the Santa Maria da Feira European Council, 19-20 June 2000.

of courts and prisons and the recruitment of local personnel in the legal and penal fields.

Strengthening of civilian administration: This aspect of civilian crisis management was meant to contribute to the overall goal of institution building after crisis. As in the area of the rule of law, strengthening the civilian administration comes down to dispatching experts to third countries to assist in reorganising administrative systems and training local personnel¹⁴⁹.

The EU had already once been assigned the task of administering the Bosnian city of Mostar under the terms of the February 1994 Washington agreement (which created the Bosnian Federation and ended hostilities between Bosnian Muslims and Croats). The EU's mission was to create the conditions for the reunification of the city by overcoming the division between Muslims and Croats. The EU's administration lasted from July 1994 to July 1996. A EU administrator was placed in charge, and the EU funded infrastructure repair and development and social services. The WEU supplied a team of policemen who attempted to establish a unified police force. The administration was set up in a series of CFSP joint actions¹⁵⁰.

Civil protection: The concept of civil protection referred to actions in the wake of a natural disaster and search and rescue capabilities deployed as part of disaster relief operations. In this respect, there is an overlap between the objectives of civil protection and general humanitarian aid. Faced with natural disasters and environmental emergencies such as earthquakes, floods and oil spills, the EU Member States have strengthened their cooperation in the field of civil protection under a Community Action Programme¹⁵¹. In the Commission's view, however, this cooperation should be improved, *inter alia*, by identifying available resources in the Member States and ensuring complementarity between individual Member State's civil protection units and other organisations such as ECHO¹⁵².

The Council also acknowledged that a preliminary rigid distinction between the two pillars was misleading when identifying existing instruments of civilian crisis management¹⁵³. The new civil mechanism in the framework of the ESDP finds important duplicates with already existing instruments from the first pillar since over the years the Community has applied policies like the ones the new Civil Crisis Mechanism is planning to apply through a number of programmes adopted to support police training and infrastructure, strengthen the administration or justice and develop training modules for personnel to be deployed in peace keeping missions.

¹⁴⁹ European Parliament, *Instruments of Conflict Prevention...*, op. cit., p.6.

¹⁵⁰ Smith, K., "The Instruments of European...", in Zielonka, J. (ed.), *Paradoxes of European Foreign...* op. cit. p. 71-72.

¹⁵¹ COM (2000) 593 final.

¹⁵² European Parliament, *Instruments of Conflict Prevention...*, op. cit., p.7.

¹⁵³ Council of the European Union, 11044/1/99 REV 1, 3 December 1999, p.2.

In a communication adopted by the Commission in November 2001 on the financing of civilian crisis management operations¹⁵⁴, the Commission proposed the establishment of a new flexible, speedy instrument for funding civil crisis interventions through an inter-institutional agreement among the Council, the European Parliament and the Commission, as well as facilitating recourse to the current emergency reserve.

In the Commission's view, crisis management should take place, as far as possible, within the established institutional framework and using existing management structures. The main guidelines of the Commission Communication are that since Community and CFSP actions in this field are complementary, financing and management procedures should reflect this complementarity, reinforce coherence and facilitate swift action of the Union. Transparency and accountability of the financing of EU's actions within the existing institutional set-up also need to be ensured.

Since the bulk of civilian crisis operations undertaken until now have been initiated and managed under Community instruments, the creation of a separate fund outside the EC budget for civilian crisis operations risks undermining the coherence of EU action, would reduce financial transparency and create overlap with existing financial management structures.

Whereas any action having military or defence implications can only be funded by contribution from the Member States, the Commission believes that as regards civilian action in a crisis situation the EC budget still offers the most efficient basis upon which to build. The regular budget is also the best framework for ensuring good governance, accountability and transparency with full respect for the present institutional framework, including parliamentary control. Charging EU civilian operations to the EC budget further contributes to promoting consistency and continuity in EU external action¹⁵⁵.

On 1 January 2003, an EU Policy Mission (EUPM) replaced the United Nations International Police Task Force (IPTF) in Bosnia and Herzegovina. Its main tasks consisted of "a broad approach with activities addressing the whole range of rule of law aspects, including institution building programmes and police activities which should be mutually supportive and reinforcing. The EUPM, supported by the Community's institution building programmes under the CARDS Regulation, should contribute to the overall peace implementation in Bosnia and Herzegovina as well as to the achievements of the Union's overall policy in the region, notably the Stabilisation and Association process"¹⁵⁶.

From that moment on, an informal Joint Co-ordination Group set up in Sarajevo including representatives from the EU police mission and the Commission's

¹⁵⁴ COM (2001) 647 final.

¹⁵⁵ Agence Europe, No. 8101, 29 November 2001.

¹⁵⁶ Council Joint Action (2002/210/CFSP), OJEC L70/1, 13/3/2002.

delegation in Sarajevo dealing with the CARDS programme, meets regularly and exchanges information on the planning and implementation of complementary projects, and it brings anything requiring their attention to the notice of the Presidency, the SG/HR and the Commission in Brussels.

In his security doctrine adopted in the December 2003 European Council of Brussels, Solana stated that there was a need for a greater capacity to bring civilian resources to bear in crisis and post crisis situations since almost every major militarily efficient intervention was followed by civilian chaos¹⁵⁷.

As a first concrete step towards implementing the EU's new security doctrine and guaranteeing a smooth transition from a military to a civil situation, on September 29 the European Union adopted a common action that initiated the operative phase of a civil mission in the Former Yugoslav Republic of Macedonia, called *EUPOL Proxima*, at the same time that the first European military mission *Concordia* concluded on 15 December 2003.

¹⁵⁷ EU High Representative, *A Secure Europe in a Better World*, Brussels European Council, 12 December 2003, p. 13.

2. FINAL CONCLUSIONS

The objective of this publication has been to describe the economic, politico-diplomatic and, although still in development, civil and military instruments available to the European Union to act in a conflict and, at the same time, to identify at which stages in a conflict these instruments can be deployed (early warning, pre- and post-conflict peace-building, peacekeeping, peacemaking and peace enforcement).

The wide spectrum of existing instruments should allow a comprehensive EU response in almost all the stages of a crisis with the exception of peace enforcement, for which the EU's military instruments are not yet sufficiently developed.

However, the EU is not always capable of making an effective use of its instruments. The examples used in this study allow us to reach some conclusions about the EU's main deficiencies when acting in a conflict. Let us now summarise them:

European Union action has always been criticised for being **more reactive than preventive**, even if most of its instruments (economic and politico-diplomatic) are oriented toward conflict prevention. This lack of reaction is due, as we have seen with the numerous examples provided, to the lack of political will to establish a coherent strategy with regard to third countries and the difficulty of Member States' agreeing to a common set of objectives.

In order to being effective in conflict prevention, the EU has to develop a unified and **more focussed foreign policy strategy** instead of producing endless shopping lists of new priorities. The EU should resist the temptation to dream up a policy on all issues, conflicts and regions in the world and instead ensure a coherent and comprehensive strategy that makes appropriate and intensive use of already existing instruments for this stage of the conflict (ECHO, Special Representatives, use of the Rapid Reaction Force for preventive deployment, and so forth).

Of all the instruments described, the most useful for contributing to conflict prevention, and, more specifically, to the pre-conflict peace-building stage, are the *sui generis* ones: accession, regional integration and privileged neighbour relations. However, EU accession is geographically limited, and regional cooperation only plays an important role when third countries can benefit from EU privileges such as the internal market. The Union's new Wider Europe policy is an attempt to "enlarge" the EU's power of attraction to those countries without the prospect of membership. The Union will succeed if this "*voisinage*" serves to guarantee peaceful and co-operative relations by tackling the root causes of conflict in these countries. Although too generic to be to be evaluated positively,

it will be worth paying attention to future developments in this policy.

The **lack of coherence** is a classical problem in the Union's foreign policy. If the EU does not want to go on losing credibility, there must be coherence between decisions taken within the second pillar, in the form of statements, joint actions or common positions, and measures from the first pillar, such as economic sanctions. This is a complex task due to both the existence of decision making mechanisms peculiar to each pillar and the fact that the institutions and their various subordinate bodies have distinct, and occasionally exclusive, powers and prerogatives under the treaties. Without a doubt, the inconsistent use of sticks and carrots lessens the EU's influence.

Furthermore, there is no doubt that the Union's **multi-representation** on the international scene weakens its action in a conflict and leads to the creation of directorates due to the pressure from other countries that do not consider the EU institutional representation to be the best *modus operandi* for responding to their needs and expectations. Recent cases of directorates (as a consequences of the 11 September attacks and the Iraq crisis) also demonstrate the fact that Member States do not comply with the obligation established in article 16 of the Treaty of the European Union according to which they should inform and consult one another on any matter of foreign and security policy.

None of the international conflicts can be tackled with a single instrument, not even with the new military ones. There must be a **mixture of instruments** that allows a comprehensive response. "In failed states", Solana reaffirms in his EU strategy, "military instruments may be needed to restore order, humanitarian to tackle the immediate crisis, economic to serve reconstructions, and civilian crisis management to restore civil government. The European Union is particularly well equipped to respond to such multifaceted situations".

No matter how much good will exists in Solana's strategy, the fiasco of common strategies obliges us to doubt the EU's capability to effectively combine and mix instruments. On the other hand, however, the appearance of new instruments such as the Civil Crisis Mechanism in the framework of the ESDP makes cooperation between the intergovernmental pillar and the European Community indispensable. First pillar cooperation programmes have already focussed on local capacity-building, supported police training and infrastructure, strengthened the administration or justice, and developed training modules for personnel to be deployed in peace keeping missions. For the EU to now able to act in conflicts in a comprehensive and coherent manner, a framework must be defined within which instruments coming under various pillars and the competence of different institutions and bodies are implemented in synergy.

The threat of activating a military mission may exert an important influence on parties involved in a conflict. The newly developed military instruments in the framework of the ESDP may **increase the EU's aggressiveness** and hence its

role as an international actor. To work, however, the EU must demonstrate its political will to effectively activate these instruments whenever necessary.

So far, EU military instruments have only been activated for peacekeeping and post-conflict peace-building. In order to be effective, these instruments should be used for conflict prevention (pre-conflict peace-building) as well. However, if we take into account the reactive rather than preventive character of the Union and the difficulties Member States have in activating the Union's political and economical instruments, there are some doubts as to the possibility of the **Rapid Reaction Force and the Civil Crisis Mechanism being activated in the pre-crisis stage of a conflict**. Although it is still too early to evaluate their action at this stage of a crisis, it is also worth paying attention to future developments in this area.

There is yet one further question: Are these instruments ever going to be at the disposal of the Union for **peace enforcement**? Three requirements are necessary for this to be possible: the deepening of relations with NATO for the European Union to have access to its military assets, the deepening of the defence structures of Member States, and the will of the Member States to act in this very complex stage of a conflict.

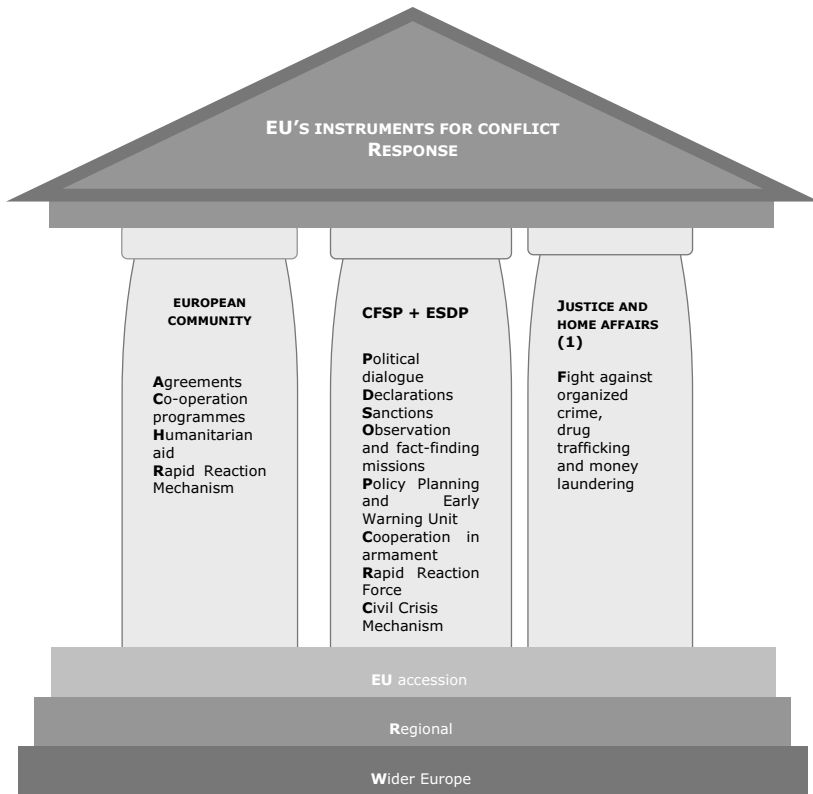
3. APPENDIX

Annex I: EU's instruments for conflict response

Annex II: EU's instruments available for each stage of the conflict response cycle

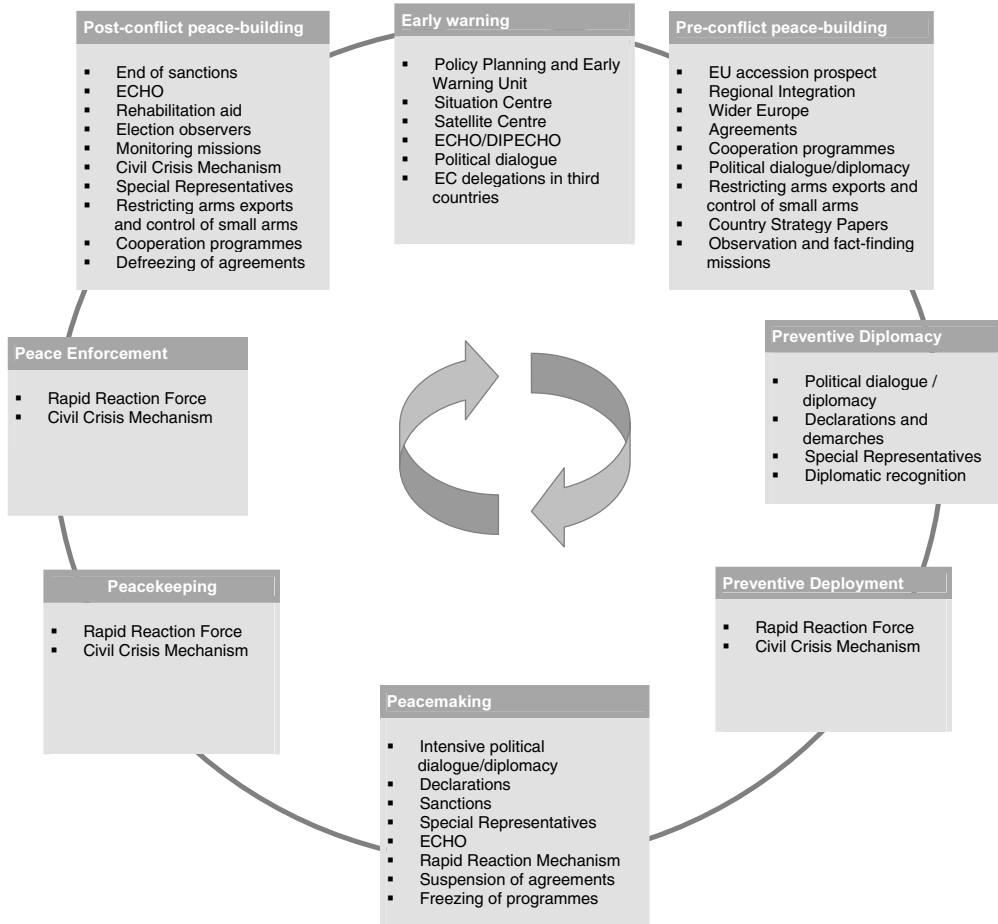
Annex III: Actual operability of EU instruments

Annex I: EU's instruments for conflict response.



(1) Third pillar instruments have been excluded from this work because of their still too limited influence on third countries.

Annex II: EU's instruments available for each stage of the conflict response cycle



During its time of life, a conflict moves in a cycle, from its very first indicators to its conclusion. This annex shows a systematisation of the EU existing instruments that could **theoretically** be applied at each stage of a conflict. Based on the cycle included at the International Crisis Group Report *EU Crisis Response Capability: Institutions and Processes for Conflict Prevention Management*, 2001.

Annex III: Actual operability of EU instruments

	Accession prospect	Regional integration	Wider Europe	Agreements	Cooperation programmes	Humanitarian aid	Rapid Reaction Mechanism	Diplomacy/political dialogue	Special Representatives	Sanctions	Policy Planning and Early Warning	Armament cooperation	Observatory and fact-finding missions	Rapid Reaction Force	Civil Crisis Mechanism
Early Warning					✓	✓		✓			✓		✓		
Pre-conflict peace- building	✓	✓	✓	✓	✓			✓				✓			
Preventive diplomacy								✓							
Preventive deployment															
Peacemaking						✓	✓	✓	✓	✓					
Peacekeeping							✓	✓						✓	
Peace enforcing								✓							
Post-conflict peace building	✓	✓	✓	✓	✓	✓		✓	✓			✓	✓		✓

Contrarily to annex II, this annex shows the **actual** use that the EU has so far made of its instruments in the different stages of the conflict response cycle. The fact that instruments are mainly used in the pre-and post-conflict peace building stages of the conflict demonstrate the conflict prevention and, hence, civil nature of the European Union.

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