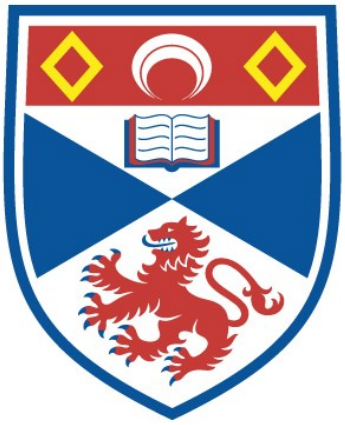
A COMMUNITY PERSPECTIVE ON THE INTERACTION OF EC EXTERNAL RELATIONS AND EUROPEAN POLITICAL COOPERATION IN THE PRE-MAASTRICHT COMMUNITY: CASE STUDIES OF ACTOR BEHAVIOUR MANIFESTED THROUGH ECONOMIC SANCTIONS AND TRADE USED AS POLITICAL INSTRUMENTS

Kathleen M. Spieker

A Thesis Submitted for the Degree of PhD
at the
University of St Andrews



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A Community Perspective on the Interaction of EC External Relations and European Political Cooperation in the Pre-Maastricht Community:

case studies of actor behaviour manifested through economic sanctions and trade used as political instruments.

by

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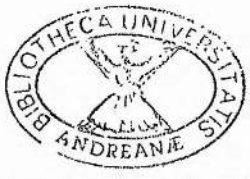

With love and gratitude to my parents

for making everything possible

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Basel, Switzerland

October 1994

ABSTRACT

The interaction of Community and European Political Cooperation (EPC) affairs is a subject which has been neglected in the research on European integration. While legal scholars have partially taken up the complex task of treaty exegesis, there has been a dearth of research from the political perspective. This thesis fills a major gap in the discussion of EPC from theoretical, analytical and empirical aspects. Thus, it explores from a Community perspective not only the normative question of whether the European Community (EC) requires or even desires an institutionalised, external political voice to fulfil its role as an international trade alliance; but also, and more important, it examines the political linkages implicit in and inseparable from economic decisions and actions.

In this context the thesis examines, through a series of case studies, the issues and tensions that have come about and still exist in the European Community in the interplay between forces of integration, external relations, and EPC: the aspiration for political integration on one hand, and the desire by the member states of the Community to retain independence on the other. The resulting tension from these forces is best reflected in the relationship between EC external economic relations, and European Political Cooperation, manifested in the quest for actorness by the Community.

I, Kathleen Mary Spieker, hereby certify that this thesis, which is approximately 92,000 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

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I was admitted as a research student under Ordinance No.12 in October 1989 and as a candidate for the degree of Doctor of Philosophy in April 1990; the higher study for which this is a record was carried out in the University of St. Andrews between 1989 and 1994.

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LIST OF ABBREVIATIONS

ACP	African Caribbean and Pacific states
Art	Article
Benelux	Belgium, The Netherlands, Luxembourg
Bull.EC	Bulletin of the European Communities
CAP	Common Agricultural Policy
CCP	Common Commercial Policy
CEES	Central and East European states
CET	Common External Tariff
CFSP	Common Foreign and Security Policy
CMEA	Council for Mutual Economic Assistance
CMLR	Common Market Law Review
Comecon	Council for Mutual Economic Assistance
COREPER	Committee of Permanent Representatives
CSCE	Conference on Security and Cooperation in Europe
EBRD	European Bank for Reconstruction and Development
EC	European Communities
ECJ	European Court of Justice
ECR	European Court Reports
ECSC	European Coal and Steel Community
Ecu	European currency unit
EDC	European Defence Community
EEC	European Economic Community
EFTA	European Free Trade Association
EIB	European Investment Bank
EP	European Parliament
EPC	European Political Cooperation
ERTA	European Road Transport Authority
EU	European Union
Euratom	European Atomic Energy Community
GATT	General Agreement on Tariffs and Trade

GNP	Gross National Product
IGC	Intergovernmental Conference
ICJ	International Court of Justice
LQR	Law Quarterly Review
MEP	Member of European Parliament
MFN	Most Favoured Nation
NATO	North Atlantic Treaty Organization
OECD	Organization for Economic Cooperation and Development
OJ	Official Journal
OPEC	Organization of Petroleum Exporting Countries
PHARE	Poland and Hungary: Aid for Reconstruction of Economies
PLO	Palestinian Liberation Organization
SEA	Single European Act
SEM	Single European Market
TEU	Treaty on European Union
UDI	Unilateral Declaration of Independence
UN	United Nations
WEU	Western European Union

CHAPTER 1

INTRODUCTION: THE DIVIDING OF ECONOMICS FROM POLITICS

Introduction

Recovering from the Second World War, the founding fathers of the European Community[1] had one primary goal in mind: to prevent the recurrence of another devastating war in Europe. To achieve this goal, the objective was to unite Europe politically and economically so that a war between its composite parts would be "unthinkable."[2]

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1 The term European Community will be used throughout this thesis interchangeably with the term Community and European Economic Community, except where explicitly stated. The terms Commission, Court of Justice and Council, will stand for, respectively, Commission of the European Communities, Court of Justice of the European Communities, and Council of the European Communities.

2 The famous quote from Robert Schuman that a united Europe would "make war not merely unthinkable but materially impossible" succinctly grasps much of the impetus and thinking that surrounded the founding of the Community. See *Keesing's Contemporary Archives*, May 13-20, 1950, p. 10701.

Precisely how this new Europe would look and the degree of supranationalism which would materialise was less discernible.[3] Yet the transmutation of Europe into a new cooperative and interdependent form was foremost in the minds of the founding fathers of the Community, who wanted:

> "to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared."[4]

Thus, are the initial political aspirations of the Community spelled out. These aspirations coupled with the later decision to create a two tier system by moving foreward first in the economic field, leaving political integration until a later date, are crucial to an understanding of the resulting history, conflicts and current experiences of the EC, EPC and external relations. After successfully building a two tier structure, which carefully relegated political decisions to the member states, the corollary effects began to reveal themselves. The consequences for the Community's position in the world, its actor capability, and its

---

3 See for example, Pierre Gerbet, "The Origins: Early Attempts and the Emergence of the Six (1945-52)," in Roy Pryce, ed., *The Dynamics of European Union*, (London: Croom Helm, 1987) pp. 35-48; Walter Lipgens, *A History of European Integration*, 1945-47, vol. I (Oxford: Oxford University Press, 1982); Jean Monnet, "A Ferment of Change," *Journal of Common Market Studies*, vol. 1 (1962-3) pp. 203-211.

4 Preamble, Treaty establishing the European Coal and Steel Community, signed in Paris, 18 April 1951.

perception by the international Community were apparent in a number of ways. The Community was developing a tremendous economic reach but was thwarted by conflicting, vague or nonexistent competences which prevented it from adopting the appropriate, consequent political postures or relationships. In short, its actor potential was diminished. This theme of actorness, which occupies a central part of the thesis, is a crucial one because although the economic strength of the Community is indisputed its political strength is less certain.

The system created to cope with the split between economics and politics, the parallel structures of EEC and EPC, and the leaving of political decisions to the member states, leaves many areas undefined and therefore unclear. In spite of the apparent neat theoretical division the practical aspects present difficulties. Important political, legal and theoretical questions emerge from the ambiguities and contradictions in the interaction of EC and EPC. The mechanisms discussed in this thesis, which have evolved for external political relations, point out these contradictions and tensions.

The interaction of Community and European Political Cooperation (EPC) affairs and their relationship to the actor capability of the Community is a subject which has been neglected in the research on European integration. While legal scholars have partially taken up the complex task of treaty exegesis, there has been a dearth of research

from the political perspective. This thesis fills a major gap in the discussion of EPC from theoretical, analytical and empirical aspects. It analyses a system which existed for over twenty years between the development of early political cooperation machinery in the early 1970s and the Maastricht Treaty of 1993. Therefore it is a worthwhile subject not only as an historical analysis of Community structures, but also as an important indicator and guide for the future development and maturation of political cooperation, under whichever name this cooperation comes. The work explores not only the institutionalised, external political voice with which the Community fulfils its mission to have a voice and impact in world affairs, but also its role as an international trade alliance; also, and more importantly, it examines the political linkages implicit in and inseparable from these economic decisions and actions, which serve to strengthen the Community's actor capability.

In this context the thesis examines, from a Community perspective, the tensions that have come about and are still unresolved in the European Community in the interplay between forces of integration, external relations, and EPC: the aspiration for political integration on one hand, and the desire by the member states of the Community to retain independence on the other. The resulting tension from these forces is best reflected in the relationship between EC external economic relations, and European Political

Cooperation, manifested in the quest for actorness by the Community.

The purpose of this introductory chapter is to lay the foundations for an analysis of the conflicting forces of EC and EPC. First, a brief historical overview of the development of EPC[5] is necessary to note specifically its separation from the EC machinery. Before going on to describe the interactive evolution of the two spheres and the difficulties and absurdities resulting from the split

---

5 This thesis will deal with European Political Cooperation in the context of its interaction with the European Community, and the implications of that interaction or lack of it. For an analysis of the institutions and mechanism of EPC see, *inter alia*, *European Political Cooperation*, (Luxembourg: Office for Official Publications of the European Communities, 1988); D. Murphy, "System of European Political Cooperation: a brief explanation," *North Carolina Journal of International Law and Commercial Regulation* (1985) pp. 383-396; D. Allen, R. Rummel and W. Wessels, eds., *European Political Cooperation: Toward a Foreign Policy for Western Europe* (London: Butterworths, 1982); A. Pijpers, E. Regelsberger, W. Wessels and G. Edwards, eds., *European Political Cooperation in the 1980's: a Common Foreign Policy for Western Europe?* (Dordrecht: Martinus Nijhoff, 1988); Panayiotis Ifestos, *European Political Cooperation: Towards a Framework of Supranational Diplomacy?* (Avebury: Aldershot, 1987); Walter Carlsnaes and Steve Smith, eds., *European Foreign Policy: the European Community and changing perspectives in Europe* (London: Sage, 1994); P. de Schoutheete, "Political cooperation and national foreign policies," *European Affairs*, no. 4 (Winter, 1987) pp. 62-67; William Nicoll and Trevor C. Salmon, *Understanding the New European Community* (London: Wheatsheaf, 1994); G. Bonvincini, "Mechanisms and Procedures of EPC: More than Traditional Diplomacy" in A. Pijpers, E. Regelsberger, W. Wessels and G. Edwards, *op. cit.*, pp. 49-70; S. Bulmer and W. Wessels, *The European Council. Decision-making in European Politics* (London: Macmillan, 1987); D. Murphy, "European Political Cooperation after the Single European Act: The future of Foreign Affairs in the EC," *Boston College International and Comparative Law Review* (Summer, 1989) pp. 335-355.

between external economic relations and political relations, it is necessary to provide the backdrop: an understanding of just how the Community's political and economic spheres became theoretically and legally separated from each other, and the resulting division of competences which emerged.

Second, an explanation of the thesis itself is provided, analysing the criteria against which case-studies were tested as feasible, the structure of the work, and a summary of the particular chapters and cases.

I. The Grand Design

1. The failure of the European Defence Community

Article 2 of the Treaty of Rome states that the European Community shall promote not only "a harmonious development of economic activities" but also "closer relations between the states belonging to it."(6) Regarding the establishment of the European Coal and Steel Community (ECSC), the French Foreign Minister, Robert Schuman said in 1950:

> "the pooling of coal and steel production will immediately provide for the establishment of common

6 Article 2, Treaty Establishing the European Economic Community, Rome, 25 March 1957. Hereafter called the Rome Treaty or Treaty of Rome.

bases for economic development as a first step in the federation of Europe."[7]

Thus, the European Coal and Steel Community, officially formed in 1951, was the first European institution set up with a supranational framework. The six European states of Belgium, the Netherlands, Luxembourg, France, Italy and the Federal Republic of Germany had voluntarily placed limits on their national sovereignty with the political aim of proceeding toward a united Europe. A common higher authority would remove decisionmaking capacity from the states themselves and place it within a central authority: a crucial step toward supranationalism, and a symbol of the determination of the states involved to follow a path of integration.

Yet, the destruction of World War II also provided both a focus and a determination by the founding fathers of the EC to set themselves an agenda for political union.[8] The

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7 *Keesing's Contemporary Archives*, May 13-20, 1950, pt. 10701.

8 For a review of the negotiations, motivations, and setbacks in the early attempts at constructing "Europe", see Pierre Gerbet, "The Origins: Early Attempts and the Emergence of the Six (1945-52)," in Roy Pryce, *The Dynamics of European Union* (London: Croom Helm, 1987); A. S. Milward, *The Reconstruction of Western Europe 1945-51* (London: Methuen, 1987); R. Morgan, *West European Politics since 1945: the shaping of the European Community* (London: Batsford, 1972); Miriam Camps, *European Unification in the Sixties* (Oxford: Oxford University Press, 1967); D. Urwin, *The Community of Europe: a history of European integration since 1945* (Harlow: Longman, 1991); D. Urwin, *Western Europe since 1945: a political history* (Harlow: Longman, 1989); Hans A. Schmitt, *European Union From Hitler to de Gaulle* (New York: Van Nostrand Reinhold, 1969)

European Defence Community treaty which had been signed in May 1952 (EDC) was the first attempt at political and security consolidation. Intended to be a military organisation, it was also seen as a step toward political integration.[9] Article 38 of the EDC treaty undertook to establish a Political Community whose powers would include autonomous and supranational power in foreign policy and the signing of treaties[10] Its failure, resulting from the defeat on August 30, 1954 of the EDC treaty in the French National Assembly, was one of the elements involved in the decision by the original Six to make progress first in the economic field.[11] The failure of the EDC scheme was also a precursor of the difficulties which would face the European Community throughout all of its future moves towards integration and towards developing a common foreign policy

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9 See D. Urwin, *Western Europe since 1945: a political history* (Harlow: Longman, 1989) p. 126; Edward Fursdon, *The European Defence Community: A History* (London: Macmillan, 1980); A. H. Robertson, *European Institutions: Cooperation, Integration, Unification* (London: Steven & Sons, 1973).

10 See A. H Robertson, *ibid.*, pp. 290-291; Frans Alting von Geusau, "European Political Integration: A record of confusion and failure," *European Yearbook* (1963) pp. 148-149; Susanne Bodenheimer, *Political Union; A Microcosm of European Politics 1960-1966* (Leyden: A. W. Sijthoff, 1967) *passim.*

11 For a detailed account of the voting in the French Assembly, see Hans Schmitt, *The Path to European Union: From the Marshall Plan to the Common Market* (Baton Rouge: Louisiana State University Press, 1962). For an alternative view regarding the consequences of the failure of the EDC to the process of economic integration, see Hanns Jürgen Küsters, "The Treaties of Rome (1955-57)," in Roy Pryce, *The Dynamics of European Union, op. cit.* pp. 78-104.

of any type.[12] Further, the collapse of the EDC was a harbinger of the tension which was to come, and which still exists, between the member states and the Community -especially in any decisions regarding the development a common foreign policy.[13]

The European Defence Community had been a far-reaching attempt at supranationalism, but one which failed. Economic integration had made a vast move forward with the signing of the treaty establishing the ECSC, but the failure of the EDC shifted the forces of integration onto two very distinct and different levels. A two-tier process had begun which required the separation of the political Europe and the economic one: the repercussions of this division and the insupportable structures, contradictions, and frictions which have resulted from the division are the primary content of this thesis. The forces of independence and autonomy, coupled with the opposing logic of integration and the reality of interdependence creates a friction in the calculation of priorities and interests. This friction is manifested not only in the Community's political relationships, but also in the definition of competences within the legal framework of the Community.

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12 See Carol Twitchett and Kenneth Twitchett, "The EEC as a framework for diplomacy," in *Building Europe: Britain's partners in the EEC* (Europa Press: London, 1981) p. 16.

13 For further analyses of the EDC, see Clarence Walton, "Background for the European Defense Community," *Political Science Quarterly*, vol. 68 (March 1953) pp. 42-69; Hamilton F. Armstrong, "Postscript to the EDC," *Foreign Affairs*, vol. 33 (October, 1954) pp. 17-27.

2. The splitting of economics and politics

After the failure of EDC, it was the Benelux states which were first to re-ignite the process of integration. In 1955 the Benelux governments proposed the convening of an intergovernmental conference-in cooperation with the institutions of the Coal and Steel Community-to elaborate plans for the next steps in European integration.[14] The conference took place in the Sicilian town of Messina in 1955 and resulted in the Messina Resolution, which declared that the Six "believe that the moment has come to go a step further towards the building of Europe."[15] The failure of the European Defence Community had increased the awareness and sensitivity of the Six to supranational institutions, so the Messina Resolution concentrated on areas such as atomic energy, transport, and a common market, while evading the vexed language of supranationalism.[16] The demarcation between political union and economic utility had begun, but

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14 Miriam Camps, *Britain and the European Community 1955-1963* (Oxford: Oxford University Press, 1964) p. 23.

15 See Resolution adopted by the Ministers of Foreign Affairs of the Member States of the ECSC at their meeting at Messina on June 1 and 2, 1955. European Parliament, *Selection of texts concerning institutional matters of the Community from 1950 to 1982* (Luxembourg: Office for Official Publications of the European Communities, 1983) p. 95.

16 According to Camps, the most important achievement at Messina was the agreement reached on the *method* to be followed in preparing the next stages in integration. Although the original Benelux proposal was somewhat modified, the essential idea that the intergovernmental conference should prepare the texts of treaties to carry out the agreed upon objectives was retained (p. 25). For a thorough evaluation of the Messina Conference see Miriam Camps, *Britain and the European Community 1955-1963, op. cit.*

the political objective was still regarded as "indispensable if Europe is to maintain her position in the world."[17] The Messina Conference made a "fresh advance toward the building of Europe," but the Six agreed, crucially, "that this step should first of all be taken in the economic field."[18] Thus, the split between economics and politics was born even before the Treaty of Rome established the EEC.[19]

This splitting up of the economic and political mechanisms for European integration has led to certain institutional difficulties which have caused uncertainties and tensions for the definition of competences of the various actors involved in the EC. Further, the way forward which was chosen, the economic path to integration, creates a distinction between economics and politics which proved difficult to sustain. It therefore creates some interesting ambiguities and questions, both for academics and practitioners, in the process of reconciling the two spheres. One of the interesting questions, therefore, relates to how the Community's role as an international

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17 See European Parliament, *Selection of texts, op. cit.* (The Messina Resolution is also reprinted in Miriam Camps, *Britain and the European Community 1955-1963, op. cit.*, pp. 520-522).

18 *ibid.*, p. 95.

19 The Bonn Declaration of 1961 was a further indicator of the political ambitions of the Community, which had been relegated to a slower track. It gave yet another voice to the aims of the Community: "to give shape to the will for political union already implicit in the Treaties." But as with previous proposals, the political aspirations of the opening paragraphs were followed rather anticlimactically by more careful words and "practical measures."

actor has been effected by the deliberate distinction between economics and politics.

The ideal of a political community may have begun the process of integration; but the logic of integration was reversed. Transforming a cohesive group of states, which possessed internal economic strength, into a community capable of executing a common European foreign posture was the direction chosen. Historically it may have been foreign affairs which were the principal factor behind creating an "ever closer union." Yet, as the mold set and as trade relationships progressed within the ambit of the EC treaties, the political aim through European Political Cooperation took a parallel but slower path. As Walter Scheel noted, "in the course of time, mere external effects led to external relations."[20] Further, as Lord Carrington, the former British Foreign Secretary, observed as late as 1981:

> Over the years, the realization has grown that economic policy and foreign policy are Siamese twins. In politics as in economics, the countries that make up Western Europe, are too small today to operate successfully on their own. They have to find

---

20 Walter Scheel, "Europe at the Crossroads," *Aussenpolitik*, vol. 25 (1974) p. 129.

a unified response to modern problems, if they are to control their own destinies.[21]

3. The development of EPC

At the Hague Summit of 22-23 July, 1969 it was argued that a "united Europe" must assume "its responsibilities in the world of tomorrow and of making a contribution commensurate with its traditions and its mission."[22] The Hague Summit was pivotal because it set in motion a series of reports which created the blueprint for European Political Cooperation. The leaders of the original Six decided to set up a committee made up of the Ministers for Foreign Affairs "to study the best way of achieving progress in the matter of political unification."[23] While the Hague Summit itself is considered by some to have been less than successful at its attempts to create a political union, it did achieve significant first steps.[24] The result of that mandate was the Luxembourg Report of 1970, the "birth certificate" of

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21 Lord Carrington, "European Political Cooperation: America should welcome it," *International Affairs*, vol. 58, (Winter, 1981-82) p. 3.
22 Bull. EC: 1-1970, p. 8.
23 Bull. EC: 1-1970, p. 16.
24 See, for the argument that the results of the Hague Summit were "*reductio ad absurdum* of the lowest common denominator," W. Wallace and David Allen, "Political Cooperation: procedure as substitute for policy," in W. Wallace H. Wallace and C. Webb, *Policy-making in the European Communities* (Saxon House: Farnborough, 1977).

EPC.[25] The Luxembourg Report outlined as its objectives "the greater mutual understanding with respect to the major issues of international politics." While a complete history of all the reports, conferences, declarations and proposals is beyond the scope of this thesis, Table 1.1 outlines the major reports and conferences and their innovations in the attempt to evolve a common foreign policy.[26]

TABLE 1.1

Major developments in Political Cooperation

1. Luxembourg Report October 1970[27]			
title	objectives	innovations	procedures
Report by the Foreign ministers of the member states on the problems of political unification.	to ensure greater mutual understanding with respect to the major issues of international politics by exchanging information and consulting regularly.	political cooperation should be launched as an inter-governmental operation.	Meetings every six months; special meetings arranged in times of crisis or emergency.

25 Otto von der Gablentz, "Luxembourg revisited or The Importance of European Political Cooperation," *Common Market Law Review*, vol. 16 (1979) p. 685.

26 For a complete evaluation of these reports, see, for example, Panayiotis Ifestos, *European Political Cooperation: Towards a Framework of Supranational Diplomacy?* (Avebury: Aldershot, 1987) *passim.*

27 Bull. EC: 11-1970.

2. Copenhagen Report, July 1973.[28]			
title	objectives	innovations	procedures
Report on European Political Cooperation in the field of foreign policy.	better mutual understanding, harmonisation of points of view, common action when possible.	EPC distinct from and additional to the activities of the institutions of the Community.	Foreign Ministers meetings increased to four times a year; Group of Correspondents established,; COREU est.; creation of working parties; four discussions a year with EP.
3. Paris Summit, December 1974[29]			
title	objectives	innovations	procedures
Communiqué issued by the heads of Government of the Nine establishing a European Council	to adopt common positions and coordinate their diplomatic action in all areas of international affairs which affect the interests of the EC.	coordination of Community issues and issues of political cooperation	Heads of states and governments to meet three times per year accompanied by Ministers of Foreign Affairs.
4. London Report, October 1981[30]			
title	objectives	innovations	procedures
Report on European Political Cooperation	to improve procedures of EPC.; greater consultation with the Commission and the European Parliament; confirms established structures.	longer term approach to political problems; political aspects of security to be discussed; commitment to consult partners before adopting positions.	ministerial meetings to be convened in times of crisis within 48 hours at the request of three member states; formalised Commission's involvement with EPC.

28 Bull. EC: 9-1973.
29 Bull. EC: 12-1974.
30 Bull. EC: Supplement, 3-1981.

5. Title III, Single European Act, 1987[31]			
title	objectives	innovations	procedures
Provisions on European cooperation in the sphere of foreign policy.	to endeavour jointly to formulate and implement a European foreign policy (Article 30.1).	legal framework provided for EPC, Commission is fully associated with the work of EPC; EPC Secretariat established; Political Committee est.; COREU communications system codified.	Treaty base given to EPC procedures; European Council to meet twice a year; Foreign Ministers to meet in EPC; Presidency of EPC rotated on a six month basis.
6. Treaty on European Union, November 1993[32]			
title	objectives	innovations	procedures
Title V, Provisions on a Common Foreign and Security Policy.	to define and implement a common foreign and security policy, to safeguard the common values and interests of the Union, to preserve peace, to promote international cooperation, to enhance democracy.	replaces European Political Cooperation with Common Foreign and Security Policy; mentions all questions of security, including the political aspects; refers to prospect for common defence.	Council decides whether a matter should be the subject of joint action, although unanimity prevails in decisionmaking; a system of qualified majority voting on procedural matters.

II. Explanation of Cases

Conceptually and organisationally, the thesis is divided into two major parts. Part I provides the foundations, first, by firmly grounding the thesis in international

31 Bull. EC: Supplement, 2-1986.

32 Provisions on a Common Foreign and Security Policy can be found in Title V, *Treaty on European Union* (Luxembourg: Office for Official Publications of the European Communities, 1992).

relations theory; second, by providing the legal framework necessary to an understanding of the Treaty intricacies and contradictions; and finally, by giving full explanation to the concept of sanctions, which is such a primary example of the interaction between political and economic decisions, and an important tool with which to establish actor behaviour.

The first part of the thesis is the theoretical section; the purpose of this Part is to:

- establish a theoretical framework

- reveal the interaction of EC/EPC

- describe what is feasible for EPC

Part II provides the most concrete examples of how the Community has projected its actorness and tried to reconcile the decision in 1955 at the Messina Conference to make progress first in the economic field. This part centres on the maturation of EPC, and the effect of the interaction of EC/EPC on third states.

As is the case with any thesis, criteria had to be established which provided a benchmark against which potential areas of study could be evaluated. Establishing these prescriptions aided the attempt at assessing the value of certain cases. It also eliminated the formidable task of deciding, based on some arbitrary method, which case-studies to choose, and which to leave out.

The criteria for Part II had to:

-show the maturation and development of EPC

-reveal the interaction of EC/EPC

-fill a gap in the previous work on EPC

The cases chosen for this thesis were considered as the most representative of the themes under discussion, covering a variety of issues and situations. It was considered optimal to focus on states or groups of states, as in the case of Eastern Europe, to illustrate most coherently and systematically the types of issues involved, and the methods chosen to contend with them. Situations of war were eliminated because of their chaotic and often short-term nature. This study has focused on the development of external relationships which have time to evolve, or, in the case of Eastern Europe, which will evolve further in the future. The chapters are also organised internally to show evolution and development, and to demonstrate how the Community's relationship or behaviour has progressed over the years.

The extent to which the Community can act in the external environment depends on its ability to reconcile the division between its external economic relations and its external political relations in light of the theoretical and treaty-based division. EPC itself, which aims to address only political issues, assumes that these can indeed be separated

out. The intergovernmental nature of Community foreign relations leaves the EC with fundamental limitations in its dealings with third states and international organisations. The conclusion of the work will, therefore, assess the maturation of the development process and the extent to which the Community has developed its international actor capability over time.

Chapter two begins with an endeavour to bind the discussion of EC/EPC interaction to international relations theory. The limitations of the pre-eminent theories are evaluated with regard to their inability to explain the tension between the Community and the member states in light of EPC. To illustrate not only the foundations of the relationship between the Community and its member states (and hence the relationship between EC and EPC), but also to show how the state-centric model has provided an incomplete framework for evaluating the European Community's external relations, the analysis begins with an evaluation of the state. The ability to act is a central force behind the development and evolution of EPC, and chapter two outlines the progress that the Community has made, and the constraints that it faces, as an international actor.

Chapter 3 builds upon this theme by analysing the relationship between foreign and commercial policy in a legal sense, with particular focus on international agreements. To develop itself as an international actor, the Community requires a legal foundation of precedents and

opinions by the Court of Justice with regard to the complex interaction of foreign relations and commercial agreements. The legal structures of the Community have been used in rather confusing and awkward ways to deal with the deliberate exclusion in the Treaty of the EC's political nature. The competences of the Community have been defined and clarified by the European Court of Justice with important ramifications for the interaction of EC and EPC. The European Court has been instrumental not only in delineating the potential foreign policy competences of the Community, but also in defining the common commercial policy, in which much of the uncertainty lies.

The case of sanctions discussed in Chapter four provides evidence with which to analyse the methods used by the Community to pursue foreign policy goals. The foreign policy nature of economic decisions is in its most obvious form when economic sanctions are implemented. With the use of sanctions the Community can take advantage of its economic identity while pursuing political goals. The examination of sanctions highlights two fundamental areas: first the inextricable connection between economic and political decisions, and second the competences available to the Community for sanctions implementation. The evolution of the competences used shows an interesting development in Community foreign and economic policy, and demonstrates the developing coherence of Community action.

The following three chapters (part II) on Rhodesia, Israel and Eastern Europe, were chosen because they fit the requirements based on the criteria established. They highlight most effectively the different stages and aspects of the relationship between the competences of the EC and those of EPC. These particular cases show how the Community has been able to act and legitimise itself not only in the face of the tension between the Community and its member states, but also in light of its limited competences in the field of foreign policy.

Studying the sanctions imposed on Rhodesia (so-called before it became Zimbabwe in 1979) is important for a variety of reasons. First, the situation in Rhodesia occurred before the establishment of the political cooperation machinery so it provides a useful control in studying the coherence of Community action. It also provides a thorough example of the difficulty in reconciling the "Community" and the "member states" in terms of compliance to Community measures and sifting through the legal intricacies of forcing the member states to comply with agreed measures. Finally, it demonstrates the fledgling attempts at actorness by the Community by showing the maturation of EPC.

The chapter on Israel's relationship with the Community analyses, through an historical overview of the various declarations, summits and statements issued in the framework of political cooperation, how the Community has responded to Israel. The case of Israel is crucial to an understanding of

the linkages involved in EC/EPC because the Arab-Israeli conflict was the first foreign policy issue in which the EC became involved. It was, therefore, the first real test of the explicit division of political cooperation mechanisms from those of EC, and thus demonstrates the subsequent implications of the hoped for separation of economics and politics.

The chapter on Eastern Europe provides a more current look at the Community's involvement in a situation of international significance. Eastern Europe is a case which clearly shows the linkages of EPC and EC mechanisms, and is the best case to date of actorness by the Community. The rigid strictures of political conditionality which the Community attached to all forms of aid and association agreements are a considerable marker of this linkage. Further, Eastern Europe was a case in which the Community was expected to involve itself by the international community. There could be no other actor. Thus, this case provides ample evidence to support the thesis that the Community is capable of significant action, and has the means to legitimise itself in the international environment despite the uncertain relationship between EC and EPC.

Conclusion

In examining these cases and issues, the prevailing question will be: What precisely is the relationship between EC external relations and European Political Cooperation in the development of the Community's role as an international actor? Moreover, what are the legal and political ramifications of the attempt on the part of the Member States to keep autonomy in foreign relations. How is the Community's role as an international actor affected by the tension between the Community and its member states? What are the implications of using the Common Commercial Policy in conjunction with EPC to construct a Community based foreign policy?

The crucial factor in these cases is the question of actorness, and the extent to which the Community's relationships with these third states has strengthened or diminished the Community's image as an international actor. Attempts to project the EC's collective identity were often thwarted by the concerted effort to separate the political and foreign policy issues from those of developing trade and economic association. The implications of economic acts are full of foreign policy consequences. Keeping economic decisions separate, or attempting to keep them separate, from politics is virtually impossible. The concept of actorness, therefore, is centred to a large degree on the binding of economic to political instruments, and the institutional mechanisms for implementing these instruments.

CHAPTER 2

THE EC AS AN INTERNATIONAL ACTOR

Introduction

The concept of an actor[1] in international relations is applied usually to the foreign policy actions of states. The unilateral action of a sovereign state, by its very definition as "sovereign" implies that any action taken is legitimate, or contains an element of legitimacy.[2] To

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1 See, for example, Kjell Goldman, "The International Power Structure: Traditional Theory and new Reality," in Kjell Goldman and Gunnar Sjöstedt, eds., *Power, Capabilities and Interdependence: Problems in the Study of International Influence*; for Gunnar Sjöstedt, *The External Role of the European Community* (Farnborough: Teakfield, 1977).

2 The concept of sovereignty has produced a wide literature. See, for example, Alan James, "The equality of states: contemporary manifestations of an ancient doctrine," *Review of International Studies*, vol. 18 (1992) pp. 377-391; Alan James, *Sovereign Statehood: The Basis of International Society* (London, 1986); Alan James, "Sovereignty: ground rule or gibberish?," *Review of International Studies*, vol. 10 (1984) pp. 1-18; J. D. B. Miller, "Sovereignty as a source of vitality for the state," *Review of International Studies*, vol. 12 (1986) pp. 79-89.

classify the European Community as a legitimate international actor is not quite so straight forward; as the following chapter will show, the competences to act in matters of foreign policy are not always clear and must often rely on interpretations of the Treaty rather than on clear lines of authority.

The question of how the Community as an organization is able to act, depends on the coherence between the member states and the Community. The attempted development of a common foreign policy through European Political Cooperation (EPC), perhaps the most important element of actorness, rests entirely on the tension between the Community and its twelve states. The desire of the member states to retain national sovereignty in the field of foreign policy, and the pressure on the Community--and possibly of non-member states--to propel the Community into state-like behaviour signifies the fundamental strain between the member states and the Community.

According to Wolfgang Wessels, "the Community cannot be easily classified, analysed and assessed by using traditional categories and notions of political and legal science."[3] Therefore, criteria for measuring actorness must be established for the Community which take into

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3 Wolfgang Wessels, "The EC Council: The Community's Decision-making Center," in Robert O. Keohane and Stanley Hoffmann, eds., *The New European Community: decision-making and institutional change* (Boulder, Co.: Westview Press, 1991) p. 133.

consideration not only the tensions between the centre and periphery, ie. the Community and the member states, but also the Community's position as an international organisation. This assessment consists of analysing, first, the Community's *actions* and, second, its ability to cause *reactions* in the international environment.

To analyse these two parts requires looking at both legitimate and legitimised actions. Legitimate action, according to Mitchell, is that which is merely legally permitted.[4] In contrast, legitimised actions are those which third states regard as within the acceptable realm of conduct of the acting party. In the case of the Community, both forms of action are crucial.

Legitimate actions of the EC would seem at first sight to be the easier of the two to assess:

1) the legally permissible action as allowed by the internal decision-making structure of the Community and as laid down by the Treaties,

2) the capacity to act as a legal person in the context of international law.

However, analysing and evaluating the precise nature of legitimate authority, power and competence often requires an

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4 C. R. Mitchell notes that legitimised action are those "which the target party accepts as being the right of the acting party to undertake." Mitchell, *The Structure of International Conflict* (London: Macmillan, 1981) p. 34.

element of legal gymnastics, as will be discussed in chapter three. The EC is a non-state actor and, although possessing legal personality, its establishment in the international system is dependent upon its actions in that system. For example, the sheer number of actions it has taken externally can be measured. Ginsberg, for example has counted 480 joint EC actions between 1958 and 1985 in his study of EC foreign policy actions.(5)

Whether the Community's behaviour is legitimised is also difficult to assess. It can, however, be established by analysing its action in a number of ways, which include not only the level of acceptance of the Community in the international arena, but also its impact. What is the influence of EC action on the actions of third states? To what degree do third states take into consideration the existence of the Community? As will be shown below, measuring the effects of the presence of the Community on policy development by non-member states, is often either arbitrary, or merely assumed.

Yet, despite the difficulties of measurement, the concept of legitimised behaviour is crucial to the EC for two reasons. First, because the Community is a non-state actor, and cannot depend on the status of statehood for its legitimacy. Second, because the relationship between the EC's political actions (EPC) and its commercial actions (EC treaty-based)

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5 Roy Ginsberg, *Foreign Policy Actions of the European Community* (London: Adamantine Press, 1989).

is not clearly delineated. Therefore, in terms of legitimation, it is important not to separate these actions, but to analyse them as a whole; rather than being political or economic, action can be analysed as a means of attaining goals. The goals envisaged are:

1) changing the behaviour of another state or actor using either diplomatic or economic means or

2) establishing the EC as a legitimate international actor.

After looking at the above measurements and indicators of EC action, coupled with additional "actor criteria," it is the purpose of this chapter to assess the extent to which the EC is a new type of "interdependent" actor within the international system. Most important, however, is the question: how has the Community been able to act and legitimise itself in the face of its limited competences, and in the face of the tension between the Community and the member states--centre and periphery--as reflected in the division between European Political Cooperation and EC external relations? Further, how have traditional theories of international relations explained the actorness of international organisations such as the EC?

This chapter provides the framework for the subsequent chapters. As such it points to the elements necessary for a thorough analysis by first grounding what is to come in the ensuing chapters within an international relations

environment, and second directing the analysis to the entirety of the thesis, where the bulk of the evidence lies. Therefore, before analysing the "actorness" of the European Community, it is important first to review why international relations theorists have viewed the state as such a vigorous and incontrovertible entity, and why international organisations are often marginalized in their capacity to accomplish significant goals in areas of vital interest. This chapter will not, however, argue for the "circumvention, reduction, or abolition of the sovereign power of modern nation-states."[6] Rather, it will analyse why, in their capacity as actors, states provide the paradigm by which all other international actors are measured, and why a new model for measurement is necessary. In international relations the concept of actorness, as will be shown below, is associated with power, and power is associated with Realism. For this chapter, the argument put forward will be that actorness still requires power, but a new definition of power is required that rests on revised realist assumptions.

First, one step back is necessary to look at the reasons why the state has dominated international relations theory.[7] It is argued here that the realist framework of traditional

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6 Charles Pentland, *International Theory and European Integration* (London: Faber and Faber, 1973) p. 29.

7 For some interesting observations regarding states in Europe see, Stanley Hoffmann, "Reflections on the Nation-State in Western Europe Today," *Journal of Common Market Studies*, vol.21 (1982-83) pp. 21-37.

international relations theory, and its central role for the state, explains to a large degree the tension between the Community itself and the member states. But realist assumptions do not incorporate the "structural contradiction between the logic of international industrial and economic integration and the national framework of popular loyalty and legitimacy."[8]

I. The Dominance of the State-as-Actor Model

1. The classical state-centric model.

From the realist[9] perspective, the state is the basic unit of analysis, and it is assumed that, although other groups can operate in international relations, the state dominates.[10] Groups, organisations, multi-national

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8 C. Tugendhat and W. Wallace, *Options for British Foreign Policy in the 1990s* (London: Routledge, 1988) p. 45.

9 The major literature in the realist paradigm includes *inter alia*: E. H. Carr, *The Twenty Years Crisis, 1919-1939*, (London: Macmillan, 1939); G. Schwarzenberger, *Power Politics* (London: Stevens, 1941); Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, (New York: Alfred K. Knopf, 1948); R. Niebuhr, *Nations and Empires* (London: Faber and Faber, 1959); M. Wight, *Power Politics*, (Leicester: Leicester University Press, 1978).

10 R. B. J. Walker calls the domination of the state in international relations an essentially uncontested concept. Writing of sovereign statehood Walker notes: "Its meaning might be marginally contestable by constitutional lawyers and other connoisseurs of fine lines, but for the most part state sovereignty expresses

corporations, free trade regimes, all operate in the international system, but they are important only to the extent to which they can effect the policies of states. The state-centricity of realism and its tenets such as interest defined as power[11] and international anarchy, present an immutable picture of world politics in which accord and cooperation among states is not possible, except for the short term.

According to Wagner, the assumptions about the primary actors in world politics derived from the view that states were not only the most important objects of study (state-centrism), but also that their behaviour could be analysed and evaluated like that of a unitary, purposeful actor (state-as-actor).[12]

The state-centric paradigm has, according to Mansbach *et. al.*, seven essential elements:

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a commanding silence." See, R. B. J. Walker, "Gender and Critique in the Theory of International Relations," in V. S. Peterson, ed., *Gendered States: Feminist (Re) Visions of International Relations Theory* (Lynne Rienner, 1992).

11 See Hans Morgenthau, *Politics Among Nations, op. cit.*

12 See, R. Harrison Wagner, "Dissolving the State: Three recent perspectives," *International Organization*, vol. 28 (Summer, 1974). For similar distinctions, using different terminology see, A. M. Wolfers *Discord and Collaboration* (Baltimore: Johns Hopkins Press, 1962); Robert Keohane and Joseph Nye, *Transnational Relations and World Politics* (Cambridge, Mass.: Harvard University Press, 1972); Joseph Nye, "Transnational and transgovernmental relations," in G. L. Goodwin and A. Linklater, eds., *New Dimensions of World Politics* (London: Croom Helm, 1975).

1. global politics are based on the interaction of states. States are viewed as both actors and targets.

2. Each state is the sovereign equal of any other state.

3. States are viewed as homogeneous political entities in which a central government controls the legitimate use of force.

4. States are independent and distinguishable from one another.

5. Statehood itself is the recognised form of dividing the world into geographic compartments.

6. States are the secular repositories of the highest human loyalties.

7. Governments of states are the only participants in world politics. All other groups interact in international relations through a recognised national government.[13]

1.1 The legal definition of the state

The political definitions of the state signal its importance in the conduct of international relations. However, the state-centrism of realism is buttressed by the definition of

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13 Adapted from R. W. Mansbach, Y. H. Ferguson and D. E. Lampet, *The Web of World Politics: Non-State actors in the global system* (Englewood Cliffs, New Jersey: Prentice-Hall, 1976).

a state in international law,[14] wherein states must satisfy at least three conditions. First, a state must have a territory--although absolute certainty about frontiers is not essential. Second, a state must have a population; and third, a state must have a government capable of maintaining effective control over its territory and of conducting international relations with other states.[15] Akehurst makes the point that recognition may be a fourth requirement of statehood, but he continues "that recognition is usually no more than evidence that the three requirements...are satisfied."[16]

Hans Kelsen, clarifying the concept of recognition, divides it into two parts, legal and political. Legal recognition is achieved when a recognised community is a state in the sense of international law. Political recognition comes when a state "is willing to enter into political and other relations with the recognised state...Since a state, according to general international law, is not obliged to entertain such relations with other states...."[17]

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14 The Montevideo Convention of 1933 on the Rights and Duties of States asserts in Article 1: "The state as a person of international law, should possess the following qualifications: (i) a permanent population: (ii) a defined territory; (iii) a government; (iv) a capacity to enter into relations with other states."

15 Michael Akehurst, *A Modern Introduction to International Law*, (London: George Allen and Unwin, 1984), p. 53.

16 Michael Akehurst, *A Modern Introduction to International Law, op. cit.*, p. 54.

17 Hans Kelsen, *Principles of International Law* (New York: Holt, Rinehart and Winston, Inc., 1967) p. 390. Kelsen adds: "...legal recognition is usually combined with

1.2 The legal definition of the European Community[18]

Within the terms of Article 52 of the United Nations (UN) Charter, the EC is considered a regional organisation of sovereign states. As such, the Community does not derive powers in the same way as does a state. A state is considered to possess inherently a legal personality which implies total competence over its external relations. Conversely, the Community as a creation of its member states "must depend on its purposes and functions as expressed or implied by its constituent instruments and as developed in practise."[19] States have unlimited capacity in international law whereas non-states, such as the Community, must have their legal capacity bestowed upon them by express attribution, or by the attribution of functions.[20] Thus Article 6 of the European Coal and Steel Community Treaty states that in international relations "the Community shall enjoy the legal capacity necessary to exercise its functions

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political recognition in one and the same act. This is the reason why the two fundamentally different functions which this act called 'recognition' has are not clearly distinguished in the traditional theory of international law and why this theory is entangled in most undesirable contradictions with respect to the nature of recognition." p. 391. See also D. J.Harris, *Cases and Materials on International Law* (London: Macmillan, 1983); Hersch Lauterpacht, *The Function of Law in the International Community* (Oxford: Oxford University Press, 1933).

18 This will be expanded upon in chapter 3 of this thesis on the legal competences of the Community.

19 See, *International Court of Justice Reports*, (1949) p. 180.

20 See Hersch Lauterpacht, "The Subject of the Law of Nations," *LQR*, vol. 63 (1947) pp. 444-450.

and to achieve its purposes." The European Community, however, does possess the status of a legal person: it is a separate and autonomous entity subject to international law, with the capacity to enter into legal relations and its incumbent rights and duties.[21] As an international legal person the Community must be regarded as a third party, legally separate from its member states within the limited domain of the Treaties.[22] However, all the discussion and analysis of the exact extent of legal standing does not bring a better understanding of the capacity of states and non-states to act in the international environment. Legal personality is not an absolute concept. According to Akehurst: "One cannot ask whether an international organisation has legal personality in the abstract; one should ask, 'what specific rights, duties and powers is it capable of exercising?'"[23]

1.3 Criticisms of state-centrism

The legal requirements for statehood overlap to some extent with the basic assumptions underlying the state-centric paradigm. International relations theorists have generally

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21 See D. Lasok and P. A. Stone, *Conflict of Laws in the European Community* (Abingdon: Professional Books, 1987) p. 8.

22 Each founding Treaty of the Community attributes it with legal personality by declaring simply that "The Community shall have a legal personality." See Article 210 European Economic Community; Article 6 European Coal and Steel Community; Article 184 Euratom.

23 Michael Akehurst, *A Modern Introduction to International Law, op. cit.*, p. 70.

laid emphasis on the normative aspect of statehood, that which sets the accepted pattern of behaviour. Realists insistence that the state is the incontrovertible and fundamental actor in international relations gives weight to Francis Fukuyama's thesis that realism "does not take account of history" and "portrays international relations as isolated in a timeless vacuum, immune from the evolutionary processes taking place around it."[24]

This failure to account for evolutionary forces is outlined by Philip Taylor. As Taylor notes, there are five serious areas which have been overlooked or at least underestimated by the predomination of state-centrism:

1. The existence of regional international organisations changes national decision making habits and requires consultation and cooperation.

2. Incidents in international relations since World War II have been predominated by non-state actors. Multinational corporations, stateless groups (eg. the PLO, Basques and Kurds), terrorist organizations, regional international organizations (eg. Organisation of African States and EC), and of course the United Nations.

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24 Francis Fukuyama, *The End of History and the Last Man*, (London: Hamish Hamilton, 1992) p. 258.

3. The potential political power of multi-national corporations (best represented by dependency theory literature).

4. the importance of economic integration.

5. The perceived importance that states have given to international organizations, often outweighing their actual importance.[25]

2. New perspectives on the state

These shortcomings of the realist, state-centric model are the aspects that later theories of international relations incorporate, presenting the world as a more "multi-centric" system of relationships.[26] These perspectives are crucial to an understanding of EPC. As Simon Bulmer points out, while the realist school can draw evidence from the competing national interests within the Community, and specifically EPC, it cannot account satisfactorily for cooperation, unless "this is undertaken to supplement national policy instruments."[27]

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25 Philip Taylor, *Nonstate Actors in International Politics: From Transregional to Substate Organizations*, (Boulder, Colorado: Westview Press, 1984) p. 5-6.

26 James Rosenau in R. Maghroori and B. Ramberg, eds., *Globalism Versus Realism: International Relations Third Debate* (Boulder, Colorado: Westview Press, 1982) p. 3.

27 Simon Bulmer, "Analysing European Political Cooperation," in Martin Holland, *The Future of European Political Cooperation* (London: Macmillan, 1991), p. 72.

Perhaps the first break from the realist framework came from R. C. Snyder's decision-making analysis.[28] It emphasised the role of the decision-maker within the state: "State X as actor is translated into its decision-makers as actors."[29] Decision-making analysis played a crucial role in questioning the state-as-actor approach and turning the focus of attention to sub-units within the state. Snyder's evaluation of international relations, as Rosenau notes:

> served to...provide guidance--or at least legitimacy--for those who had become disenchanted with a world composed of abstract states.[30]

As B. P. White points out, "this first systematic application of a decision-making framework to International Relations at least constituted a serious challenge to traditional assumptions."[31] He continues that the publication of Snyder's work on decision-making "was a crucial turning-point in the study of foreign policy."[32] Yet, Snyder, while observing that the state could not be viewed abstractly, adhered in an important way to the state-as-actor postulate:

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28 R. C. Snyder, "Decision-Making as an Approach to the Study of International Politics," in R. C. Snyder, H. W. Bruck, and B. Sapin, eds., *Foreign Policy Decision-Making: An Approach to the Study of International Politics* (New York: Free Press, 1962).

29 R. C. Snyder, *ibid*, p. 65.

30 James Rosenau, *Domestic Sources of Foreign Policy* (New York: Free Press, 1967) p. 202.

31 B. P. White, "Decision-making analysis," in T. Taylor, ed., *Approaches and Theory in International Relations* (London: Longman, 1978) p. 143.

> It is one of our basic methodological choices to define the state as its official decision-makers--those whose authoritative acts are, to all intents and purposes, the acts of the state. State action *is* the action taken by those acting in the name of state.[33]

Drawing upon Snyder's decision-making analysis, Allison evaluated international relations from three distinct frames of reference, two of which analyse units other than the state.[34] Allison's "rational actor" model is a characterisation of the state-as-actor approach in which, "Happenings in foreign affairs are conceived as actions chosen by the nation or national government."[35] Allison continues by noting the organising concept of the rational actor model: the national actor. "The nation or government, conceived as a rational, unitary decisionmaker, is the agent."[36]

Allison criticises the realist, state-as-actor approach, noting that:

> In spite of significant differences in interest and focus, most analysts and ordinary laymen attempt to understand happenings in foreign affairs as the more

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32 B. P. White, *ibid*, p. 143.
33 R. C. Snyder, *op. cit.*, p. 65.
34 Graham Allison, *Essence of Decision: Explaining the Cuban Missile Crisis* (Boston: Little,Brown, 1971).
35 Graham Allison, *ibid*, p. 32.
36 Graham Allison, *ibid*, p. 32.

> or less purposive acts of unified national governments. Laymen personify rational actors and speak of their aims and choices. Theorists of international relations focus on problems between nations in accounting for the choices of unitary rational actors.[37]

Allison continues that "there is powerful evidence that [the state] must be supplemented, if not supplanted, by frames of reference that focus on...the organizations and political actors involved in the policy process."[38] As Rosenau avers, to speak of states as actors "is to run the risk of oversimplifying, of ascribing human characteristics to nonhuman, abstract entities."[39] While it may be a convenient abbreviation to talk of, "Germany wanting this or France avoiding that," it not the states themselves which are acting.[40]

2.1 Interdependence and the state

While Allison and Snyder attempted to analyse the forces in the decision-making process that came from within the state, Keohane and Nye based their analysis on transnational

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37 Graham Allison, *Essence of Decision, ibid*, p. 5.
38 Graham Allison, *Essence of Decision, ibid*, p. 5.
39 James Rosenau, *International Politics and Foreign Policy*, (Glencoe, Illinois, 1961) p. 78.
40 James Rosenau, *International Politics and Foreign Policy, op. cit.*, p. 78.

relationships.[41] The development of complex interdependence comes from a dissatisfaction with the basic assumption of state-centrism, that states are the only units which can act effectively in international relations. As Roger Coate notes:

> The term nation-state is nothing more than an analytical construct, a conceptual device used to supply order to our perceptions of the world around us. To attribute action to such entities can be very misleading, depending on the nature of the question being asked.[42]

Interdependence theory thus broke from the realist framework as decision-making analysis had done, but from a new frame of reference. Instead of looking at actors within the state, or simply states-as-actors, interdependence recognises the importance of transnational, subnational, and supranational actors and relationships. An interdependent system is characterised by a continuum of relationships rather than a hierarchical structure. The advantage of this approach to an analysis of EPC and its relationship to the EC's external relations is that it recognises the influential role of a quasi-institutional institution on its constituent members.

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41 Robert Keohane and Joseph Nye, *Power and Interdependence: World Politics in Transition*, (Boston: Little, Brown, 1977).

42 Roger A. Coate, *Global Issue Regimes*, (New York: Praeger, 1982) p. 35.

Keohane and Nye developed the concept of "complex interdependence," which cut across state boundaries. It has three main characteristics:

1. Multiple channels summarized as interstate, transgovernmental, and transnational relations.

2. Non-hierarchical issue agenda enables the distinction between domestic and foreign issues to be lessened and removes military security from a consistently dominant position in the policy agenda.

3. Military force is not used when complex interdependence prevails.(43)

In complex interdependence, states play only one part in the system. The principle tenet of the state-centric paradigm is that states are the most important actors to analyse, in order to account for behaviour in international politics.(44) This principle is questioned in interdependence theory. Complex interdependence relaxes the rigid boundaries of state-centrism and takes a holistic view, including within the cast of actors such entities as

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43 Robert Keohane and Joseph Nye, *Power and Interdependence*, *op. cit.*, pp. 24-25. Keohane and Nye remind their readers that both realism and interdependence represent ideal types as representations of world politics, and that reality comes somewhere in the middle of the spectrum. Keohane and Nye also acknowledge importance of the state, but encourage theorists to place less emphasis on its significance.

44 See for example, R. W. Mansbach and J. A. Vasquez, *In Search of Theory : A New Paradigm for Global Politics* (New York: Columbia University Press, 1981).

international and regional organisations and multinational corporations.

2.2 Criticisms of interdependence.

However, although some scholars of international relations have questioned the state-centricity of realism and its basis of conflictual relations,[45] most still retain, to a large degree, a belief that the state has demonstrated a formidable capacity to withstand challenges from other types of actors.[46]

Hedley Bull, for example, argues that the regional integration of states such as that in the European Community is not a move away from the supremacy of the state, but rather is the reaffirmation of it:

> ...if the process of integration of European states were to lead to the creation of a single European state (and if similar processes, sparked off by this example, were to have the same result in other regions), the upshot would be to reduce the number of sovereign states but to leave the institution of

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45 See for example Ernst B. Haas, *The Uniting of Europe* (Stanford: Stanford University Press, 1958); Robert Keohane and Joseph Nye, *Power and Interdependence: World Politics in Transition* (Boston: Little, Brown, 1977); R. Cooper, *The Economics of Interdependence* (New York: McGraw Hill, 1968.

46 F. Northedge, "Transnationalism: the American Illusion", *Millennium*, 1976, vol. 5 no. 1.; Hedley Bull, *The Anarchical Society* (London: Macmillan, 1977).

> the sovereign state precisely where it was before.[47]

To go back to Fukuyama, international relations does not operate in a vacuum, and relationships do evolve. However, interdependence is not necessarily evolutionary. The increase in the number of actors, units, mutual decisions, agreements, transactions, communications does not mean that there will be a corresponding decrease in the authority of the state. There may not be a negative correlation.[48] According to Calleo:

> The EC has not made the traditional states fade away. On the contrary, they have grown more viable. Grouped together in their confederal structures, they have had more real control over their respective national economic environments than they would have had without such organisation.

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47 Hedley Bull, *The Anarchical Society: A Study of Order in World Society* (London: Macmillan, 1977) p. 265. Later, Bull wrote that "'Europe' is not an actor in international affairs, and does not seem likely to become one." H. Bull, "Civilian Power Europe: A Contradiction in Terms?" *Journal of Common Market Studies*, vol. 21 (1982-83) p. 152.

48 This could be related to Philippe Schmitter's refinement of the "spill-over" of Ernst Haas. Schmitter discusses "spill-around", which is an increase in the range of functions performed by an international organization, without a corresponding increase in authority of that organization. Phillipe C Schmitter, "A Revised Theory of Regional Integration", *International Organization*, 1970, vol. 24, no. 4, p. 846.

> Cooperation has increased rather than diminished.[49]

Interdependent relationships can be interpreted as a non-zero-sum game in which there are:

> ...several different payoffs...[which] depend upon whether the players cooperate with each other, cut each other's throats, or mix their strategies of conflict and cooperation in varying combinations.[50]

The arguments concerning the supremacy of interdependence versus the state system go back and forth. This chapter will argue that interdependence plays a crucial role in the relationships, actions and issue agendas of states, EPC and also of the European Community. Realism does not explain fully the degree of cooperation between the member states, or the significant competences assigned to the Community. Interdependence does not explain the tenacity of the member states in their determination to hold on to authority, in areas of foreign and security policy. Thus, it is the traction reflected in the state-as-actor paradigm and that of interdependence, which helps to explain the European Community's state of tension.

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49 D. Calleo, *Beyond American Hegemony: the Future of the Western Alliance* (Brighton: Wheatsheaf, 1988) p. 174.

50 James Dougherty and Robert Pfaltzgraff, Jr., *Contending Theories of International Relations*, (New York: Harper Collins, 1990) p. 511.

Interdependence, may have to be seen as an important subset of realism rather than as a replacement for it; yet one that influences, shapes, and even alters relationships between states. It changes the agendas of states and diminishes conflictual relations between them.

Interdependence speaks of "multiple channels" and transnational relationships, but not how these translate into actorness. Christopher Hill argues that actorness does not "derive neatly from any of the major schools of thought about integration," and further that actorness "is something which most non-theoretical observers automatically assume that the European Community possesses, but which on closer examination might be seriously doubted..."[51]

The next section will analyse, in the framework of a non state-centric perspective, the European Community as a non-state actor, and the criteria for actorness in light of both the relevancy and inadequacy of both realism and interdependence as theoretical frameworks.

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51 Christopher Hill, "The Capability-Expectations Gap, or Conceptualizing Europe's International Role," *Journal of Common Market Studies*, vol. 31 (September, 1993) p. 308.

II. The European Community as an International Actor

1. The traditional definition of actorness

It is because of the dominant position of the state-as-actor in international relations, that the definition of an actor has been neglected: the state possessed the necessary substance to act, and the very definition of a state, as has been seen above, includes the capacity to act. Within the context of a realist perspective, the Community's action, especially reflected in the framework of foreign policy formulation, requires closer examination.

To consider the European Community as an international actor, especially as it operates within a system of states, requires first defining some terms. Two related concepts must be defined in order to define actorness: action and actor. According to Ginsberg action can be defined as a specific, conscious, goal oriented undertaking putting forth a unified membership position toward non members, international bodies, and international events and issues.(52) Action in this sense implies intervention or influence. K. J. Holsti defines action as "the things governments *do* to others in order to effect certain orientations, fulfil roles, or achieve and defend

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52 Roy Ginsberg, *Foreign Policy Actions of the European Community*, *op. cit.*, p. 2.

objectives."[53] Ginsberg distinguishes between joint action and joint foreign policy action. The former is concerned with a unified position, the latter with turning the position into predetermined objectives and outcomes. However, as Stanley Hoffmann notes, "in the widest sense... every act of a state constitutes intervention...even non-acts..." [54] Action leads to expectations. This action may not necessarily be concrete or directly perceivable. Rather, action may be inaction, it may be passive or active, explicit or implicit. But whatever the nature of the action, its objective is the attainment of status and rank internationally. For example, in the case of European involvement in Yugoslavia in 1991-92, not only *did* the EC become involved, but it was *expected* to become involved. Action itself establishes customary patterns of behaviour for the EC that are then expected by the international system. That Yugoslavia was a European problem was understood by the United States which was willing, even adamant, about staying in the background; the Europeans were considered the relevant actors.[55]

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53 K. J. Holsti, *International Politics*, fourth edition (Englewood Cliffs, New Jersey: Prentice Hall International, 1983) p. 144.

54 Stanley Hoffmann, "The Problem of Intervention", in *Intervention in World Politics*, Hedley Bull (ed.) (Oxford: Clarendon, 1984) p. 8. Hoffmann uses the example of West Germany in its decision not to impose sanctions against the Soviet Union over Poland.

55 Robert Jervis views action as a collections of orientations and images which signal the receiver of the act and develop the image of the sender. Robert Jervis,

The definition of an international actor is often associated with its capacity to make decisions in terms of structure. Gunnar Sjöstedt describes an actor as a body capable of unitary external behaviour to the same extent as a state. He describes "actor capability" as the ability both to make common decisions, and to carry out these decisions.(56) According to Sjöstedt, an actor must be, 1) discernible from the external environment and 2) possess internal cohesion. If an entity possesses these preceding elements, then the third crucial part, autonomy, necessarily follows. But the capacity of an international actor is not fixed. As Sjöstedt notes:

> ... the capacity of being an actor is most appropriately conceived of as a variable property which the Community may possess to a greater or lesser extent.(57)

However, this structural definition may not be a reliable indicator of actorness. According to Kjell Goldman an actor must possess a minimum amount of power, "otherwise the question of the existence of non-state actors may degenerate into a dispute about trivialities".(58) Goldman views power

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The Logic of Images in International Relations (Princeton: Princeton University Press, 1970).

56 See Gunnar Sjöstedt *The External Role of the European Community* (Farnborough: Teakfield, 1977).

57 *ibid.*, p. 14.

58 Kjell Goldman, "The International Power Structure: Traditional Theory and New Reality", in Kjell Goldman and Gunnar Sjöstedt, eds., *Power, Capabilities and Interdependence: Problems in the Study of International Influence* (London: Sage, 1979) p. 26. Hedley Bull wrote

as an essential element of actorness: actors must be significant and comparable to states in terms of their power in international matters.(59)

Cosgrove and Twitchett see three points necessary for considering an organisation as incontestable actors in the international system:

1. the degree of autonomous decision-making power embodied in its institutions.

2. the extent to which it performs significant and continuing functions having an impact on inter-state relations.

3. the significance attached to it in the formation of the foreign policies of third states.(60)

Cosgrove and Twitchett apply their analysis to the United Nations and the European Community to demonstrate the qualities of actorness held by regional organisations in the international community. They state that "the UN is an actor more by virtue of its pervading global influence whereas the

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along similar lines that the European Community would need to develop a military capability ever to be considered, or even to behave, as an international actor. See, H. Bull, "Civilian Power Europe: A Contradiction in terms?" *Journal of Common Market Studies*, vol. 21 (1982-83) pp. 149-64.

59 Kjell Goldman, *op. cit.*, p. 26.

60 Carol Ann Cosgrove and Kenneth Twitchett (eds.), *The New International Actors: The UN and the EEC*, (London: Macmillan, 1970). p. 12.

EEC has had a direct impact on many aspects of European and international affairs."[61]

Allen and Smith, questioning the concept of actor and preferring to use the term presence, note that Europe is a "variable and multi-dimensional presence, which plays an active role in some areas of international interaction and a less active one in others."[62] The notion of "presence" is defined by them as "a feature or a quality of arenas, of issue-areas or of networks of activity."[63] Crucial in this evaluation is the place which international presence "occupies in the perceptions and expectations of policy makers."[64] The concept of presence corresponds to the definition of legitimised action defined in the beginning of this chapter as that deemed by third states to be within the acceptable realm of action.

However, it is worth noting that the degree of "significance" attached to an actor in the formation of another actor's foreign policy formation is not only

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61 Carol Ann Cosgrove and Kenneth Twitchett (eds.), *The New International Actors: The UN and the EEC*, p. 12.

62 David Allen and Michael Smith, "Western Europe's presence in the contemporary international arena," *Review of International Studies*, vol. 16 (1990). p. 20. For an important contribution to the concept of presence see also, Donald Puchala, "Of Blind Men, Elephants and Regional Integration," *Journal of Common Market Studies*, vol. 10 (1971-72) pp. 267-84. See also, Stanley Hoffmann, "Reflections on the Nation-State in Western Europe Today," *Journal of Common Market Studies*, vol. 21 (1982-83) pp. 21-37; Stanley Hoffmann, "Obstinate or obsolete? The fate of the nation state and the case of Western Europe," *Daedalus*, vol. 95, (Summer 1966);

63 David Allen and Michael Smith, *ibid*, p. 21.

64 David Allen and Michael Smith, *ibid*, p. 21.

difficult to judge, but virtually impossible to measure. Similarly, Allen and Smith's notion of outside "perceptions and expectations" and its effects on the operation and implementation of foreign policy of third parties is a vague one.(65)

2. New elements of actorness

The focus of this section will be to consider elements necessary for international actorness, building on and adding to previous definitions. The intention is not to prove that the European Community is an actor along the lines of a state, but rather to develop criteria for measuring its development and actor capability by using some of the categories that have been elaborated.

To be defined as an international actor, an organisation must possess the characteristics of:

1) unity

2) independence (autonomous decision-making structure)

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65 Christopher Hill writes of the potential of the Community to fulfil an international role--its capabilities, and of the expectations of third parties in that role. However, while demonstrating that a significant gap lies between the actual capabilities and the perceived capabilities, he does not attempt to explain exactly how the "presence of the Community is certainly felt...wherever mediated solutions to international conflicts are sought." C. Hill, "The Capability-Expectations Gap, or Conceptualizing Europe's International Role," *op. cit.*, pp. 306 and 309.

3) impact on the international system

4) power

- These four elements are not an exhaustive list, but they suffice as a test for the European Community's level of achievement as an international actor. The first two elements of actorness, unity and autonomous decision-making structure, are concerned with the Community's internal strength: the effectiveness of the Community resulting from internal structures. The third element, impact, is concerned with the manifestations of that strength in the external environment. The final two features of actorness, power and impact, are perhaps the most crucial test of the Community's level of actorness: how an international actor's internal strength and its external impact are reflected back onto the actor. An actor can have internal strength and economic impact, but its ability to manipulate the response of third states and thus operationalize its actorness is vital. In other words what instruments does the actor have available for the pursuit of goals.

Boundaries for these categories are difficult to delineate, and they are not always mutually exclusive. However, they are a useful starting point for an evaluation of the Community's actorness.

2.1 Unity

The development of the European Community from the Paris Treaty of 1951, which formed the European Coal and Steel Community, followed by the EEC and Euratom Treaties of 1957, the Merger Treaty of 1967, the Single European Act of 1986, and the Treaty on European Union of 1992, makes clear that there is some degree of internal cohesion. The fact that the Community has been able to work together to formulate the idea of a European Community, and then develop that idea into a series of legally enforceable treaties and working institutions shows a certain amount of cohesion. The question is how much is present in the EC and how can it be measured. The presence of treaties, trade agreements, summit meetings, missions etc. are one measure.[66] However, beyond making lists, and counting the numbers,[67] it is more

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66 G. Sjöstedt claims that another measure of actorness in the European Community is reflected in delimitation, its boundaries. This, according to Sjöstedt, makes the whole process more difficult. Measuring the EC's territory, the sum of its constituent member states, has the advantage of quantification, but the disadvantage of ambiguity. The potential expansion or even contraction of the Community makes a territorial boundary a vague measurement. Gunnar Sjöstedt *The External Role of the European Community* (Farnborough: Teakfield, 1977) p. 156. Defining the limits of the Community was made somewhat easier by Article 237 of the Treaty of Rome which states that "any European state may apply to become a member of the Community". The addition of the word "democratic" in the Treaty on European Union in Article O begins to make the process somewhat more difficult. However, looking for a physical, geographical border seems unnecessary for the purposes of defining the EC's identity.

67 One cogent example is given by the work of Roy Ginsberg in his study of the foreign policy actions of the European Community. Ginsberg tabulated the number of joint foreign policy actions taken, and under which

instructive to look at unity from a perspective which confronts the issue of the tension between the Community and the member states and the tension between EC and EPC. There are two forms of unity that the international actor can possess: internal and external. Both are concerned with consistency and accord, but in different forms. The former is the degree to which the actor actually operates as a unit, its coordinative structures and mechanisms. As Sjöstedt claims, "The EEC's capability for the performance of actor-behaviour is strongly conditioned by the internal state of structural integration within the Community."(68)

The latter, external unity, follows-on from these coordinative structures and concerns the mechanisms available to the Community, to manifest internal unity to the outside world.(69) While external unity and impact are

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Treaty article they were mandated. Between the years 1958 and 1985, his study measured 480 joint EC actions. See Roy Ginsberg, *Foreign Policy Actions of the European Community*, *op. cit.*, *passim*.

68 G. Sjöstedt, *op. cit.*, p. 56. This type of unity will be discussed in detail in the following chapter on the legal competences of the Community's external relations, which analyses the Community's legal status, and the definition of competences between the member states and the Community. See also, Paul Taylor, "The European Communities as an Actor in International Society," *Journal of European Integration*, vol. 6, VI (1982) pp.7-41.

69 Another way of measuring the internal unity of the Community, is to look at attitudes of membership. In terms of the population of the European Community, there is a generally positive attitude toward membership in the EC. A significant majority of the public feels that their state's membership in the Community is a positive factor. When asked in 1987: "Generally speaking, do you think that your country's membership of the Common Market is a good thing, a bad thing, neither good nor

similar to a certain extent, they do differ. External unity gauges coordination, and the ability, whether in legal or simply in practical terms, to act. To impact measures the results of that coordination; it is the projection of unity into concrete results.

Both types of unity do not fit well into theories of integration.[70] Certainly as Ernst Haas formulated the

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bad", 65% responded that it was a good thing, 8% a bad thing 20% neither good nor bad, and 7% gave no reply. By 1991, the figures were more positive: 69% said it was a good thing, 8% a bad thing, 17% neither good nor bad, and 6% gave no reply, see *Eurobarometer: Public Opinion in the European Community*, "Trends 1974-1991", (Luxembourg, 1992). When EC citizens were asked how they felt about belonging to the Community, an average of 69% responded that membership was a good thing and 7% responded negatively (*Eurobarometer*, No. 34, 1990). A common defence organization is also widely supported by the citizens of the Community: fully 61% of the respondents felt that the Community should have some sort of European defence identity, and just over half favour a joint foreign policy, see *Europe: World Partner. The external relations of the European Community* (Luxembourg: Commission of the European Community, 1991). Support for the Community by its citizens is an important indicator of the internal unity of the Community because it shows to some extent how "European" the citizenry of the EC feels. In 1988 the President of the Commission, Jacques Delors, urged that the Union should rest on a "European consciousness" (Bull. EC: Supplement 1, 1988, p. 34). Membership in traditional international organisations does not inspire feelings of a similar nature. The Treaty on European Union refers not to a European population, but rather to "the peoples of the States brought together in the Community" (Art. 137, *Treaty on European Union*, 1992).

70 The literature on integration theory is vast. Among the classics are: Ernst B. Haas, *The Uniting of Europe* (Stanford, California: Stanford University Press, 1964); Ernst B. Haas, *Beyond the Nation-State* (Stanford, California: Stanford University Press, 1964); Ernst B. Haas, "The Challenge of Regionalism," *International Organization*, vol. 12 (Autumn, 1958); Leon Lindberg, *The Political Dynamics of European Economic Integration* (Stanford: Stanford University Press, 1963); Karl Deutsch, "Communication theory and political

concept of political integration, the Community has not seen "a process whereby political actors are persuaded to shift their loyalties, expectations and political activities toward a new center..."[71] As Keohane and Hoffmann point out: "The EC is best characterized as neither an international regime nor an emerging state but as a network involving the pooling of sovereignty."[72] Yet, although Keohane and Hoffmann do not magnify the role of the EC as an actor, they are "struck by the distinctiveness of the Community among contemporary international organizations."[73] Their analysis of the Community in terms of institutional change does not aid in the examination of the Community's actorness because it emphasises how the Community reached its current level of integration rather than its level of impact.

2.2 Autonomous and independent decision-making structure

To act requires decisions. Decision-making structures are an important aspect of actorness in an organisation as they indicate the degree to which the actor has independent

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integration," in Philip E. Jacob and James V. Toscano, eds., The Integration of Political Communities (Philadephia: Lippincott, 1964); Joseph Nye, "Comparative regional integration: Concept and measurement," *International Organization*, vol. 22 (1968); Carl J. Friedrich, *Europe: An Emergent Nation?* (New York: Harper and Row, 1969); R. Keohane and J. Nye, *Transnational Relations and World Politics, op. cit.*

71 E. Haas, *The Uniting of Europe, op. cit.*, p. 16.

72 R. Keohane and S. Hoffmann, *The New European Community, op. cit.*, p. 10.

73 R. Keohane and S. Hoffmann, *The New European Community, ibid*, p. 11.

control over the constituent member states. When compared to other international and regional organisations, the Commission is unique in terms of decision-making authority.

An autonomous organisation is defined as one which possesses a large degree of self-government, and one which is independent of others. To an extent this definition corresponds to the Community in terms of its decision-making capacity. An organisation which has well developed institutions and which is capable of taking some decisions independently of its constituent member states, defies the characteristics of a typical international organisation. Unusually for an international organisation, the Community is directly responsible for implementation of some of its policies. The most notable is in competition policy:

> In this area the Community itself has dealt directly with individual market participants, examining their practices, carrying out investigations, handing down individual decisions of approval or condemnation and, in a minority of cases, applying sanctions.(74)

Decision-making in the European Community is laid out by the Treaties which assigns to the Commission wide ranging powers conferring on it executive powers, the role of guardian of

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74 See, for a discussion of the Commission's powers over competition policy and the resulting tension between national and supranational legal authority, Christopher Harding, *European Community Investigations and Sanctions: the supranational control of business delinquency*, (London: Leicester University Press, 1993) p. 4.

the Treaties, and initiator of policy. Its activities include formulating proposals which it then sends to the Council, ensuring that existing Community policies are carried out effectively and acting as executive arm of the Community.[75] The Commission is composed of nationals of the member states, but they are not representatives of their state. Commission members are required by the Treaty to be independent of national loyalties and interests. To this end Article 9(2) Treaty on European Union states:

> The members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties.
>
> In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the members of the Commission in the performance of their tasks.

The unique aspect of the Commission's role in the Community, and that which sets it apart from other organisations, is that in certain limited and defined areas the Community has removed from the competence of member states authority to

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75 See Peter Ludlow, "The European Commission," in Keohane and Hoffmann, *The New European Community, op. cit.* pp. 85-132. A thorough analysis of the Commission which emphasises "the close interdependence of the Commission and its partner institutions." p. 113.

act. Most notably this includes the Common Commercial Policy (CCP) which gives the Commission authority to negotiate and conclude, within the mandate of the Council, agreements in international trade, export aids, credit and finance. The Commercial policy covered under Article 113 gives exclusive power to the Community; the member states are precluded from entering into agreements covered by the CCP. (However, the Council must give permission to open negotiations.)

As noted above, the Commission is called the guardian of the Treaties, and in support of this title it is responsible for ensuring that treaty provisions are properly carried out. Article 155 EEC states that the Commission "shall ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied". Alleged infringements of the Treaty are investigated by the Commission which may be made aware of such a breach by a government, firm or private individual. If a member state fails to modify its practice, the Commission may refer the matter the European Court of Justice, whose judgement is binding.(76)

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76 The European Community's legal system is the true supranational institution of the Community, and provides the EC with a court which is completely independent of its member states. As Chapter two of this thesis states, the decisions of the Court are directly effective in the member states, and all Community Court decisions preclude national law. The Court stated: "The transfer by the states from their domestic legal system to the Community legal system carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail." Case 6/64, Costa v.

The Commission, apart from being the watch-dog of the Treaties, is also the executive arm of the Community. The executive capacity of the Commission can be divided into three general categories.

First, the EEC Treaty gives the Commission direct legislative powers under Article 189 which lists the various acts that the Commission may adopt.

1. Regulations - binding at Community and national level "in their entirety".(77)

2. Directives - binding on the Member State to which they are addressed. They require a certain "result to be achieved" but leave to the member state "the choice of form and method".(78)

3. Decisions - binding on the Member State or person to which they are addressed. No choice as to method of implementation.(79)

4. Recommendations - suggestions, not binding at all.

ENEL (1964) ECR 585; CMLR 425. For more on the European Court of Justice in general, see: European Commission, *The Court of Justice of the European Community* (Luxembourg, 1986); T.C. Hartley, *The Foundations of European Community Law*, (Oxford: Clarendon, 1988); D. Lasok and J. W. Bridge, *Law and Institutions of the European Communities*, (London: Butterworths, 1991); D. Freestone, "The European Court of Justice", in J. Lodge(ed.) *Institutions and Policies of the European Community* (London: Pinter, 1983)

77 Art. 189(2) EEC.

78 Art. 189(3) EEC.

79 Art. 189(4) EEC.

5. Opinions - not binding.

Second, the Commission is invested by the Treaty with applying the rules of the Treaty to specific cases. This includes powers to ensure the completion of the single market and to ensure that competition in the internal market is not hindered by unfair trade practices, and various powers in connection with the Common Agriculture Policy (CAP), Common Fisheries Policy, and Common Commercial Policy.

Third, the Commission has the right to administer derogations from the Treaty in exceptional cases. Here the Commission is invested with the authority to decide whether, under extenuating circumstances, a member state may be eligible for a waiver from a Treaty requirement.

Another role assigned to the Commission was as the sole initiator of policy. This gave the Commission several advantages. It could decide on the timing of a proposal, its content, and its publicity. Control on proposals has been described as a series of "taps" influencing the "flow of business through the decision-making machinery of the EC."(80)

The formulation and initiation of policy is undeniably a political act. The Commission's role "in the shaping of

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80 See Stanley Henig, "The European Community's Bicephalous Political Authority", in Juliet Lodge(ed.),*op. cit.* p. 16.

measures taken by the Council",[81] plays a significant part in the Community's policy direction. Specialists and interested parties are consulted, including academics, trade union officials and politicians, before the proposal is amended by the Commission with the assistance of the appropriate Directorate and finally submitted to the Council.[82]

The above section on the power of the Commission has perhaps emphasised the potential power of that institution at the risk of making it sound like the dominating force in the Community. The intention has been to highlight those areas that make such an institution substantially different from other international organisations, and not to make claims for its predominance within the Community structure. It is far from the dominant force. As Jacques Delors succinctly stated:

> The Commission has a right of initiative. But a distinction needs to be made according to whether we exercise it within a specific institutional framework or in a more general political context. Within a specific institutional framework, our duties are to give effect to what has formally been

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81 Article 155 EEC.

82 For more on the power of initiating proposals in the decision-making process of the Commission see Stanley Henig, *op. cit.*; D. Lasok and J. W. Bridge, *op. cit.* pp. 218-224; N. Noel, "The Commission's Power of Initiative", *Common Market Law Review*, vol. 10, (1973).

> decided by the European Council or by an amendment to the Treaty.... We might well dream of a Commission that had more powers, but we have to operate within our actual terms of reference.[83]

The Community's label as an autonomous organisation is the result of its ability to formulate and execute policy in certain defined areas which are traditionally the domain of states. That the Community has removed crucial areas of policy from the competence of its members is a vital measure of autonomy and independence.

2.3 Impact on the international system

2.3.1 The impact of external trade

A Community of 345 million inhabitants, with a gross domestic product of $5,800 billion, and which is the world's biggest trading bloc is bound to have a significant economic impact on the international system.[84] The following trade figures for the European Community show its strength as a trading bloc:

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83 Bull. EC: 2-1989, *Supplement*, p. 60.
84 *Eurostat*, "Basic Statistics of the Community", (Luxembourg, 1992).

TABLE 2.1

Exports as a percentage of world total

	1982	1990
EC	33.5	40.5
Japan	07.5	08.4
USA	11.6	11.6

Source: *Eurostat*, "Basic Statistics of the Community", 29th edition (Luxembourg, 1992).

TABLE 2.2

Imports as a percentage of world total

	1982	1990
EC	34.6	40.7
Japan	06.9	06.6
USA	12.8	14.0

Source: *Eurostat*, "Basic Statistics of the Community", 29th edition (Luxembourg, 1992).

The European Community receives 24.9% of the United States' total exports and 18.8% of Japan's.(85) The association between economic interdependence and political influence is hard to measure, but looking at the trade figures for certain areas of the world where the EC may wish to exert political influence, one can draw some tentative conclusions. Newly democratised states such as the Central and East European States (CEES) send 27.7% of their exports to the Community.(86) The former Yugoslavia exported 46.5% of its goods to the EC in 1990.(87) While these trade figures do not imply that CEES will necessarily change their behaviour because of trade with the EC, they do show the increasing interdependence between the two groups of states, which may have implications for policy-making.

The powers which the member states have surrendered to the Community have made it a unique organization capable of interacting and participating in the works of international and regional organisations. Article 229 of the EEC Treaty makes the Commission responsible for relations with international organisations; the Commission must maintain relations with organisations whose work is of interest to

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85 *Eurostat*, "Basic Statistics of the Community", 29th edition (Luxembourg, 1992).

86 The CEES include Bulgaria, Czechoslovakia, Hungary, Poland, Romania. The value of imports from the CEES into the Community is Ecu 13.6 billion, *Eurostat*, "Basic Statistics of the Community", 29th edition (Luxembourg, 1992).

87 Figures are for the year 1990. *Eurostat*, "Basic Statistics of the Community", 29th edition (Luxembourg, 1992).

the Community. To make this involvement more structured and formal, the Commission often establishes working arrangements: exchanges of letters and documents, participation in meetings, joint working parties. To facilitate cooperation the Community is often granted observer status-granting the Community the right to participate but not to vote. The Community has observer status in 57 regional and international organisations, not including the United Nations Organization and its subsidiary bodies and specialised agencies.[88]

An organisation linked with the UN system is the General Agreement on Tariffs and Trade (GATT). The Community's involvement in the General Agreement on Tariffs and Trade is another indicator of impact on the international system. Under Article XXIV GATT, the Community may conclude preferential or non-preferential trade agreements with a third state. Preferential agreements usually reduce the Common External Tariff (CET) by 50 to 70 percent for a period of years with the beneficiary offering limited reciprocity. Non-preferential agreements offer reduction of the CET on a limited range of goods and also require some measure of reciprocity. The Commission represents the Community collectively in the GATT and negotiates in the various rounds of trade discussions. Using its collective strength causes some contention. Non EC member states

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88 Commission of the European Communities, *Relations Between the European Communities and International Organisations*, (Luxembourg, 1989).

consider reciprocity-the principle of mutual tariff concessions-to be a violation of the most favoured nation (MFN) clause (Article I GATT) which states :

> any advantage...granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.[89]

However, Article XXIV GATT permits exceptions from the MFN clause in cases where states enter into a customs union and/or free trade areas, or participate in interim agreements necessary for the attainment of a customs union.[90] Although the Community did not require strict reciprocity from developing states, the GATT was amended to allow developing states preferences for their exports with reciprocity for developed member states of GATT (and therefore of the Community) within the MFN clause.[91]

The important aspect of the Community's relationship with GATT is that it is the Community which acts, and not the individual member states. The Commission has the responsibility to negotiate (within the framework laid down by the Council of Ministers). The United States and Japan

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89 See *Report on the Geneva Tariff Negotiations*, Geneva, October 30, 1947 (London: HMSO, 1947).
90 Art XXIV, para. 2(b) General Agreement on Tariffs and Trade.
91 Art. XXXVI, GATT.

have to look to the Community as the European actor in international trade. The Common Commercial Policy (CCP) provides the legal basis by which the Commission gains international presence.

Although never formally decided that the Community superseded its member states in GATT, "practice shows that the European Community is generally accepted not only as a spokesman negotiating on behalf of its member states, but also as a party to various GATT agreements."(92)

2.3.2 The Impact of Enlargement

Enlargement is one key area where the Community holds a reward that is not only demonstrably sought after, but also can influence states to act in a particular way. Article 237 of the Rome Treaty and Article O of the Maastricht Treaty say that "any European State may apply to become a member". However, this prerequisite for membership is not as clear as it first appears. According to the Commission:

> The term 'European' has not been officially defined. It combines geographical, historical and cultural elements which all contribute to the European

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92 J. Steenbergen, "The Status of GATT in Community Law," *Journal of World Trade Law*, vol. 15, (1981) p. 337. See also, Commission of the EC, *Eighteenth Report on Competition Policy* (Luxembourg, 1989); Anna Murphy, *The European Community and the International Trading System*, i and ii. (Brussels: Centre for European Policy Studies, 1990); R. C. Hine, *The Political Economy of International Trade* (Brighton: Harvester, 1985); L. Tsoukalis, *The New European Economy* (Oxford: Oxford University Press, 1993).

> identity. The shared experience of proximity, ideas, values, and historical interaction cannot be condensed into a simple formula, and is subject to review by each succeeding generation. The Commission believes that it is neither possible nor opportune to establish now the frontiers of the European Union, whose contours will be shaped over many years to come.[93]

The Community can impact significantly the direction not only of economic reform, but also of political development and stability. According to the Commission:

> the Community will provide encouragement to those pursuing reform and make the short term economic and social upheaval easier to bear. This perspective will also provide a stimulus to investment and discourage excessive nationalism.[94]

That states have wished to join the European Community is obvious from the number of applications pending: Turkey, Austria, Cyprus, Malta, Sweden, Finland and Norway. The four European Free Trade Association (EFTA) states will strengthen the free trade aspect of the EC, but since

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93 Bull. EC: Supplement, 3-1992, p. 11. See also, L. Tsoukalis, *The New European Economy, op. cit.*, p. 324; A. Michalski and H. Wallace, *The European Community: The Challenge of Enlargement* (London: Chatham House Discussion Paper, 1992).The cases of Central and Eastern Europe will be discussed in chapter 7 of this thesis.

94 Commission of the European Communities, *Towards a Closer Association with the Countries of Central and Eastern Europe*, Background Report, 17th February, 1993.

Austria, Sweden and Finland have been neutral, their contribution to European foreign policy is less certain. Norway, as a NATO member, and a supporter of the CFSP, is for majority voting in foreign policy in order to strengthen the EC's position "as an organisation that can act".(95)

A cogent example of the Community's potential impact comes from the opening up of Eastern Europe, which brings with it economic and political problems lying right on Europe's doorstep. These problems are associated with the switch from centrally planned to market economies, the weak and uncertain nature of new political institutions, and ethnic tensions. The ability of Europe to act-to offer aid, association and even the possibility of membership in the EC-is an indication of its impact on the international system, and will be fully discussed in chapter seven.

2.4 Power

The notion of power encapsulates the above three categories, not only taking meaning from them, but also giving them meaning: if the Community was not a unified body capable of decision-making, it could not possess power, and the category of impact could not be fully defined without defining power.

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95 Ms. Helga Hernes, Norway's minister for Europe. Quoted in the *Financial Times*, 11 June, 1993.

Power includes not only the economic power that comes with the Community's strength as a trading alliance, but also comprises the perception of the EC as a recognised performer in world affairs: that is, power derived from something the Community *is* rather than something the Community *has*.[96] This relates to much assumed, but not measured, perceptions and expectations of non-member states, and about the influence of the Community on their decision-making process.[97]

It has already been shown above that the EC has economic impact which is measurable. The more intangible aspects of power, its ability to influence the behaviour of third states, are less identifiable, difficult to measure, and in the case of the Community cannot be based on military strength. Therefore, a definition of power is required that considers impact and influence without the military requirement. Also, since power is defined most often in terms of states' influence, definitions do not consider the

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96 See Johan Galtung, *The European Community: a Superpower in the Making*, (London: Allen & Unwin, 1973), p. 36. Galtung makes a distinction between three sources of power: power deriving from something one *is*; power deriving from something one *has*; power deriving from *position in a structure*.

97 See for example C. Hill, "The Capability-Expectations Gap, or Conceptualizing Europe's International Role," *op. cit.*; David Allen and Michael Smith, "Western Europe's presence in the contemporary international arena," *op. cit.*

tension between central and peripheral units within an international organisation.[98]

K. J. Holsti gives perhaps the most straightforward definition of power, describing it as "the general capacity of a state to control the behavior of others."[99] He breaks down the concept of power into three distinct elements: (1) the acts required to influence other states; (2) the resources used to make the process of influence successful; (3) the responses to the acts.[100]

Attempts have been made to enumerate those elements which make up a check-list for the definition of power, but a list, however much it tries to quantify and measure[101] the

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98 K. J. Holsti distinguishes influence from power, noting that influence is an element of power. *International Politics*, fourth edition (Englewood Cliffs, New Jersey: Prentice Hall International, 1983) p. 145. See also Klaus Knorr, *The Power of Nations: The Political Economy of International Relations* (New York: Basic Books, 1975). David Baldwin uses the term interchangeably with influence, noting that the "usage is not intended to deny the validity or the utility of distinguishing among such terms..." D. Baldwin, "Power Analysis and World Politics," *World Politics: New Trends versus Old Tendencies*, vol. 31 (January, 1979) p. 162.

99 K.J. Holsti, *ibid.*, p. 145. Though David Baldwin's definition is also to the point: "situations in which A gets B to do something he would not otherwise do." See D. Baldwin, "Power Analysis and World Politics," *op. cit.*, p. 163.

100 K.J. Holsti, *International Politics*, *ibid*, p. 146.

101 An interesting example of an attempt at measuring power comes from Ray Cline. Cline's framework consists in the formula Pp = (C + E + M) X (S + W), where Pp = perceived power, C = critical mass (population and territory), E = economic capability, M = military capability, S = strategic purpose, W = will to pursue national strategy. Ray S. Cline, *World Power Assessment: A Calculus of Strategic Drift* (Boulder, Colorado: Westview Press, 1975) p. 11.

necessary components of power, does not provide the ultimate answer to the question: can A influence the behaviour of B?

Hans Morgenthau called power a means to a state's ends.[102] According to Morgenthau, political power derives from three sources:

1. the expectation of benefits
2. the fear of disadvantages
3. the respect...for institutions.[103]

Most researchers place military power at the apex of all other measurements.[104] This exalted status of military power neglects other forms of power.[105] According to the neorealism of Arthur Stein, for example, other issues are considered as equally important.[106]

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102 H. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 4th edition (New York: Alfred A. Knopf, 1966) p. 25.

103 H. Morgenthau, *Politics Among Nations, ibid,* p. 27.

104 See W. H. Ferris, *The Power Capabilities of Nation-States: International Conflict and War* (Lexington: D.C.Heath. 1973); H. Morgenthau states: "what gives the factors of geography, natural resources and industrial capacity their actual importance for the power of a nation is military preparedness," *Politics Among Nations, op. cit.*, p. 114.

105 See K. Knorr, *The Power of Nations: The Political Economy of International Relations* (New York: Basic Books, 1975).

106 Arthur Stein, *Why Nations Cooperate* (Ithica, New York: Cornell University Press, 1990).

III. The EC as a Quasi-Interdependent Foreign Policy Actor

Analysing power in terms of the European Community requires a definition which recognises the value of a less realist approach. Survival and the ultimate use of force may be a primary goal for states, but not necessarily for international organisations. Therefore the usual components of power do not apply.

A move away from the realist assumption of military strength as the primary factor of power is the interdependence view of international politics. Interdependence looks at not only at new issues in the international setting such as the environment, but also considers economic, rather than military statecraft as a considerable foreign policy instrument. Because, as has been shown above, the interdependence school looks beyond the state and considers the implications of non-state, transnational actors, it also diminishes the realist's distinct separation of foreign and domestic policies and the distinction between external economic relations and foreign policy. In its efforts to look at the complex inputs and relationships in the process of foreign policy, interdependence also incorporates such theories as decision-making analysis and governmental and bureaucratic politics models.(107)

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107 See, for example M. P. Sullivan, *Power in Contemporary International Politics* (Columbia, South Carolina: University of South Carolina Press, 1990) p. 9-11; Karl

Yet, these influences, which serve to diminish existing hierarchies and point out important auxiliary relationships, do not explain the strict adherence to an intergovernmental structure for EPC foreign policy. The intergovernmental structure of EPC and its required unanimity is contrary to the interdependence theorist's view that a multiplicity of relationships would erode the predominance of the state. While interdependence does help to explain why it has been so difficult for the artificial separation between economic and political decisions to be eradicated, it does not explain the endurance of national interest.

A concept to define the relationship between the EC and its members, to take into consideration interdependent notions of "multiple channels," and to place military security somewhere further down the power scale, must be placed somewhere within a modified realist framework. This framework would account for cooperation between states[108] and also for the tenacity of national interest.[109] It would therefore loosen rigid state-as-actor convictions, not

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Kaiser calls the increase in foreign policy inputs "multibureaucratic decision-making." Karl Kaiser, "Transnational Relations as a Threat to the Democratic Process." In Keohane and Nye's, *Transnational Relations and World Politics, op. cit.* p. 34.

108 See for example Arthur Stein, *Why Nations Cooperate* (Ithica, New York: Cornell University Press, 1990).

109 According to one account: "That national interest is a necessary criterion of policy is obvious and unilluminating. No statesman, no publicist, no scholar would seriously argue that foreign policy ought to be conducted in opposition to, or in disregard of, the national interest. Thomas I. Cook and Malcolm Moos, "The American Idea of International Interest," *American Political Science Review* (March, 1953) p. 28.

only taking into consideration the various transnational relationships, but also newly emerging transnational competences.

A definition of power along these lines would therefore include:

1. The ability to formulate cohesive action.

2. The possession of economic strength.

3. The ability to exploit the foreign policy implications of economic strength through cohesive action.

Eastern Europe, which will be discussed in chapter seven of this thesis, is a prime example of the Community's role in a crucial international episode which, though involving initially the coordination of economic aid, evolved into an agenda-setting, foreign policy relationship.[110]

Conclusion

The four categories discussed above do not present the European Community as an ideal unitary actor, capable of completely coherent action. There is little debate that the Community has evolved into an actor capable of state-like

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110 An interesting comparison can be made to the concept developed by Schmitter. P. C. Schmitter, "Three Neo-Functional Hypotheses about International Integration," *International Organization*, vol. 23 (1969) p. 165.

behaviour on very many issues. As indicated above, the establishment of new criteria for actorness must incorporate economic power, and the improved control over the effects of its wielding. Further it must also acknowledge that the implications of economic acts are full of political and foreign policy consequences. As Keohane and Hoffmann point out, keeping negotiations on economic issues separate from the definition of a common foreign policy is impossible. International politics, including both economic and foreign policy, "will increasingly be played on the chessboard of economic interdependence."(111)

The revealing factor of the intricate relationship between the economic and political sphere is the often vexed relationship between EC external relations and that of EPC. This is manifestly reflected in the relationship between the Community and its member states. The tension springs from the three attracting forces of 1) Community institutions; 2) the formation of EPC; 3) the perceptions of the outside world. The counter forces include primarily issues of high politics, the fear of giving up national sovereignty in the field of foreign policy and the tenacity of the member states. The European Community derives its ability to act cohesively and with a singularity of purpose toward third states when the friction between these opposing forces can be minimised.

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111 Robert Keohane and Stanley Hoffmann, *The New European Community, op. cit.*, p. 27.

As the next chapter will show, the European Court of Justice has been instrumental in defining the competences of the Community, and pointing out the relationship between foreign and economic policy in international agreements. Thus, the Court has helped not only to define the relationship between the Community and the member states, but further has given the Community tools by which to turn economic competences into instruments of foreign policy.

CHAPTER 3

LEGAL COMPETENCES OF EXTERNAL RELATIONS: THE RELATIONSHIP BETWEEN FOREIGN AND COMMERCIAL POLICY.

Introduction

The evolution of mechanisms through which the European Community has presented its common foreign policy posture has occurred, on one hand through a process of careful planning by the member states, and on the other through the unanticipated involvement of the European Court of Justice (ECJ).[1] The planned process can be found in the form of European Political Cooperation (EPC), and the unplanned logic in the form of interpretations of the Common Commercial Policy and other Treaty based provisions, making up a "Community method." The introduction to this thesis has shown the development of EPC and its aims, one of which was

1 Hereafter referred as the Court or the ECJ.

to increase the influence of the EC in international affairs. While the early basis of Political Cooperation relegated it resolutely, until its incorporation by the Single European Act (SEA),[2] to the perimeters of the Community system, the legal foundations of EC external relations are spelled out in the Treaty.[3]

This chapter will discuss the relationship between EPC and the Common Commercial Policy and show how the "uniting of Europe"[4] in foreign policy has been a process of bridge-gapping between Community competences and those of the member states.[5] The vexed relationship between the Community and its member states in the context of the split between the external (economic) relations and the enterprise of foreign policymaking was established in the early days of EPC. Yet the European Court has been instrumental in

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2 *Single European Act*, Bulletin of the European Communities, *Supplement 2/86*; OJ L 169, 29.6.87. Hereafter referred to as SEA.

3 External relations can be defined as the legally binding unilateral economic action (taking the Community as a unit) and/or relationships of the Community toward non-member states through the conclusion of treaties. Using such agreements for the attainment of political goals is one part of Community foreign policy, which may or may not coincide with the political objectives of the Member States individually.

4 Ernst B. Haas, *The Uniting of Europe* (Stanford: Stanford University Press, 1958).

5 Foreign policy is defined here as the predetermined and coordinated political objectives of the Community. It is argued throughout this thesis that the coordinated (external) economic objectives of the Community are difficult, if not impossible, to separate from the political objectives. In fact often they are one and the same. Foreign policy is more than common action taken over one issue, for this constitutes a reactive approach. It is instead a plan of action, the elements of which make up a policy with discernible objectives.

developing the external relations competence of the EC, widening it so that some of the political aspects of the Community's trade policies can be included in the competence of Community treaties with third states. Freestone and Davidson have called this an "organic" theory of external relations power.[6] The penetration by the Court, and its precipitance in adopting a pro-Community stance "has not been readily accepted by the member states who see the accretion of powers to the Community as entailing a corresponding diminution in their own powers."[7]

To demonstrate the evolution of external relations and foreign policy competences, this chapter is divided into three parts: the establishment of the Court as the constitutional authority, the relationship between external economic relations and foreign policymaking, and interpretations and division of powers. These three parts analyse the European Court of Justice and its instrumental role and "judicial creativeness"[8] in defining Community competences, and turning those competences into potential instruments of positive foreign policymaking. The sections also show how the involvement of the Court has worked toward system legitimization, giving the Community not only tools, but also a focal point for the definition of competences.

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6 David Freestone and Scott Davidson, "Community Competence and Part III of the Single European Act," *Common Market Law Review*, vol. 23 (1986) p. 799.

7 *idem*.

8 See, G. Federico Mancini, "The Making of a Constitution for Europe," *Common Market Law Review*, vol. 26 (1989) p. 599.

Demarcation lines between competences of the member states and the Community are difficult: the centre-periphery relations involve issues of sovereignty and supremacy.[9]

I. A New Legal Order: The Twin Pillars of Community Law

1. Direct effect of Community law.

With the ECJ's landmark decision in the *Van Gend en Loos* case, the European Community established "a new legal order in international law comprising both the Member States and their nationals".[10] For the benefit of this new legal order the member states of the Community:

> have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of the Member States, Community law therefore not only imposes obligations on individuals but it also intended to

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9 See Mary L. Volcansek, "The European Court of Justice: Supranational Policy-Making," *West European Politics*, Vol. 15, no. 3 (July, 1993) p. 111.

10 ECJ Case 26/62, *Algemene Transport & Expeditie Onderneming Van Gend en Loos v. Nederlandse Administratie der Belastingen* (1962) ECR 1 at 29, (1962) *CMLR* 105 at 129. The content of the case concerned a Dutch importer who invoked the provisions of the Treaty of Rome directly against the government of the Netherlands, which wanted to impose an 8% tax.

> confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community.[11]

Thus the Court enunciated for the first time that the Community had established a new legal order which would limit sovereignty, impose obligations on individuals, yet also offer rights. And these rights would flow not from national governments, but directly from the Treaty.[12]

2. Supremacy of Community law.

Once the pillar of direct effect[13] had been established through the *Van Gend en Loos* case, the European Court of

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11 *Van Gend en Loos, op. cit.* p. 12.

12 For a discussion of individual rights which have evolved and been clarified by the Court see, Dierdre Curtin, "Directives: The Effectiveness of Judicial Protection of Individual Rights," *Common Market Law Review*, vol. 27 (1990) pp. 709-39.

13 The concept of direct effect is defined as a legal provision which grants individuals rights which must be upheld by the member states national courts. See T.C. Hartley, *The Foundations of European Community Law* (Oxford: Clarendon Press, 1988) pp. 183. For a detailed analysis of the doctrine of direct effect see, E. Stein, "Lawyers, Judges and the Making of a Transnational Constitution," *American Journal of International Law*, vol. 75 (January, 1981) pp. 1-27. For a discussion of the effect on Community national legal systems of an international agreement which is part of Community law see, T.C. Hartley, "International Agreements and the

Justice elaborated and refined its decision the following year in the landmark decision of *Costa v. ENEL*.[14] This decision held that the Community "has created its own legal system which...became an integral part of the legal systems of the Member States and which their Courts are bound to apply...".[15] The Court went on to say that:

> The transfer by the states from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail.[16]

The case of *Costa v. ENEL* thus established the second pillar of Community law, that of supremacy.[17] The Court of

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Community Legal System: Some Recent Developments," *European Law Review*, vol. 8 (1983). pp. 383-92.

14 Case 6/64 Costa v. ENEL (1964) ECR 585. This case dealt with a customer of an Italian electric company who refused to pay his electric bill, claiming that Article 37 of the EEC Treaty had been violated by Italy's nationalisation of electric companies.

15 *Costa v. ENEL*, *op. cit.*, p. 585.

16 *idem.*

17 For an evaluation of the *Costa v. ENEL* case with special reference to the Italian Constitutional Court see, M. L. Volcansek, "Impact of Judicial Policies in the European Community: The Italian Constitutional Court and European Community Law," *Western Political Quarterly*, vol. 42 (December, 1989) pp. 569-85. For an analysis of how *Van Gend en Loos* and *Costa V. ENEL* have provided the groundwork for the constitutionalization of the Community see, Robert Keohane and Stanley Hoffmann, "Conclusions: Community Politics and Institutional Change," in W. Wallace, ed., *The Dynamics of European Integration* (London: Pinter, 1990) pp. 280-81; See also, Eric Stein "Lawyers, Judges and the Making of a

Justice stated that Community law takes precedence over national law and cannot "be overridden by domestic legal provisions, however framed".[18] The Court argued that without this fundamental principle of Community law supremacy "a State could unilaterally nullify its effects by means of a legislative measure."[19] Finally, the principle of supremacy of Community law was perhaps most succinctly put in the 1969 *Walt Wilhelm* case in which the Court stated that "the EEC Treaty has established its own system of law, integrated into the legal system of the Member States," however, despite this integration, "Community law takes precedence."[20]

Thus, the Community submits to an internal judicial settlement when disputes arise from the interpretation of the Treaty, and the member states undertake not to seek any other method of settlement.[21] The ECJ is the final arbiter in cases involving the interpretation of the Treaty and, should a conflict occur between Community law and national law, Community laws prevail. This prevalence is in accordance with both the *Van Gend en Loos* case and *Costa v.*

Transnational Constitution," *op. cit.*; Federico Mancini, "The Making of a Constitution for Europe," *op. cit.*

18 *Costa v. ENEL*, p. 585.

19 *Costa v. ENEL*, p. 585.

20 *Walt Wilhelm and Others v. Bundeskartellamt*, Case 14/68 (1969) ECR 1.

21 Article 219 EEC Treaty of Rome.

ENEL, together establishing the twin doctrines of supremacy and direct effect.[22]

3. Criticisms of the new legal order

These doctrines sound impressive as mechanisms for increasing the legitimacy of the Community. However, they have not been without their critics.[23] Rasmussen notes, with reference to the Court's pro-integration activism, that "even firm believers in a federal Europe occasionally are baffled by the Court's strong and bold pro-Community policy preference."[24] Paul Taylor, conversely, saw the policy making effect of the Court as a less threatening phenomenon than Rasmussen precisely because of his pessimism regarding the Community becoming anything more than a strictly intergovernmental organisation. He maintained that, "if a national legislature decided to limit the effect of a Communities' regulation, or to nullify it,...the national courts would not apply the Communities' law."[25] Taylor's

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22 See, generally, D. Lasok and P. A. Stone, *Conflict of Laws in the European Community*, (Abingdon: Professional Books Ltd., 1987).

23 See for example, Hjalte Rasmussen, *On Law and Policy in the European Court of Justice: A Comparative Study in Judicial Policymaking* (Dordrecht: Nijhoff, 1986). As Mary Volcansek notes: "The actions of the [Court] undoubtedly violated the line between interpretation (in even the loosest sense) and legislation." See, "The European Court of Justice: Supranational Policy-Making," *op. cit.*, p. 113.

24 Hjalte Rasmussen, *On Law and Policy in the European Court of Justice*, *op. cit*, p. 3.

25 Paul Taylor, *The Limits of European Integration* (New York: Columbia University Press, 1983) p. 280.

study of the European Community and its institutions is altogether doubtful of its ability at decision making or effective integration. It concludes that states would impose limits on any "challenges to sovereignty...and the central institutions [would fail] to obtain the qualities of supranationalism."[26]

Stuart Scheingold views the Court's role as "consensual," and notes that by repeatedly upholding the supremacy of Community law, the Court contributes to the process of integration by "generally blurring the lines which divide one set of structure from the other."[27] He claims that the Court of Justice has operated as a validator...rather than as a policymaker."[28]

Whether viewed positively or negatively, the Courts twin pillars have acted as a cohesive force in both the process of integration and the establishment of Community legitimacy. Without the supremacy of Community law as an established principle, a certain *ad hoc* approach could have resulted. Member states could choose to accept or reject various elements of Community decisions as they saw fit.[29]

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26 *ibid.*, p. 56.
27 Stuart Scheingold, *The Law in Political Integration: The Evolution and Integrative Implications of Regional Legal Processes in the European Community*, Occasional Papers in International Affairs, no. 27 (Cambridge, Mass.: Center for International Affairs, Harvard University, 1971) p. 3.
28 *idem.*
29 For a discussion of this point see, Andrew Wilson-Green, *Political Integration by Jurisprudence* (Leyden: A. W. Sijthoff, 1969) p. 64.

II. External Relations and Foreign Policy.

1. European Political Cooperation and Community law

EPC and Community external relations operated in separate spheres initially. EPC was conducted along side the Treaty rather than within it. The idea of unity and separateness are apparent in the introductory common provision of Title I of the Single European Act (SEA): "The European Community and European Political Cooperation shall have as their objective to contribute together to making concrete progress towards European unity,"[30] but each is to continue to operate under separate regimes. For the Community this regime is the Community Treaties as modestly amended in Title II of the SEA; for EPC it is Title III confirming and supplementing the procedures agreed in specified reports and practices gradually established since 1970. Article 1 of Title III specifically mentions the reports of Luxembourg (1970), Copenhagen (1973), London (1981), and the Solemn Declaration on European Union (1983). The SEA offers primarily affirmation of evolved practices, and rules to govern EPC. It has been argued that SEA provided little innovation, but simply transformed and legalised an existing process.[31]

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30 *Single European Act*, Bulletin of the European Communities, *Supplement 2/1986*; OJ L 169, 29.6.87. Hereafter referred to as SEA.

31 See, for example, Renaud Dehousse and Joseph H.H. Weiler, "EPC and the Single Act: from Soft Law to Hard Law?" In

The SEA attempted to link EPC and EC, giving EPC a treaty basis and associating the Commission with EPC in Title III. The SEA also affirmed that the "external policies of the European Community and the policies agreed in European Political Cooperation must be consistent."[32] The careful wording continues: "the Presidency and the Commission, each within its own sphere of competence, shall have special responsibility for ensuring that such consistency is sought and maintained".[33]

1.1. The nature of EPC commitment

The primary commitment of the member states under EPC is one of consultation. Under the Single European Act, the procedures of EPC were codified and the processes of EPC, which had been established and refined since the Luxembourg Report of 1969, were confirmed. However, the SEA did not lay down a legal, formally binding framework for EPC, and Title III calls for the member states solely to "endeavour jointly to formulate and implement a European foreign policy".[34] Mechanisms are clearly those of cooperation and consultation and the level of 'commitment to endeavour' is difficult to measure. The insubstantial legal resources of EPC in

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Martin Holland, ed., *The Future of European Political Cooperation* (London: Macmillan, 1991) pp. 121-142

32 Article 30(5), SEA.
33 Article 30(5), SEA.
34 Article 30(1), SEA.

relation to commitment are compounded by the vague wording of Title III. The sphere of competency of the member states is protected by conditional clauses and indistinct injunctions. Article 30(3)(c), for example, politely requests member states to refrain "as far as possible... from impeding the formation of a consensus and the joint actions this might produce." This wording does not sound like a traditional legal document. On the other hand, Title III is unsurprising in its care to protect the foreign policy competences of the member states: even the most pro-integration states are disinclined to relinquish foreign policy competences.

In judging and evaluating the Title, it is therefore important not to overestimate the legal commitments simply because it is part of a legal document. It is equally important to look at the unique system which EPC created: in depth exchange of information, the production of common viewpoints, collective commitment by the Twelve to an EC position.[35]

Yet, another view can be taken regarding the commitment of the member states. Non-binding agreements, or those which at first sight appear to be non-binding, have precedents in

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35 See Elfriede Regelsberger, "European Political Co-operation after the Single European Act: Balance Sheet and Perspectives of a European Foreign Policy," in Armand Clesse and Raymond Vernon, eds., *The European Community after 1992: A New Role in World Politics?* (Baden-Baden: Nomos Verlagsgesellschaft, 1991) pp. 123-129.

international law which cannot be underestimated.[36] Dehousse and Weiler point out four socio-legal reasons why Title III can be regarded as a binding document.

1. precedents from other international documents (North Atlantic Treaty, Warsaw Pact, Helsinki Final Act);
2. sincerity of the treaty negotiating phase;
3. length of treaty negotiating phase;
4. opposition to changes contained in the proposed treaty.[37]

Agreements must create obligations in order to be legally binding; if Title III does not create obligations, then, Dehousse and Weiler ask, why were certain clauses of the Title opposed for so long? Further, "to state that parties 'shall endeavour' to formulate a European foreign policy may seem an oxymoron, but in reality it creates an obligation to act in good faith, which is a recognised concept of international law."[38] Although Title III and the obligation it entails are not altogether specific, it is clear that under international law the legal duty to cooperate does exist.

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36 For an elaboration of this view see, Renaud Dehousse and Joseph H.H. Weiler, "EPC and the Single Act: from Soft Law to Hard Law?", *op. cit.*, pp. 129-131.
37 *ibid.*, pp. 129-130.
38 *ibid.*, p.130.

This legality of Title III was the subject of Irish Supreme Court ruling in 1987. The argument put forward was that Title III infringed on the neutrality provisions of the Irish constitution. The Irish Court found that Title III was a legal document whose provisions were not a mere confirmation of extant practices within the Community. Rather, the new provisions imposed legal obligations which were in fact incompatible with the Irish constitution and its neutrality clauses. The Irish Court found that states may arrange to confer and consult with other states regarding the conduct of foreign policy. However:

> It is quite a different matter when, as here, it is proposed that the State be bound by an international treaty which requires the State to act in the sphere of foreign relations in a manner which would be inconsistent with constitutional requirements.(39)

Justice Henchy, arguing for the majority, maintained that with the ratification of Title III each state was "*bound* to surrender part of its sovereignty in the conduct of foreign

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39 Crotty v. An Taoiseach and others, *Common Market Law Reports*, vol. 49 (1987) p. 666. For a discussion of the Irish decision see, J. Temple-Lang, "The Irish Court which delayed the Single European Act: Crotty v. An Taoiseach and others, *Common Market Law Review*, vol. 24 (1987); T. C. Salmon, *Unneutral Ireland: an ambivalent and unique security policy* (Oxford: Clarendon, 1989) pp. 286-97; J.P. McCutcheon, "The Irish Supreme Court, European Political Cooperation and the Single European Act," *Legal Issues in European Integration*, vol. 10 (1988).

relations."[40] The Irish Supreme Court thus found that, "without the appropriate constitutional amendment, the ratification of the Single European Act (insofar as it contains Title III) would be impermissible under the Constitution."[41] The ratification of the SEA therefore required a constitutional amendment.

1.2 Delineating the boundaries

As the Tindemans Report first enunciated, EPC and the Community are two distinct pillars. The European Union would one day rest, or be built around, these two pillars. However, delineating the boundaries of these columns proved difficult from the start. The oft cited example of the Foreign Ministers meeting in Copenhagen in the morning within the framework of political cooperation, and then flying to Brussels to meet as the Council of Ministers, demonstrates the absurdity of the initially strict delineation. The Preamble of the SEA continues along the lines of separation, clearly stating that the EC shall be founded on the Treaties, while EPC shall be governed by Title III, confirming and supplementing the procedures and practices "gradually

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40 *ibid.*, p. 668, emphasis added.
41 *ibid.*, p. 667.

established among the Member States."[42] Article 1 specifically refers to the reports of Luxembourg(1970), Copenhagen(1973), London(1981), and the Solemn Delcaration on European Union(1983). Article 3 of the SEA further spells out the "powers and jurisdiction" of each system and the conditions and purposes for which they operate.[43]

The protection of the member states sovereignty in Title III presents further difficulties in delineating the boundaries of EC and EPC activity. Member states certainly preserve their autonomous capacity to act in foreign relations under Title III. They are encouraged, but not obliged to coordinate their efforts.[44]

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42 Title I, Article 1, SEA.

43 Article 3, SEA: 1. The institutions of the European Communities, henceforth designated as referred to hereafter, shall exercise their powers and jurisdiction under the conditions and for the purposes provided for by the Treaties establishing the Communities and the subsequent Treaties and Acts modifying or supplementing them and by the provisions of Title II.
2. The institutions and bodies responsible for European Political Cooperation shall exercise their powers and jurisdiction under the conditions and for the purposes laid down in Title III and in the documents referred to in the third paragraph of Article 1.

44 Further, the member states' ability to act unilaterally in external relations is not undermined by the rest of the SEA. For example, according to Article 130R(5): "Within their respective spheres of competence, the Community and the Member States shall co-operate with third countries and with the relevant international organizations. The arrangements for Community co-operation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 228." It continues: "The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude

The cautious text of Title III provides some interesting ambiguities concerning the division of competences in practice. As one observer notes:

> The problem of contradiction between the EC policy on the one hand and the policies of the Member States on the other is, for instance, important in the areas of human rights and relations with the Third World. How can the responsibilities of the Presidency and of the Commission which are mentioned in Article 30, paragraph 5, in fact be implemented? Are there legal ways and means to implement that responsibility?(45)

The duality of EPC and EC, one having a legal Treaty base, the other based on a codified process of consensus and consultation, is reflected in the Single European Act in a variety of other ways. First, in the wording of the Title itself which refers only in the EPC section to the High Contracting Parties, and not to the member states of the Community. Second, in the exclusion of the ECJ from any authority over EPC. The role of the European Court of

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international agreements." Articles 130R(5) and 130R(5)(2), SEA.

45 Jochen A. Frowein, "The competences of the European Community in the field of external relations," in Jürgen Schwarze, ed., *The External Relations of the European Community, in particular EC-US Relations*. Contributions to an international colloquium organized by the European Policy Unit of the European University Institute held in Florence on 26-27 May 1988 (Baden-Baden: Nomos Verlagsgesellschaft, 1989) pp. 34-35.

Justice regarding EPC is spelled out in Article 31 of the Single European Act, which states:

> The provisions of the Treaty establishing the European Coal and Steel Community, the Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community concerning the powers of the Court of Justice of the European Communities and the exercise of those powers shall apply only to the provisions of Title II and to Article 32; they shall apply to those provisions under the same conditions as for the provisions of the said Treaties.[46]

This Article excludes the ECJ from action regarding EPC, which is placed under Title III, and is therefore not subject to any form of review by the ECJ. The Court's judicial activism as discussed above was, according to some observers, the main reason for EPC's exclusion from Title III of the Single European Act.[47] Another reason that has been put forward concerns the legalisation of the diplomatic process. The process of diplomacy and political negotiation

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46 Article 31, SEA.

47 See David Freestone and Scott Davidson, "Community Competence and Part III of the Single European Act," *op. cit*, p. 799.

should remain as flexible and tractable as possible, and therefore does not submit well to "judicialisation."(48)

The legal status of EPC is reflected in the wording of Title III, which lays out the general obligations of the member states. The High Contracting Parties under EPC are, as previously noted, to endeavour to formulate and implement a European foreign Policy, to inform and consult each other on any foreign policy matters of general interest, to take full account of the positions of the other partners and, perhaps most important, to avoid any action or position which would impair the member states' effectiveness as a cohesive force in international relations. Yet breaches of these provisions have no judicial redress. As Dehousse and Weiler point out, the main criticism of EPC "is not so much the absence of legal obligations as such, but rather the absence of effective enforcement mechanisms."(49)

The extra-Treaty origins of EPC, before the SEA formalized the procedures, and the contrasting Treaty provisions for commercial and external relations policy have led to a fracture which has proved difficult to mend. The vagaries of EPC have also meant that it has been difficult to define. As Holland notes, "a clear operational definition of EPC is

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48 See E. Stein, "European Foreign Affairs System and the Single European Act of 1986." *International Lawyer*, vol. 23 (1989) pp. 977-94.

49 See, Renaud Dehousse and Joseph H.H. Weiler, "EPC and the Single Act: from Soft Law to Hard Law?", *op. cit.*, p. 131.

required."[50] EPC may not have been envisioned as "a legalistic exercise," and rather as an "enterprise to establish common positions and common actions in foreign policy,"[51] but the apparent neat theoretical division which keeps EPC and EC external economic relations in separate categories has proved untenable.

Yet, the dual system of dealing with foreign policy actions evolved. An operational distinction between the two spheres of international action emerged and has persisted, with Community competence resting only in matters of international trade. The Community has founded its actor capability in foreign policy on a variety of competences and two overarching spheres: the EPC method and the Community method.

2. The Community method.

The Treaty based, legally binding Community method covers areas of economic policy while the non Treaty based work of political cooperation works in parallel to that of the Community and contains no elements of supranationalism. The Community method involves the Commission. Actions are based

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50 Martin Holland, "Sanctions as an EPC Instrument," in Martin Holland, ed., *The Future of European Political Cooperation, op. cit.*, p. 182.

51 E. Regelsberger, P. de Schoutheete, S. Nuttall and G. Edwards, eds., *The External Relations of European Political Cooperation and the Future of EPC* (Florence: European University Institute Working Paper no. 172, 1985).

on the Treaty and can be, depending on the Article in question, legally binding on the member states. This section will analyse how the decisions and opinions of the Court have contributed to the clarification of the potential of commercial relations.

In the absence of express provisions for foreign policy the task of identifying and interpreting those areas of the Treaty that bridge external relations and foreign policy make up two distinct domains: explicit powers of the Treaty and implied powers interpreted from the Treaty. The first, explicit powers, are spelled out in Articles 113 and 238. The second, implied powers, derives from interpretations of the Treaty developed by the European Court of Justice. Power can be attributed implicitly from a provision in the treaty which is not specifically directed at the agreement in question. This is known as the concept of implied powers of the Community and has been developed by the Court in case 22/70 (more commonly known as the *ERTA* case), the joined *Kramer* cases, and Opinion 1/76 (*Laying up Fund*). In *ERTA*, the power to regulate the maximum driving hours of lorry drivers was attributed to the Community, but because treaty-making power had not been expressly conferred to the Community for this subject matter the States claimed that they retained the treaty-making power. In view of the Kramer cases the ability of the Community to conclude international treaties depends upon whether the Member States still have

powers "to enter into international commitments."[52] If the member states do not have the power to do so then Community power is termed exclusive. However, exclusive Community power does not necessarily exclude the member states from involvement in a prospective treaty. Mixed agreements cover a far greater majority of international treaties concluded by the Community and involve both the Community and the member states.

The Common Commercial Policy and the power of the Community to conclude association agreements will be evaluated in the next section as methods of external foreign relations power. Further the role of the case law of the ECJ with regard to external relations will be analysed to see how the Court of Justice has had a role in providing the Community with powers of foreign policy. In this context the Common Commercial policy and the Court's interpretation of explicit and implied powers play a role in clarifying the concept of commercial policy. Mixed agreements, which have emerged as the solution for the member states to retain sovereignty, will then be discussed.

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52 *Officier van Justitie v. Kramer and others;* Joined cased 3,4 and 6/76; Preliminary ruling of 14 July 1976; ECR 1279 at 1305, Para.17/18.

2.1. Association Agreements.

An explicit basis for Community external relations is through the various association relationships provided for under Article 238 and Articles 131-136. Treaty-making power is thus attributed to the Community by association agreements provided for by the Treaty, which states in Article 238:

> The Community may conclude with a third State, a union of States or an international organisation agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.

Association can be a transition or preparatory phase for European states who have Treaty based eligibility for membership in the Community.[53] These transition phase states may be kept waiting for administrative or political reasons, or because they are unable to fulfil the economic conditions necessary for membership. For example Greece was an associate for six years between application in 1975 and accession in 1981.[54] The Commission's Opinion on Greek accession placed considerable emphasis on the economic

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53 See Article 237.

54 Greece had also been an associate since 1961 before it made an official application for membership to the EC. The Greek association agreement was placed in suspension between the 1967 military coup and the return of a civil government in 1974. See Loukas Tsoukalis, *The European Community and its Mediterranean Enlargement* (London: George Allen and Unwin, 1981) pp. 28-49.

problems that Greece's membership would place on the existing Community.[55]

Another aspect of association was set up under Part IV of the Rome Treaty[56] to take into account the colonial legacies of Belgium, Italy, the Netherlands and France.[57] Through Part IV association the territories and colonies of these member would benefit from trade and aid because of their special relations.[58] The aim of association under Part IV was to "promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole."[59] Thus associates received development aid, trade

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55 Bull. EC: Supplement 1-1976.

56 Articles 131-136, Treaty of Rome.

57 France even threatened abandonment of Treaty negotiations unless provisions were made for its former colonial empire. See Roger Morgan, *West European Politics Since 1945* (London: B.T. Batsford, 1972) p. 147.

58 Close economic, historical and cultural links between the member states and their overseas dependencies made Part IV association a necessary insertion into the Rome Treaty. For example France in 1957 had special relations with Tunisia, Morocco and Algeria and still maintained a colonial empire in Africa: Belgium was installed in the Congo and Ruanda; Italy had ties with Libya and Somalia; the Netherlands had Dutch New Guinea, Surinam and Curaçao. See Werner Feld, *The European Community in World Affairs* (Boulder: Westview Press, 1983) p. 105. When Britain joined the Community in 1973 and had to make arrangements for the Commonwealth states, all UK dependent territories became eligible for association except Gibraltar and Hong Kong. See, *British Membership of the European Community* (London: HMSO, 1973) pp. 29-47. See also Bull. EC: Supplement 1-1972 p. 45. For an account of the new relationship of the Community with these Part IV states after gaining independence in the 1960s see, for example, C. Cosgrove Twitchett, *A Framework for Development: the EEC and the ACP* (London: George Allen and Unwin, 1981).

59 Article 131, Treaty of Rome.

concessions and the right to "levy customs duties which meet the needs of their development and industrialisation or product revenue."[60]

The language of the Treaty for association agreements is wide, referring to "reciprocal rights and obligations, common action and special procedures...." However, as Weiler notes, despite the wide language the first Association Agreements were based on mixed agreements: the member states insisted on joint participation, preventing the Community from concluding such agreements alone.[61] With association agreements the Community was once again faced with an untenable split between its economic and political relationships.

2.2. Common Commercial Policy

Another realm of Community-method external relations which have foreign policy implications, is the Common Commercial Policy (CCP). While foreign policy decisions are, as noted, outside the legal sphere of the Treaty, the basis for international trade decisions, Article 113, can be interpreted broadly. This broad interpretation has implications for foreign policy. The European Court of Justice, claiming its authority from the precedent of the

60 Article 133, Treaty of Rome.
61 J. H. H. Weiler, "The Evolution of the Mechanisms and Institutions for a European Foreign Policy (Florence, European University Institute Working Paper, no. 202) pp. 7-8.

Van Gend en Loos case has played a significant role in defining and clarifying the foreign policy potential of commercial relations, and in giving the Common Commercial Policy foreign policy potency. This foreign policy power is given explicitly and implicitly for trade under Article 113.

Nearly all international agreements of the Community are expressly based on Article 113.[62] Paragraph one of the Article states:

> the common commercial policy shall be based on uniformly established principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.[63]

The Commission acts under the direction and within the framework issued by the Council, who also appoint a special committee to consult and assist the Commission with their task.[64] The external relations of the Community, based as

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62 See Roy H. Ginsberg, *Foreign Policy Actions of the European Community* (Boulder Colorado: Lynne Reinner, 1989) pp. 90-105.

63 Article 113, Treaty of Rome.

64 Article 113, paragraph 3. The Article 113 Committee, which has the task of ensuring that the interests of the Member States are fully considered, is composed of national officials of the member states from the ministry relevant to the negotiations. Although the Commission does not need the consent of the Committee it must consult with it and establish a relationship conducive to the performance of its task. The Committee's role is supervisory but can be an

they are on the Treaty, are also subject to the Court as the final and exclusive arbiter of international treaties and agreements.

The supremacy of Community law is an important doctrine in the context of the Community's external relations. The Court has developed, through the accumulation of case law, what could be called a doctrine of external relations whereby the competences of the Community and the member states have been established. When there is uncertainty about the compatibility of a proposed agreement with the Treaty the Court may be asked by the Council, Commission or a member state to give an opinion under Article 228(1)(b) EEC which states:

> The Council, the Commission or a Member State may obtain beforehand the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty.

The external relations powers of the European Communities involve the ability to conclude international treaties on specific subject matters, notably tariff and trade agreements. This power to conclude international treaties must be derived either implicitly or explicitly from the treaty - for example Art. 113 states in paragraph 3:

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influential one as its members are often bound by specific instructions from their national governments. Thus the Commission's role and authority are somewhat lessened.

> Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Court's judgements and opinions regarding the interpretation of the Treaty will be discussed below to show how the competences of the Community and the member states have evolved through the development of implied and explicit powers. It is important to consider the difference between the "Community" and its individual "member states" in a legal sense. For the Community it is the Treaty which provides the basis of its legal order. Yet the Treaty is more than a contractual agreement: it is "an institutional stage of European unity."[65] Power is both attributed and circumscribed by the founding and subsequent Treaties of the EC and the relationship between the Community and the member states is based upon the delegation of this power and the division of functions.[66] Powers given to the Community by the member states can be used for conducting external relations as well as for intra-EC activity. However, powers not specifically ascribed, the residue of powers, remain with the member states. As stated in an early case by the Court:

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65 D. Lasok and J. W. Bridge, *Law and Institutions of the European Communities* (London: Butterworths, 1991) p. 31.

> Within the specific domain of the Community, i.e. for everything which relates to the pursuit of the common objectives within the common market the institutions [of the Community] are provided with exclusive authority....Outside the domain of the Community, the governments of the Member States retain their responsibilities in all sectors of economic policy....(67)

III. Division of Powers: Interpretations by the Court.

1. Implied powers

The European Road Transport Authority judgement of 1970 was a landmark case regarding Community and member state competences.(68) It was the first instance of legal action between the Council and the Commission, and concerned the treaty-making power of the Community: did the Community or the member states have the power to enter into an international agreement. Since no provisions in the Treaty expressly allowed for a Community competence, the Court had to decide whether there was an implied power in the Treaty. By deciding that "regard must be had to the *whole scheme* of

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66 D. Lasok and P. A. Stone, *Conflict of Laws in the European Community* (Abingdon: Profession Books Ltd., 1987) pp. 6-8.

67 Case 30/59 *De Gezamenlijke Steenkolenmijnen in Limburg High Authority of the ECSC* (1961) ECR 1, p. 23.

68 Commission v. Council, case 22/70, (1971) ECR 272 *et seq.*

the Treaty no less than to its substantive provisions,"[69] the European Court of Justice set a precedent in the development of the common commercial policy recognizing, through the *ERTA* judgement, the existence of implied Community powers.

Since the Treaty explicitly allows for only a few types of agreements to be concluded with third parties, the question came up as to whether the Community might conclude agreements in the absence of an express provision in the Treaty. Two alternative arguments emerged. The Commission held to the principle of parallel powers, taking the view that competence in external relations should be coextensive with competence derived from the Treaty for internal purposes. Internal powers "must apply to external relations just as much as to domestic measures in the sphere envisaged".[70] Conversely, the Council drew inspiration from the *principe d'attribution* contending that the Community only has "such powers as have been conferred upon it, authority to enter into agreements with third countries cannot be assumed in the absence of an express provision in the Treaty".[71] The Court was not convinced by the

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69 Para. 15, *ERTA*. Emphasis added.
70 Para. 6, *ERTA*.
71 Para. 9, *ERTA*. The Community, as an international organisation, does not derive legal powers in the same way as does a state. This is a key point. A state considered to possess inherently a legal personality which implies total competence over its external relations. The Community, as a creation of its member states, "must depend on its purposes and functions as expressed or implied by its constituent instruments and

Council's arguments and noted that "in the absence of specific provisions of the Treaty relating to the negotiation and conclusion of international agreements in the sphere of transport policy...one must turn to the general system of Community law in the sphere of relations with third countries".(72) Thus, the Court upheld the principle of parallel powers. The member states claimed that treaty-making power is more than an extension to third parties of an internal Community competence. In their view treaty-making establishes political bonds and relationships well beyond the subject-matter of an agreement.(73) The Court's Opinion, however, strongly limited the external to the internal powers.

In the *ERTA* case the Court held that, because the European Community has legal personality,(74) "in its external relations the Community enjoys the capacity to establish contractual links over the whole field of objectives defined in Part One of the Treaty".(75) So the Court added the principle of parallel powers to its body of external relations case law, empowering the Community "to assume and carry out contractual obligations towards third countries

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as developed in practise" (International Court of Justice Reports, 1949, p. 180). States have unlimited power whereas the Community has only those powers bestowed upon it by the Treaty.

72 Para. 12, *ERTA*.

73 Para. 31, *ERTA*. See Jürgen Schwarze, "Towards a European Foreign Policy-Legal Aspects." In J. K. De Vree et al., eds. *Towards a European Foreign Policy* (The Hague: Nijhoff, 1987) pp. 70-75.

74 Para. 13, *ERTA*.

75 Para. 14, *ERTA*.

affecting the whole sphere of application of the Community legal system".[76] According to Hartley, "there is little doubt that the doctrine of parallelism applies not only with reference to internal powers granted by the Treaty for specific objectives, but also with regard to such general powers as that contained in Article 235....The result is that the Community now possesses wide treaty-making powers covering virtually the whole area of the EEC Treaty."[77]

The *ERTA* decision is a landmark decision for the external relations of the Community although it does seem to limit external powers to those which stem from the prior use of an internal competence. According to later decisions of the Court however, prior use is "not limited to that eventuality".[78] Opinion 1/76, known as the *Laying Up Fund* case,[79] and *Kramer et al.*,[80] clarify and define the *ERTA* decision, declaring that an external competence "flows by implication"[81] in cases where the Community has not yet used an internal power.

Whenever the EC institutions have the power to pursue an objective - those defined in Part One of the Treaty - the Community, as a supra-national entity, may enter into

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76 Para. 18, *ERTA*.
77 T. C. Hartley, *The Foundations of European Community Law* (Oxford: Clarendon Press, 1988) p. 167.
78 Opinion of the Court 1/76 (Laying Up Fund for inland waterway vessels), 26 April 1977, ECR 741 at 754.
79 Para. 4, *Laying Up Fund*.
80 *Officier van Justitie v. Kramer and others*; Joined cased 3,4 and 6/76; Preliminary ruling of 14 July 1976; ECR 1279 at 1305.
81 Para. 4, *Laying Up Fund*.

international agreements in order to obtain that objective. The Court averred "that authority to enter into international commitments may not only arise from an express attribution by the Treaty"[82] Further, the Court stated:

> ...whenever Community law has created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community has authority to enter into the international commitments necessary for the attainment of that objective even in the absence of an express provision in that connexion.[83]

According to the *Laying Up Fund* opinion, once an internal power has been used the respective external power stays with the Community. Thus the member states may be deprived of their power to enter into unilateral agreements. They are exempted, on the basis of the *ERTA* decision, of their external powers. So the Council is reluctant to make use of the implied-powers theory of the Court for two reasons: 1) the practical difficulties of forging potential foreign policy decisions on the basis of a qualified majority vote and 2) the pre-emptive nature of Community power under the *ERTA* decision.[84]

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82 Para. 3, *Laying Up Fund*.
83 Para. 3, *Laying Up Fund*.
84 See Jürgen Schwarze, "Towards a European Foreign Policy-Legal Aspects," *op. cit.*, pp. 73-74.

2. Explicit powers

The explicit external relations powers of the European Community are concerned primarily with Arts. 110-116 EEC dealing with the Common Commercial Policy (CCP), and Article 238 concerning association agreements. The concept of explicit powers has been developed primarily by the Court through Opinion 1/75 (*Local Cost Standard*)[85] and Opinion 1/78 (*International Agreement on Natural Rubber*).[86] The Opinion on the *International Agreement on Natural Rubber* deals with the scope of Art. 113, establishing that the CCP is not restricted to those elements explicitly mentioned in the article but also to "any other process intended to regulate external trade".[87] In the *Natural Rubber* opinion, the Commission requested that the ECJ give an opinion as to whether or not the Agreement was compatible with the Treaty and, if so, whether the Community possessed the necessary competence to conclude that agreement. The Commission held that the Agreement came entirely within the framework of Art. 113 thus placing it within the Community's exclusive powers. However according to the Council, whose interpretation of the scope of the CCP was more restrictive, the subject matter of the agreement fell outside the CCP's framework, thus calling for a mixed agreement: a division of

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85 Opinion of the Court 1/75 (Understanding on Local Cost Standard); (1975) ECR 1355 at 1356; (1976) *CMLR* 85; CCH 8365.

86 Opinion of the Court 1/78 (International Agreement on Natural Rubber); (1979) ECR 2871; (1979) 3 *CMLR* 639; CCH 8600.

87 Para. 45, *Natural Rubber*.

powers between the Community and the member states whereby an agreement is concluded jointly.

The central question then related to the *subject-matter* of the Agreement and whether it came within the framework of the CCP as set out in Article 113 of the Treaty. If it did, then the question remained as to whether the member states involvement was necessary. According to the Commission, Commercial policy includes any measure regulating international trade.(88) The Council interprets the CCP less broadly, or at least from a different perspective, looking to the motivation of a measure for its decisive qualification as an act of commercial policy.(89)

The Court was hesitant to limit the CCP to include "the use of instruments intended to have an effect only on the traditional aspects of external trade to the exclusion of more highly developed mechanisms".(90) Moreover the Court held that Art. 113 must be "governed from a *wide point of view* and not only having regard to the administration of precise systems such as customs and quantitative restrictions."(91) The Court also deduced that the list of subjects covered under Art 113 (changes in tariff rates, the conclusion of trade and tariff agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade) is not exhaustive and is

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88 Para. 38, *Natural Rubber*.
89 Para. 39, *Natural Rubber*.
90 Para. 44, *Natural Rubber*.
91 Para. 45, *Natural Rubber*, emphasis added.

therefore an enumeration of possible subjects rather than a complete and decisive list.[92]

The conclusion of the Court as to the *International Agreement on Natural Rubber* was that it was within the scope of Art 113 of the EEC Treaty but because the financial arrangements dealing with the Agreement were not within the exclusive power of the Community budget and the whole question of budgetary competence had not been settled "the Member States must be allowed to participate in the negotiations of the agreement".[93]

This Opinion points to the reluctance of the Court to assign exclusive competence to the Community and to the uncertainty of the whole question of how to handle Article 113. It also shows how in the field of external relations the member states are reluctant to give up their carefully guarded sovereignty and be replaced by the supranational institutions of the Community.

The *Natural Rubber* Opinion was somewhat of a step back for the Community with respect to strengthening Community competence in relation to an earlier Opinion of the Court. Opinion 1/75 (Understanding on Local Cost Standard) stated that the Understanding fell within the exclusive external competence of the Community to the exclusion of the member states despite a similar budgetary arrangement to that of

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92 Para. 45, *Natural Rubber*.
93 Para. 63, *Natural Rubber*.

the *Natural Rubber* Opinion. It was in the *Local Cost Standard* Opinion that the Court has expressed the obligations of the member states vis-a-vis the Community in the field of international relations most vehemently.[94] According to the Court, on the subject of the CCP prescribed by Article 113 of the Treaty:

> Such a policy is conceived in that article in the context of the operation of the Common Market, for the defence of the common interests of the Community, within which the particular interests of the Member States must endeavour to adapt to each other.
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> Quite clearly, however, this conception is incompatible with the freedom to which the Member States could lay claim by invoking a concurrent power, so as to ensure their own interests were separately satisfied in external relations, at the risk of compromising the effective defence of the common interests of the Community.

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94 See Pierre Pescatore, "External Relations in the Case-Law of the Court of Justice of the European Communities," *Common Market Law Review*, vol. 16 (1979) p. 643.

> The exercise of concurrent powers by the Member states and the Community is impossible [and]...would amount to recognising that, in relations with third countries Member States may adopt positions which differ from those which the Community intends to adopt, and would thereby distort the institutional framework...and prevent the latter from fulfilling its task in defence of the common interest.[95]

In the *Natural Rubber* Opinion the Court held that participation in the negotiations by the member states was acceptable because they financed the Agreement's fund directly rather than through the Community budget. However, in the earlier *Local Cost Standard* Opinion the Community was given competence even through the member states financed the aid involved. Therefore it would seem that these Opinions are inconsistent with each other. In a sense they contradict each other, the later *Natural Rubber* Opinion calling for a mixed agreement, the earlier *Local Cost Standard* case assigning exclusive Community competence even though in both cases national budgets were involved.

This inconsistency by the Court is a reflection of the general difficulty within the Community of assigning exclusive competence to EC institutions. The Council is continually looking for characteristics which would necessitate a mixed agreement. For example in the

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95 *Local Cost Standard*, Part B, 2.

International Agreement on Natural Rubber, the Council suggested that the interpretation of Article 113 should not detract from the general economic policy which remains within the powers of the member states. The Council recognised the interrelation between the Community and the member states, noting the difficulty in separating international economic relations and international political relations.[96] The Council, in the text of its submission on the *Natural Rubber* opinion, referred to the exclusive nature of Community power under the CCP, but averred that "the common commercial policy nevertheless fulfils a functions of its own in the context of the structure of the Treaty inasmuch as it applies to 'any measure the aim of which is to influence the volume or flow of trade.' Thus Article 113 should be interpreted so as not to render meaningless other provisions of the Treaty, in particular those dealing with general economic policy...."[97]

Two courses were used by the Council to show that the Agreement did not constitute commercial policy and therefore should not be negotiated exclusively by the Community. The first was to aver that natural rubber is a strategic product and therefore the agreement impinges directly on the question of member states control over their defence policies.[98] Because of this the Council took the view that the Agreement did not fall only within Article 113 but also

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96 Para. 39, *Natural Rubber*.
97 Para. 39, *Natural Rubber*.
98 Para. 39, *Natural Rubber*.

under Article 116 relating to common action by member states within the framework of international organisations of an economic character to which they belong.

The second course used by the Council to point out the non-commercial elements of the Agreement was the question of the political nature of the Agreement, which in the Council's view contains elements of development aid. The Agreement, according the Council, must be seen against "the general political background of North-South relations between the industrialised world and the developing countries".(99) Development aid does not come within the framework of commercial policy. So it would appear that the Council went to some lengths to ensure their right to participate in the negotiations of the agreement and that their sphere of competence was not restricted in external relations and, potentially, foreign policy.

The question of explicit external relations powers of the Community then are decided by a careful examination of the subject-matter of a proposed agreement. The Commission will look for a broad reading of the CCP, not wishing to separate out political considerations when determining a measure's acceptability as a piece of commercial policy. The Council, taking the sovereign interests of the member states to heart, will adhere to a restrictive interpretation of commercial policy.

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99 Para. 40, *Natural Rubber*.

The European Court of Justice has in most respects been willing to interpret Article 113 broadly, and the evolving case law and Opinions of the Court demonstrate empirical evidence of this. For example in 1973 the Court noted that "the proper functioning of the customs union justifies a wide interpretation of Articles...113 of the Treaty.[100] In 1975: "The common commercial policy is above all the outcome of a progressive development....[101] In 1978: "...the question of external trade must be governed from a *wide point of view*".[102]

3. Mixed agreements

When both the EEC and its member states appear on one side of an international agreement as the contracting parties, the agreement is known as mixed.[103] After analysing the relevant Court cases and opinions regarding the splitting up of competences, the tension between the member states and

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100 *Hauptzollamt Bremerhaven v. Massey Ferguson*, Case 8/73 (1973) ECR 897 *et seq.* at 908.
101 *Local Cost Standard*, p. 1363.
102 Para. 45, *Natural Rubber*. Emphasis added.
103 Among those to have written on the phenomenon of the mixed agreement are: J. Weiler, "The External Legal Relations of Non-Unitary Actors: Mixity and the Federal Principle", in D. O'Keefe and H. Schermers (eds.) *Mixed Agreements*, (Deventer: Kluwer, 1983); Henry G. Schermers, "The Internal Effect of Community Treaty-Making", in D. O'Keefe and H. Schermers (eds.), *Essays in European Law and Integration*, (Deventer: Kluwer, 1982); Jürgen Schwarze, "Towards a European Foreign Policy-Legal Aspects," *op. cit.*; N. A. Neuwahl, "Joint Participation in International Treaties and the Exercise of Power by the EEC and Its Member States: Mixed Agreements, *Common Market Law Review* vol. 28 (1991).

the institutions of the Community regarding their competence in external relations is clear. The demarcation line is blurred as to the fields belonging to the powers[104] of the member states and those belonging to the Community. International agreements do not always lend themselves to neat compartments dividing Community and member states' powers. Therefore, whenever the subject-matter of an agreement enters simultaneously into the spheres of jurisdiction of both the Community and member states problems obviously arise. According to Pescatore, two questions must be asked and resolved if a jurisdictional dispute is to be solved.[105] First, it must be asked whether the subject-matter of a proposed agreement comes under the jurisdiction of the Community. Answering this question by itself is often an impossible task and assumes that an answer may indeed be found. Second, if the first question can be answered then the question remains as to the exclusivity of Community power as developed by the Court: is the existence of a Community power exclusive or is it parallel to a power of the member states? It is precisely because of this problem of defining the boundaries of

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104 Competence refers to the legal authority to act in a field of policy; power to the instrument by which competence is exercised. According to Neuwahl, there are three distinct types of power in this context: norm-setting power (legislative and treaty-making power) executive power (representation, administrative execution) and judicial power. N. A. Neuwahl, "Joint Participation in international Treaties and the Exercise of Power by the EEC and Its Member States: Mixed Agreements," *op. cit.* p. 718.

105 Pierre Pescatore, "External Relations in Case Law," *op. cit.*, p. 622.

competences that the Community and member states often resort to mixed agreements in which both parties appear jointly on one side as contracting parties.

However, if it is agreed that defining the boundaries is a difficult task, then it follows logically that there are indeed boundaries capable of definition. The mixed agreement allows the member states to leave the division of power undefined, while at the same time allowing them to "to maintain a sphere of action in which they can display authority."[106] Mixed agreements highlight the difficulty faced in trying to maintain a distinction between commercial, economic, and foreign policy measures. A determination can be extremely difficult as to what constitutes the province restricted exclusively to the Community, and the margins of autonomy reserved for the member states.

Another crucial element of mixity is the opportunity it affords in leaving undefined, in the light of the principle of parallel powers, the scope of Article 235 of the Treaty. The potential exists for the Community to extend its legal capacity in external (including foreign) relations through the Treaty. Article 235 states:

> if action by the Community should prove necessary to attain, in the course of the operation of the common

106 N. A. Neuwahl, "Joint Participation in International Treaties," *op. cit.* p. 726.

> 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 Assembly, take the appropriate measures.

The Article is noteworthy because of its wording which explicitly refers to the Community rather than the member states. The action referred to in Article 235 must, however, remain strictly within the limits of the objectives defined in Part One of the Treaty, specifically those outlined in Article 3.[107] The mixed agreement makes it possible to avoid taking on the exact interpretation of "appropriate measures", and defining the "necessary powers" needed to attain the objectives of the Community.

Mixed agreements are often used when, according to the *ERTA* doctrine of parallel powers, the Community could have acted alone. As mentioned above however, if the Community acts its powers are exclusive leaving no room for concurrent powers of the member states.[108] Mixed agreements therefore

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107 Article 3 of the Treaty of Rome states the objectives of the Community as follows: the elimination of customs duties; the establishment of a common tariff and of a common commercial policy towards third countries; the abolition of obstacles to freedom of movement for persons services and capital; the adoption of a common policy in agriculture, transport and competition; the approximation of national laws to EC laws; the creation of a European Social Fund; the establishment of a European Investment Bank, and the association of the overseas countries and territories.

108 Jürgen Schwarze, "Towards a European Foreign Policy-Legal Aspects," *op. cit.* p. 73.

provide a means for the member states to avoid Community pre-emption and may result in a compromise between the two.[109]

Mixity seems to solve many of the practical problems resulting from the difficulty in dividing spheres of competence.[110] However, looked at from another point of view, it also provides a method of circumvention for the member states from the Community method, and risks "compromising the effective defence of the common interests of the Community".[111] Mixed agreements also leave open the question of liability as it may not be clear whether the Community or the member state is liable if difficulties arise in enforcement.

The Court, in its *Laying Up Fund*[112] opinion was critical of the mixed agreement, noting that a special problem arose because of the participation in the draft agreement not only of the Community and Switzerland (the third party) but also of certain member states whose involvement aimed at removing

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109 See J. Weiler, "The External Legal Relations of Non-Unitary Actors: Mixity and the Federal Principle", in D. O'Keefe and H. Schermers (eds.) *Mixed Agreements*, (1983) p. 35.

110 See Henry G. Schermers, "The Internal Effect of Community Treaty-Making", in D. O'Keefe and H. Schermers (eds.), *Essays in European Law and Integration*, (Deventer: Kluwer, 1982) p. 170.

111 *Local Cost Standard*, Part B, 2.

112 For a discussion of the *Laying Up Fund* case in its relation to the treaty-making power of the Community, see M. Hardy, "Opinion 1/76 of the Court of Justice: The Rhine Case and the Treaty-Making Powers of the Community," *Common Market Law Review*, vol. 14 (1977) pp. 561-600.

certain legal obstacles arising from prior conventions.[113] "The participation of these states in the Agreement must be considered as being solely for this purpose and not necessary for features of the system."[114] The Opinion goes on to say that "the participation of these Member States, though justified for the above-mentioned purpose, has however produced results extending beyond that objective which are incompatible with the requirements implied by the very concepts of the Community and its common policy."[115]

Similarly, in the *ERTA* judgement the Court, after placing the competence to conclude the agreement squarely with the Community, went on to say that, "Community powers exclude the possibility of concurrent powers on the part of Member States, since any step taken outside the framework of the Community institutions would be incompatible with the unity of the Common Market and the uniform application of Community law."[116]

A similar argument was raised in the *Local Cost Standard* judgement where the Court succinctly pointed out that: "the provisions of Articles 113 and 114 concerning the conditions under which, according to the Treaty, agreements on commercial policy must be concluded show clearly that the

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113 Para. 6, *Laying Up Fund.*
114 Para. 7, *Laying Up Fund.*
115 Para. 8, *Laying Up Fund.*
116 Para. 31, *ERTA.*

exercise of concurrent powers by the Member States and the Community in this matter is impossible."[117]

Conclusion

Opinions of the Court 1/76 (*Laying Up Fund*) and 1/78 (*International Agreement on Natural Rubber*) allow for only limited participation by the member states in the negotiation and conclusion of international treaties. These opinions are important because they deal with the concept of the Common Commercial Policy and its scope in international relations. Only a circumscribed role is allowed for the member states in the negotiation of treaties involving external trade.[118] The Community is vested with the authority to act.

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117 *Local Cost Standard*, Part B, 2.

118 In order to resolve the problem of the member states being excluded, the Council decided to follow a special procedure in the case of international commodities agreements which seems to contravene both the relevant Treaty provisions and the *Natural Rubber* opinion. The PROBA 20 formula is an arrangement between the Commission and the Council arrived at in 1981 by the Committee of Permanent Representatives (COREPER) concerning participation in international negotiations on raw materials. The Commission held that PROBA 20, set up as a special procedure to be followed in the negotiation and signing of commodities agreements, was a political initiative aimed at improving the Community's external image and reinforcing its cohesion and solidarity. The essential element "consists in the leaving aside of any legal or institutional considerations with regard to the respective powers of the Community and Member States." PROBA 20 called for joint participation of the Commission and the Member States in the form of a joint delegation who, though a single spokesman, voice a common position. See *Arrangement between the Council and the Commission*

The foregoing detailed exegesis of the Court's widening of community external (and therefore sometimes foreign) relations powers demonstrates the strength of two forces: one, the ECJ as an integrative force, with an aim to strengthen the institutions of the Community, and two, the determination of the member states in their aim to maintain sovereignty.

The Court has widened the interpretation of Article 113 so that the political aspects of the Community's trade policies are included in the competence of Community treaties with third states. However, while the the European Court of Justice has been instrumental in developing the external relations competence of the Community, the pratical differences that this legal expansion of powers has not been highly significant. Concerning the role the foreign affairs powers granted to the Community with the European Road Transport Authority decision, it has been noted that:

> The Council has been extremely reluctant to apply that principle, although it is not in dispute as such.... It seems to be unclear whether in practice the ERTA principle leads to an exclusive jurisdiction of the Community in specific matters or whether there is divided jurisdiction between the

Community and the Member States and to what extent.(119)

Yet the consistency of EPC and external relations is crucial to the development of an effective form of foreign policy decision-making and implementation. The combining of the Community and EPC decision-making processes creates the potential for an effective method of consultation and coordination of positions before action is taken. Community procedures can then support those of EPC: meetings in the framework of EPC leading to action under a Community competence.

The above discussion of Court cases, opinions and judgements reveals that economic decisions are not only politically significant, but also that a distinct set of non-political objectives for which Community or member states competence can be neatly divided is extremely difficult if not impossible.

Economic sanctions, discussed in chapter four, are a perfect example of the difficulty of separating out the political aspects of the Community's commercial policy. Sanctions can be considered a political instrument which use economic means to fulfil their goal, therefore they implicitly pose problems for the EC in terms of reconciling the division

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concerning participation in international negotiations on Raw Materials, OJ L 174, 27 March 1981.

119 Jochen A. Frowein, "The competences of the European Community in the field of external relations," *op. cit.*, p. 32.

between external economic and political relations. From the Commission' point of view, reflected in their submission to the Court in the *Natural Rubber* judgement, trade measures such as economic sanctions can be considered a step toward regulating trade, thus becoming a matter for the CCP, and therefore an exclusive Community competence. From the Council's stand-point one must regard the motivation behind the trade measure, its *raison d'être*.

The next chapter, which deals with the European Community and international sanctions, will show how the EC has, through combining competences, been able to act despite the tensions and difficulties in defining margins of automomous authority between Community and member states.

CHAPTER 4

SANCTIONS AND THE EC

Introduction

The limited range of foreign policy instruments available to the Community, although potentially large as has been shown in the previous chapter, is most highly developed in the form of the imposition of sanctions. The issue of sanctions cuts at the heart of the crucial issues in this thesis: the relationship of EC to EPC, the Community to its member states, the legal competences available to the Community for the pursuit of foreign policy objectives, and the controversial scope not only of Article 113, but also of Articles 224 and 235.

While this chapter will analyse these points, it will also look at the objectives of sanctions other than those stated as the primary aim, and the implications of these objectives

for the European Community. It is not the purpose here to determine only whether sanctions are useful for the European Community to pursue foreign policy objectives. Rather, it is to ascertain to what degree sanctions are a useful method for uniting the EC in action, pursuing foreign policy objectives through the guise of economic external relations, and strengthening the EC as an international actor.

Much of the literature on sanctions is concerned with determining whether they are an efficient, reliable, and successful method of influencing the economic and foreign policy of a state. In other words, do they work? This line of enquiry is problematical because there are many motives for imposing sanctions, which may or may not have to do with a measurable outcome. Asking whether or not sanctions work often relies on a narrowly defined measure of success or failure: did the sanctions result in a desired policy change in the target state.[1]

The determinants of success for the European Community are, however, rather different, being based on legitimisation, the degree to which the Community can act coherently, and not only on the influence of behaviour on the target state. In this case the impact on the target state and its change (or not) of policy is less important than the signal which action sends to the international environment. From an

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1 See G. C. Hufbauer, J. J. Schott and K. A. Elliot, *Economic Sanctions Reconsidered: History and Current Policy*, 2nd edition, 2 volumes (Washington, DC: Institute for International Economics, 1990).

interdependence perspective, sanctions are one way of organising a response which not only takes advantage of economic ties, but also of the "multiple channels" of interdependent relationships. Sanctions also buttress non-military definitions of power.

This chapter will therefore analyse the role that sanctions play in providing a means with which the Community can act and react when international crises erupt. First, by providing one of the few concrete instruments at the Community's disposal. Second, by providing a form of accordant action that brings with it less chance for heated disagreement. Third, and most crucially, by providing an organised means with which to signal the actor capability of the Community to the international environment.

Before proceeding, however, first a review of the instruments available to EPC for influencing or reacting to the behaviour of third states other than sanctions is necessary and enlightening.

I. Instruments of Action Available to the EC

1. Instruments of action under EPC

The European Community is, to a large degree, bereft of concrete responses to international events. The instruments which are available to the European Community for action in specific situations are limited to the constitutional

framework of the Treaties. Imposing sanctions is one method of applying an instrument of foreign policy to a particular problem or event. This method may or may not rely on EPC, as will be discussed below. But under the framework of EPC, there are means of action and instruments available other than those of a punitive nature.

1.1 Declarations

First, EPC has declarations, which make up the bulk of specifically EPC foreign policy actions.[2] Through this arrangement member states agree on a unilateral position toward third parties by issuing a statement. While declarations have no legal standing, they do provide a concrete response. They furnish a unified European front and provide a means for the rest of the world to know the Community position on a particular issue. This outside awareness of the Community stance is particularly important in developing Community legitimation, and will be discussed later in this chapter.

Declarations also send a public signal to the party at which the statement is directed, providing a distinct and visible form of disapprobation. Related to declarations is the public support or rejection of proposals which have been

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2 See Panayiotis Ifestos, *European Political Cooperation* (Aldershot: Avebury, 1987) p. 235.

brought forward in international fora such as the United Nations.(3)

EPC has been criticised for its mere "declaratory diplomacy", since its effects are seen as indirect and weak. However, this "mere verbal policy,"(4) may be an effective means of establishing the Community in the international system, and enhancing legitimacy.

> It should be remembered that a common declaration of intent, although the EC is not able to implement it immediately, may very well have long run effects. Such a declaration may, for instance, lay the foundation for the tacit co-ordination of the policies of the nine in relation to some other international actor.(5)

1.2 National legislation

The second instrument available to the Community are the means available to the individual member states through

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3 See W. Wessels, "European poolitical cooperation: a new appproach to European foreign policy," , David Allen, Reinhardt Rummel, and Wolfgang Wessels, eds. *European Political Cooperation* (London: Butterworths, 1982) p. 9.

4 Pieter Jan Kuyper, *The Implementation of International Sanctions: The Netherlands and Rhodesia*, (Alphen aan an den Rijn: Sijthoff and Nordhoff, 1978) p. 237. Another criticism of EPC declarations, according to P. Ifestos, is that they are only effective when circumstances happen to coincide with member states' national interests. See Panayiotis Ifestos, *European Political Cooperation* (Aldershot: Avebury, 1987) p. 234.

5 Gunnar Sjöstedt *The external role of the European Community* (Farnborough: Teakfield, 1977) p. 48.

their national legislatures. If a common approach is agreed upon under EPC, it must often be operationalized through the national policy instruments of the member states. National policies can be coordinated and used to implement EPC measures. This type of collective instrument is really a quasi-EPC measure because it relies totally on the member states. However, as will be shown in chapter six, the use of national policies can be effective. National measures can be created, or passed through the legislature of the member state, simply to facilitate an EPC prerogative.

1.3 Diplomatic recognition

A third instrument is a diplomatic one: recognition. Whether the Community decides to recognise a state officially or not, and the timing of that recognition, is a definitive instrument of EPC. Recognition can be an effective instrument for several reasons. First, it can be a question of international reputation and status for a would be state to obtain the official recognition of another state or international organisation. Being a fully recognised state in the international environment brings with it a certain standing, which many former republics, territories, or former colonies have been eager to receive. Second, through the giving or withholding of recognition it is possible to create important political demands. One such demand which provides a powerful link to recognition is the establishment

of constitutional clauses which may help to protect the rights of various minorities or subgroups.

A dramatic example of the power of the recognition instrument was seen during the Yugoslavian situation in 1991. Here was an example when the Community most needed to fulfil its mandate to consult and cooperate in order to determine when or if the republics of Croatia and Slovenia should be recognised. The Federal Republic of Germany failed to bend to the consensual politics of EPC and went on to recognise Croatia and Slovenia on 23 December 1991. Germany's independent action came as a big setback to the reflex of consultation. It also preempted the opportunity for the Community to use recognition as a tool for influencing or shaping constitutional protection clauses, or to use the withholding of recognition as a penalty for non-compliance. Thus, the inclusion of constitutional guarantees could have been held out as a prerequisite for the granting of recognition

Most instruments of action under EPC rely on and assume a consistency and merger with EEC mechanisms (primarily under the CCP). The Community can engage in formal agreements which involve both EC and EPC mechanism. Formal agreements within EPC come the closest to mirroring Community contractual arrangements with third states and international organisations. However, EPC discussions, even those which end up written into formal agreements, are usually in broad, general terms-i.e. agreements of principle-and not in the

specific detail of the agreements reached on trade or commercial matters.

Unlike negotiations under the Common Commercial Policy, EPC agreements are negotiated by the Presidency (assisted by the EPC Secretariat) and instead of qualified majority voting, EPC decisions require consensus by the member states. According to the Single European Act:

> The Presidency shall be responsible for initiating action and coordinating and representing the position of the Member States in relations with third countries in respect of European Political Cooperation activities(6)

Since the Presidency is held by the member state who holds the Presidency of the European Council, consistency between EPC and EC is, theoretically, maintained.

The instruments which EPC has available are weak, circuitous and contingent upon the action of the member states. Measures are always subject to the veto of one of the member states, which operate under a variety of perceptions of their national interest. The instruments of EPC can be classified as:

> unmistakenly in national hands, and their occasional use for the implementation of European-level foreign policy goals depends completely on the willingness

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6 Title III, Article 30(10)(b).

of the member states to do so, and the existence of an agreement among them.(7)

2. Instruments of action under EC

The instruments available to the Community are tenaciously tied to the Treaties, and a constitutional basis for any action must be firmly fixed. The constitutional bases of EC instruments are listed in Table 4.1 to show the scope of the Community's potential reach through the Treaty. In examining the the type of actions or involvements that the Treaty-based provisions allow, it is evident that specific mention of foreign policy instruments is lacking. The various articles discuss the opening and maintenance of relations, negotiating and concluding accords, and establishing associations. Yet these treaty-based external relations are the prime foundation on which much of the Community's foreign policy is produced. EPC provides a forum for discussion, but the bulk of concrete measures are taken under the pretext of economics. The distinction may be illusory, but the divide that was established to make progress first in the economic field has proven to be stalwart.

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7 Panayiotis Ifestos, *op. cit.*, p. 237.

TABLE 4.1

Constitutional bases of Community external actions (Treaty of Rome, 1957) (8)

EEC Article	Provisions
Article 110	commits member states to contribute to harmonious development of world trade, to abolition of world trade restrictions, to lower customs barriers
Article 113	allows Council to authorise Commission to conduct and conclude trade negotiations
Articles 131-136	provides for association agreements with non-European states and territories
Article 224-225	allows for consultations between member states regarding the functioning of the common market during war or other security crises
Article 228	provides base for Commission to negotiate accords with third states and international organisations. Council concludes these accords after consulting with the European Parliament
Article 229	provides for Commission to maintain relations with United Nations, GATT and other int. bodies
Article 230	authorises EC to cooperate with Council of Europe
Article 231	authorises EC to establish links with OECD
Article 234	asks member states to eliminate contrarieties when, before the entry of Rome Treaty, they had rights and obligations from accords with third states
Article 235	Provides for the Council, acting on a proposal from the Commission, to take appropriate measures when the Treaty has not provided the powers
Article 237	provides for European states to apply to become a member of the EC. Application is addressed to the Council, which must act unanimously after consulting the Commission
Article 238	provides for EC to conclude accords with third states establishing an association with reciprocal rights, obligations special procedures and common action

8 In addition, Treaty articles, such as those governing the Common Agricultral Policy, have external dimensions.

The most tangible result of this divide is the foreign policy mechanism of sanctions. The imposition of economic sanctions requires not merely the blurring of the distinction between economic and political realms, but even its eradication. Therefore sanctions are a cogent illustration of the dichotomy between external economic relations and foreign poliymaking, and illuminate the shadowy line straddling international economics, security, and foreign policy.

This chapter focuses on sanctions precisely because they are the most concrete foreign policy mechanism that the EC can put into action. They are also the most cogent example of the relationship between EPC and EC external relations because sanctions are made operational through the common commercial policy.

The following section on the general theory and definition of sanctions provides the background necessary to examine the European Community's use of sanctions as a foreign policy instrument.

II. The Definition of Sanctions

1. The terms

Many terms have been used to define the economic methods of influence available to policy makers. Most are concerned with economic instruments as a means to an end. While the term economic sanctions usually refers to methods of influence and their outcomes, it is used here to refer to the structure of the international environment, the nature of international organisation, and the legitimacy of the EC. Economic warfare, economic sanctions, economic coercion, etc.: when so many terms are used to describe a particular phenomenon an exercise in definition is required. This undertaking is useful not only to distinguish between the various terms that writers on the subject use, but also to come to a clearer understanding of what sanctions are about, and why specific terms have been chosen for this thesis.(9)

Although the above terms have often been used interchangeably and without specific definitions, it is important to differentiate between them in order to come to a better understanding of why economic sanctions is the preferred expression here. Economic sanctions may seem at

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9 Daoudi and Dajani point out in their interesting first chapter on the definition of sanctions, that the term sanctions only takes on a negative connotation when in the plural form: "sanction" in the singular means approval, or to condone. See M. S. Daoudi and M. S. Dajani, *Economic Sanctions: ideals and experience* (London: Routledge & Keegan Paul, 1983) pp. 1-15.

first to be rather a narrow term to choose for analysing the EC as an international actor. It has certain legalistic overtones; it is more concerned with economic tools for punishment, coercion, deterrence, and adherence to international law. The criticism usually levelled at the term sanctions is that it is more concerned with effects rather than methods used for achieving those effects.[10]

Although it is precisely with effects that this study is centered, it is also crucial to recognise the linkages between methods and effects. In the case of the Community the link is reflected in the relationship between the Community, as an actor in its own right, and the member states resistance to Community action. Community competences are ostensibly reserved for economic and commercial matters and not foreign policy, but economic sanctions traverse the two realms so conspicuously that it is difficult to assess the effects of the sanctions, both internally and externally, without considering how the Community arrived at the necessary competences with which to impose sanctions. Thus, in the case of the Community, the linkages between the methods and the effects of those methods, discussed below, are crucial for any measurement of the success of sanctions. However, the term is useful because although it is concerned with methods of influence it does not limit the discussion in terms of outcomes.

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10 David Baldwin, *Economic Statecraft* (Princeton: Princeton University Press, 1985) p. 36.

The term statecraft suggests techniques of foreign policy making. Kenneth Holsti defines statecraft as "the organized actions governments take to change the external environment in general or the policies and actions of other states in particular to achieve the objectives that have been set by policy makers."[11] The term sanctions, conversely, directly refers to the methods chosen, but is not limited only to these tools. Rather it is a starting point for a discussion of the implications of using these tools.

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11 K. J. Holsti, "The Study of Diplomacy", in James Rosenau, Kenneth W. Thompson, and Gavin Boyd, eds., *World Politics* (New York: Free Press, 1976) p. 293. Other terms include, 1) foreign economic policy refers to the way states influence the international economic environment. It is concerned with influencing behaviour, therefore a narrow range of goals act as the measuring stick for success. See Benjamin Cohen, ed., *American Foreign Economic Policy: Essays and Comments* (New York: Harper and Row, 1968) p. 10; 2) The term economic coercion is used regularly and often interchangeably with the term economic sanctions. It implies the forceful changing of another states behavior through the use of negative sanctions to accomplish this goal. Coercion implicitly leaves no room for multiple goals: state A is forced to do what state B wants.See for example, Richard Stuart Olson, "Economic Coercion in World Politics: With a focus on North-South Relations", *World Politics* XXXI (July, 1979) pp. 471-494. See also, Klaus Knorr, *Power of Nations: The Political Economy of International Relations* (New York: Basic Books, 1975) pp. 4-5; 3) The term economic warfare is concerned with measures taken to weaken the target's capacity to wage war. It is usually associated with wartime activity, and the blockades, embargoes, attacks on industrial operations that occur during a military conflict. See E. Wallensteen, "Characteristics of Economic Sanctions," *Journal of Peace Research*, vol. 3 (1968) p. 248; Klaus Knorr "International Economic Leverage and its Uses," in K. Knorr and Frank N. Trager, eds., *Economic issues and National Security* (Lawrence, Kansas: University Press of Kansas, 1977).

The term economic statecraft may be useful in this study because, although it highlights means rather than ends, it is not a narrow definition, and centers on a wide range of goals. Economic statecraft is defined as policy influence attempts aimed at other international actors with the goal of influencing some dimension of the target's behavior (including noneconomic areas such as beliefs, attitudes, opinions, expectations etc.).[12] According to Baldwin "it makes it conceptually possible the empirically undeniable fact that policy makers sometimes use economic means to pursue a wide variety of noneconomic ends."[13] However it is still primarily concerned with influence of behavior, even if the term is less focused on specific outcomes.

2. The uses of sanctions

According to Renwick, a state when faced with an international crisis has three options available: to do nothing, to respond militarily, or to impose economic sanctions.[14] The initial idea of the use of international sanctions was part of the Covenant of the League of Nations' attempt at substituting order, through arbitration and negotiation, for war. The first of four principles laid down in the Preamble to the Covenant states that in

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12 David Baldwin, *Economic Statecraft, op. cit.*, p. 32.
13 David Baldwin, *Economic Statecraft, op. cit.*, p. 40.
14 Robin Renwick, *Economic Sanctions*, (Cambridge: Harvard University Center for International Affairs, 1981). p. 1.

international relations states must accept their obligation "not to resort to war".[15] Of course the use of sanctions goes back to well before the First World War. The first use of sanctions which is documented is the imposition of a decree by Athens in 432 B.C. "that the Megarians be banished both from our land and from our markets and from the sea and from the continent."[16]

According to a report by the Royal Institute of International Affairs, sanctions are defined as "action taken by members of the international community against an infringement, actual or threatened, of the law".[17] This definition is broader than that given in an earlier report which defined them as "measures for securing obedience to law".[18] The former taking into consideration the

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15 This does not mean that states and their populations suffer less as the targets of economic sanctions than they would from a military response. As Cooper points out, it took a civil war and fourteen years of sanctions before majority rule obtained in Rhodesia. see Richard Cooper, "Trade Policy as Foreign Policy", in Robert M. Stern, ed., *U.S. Trade Policies in a Changing World Economy*, (London: The MIT Press, 1987), p. 318.

16 See Aristophanes, *The Archanians* in Eleven Comedies, quoted in Stephanie A. Lenway, "Between war and commerce: economic sanctions as a tool of statecraft", *International Organization* 42:1 (Spring, 1988) p.410. For an analysis of the Megarian decree see David Baldwin, *Economic Statecraft, op. cit.*, and Hufbauer and Schott, *Economic Sanctions Reconsidered, op. cit.*

17 *International Sanctions: A Report by a Group of Members of the Royal Institute of International Affairs*, (London: Oxford University Press for RIIA, 1938) p. 16.

18 See *Sanctions: The Character of International Sanctions and their Application*, (London: The Royal Institute of International Affairs, 1935) p. 5. These legalistic definitions of sanctions are elaborated on by Margaret Doxey, who defines sanctions as "negative measures which seek to influence conduct by threatening and, if necessary, imposing penalties for non-conformity with

international aspect of sanctions and their nature as objects of collective action; the latter defining them as instruments of international law.[19]

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law". See M. Doxey, "International Sanctions: A framework for analysis with special reference to the UN and Southern Africa", *International Organisation* 26 (1972) p. 528. Doxey further limits her definition to "justifiable reaction to wrongdoing", and discounts those definitions which are "used loosely and inaccurately to describe any politically motivated injurious act of foreign policy", M. Doxey, "International Sanctions: Trials of Strength or Tests of Weakness?", *Millenium* 12:1 (1983) p. 82.

19 Sanctions' definitions have also emphasized "deprivations or indulgences of individual and group norms for the purpose of supporting the primary norms of a public order system". See Richard Arens and Harold D. Lasswell, "Toward a General Theory of Sanctions", *Iowa Law Review* 49 (1964), pp. 233-4. Donald Losman defines sanctions as "penalties inflicted upon one or more states by one or more others, generally to coerce the target nation(s) to comply with certain norms that the boycott initiators deem proper or necessary". See Donald L. Losman, *International Economic Sanctions: The Cases of Cuba, Israel and Rhodesia*, (Albuquerque: University of New Mexico Press, 1979), p. 1. Johan Galtung's definition elaborates on this, introducing the notion of retaliatory effects: "actions initiated by one or more international actors (the senders) against one or more others (the receivers) with either or both of two purposes: to punish the receivers by depriving them of some value and/or to make the receivers comply with certain norms the senders deem important." Johan Galtung, "On the Effects of International Economic Sanctions, with Examples from the case of Rhodesia", *World Politics* XIX (1967) p. 379. Richard Olson goes further to clarify Galtung's interpretation by introducing the word 'target' to describe the receivers of economic penalties, thus placing the emphasis on the isolation of the targeted state.Richard S. Olson, "Economic Coercion in World Politics, with a Focus on North-South Relations", *World Politics* XXXI (July, 1979) p. 474. Hufbauer and Schott define economic sanctions as "the deliberate government-inspired withdrawal, or threat of withdrawal, of 'customary' trade or financial relations". However, Hufbauer and Schott deliberately separate out the diplomatic and foreign policy goals of sanctions except when these aspects are "closely connected with economic sanctions ('carrot and stick diplomacy')".See Gary C. Hufbauer and Jeffrey J. Schott,

In this chapter the definition of sanctions will adhere to the one propounded by Richard S. Olson[20] with the inclusion of a variety of goals. Therefore sanctions in this discussion are defined as:

> penalties including the withdrawal or threat of withdrawal of usual financial, trade, or diplomatic relations inflicted on one or more states by one or more others with a multiplicy of prospective goals both for the receiver and the sender.

The above definition does not attempt to eliminate from the discussion the foreign policy and political objectives of the senders. Nor does it attempt to delineate the objectives of the sanctions. Although the fundamental reason for the implementation of sanctions may not be to change the behaviour of a state, it is one factor in the catalogue of reasons. While foreign policy includes "decisions and actions which involve to some appreciable extent relations between one state and others,"[21] it also includes the pursuit of objectives and the actions necessary to achieve them. Sanctions are one of the instruments with which states, or groups of states pursue objectives. However, this analysis of sanctions will concentrate on the multiple

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Economic Sanctions Reconsidered: History and Current Policy, (Washington DC: Institute for International Economics, 1985) p. 2.

20 Richard S. Olson, "Economic Coercion in World Politics," *op. cit.*

21 Joseph Frankel, *The Making of Foreign Policy: an analysis of decision-making* (New York, 1963).

inputs and outputs in a sanctions episode and how this effects the sender, the target, and also the international audience. As Brown-John states: "sanctions must be viewed as a political function".[22]

3. The dilemma of sanctions

The use of sanctions as a method of ameliorating an international crisis situation does not have a particularly admirable record of success. According to Doxey, "one must concede that the deterrent and coercive force of sanctions is weak on almost every count".[23] On the effectiveness of sanctions as an element of the United Nation's enforcement process, Leonard Kapungu notes that "economic sanctions alone are a blunt and ineffective instrument of peace enforcement".[24] Harry Strack, writing of the use of sanctions by Great Britain and the United Nations against Rhodesia, noted that: "Not only did sanctions fail to achieve their major goal, but they may have been a contributory factor to the deterioration of a situation which they were designed to alleviate".[25] Klaus Knorr argues that economic sanctions fail because "no matter how

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22 C. Lloyd Brown-John, *Multilateral Sanctions in International Law* (New York: Praeger, 1975).
23 M. Doxey, "International Sanctions: A framework for analysis with special reference to the UN and Southern Africa", *International Organisation* 26 (1972) p. 547.
24 Leonard T. Kapungu, *The United Nations and Economic Sanctions Against Rhodesia*, (Lexington, Massachusetts: Lexington Books, 1973) p. 129.
25 Harry Strack, *Sanctions: The Case of Rhodesia*, (Syracuse: Syracuse University Press, 1978) p. 237.

dependent the target country is on its trade with the state attempting an economic power play, the government under pressure can usually turn to other partners."[26] Writing of the use of economic instruments as a source of power, he states: "collective trade and other economic sanctions have proved abortive."[27]

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26 Klaus Knorr, *Power and Wealth: The Political Economy of International Power* (New York: Basic Books, 1973) p. 152. Knorr also concludes that sanctions promote a sense of political solidarity in the target state: Instead of "promoting political disintegration in the target state, coercive trade sanctions tend to foster political integration." p. 154.

27 Klaus Knorr, *Power and Wealth, op. cit.*, p. 156. The list of writers who have considered and subsequently discounted the effectiveness of economic coercion is long. See for example, R. Cooper "Trade Policy as Foreign Policy", in Robert M. Stern, ed., *U.S. Trade Policies in a Changing World Economy*, (London: The MIT Press, 1987); J. Galtung, "On the Effects of International Economic Sanctions, with Examples from the case of Rhodesia", *World Politics* XIX (1967); Judith Miller, "When Sanctions Worked", *Foreign Policy* 39 (Summer, 1980). Miller writes: "while trade boycotts, embargoes and other economic sanctions are legitimate alternatives to military action they rarely work", p. 118; E. G. Cross writes, "economic sanctions are a comparatively ineffective means of exercising political leverage", "Economic Sanctions as a Tool of Policy against Rhodesia", *The World Economy* 4 (March, 1981) p. 74. In many cases sanctions are not only ineffective, but may have the opposite effect of those stated by the imposing state(s), militating against political change rather than quickening it. They often serve to cement the target state together, bolstering patriotism and instilling a sense of cohesion in the population. Leonard Kapungu notes that sanctions "welded together the Rhodesian conservative element in support of the survival of the regime" See Leonard T. Kapungu, *The United Nations and Economic Sanctions Against Rhodesia, op. cit.*, p. 128. Further, Margaret Doxey argues that sanctions, by ostracising the target state, close channels of communication and curb diplomatic efforts adding to the sense of siege.See M. Doxey, *Economic Sanctions and International Enforcement*, (London: Oxford University Press, 1971) p. 140.

This leaves somewhat of a paradox: sanctions are not only ineffective, but also may lead to the entrenchment of an already deleterious situation. Yet, in spite of the above limitations to their effectiveness, sanctions continue to be used.[28]

Several reasons for the continued use of economic sanctions have been put forward. First, in a world armed with nuclear weapons and other weapons of mass destruction, there is arguably a dearth of alternatives to the use of economic means. The military option is often unthinkable and, in terms of proportion, may be a heavy-handed response to a situation which demands, although more than a diplomatic effort, certainly less than a military one.[29]

Second, whether for reasons of economic weakness or political disagreement, states are often not in a position to pursue a military option. In the case of the European Community, for example, it is, at the current stage of integration, impossible for it to agree on any form of action more substantial than declarations through European

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28 See Christopher Hill and James Mayall, "The Sanctions Problem: International and European Perspectives", *European University Institute Working Paper No. 59*, (Florence: European University Institute, 1983).

29 Further, according to Klaus Knorr there are four reasons why war is not as easy or reliable as it used to be in the late nineteenth or early twentieth centuries: 1. the restraint of nuclear powers from using nuclear weapons against non-nuclear states; 2. potential backing by the rival superpower; 3. the diminished legitimacy of the use of force; 4. the rapid spread of nationalism among less-developed countries and their combined will to resist superpower pressure. See Klaus Knorr, *The Power of Nations*, (New York: Basic Books, 1975) p. 112.

Political Cooperation, sending "monitors" to observe in crisis areas, or economic sanctions. Asymmetry of power may also be a reason for the economic option. Certainly the OPEC states would not have launched a military attack against the West to force the return of lands occupied by Israel. States in possession of an essential product can balance an asymmetry of power in one area by resorting to economic rather than military warfare in pursuit of their objective.

Third, quite apart from their efficacy instrumentally, sanctions provide a symbolic indication that a state or group of states is not content with the behaviour of another. Sanctions provide a method of displaying this disapproval which is relatively cheap, compared to the costs of engaging in an armed response, and politically and socially more acceptable. Thus even economically and militarily powerful states use sanctions. The United States did not attack Iraq militarily in 1980 when it was alleged that Iraq was involved in state-sponsored terrorism. Rather it used export restraints. This method of action not only showed the disapproval of the United States to Iraqi involvement in terrorism, but also provided a method of responding to a situation in a measured way, thus limiting potential political damage to the Carter government.[30]

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30 Sanctions did not always prove a successful method for the Carter administration. The 1980 grain embargo and Olympic games boycott resulted in tremendous political fall-out for Carter. For an analysis of the grain embargo see, Barry Carter, *International Economic Sanctions*, pp. 70-75; see also the report drawn up in

Much of the literature on sanctions has, as would be expected, been centered on their use in the context of the Cold War: sanctions as an option to avoid superpower alliance shifts and the threat of nuclear war between the superpowers. In the post Cold War situation some of these widely held views must be replaced by a more complex and varied understanding of the reasons for and implications of using sanctions.

4. The sanctions dilemma revisited

Scepticism about the efficacy of sanctions has not deterred states from employing them very regularly, and making every attempt to encourage other states to follow suit. It is now the expected reaction to an international crisis or incident. Although there is a general consensus that sanctions are ineffective as a coercive policy instrument,[31] they are often the most acceptable option, and indeed an option which is almost automatically part of the calculus of the international crisis response.

Apart from being politically and economically attractive to the sender, sanctions are also often used for other reasons.

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the United States Congress by the Sub-committee on Foreign Affairs, 97th Congress, Ist Session, *An Assessment of the Afghanistan Sanctions: Implications for Trade and Diplomacy in the 1980s*, (1981).

31 However, this consensus does, in fact, shift over the years. See M. S. Daoudi and M. S. Dajani, *Economic Sanctions: Ideals and Experience*, (London: Routledge & Kegan Paul, 1983).

The goals and objectives of sanctions are often more complex than their primary aim of influencing the behaviour of a state would suggest. Placing the emphasis on the change in the behaviour of the target state is described by Daoudi and Dajani as "the 'bull's-eye fallacy,'i.e., the erroneous idea that unless economic sanctions succeed in achieving their publicly stated initial demands, they have failed."[32] David Baldwin incorporates this into his argument. He claims that most writers on economic sanctions have failed to differentiate between relational and property concepts, which he argues are crucial to assessing the effectiveness of economic sanctions. Property concepts are those attributes of a state which are fixed, such as geography, populations, wealth. Relational concepts can only be measured or understood in comparison or relation to another actor. These properties include such attributes as influence, capabilities, outcomes and results. The importance of these two concepts lies in the way sanctions episodes are viewed by the target:

> Embargoes may trigger a sense of shame, impose a sense of isolation from the world community, signal a willingness to use more radical measures, or simply provoke a reexamination of policy stances in the target country. Any or all of these effects can occur without any economic effects whatsoever on the target. Economic sanctions may have diplomatic,

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32 *ibid*, p. 168.

> psychological, political, military, or other effects even when their economic effect is nil. Ignoring this fact severely impairs one's ability to evaluate the costs and effectiveness of economic sanctions as instruments of foreign policy.(33)

James Barber, refers to these ancillary goals, as "secondary" and "tertiary" objectives.(34) Barber concludes that secondary and tertiary goals are vital to the debate for they take the emphasis away from the primary objectives, where they are arguably ineffective, and place it elsewhere. According to Barber, secondary goals are those which involve:

> the status, reputation and position of the government imposing them. In broad terms these objectives have positive and negative aspects, and they are directed to both home and international audiences. Positively, they are intended to demonstrate the effectiveness of the imposing

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33 David Baldwin, *Economic Statecraft*, *op. cit.*, p. 63.

34 James Barber, "Economic Sanctions as a Policy Instrument", *International Affairs* (July, 1979) pp. 367-384. According to Barber, the primary goals of economic sanctions are concerned with changing the behaviour of an offending state. Often, imposing states, the senders, gives these goals the most emphasis as they have an immediate and compelling nature and are directly and obviously related to the situation which demands the action taken. For example, during the prelude to the Gulf War in 1991 the primary aim of sanctions (called for by the United Nations) was to punish Iraq for its invasion and occupation of Kuwait and to bring about Iraq's retreat.

> government....The purpose of sanctions here is to demonstrate a willingness and capacity to act.[35]

One example is the United States' continued embargo on Cuba. When the Organisation of American States lifted its sanctions against Cuba in 1975 the US maintained unilateral sanctions not necessarily with the immediate hope of removing Castro from power and eliminating Soviet influence in the western hemisphere. Rather, this policy entered "a 'grey' area of continuing economic warfare - the use of foreign policy weapons which make things difficult for the target but are not related to specific acts of wrong-doing".[36] In this case the primary objective of removing the Castro regime, was superseded the secondary objective: maintaining the reputation of the sender and sending the right foreign policy signals.

Symbolic signals are also an important aspect of a sanctions episode. David Baldwin emphasizes that sanctions can be effective even if the primary objective is not achieved. He states that compliance with the specific demands of the sender may not be the most important consideration. In the case of the continued embargo against Cuba by the United States, Baldwin states:

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35 James Barber, "Economic Sanctions as a Policy Instrument", *op. cit.*, p. 379-380.
36 M. Doxey, *International Sanctions in Contemporary Perspective*, (London: Macmillan Press, 1987) p. 64.

> The question of whether the government...calls itself "Marxist" may matter less because of immediate specific implications for United States interests than for the symbolic challenge to American hemispheric dominance. In such a situation the imposition of economic sanctions may be primarily aimed at reinforcing the image of American resolve to resist communism and only secondarily at compliance with specific demands.[37]

Sanctions act as a signal to the international community which demonstrate resolve, disapproval, condemnation or willingness to act. Symbolic action may be important even if the economic impact on the target is minimal, or even non-existent.

James Barber's early attempt to classify goals of sanctions into three categories, is refined and expanded by Baldwin into an analytical framework which includes multiple means *and* goals. Baldwin in fact criticises Barber for assigning the multiplicity of goals into distinct categories which he sees as impermeable. Although Baldwin acknowledges the importance of Barber's contribution to the analysis of sanctions, he states that "the relative importance of targets and goals should be treated an empirical matter rather than based on *a priori* assumptions embedded in a conceptual framework that assigns primary importance to

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37 David Baldwin, *Economic Statecraft*, *op. cit.*, p. 108.

objectives having to do with the behavior of the immediate target."[38]

However one may choose to categorize or not to categorize the ancillary goals of sanctions, it is apparent that more than one type of goal exists for the senders. In his analysis of sanctions, Makio Miyagawa claims that the various goals of sanctions can be hidden, and divides these goals into six categories:

> 1. the rule making effect - to announce to the international community, as well as the target, the principles which must be observed. Offending those principles will result in punishment.
>
> 2. the demonstration effect - to demonstrate to the international community, by the taking of decisive public action, the firm conviction of the sender that justice is on its side.
>
> 3. satisfying (or placating) public opinion - to give the appearance of resolute action against transgressors of rules of the international community, especially for the sake of the domestic (voting) population.
>
> 4. satisfying international public opinion - to maintain support for the bloc imposing the sanctions. To build or maintain alliances with

38 *ibid*, p. 18.

friendly states so as not to lose their allegiance to Communism.

5. the lifting of sanctions as a bargaining counter - to construct an artificial bargaining tool, by imposing sanctions and, in the process of negotiation for a settlement, offering to lift those measures.

6. undermining the target's strategic position - to remove or reduce the strategic threat of the target by damaging its economic ability to build up military forces.(39)

This list of hidden goals, although useful for analysing sanctions in a multidimensional way, fails to take into full consideration the relational concepts of Baldwin's approach. These concepts can be used to understand the necessity for an international actor, which does not have the quality of statehood to lend it legitimacy, to impose economic sanctions as a tool for strengthening viability. Such a case is the European Community.

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39 Makio Miyagawa, *Do Economic Sanctions Work?*, (New York: St. Martin's Press, 1992) pp. 91-103.

III. Sanctions as a two-way EC instrument

1. Sanctions and tertiary goals

Economic sanctions are one way that the EC can exert pressure on a third state, thus flexing its Common Market muscles. The EC has a strong voice and presence in the GATT negotiations, putting it in a bargaining position equal to that of the United States and Japan. Access, and the potential for denial, to the lucrative market which the EC possesses is a formidable tool of external policy. However, this section is not concerned with the potential for the EC to influence specific behaviour, but rather it is concerned with the use of sanctions as a tool for developing the EC as an international actor. For the European Community, then, the indirect effects of sanctions, beyond those of their immediate impact on the target state, are of great importance. To this end, sanctions are a vital tool.

It is evident that sanctions are a political instrument which use economic means - trade restrictions, embargoes, boycotts, raising tariffs - to fulfil a political end. Therefore their imposition, which involves the political use of economic instruments, by the European Community would appear to serve at least three functions in addition to the stated objective of changing the behaviour of the target state:

1. provide a strong, unified front to a target state.

2. strengthen the place of the EC in the structure of international relations.

3. demonstrate commitment to international involvement.

These are some of the auxiliary objectives of sanctions which can be applied in general to the use of sanctions as a policy instrument. These objectives can also be applied to the European Community where they are crucial to demonstrate its capacity as an international actor.

In his analysis of economic statecraft, David Baldwin, although arguing that sanctions do have a multitude of goals, still analyses sanctions in terms of their effectiveness as a foreign policy tool. In contrast, James Barber's analysis of tertiary goals addresses "the structure and behaviour of the international system generally, or those parts of it which affect the imposing states". (40) These objectives are both normative and structural, becoming a "means of upholding international norms by deterring those who might be tempted to break them and, if necessary, punishing those who do". (41) They are structural in the sense that they relate to the international environment, the conduct of diplomacy and the support for international organisations within that environment. Barber's tertiary

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40 James Barber, "Economic Sanctions as a Policy Instrument", *op. cit.*, p. 382.
41 *idem*.

framework is useful for analysing the European Community's attempt to utilize sanctions. According to Barber, tertiary goals include those which relate to the structure of the international system. The imposition of sanctions once again is placed within a broader framework: how states relate to each other, to the international environment and their place in the international system. This includes "support for a particular international structure":

> The form of this structure will depend on the way international relations are perceived. It may, for instance, be an attempt to defend a balance of power, or to ensure the coherence of a regional grouping.... Tertiary objectives are usually directed to defending or furthering existing structures or organisations, whether it be an alliance or an international body".[42]

This type of analysis responds to the usual work on sanctions by turning it around to look at the senders of sanctions and their international audience. It is concerned with action as an element of legitimacy.

To develop this reflective theory of sanctions it is helpful to look more closely at the concepts of legitimacy and legitimised action, as discussed in chapter two. Legitimised action, as a framework for analysing third party responses to conflict situations, has been developed by Jabri.

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42 James Barber, p. 382-383.

According to Jabri, legitimation "implies the recognition and acceptance of a party as a relevant actor in the system of a conflict and the issues which are of concern to that actor."[43] However, whereas Jabri is concerned with the legitimation of an actor, such as the PLO by its inclusion in the legitimate sphere of international relations (and thus taking its status out of the perimeter of international relations and placing squarely in the center), this chapter is concerned also with a non-state actor, but one whose legal legitimacy is not in doubt. Rather the legitimation which the EC seeks is not legal, but instead involves the perception of the international environment by the community of international actors. Legitimation, in this context, is directly applicable to the European Community for two reasons. First, the EC is a non-state actor and, although possessing legal personality, its establishment in the international system is dependent upon its actions in that system. Second, the relationship between the EC's political actions (EPC) and its commercial actions (EC treaty-based) is not clearly delineated. As Jürgen Schwarze notes: "Under the present legal system a clear distinction especially between foreign commercial policy matters of the Treaty (Art.113) and European foreign political affairs of the EPC,

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43 V. Jabri, "The European Community and Responses to Regional Conflict: The Case of the Israeli-Palestinian Conflict," Paper presented to the Eighth International Conference of Europeanists. The Council for European Studies, March 27-29 (1992) Chicago Illinois, p. 2.

often seems to be impossible."[44] Actions are therefore analysed as a means of attaining a multiplicity of goals, with a parallel number of competences used to accomplish them. The goals envisaged are not only changing the behavior of another state(s) by using either diplomatic or economic means, but also establishing the EC as a legitimised international actor.

This type of analysis is reflective because Community actions are first transmitted into the international arena and then may be reflected back as increased legitimacy. In this way Community actions are double-acting providing both the possibility of effecting the target, and receiving the benefits of that action itself.

The European Community can only strengthen its position in the structure of international relations by demonstrating coherence and purpose of action in its responses to international events. This coherence of action, although not completely consistent, could be seen in the Falkland Islands episode when the EC pulled together to impose sanctions against Argentina, as will be shown in chapter five.

As Paul Tsakaloyannis put it, "the EC rose almost Phoenix-like from the ashes or the wilderness" in the 1980s to adopt measures aimed at political, economic and monetary

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44 Jürgen Schwarze, "Towards a European Foreign Policy: Legal Aspects," in J. K. de Vrees *et al*, 1987, pp. 78-79.

union.[45] In the European Community's role as an actor it is vital that it does in fact act. Imposing sanctions is one method of applying an instrument of foreign policy which is at its disposal to a particular problem or event. An example is the European Community's action in the former Yugoslavia. The European Community is acting by assisting in the mediation of the conflict. Initially it was the only international actor, and currently it is one of the troika, the United States and the United Nations being the other two.

The European Community's representative, Lord David Owen, acted with the representatives of the United States and the United Nations, to try to work out a peaceful settlement. The United States at first, almost studiously, remained in the background, regarding the situation a "European" problem. The EC's primary goal may not be accomplished but this does not detract from the ancillary goals which are realised. First that the EC *will* get involved in world crisis events, and second and perhaps more important, that it will be *expected* to become involved. Once again these goals are both normative and structural, establishing customary patterns of behaviour and expectations for the EC and firmly placing it in the international order.

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45 See Panos Tsakaloyannis, "The EC, EPC and the Decline of Bipolarity," in Martin Holland, ed., *The Future of European Political Cooperation* (London: Macmillan, 1991) p. 38.

2. The implementation of sanctions

Economic sanctions are not primarily instruments of economic policy, but of foreign policy. Therefore they cross that already blurred line between EC external economic relations and EC political relations. For the European Community, whose foreign policy mechanisms may be thwarted by member states national interests, the major instrument of foreign policy action that has real bite are economic sanctions. European political cooperation is also a force, but is still primarily intergovernmental.

The EC has a wide range of legal mechanisms for imposing sanctions.(46) The Community method, involving Article 113, is the most reliable method of imposing sanctions, but EC sanctions can also be implemented by the Community under Article 223 which provides for measures which involve "production of or trade in arms, munitions and war material."(47) This was the case in the diplomatic and arms embargo to Iran in 1980 when the EC member states coordinated their individual action through Article 223 before using the consultation mechanism under Article 224.(48)

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46 See Pieter Jan Kuyper, "Community Sanctions Against Argentina: Lawfulness under Community and International law" in D. O'Keefe and Jenry Schhermers (eds) *Essays in European Law and Integration* (Deventer: Kluwer, 1982).

47 See Bull. EC: 5-1980, p. 26; see also Barry Carter, *International Economic Sanctions*, *op. cit.*, p. 228.

48 See Pieter Jan Kuyper, "Community Sanctions Against Argentina," *op. cit.*, p. 145.

Article 235 provides an instrument for Community action which extends the legal basis of EPC. This Article gives the Community the ability to apply "appropriate measures" to attain any objective of the Treaty which includes the use of sanctions. Article 224 of the EEC Treaty is essentially a clause enabling a member state to take measures:

> in the event of war or serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.[49]

The choice between Article 224 and Article 113 is essentially a choice between the Community method and the intergovernmental method. Under Article 224 the member states are bound only to consult each other "with a view" to working together in order to prevent the disruption of the common market. Article 224 constitutes a derogation from Community law which protects the member states' sovereignty and leads to the application of national law under certain defined circumstances. Thus issues placed within the framework of this Article are considered the *domaine réservé*

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49 The full text of Article 224 reads:
Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the common market being affected by measures which a Member States may be called upon to take in the event of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security. *Treaty Establishing the European Economic Community*, Rome, 25 March, 1957.

of the member states, those realms of activity which the member states regard as theirs alone. In this case, the issue of sanctions is not regarded as a Community matter *per se* and does not raise issues of qualified majority voting or Commission initiative. However, several legal questions arise in relation to this Article. First, under which circumstances should Article 224 be used; should it be invoked only after disruption to the common market has occurred, or should consultation take place in order to prevent, as the Article reads, negative effects on the common market (ie. before negative effects have occurred)?

Considering the wording of Article 224, it would seem the question raised answer itself: Article 224 should be used to prevent negative effects on the common market. If measures taken by the member states are "intended to prevent ill effects on the Common Market", then this process naturally entails that consultation should take place before the introduction of the measures concerned. According to this interpretation, the possibility of harmful effects on the Common Market triggers the consultation mechanism of Article 224.(50)

The sanctions imposed on Iran in 1980 for the seizure of the American Hostages were imposed by EC after some discussion

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50 For a thorough discussion of the legal intricacies of Article 224 see, Pieter Jan Kuyper, *The implementation of International Sanctions: The Netherlands and Rhodesia* (Alphen aan den Rijn: Sijthoff and Nordhoff, 1978) pp. 105-106.

of the method. During the Iran hostage crisis the Community's choice was distinct: either Article 224 or 113. Disagreement among the member states about the nature of the Iran crisis led to the use of Article 224 as the legal basis for the sanctions. The situation in Iran constituted, according to the member states, a threat to international peace and security which led necessarily to the measures being taken under the framework of Article 224. The Commission was consulted by the member states after the Foreign Ministers decided to "apply in concert and without delay, the measures provided for in the draft Security Council resolution..."[51] The Commission, after analysing the measures taken by the member states, decided to consult under Article 224 in order to exchange "information regarding the implementation of the various measures, particularly in order to identify any risk of distorting the conditions of competition in the common market"[52]

As will be discussed further in chapter five, by the time of Argentina's invasion of the Falkland Islands in 1982 the European Community was able to execute sanctions under Regulations No. 877/82 based on Article 113 of the EEC Treaty[53] despite the foreign policy implications. This willingness to use Article 113 was, according to some, due to its convenience as an "issue over which to demonstrate

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51 Bull. EC: 5-1980, p. 26.
52 Bull. EC: 5-1980, pp. 27-28. This comment referred to Article 225 which involves the Commission in the consultation process.
53 OJ 1982, L 102/1, 16 April 1982.

the new-found efficiency and solidarity of EPC."[54] However, action under EPC would not require Article 113 as its legal base.

With the ratification of the Maastricht Treaty, the Community will have another tool for economic sanctions at its disposal. Article 228a gives the EC a treaty base for imposing sanctions:

> 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 urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.[55]

This new Treaty Article is a major step in the awareness that the myriad competences with which a sanctions episode may be implemented[56] obfuscate the foreign policy issues involved. Although not placed within the framework of the

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54 Christopher Hill and James Mayall, "The Sanctions Problem: International and European Perspectives", *European University Institute Working Paper No. 59*, (Florence: European University Institute, 1983). p. 18.

55 Article 228a. *Treaty on European Union*. (Luxembourg, 1992).

56 See P. J. Kuyper, "Community Sanctions Against Argentina." *Op. cit.*

Common Foreign and Security Policy, the new Article boldly sets about filling in the political void of the Common Commercial Policy. In addition, it involves a proposal from the Commission, and a process of qualified majority voting in the Council on salient issues of foreign policy.

Whereas the Community had with the Falkland Islands to confront itself with the blurred line between external economic relations and political relations, it now has a specific Article designed to cover the use of trade measures to pursue its foreign and security policies. Under Article 113 the Commission retains competences (and therefore powers of decision-making) in commercial relations. That power in relation to sanctions is taken away with the new Article which places the decision and mechanisms of economic measures squarely in the hands of the Council. However, although the Council can "take the necessary urgent measures", it must act "by qualified majority on a proposal from the Commission."

Conclusion

Economic sanctions with their inadequacies and paradoxes are indeed a blunt tool, but one that is not necessarily ineffective. If one asks the simple question, do sanctions work?, then the simple answer would probably be no. But if one moves into a more complex analysis which looks at multiple and less obvious goals, the case for sanctions strengthens.

To be effective, international organizations require legitmisation by the international community. In an effort to achieve this legitimisation they need to act with purpose, and to develop coherent approaches to international crisis situations. Economic sanctions provide a method of transmitting actor capability into the international environment which is then reflected back on to the sender as increased legitimacy. The European Community can act through its individual member states to coordinate "separate" action toward third states, but more importantly, it is capable of implementing sanctions as "the Community". The vehicle chosen for the implementation of a measure is crucial. Article 189, which provides for Regulations, Directives, Decisions, Recommendations and Opinions, impacts the way economic sanctions are dealt with in the member states. A Regulation is in effect a Community and not a member state action.

The vaguaries of Community implementation are an interesting exercise in legal intricacies, but the very fact that the Community is acting with purpose toward an international situation, whether through its member states, or its Common Commercial Policy, demonstrates coherence.

CHAPTER 5

EC SANCTIONS AGAINST RHODESIA

Introduction

In November 1965, Southern Rhodesia broke its colonial ties with Britain and illegally declared itself an independent state. This act, by the Prime Minister Ian Smith and his minority government, was seen as an attempt to retain exclusive power, and maintain White minority rule. Following this Unilateral Declaration of Independence (UDI) of November 11, 1965 in Southern Rhodesia[1], the United Nations Security Council asked all states to do their utmost

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1 This chapter will focus on the European Community's relationship to Rhodesia and on sanctions at the time of UDI. For a more complete history of events leading up to UDI and the political events that followed see James Barber, *Rhodesia: The Road to Rebellion*, (London: Oxford University Press, 1967); Robert C. Good, *U.D.I. The International Politics of the Rhodesian Rebellion*, (London: Faber and Faber, 1973); Martin Meredith, *The Past is Another Country, Rhodesia 1890-1979*, (London: Andre Deutsch, 1979)

to break off economic relations with Rhodesia.[2] The Security Council condemned "the illegal racist minority" and called upon states to "refrain from rendering any assistance to this illegal regime." One year later in December 1966, the Security Council imposed mandatory sanctions against Rhodesia and listed selected exports whose importation, promotion, and transport were to be forbidden by United Nations Member States.[3]

These trade measures against Rhodesia undoubtedly affected the member states of the European Community in the conduct of their commercial policy. Yet, due to the nature of sanctions as an instrument of foreign policy at that time, the Common Commercial Policy was never used as the foundation for Community sanctions against Rhodesia. How then did the Community implement these sanctions?

Studying the sanctions imposed upon Rhodesia is useful when analysing the evolution of political cooperation among the

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2 United Nations Sec. Council Res. 216 of November 12, 1965.

3 United Nations Sec. Council Res. 232 of December 16, 1966: "...Acting in accordance with Articles 39 and 41 of the United Nations Charter, 1. Determines that the present situation in Southern Rhodesia constitutes a threat to international peace and security; 2. Decides that all States Members of the United Nations shall prevent: (a) The import into their territories of asbestos, iron ore, chrome, pig-iron, sugar, tobacco, copper, meat and meat products and hides, skins and leather originating in Southern Rhodesia and exported therefrom after the date of the present resolution;..." Sec. Council Res. 253 of May 29, 1968 brought a complete boycott of goods with Rhodesia (except medical supplies and humanitarian goods) and Sec. Council Res. 277 of March 18, 1970 broke off all official relations.

member states of the European Community. UDI, and the UN led sanctions that followed, occurred before the establishment of the Political Cooperation machinery in 1970; therefore, the ability of the Community to cooperate in a decision-making process, as well as their determination to implement and enforce their decisions *au communitaire* prior to the institutionalisation of political cooperation merits investigation. The case of Rhodesia provides a starting point for an analysis of Community actorness because it was really the first test of its cohesiveness in an important international event.

The case of Southern Rhodesia provides an illustration which encompasses many factors: the relationship of the EC to its member states, the legal framework within which the Community, as a separate entity, can take measures such as economic sanctions, the relationship between political cooperation and action taken by the Community outwith the Treaties to the legal basis for action based on the Treaties, and the relevance of informal political cooperation before the establishment of the Davignon procedure. The aim of this discussion is to analyse the points raised above and also to examine the unity with which the European Community and its member states considered the Rhodesian problem and took action collectively: how did the Community's effort, or lack of it, effect potential actor capability? The level of actorness of the Community influenced the methods of implementation which the Community

used. It also highlighted the problems of reconciling the "Community" and the "Member States" in their disparate attempts at implementing sanctions.

It will be argued in this chapter that the sanctions against Rhodesia had the potential to be a vehicle for establishing the European Community in the international system, committing them to a firm place in the international environment. The member states, it will be argued, however, did not show their commitment from the outset to a Community based, systematic method of sanctions implementation, which would have strengthened their image both at home and abroad. The European Community did not, through a systematic imposition of sanctions against Rhodesia, demonstrate its ability to act cohesively. Further, although Rhodesia provided an opportunity for the EC to present itself as an international actor, its inability to act with unity weakened its international image.

To be seen to act on the international stage as a cohesive entity with a singularity of purpose was potentially a significant source of recognition for the Community, vital to the development of its role as a legitimate international power. In this case power includes not merely the economic power that comes with the Community's strength as a trading alliance but comprises the perception of the EC as a recognised performer in world affairs. The random, largely incoherent and uncertain, way in which the Community went about addressing the Rhodesian crisis did nothing to nurture

their image as a unitary actor. It may, however, have provided the Community in its early years with a benchmark for future action or inaction. The case certainly provides a benchmark for students of Community foreign policy and actorness.

I. The Community or the Member States: the Tension

1. The use of sanctions against Rhodesia

Harry Strack writing of the use of sanctions against Rhodesia noted that: "Not only did sanctions fail to achieve their major goal, but they may have been a contributory factor to the deterioration of a situation which they were designed to alleviate."[4] Leonard Kapungu noted that "economic sanctions have welded together the Rhodesian conservative element in support of the survival of the regime"[5] Cross also points out that in the case of Rhodesia the political changes demanded by the international community and the use of sanctions to attain them "might

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4 Harry Strack, *Sanctions: The Case of Rhodesia*, (Syracuse: Syracuse University Press, 1978) p. 237; E. G. Cross: "economic sanctions are a comparatively ineffective means of exercising political leverage. In the case of Rhodesia, the international programme of sanctions was a complete failure...," E. G. Cross, "Economic Sanctions as a Tool of Policy against Rhodesia", *The World Economy* 4: March, 1981, p. 76.

5 Leonard Kapungu, *The United Nations and Economic Sanctions Against Rhodesia* (Lexington, Mass: Lexington Books, 1973) p. 128.

well have resulted in the further entrenchment of recalcitrant attitudes within the Rhodesian government."[6]

Yet the dilemma of sanctions, that they are most often considered a weak and ineffective tool and yet are still used often in conflict situations, is not as important for this discussion as the effectiveness with which the Community wielded its foreign policy tool. In chapter four sanctions have been described as an effective method of providing legitimisation to the Community by providing it with an effective method for pursuing foreign policy objectives, and giving it a method. As has been noted above, while the primary goals of economic sanctions, those concerned with changing the behaviour of an offending state, may be given the most emphasis in the literature, they are not crucial to the development of the Community's international position. The senders of sanctions give these goals the most stress as they have an immediate and compelling nature and are directly and obviously related to the situation which demands the action taken. In the case of Rhodesia the primary goal was to induce political change, the establishment of a government elected by a majority of the people. Thus, sanctions have been regarded as a failure: the regime of Ian Smith in Rhodesia remained firmly entrenched for years.

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6 E.G. Cross, *op. cit.* p. 74.

Barber's tertiary framework is useful for analysing the European Community's attempt at utilising sanctions against Rhodesia. According to Barber, tertiary goals of sanctions include those which relate to the structure of the international system.[7] or "ensure the coherence of a regional grouping."[8] The imposition of sanctions once again is placed within a broader framework: how states relate to each other and to the international environment, their place in the international system.

The important consideration for the European Community in the Rhodesian case was developing this support for a new structure of international relations. According to Barber: "the broader issue of how international relations are handled is superimposed on the particular problem."[9] Certainly the European Community, especially at the time of UDI in Rhodesia was an international body whose place in the international structure was not yet certain. Developing its position depended upon uniform acts of foreign and commercial policy implementation.

In the case of Rhodesia the tertiary goal of sanctions was the establishment of the EC in the international political system. As Barber notes: "when international structures and norms are changing, the sanctions may also be used to ensure

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7 J. Barber, "Economic Sanctions as a Policy Instrument," International Affairs (July, 1979) p. 382-383.
8 J. Barber, *ibid.*, p. 382.
9 J. Barber, *idem.*

that the new dispensation is accepted."[10] With the development of the EC in the latter half of this century the structure of international relations was indeed changing. The EC emerged as a "new dispensation" which relied upon cooperation and diplomacy, and whose economic well-being was strengthened by interdependence and regional security. Robert Schuman's declaration that the EC would "make war not merely unthinkable but materially impossible" amongst its members was a reflection of this change in the international order.[11]

The fact that Rhodesia was not perceived as presenting any issues which affected the particular interests of the member states of the Community is not insignificant when analysing the development of the European Community at that time as a legitimate international force. As Britain was not a member of the Community when sanctions began, it could be argued that Rhodesia presented a situation ideally constructed to aid the development of international recognition. The Community could thus demonstrate its "willingness and capacity to act" in support of international issues rather than limiting itself to intra-EC matters, and the direct interests of the Member States.[12]

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10 J. Barber, *ibid.*, p. 383.
11 Robert Schuman, 9 May 1950, *Keesing's Contemporary Archives*, vol. 7., pp. 10701-2.
12 Yet, France perceived the Rhodesian problem as "solely the concern of the United Kingdom, whose colony it is". Further, France did not place its allegiance to developing a European response to a globally recognised

2. Article 224

The EC sanctions against Rhodesia were implemented by the Community under Article 224 of the EEC Treaty, which is essentially a clause enabling a member state to take measures "in the event of war or serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security."[13] Under this Article the Member States are bound only to consult each other "with a view" to working together in order to prevent the disruption of the common market. Therefore, the sanctions discussion was not immediately regarded as a Community matter *per se* and did not raise issues of qualified majority voting or Commission initiative. However, several questions arise in relation to this Article. First, under what circumstances should Article 224 be used; should it be invoked only after disruption to the common market has occurred, or should consultation take place in order to

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crisis situation, although France's position may have been a reflection of Anglo-French hostility over Britain's initial reluctance to join the EC rather than a particular aversion to implementing the UN sanctions. A.G. Mezerik, "Rhodesia and the United Nations", *International Review Service*, XII, 1966, p. 8.

13 the full text of Article 224 reads:
Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the common market being affected by measures which a Member State may be called upon to take in the event of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security. *Treaty Establishing the European Economic Community*, Rome 25 March 1957.

prevent, as the Article reads, negative affects on the common market (i.e.. before negative affects have occurred). Considering the wording of Article 224, it would seem as though the question raised answers itself: Article 224 should be used to prevent negative effects on the common market. According to Kuyper, if measures taken by the member states are

> intended to *prevent* ill effects on the Common Market; this naturally entails that the consultation should take place *before* the introduction of the measures concerned. According to this interpretation, the *possibility* of harmful effects on the Common Market triggers the consultation mechanism of Article 224.(14)

However, this interpretation is not the one adhered to by the Commission.(15) The Commission, as can be seen below in its response to a written question by Mr. Patjin, has taken Article 224 to mean that consultation is only necessary if distortions to the common market can be shown empirically after measures, such as the sanctions against Rhodesia, have been taken. This is often too late. Once measures have been put into effect it is often difficult to quantify whether they have indeed disrupted the functioning of the common market and consultation at this point may be impractical and

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14 Pieter Jan Kuyper, *The Implementation of International Sanctions: The Netherlands and Rhodesia*, (Alphen aan den Rijn: Sijthoff and Nordhoff, 1978) pp. 105-106.
15 *ibid.*, p. 106.

ineffectual. The consultation procedure also raises the next question concerning Article 224: What does the use of Article 224 involve and, moreover, does the use by the Community of Article 224 supplant Article 113 in the carrying out of sanctions?

These issues were raised to a certain extent in two written questions addressed to both the Commission and the Council in which the subject of sanctions implementation against Rhodesia was discussed. A reply was requested as to which Article of the EEC Treaty should provide the framework for the implementation of the sanctions, consultation under Article 224 - a loose intergovernmental approach - or Community action under Article 113, a legally binding, treaty-based course which gives the Community competence to act. Mr. Patjin asked:[16]

> 1. Is the Community bound under Article 113 of the EEC Treaty by the UN Security Council decisions concerning sanctions against Rhodesia?
>
> 2. If the answer is in the affirmative, how is this to reconciled with Regulation (EEC) No 2603/69 on exports and Article 8 of Regulation (EEC) No 727/70 on tobacco?[17]

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16 Written questions No. 527/75 and No. 526/75, 20 Nov. 1975, OJ 1976 No. C 89/6, asked by Mr. Patjin.

17 Regulation (EEC) No 2603/69 lays down *inter alia* that exportation shall be free. Article 8 of Regulation (EEC) No 727/70 prohibits any quantitative restrictions on tobacco imports.

3. If the answer to question 1 is in the negative, does Article 224 of the EEC Treaty apply in this case?

4. If so, should it then be assumed that Article 224 completely overrides the provisions of Community law mentioned in question 2, and makes unilateral national measures possible?

5. If Article 224 does apply, has the consultation between Member States referred to in that Article ever taken place? If so, what was the outcome? Has the Commission ever felt it necessary in this connection to use the powers conferred on it by Article 225?

6. In view of the fact that at the present time the sanctions against Rhodesia are carried out in a very different fashion in the different Member States, and for this reason evasion of the sanctions across the Community's internal frontiers is not inconceivable, does the Commission believe that it has a task to fulfil on the basis of Article 113 of the Treaty?

The Commission's reply had many facets. With regard to the interpretation of the consultation procedure envisaged under Article 224, the Commission fell back on the intent of the founders of the Treaty of Rome stating that Member States were able to invoke the Article on an individual basis:

Member States should be free individually to "discharge obligations accepted in the interests of peace and international security."[18] It would not be necessary to act in concert because the sanctions imposed were not, according to the Commission, affecting the functioning of the Common Market.

Individually the member states were bound to implement the UN measures in light of Article 48 paragraph 2 of the UN Charter which states:

> [that sanctions]... shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members."

Therefore, it could be argued that the member states of the European Community were bound to act not only individually to the UN led sanctions but, according to the wording of Article 48 UN, the EC could conceivably have acted in its role as an "appropriate international agency" through which UN measures could be carried out. The Commission confronted this possibility circuitously, obfuscating the issues involved. The Commission seemed to admonish the Security Council for failing to approach the Community as a legitimate body, perhaps implying that if the Security Council had approached it as such the Commission would have

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18 Written question no. 527/75, 20 Nov. 1975, OJ 1976 No. C 89/6, asked by Mr. Patjin., *op.cit.*

considered the feasibility of applying the Common Commercial policy, hence bringing the sanctions under the exclusive competence of the Community. The Commission directly refers to the possibility of autonomous Community action in its response to the question posed, declaring that the UN sanctions "can include the complete or partial interruption of economic relations (Article 41 of the UN Charter) and impinge on areas within the Community's jurisdiction, notably its common commercial policy". This statement by the Commission seems at least to leave open the possibility of Community action.

It seems the Commission was trying to have the best of both worlds. On one hand the Community wanted to be recognised by the world - including, of course, the United Nations - as a legitimate body: the Commission emphasised its wish for the Community to be an accepted presence at the UN and its pleasure at being granted observer status at the General Assembly in 1975: "with the support of the Member States (all of them members of the United Nations) the Community has endeavoured to secure acceptance of its presence in the United Nations, in its specialised agencies and in the conferences and negotiations organised under UN auspices so that it can participate in proceedings within the limits set by its particular competences and assume the attendant rights and obligations."[19] On the other hand, the Commission pointed out that it was in fact up to the

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19 Written question no. 527/75, *op.cit.*

Security Council to check compliance with its decisions and since the Community "has never been approached by the Security Council, the Commission sees no need to consider the feasibility of applying in its common commercial policy the sanctions imposed against Rhodesia by the relevant Security Council resolutions."[20] Hence, the Community placed itself in catch-22 situation. It wanted to be recognised as an international actor but refused to act as one until so acknowledged. This rather weak and somewhat roundabout justification for the random nature of Community measures weakened the Community's legitimacy and did not bode well for subsequent action.

With regard to Article 224, the Commission stated that should consultation in the framework of Article 224 prove necessary, that the application of sanctions was indeed causing disruption to the smooth functioning of the Common Market, the Commission would propose the appropriate action to the Council.[21] The Commission did not, however, elaborate on what this would involve, in other words, in what type of forum member states would meet:

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20 *idem.*

21 The Commission, although not mentioned in Article 224, becomes involved if the measures taken by the Member States within the framework of that article effect the functioning of the Common Market. It is related in this case to Article 225(para. 1) which reads: "If measures taken in the circumstances referred to in Articles 223 and 224 have the effect of distorting the conditions of competition in the common market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in this Treaty."

> Articles 224 and 225 of the EEC Treaty would require Member States and the Commission to consult each other on the application of the sanctions contained in the Security Council resolutions if these were having repercussions on the functioning of the common market.
>
> The Commission has no evidence to suggest that sanctions imposed by Member States have affected the functioning of the common market or that they are being evaded across intra-Community frontiers. Evidence to this effect would obviously lead the Commission to hold the consultations provided in Articles 224 and 225 of the EEC Treaty and propose appropriate action to the Council.(22)

The Commission firmly stated in its response that the chosen competence should be Article 224:

> In drafting Article 224 of the EEC Treaty the founders left Member States free to take whatever action is necessary, even if this runs counter to the Treaty, to discharge obligations accepted in the interests of peace and international security. Member States were therefore able to invoke this Article on an individual basis, to impose sanctions against Rhodesia.(23)

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22 Written question No. 527/75, *op. cit.*
23 *idem.*

When asked virtually the same question *vis à vis* the possible application of Article 113 or the consultation within the framework of Article 224, the Council pointed out that although the Security Council measures did apply to the field of commercial policy, the sanctions taken were for purposes of peace and international security (this was mentioned three times) thus placing them outside the scope of Article 113:

> Article 113 of the EEC Treaty lays down the principle of exclusive competence of the Community as regards the common commercial policy, i.e.., for all measures aimed at altering the volume or the structure of trade in goods and services with a non-member country.
>
> Although they apply to the commercial field, the measures decided by the United Nations Security Council concerning Rhodesia, mentioned by the Honourable Member, were taken for the purpose of maintaining peace and international security and therefore do not fall within the scope of Article 113.[24]

This sentiment goes back to the Council's requirement at the time that it is a measure's *motivation* that determines whether or not it is placed in the framework of the CCP. In its reply concerning Rhodesia, the Council remained

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24 Written question No. 526/75, *op. cit.*

unwavering it its stance that "the Community, as a separate entity from the member states, is not responsible for applying these decisions."[25] Therefore, the Council firmly and explicitly declared the sanctions a matter for the member states unilaterally, rejecting even the possibility of a role for the Community under Article 113:

> ...The Council thinks that, as the measures in question are necessary for fulfilling commitments concerning the maintenance of peace and international security, the case in point is covered by Article 224.[26]

Implying that the member states had fulfilled their obligation to consult under Article 224, the Council cited as proof consultations taken by the member states in the context of political cooperation which by the time of the parliamentary questions had begun to function along side the Treaty framework as a method for discussing foreign policy issues.

The Council did not address the issue concerning the wording of Article 48 of the UN Charter that the member states of the EC are bound to carry out Security Council decisions both "directly and through their action in the appropriate international agencies of which they are members" which was addressed by the Commission in its response.

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25 *idem.*
26 Written question No. 526/75, *op. cit.*

From the above, the basic and on-going relationship between the Commission and the Council can be gleaned. The question on sanctions posed by Mr. Patjin in 1975 highlighted the delicate matter of sovereignty, with which the member states continuously struggle, and its cognate, the paradoxical relationship of the Council to the Commission. It can be seen from the above that the Commission appeared uncertain, wanting to spare the Community's image as a strong international actor and, therefore, finding rationalisations to explain why it was not acting as one. To this end the Commission left open a number of possibilities, not committing itself to any definite, irretrievable course of action, while at the same time seeking to support the Community's chosen path. Conversely, the Council remained a staunch supporter of states' rights and there are no hints to the contrary in the text of the Council's response.

By the time of these written questions the transitional period of the Treaty was over for the original Six members, and obviously there was some doubt as to whether the sanctions should have been placed under the Community's Common Commercial Policy. As has been shown, legally the external relations powers of the EC are concerned primarily with Article 113 EEC dealing with the Common Commercial Policy (CCP).[27] Economic sanctions implicitly pose

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27 Paragraph One of Article 113 reads:
'After the transitional period has ended, the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the

problems for the EC in terms of reconciling the divide between external economic relations and political relations. It is these distinctions which cause difficulty for the Commission and the Council. The tension between these two EC institutions was elucidated in their differing replies to the written question.

3. The UN and the EC in Rhodesia

The Charter of the United Nations proscribes violence between its members and can under Article 41 oblige all member states to impose mandatory economic sanctions against a state which threatens international peace and security, thus breaching the Charter.

> The Security Council may decide what measures not involving the use of armed forces are to be employed to give effect to its decisions...[28]

The member states of the European Community as members of the United Nations (except the Federal Republic of Germany which became a member of the United Nations in 1973) were obliged individually to implement these measures. Moreover, due to their status as a regional organisation, as defined under Article 52 of the Charter, the EC could legitimately

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achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.'

28 It is perhaps noteworthy that the UN Charter does not use the term "sanctions", preferring to use the term "measures."

have acted as a unit as far as the Charter was concerned. Article 53 of the Charter allows the Security Council to "utilize such regional arrangements or agencies for enforcement action under its authority".

So in a sense it worked both ways. The Security Council could have approached the Community as a regional organisation, and/or the Community could have acted in its role as a regional organisation and confronted the implementation of the Rhodesian sanctions as the Community.

Article 234 of the EEC Treaty provides that obligations arising from agreements, concluded before the entry into force of the Treaty, between member states and third parties shall not be affected by the provisions of the EC Treaty.[29] The Charter of the United Nations also provides for the supremacy of United Nations obligations in its Article 103: "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present

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29 The relevant text of Article 234 reads:
"The rights and obligations arising from agreements concluded before the entry into force of this Treaty between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty. To the extent that such agreements are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude", *Treaty establishing the European Economic Community*, Rome, 25 March 1957.

Charter shall prevail."[30] This serves to clarify the Treaty commitments of the member states of the EC; the Charter was obviously antecedent to the Rome Treaty. Therefore even though the obligations incurred by the EC may legally have come into force at a later time Security Council decisions prevail because the Charter prevails. The issue is not when obligations are incurred, the UN Charter supersedes any subsequent agreements that its Members may enter into, but which Treaty prevails. However, according to Kuyper "it cannot be assumed that the Community as such is bound by the mandatory Security Council resolutions on sanctions against Rhodesia, nor that the prevalence of these Security Council resolutions is assured by incorporation into Community law, nor that the Community has an exclusive right to implement these resolutions."[31]

The EC member states did manage to come up with, on an individual basis, an assortment of national legislation or measures to implement, at least partially, the UN led sanctions. Implementation strategies of the UN imposed sanctions varied among the EC member states in timing, method, and according to their interpretation of the UN resolutions: France, Germany and the Netherlands used trade rules already in existence, Italy incorporated Security Council Resolutions 252 and 253 in their entirety into

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30 Charter of the United Nations, 1948.
31 See P. J. Kuyper, *The Implementation of International Sanctions: The Netherlands and Rhodesia, op. cit.*, p. 192.

domestic law while Belgium and Luxembourg used both methods.[32]

TABLE 5.1

Imports from Southern Rhodesia, 1965-1974 in $000

	1965	1966	1967	1968	1969	1970	1972	1974
Belg.and Luxemb.	2806	3540	1998	829	477	142	10	2
Denmark	1244	1205	0	0	0	0	0	0
France	2873	1856	1059	1171	50	61	907	0
FRG	35112	30525	15966	13298	1120	572	367	479
Italy	16666	8554	259	138	27	59	9	124
Netherl.	5987	5722	2406	542	136	21	0	0
UK	33711	12809	405	215	163	117	222	247
USA	14056	9359	6463	1599	68	115	12400	19415

Source: *United Nations Commodity Trade Statistics*, 1965-1974.

32 *ibid.*, pp. 189

TABLE 5.2

Exports to Southern Rhodesia, 1965-1974 in $000

	1965	1966	1967	1968	1969	1970	1972	1974
Belg. and Luxemb.	6832	3444	1922	1312	139	82	41	138
Denm.	667	31	37	29	29	31	37	99
France	3850	4246	3976	2380	200	286	488	186
FRG	10903	11186	12305	12914	1234	1176	2004	2615
Italy	6318	5010	1339	1295	73	63	42	252
Netherl.	7291	5748	4699	3000	57	278	261	17
UK	38808	7648	2877	1946	1958	1206	1796	1945
USA	22982	7491	3757	2024	455	514	700	853

Source: *United Nations Commodity Trade Statistics*, 1965-1974.

Five years elapsed before the Netherlands passed legislation imposing sanctions on payments to Rhodesia. Moreover, these inconsistencies provided the EC with a method of escape through which the EC member states could evade the

inconvenience of sanctions completely through the use of the Community's internal market.[33]

The interesting point about the above tables is the divergence in the trade figures of the various states. Because the sanctions were UN led, the Federal Republic of Germany was not bound by the resolutions. The FRG became a member of the UN in 1973 so not until then was it obliged by its UN affiliation to comply with the sanctions policy. This failure of the FRG to apply sanctions compounded any Community efforts to come up with a consistent policy.

In 1968 the government of the Netherlands ordered investigations into the illegal relabelling of Rhodesian tobacco as American. The tobacco was then shipped to Switzerland (however, it could have been an EC Member State just as easily). This accounts for a 300 percent increase, on paper, of American tobacco trade with Switzerland.[34] However, when asked by a member of the European Parliament about the commercial measures adopted by the member states the Commission denied that the sanctions were being circumvented through intra-Community frontiers, saying that "Evidence to this effect would obviously lead the Commission

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33 European Parliament, "Report drawn up on behalf of the Committee on External Economic Relations on the significance of economic sanctions, particularly trade embargoes and boycotts, and their consequences for the EEC's relations with third countries", Mr. H. J.. Seeler, *Working Documents 1982-1983*, 8 April 1982, 1-83/82, p.19

34 see the *Times*, 8 June 1973.

to hold the consultations provided in Articles 224 and 225...".[35]

In 1968 the Community promulgated EEC Regulation 2041/68 liberalising trade with a list of states and territories which included Rhodesia.[36] Thus importation of goods from Rhodesia into the European Community was freed up in direct contravention of Security Council Resolution 253 and in contravention of the national laws which by this time had been adopted, however tenuously, by the member states.[37] Community law should have prevailed over national law in this case, but adhering to Community law, which through Regulation 2041/68 freed up trade with Rhodesia, would have been a contravention of the UN Security Council Resolutions. This all seems to have been somewhat of a muddle; it was after all only six months since Resolution 253, bringing about a complete boycott of goods, had been adopted and it was much later before Rhodesia was indeed taken off the EC list re-establishing it as a state with which trade was restricted.[38]

Compounding the EC's failure to act coherently was Article 7 of Regulation 2041. Article 7 provided an escape clause under which EC member states, if required to apply trade

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35 Written question No. 527/75, 20 Nov. 1975, OJ 1976 No. C 89/6.
36 JO 1968 L 303/1
37 The supremacy of EC over national law is well established through the European Court of Justice in the *Van Gend en Loos* case which established the doctrine of supremacy as has been shown in chapter three of this work.
38 Regulation No. 1025/70

restrictions by an international agreement as they were by the UN, could abide by their prior agreement - in this case a UN Resolution - and continue to impose sanctions. National measures of sanctions implementation were in contravention of an EC Regulation (Reg. 2041 liberalised trade with Rhodesia), but the EC Regulation was contrary to the Security Council Resolution. A Regulation issued by the EC is, after all, binding in its entirety on all member states of the Community. Yet, Article 7 of Regulation 2041/68 gave permission for member states to abide by the Security Council Resolution. According to Kuyper, "it is hardly credible to provide for the implementation of sanctions through an 'escape clause', while Rhodesia could have been struck off the list as well."(39)

II. Political Cooperation

The varying implementation strategies of the member states, which were partly responsible for the breaching of sanctions, could have been ameliorated to some degree by a policy of coordination. Very early on in the Rhodesian crisis a written question was addressed to the Commission this idea was put forth. The coordination measures, promised by the Commission in their answer, to aid the individual member states in harmonising their efforts immediately after

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39 P. J. Kuyper, "Sanctions Against Rhodesia. The EEC and the Implementation of General International Legal Rules", *CMLR*, vol. 12, 1975, p.233.

the UDI, were not forthcoming.[40] It is not clear from any Community documents why these measures did not occur, but clearly some method was necessary to coordinate the various policies of the member states. The European Community's effort at implementing sanctions was muddled and certainly not unified. Moreover, the EC did not appear to even recognise that its action had not been particularly solid. This is highlighted in an address to the United Nations in 1976; the representative of the Netherlands, Mr. Van der Stoel, spoke for the nine members of the EC. Though it was 11 years after UDI, he praised the effectiveness of international concerted action and, made assurances that the Nine would continue to "comply strictly" with the UN imposed sanctions.[41]

European Political Cooperation was designed to deal with just these problems. As the situation in Rhodesia developed before but also endured until after the system of political cooperation was developed in 1970 it is appropriate to examine whether or not EPC made any difference to the handling of Rhodesia. EPC was developed as a system of consultation and cooperation to increase the influence of the EC in international affairs and to ensure a common European approach.[42] From 1970 the Davignon Report

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40 Written Question No. 68 24 Nov. 1965, OJ 1966 No. 14, 25.1.1966.

41 *Year Book of the United Nations*, vol. 30, 1976, p.152.

42 The literature on European Political Cooperation is extensive and growing. See, for example, P. Ifestos, *European Political Cooperation: Towards a Framework of*

advocated meetings by the Foreign Ministers of the member states to coordinate foreign policy and strive for a unified approach to actions taken toward third states. EPC led to attempts at European cohesion but this was not evident in the EC's response to Rhodesia. Coordination and consultation were not strengthened by EPC and no improvement in implementation was forthcoming; Rhodesia was not even discussed much in Political Cooperation.

By the time Britain became a member of the EC, Rhodesia was already an entrenched problem for both Britain and the Community. It of course had been an issue for Britain for years before, but it was not until the accession of the Labour government in 1974 that Britain realised that its former colony was now a Community problem as well. In fact being a member of the Community may have made it easier for Britain to maintain its facade of enthusiasm for sanctions having realised years before that sanctions were not having much success.

On June 11, 1974 the British Foreign Minister announced a plan to tighten up the loopholes in the Community's on-going trade with Rhodesia by setting up a committee of experts on Rhodesian sanctions. The committee consisted of experts on

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Supranational Diplomacy? (Aldershot: Avebury, 1987); A. E. Pijpers *et al*, *European Political Cooperation in the 1980s: a Common Foreign Policy for Western Europe?*; R. Ginsberg, *Foreign Policy Actions of the European Community: the Politics of Scale*, (Boulder: Lynne Rienner, 1989); von der Gablentz, "Luxembourg Revisited or the Importance of European Political Cooperation", *CML Rev.* vol. 16 (1979) p.685.

foreign trade and customs and met for the first time in November 1974. This committee did not meet in the framework of Political Cooperation however and resulted in no coordination of national legislation on sanctions, nor did it result in the blocking of legal loopholes through which firms were able to break sanctions. The committee seems to have been more a way of satisfying the Labour Party in Britain that something indeed was being done to keep up the pressure on the Rhodesian regime.(43)

It was not until problems in Southern Africa as a whole began to reach a crisis level that Rhodesia was mentioned by the (now) Nine. The political committee that was set up by Foreign Secretary Callaghan in 1974 never issued any results and in fact, ended up meeting only on one occasion. At a meeting of EC Foreign Ministers in Luxembourg in February 1976, a comprehensive statement was issued by the Nine on the subject of Southern Africa in which the Foreign Ministers backed the right of the Rhodesian people to self-determination and independence. The EC had been quiet on the subject of Rhodesia for so long that the policy statement marked a significant step toward a renewed effort. In April 1976 the Foreign Ministers met again in Luxembourg and issued a declaration on Rhodesia reconfirming the right of the Rhodesian people to self-determination and appealing to the white minority to accept a peaceful transition to a

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43 see *The Economist*, 22 June 1974, p.48.

majority government.[44] In Beetsterzwag, Friesland, in the Netherlands, the Foreign Ministers met in September 1976 to discuss Southern Africa, including Rhodesia.[45] Once again the right of the Rhodesian people was reconfirmed and the member states agreed to do everything possible to enforce the sanctions until a satisfactory transition of power to the black majority took place. By January 1977 a new statement was issued confirming that the Nine would not give any aid to Rhodesia and that their obligations concerning sanctions would continue. The consultation by the Foreign Ministers in their attempts at political cooperation can be seen as rather weak, issuing statements and declarations but not getting anywhere toward a coordinated sanctions regime.

Conclusion

It can be seen from the above that the Community possesses the necessary legal status, as an entity in its own right, to enter into legal commitments and treaties. The European Community, striving for both economic as well as political legitimacy, needed a strong, coherent sanctions policy within the ambit of an exclusive Community competence.[46] However, resistance by the individual member states to a

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44 Bull. EC: 5-1976, p. 94.
45 Bull. EC: 9-1976, p. 82.
46 The Common Commercial Policy did not become the exclusive domain of the Community until after the transitional period of the Treaty had elapsed. Still, even after the Community gained this exclusive competence it did not attempt a sanctions policy toward Rhodesia based on Article 113.

Community based competence under Article 113 precluded the enactment of a Community regulation on sanctions policy. A regulation of this sort would have prevented inconsistencies, increased the effectiveness of sanctions and, perhaps most importantly for the Community, greatly advanced recognition of the European Community's place in the structure of international relations. In the case of the sanctions against Iran in 1980 the Community was becoming more deft in the handling of legal competences regarding sanctions. Some member states advocated the use of Article 113 after a consensual, unanimous decision had been reached under consultation in the framework of Article 224. However agreement could not be reached as to the Treaty basis of the implementation of sanctions against Iran and the result was yet more variety and inconsistency in spite of many meetings and declarations of EPC.

After the seizure of the United States' embassy in Iran on 4 November 1979 and the subsequent taking of US hostages, the United Nations attempted to impose sanctions against Iran with the object of freeing the hostages. The Soviet veto of the sanctions resolution on 13 January 1980 left the United States looking elsewhere for support of its proposed sanctions. The European Community responded less than wholeheartedly at first,(47) wavering on the sanctions issue, and instead issuing statements "requesting the

47 See *Business Week*, "A Limp Set of Sanctions on Iran", 2 June 1980, p. 25.

release of the hostages and seeking information and assurances from the Iranian authorities about the date and method of release."[48] Further measures decided on by the Community included reduction of Embassy staffs in Tehran, introduction of a visa requirement for Iranian nationals and withholding of arms or defence related equipment. These measures were not strong enough for the Americans who wanted a more decisive effort from the EC. At a meeting in Naples on 17 and 18 of May 1980, by which time no decisive progress leading to the release of hostages had been made, the Foreign Ministers met and adopted a new declaration on Iran. In this declaration the Foreign Ministers decided to impose sanctions.

> They therefore decided to apply, in concert and without delay, the measures provided for in the draft Security Council resolution of 10 January. In particular they agreed that all contracts concluded after 4 November 1979 would be suspended. They will remain in close consultation in accordance with Article 224 of the Treaty of Rome."[49]

Although the foreign ministers alleged that the measures were adopted purely to hasten the release of the hostages, there were other reasons for Community involvement. As one

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48 Bull. EC: 4-1980, p. 20. This statement was made at Lisbon where the Ministers of Foreign Affairs met informally on 10 April 1980 and issued a declaration on the hostage taking.

49 Paragraph 3 of the statement, Bull. EC: 4-1980, p. 25.

member of the Irish Parliament observed: "I have reservations in regard to out our joining in a trade boycott of Iran. Such a course may be ineffective and may be counterproductive."(50) But in spite of reservations, and as the Irish Foreign Minister noted: "One may agree wholeheartedly or disagree with particular actions, but within a Community context it is important to ensure that a formula will be worked out agreeable to all the countries within the Community."(51) In other words, the Community must act together; there must be unity within its ranks to support the role of Europe as a collective actor in matters of international significance. As the Irish Foreign Minister observed: "We as one of the nine partners could not stand apart."(52)

During the Iran hostage crisis the Community's choice was distinct: either Article 224 or 113. The recently held Opinion of the European Court of Justice held that Article 113 must be "governed from a wide point of view and not only having regard to the administration of precise systems such as customs and quantitative restrictions".(53) Moreover, the Court was hesitant to limit the CCP to include "the use of instruments intended to have an effect only on the traditional aspects of external trade to the exclusion of

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50 O'Keeffe, Dáil Debates, 322 (1980) 1818, 24 June 1980.
51 Lenihan, Minister for Foreign Affairs, Dáil Debates, 322 (1980) 1829, 24 June 1980.
52 ibid., p. 1830.
53 Opinion of the Court 1/78 (International Agreement on Natural Rubber); (1979) ECR 2871, para. 45.

more highly developed mechanisms".[54] The *Opinion* by the ECJ was used by the Commission to strengthen its instrumental approach to the Common Commercial Policy; although the trade measures against Iran were taken to attain political ends, they were trade measures none-the-less and therefore should have fallen under Article 113. However, disagreement among the member states about the nature of the Iran crisis led to the use of Article 224 as the legal basis for the sanctions. The situation in Iran constituted, according to the member states, a threat to international peace and security which led necessarily to measures being taken under the framework of Article 224. The Commission was consulted by the member states after the Foreign Ministers decided to "apply, in concert and without delay, the measures provided for in the draft Security Council resolution...".[55] The Commission, after analysing the measures taken by the member states, decided to consult under Article 224 in order to exchange "information regarding the implementation of the various measures, particularly in order to identify any risk of distorting the conditions of competition in the common market."[56] This refers to Article 225 which involves the Commission in the consultation process. Under Article 225, if national measures do have the effect of distorting the conditions of competition, "the Commission shall, together with the State

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54 *ibid.*, para. 44.
55 Bull. EC: 5-1980, p. 26.
56 *ibid*, pp. 27-28.

concerned, examine how these measures can be adjusted to the rules laid down in the Treaty."[57]

Another interesting and relevant comparison to UDI and the crisis in Southern Rhodesia, is the invasion of the Falkland Islands by Argentina.[58] This particular comparison is cogent because it has certain similarities. First, it was a particularly British situation.[59] Britain retained sovereign rule over both territories, although Britain was not a member of the Community at the time of UDI. Second, it was a crisis situation which required an immediate response to an act of rebellion. Third, sanctions were used in both cases, although neither threats nor military force were used in Southern Rhodesia. It is also a useful comparison in analysing the evolution of political cooperation machinery in the time between the events surrounding UDI in the late sixties and the invasion of the Falkland Islands in 1982.

The Falkland Islands episode is an example of the coordination of the two systems, EC and EPC which produced

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57 See Article 225, Treaty of Rome. See also Bull. EC: 5-1980, p. 28.

58 For a history of the Falkland Islands and the conflict between Britain and Argentina see, Ian J. Strange, *The Falkland Islands* (Newton Abbott, London: David and Charles, 1983); Julius Goebel, *The Struggle for the Falkland Islands: A Study in Legal and Diplomatic History* (New Haven: Yale University Press, 1982); Lawrence Freedman and Virginia Gamba-Stonehouse, *Signals of War: The Falkland Conflict of 1982* (London: Faber and Faber, 1990).

59 See, for the relevant discussions in the British parliament, *The Falklands Campaign: A Digest of Debates in the House of Commons, 2 April to June 1982* (London: HMSO, 1982).

quick and decisive action. When on 2 April 1982 Argentine forces seized control of the British held Falkland Islands, the EEC agreed to impose sanctions for one month. The Council adopted Regulation 877/82 on 16 April 1982. This regulation suspended imports of products originating in Argentina. Quick action was possible by the European Community as the Political Committee, the Political Directors from the Foreign Ministries of the member states, was in session in Brussels (for another purpose) and was able to come out with a statement condemning Argentina for its military action.

The action taken by the European Community was based upon Article 113 and therefore taken by the Community and not by national legislation of the individual member states. It is noteworthy that sanctions although taken for reasons of foreign policy and security, were adopted on the basis of Article 113, with only a reference to Article 224.[60] The use of Article 113 strengthened the position of the Community both legally and politically. The Common Commercial Policy, based on uniform principles of external trade, was used for political reasons in a decisive manner. By the time of Argentina's invasion of the Falkland Islands, the European Community was able to execute sanctions under Regulation No. 877/82 based on Article 113 of the EEC

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60 Article 224 enables member states to take measures "in the event of war or serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security."

Treaty[61] despite the foreign policy implications. This ability to act with cohesion, according to some, was due to its convenience as an "issue over which to demonstrate the new-found efficiency and solidarity of EPC".[62] Action under EPC would not necessarily require Article 113 as its legal basis however, so it seems as though the member states were more willing to take economic measures to pursue political objectives within a true Community approach rather than under the parallel, but at the time non Treaty-based, EPC system. In the case of Argentina, EPC and the Treaty of Rome produced a hybrid system of addressing the issue: sanctions were implemented after "discussions in the context of European political co-operation", yet "in accordance with the relevant provisions of the Community Treaties".[63]

In Argentina, the Community was also able to act with a certain degree of speed. The unanticipated and sudden nature of the invasion, directed at one of its own, meant that the Community had to come up with a swift response: time for negotiation and deliberation was minimal, and the "reflex"

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61 O.J. 1982, L 102/1, 16 April 1982. Sanctions were approved for a period of one month. However, contracts concluded prior to the sanctions period were exempted from the ban.

62 Christopher Hill and James Mayall, "The Sanctions Problem: International and European Perspectives," *European Working Papers* 59 (Florence: European University Institute, July 1983) p. 18.

63 see preamble to Council Regulation (EEC) 877/82, OJ 1982, L 102/1. For a discussion of this point see, P. J. Kuyper, "Community Sanctions against Argentina: Lawfulness under Community and International Law," in David O'Keeffe and Henry G. Schermers, eds., *Essays in European Law and Integration* (Deventer: Kluwer, 1982).

of EPC took effect.[64] Within a period of fifteen days the Community made decisions to ban all Argentine imports, and all deliveries of arms sales.[65]

These two comparisons with Rhodesia are interesting because they show how the development of a system of "coordination and consultation" worked to combine the extra Treaty mechanism of EPC with an internal Treaty-based competence. They also show, especially in the case of the Falkland Islands, that even though sanctions were soon to dissolve as the solidarity of the member states began to waiver, the tertiary goal of establishing the Community in the structure of international relations was accomplished.

The Rhodesia crisis presented a situation where the inchoate collective foreign relations of the member states of the Community could be tested; the Community could dip its toes into the waters of the international arena while not having to make the crucial decisions (already made for them by the UN). The response of the Community to the Rhodesian crisis was haphazard at best, however; as individual members of the United Nations, its response was found wanting, but as

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64 Although the Community made its decision to ban imports on April 10th, there were some difficulties to iron out. Sanctions therefore went into effect on April 17, effective for a period of one month.

65 "Statement of the Ten on the Falklands (Brussels, 10 April 1982)," *European Political Co-operation (EPC)*, 5th ed. (Federal Republic of Germany: Clausen and Bosse, 1988) pp. 150-151.

members of an organisation striving for international recognition it was a failure.

The European Community did not use its status and economic power to great effect during the course of the crisis in Rhodesia. In spite of being a powerful and at that time somewhat unified trading organisation, the European Community lacked recognition. It is in this area that a smoothly implemented sanctions policy could perhaps have played a vital role. The next chapter highlights a case which saw the Community progress from a position which involved virtually no unified stance, and therefore very limited actorness, to one of a higher level of unity and increased actorness.

CHAPTER 6

ISRAEL AND THE EUROPEAN COMMUNITY

Introduction

Relations between the European Community and Israel date back to 1960 when, after the signing of the Treaty of Rome, diplomatic links were established.(1) In its association with Israel, the European Community faces two opposing objectives: first, maintaining relations with a pro-Western state with which it has cultural and historical ties (including a sense of guilt and obligation on the part of the Federal Republic of Germany), and second, protecting its relations with the Arab states on which the EC relies for its oil imports, and which are of strategic importance.(2)

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1 See European Commission, *Third General Report*, pt. 389, 1960.

2 See for data on this, Robert J. Lieber, "Europe and America in the World Energy Crisis," *International Affairs*, vol. 55 (1979) pp. 531-545; Robert Lieber, *Oil and the Middle East War, Europe in the Energy Crisis* (Cambridge, Mass.: Harvard University Press, 1976); L.

These conflicting aims are exacerbated by other factors including the geographic proximity of the southern EC member states to the Middle East, economic interdependence, and the social and cultural links of Europe to the Middle East because of former colonial links and immigration.

The evolution of the relationship between the EC and the state of Israel cannot be evaluated outside the context of the Arab-Israeli conflict.[3] Israel provides the EC with difficult foreign policy issues, and with a case which highlights the tenacious links between political, security and economic relationships. As will be discussed below, the Arab-Israeli conflict was the first foreign policy issue to be dealt with by the Six in the framework of European Political Cooperation following the Luxembourg Report of 1970.[4] The decision to make the Middle East its first political cooperation priority (along with the Conference on Security and Cooperation in Europe (CSCE)), was taken by the

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Turner, "The European Community: Factors of disintegration. Politics of the Energy Crisis," *International Affairs*, vol. 50 (1974). For an analysis of oil's security dimension see, Gregory Treverton, ed., *Energy and Security* (Gower: London, 1980) pp. 40-73; William Wallace, "Europe: the changing international context," *The World Today*, vol. 35, (1975) pp. 188-95.

3 The literature on the Arab-Israeli conflict is wide and encompasses many aspects. For an historical overview of the discord see, D. Ronen, *The Quest for Self-Determination* (New Haven, CT: Yale University Press, 1979); Tossi Beilin, *Israel: A Concise Political History* (New York: St. Martin's Press, 1993); Mordechai Nisan, *Toward a New Israel: the Jewish State and the Arab Question* (New York: AMS Press, 1992); Deborah J. Gerner, *One Land, Two Peoples: the Conflict over Palestine* (Boulder, Colorado: Westview Press, 1991).

4 *Luxembourg Report*, Bull. EC: 11-1970.

Community because it offered a foreign policy issue on which it was thought some consensus could be reached.[5] At virtually the same time as EPC began its involvement in the Middle East, trade accords partially dismantling customs duties were signed between the EC and Israel.[6]

Commercial factors coupled with the strategic issue of energy became wrapped up with the diplomatic and political issues of EC involvement in Israel from the outset. EPC, as has been discussed in previous chapters, was created to promote the EC's identity in world affairs, and to provide a united Community position in world affairs. Yet, in spite of the Arab-Israel conflict and the wars of 1967 and 1973 the EC did little to alter its trade relationship with Israel. The hope of a concrete political result was placed on the declarations of EPC, while trade patterns or relationships were not affected significantly, as will be shown. Israel was a definitive case where the trade and economic relationships were forced into separate categories from those of politics. The declarations of EPC remained in a fringe world separate from the realities of economic life. It took the involvement of the European Parliament to impose a sanction of sorts, which tied trade to political rectification. Yet in spite of the tensions and lack of definitive competence boundaries between the Community and

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5 See the *Copenhagen Report*, Bull. EC: 9-1973.
6 See, for example, OJ L182, 16.8.1970 and OJ L183, 17.8.1970.

the member states, the Community was able to act significantly in Israel.

To analyse the relationship between the European Community and Israel in light of the dichotomy between external relations and EPC, a framework can be applied which incorporates theories of international sanctions and actor behaviour. The former developed from the concept of the tertiary objectives,[7] the latter from legitimation. According to Jabri, legitimation takes three forms:

> 1) inclusion of the actor in international negotiations;
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> 2) diplomatic links with the actor in the form of both systematic official dialogue and occasional official contact with that actor;
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> 3) adoption of positions on specific issues in the conflict which are of salience to the actor and which have the effect of reinforcing the position taken by that actor in the conflict situation.[8]

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7 James Barber, "Economic Sanctions as a Policy Instrument", *International Affairs*, July 1979, pp. 367-384.

8 See V. Jabri, "The European Community and Responses to Regional Conflict: The case of the Israeli-Palestinian Conflict," Paper presented to the Eighth International Conference of Europeanists, The Council for European Studies, March 27-29, 1992, Chicago, Illinois.

Tertiary goals involve "the structure and behaviour of the international system generally, or those parts of it which affect the imposing states."(9)

Legitimation and the concept of tertiary objectives are linked. The theory of tertiary objectives is not concerned with the primary objective of changing another states' behaviour, but rather with the reputation of the sender and its place in the international system. This structural understanding of foreign policy objectives is, therefore, similar to the concept of legitimation. Both legitimation and tertiary objectives involve the reputation of the actor, not necessarily its implications for the receiver.

The decision of the foreign ministers to make the Arab-Israeli conflict their first foreign policy issue in the framework of EPC, was also a decision to place themselves firmly in the international arena: a more contentious issue could hardly exist. Borrowing the concept of tertiary objectives from sanctions theory is a useful way of analysing EPC actions in the Arab-Israeli conflict. If one replaces the term *sanctions* with the term *action*, then the tertiary framework can be utilised. Action may create "support for a particular international structure" and may further "existing structures or organisations, whether it be an alliance or an international body."(10) Action may also

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9 James Barber, "Economic Sanctions as a Policy Instrument," *op. cit.*, p. 382.
10 James Barber, *op. cit.*, p. 383.

"ensure the coherence of a regional grouping."[11] Structurally, action in this sense is crucial to the development of the European Community as a legitimate actor in international affairs. If one considers action as a means to increase legitimacy by the Community, then the type of action is less relevant. The Community is responsive to the external environment: it does not necessarily have to be a proactive force in the international system to further its legitimacy.

The important consideration for the European Community in the Middle East was the development of this structural matrix; "the broader issue of how international relations are handled is superimposed on the particular problem"[12]: in this case, the Middle East. While the handling of the relationship with Israel was not a model of consistent or consensual action-even the loosest definition of action cannot make up for the Community's indistinct approach-the Community did manage to develop a Middle east initiative, culminating in the Venice Declaration of 1980. The sketchy nature of the interaction between EC and EPC mechanisms, and the apparent disregard for the impact of one upon the other left a gap in policy which was filled by the European Parliament, as will be discussed below.

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11 *ibid*, p. 382.
12 James Barber, *op. cit.*, p. 383.

This chapter will examine the evolution of the Community's relationship with Israel along the lines it actually developed: with parallel but separate political and economic accords. Section I thus looks briefly at the development of the trade relationship with Israel and some of the issues which surrounded the early stages of that relationship. Section II analyses the development of political cooperation and the various accords, declarations and reports which helped to shape a Community policy toward Israel. Section III then integrates the first two parts of the chapter through an examination of the sanction imposed by the European Parliament, and its effect on the actor capability of the Community.

I. EC-Israel: History of Trade Relationship

Israel was one of the first states to establish a mission to the Commission in Brussels (1959), and as early as 1960 expressed a desire to become an associate member under Article 238, Part IV of the Treaty.[13] Despite the early attempts by Israel to establish links with the EC, a trade relationship was slow to evolve. A simple commercial agreement was signed in 1964 which was non-preferential with reductions in Community tariffs on some goods.[14] It was not until 1970 that a preferential agreement was signed, allowing for reductions of up to 50 % on EC tariffs on

13 See European Commission, *Third General Report*, 1960.
14 European Commission, *Seventh General Report*, 1964.

Israeli goods. The agreement provided for a partial dismantling of customs duties and a provision for a further agreement under which trade obstacles would be removed in accordance with GATT rules.[15] However, the 1970 agreement was dissipated by at least two factors. First, the EC established preferential agreements with many Mediterranean states at about the same time (Morocco and Tunisia, 1969; Spain, 1970; and Malta, 1971). Second, the impending accession of the United Kingdom to the EC meant that Israel's largest European export market would be subsumed under the European Community's trade regime.[16]

The United Kingdom was an extremely important outlet for Israeli citrus fruit and British EC membership would significantly effect Israel's ability to export. For these reasons Israel requested a renegotiation of the 1970 accord, and after years of negotiations,[17] a free trade agreement was finally signed in 1975 under the EC's Global Mediterranean Policy (which sought trade liberalisation in both manufactured and agricultural products for all Mediterranean states).[18] The 1975 EEC-Israel Agreement[19]

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15 OJ L212, 25.9.1970 and Bull. EC: 11-1970.

16 Alfred Tovias, *Israel and the Southern Enlargement of the European Community*, (London: Institute of Jewish Affairs, 1988) p. 4.

17 See OJ L66, 13.3.1973; Bull. EC: 9-1974, pt. 2315; Bull. EC: 6-1974 pt. 2331; Bull. EC: 10-1974, pt.2328.

18 For more on the Global Mediterranean Policy see A. Shlaim and G. M. Yannopoulos, *The EEC and the Mediterranean Countries* (London: Cambridge University Press, 1978); Loukas Tsoukalis, "The EEC and the Mediterranean: Is 'Global Policy' a misnomer?," *International Affairs*, (July 1977);"The European Community and the Mediterranean," *European Documentation*, (Luxembourg,

superseded the 1970 agreement and stipulated complete elimination of tariff and quota barriers for all products. It also carried a cooperation facet not present in the 1970 Agreement.[20] The 1975 trade agreement and cooperation accord were based on Article 113 of the Rome Treaty, and envisaged not only a schedule of trade barrier elimination, but also a process of cooperation in science and technology.

Although Israel was the first Mediterranean state to benefit from a relationship with the European Community, trade agreements with Morocco, Tunisia and Algeria soon followed. Further, the Southern European states of Greece, Spain and Portugal, which exported similar products to those of Israel, were coming up for membership in the EC. Israel obviously feared that Southern European enlargement would hurt its export market.

Following the Greek accession in 1981 and with the imminent accession of Spain and Portugal in 1986, the Community's relationship with Israel went through a process of adjustment. The enlargement of the Community posed a potentially serious threat to Israel's agricultural exports. In 1984, for example, 74.8% of Israel's vegetables and fruit

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1985); F. de la Serre, "The Community's Mediterranean Policy after the Second Enlargement," *Journal of Common Market Studies*, (June, 1981); R. Pomfret, *Mediterranean Policy of the EC: A Study of Discrimination in Trade* (London: Macmillan, 1986).

19 OJ L136, 28.5.1975.

20 See Bull. EC: 5-1975, pt. 2334.

were for EC markets.[21] Israel had been on equal trading terms with its Mediterranean neighbours, but trading parity was to be diminished with Spain and Portugal's accession. Spain, Portugal and Israel offered similar products to the EC, and competed, until 1986, on equal terms for EC market share. Israel wanted an agreement from the EC that would offset the disruption to its export market.[22]

TABLE 6.1

Israel's Exports to Spain, Portugal and EC (in $000)

	1978	1985	1988
Spain	19,029	29,978	124,136
Portugal	21,185	31,882	18,396
EC Total	1,344,692	1,979,098	3,219,731

Source: UN Commodity trade Statistics for Israel, New York, 1978, 1985, 1988.

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21 *United Nations Commodity Trade Statistics* (New York), 1984.

22 It is also interesting to note the trade patterns which were evolving between the European Community and the Arab states. See "Trade Patterns between the European Community and the Arab League Countries," European Commission information note VIII/534/77-E, revised September 15, 1977. Cited in Alan R. Taylor, "The Euro-Arab Dialogue: Quest for an Interregional Partnership." *The Middle East Journal*, vol. 42, (Autumn, 1978). p. 429. Arab imports from the EC accounted for 44 per cent of all Arab imports by 1977, and forty per cent of exports from the Arab states were sold to EC states. See also Stephen J. Artner, "The Middle East: A Chance for Europe?," *International Affairs*, vol. 56 (Summer, 1980) p. 421.

TABLE 6.2

Israel's Imports from Spain, Portugal and EC (in $000)

	1978	1985	1988
Spain	35,181	77,480	125,352
Portugal	9,391	13,924	28,026
EC Total	2,452,455	3,738,921	6,732,999

Source: UN Commodity Trade Statistics for Israel, New York, 1978, 1985, 1988.

From the tables above it can be seen that although Israel was concerned about the prospects of EC enlargement, its exports did not in fact suffer in the immediate aftermath of enlargement. Trade between the EC and Israel in fact improved dramatically. Even in the vegetable and fruit category, in which Spain and Portugal compete very directly, the actual trade figures were positive for Israel. Of all vegetables and fruit exported by Israel in 1985, 75.4% went to EC markets; whereas in 1988, following enlargement, the percentage had increased to 78.6.

In 1987 Protocols were issued in response to Israel's concerns over the enlargement of the EC.[23] The first Protocol outlined financial cooperation to aid Israel's industrialisation, and two others eased adjustment for

23 See Bull. EC: 11-1988, pt.2.2.22; OJ L327 30.11.1988.

Israel to the EC enlargement: one offset the new agricultural competition faced by Israel, and the other harmonised custom's duties between Israel, Spain and Portugal.

Three reports[24] were drawn up, one for each protocol, and were sent to the European Parliament (EP) for ratification, a power the EP had only recently acquired under the Single European Act of 1986. As will be discussed below, ratification by the Parliament was not forthcoming, and the withholding of economic benefits from Israel was an attempt by the European Parliament to impose an economic sanction with the primary objective of changing Israeli policy regarding direct Palestinian exports. Israel's insistence on maintaining "made in Israel" labels on products originating in the West Bank and Gaza was contrary to the position of the Community, which was to encourage direct Palestinian exports. Direct exports was for Israel an acknowledgement

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24 1) European Parliament, "Report drawn up on behalf of the Committee on External Economic Relations on the conclusion of the protocol on financial cooperation between the European Economic Community and the State of Israel," *European Parliament Session Documents 1987-88* , Doc. A 2-0285/87, 1 February 1988; 2) European Parliament, "Report drawn up on behalf of the Committee on External Economic Relations on the conclusion of the protocol to the agreement between the European Economic Community and the State of Israel consequent on the accession of the Kingdom of Spain and the Portuguese Republic to the Community," *European Parliament Session Documents 1987-88* , Doc. A 2-0286/87, 1 February 1988; 3) European Parliament, "Report drawn up on behalf of the Committee on External Economic Relations on the conclusion of a fourth additional protocol to the Agreement between the European Economic Community and the State of Israel," *European Parliament Session Document 1987-88*, Doc. A 2-0287/87, 1 February 1988.

that Palestine existed, and "Made in Palestine" labels on Palestinian goods was therefore a sensitive issue. However, it was an issue important to the Community whose position, evolved over the years in the framework of European Political Cooperation, was to favour self-determination for the Palestinians.

The involvement of the European Parliament in the trade discussions represented a new, wider connection of trade and politics between Israel and the EC. It also represented the integration of the EP into the international political arena of the European Community. Perhaps most importantly however, the involvement of the Parliament signalled a new tension between the institutions of the Community and the member states, and with it a new method of foreign policy action.

The EC had managed to keep its political cooperation discussions separate from the evolving trade relationship. Yet by doing so it had also diminished its ability to establish itself as an actor of significance in the region. The involvement of the EP forced the issue of political responsibility and moved the Community to more integrated action. This case highlights the maturation of the Community in matters of international consequence, and reveals the internal dynamic of institutional behaviour which led not only to action in the form of the parliamentary sanction, but also to the increased legitimation which sprang from that action.

II. European Political Cooperation: from the Schumann Paper to the Madrid Declaration.

The European Community of the Six did not have a joint position on the Arab-Israeli conflict of 1967. During the Six Day War the Heads of State and Government, although meeting in Rome, were not able to agree upon a common position.(25) Efforts by the Community to come up with a declaration were not successful; the positions of the member states differed substantially, and each adopted separate and divergent responses. The Federal Republic of Germany remained officially neutral although tacitly supporting Israel; France adhered to its pro-Arab policy; Italy was divided, but the government took a pro-Arab stand; the Netherlands adopted a pro-Israeli position, and accused the Arab states of causing the conflict by their hostile actions, a view which was completely opposite to that of France; and Belgium wavered on the issue, yet supported UN resolution 242.(26)

1. The Schumann Paper

It was not until the establishment of European Political Cooperation that the Community was able to coordinate a

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25 For a comprehensive account of the varying opinions and positions of the member states after the 1967 war, see Ilan Greilsammer and Joseph Weiler, "European Political Cooperation and the Palestinian-Israeli conflict: An Israeli perspective." In A. Pijpers and D. Allen, eds., *European Foreign Policy-Making and the Arab-Israeli Conflict* (Dordrecht: Martinus Nijhoff, 1984) pp. 131-2.

26 See A. Pijpers and D. Allen, *ibid., passim.*

Middle East policy. The result of that collaboration was the Schumann paper, a report agreed by the six Foreign Ministers on 13 May 1971.[27] This document outlined the position of the Six toward UN resolution 242, and was an attempt to refine the wording of the resolution, which had been the subject of much controversy. One part of the dispute surrounded the omission, in the text of the English translation, of the word "all" before the word "territories". The Israelis and the British considered this a deliberate omission, an opening for further negotiation. The British Foreign Minister told the House of Commons, "The omission of the word "all"... is deliberate".[28] The Arab states remained adamant that "territories" meant "all" territories, and averred that they would interpret the resolution accordingly.[29] UN resolution 242 of 22 November 1967:

> 1. Affirms that the fulfilment of Charter principles requires the establishment of a just and lasting peace in the Middle East which should include the application of both the following principles:

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27 Bull. EC: 6-1971.
28 *Hansard*, December 9, 1969.
29 Jane Moonman, "Using UN Resolutions 242 and 338 as the Basis for Peace," *Focus* (London: Britain/Israel Public Affairs Centre, July 1991).

-Withdrawal of Israeli armed forces from territories occupied in the recent conflict;

-Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognised boundaries free from threats or acts of force;

2. Affirms further the necessity

-For guaranteeing freedom of navigation through international waterways in the area;

-For achieving a just settlement of the refugee problem;

-For guaranteeing the territorial inviolability and political independence of every state in the area, through measures including the establishment of demilitarized zones.[30]

The Schumann Paper was an attempt to clarify UN resolution 242, and present a coherent European stance. As important as it was for the European Community to converge on a crucial foreign policy issue, it was equally, if not more so, important for Israel that the EC did not adopt a unified

30 *Yearbook of the United Nations*, (New York, 1967).

position. For Israel a unified Community position meant a pro-Arab position. France, under the presidency of George Pompidou, held considerable sway in Community of the Six, and Israel knew that the Community, if unified, would unify toward France, a state more sympathetic to the Arab cause than to that of Israel. At the end of the conference of the Foreign Ministers, a communiqué was issued on 13 May 1971 in which the Six declared that they:

> consider that it is of great importance for Europe that a just peace should be established in the Middle East, and they are therefore in favour of any efforts which may be made to bring about a peaceful solution of the conflict.... they confirm their approval of Resolution 242...which constitutes the basis of a settlement and they stress the need to be put into effect in all its parts.[31]

The report on which the declaration was based was itself not made public. However, the details of the report were disclosed by the Springer Group of the German Press who were opposed to it.[32] The Schumann Paper proposed:

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31 Bull. EC: 6-1971.

32 See, I. Greilsammer and J. Weiler, "European Political Cooperation and the Palestinian-Israeli Conflict: An Israeli Perspective," in A. Pijpers and D. Allen, eds., *European Foreign Policy-Making and the Arab-Israeli Conflict*, *op. cit.*, p. 54.

- the establishment of demilitarized zones in which international forces would be stationed;

- an overall Israeli withdrawal from occupied territories with minor border adjustments;

- the internationalization of Jerusalem;

-the postponement of any conclusive solution regarding the sovereignty of East Jerusalem;

-the choice for the "Arab refugees" of either returning to their home or being indemnified;

-the approval of the Jarring mission.[33]

Several points of interest surround the Schumann Paper. First, like UN resolution 242, the Schumann Paper did not condemn Israel, nor was it inconsistent with the UN resolution. Second, there was no mention of the Palestinians or the Palestinian homeland in the paper; the Palestinians were considered as part of a general refugee problem. Third, the Schumann paper, as a result of objections to it by Germany, Italy and the Netherlands, was not published; the German Foreign minister declared, while on a visit to

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33 Gunnar Jarring was the United Nations special representative for the Middle East. Jarring was engaged in shuttle diplomacy between New York and the Middle East for over one year. His objective was to secure the aims of UN resolution 242. See David A. Korn, "US-Soviet Negotiation of 1969 and the Rogers Plan," *Middle East Journal*, vol. 44 (Winter, 1990) p. 37.

Israel, that the Schumann paper was merely a "working document."[34] Fourth, while the paper was not necessarily a pro-Palestinian document, it did reflect, by the very convergence of formerly disparate positions by the member states, some of them previously maintaining a definite pro-Israeli stance, a deterioration of EC-Israel relations.

The paper was most remarkable, perhaps, for its indication of the status of EPC: the Six Day War brought variance of positions, the Schumann paper brought convergence. Despite the fact that certain member states remained rather tenuous in their support of the document, the fact remains that it was agreed upon unanimously under the framework of EPC.

2. Joint Declaration of 6 November 1973

It was not until immediately after the Yom Kippur War that the European Community again took up the issue of the Middle East. At a meeting on 31 October, the Foreign Ministers decided on a declaration that was published on 6 November. This statement was crucial not only as a response to the Yom Kippur War, but also as it was the first EPC declaration concerning Israel. It outlined a European Community position toward the War which was substantially in agreement with Resolution 338 of the UN; it clarified the EC view of

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34 Panayiotis Ifestos, *European Political Cooperation: towards a Framework of Supranational Diplomacy?* (Aldershot: Avebury, 1987) p. 421.

Resolution 242, and marked a shift in the EC position towards both the Arabs and Israel.[35]

The statement goes on to declare that its members:

> ...consider that a peace agreement should be based particularly on the following points:
>
> (i) the inadmissibility of the acquisition of territory by force;
>
> (ii) the need for Israel to end the territorial occupation which it has maintained since the conflict of 1967;
>
> (iii) respect for the sovereignty, territorial integrity and independence of every state in the area and their right to live in peace within secure and recognized boundaries;

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35 Resolution 338 reads:
The Security Council
1. Calls upon all parties to present fighting to cease all firing and terminate all military activity immediately, no later than 12 hours after the moment of the adoption of this decision, in the position they now occupy:
2. Calls upon all parties concerned to state immediately after the cease-fire the implementation of Security Council Resolution 242 (1967) in all of its parts;
3. Decides that, immediately and concurrently with the cease-fire, negotiations start between the parties concerned under appropriate auspices aimed at establishing a just and durable peace in the Middle East.

(iv) recognition that in the establishment of a just and lasting peace account must be taken of the legitimate rights of the Palestinians.[36]

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This declaration was somewhat of a victory for France whose policies had been pro-Arab since the 1967 War. France had lobbied, within the EC, for a move away from the United States' position which was to favour Israel. The EC Declaration brought a negative reaction from both the United States and Israel. The former was concerned with interference in its role as Middle East peace negotiator, and the latter with the Community's motivations for adopting a pro-Arab position. The Israeli government argued that the Community's reaction to the Yom Kippur War was biased for at least two reasons. First, the Community's objective was not to secure peace in the Middle East, but was rather to secure its access to Arab oil; it did not want to be affected by the OPEC oil cutbacks of 5%, to which all the member states had been subjected except Great Britain and France, considered, apparently, critical enough of Israel. Second, the Declaration went further than either UN resolution 242 or 338, and explicitly named "the legitimate rights of the Palestinians", a change from the Schumann Paper which followed more closely the text of UN resolution 242.

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36 Bull. EC: 10-1973.

Not only is the Declaration often cited as evidence of a shift of the Community away from Israel, but it is also often considered as the first serious step towards a European Community Middle East policy.[37] The 6 November Declaration was an important step for the Community in the development of EPC. The Community took on a difficult foreign policy issue, and managed to formulate a collective policy. The Community's coordinated policy, forged out of formerly divergent views, made clear to all parties, including the United States, that the Europeans were serious not only about their involvement in the Middle East, but also about their involvement in international affairs in general. Sir Alec Douglas-Home, British Foreign Secretary, saw the Middle East policy as "a new step in the process leading to a common attitude on the part of Europe towards major international problems and thus to a common foreign policy." [38]

The British Prime Minister, Edward Heath, viewed the Declaration as a first step on the way to a comprehensive Middle East policy by the Community. He believed that the Community was "entirely correct in concentrating its efforts on a statement of foreign policy" and that the 6 November Declaration was a "substantial beginning, so that Europe can

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37 Ilan Greilsammer and J. Weiler, *Europe's Middle East Dilemma: The Quest for a Unified Stance* (Boulder, Colorado: Westview Press, 1987) p. 29; P. Ifestos, *European Political Cooperation*, *op. cit.* p. 426.
38 *Europe*, 7 November, 1973.

make the maximum possible contribution to the restoration of peace in the Middle East".[39]

3. Copenhagen Summit (December 1973)

While the European Community reaction to the Declaration was positive because it showed internal harmony, the Arab reaction was similarly favourable because of the pro-Arab tilt which the document contained. At the Copenhagen Summit of the States and Governments, held a few weeks after the publication of the 6 November Declaration, the proceedings were disrupted somewhat, however, by the rather unexpected arrival of the Foreign Ministers of 4 OPEC states, who were invited, subsequently, to meet informally with the EC Foreign Ministers.[40]

The Copenhagen Summit of the Heads of State and Government resulted in a statement which, *inter alia*, reaffirmed the EPC declaration of 6 November. The statement in its main parts reads:

> The Heads of State and Government reaffirmed the united stand of their governments on the Middle East question embodied in the Declaration issued on 6 November. Recent events have strengthened them in

39 Bull. EC: 12-1973.
40 Werner Feld, "West European Foreign Policies: The impact of the oil crisis," *Orbis*, vol. 22 (Spring 1978) pp. 68-70.

> their view that the security of all states in the area, whether it be Israel or her Arab neighbours, can only be based on the full implementation of Security Council Resolution 242 in all its parts taking into account also the legitimate rights of the Palestinians.
>
> The Heads of State and Government are convinced that the requirements of sovereignty and the requirements of security can be met by the conclusion of peace agreements including among other arrangements international guarantees and the establishment of demilitarized zones.(41)

The Copenhagen Summit was centred on the oil issue. Regarding energy the Heads of State and Government:

> confirmed the importance of entering into negotiations with oil producing countries on comprehensive arrangements comprising cooperation on a wide scale for the economic and industrial development of these countries, industrial investments, and stable energy supplies to the member countries at reasonable prices.(42)

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41 *Copenhagen Summit Conference Declaration*, Bull. EC:12-1973, p. 10.
42 Bull. EC: 12-1973, p. 11.

The British Prime Minister Edward Heath provided further evidence for this view when he said in a speech on 3 December 1973 in Brussels: "It is only by using all the resources of foreign policy that we can hope to give Europe secure access to the oil it needs".[43]

TABLE 6.3

Dependence on Primary Fuels 1973 in percent of total energy requirements.

	Oil	Natural Gas	Coal*	Other**
Italy	78.6	10.0	8.1	3.2
France	72.5	8.1	16.1	3.2
Belgium and Luxembourg	62.1	13.8	23.7	0.4
Netherlands	54.2	42.3	3.4	0.1
W. Germany	58.6	10.1	30.1	1.3
Britain	52.1	13.2	33.6	1.2
Denmark	68.2	29.4	20.4	0.6
Ireland	60.4	12.1	28.3	0.8

* including lignite and brown coal.
** including nuclear energy, hydroelectric power, and geothermal energy.

Source: BP Statistical Review of the World Oil Industry, 1973

Directly before the Summit meeting, the OPEC ministers had agreed not to continue cutbacks to the EC, except for the Netherlands which was considered pro-Israeli. The Copenhagen

43 *ibid.*, p. 24.

statement did not mention the need for a policy for the Nine as a whole regarding effective measures with which to reply to the Arab oil cut-backs. Instead, the statement aimed to keep oil flowing to the EC by placating the OPEC states. According to Feld, "the deep official sympathies for Israel held by most EC governments were abandoned as a result of the oil debacle and powerful pressure from the Arab oil producers."(44)

The year 1973 found the EC totally unprepared for the Arab use of the oil weapon;(45) the EC, like most states at the time of the 1973 oil crisis, had neither a specific oil policy, nor a general energy policy.(46) Turner sees this failure on the part of the EC as a direct consequence of the EC's Coal and Steel Community foundation.(47) Oil was perceived as a supplement to coal in the 1950s, but by the

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44 Werner Feld, "West European Foreign Policies: The impact of the oil crisis," *op. cit.*, p. 80.

45 See R. Lieber, *Oil and the Middle East war: Europe in the energy crisis* (Cambridge: Harvard University Press, 1976); N.J.D. Lucas, *Energy and the European Communities* (London: Europa, 1977).

46 According to Turner, cheap oil was "relied on as a base for European industrial expansion, and, since the companies seemed able to bring in unlimited amounts, there was no need to rethink [the policy]." L. Turner, "The European Community: Factors of disintegration. Politics of the Energy Crisis," *International Affairs*, vol. 50 (1974) p. 405. It was not until the Six Day War of 1967 that the Commission formulated a policy of sorts, but this only referred to the oil stocks of member states, and not to reducing dependence on Middle East oil. See OJ C 69, 4.30.64, and Supplement, Bull. EC: 12-1968. See also Werner Ungerer, "Consequences of the Oil Crisis," *Aussenpolitik*, vol. 25, (1974) pp. 213-226; Carl Ehrhardt, "Europe and Energy Policy at Top Level," *Aussenpolitik*, vol. 26 (1975).

47 Louis Turner, "The European Community: Factors of Disintegration. *op. cit.* p. 405.

1960s was being relied upon as the basis for European industrial expansion. No attempt to correct this outdated, and even fatalistic, policy void was made by the EC until 1964 when a protocol relating to energy was signed.[48] More serious guide-lines were established in 1968 following the attempted oil embargo at the time of the Six Day War[49], but these were not an active attempt on the part of the EC to reduce oil dependency.

4. London Statement

The London Statement on the Middle East issued on 30 June 1977 was the next crucial step for political cooperation. This statement was a continuation of the pro-Arab stance which had evolved from the 1970 Schumann Paper. It resulted from the 1977 meeting of the European Council in which the Member States:

> ...affirmed their belief that a solution to the conflict in the Middle East will be possible only if the legitimate right of the Palestinian people to give effective expression to its national identity is translated into fact, which would take into account the need for a homeland for the Palestinian people. They consider that the representatives of the parties to the conflict including the Palestinian people, must

48 OJ C-69, 30.4.1964.
49 Supp. Bull. EC: 12-1968.

> participate in the negotiations in an appropriate manner to be worked out in consultation between all the parties concerned. In the context of an overall settlement, Israel must be ready to recognize the legitimate rights of the Palestinian people equally, the Arab side must be ready to recognize the rights of Israel to live in peace within secure and recognized boundaries. It is not through the acquisition of territory by force that the security of the States of the region can be assured but it must be based on commitments to peace exchanged between all the parties concerned with a view to establishing truly peaceful relations.[50]

The London statement reaffirmed EC commitment to UN Security Council Resolutions 242 and 338, but also went further. Not only did the London Statement mention the rights of the Palestinians, but also it gave expression to those rights by stating that the solution to the problem lay in the need for a Palestinian homeland. Several essential points regarding the London statement must be mentioned. First, it established new parameters for the Arab-Israeli discussion; the Palestinian problem was now the central feature, not the security of Israel. For the Israelis the key issue was the failure of the Arab states to recognise the state of Israel. The Community had shifted the focus of the discussion to the

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50 Bull. EC: 6-1977.

need for a Palestinian homeland. Second, Egypt had, by the time of the London statement, begun negotiations with Israel, and had recognised Israel's statehood.(51) The London statement makes no mention of Egypt. Third, the solution to the Palestinian problem which was to be worked out by the Camp David peace process in the ensuing months made no mention of a Palestinian homeland.(52) The Israeli-Egyptian negotiations had centred on autonomy for those Palestinians living on the West Bank and Gaza, not on a homeland. Therefore, from an Israeli perspective the London statement was opposed to every interest of Israel and was blind to the Israeli-Egyptian negotiations.(53)

Arab reaction to the London statement was positive. The statement had put very few demands on the Arab states, other than to recognise the rights of Israel to live in peace within secure and recognised boundaries. Conversely, the requirements asked of Israel were extensive, implicitly calling for it to give up territory in order to secure the mandate of a Palestinian homeland.

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51 See, for example, Martin Sicker, *Israel's Quest for Security*, (New York: Praeger, 1989).

52 For an interesting evaluation of the Camp David Peace Process, see Institute of Jewish Affairs, *Research Report*, Western Europe/79/5, "The EEC and the Middle East Peace Process," (August, 1979).

53 See Ilan Greilsammer and J. Weiler, *Europe's Middle East Dilemma: The Quest for a Unified Stance*, *op. cit.*; see also, Institute of Jewish Affairs, *Research Report*, Middle East/77/3, "European Stance on the Palestinian Issue: EEC Statement Analysed," (August, 1977).

5. The Venice Declaration

The Camp David peace process which began a few months after the June 1977 London Summit, was somewhat of an embarrassment for the EC, which did not wish to dismiss "the rights and concerns of all interested parties".(54) By this time "all interested parties" may have been a less than subtle reference to the part played by the EC. The Nine viewed the Camp David process as exclusionary, involving only certain of the parties concerned, namely Israel and Egypt, and of course the United States, which had previously been the prime external mediator in the conflict. The Camp David process, and the United States' involvement in that process, left the Europeans in the background.

A significant precursor to the Venice Declaration of 1980 was the speech delivered by Irish Foreign Minister Michael O'Kennedy, in his role as President of the European Council, to the 34th United Nations General Assembly. In his speech O'Kennedy redefined the "legitimate rights" of the Palestinians to include a homeland; mentioned the Palestinian Liberation Organization by name, rather than alluding to "representatives" as other declarations had done; and for the first time used the term self-determination. O'Kennedy stated that a peaceful settlement would be endorsed by the international community and would need to meet the legitimate rights of all parties, including

54 Bull. EC: 9-1978.

Israel and the Palestinian people "who are entitled, within the framework set by a peace settlement, to exercise their right to determine their own future as a people."(55)

The Venice Declaration is still considered to be the fundamental EC position on the Middle East. It was arrived at on 13 June 1980 at a meeting of the European Council in Venice. It is important enough to reprint in full:

> 1. The heads of state and government and the ministers of foreign affairs held a comprehensive exchange of views on all aspects of the present situation in the Middle East, including the state of negotiations resulting form the agreements signed between Egypt and Israel in March 1979. They agreed that growing tensions affecting this region constitute a serious danger and render a comprehensive solution to the Israeli-Arab conflict more necessary and pressing than ever.
>
> 2. The nine member states of the European Community consider that the traditional ties and common interests which link Europe to the Middle East oblige them to play a special role and now require them to work in a more concrete way towards peace.
>
> 3. In this regard, the nine countries of the Community base themselves on Security Council

55 Speech delivered by Mr. O'Kennedy at the United Nations General Assembly 26.9.79, printed in Bull. EC: 9-1979.

resolutions 242 and 338 and the positions which they have expressed on several occasions, notably in their declarations of 29 June 1977, 19 September 1978, 28 March and 18 June 1979, as well as the speech made on their behalf on 25 September 1979 by the Irish Minister of Foreign Affairs at the thirty-fourth United Nations General Assembly.

4. On the bases thus set out, the time has come to promote the recognition and implementation of the two principles universally accepted by the international community: the right to existence and to security of all the states in the region, including Israel, and justice for all the peoples which implies the recognition of the legitimate rights of the Palestinian people.

5. All of the countries in the area are entitled to live in peace within secure, recognised and guaranteed borders. The necessary guarantees for a peace settlement should be provided by the United Nations by a decision of the Security Council and, if necessary, on the basis of other mutually agreed procedures. The Nine declared that they are prepared to participate within the framework for a comprehensive settlement in a system of concrete and binding international guarantees, including (guarantees) on the ground.

6. A just solution must finally be found to the Palestinian problem, which is not simply one of refugees. The Palestinian people, which is conscious of existing as such, must be placed in a position, by an appropriate process defined within the framework of the comprehensive peace settlement, to exercise fully its right to self-determination.

7. The achievement of these objectives requires the involvement and support of all the parties concerned in the peace settlement which the Nine are endeavouring to promote in keeping the principles formulated in the declaration referred to above. These principles apply to all the parties concerned, and thus the Palestinian people, and to the PLO, which will have to be associated with the negotiations.

8. The Nine recognise the special importance of the role played by the question of Jerusalem for all the parties concerned. The Nine stress they will not accept any unilateral initiative designed to change the status of Jerusalem and that any agreement on the city's status should guarantee freedom of access for everyone to the holy places.

9. The Nine stress the need for Israel to put an end to the territorial occupation which it has maintained since the conflict of 1967, as it has

done for part of Sinai. They are deeply convinced that the Israeli settlements constitute a serious obstacle to the peace process in the Middle East. The Nine consider that these settlements, as well as modifications in population and property in the occupied Arab territories, are illegal under international law.

10. Concerned as they are to put an end to violence, the Nine consider that only the renunciation of force or the threatened use of force by all the parties can create a climate of confidence in the area, and constitute a basic element for a comprehensive settlement of the conflict in the Middle East.

11. The Nine have decided to make the necessary contacts with all the parties concerned. The objective of these contacts would be to ascertain the position of the various parties with respect to the principles set out in this declaration and in the light of the result of this consultation process to determine the form which such an initiative on their part could take.[56]

The Venice Declaration was met with disapproval by both Israel and the Arab states. The former because of its perceived hostility to Israel, the latter because of the

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56 See, Bull. EC: 6-1980, pt. 1.1.6.

declaration's perceived ambiguity and inadequacy. The Venice declaration, for the first time in a Community statement, mentioned self-determination for the Palestinians, and direct involvement of the Palestine Liberation Organization (PLO) in the negotiation process. These objectives were anathema to Israel especially in light of the Covenant of the PLO whose guiding principles state:

- The Jews are not a nation and consequently possess neither the right to self-determination nor the right to an independent state (Article 20);

- Any solution not based on the right to total liberation of the country must be rejected. The objective - the establishment of an independent state - cannot be achieved by political means but only by armed combat (Articles 9 and 21);

- The struggle against Israel is legal, but the defence of Israeli interests is illegal (Article 18).[57]

More surprising than Israeli reaction to the Venice Declaration was the negative Arab response. The PLO leadership was irritated that it had not been given

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57 (Reprinted from "Report drawn up on behalf of the Political Affairs Committee on the situation in the Middle East", *European Parliament Working Documents 1982-83*, Doc. 1-786/82, 3 November 1982 (Penders Report).

exclusive capacity to negotiate on the part of the Palestinians; that there had been no call for a new UN resolution; and that the Declaration had made no mention of a Palestinian state. The PLO saw the declaration as a sell out to the United States and to the Camp David process. The Europeans had, in the eyes of the Arab world, aligned themselves with the United States.[58]

6. The invasion of Lebanon (1982)

The Israeli invasion of Lebanon in 1982 was discussed at a special meeting of the Ten in Bonn on 9 June 1982.[59] Although the chief issue under discussion at the time was the Falkland Islands conflict, a statement was adopted on the situation in Lebanon. The foreign ministers "vigorously condemn the new Israeli invasion...[which] constitutes a flagrant violation of international law." At a meeting on 21 June in Luxembourg the President of the Council, Mr. Tindemans, confirmed a decision not to sign the second EEC-Israel Financial Protocol. It was decided to suspend the signing of this Protocol until the next meeting of the Cooperation Council.[60] At a speech given by Mr. Uffe Ellemann-Jensen of Denmark on behalf of the Ten at the United Nations General Assembly, the Ten again expressed

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58 *Middle East International*, 18 July 1980.
59 Bull. EC: 6-1982, pt. 2.2.74 and 2.2.75.
60 Bull. EC: 6-1982, pt. 2.2.75. The Cooperation Council held its third meeting in Brussels on 20 February 1983 (Bull EC: 2-1984); The second Financial Protocol was eventually signed in June 1983 (Bull. EC: 6-1983).

their outrage at Israel. Still, they offered no threat of sanctions, instead committing themselves only to a continued part in promoting a peaceful settlement. "The Ten will maintain and expand their contacts with all parties to help improve conditions for such negotiations."[61] The second Financial Protocol which provided Israel with 40 million ECU from the European Investment Bank (EIB) was, however signed before the withdrawal of troops in 1985.[62]

7. Madrid 1989

A Declaration on the Middle East in the framework of European Political Cooperation was made in Madrid at a meeting of the European Council. Although it primarily based its Middle East policy on the Venice Declaration of 1980, the Madrid Declaration went further and mentioned the need for elections in the Occupied Territories as a contribution to the peace process. Also, whereas the Venice Declaration mentioned only the need for a peaceful settlement to the problems, the Madrid Declaration gave some direction for the fulfilment of that need.

> The Twelve consider that these objectives should be achieved by peaceful means in the framework of an

61 Bull. EC: 9-1982.
62 Also on 10 December, 1982, the Council adopted regulations concluding Agreements concerning the import of fruit salads. Thus the political issues at hand did not overwhelm the discussion of more mundane trade matters. See OJ L 371 30.12.1982.

> international peace conference under the auspices of the United Nations, as the appropriate forum for the direct negotiations between the parties concerned...[63]

The need for an international peace conference had, however, been drawn up at a meeting of EPC two years before in a Declaration on 23 February 1987.[64] But at this meeting the fundamental framework was still the Venice Declaration of 1980.[65]

III. The 1987 Protocols: an Economic Sanction?

From the survey of both the trade relationship of the EC to Israel, and the declarations made in the framework of EPC, it is evident that politics and economics were virtually impossible to separate. The 1987 protocols, mentioned above, which were sent to the European Parliament for ratification in 1988, were vetoed.[66] It has been argued that the parliamentary veto was an economic sanction wielded by the

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63 Bull. EC: 6-1989.
64 Bull. EC: 2-1987.
65 At the Copenhagen meeting of the Foreign ministers on 13 July 1987, the Twelve stated that "For their part, the Twelve have followed developments in the area closely and have decided to pursue, both via the Presidency and bilaterally, their contacts at all levels with all the interested parties in order to contribute to the search for a just global and lasting settlement of the Arab-Israeli conflict, including the Palestinian problem, in accordance with the 1980 Venice Declaration." Bull. EC: 7/8-1987, pt. 2.4.1.
66 OJ C94, 11.4.1988.

EP in an attempt at political coercion;[67] and that the withholding of the ratification by the European Parliament was an effective sanction which succeeded in bringing about a change in policy by the Israelis. In other words, the primary objective was satisfied.

However, it is difficult to assess whether in fact this was the case. The impact of the European Parliament sanction within Israel "was felt exclusively by the farmers. And the economic damage inflicted was not sufficient to unleash domestic political pressure that would bring a new policy more in accord with the norms of the Community."[68] The normative aspect of sanctions was therefore not effective; European Parliament action did not bend Israeli policy on the paramount issue of repression in the occupied territories, even if was instrumental in allowing Gaza fruit growers to export their goods directly, and without "Made in Israel" labels.

The Parliamentary sanction did, however, accomplish a goal in line with legitimation and tertiary objectives. European Political Cooperation, which had produced a Community policy toward the Arab-Israeli conflict, the basis of which was the Venice Declaration, had provided a framework within which

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67 See Ilan Greilsammer, "The Non-Ratification of the EEC-Israel Protocols by the European Parliament (1988)," *Middle Eastern Studies*, vol. 27 (April, 1991) pp. 303-321.

68 Ilan Greilsammer, "The Non-Ratification of the EEC-Israel Protocols," *ibid.* p. 320.

the issue could be discussed, and gave the European Parliament a touchstone for its action. Without the basic texts of EPC, it would have been much more difficult for the European Parliament to debate the issue. The Community's position, drawn up within EPC, found its manifestation in the actions of the Parliament, which had just been given the new power of assent. Under Article 238 EEC, as amended by the European Single Act of 1986, an absolute majority of 260 was needed to ratify the Protocols.

The Parliamentary debate was ostensibly about commercial matters, but influenced markedly by political considerations. The three reports, prepared by *rapporteur* Hitzigrath of the Committee for External Economic Relations, resulted in parliamentary debates on March 8 and 9, 19888 in Strasbourg.(69) Extracts from these debates provides some interesting insights to the politics of economic decisions. Typical of the arguments against approval were those of:

Mr. Arndt (Socialist, Germany):

> with international agreements there are often political factors involved which do not stem directly from the actual agreements being voted on. This of course means that the House faces a political question of principle concerning its relations with the country with which these

69 See, Bull. EC: 3-1988. For the complete debate see, "Debates of the European Parliament" OJ C23, 8.3.1988.

agreements or protocols are to be concluded. That is particularly true of the protocols with Israel. They are a classic example....

Were it not for the events in the occupied territories in Palestine and the behaviour of the Israeli Army, it is my guess that at least one protocol would have been approved without any debate. I refer to the protocol dealing with the inclusion of Spain and Portugal in the existing contractual arrangements with Israel.... The action taken by the Army and the unrest in the Israeli-occupied territories has given the whole thing a political dimension which we simply cannot ignore.

Conversely, those in favour of ratification opposed the mixing of economics and politics. For example Mr. Blumenfeld (European Peoples Party, Germany):

You are trying to exert unfair political pressure on a sovereign government, even though I share your concern over the behaviour of the Israeli Army, but that is quite another matter... we are talking here of financial and trade protocols which have to be approved and which we, as one of the three Community institutions, have to approve.

Cassidy (Conservative, UK)

> It is a pity that, in what is essentially a matter of trade, political considerations should be dragged in.

Pimenta (Liberal, Portugal):

> We must be able to distinguish between the results of normal political cooperation on the one hand and economic relations on the other.

Oppenheim (Conservative, Denmark):

> When does a matter have political character, and when does it not? The extreme consequence could be that we will always find a political reason for dealing with or refusing to deal with a question.

Varfis (member of the Commission):

> I just want to stress that the three protocols do no more than adjust relations between the Community and Israel concerning matters of trade and financing cooperation. These protocols are in no way related to the occupied territories.

The protocols, receiving 255, 207 and 205 votes respectively, were not ratified in March 1988 by the European Parliament when they met in Strasbourg on March 8 and 9 (260 votes were needed). The parliament had, in effect, imposed an economic sanction. However, two events

between March and October 1988, (Gaza citrus growers were granted direct export licenses, and Yasser Arafat went to the European Parliament at the invitation of the socialist group), led to their approval, and the European Parliament ratified the protocols with 314 votes.(70)

Conclusion

The Parliament's measures, while not accomplishing a profound change in the policies of Israel, had structural implications for Community's international position. The wielding of an economic instrument by a body acting independently of its member states was a crucial factor in the measurement of this actor capacity, as was the recognition by the EP of its potential political power and the political consequences of trade measures. Before the issuing of this sanction, the European Parliament had hardly figured in the discussion of European Community competences.

The crucial question in this case is: how has the Community's handling of its relationship with Israel, considering that it chose to make the Arab-Israeli conflict its first foreign policy issue, strengthened or diminished the Community's image as an international actor? The examination of the period from the initial trade relationship which began in the 1960s to the pivotal Venice

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70 Ilan Greilsammer, "The Non-Ratification of the EEC-Israel Protocols," *op. cit.* p. 317.

declaration of 1980 and beyond highlights three important issues. First, attempts to project the EC's collective identity were thwarted by the concerted effort to separate the political and foreign policy issues from those of the developing trade and economic association. Unlike the Central and East European states (discussed in a later chapter), where the Community has specifically tied the issue of trade to political reform, with Israel a staunch attempt at separation was maintained up until the time of the Parliamentary sanction. This separation weakened the backbone of the declarations by providing no structural support. Declarations may be an effective instrument on their own, but their support by economic considerations would have increased the force of the EC's international image projection.

Second, approval internationally of Community involvement in the settlement of the Arab-Israeli conflict provides significant evidence for the thesis that the Community is capable of actions which increase its legitimisation even if mechanisms of EC and EPC are not always coordinated. While approval of the Community's role was not forthcoming in the beginning, it was gradually accepted and approved of by almost all parties to a greater or lesser degree. When the Community meeting in Madrid proposed an international peace

conference it brought, quite remarkably, convergence of opinion from all sides.(71)

Third, the collection of EPC declarations, reports and statements became a "useful reservoir of common reflection"(72) which established a cumulative EC position. This history of involvement through the means available to EPC, refined and adjusted over the years, became a source of commonalty among the member states whereby divergence was avoided and positions were known. In the 1980 Venice declaration principles that had been agreed upon cooperatively in a diplomatic framework produced a common position on an important international issue.

Along these lines, as a diplomatic instrument, EPC also became in effect a tool for various groups with a variety of interests who were eager to see EPC declarations reflect their particular objectives. In the case of Israel certainly the parties involved reacted to all pronouncements with hearty conviction either favourably or not. The fact that broad or even vague statements emerged from EPC did not deter either the attempts to influence their content, or the strength of reaction to them by the international community.

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71 See *Europe*, no. 4497, 25 February 1987. The PLO said: "We support all European efforts in this sense." The Israeli response was also favourable, seeing European Community efforts as a new step in the peace process. *Europe*, no. 4497, 26 February 1987.

72 P. Ifestos, *op. cit.*, p. 529.

Israel proved a stronger case of Community actorness than Southern Rhodesia partly because the mechanisms which provided a voice for the Community were better developed. EPC had emerged from its fledgling stages and had begun to fulfil its purpose. EPC began also to take unexpected turns, not only providing a voice for the Community position, but also providing a forum for others to voice approval or disapproval of the EC line. But the main reason that the Community gained from its involvement in Israel goes back to the original hypothesis: that the Community can act and obtain legitimisation in spite of limited competences and in spite of the frequent dichotomy and tension between the member states and the Community. The Community was able to legitimise itself because it was first, included in the international peace process, second, involved in systematic official dialogue and contact, and third, it adopted positions on specific issues in the Arab-Israeli conflict which were of specific interest and salience to the other actors involved. The Venice Declaration alone provides proof for the above three points as it remained a significant benchmark document for both Palestinians and Israelis for fourteen years.

As already noted in chapter two, the implications of economic acts are full of foreign policy consequences, and keeping economic decisions separate from those of foreign policy is virtually impossible. The concept of actorness is centred to a large degree on the wielding of economic power.

In the case of Israel, it took the European Parliament not only to speak out on the topic, as shown in the debates, but also to take concrete measures.

CHAPTER 7

CENTRAL AND EASTERN EUROPE AND THE EUROPEAN COMMUNITY: THREE LEVELS OF ACTORNESS

Introduction

The previous chapters on Rhodesia and Israel showed a certain degree of evolution in the Community's ability to square the tensions and interplay in the forces of its external relations and EPC. Rhodesia showed a muddled Community not sure either of its role in the whole situation or of its capacity or willingness to act. Little legitimisation was gained through the uncertain way in which the Community implemented and enforced UN sanctions. In the case of Israel the same tensions remained between the Community and the member states: the Community remaining unwilling to cede to the political realities of economic involvement. With Israel some headway was made in combining

competences, but then only at the insistence of the European Parliament. The case of Central and Eastern Europe provides a prime illustration of the integrative forces of Community external relations and its political cooperation mandate. Political and economic aspects of the Community's relationship with the states of Central and East Europe are integrated more fully than ever before, and the best example to date of Community actorness is established.

In April 1990 the European Community held a special summit in Dublin to consider the changes which were occurring in Central and Eastern Europe. The European Council,

> applauded the continuing process of change in these countries with whose people we share a common heritage and culture. This process of change brings ever closer a Europe which, having overcome the unnatural divisions imposed by ideology and confrontation, stands united in its commitment to democracy, pluralism, the rule of law, full respect of human rights, and the principles of the market economy.(1)

With this summit the EC began to address fully the new situation with its eastern neighbours. The newly democratised states of Central and Eastern Europe(2) in the

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1 Press Release "Conclusions of the Presidency", European Council, Dublin, 28 April, 1990.

2 For the purpose of this chapter, Central and East European States (CEES) will include Poland, Hungary,

years since 1989 have been, and still are, in a state of flux. The evolution of the changed and changing relationship between the Central and Eastern Europe states (CEES) and the European Community presents a case which fits precisely a study of the complex relationship between external economic and political relations. The Community has offered its reward of association, ie. with the Europe Agreements, and perhaps eventual membership for the newly independent states of Czechoslovakia[3], Poland and Hungary symbolising for them a "return to Europe".[4] From June 25 1988 when the "EC-COMECON Joint Declaration on the Setting Up of Official Relationships" was issued[5], to the framework developed under the Europe Agreements, the Community has been extensively involved in contributing to the restructuring of its eastern neighbours.

It is the purpose of this chapter to analyse the recent major developments in the relationship between the states of

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Czechoslovakia, Bulgaria and Romania. It is beyond the scope of this chapter to consider the states of the former Soviet Union.

3 Czechoslovakia as of 1 January 1993 officially split into the Czech and Slovak Republics. At the time of writing new agreements were currently being worked out with the two new states, the Czech Republic and Slovakia. As the new arrangements are in the negotiating phases, the term Czechoslovakia will be used. See Bull. EC: 1/2-1993, "Recommendation for a Council Decision authorizing the Commission to negotiate two separate Europe Agreements between the Community and the Czech Republic and between the Community and Slovakia", p. 69.

4 See Commission of the European Communities, "Towards a closer association with the countries of Central and Eastern Europe", *Background Report*, 17 February 1993.

5 Bull. EC: 6-1988; OJ 1988 L 157/35.

Central and Eastern Europe and to examine why and how the EC became the major international actor in aiding the transition in the East. A crucial issue in this analysis is the role of Community involvement and its influence in determining the direction of the transition. The CEES needed, and still need, help to overcome the structural difficulties of transforming their centrally planned political and economic systems into democratic, civil societies and market economies. The Community has a vested interest in an economically healthy neighbours. For this type of large scale restructuring the Community has no historical precedent or model of its own on which to base such an immense process of transition. The examples of Spain and Portugal, which were effectively integrated into the Community, provide the closest comparison. However, Spain and Portugal were, while cut off from the political system, still participants in the world economic system. The structures of a market economy were in place. Therefore these states did not provide an adequate model on which to base the relationship between the Community and the CEES.[6]

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6 The extensive literature on the Spanish-Portuguese enlargement and the role of the European Community includes, *inter alia*, Roy H. Ginsberg, "The European Community and the Mediterranean," in Juliet Lodge, ed., Institutions *and Policies of the European Community* (London: Pinter, 1988); R. Taylor, *Implications for the Southern Mediterranean Countries of the Second Enlargement of the European Community* (Brussels: Commission of the European communities, 1980); D. Seers, C. Vaisos and M-L Kiljunen, *The Second Enlargement of the EEC: the Integration of Unequal Partners* (London: Macmillan, 1982); L. Tsoukalis, *The European Community*

The approach of the Community in Eastern and Central Europe which has been to set up rigid strictures of political conditionality is the chief factor on which all forms of aid and association are based. The Community has a lot to gain from system transformation in terms of trade and economic benefits. Equally important are its gains in terms of its own legitimization through its role as the chief actor in the region. This assertion, as will be discussed below, is based on three levels of actorness by the Community: The Community as aid provider, as role model, and as establisher and enforcer of political norms. Through these three levels of actorness the Community has secured its legitimacy in the region, and strengthened its position as an international actor.

Before analysing the actor capability of the Community in Eastern Europe, it is important to look briefly at the background of the relationship between the EC and the CEES, and the progressive levels of involvement between the two

bodies.[7] Although some background is of course necessary to the discussion, this chapter will not engage in an historical account of the region and its special relationship with the states of the European Community or focus on the essential "Europeanness" of Central and Eastern Europe. Rather it will remain centred on the transitionary phase of the development of market economies and democratic institutions and the EC's involvement with this process.

I. General Background and Early Developments

The lack of contractual relations between the European Community and the Council for Mutual Economic Assistance (Comecon or CMEA) ended on June 25 1988 with a Joint Declaration signed in Luxembourg.[8] This Declaration was the result of negotiations between the Community and Comecon which began in 1986[9] and announced the opening of official

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and its Mediterranean Enlargement (London: George Allen and Unwin, 1981); L. Tsoukalis, "A Community of Twelve in Search of an Identity," *International Affairs*, vol. 54 (1978) pp. 437-451; R. Pomfret, *The Mediterranean Policy of the European community: A Study of Discrimination in Trade* (London: Macmillan, 1986); Commission of the European Communities, "General Considerations on the Problems of Enlargement," COM (78) 120 final, 20.4.1978 (Brussels, 1978); Commission of the European Communities, "The Transitional Period and the Institutional Implications of Enlargement," (COM) 190 final, 24.4.1978 (Brussels, 1978).

7 Because of the unprecedented changes which have occurred in the Central and East European states in the years since 1989, this chapter will concentrate on the limited time frame between 1988 and 1993.

8 OJ 1988 L 157/35.

9 Bull. EC: 9-1986.

relations between the two bodies.[10] The negotiations leading up to the signing of the Declaration made a breakthrough when Comecon agreed to the Community's demand that it should be allowed to negotiate contracts with the individual member states rather than with Comecon itself. The European Commission then sent letters both to Comecon and to the members states of Comecon outlining its intentions to open negotiations for cooperation made possible by the flexibility of the Declaration.[11] It was for the most part a political document which declared the pursuit of cooperation in fields falling within their

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10 For more on the early relationship between the European Community and Comecon see, Barbara Lippert, "EC-CMEA relations: normalisation and beyond," in Geoffrey Edwards and Elfriede Regelsberger, eds., Europe's *Global Link: The European Community and Inter-regional Cooperation* (London: Pinter, 1990); J. Pinder, "Integration in Western and Eastern Europe: Relations between the EC and CMEA," *Journal of Common Market Studies*, vol. 18 (1979); J. Pinder, *The European Community and Eastern Europe* (London: Pinter, 1991); K. Schneider, *The Role of the European Community in East-West Economic Relations: A Pan-European Economic Space?* (London: Macmillan, 1990); M. Maresceau, *The Political and Legal Framework of Trade Relations between the European Community and Eastern Europe* (Dordrecht: Martinus Nijhoff, 1989); R. M. Cutler, "Harmonizing EEC-CMEA relations: Never the twain shall meet?", *International Affairs* vol. 63, no. 2, 1987; J. Maslen, "The European Community's Relations with the State-Trading Countries of Europe 1984-1986", in F. J. Jacob's (ed.)*Yearbook of International Law* (London: Oxford University Press, 1987); A. Lebahn, "Alternatives in EC-CMEA Relations", *Aussenpolitik*, vol.31, no.2, 1980; A. Shlaim and G.N. Yannopolous, *The EEC and Eastern Europe* (London: Cambridge University Press, 1978); See also H. J. Seeler, *Report on the Relations between the European Community and the Council of Mutual of Economic Assistance (CMEA) and the Eastern European Member States of the CMEA*, European Parliament Working Documents, A 2-187/86 (December 19, 1986).

11 Bull. EC: 1/2 1986.

individual competences and areas of common interest. However, it opened the way for trade agreements and resulted in the acceptance by Comecon of bilateral trade agreements between the Community and the individual member states of Comecon. With this Declaration the original mistrust by the CMEA of the European Community which was published in both *Pravda* and *Izvestia*, in 1962 had come, officially at least, to an end.(12)

The Community and the states of Comecon were quick to take advantage of their new opportunities. On 30 June 1988 Hungary and the EC initialed a trade and cooperation agreement(13); Poland followed closely behind, initialing an agreement on 22 July 1988.(14) Three months following the signing of the Declaration an agreement with Hungary was concluded, and six months later a trade and cooperation agreement with Czechoslovakia was signed.(15) These early agreements, which were somewhat overtaken by the pace of events (including the demise of Comecon), remained a significant starting point for trade between the two sides.

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12 See "On Imperialist Integration in Western Europe (The Common Market)", *Pravda* and *Isvestia*, August 26, 1992, quoted in, "EEC-CMEA Relations: The Aftermath of the Declaration of June 25, 1988", *European Integration and East-West Relations*, (Geneva: Graduate Institute of International Studies, 1990); For an analysis of the attitude of CMEA towards the newly formed EEC, see Michel Mouskhely, "Le bloc communiste et la Communauté Economique Européenne", *Revue d'économique politique*, mai-juin, 1963, pp. 406-438.

13 Bull. EC: 6-1988.

14 Bull. EC: 7-8-1988.

15 Twentieth General Report, point 900.

II. Three Levels of Involvement

Before going on to discuss the further implications of the new relationship to Eastern and Central Europe which the European Community is now faced with, it is first essential to analyse the content of the various aid, trade and association agreements. These include the Phare programme, the 1st Generation Agreements, and the Europe Agreements. Trade measures have traditionally, as has been seen in the previous chapters, relied on the Common Commercial Policy for their implementation. However, the splitting up of trade and politics forces issues into rigid and artificial categories. This artifice becomes blatantly unsuitable in the situation of Central and Eastern Europe where the mandate of the Community is itself inherently political. In the case of the CEES, trade measures are a method of ingraining not only market principles, but the whole gamut of liberal economic and social institutions. Nevertheless, to cover the whole one must begin by splitting up the relevant parts. Therefore this chapter will first look at the three levels of Community involvement: the Phare programme, the First Generation Agreements and the Europe Agreements.

1. Aid and restructuring

1.1 The Phare Programme

It was the Paris Summit on 14 and 15 July 1989[16] of the seven main industrialised states (G-7) which offered specific and concrete measures to central Europe in the form of aid to Poland and Hungary. The first step in the process was the establishment of a coordinated aid programme which would help to protect the emerging states from social and economic hardship during their tenuous transition period. Thus, the programme was designed to be emergency aid to assist through the transition period.[17] At the Paris Summit the G-7 states requested that the Community act as the developer and coordinator of an aid programme that would address the needs of the CEES.[18] In this context the Commission presented the Phare (Poland and Hungary: aid for economic reconstruction[19]) programme[20] which is the legal basis for a Community "Action Plan". The main aim of

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16 Bull. EC: 7-8-1989.

17 Although Phare was originally fashioned specifically for Poland and Hungary, it was in 1990 extended to include Bulgaria, Czechoslovakia, Romania and Yugoslavia. For a short period the German Democratic Republic was also included, but this came to an end with unification. The former Yugoslavia has now also been eliminated from the list.

18 The fact that the Community was charged with this task is a significant point, and will be addressed fully below.

19 It is perhaps interesting to note that Phare is the French word for lighthouse.

20 Council Regulation 3906/89; OJ 1989 L 375/11. See also Commission of the EC, *XXIIIrd General Report on the Activities of the European Communities, 1989*, point 786.

the Phare programme was to establish an environment in which the progress toward market and democratic reforms could be facilitated.[21]

The Commission was quick to take up its mandate of distributing aid.[22] One week after the Paris Summit Ecu 130 million was approved, and shipments of food aid began.[23] This immediate aid relief would be overtaken eventually by a more structurally based aid programme aimed at creating necessary social and political infrastructures (discussed below).

On the part of the European Community, efforts to assist the CEES included "improvements in agricultural production, training, including the training of managers, staff and public administrators and the promotion of foreign investment"[24] The original aid was only temporary, conditional upon the continued efforts at reform. By May 1990 the Commission held that "the infrastructure of political and reform programmes [had] largely satisfied the

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21 See *XXIIIrd General Report, op. cit.* The original Phare legislation was amended by EC Regulation 2698/90, OJ L 257, 21.09.90.

22 For an account of the first aid shipments and the Commissions role see Claus-Dieter Ehlermann, "Aid for Poland and Hungary, first assessment", *European Affairs*, vol. 4, 1989.

23 See Bull. EC: 7-8-1989, and Bull. EC: 8-1989.

24 See EC Commission's Spokesman Press Release IP, 1989, no.953, 13 December 1989.

conditions for the extension of coordinated assistance" which was approved at the Paris Summit.[25]

At the beginning of Phare's implementation, the programme received financial means of Ecu 5.7 billion in grants from the G-24. Of this amount the Community and its member states provided the bulk, giving Ecu 4.1 billion in grants.[26] This amount made the European Community the largest contributor to the programme (72%). Out of the money allocated by the EC, Ecu 2.5 billion of the grants was given from the Community's own budget, and the remaining Ecu 1.6 billion was provided by the member states. From the contributions of the member states of the EC, Germany's was by far the largest at 48.8% (Ecu 766 million), a figure which demonstrates not merely the economic strength of Germany, but its direct geographical and historical relationship with the Eastern European states.[27] Germany

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25 Commission of the European Community, *Action Plan: Coordinated assistance from the Group of 24 to Bulgaria, Czechoslovakia, the German Democratic Republic, Romania and Yugoslavia*, SEC (90)843, Brussels, 2 May 1990.

26 For a discussion of the aid distribution see H. G. Gerstenlauer, "Der Beitrag der EC zur Restrukturierung Mittel- und Osteuropas", in J. Fischer *et.al.*(ed.), *Die Transformation der osteuropäischen Länder in die Marktwirtschaft* (Münster/Hamburg: Lit. Verlag, 1992), pp. 352-373. The following figures are taken from the G24 Coordination Unit, Directorate General for External Affairs, Brussels, *PHARE Scoreboard*, Commission of the EC, 30 January 1993. See also Commission of the European Communities, *Together in Europe*, Brussels, No. 14, 1.9.92. For an interesting criticism of aid distribution see, *The Economist*, 10 April, 1993. See also J. Pinder, *The European Community and Eastern Europe*, *op. cit.*, p.

27 Germany has been an ardent supporter of the CEES, and has called for accelerated integration of these states into the Community. See J. Hoagland, "Europe's Destiny",

perhaps more than the rest of Europe "lives with the inescapable necessity to coexist".[28]

The Phare programme concentrated in its first year on economic transformation through the support of economic activity in specific sectors. These focused on five main areas: emergency aid, agriculture, environment, training and education. The Commission hoped that by focusing on a small number of specific areas it could do the most in the short term. The short term was significantly different in its requirements than future aid would have to be. The immediate aim of the Community was to aid in stabilisation by providing food and the transportation of agricultural products.

For its longer term Phare plans the Commission again relied on a number of core areas. These areas covered the more structural goals of transformation to market principles.[29] The first of these sectors was privatization, a goal not necessarily of liquidating state controlled industries, but rather of identifying potentially profitable concerns and aid in the process of transforming them into independent operations. This aid is aimed primarily at the restructuring

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Foreign Affairs, vol. 69, no. 1, 1990, pp. 33-50; "Genscher Proposes States to Join EC", *Financial Times*, 10 February, 1992; "Kohl Backs Prague's EC Drive, *Financial Times*, 28 February, 1992.

28 Werner Weidenfeld, "The European Community and Eastern Europe", *Aussenpolitik*, vol. 38, no. 2, 1987, p. 143.

29 See Directorate General for External Relations, *Operation PHARE*, 1/646/90 EN, Commission of the EC, Brussels, 29.11.90

of business concerns, and the demonopolization of enterprises which had controlled entire market sectors. The Commission also commissioned studies into the future market viability of various business concerns, and helped to determine the costs and benefits of liquidation of such potentially tenuous operations.

A second area identified by the Commission was banking services and the operation of financial institutions. This was considered by the Commission to be a crucial segment of structural reform necessary to create an economy capable of growth through investment.[30] In this context the European Commission offered not only financial contributions to the assets of banks, but also offered consultancy on the development of commercially operable financial institutions.

Third, the Commission was instrumental in the advancement of small companies and in entrepreneurial ventures through the guaranteeing of credit and loans. The Commission did not provide risk capital for the establishment of firms, nor did it engage in direct aid to firms, but it has contributed to equity funds set up with the purpose of facilitating such ventures (although these are approved on a case by case basis by the European Investment Bank). Here the Commission

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30 See Bank for International Settlements, "Recent Developments in the External Payments and Financing of Central and Eastern European Countries", *International Banking and Financial Market Developments*, Basel, Bank for International Settlements Internal Paper, February, 1991.

relies on providing funding to the recipient countries' programmes which are then responsible for distribution.[31]

Fourth on the list of structural reform relates to labour laws, including employment, training and social security arrangements.

It was originally planned that the Phare Programme would expire at the end of 1992, but after reviewing the situation the EC Council decided to extend the time frame until 1997.[32] The objective for the 1993-97 period is to continue the economic and technical assistance, but the emphasis is on consolidation of existing reform measures. This requires:

- an appropriate balance between technical assistance and support for investment;
- support for institution building;
- programming on a multi-annual basis;
- the greater use of funds to support the countries' own sectoral and regional development programmes;
- cooperation between PHARE, EIB and EBRD[33]

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31 For a discussion of the above points, see J. Pinder, *The European Community and Eastern Europe* (London: Pinter, 1991), pp. 89-90.

32 See Commission of the European Communities, *Together in Europe*, Brussels, no. 18, 15.11.92.

33 Commission of the European Communities, "Towards a Closer association with the Countries of Central and Eastern Europe", *Background Report*, 17 February, 1993.

1.2 European Bank for Reconstruction and Development

As part of the commitment by the Community to aid in the setting up of a thriving private sector, it was agreed to establish a banking institution capable of guaranteeing financial intermediation. Thus the European Bank for Reconstruction and Development (EBRD) was conceived at the Strasbourg meeting of the European Council in December 1989 on an initiative from President Mitterrand.[34] Although the it is not part of the EC directly, the Community set up the European Bank for Reconstruction and Development in April 1991 whose sole mandate it was to provide financing for economic restructuring in the states of Eastern and Central Europe by assisting the establishment and growth of the private sector in the former socialist countries.[35] The Bank was designed specifically to respond to the unique and unprecedented changes that have happened in the region, and it had responsibility in no other part of the world. The role of the Bank is to foster systemic change with a holistic outlook.

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34 Bull. EC: 12-1989.

35 For more detailed account of the EBRD, see P. Aghion, "The Transformation of the Economies of Central and Eastern Europe: The Role of the European Bank for Reconstruction and Development", In J. Fischer *et.al.* (ed.) *op. cit.*; I. Shihata, *The European Bank for Reconstruction and Development: A Comparative Analysis of the Constituent Agreement* (London: Graham and Trotman, 1990); K. Donfried, *The European Bank for Reconstruction and Development: An Institution of and for the New Europe*, Doc. no. 91-611F (Washington: Congressional Research Service, August 15, 1991).

Therefore, the EBRD has a "Dual Mandate" in the realms of both the political and the economic. While other international monetary institutions such the International Monetary Fund (IMF) rely solely on macroeconomic data (inflation rates, and debt as a percentage of Gross National Product) as a gauge of a functioning economy, the EBRD focuses on economic *and* political indicators. The main task of the Bank is to assist in the transition of the Central and East European states by helping to promote private projects and entrepreneurial endeavours. But this assistance is predicated upon the political commitment to, and practice of, democratic principles such as free and fair elections, free press, and a functioning judiciary process. The Charter of the Bank specifically forbids it from financing projects in states where these democratic elements are missing.

The original capital amounted to Ecu 10 billion which was contributed to by 42 founders including the member states of the Community, the European Community as a separate entity, and the European Investment Bank. The EBRD has implemented a two sided approach which aims at both direct investment with the private sector-through its merchant banking operations-and with the development of market infrastructure-through its development banking programme.(36)

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36 P. Aghion, *op. cit.* p. 224.

2. The First Generation Agreements

The pace of change in the Eastern European states meant that the European Community had to come up with strategies to manage that change, to find ways to accommodate it and to direct it at a rapid speed. Aid was the first step, but was not necessarily a dynamic force the in transformation of the economic system. For this reason a system of multiple channels had to replace the one-way approach of aid. As has been mentioned above, trade and cooperation agreements were negotiated and initialed almost immediately after the Declaration. These are known as the 1st Generation Agreements because they were signed with extreme speed, but were overtaken very quickly with more advanced trade and association agreements which will be discussed later.

While the Phare was designed initially as an aid programme, trade and cooperation agreements were seen as the long term basis on which to develop relations with the former socialist states. Bilateral trade agreements were signed, as has been mentioned above, almost immediately after the June 25, 1988 Declaration between the Community and Comecon. Although Comecon was to disappear, the liberalisation of trade between the members of the former organization would remain a significant starting point for the new order.

2.1 Canada Clause

It was these 1st Generation Agreements, however, which set the scene. Because of the wide variety of agreements, the special circumstances, and the potential political consequences of actions covered under the exclusive Community competence of the Common Commercial Policy (CCP), the Community concluded trade agreements under a similar approach to the so-called Canada clause, which relies on Article 235 of the EEC Treaty, permitting the Council, acting unanimously, to take those measures which "should prove necessary to attain in the course of the operation of the common market, one of the objectives of the Community [for which] this Treaty has not provided the necessary powers". This arrangement was devised in 1976 when the Community was faced with developing a progressive trade and cooperation with Canada. The Commercial and Economic Co-operation Agreement between the Community and Canada was signed under Article 235 of the Treaty.[37] The use of this arrangement was used as a model for the trade and cooperation agreements that the Community signed with the states of eastern Europe. The reason for the insertion of the Canada clause was simple: the member states of the Community, who had concluded agreements of their own on a bilateral basis with individual states, did not want the Community acting under Article 113 to take over complete

37 OJ L 260/1 1976.

responsibility for financing such agreements. Instead, they wanted to keep some autonomy over their relationships, and therefore insisted on Community and member state agreements running in parallel with each other. In the agreements signed with Hungary, Poland, Czechoslovakia and Bulgaria, Articles 113 *and* 235 serve as the legal basis.(38)

In principle, the 1st generation agreements provided a general framework under which trade and commercial relationships could develop. From the outset these agreements were designed to be flexible and transitional, allowing for a progressive development of trade and cooperation with the idea that, as adherence to democracy and market principles became established, new agreements would replace them.

The basic contents of the new agreements, according to some observers was not as important as "their very existence".(39) But although these agreements have been overtaken to a large degree by events and replaced by more advanced arrangements, their contents still warrant a discussion.

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38 Hungary, OJ L 327/2, 1988; Poland, OJ L 338/2, 1989; Bulgaria, OJ L 68/2, 1990.

39 D. Horovitz, "EC-Central/East European Relations: New Principles for a New Era", *Common Market Law Review*, vol. 27, 1990, p. 269.

2.2 Trade and commercial relations.

The agreements covered all goods and reaffirmed the reciprocal application of the General Agreement on Tariff and Trade (GATT) principles to which all parties to the agreements were members except the Soviet Union. The Community was able to protect its steel[40] and coal markets by placing off limits those dominions covered by the European Coal and Steel Community (ECSC). In agriculture the Community offered limited reductions in tariffs to Poland, but the agreements with Czechoslovakia, Hungary, and Romania were left open for future consideration. Quantitative restrictions on imports into the Community were applied on a progressive timetable of elimination[41] relating to the degree of "sensitivity" of these products.[42] The Trade and Cooperation Agreements envisaged provisions for certain sensitive sectors such as agricultural products textiles, iron and steel but the EC concessions were limited. Quota increases in textiles of 13 percent were provided for Hungary and 23 percent for Poland. Czechoslovakia, Hungary, Poland and Romania all participate in the Multifibre Arrangement (MFA) which governs trade in textiles and

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40 Note that the steel market is very sensitive to any increase in imports, however slight. See Commission of the European Communities, Brussels, *Together in Europe*, no. 21, 1992.

41 See OJ L 326/6, 1989 and OJ 362/1, 1989 wherein quantitative restrictions were eliminated or suspended for Polish and Hungarian products as of 1 January 1990.

42 See OJ L 327/2, 1988; OJ L 339/2, 1989; OJ L 68/2, 1990. See also the *XXIIIrd General Report*, pt.787.

clothing. Their combined share was less than 11 percent of EC imports of textiles and clothing from MFA states.

TABLE 7.1

Commodity composition of exports to the EC from Poland, Czechoslovakia and Hungary, 1988-90, in percentages.

Poland

	1988	1989	1990
Food and agriculture	20.0	23.2	21.0
Textiles and clothing	10.6	10.3	11.2
Iron and steel	06.8	08.9	08.9

Source: *Eurostat*, "Basic Statistics of the Community", 28th edition (Luxembourg, 1991).

Czechoslovakia

	1988	1989	1990
Food and agriculture	07.0	08.6	07.6
Textiles and clothing	10.9	09.9	10.7
Iron and steel	14.0	14.7	15.2

Source: *Eurostat*, "Basic Statistics of the Community", 28th edition (Luxembourg, 1991).

Hungary

	1988	1989	1990
Food and agriculture -	28.5	29.3	23.8
Textiles and clothing	15.8	14.7	15.5
Iron and steel	07.5	07.2	08.3

Source: *Eurostat*, "Basic Statistics of the Community", 28th edition (Luxembourg, 1991).

The above figures show that the "sensitive" sectors which the Community had designated made up a substantial percentage of the exports of the Central and East European states.(43)

Second, on the cooperation side of the agreements, the Community gave rather broad outlines, what has been described as a "catalogue of possibilities".(44) The main emphasis of this aspect of the agreements was the emphasis on the promotion of trade through the establishment of a favourable trade environment. This would involve not only relatively simple aims such as the organization of conferences and trade fairs, but also the elimination of

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43 Commission of the European Community, "European Economy: The European Community as a world trade partner", No. 52, 1993, p. 34.

44 François de La Serre, "The EC and Central and Eastern Europe," in *The State of the European Community: Policies, Institutions and Debates in the Transitions Years*, Leon Hurwitz and Christian Lequesne, eds. (Boulder: Lynne Rienner, 1991), p. 305.

trade frictions through measures such as consultations and arbitration over conflicts involving disruption of local market conditions, and abiding by internationally respected trade rules including those spelled out by the United Nations Commission on International Trade Law. Cooperation was also envisaged in economic spheres such as managerial, and technical know-how. However, it is crucial to note that no financing was provided by the Community for these cooperation agreements.

The new agreements which the Community negotiated also contained a new aspect of political conditionality with clauses concerning elements of democracy and political pluralism, the rule of law, and elements of market principles.[45] By incorporating requirements of adherence to a political regime based on liberal democratic and economic principles, the Community has made it economically highly disadvantageous for the Central and East European states to pursue any other forms of economic and political relations. These conditions have been elaborated and expanded upon in further agreements, which will be discussed below.

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45 See Heinz Kramer, "The EC's Response to the New 'Eastern Europe", *Journal of Common Market Studies*, vol. 31, no.2, 1993, p. 238.

3. The Europe Agreements

With the fast pace of change in the CEES, the need for more complex and comprehensive agreements became apparent; thus the 1st generation agreements were supplanted by a second generation of relations. The Council of Ministers agreed on 20 January 1990 that the Commission should prepare a paper on the possibility of association agreements for those CEE states which could demonstrate a significant movement toward economic and political reforms.(46) This paper(47) resulted in the Council giving its go-ahead for negotiations to begin between the Commission and Poland, Czechoslovakia and Hungary.(48) The Commission's paper led eventually to the signing of the Europe Agreements, the name given to these

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46 Commission of the European Communities, "The Development of the Community's Relations with the Countries of Central and Eastern Europe", Communication to the Council and Parliament, Brussels, 1 February, 1990.

47 Commission of the European Communities, *Association agreements with the countries of central and eastern Europe: a general outline*, Communication from the Commission to the Council and Parliament, COM/90/398 final, Brussels, 27 August, 1990. This paper was the result of the refining of several earlier reports: Commission of the EC, *Implications of recent changes in central and eastern Europe for the Community's relations with the countries concerned, Communication from the Commission to the Council*, SEC(90)111 final, 23 January 1990; *The development of the Community's relations with the countries of Central and Eastern Europe*, SEC(90)196 final, 1 February 1990; *The development of the Community's relations with the countries of Central and Eastern Europe*, SEC (90)717 final, 18 April 1990.

48 Negotiating Directives for Association Agreements with Poland, Czechoslovakia, Hungary, Council Directives 11043/90; 11044/90; 11045/90, Council of the European Communities, Brussels, 19 December, 1990.

special association agreements, by the Community and Czechoslovakia, Hungary and Poland on 16 December 1991.[49]

The Europe Agreements are a new type of association agreement which cover not only comprehensive trade relationships, but have at their heart the firm commitment of the Community to eventual accession. To this end the Europe Agreements provide sections on political dialogue and cooperation at the highest levels, plus economic, financial, and cultural cooperation.[50] For its part, the Community expects "decisive steps ...taken towards systems based on political and economic liberties".[51] These measures must be implemented to a level which guarantees to the Community that the associates and potential new members are "pursuing the path of economic and political reform".[52] While the agreements refer to the "four freedoms" of free trade and free movement of labour, capital, and services[53] it is perhaps the political sections which are most noteworthy.

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49 Bull. EC: 12-1991. In order to facilitate the implementation of the provisions on trade and economic matters while waiting for national ratification from the member states, interim agreements were signed, OJ L 114/1, 30.4.92; OJ l 115/1, 30.4.92; OJ L 116/1, 30.4.92 on a Council Decision of 25 February, 1992. Negotiations with Romania and Bulgaria led to signing of Europe Agreements with those states in early 1993. See Bull. EC: 3-1993 and COM(93)45.

50 See Commission of the European Communities, *Background Report* "Towards a closer association with the countries of Central and Eastern Europe," *op. cit.*

51 See Commission of the European Communities, "The Development of the Community's Relationship with the Countries of Central and Eastern Europe, *op. cit.*, p. 7.

52 *ibid*, p. 8.

53 As spelled out in the Treaty of Rome, Art. 8(a).

According to one view, the economic effects of the Europe Agreements "are probably less important. Possible short-term trade creating effects" may result, but are not as crucial as the political involvement.[54] However, in order to analyse the Europe Agreements fully, it is necessary first to look at the trade and economic aspects of the Agreements before looking at the political side.

3.1 Trade levels and patterns

To begin this section some figures are necessary to clarify trade patterns, and to see where the Community and the CEES may see potential opportunities or threats from the liberalisation of their markets. In this realm there are many asymmetries.[55] While the collapse of the Soviet Union and the synchronous dismemberment of the protected economic environment, provided the necessary conditions for systemic transformation of the CEES, it also meant that new dependencies have arisen. The dismantling of the CMEA required enormous reorientation by the CEES. However, economic strengthening through trade is one path which the

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54 Páeter Balázs, "New Ways of Enlarging the European Integration to East European Countries: The Case of Hungary, Paper presented at the "Impediments to Transition: The East European Countries and the Policies of the European Community" conference, Florence, Italy, 24-25 January 1992.

55 As noted by András Köves, *Central and East European Economies in Transition*, (Boulder, Colorado: Westview Press, 1992), pp. 94-95.

CEES can follow to turn their dependence into interdependence.

The following table shows the share of total exports which Bulgaria, Czechoslovakia, Poland, Hungary and Romania have with the European Community. It also shows how important the Community is as a trading partner.

TABLE 7.2

Share of total exports to the EC from CEES in percentages.

	1988	1989	1990	1991
Bulgaria	17.7	18.7	28.8	37.8
Czecho-slovakia	24.2	25.7	32.0	n.a.
Hungary	22.5	24.7	33.5	39.7
Poland	30.3	30.9	35.6	45.0
Romania	24.0	25.2	31.4	34.2

Source: International Monetary Fund, *Direction of Trade Statistics*, (New York, 1991).

Table 7.2 shows a significant increase in trade between the CEES and the Community. Between 1988 and 1991, for example, Poland's share of exports destined for the Community rose 48.5 percent from 30.3% in 1988 to 45.0% in 1991. Hungary's share of exports to the EC rose from 22.5% to 39.7%, a tremendous 76.4% increase in the space of only a few years. By 1991 the EC accounted for well over thirty percent of trade for each of the CEES.[56]

TABLE 7.3

Export Destinations, pre 1990 in percent of total exports.

	Czechoslovakia 1989	Hungary 1989	Poland 1988
EC	15.7	25.0	28.9
USSR	30.5	25.1	24.5
Other Eastern European states	23.3	15.9	16.2

Source: UN, *International Trade Statistics Yearbook*, (New York, 1989).

56 Note also that by 1991 about 50% of all exports from Czechoslovakia, Hungary and Poland entered the EC without quantitative restrictions or import duty. See "European Economy: The European Community as a world trade partner", *op. cit.*, p. 35.

Table 7.3 shows the export destinations of three of the CEES in the pre-transitionary period. While trade with the EC was still a significant factor, it was dominated by the Soviet Union and the satellite states. As competition from western products grew, the Soviet market collapsed, and the trade agreements with the EC began to take effect, trade patterns began to shift.

TABLE 7.4

EC imports from CEES 1991-92 in percentage increase.

	1991-1992
Poland	13.9
Czechoslovakia	36.3
Hungary	10.0
Bulgaria	19.4

Source: *Eurostat*, "Basic Statistics of the Community", 30th edition (Luxembourg, 1993).

The above tables show the dynamic nature of trade between the two groups, and the rates at which trade is beginning to flow with the economic transformation. The tables also show

that the European Community has become and will likely remain the main trading partner of the CEES.

Yet, in the Europe Agreements the European Community has been careful to protect its markets in "sensitive" products which the Community fears will disrupt too radically its domestic market.[57] While the Europe Agreements embody a commitment by the Community to move toward, within a period of ten years, the removal of all trade obstacles, they also contain specific contingencies for protecting Community markets in textiles and clothing, iron and steel (ECSC products) and agriculture.[58] To this end, the Agreements contain safeguard provisions in case of market disruptions or serious injury to Community producers, although no mention is made of which measures are to be taken if disturbances do occur. These measures are known as contingent protection, ie. actions taken through trade policy as a response to import growth. The Community is

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57 In this regard some argue that the Community has been too protective of certain markets. "Sensitive" sectors make up (and, based on economic modelling, would continue to make up) only a very small proportion of trade with the CEE states. See J. Rollo and A. Smith, "The political economy of Eastern European trade with the European Community: why so sensitive?", *Economic Policy*, April 1993, pp. 140-181. For an analysis of the ways in which the direction of trade toward the Community would be affected by the breakdown of the CMEA, see S. Collins and D. Rodrik, *Eastern Europe and the Soviet Union in the World Economy*, (Washington DC: Institute for International Economics, 1991).

58 For an early analysis of export on agricultural goods might effect the Community market, see Center for Economic Policy Research, *Monitoring European Integration: The Impact of Eastern Europe* (London: CEPR, 1990).

nervous that the sudden increase in the export potential of the CEES will damage markets which are important to the EC economy. Therefore, a complex scheme was laid down in the interim Europe agreements (which established the trade related areas of the Europe Agreements) for the schedule of trade barrier removal.(59) This plan keeps in place substantial protection even after the end of the ten year transition period called for by the Agreements.

The general principles involved in the trade aspects of the Agreements between the CEES and the Community revolve around the establishment of the "four freedoms" outlined in the Europe Agreements. These are the movement of goods, services, capital and people. The Community has made some attempts at speeding the process of economic integration. The European Parliament "considered that the Community could open up its markets to most industrial products from Central and Eastern Europe more rapidly than envisaged, but that access to Community markets would none the less have to be restricted for certain sensitive goods".(60) However,

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59 For the specific breakdown of tariff reductions, quantitative restrictions, and import quotas see Commission of the European Communities, "European Economy: The European Community as a world trade partner", No. 53, 1993, pp. 34-36. For an analysis of the complex schedule of trade liberalization see, H.-D. Kuschel, "Die Europa-Abkommen der EC mit Polen, Ungarn und der CSFR", *Wirtschaftsdienst*, 1992, vol. 72, no. 2, pp. 93-100; J. Langhammer, "Die Assoziierungsabkommen mit der CSFR, Polen und Ungarn: wegweisend oder abseisend?", Discussion Paper No. 182, (Kiel: Institute for World Economics, 1992).

60 OJ C 176, 28.6.93. For more on the position of the European Parliament see, Christa Randzio-Plath, *Report*

Parliament also stressed that trade "be better balanced, and...steps be taken to encourage foreign investment in Central Europe".[61] Another proposal by the Commission suggested lifting all tariffs on industrial goods by the end of 1994, thus shortening the period from five to three years in which trade in that area is liberalised. The Commission also suggested reducing from five to four years the period in which customs duties on sensitive goods such as steel and textiles are to be eliminated.[62]

According to the Commission, the Community is prepared to take action to:

- shorten the transition periods for the Community's dismantling of customs duties and quantitative restrictions for all products;

- improve market access for food products, making use of all possible flexibility for import quotas and the reduction of levies or duties, and for textiles, including the liberalisation of economic outward processing traffic;

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of the Committee on External Economic Relations on a General Outline for Association Agreements with the Countries of Central and Eastern Europe, European Parliament Session Documents, A3-0055/91 (March, 1991)

61 *idem.*

62 Bull. EC: 5-1993.

- encourage regional economic cooperation under the rules of origin for all products from associated central and east European countries and EFTA.[63]

However, while the Community and specifically the Commission may have spelled out its aims at improving market access, it is clear that it is the member states who "should be encouraged to apply the provisions of the Europe Agreements concerning access to employment as soon as possible, notably through the conclusion of bilateral agreements on quotas".[64]

These bilateral agreements may be hard won by the member states in a political environment which sees in Western Europe rising unemployment, increasing right-wing nationalism and the social effects of large populations of migrants, especially in Germany. Estimates of the number of former Soviet citizens who wish to live and work in Western Europe have been as high as 6 million.[65] The establishment of a true freedom of movement would have implications for the Community which are far-reaching. Yet, the Community does foresee economic advantages from greater liberalisation of labour movement. The benefits from economic reconstruction and two-way access to employment do not run in one direction only. And the same is true for the opening up of the labour market. High unemployment in the CEES

63 *Background Report*, *op. cit.*, p. 4.
64 *idem.*
65 See, for example, *The Economist*, 1 December, 1990.

portends destabilization of a tenuous, restructured political economy. Relaxing restrictions on freedom of movement has the potential to offset high, destabilizing unemployment in the CEES, and according to Pinder: "migrant workers would not only help their economies and remittances but would also demonstrate the Community's practical concern about the unemployment problem".(66) However, the political problems faced by the Community and its member states are enormous when it comes to such sensitive issues as jobs.(67) This dilemma of adjustment between short term and long term considerations is reflected in the Commission's *Report* which in its section on movement of workers (which nowhere contains the word "free" in association with movement of workers) states that the "possibility...to improve the conditions for access to employment, should be explored".(68)

To conclude this section on market access, it can be argued that while domestic political problems are faced by the Community, and more relevantly by its member states, the long term advantages may be worth waiting for. The Commission also stresses these advantages, stating that the

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66 See J. Pinder, *op. cit.*, p. 68.

67 For a discussion of Europe's labour market, and the potential changes caused by the integration of Central and Eastern Europe see, K. Szénási-Zborovári, "Changes in the Labour Market in the East and the West", *European Integration and East-West Relations*, (Geneva: Graduate Institute of International Studies, 1990) pp. 101-107.

68 For further commentary on the movement of labour see, András Köves, *Central and East European Economies in Transition*, *op. cit.* p. 96.

"Europe Agreements considerably improve market access.... But the pace of liberalisation should be increased and trade obstacles in sensitive sectors removed more rapidly". The Commission goes on:

> A more buoyant economic climate in partner countries will increase demand for many products which the Community is well placed to supply, given its comparative advantages, which include technology, proximity and familiarity with the market. A more attractive range of goods in the shops and brighter economic prospects in their own countries will encourage workers to pursue job opportunities at home without adding to migratory pressures.(69)

As has been argued throughout this thesis, the external economic relations of the European Community go hand in hand with its external political relationships. In the aftermath of the post 1989 transitions of the CEES, commercial measures and the interests of the Community have played a significant role in reshaping not only the economy of the CEES, but also their political institutions. Trade and market access have provided an incentive for the CEES to reform, but the asymmetries which exist between the two groups of states have caused tensions.(70) The awareness by the Community that, for its part, it must move toward

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69 See *Background Report*, *op. cit.*, p. 4.
70 See A. Köves, *op. cit.*, pp. 94-96.

incorporating the CEES into its foreign policy considerations, goes concurrently with the CEES attempts at internal political reform. That economic aid and market access is, in the opinion of the Community, dependent upon political reform, has been shown above.(71) That political reform has led to political involvement with its neighbours will now be discussed.

3.2 Political dialogue

At the Lisbon European Council Meeting of 26 and 27 June 1992, the Council stated that the "political dialogue will be intensified and extended to include meetings at the highest political level. Cooperation will be focused systematically on assisting their efforts to prepare the accession to the Union which they seek".(72) The stipulations in the Europe Agreements regarding political reform are a potent signpost of the significance of the symbiosis between the Community's economic and political relationships. Crucially for the Community, the political relationship which develops could have significant implications for its foreign policy and security. Therefore, the institutionalisation of political dialogue is a vital element of the Europe Agreements.

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71 See also, I. Husain and I. Diwan, "External Debt and Expected Net Flows," in P. Marer and S. Zecchini, *The Transition to a Market Economy in Central and Eastern Europe*, Vol. 2, *Special Issues*, (Paris: OECD, 1991).

72 See Bull. EC: 6-1992.

Therefore the Europe Agreements call for formal arrangements, establishing multilateral political discussion with the Visegrad states.[73] The first of the institutionalised arrangements was a meeting of the foreign ministers of the EC and the Visegrad states on 5 October 1992.[74] At this joint meeting it was noted "with satisfaction that political dialogue has started even before the Europe Agreements have entered into force". It was also suggested that "[p]olitical dialogue should foster political convergence, a better mutual understanding and enhanced security and stability throughout Europe". To further this process, "the parties will seek to consult each other on matters covered by the European Political Cooperation in harmony with the provisions of the Europe Agreements".[75]

While in the Europe Agreements the methods for political dialogue remained rather vague and inconclusive, (stating that mechanisms should be established by "any other means which would contribute to consolidating, developing and stepping up political dialogue"[76]) the Commission used its report entitled "Towards a closer association with the countries of central and eastern Europe" to outline somewhat more specifically its proposals for how this dialogue should

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73 Visegrad is the term used to define Poland, Hungary and Czechoslovakia.
74 See "Joint statement by the Foreign Ministers of the European Community and the Visegrad countries", Bull. EC: 10-1992.
75 See "Joint Statement", *ibid.*
76 See *Background Report*, *op. cit.*, p. 3.

be carried out. In this context the Community, according to the Commission should:

- intensify the political dialogue which has begun with the Visegrad countries and which is being established with other partners;

- strengthen the multilateral character of this dialogue, which will become increasingly necessary both for practical reasons and to build a common European approach to pressing international issues of mutual concern;

- increasingly involve partner countries in the process of European political cooperation.(77)

Developing this political dialogue, and making arrangements for its incorporation into the institutions of the Community is another element of Commission concern. To this end it outlines the appropriate measures which it suggests should be included as a method of consolidating the necessary mechanisms. The measures outlined by the Commission include:

- the extension of political dialogue to the level of political cooperation working groups dealing with issues of common interest;

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77 *idem*.

- participation, as observers, of partner countries at certain European Political Cooperation (EPC) meetings of common interest on an ad hoc basis;

- systematic consultation with partner countries, as envisaged in the Europe Agreements, on positions taken within international organisations.[78]

The foreign policy dimension of the Europe Agreements means that after the Council's enactment and the Parliament's assent, the Agreements must still be ratified by the member states. Because they contain elements of political cooperation, which is not covered under Community competence, the agreements are considered "mixed", ie. they must be concluded by the Community and the member states on one side and the other signatories to the agreements on the other.[79]

3.3 Accession

At the heart of the Europe Agreements, and related to the section on political dialogue is the commitment by the Community to the eventual accession of the CEES. The question of the CEES subsequent membership in a future

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78 *idem*.

79 Because the ratification by the member states would take considerable time, the Community was able to put into force the trade and cooperation aspects of the agreements through the Interim Agreements. This allowed the speedier application of those areas covered by Community competence.

"European architecture" is given only vague shape, however, and a timetable is kept off the agenda. Rather, priority is given to the direction and progress of the CEES in the transformation of their economic and political systems so that they are compatible with and can integrate into the international system. Membership is not mentioned by the Community as the ultimate or automatic result for the associated states, although the Twelve in the preamble to the Agreements agree to assist in the achievement of the aim of accession, even if it is not mentioned how this assistance will be carried out.(80) The Commission has made attempts at persuading the Council for a broader negotiating mandate which would include a firm schedule from the Community on a time frame for membership.(81)

At the first joint meeting of the Foreign Ministers in Luxembourg it was reaffirmed that the implementation of the Europe Agreements:

> should help the [Visegrad states] achieve their final objective, namely accession to the European Union.... The Community recognized that the Visegrad countries have established democratic political

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80 As Pablo Benavides, a negotiator for the Community, stated, "This is not an entrance ticket. It's a kind of trial run..., quoted in *Financial Times*, November 23-24, 1991.

81 See Committee on External Economic Relations, "Association Agreements with the Countries of Central and Eastern Europe", *Resolution*, PE 150.654 (April 18, 1991).

systems which ensure respect for human rights, and made substantial progress in creating economic systems based on competitive markets and private entrepreneurship.(82)

However, the Council must confirm that it accepts the goal of eventual membership in the Community. This acceptance, according to the Council, will be based not only on the specific provision for membership laid down by the Treaties, but also on their ability "to fulfil the conditions required".(83) The conditions established are laid down in the Commissions "Report" which cites six considerations:

- the capacity of the country concerned to assume the obligations of membership (the "acquis communautaire");

- the stability of institutions in the candidate country guaranteeing democracy, the rule of law, human rights and respect for minorities;

- the existence of a functioning market economy;

- the candidate's endorsement of the objectives of political, economic and monetary union;

- its capacity to cope with competitive pressure and market forces within the European Union;

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82 See "Joint Statement", *op. cit.*, p. 127.
83 See *Background Report*, *op. cit.*, p. 2.

- the Community's capacity to absorb new members while maintaining the momentum of European integration.(84)

The considerations listed go far beyond the Treaty of Rome in its Article 237 which refers to any democratic European state being eligible for membership. The hesitancy of the Community over exactly how to handle the desired membership objective of the CEES is also perceptible in its *Report* which states:

> It would be premature at this stage to establish a timetable. The Europe Agreements and the initiatives suggested will help to prepare partner countries for eventual membership, but the timing will depend on progress in meeting the criteria referred to above. A process of transition would be needed both before and after the formal act of accession to enable them progressively to assume their responsibilities as full members of the Community and the European Union.(85)

The difficulties that the Community perceives with accession has resulted in its subsequent reluctance to rush into membership agreements with the CEES. The Community has kept other policy issues higher on the agenda. The development of the Single European Market, the Intergovernmental

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84 *idem.*
85 *ibid.*, p. 3.

Conferences, the Maastricht negotiations and ratification, and the EFTA enlargement have all occupied positions of importance.

III. Three Levels of Actorness

The power vacuum that has emerged as a result of the collapse of the old bloc has also provided a focal point. The Community has perceived the potential that comes with its economic weight in Eastern Europe and its clout as an actor in this area of joint foreign policy.(86)

While a number of concerns have led to the Community becoming involved in the transformation of the CEES, the most apparent has been to build and maintain secure paths through which the market for its goods can remain open and permeable. This concern, in which trade is tightly bound to politics, is explicitly spelled out in the Commission's report on enlargement, which refers to the CEES as developing a "new partnership" with the Community, in which the "other countries of Europe are looking to us for guarantees of stability, peace and prosperity". This guarantee is "not only in their interest, but also in ours".(87) Thus, the evolving relationship between the

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86 See for example, Luis Planas Puchades, *Report on Community Enlargement and Relations with other European Countries, European Parliament Session Documents*, A3-0077/91 (March 26, 1991).

87 Bull. EC: Supplement 3-1992, *Europe and the Challenge of Enlargement*, p. 20.

Community and the CEES is one of multiple interests and potential outcomes. The Community's interests and actorness in the region can be analysed in three parts. First, through the Community as a provider of aid, second, as a role model, and third, through the concept of political conditionality: the conditions that the Community dictates for membership, or for that matter, association. These three considerations are key factors in the development of political policies between the two groups of states. And all are indicators of the Community's role as the relevant actor in the region.

1. The Community as provider

From the foregoing discussion, it becomes clear that the Community is faced with a new situation which it does not know precisely how to handle.[88] Comparisons have been drawn between the restructuring of the CEES and the Marshall Aid plan provided by the United States after the Second

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88 In terms of accession the only comparable situation is perhaps the expansion of the Community with the Mediterranean enlargement in which the aim was partially to stabilise the emerging and perhaps somewhat tenuous democracies of Spain, Greece, and Portugal. Although not much has been written on this particular comparison, many writers have commented upon it briefly. See for example, H. Kramer, "The EC's Response to the New 'Eastern Europe'", *op. cit.*; J. Pinder, *The European Community and Eastern Europe*, *op. cit.*; An interesting comparison has also been, although in a different context, between the CEES and third world development, namely the structural adjustment policies of the International Monetary Fund in Latin America and Africa. See C. Stevens and T. Killick, "Eastern Europe: Lessons on Economic Adjustment from the Third World", *International Affairs*, vol. 67, no. 3, October, 1991.

World War.[89] The prosperous capitalist states of the West have had to develop new political and financial relationships with those of the CEES, who have emerged from their communist umbrella in great need of assistance for a recovery programme. Moreover, the West has had a tremendous investment in ensuring that the transition went smoothly. The West won the Cold War and, as one writer put it:

> Having spent trillions of dollars to contain communism in Europe, the West would make one of the great mistakes in history if it refused to spend the several billions more needed to help countries through this hard period.[90]

These comparisons with the Marshall Plan are instructive on one hand, but there are two fundamental differences. First, although the restructuring of Central and Eastern Europe is a "grand design" along the same lines as the Marshall Plan, the situation is different. The United States is no longer the benefactor. Reasons of geographic proximity, historical

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89 See, for example, D. C. Stone, "Assistance to Central and Eastern Europe", *The Bureaucrat* (Winter, 1990-91) pp. 7-12; A. Köves, *Central and East European Economies in Transition, op. cit.*, pp. 108-111; W. Kostrzewa, P. Nunnenkamp and H. Schmieding, "A Marshall Plan for Middle and Eastern Europe?", *The World Economy*, vol. 13, no. 1, 1990, pp. 27-50; E. Mortimer, "Where are you, Marshall and Monnet?", *Financial Times*, 10 July, 1990. For an analysis and history of the Marshall Plan itself see, H. B. Price, *The Marshall Plan and Its Meaning* (Cornell University Press, 1955); A. S. Milward, *The Reconstruction of Europe 1945-51* (London: Methuen, 1984).

90 R. Hormats, "As Comecon Fades, the East Needs a Hand", *International Herald Tribune*, 21 November, 1989.

relationship, and political interest, are partly responsible, but the European Community has replaced the United States as the main actor involved also because it and not the United States has been perceived as the relevant party. Second, economic conditions in the West have meant that it is politically risky to become too heavily involved in the CEES. The Community cannot risk its own cohesion by overextending itself to its eastern neighbours.

The Marshall Aid plan authorised 1.3% of US gross national product to be allocated to Western Europe in the post-war period of 1948-52.[91] The Delors plan has suggested one-third of 1% of Community gross domestic product, amounting to Ecu 14 billion.[92] As has been pointed out, if the Community were to give the same proportion as the Marshall plan, it would amount to over Ecu 50 billion.[93]

The Community has not provided aid on the massive scale of the Marshall Plan. However, through its Phare programme, it has provided, as has been discussed in the previous section, substantial and significant assistance. More important, the Community has been not only the chief provider, but also the coordinator of Western aid, charged by the G-7 states at the Paris Summit[94] with the coordination of foreign aid. The

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91 See D. Stone, "Assistance to Central and Eastern Europe", *op. cit.*
92 President of the European Commission, Jacques Delors, address to the European Parliament, 17 January 1990. See Bull. EC: 1/2-1990.
93 See J. Pinder, *op. cit.*, p. 98.
94 Bull. EC: 7/8-1989.

Paris Summit set the stage by requesting that the Commission of the European Community coordinate the aid from the Group of 24[95] (G-24) states. At the Paris Summit it was noted that:

> the peoples of Eastern Europe are aspiring increasingly vociferously to freedom and democracy, and that in some of the East European countries the leadership has set in motion a process of democratization and modernization.... Taking the view that other interested countries and the competent international institutions should also be involved in the endeavours of the Seven, they called for a meeting to be held as soon as possible to organize concerted *and for the Commission to take the necessary steps to this end.*[96]

This extensive involvement of the Commission in the organisation and coordination of foreign aid was a sign not only of its capabilities, but also of matters of deeper significance. The programme would be funded by the G-24 states and the Community. However, the coordination of the programme was put solely in the hands of the Community, which represented a crucial signal by the industrialised

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95 The Group of 24 include the 12 member states of the European Community, the six European Free Trade Association member states (Austria, Finland, Iceland, Norway, Sweden, Switzerland) plus Turkey, the United States, Canada, Australia, New Zealand, and Japan.

96 Bull. EC: 7/8-1989; emphasis added.

states of the world that the CEES were within the Community's sphere of influence. The mandate given to the Commission was a clear sign of the direction of responsibility which the international community saw as essential. The European Commission was the body seen as the uniting force in bringing Central and Eastern Europe into the arena of open market economies, and democratic institutions.[97] This authority given to the Commission "not only underlined the particular responsibility of the European Community for its East European neighbours but also provided a new dimension to the competence of the European Commission."[98]

After looking at so many of the indirect aspects of actorness, the mandate by the Paris Summit and the major industrial states that the European Commission should take over responsibility for coordinating aid to the CEES provides the best and most direct example of Community actorness. Not only was the Community perceived as the relevant actor by the international community, but also the Community saw itself in that role. Thus the Community became assertive in taking over its responsibilities in the CEES:

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97 See J. Pelkmans and A. Murphy, "Catapulted into Leadership: The EC's Trade and Aid Policies *vis-a-vis* Eastern Europe", *Journal of European Integration*, vol. 14, no.2-3.

98 Frans H.J.J. Andriessen, "Change in Central and Eastern Europe. The role of the European Community." *NATO Review*, vol. 38, No. 1, February 1990, p. 3.

> The Commission had assessed the assistance already being provided, and had come to the conclusion that additional efforts were needed from the industrialised countries. It took the view that it should not only coordinate the operation but also submit its own proposals which was why it submitted to the 24 an action plan coordinated aid....The 24 welcomed the broad lines and individual components of the plan and reaffirmed the need for action in the areas in question.... The 24 encouraged the Commission to continue with its coordination efforts, for which special working parties were essential.(99)

The Community was thus not only asked to coordinate western aid, but took on its responsibility whole heartedly and assertively. This willingness on the part of the Community to manifest its internal strength through its actions, taking on the role of aid coordinator for the rest of the industrialised world reflected powerfully back onto its actor image. But most indicative was the fact that the Paris Summit explicitly gave the task of coordinating measures to the Commission: The richest and most powerful states had nodded in agreement that the European Community was the actor capable of achieving such a monumental task.

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99 Bull. EC: 10-1989.

2. The Community as a model

For the societies of the CEES, the Community offers to its neighbours a model[100] at both the political and economic levels. While this view may seem to present the CEES as groping around in the dark for a way out of their chaos, it does not intend to. Rather it shows that these states have operated under a centrally planned economy, protected from the rigours of market competition, and need a model on which to base their restructuring. But perhaps more importantly it shows that the Community provides a model not only of economic competition, but also for the rigours of democratic competition through political pluralism. It also provides a focal point on which the governments of the CEES can concentrate their restructuring programmes.

First, the Community provides a secure trunk to which the CEES can graft themselves, an institutional infrastructure and nucleus which anchors the process of transformation. The goal of membership in the Community can act as a domestic policy instrument with which to make the difficulties of economic transformation less jarring for the society. As a publication of the Commission states:

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100 See, for a very brief discussion of this idea, Commission of the European Communities, "The Community and its Eastern Neighbours", *European File*, Brussels, 1991.

> The EC is a magnet for East European reformers. It is the model to which they aspire in terms of democratic freedom and higher living standards.[101]

Community statistics have shown that the goal of membership is highly sought after by the citizens of the CEES.[102] Over three-quarters support the idea of future membership in the Community.[103] Thus the goal of membership, having so much support in the populace, gives focus to the implementation of difficult domestic policies.

Second, by insisting on harmonisation of laws, standards, and regulations so that they come in line to those established by the EC, the Community deflects potential internal confusion and destabilizing elements by giving the CEES a European norm for which to aim. Thus the *acquis communautaire* plays a stabilising role. Again the focus of economic, political and even technical reform remains the potential of membership in the Community.

Third, the Community provides to the CEES a model of relations between states, and how to transform relations between states. The Community, having reached a high level

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101 See, "The Community and its Eastern Neighbours", *op. cit.* p. 3.

102 See Commission of the European Communities, "Europe in a Changing World: the external relations of the European Community", Brussels, 1993, p. 31.

103 The breakdown for percentage of support for membership in the Community in the various states is, Romania 88%, Slovakia 86%, Czech Republic 84%, Hungary 83%, Poland 80%, Bulgaria 73%. See *Central and Eastern Eurobarometer*, no. 3, February 1993.

of integration and cooperation on many levels, provides a model of state interaction. Quite apart from whether or not the CEES join, or wish to join, the Community, they are provided with a model of democratic interaction and diplomacy.

3. Political conditionality

From the early stages of Community involvement, conditions were set out with which the CEES had to comply. The recipient states did not receive aid without certain strings. Initially, the most significant obligation on the part of the CEES was to show signs both of implementing and of showing real progress toward political and market reforms. In 1989 five areas considered fundamental toward this progress were outlined at the Paris Summit as being absolute preconditions for the receipt of aid. These were:

1. the rule of law;

2. respect for human rights;

3. the establishment of multi-party systems;

4. the holding of free and fair elections;

5. economic liberalization with a view to introducing market economies.[104]

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104 Bull. EC: 7/8-1989.

In December 1989, at the meeting of the G-24 in Brussels, support was shown for the Commission's insistence at the prerequisite cooperation of the recipient states: the Declaration of the Group of 24 stressed the push "in political and economic terms for the progress in East Europe towards pluralistic democracy, the rule of law and market oriented economies".(105)

However, the requirements changed throughout the period between 1989, when the Community first developed its response to the CEES, and 1993 when the Commission delivered its *Background Report*. The Paris Summit concluded that the preconditions for the receipt of aid included *progress toward* the rule of law, respect for human rights, the establishment of multi-party systems, the holding of elections, and economic liberalisation.(106) The Europe Agreements refer *inter alia* to the stability of institutions in the candidate state guaranteeing democracy, the rule of law, human rights and, a completely new element from previous Declarations and statements, of respect for minorities.(107)

That the Community's reward of membership for the CEES could influence the development of political institutions and legal structures is another crucial indicator of its

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105 See EC Commission's Spokesman Press Release IP, 1989, no.953, 13 December 1989.
106 Bull. EC: 7/8-1989.
107 *Background Report*, *op. cit.* p. 2.

influence in the CEES. The Community has established political conditionality as the foremost element of its Europe Agreements. These conditions help to assure, through clauses spelled out in the Agreements, that the CEES structure their economies and governments in a particular way. In order to reach the aim of membership in the club to which the states of Central and Eastern Europe aspire, they must meet the political criteria. These requirements "presuppose a functioning and competitive market economy, and an adequate legal and administrative framework in the public and private sectors".[108]

Conclusion

The levels of actorness approach of this chapter has shown that the Community has gained legitimacy on three levels. But it has also shown the extent to which it has been expected to become involved in the transition. The expectations of third states played a role in securing the Community's legitimacy by catapulting the EC into a leadership role.

This chapter has shown that the Community has been propelled into a powerful situation not only by its own actions, but also by the expectations of other states and groups of states. By its own accord, the Community accepted the role

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108 Bull. EC: Supplement, 3-1992, p. 11.

given to it by the 1989 meeting of the G-7 states in Paris, developing and coordinating the extensive Phare programme. It has opened up access for trade and taken steps to remove barriers-even on "sensitive" goods. Political dialogue has been initiated through involvement in European Political Cooperation. The Community has provided the focus for the CEES by guaranteeing multilateral involvement. The CEES have looked to the Community for providing linkages, through its institutional structure, between economic and political fields. Stable and reliable decision making structures and procedures, plus the *acquis communautaire* also provide a focus for the transition.

CHAPTER 8

EVALUATION AND OUTLOOK

I. Evaluation of Thesis

This thesis has not discussed the success or failure of EPC; rather it has been concerned with the maturation of EPC as part of the logic of Community actorness, and the influence on that actorness caused by the friction between the competing systems of EPC, Community and the member states. To this end it has been occupied first with the place of the Community in the international system, and how that place is influenced by actor behaviour in its various forms. Second, it has attempted to unravel the political from the economic and to show the consequences and implications of one upon the other. The ability of the Community to legitimise itself in the face of the tension between the interaction of EC and EPC has thus been a central theme.

In this context, the thesis has examined the tensions that exist in the Community in the interplay between forces of integration, external relations and EPC. Reflected in the structure of EPC, its mechanisms and treaty language, is the capacity of the Community to act in the international environment. By wedding the concept of actorness to that of EPC and external relations, the issues addressed have taken on a wider form, and a form that presents two of EPC's crucial goals: to provide a forum for coherent policy development and to present the Community's position and its potential impact on international issues. Yet in order to achieve a single "Community" position, and to implement that position reconciliation is necessary between the machinery of EC and EPC.

Yet, it has been the purpose of this thesis not only to describe the relationship between EC and EPC and their structures, but also to expose the tension, latent and active, that surrounds this relationship. Further, the aim has been to show how this tension coloured all external political and economic acts of the Community, and provided a constant check on the development of the Community as an international actor.

The endeavour to formulate a common Community foreign policy was restricted from the beginning by a perilous fissure created at the Messina Conference in 1955 when the Community decided to make progress first in the economic field. Because of the untenability of creating this artificial

distinction, a myriad of complex legal and political gymnastics has taken place in an attempt to overcome this split. The complexities involved in the relationship between EPC and commercial and trade policy have been unravelled by the preceding chapters.

It could be objected that no progress toward integration would have been made without this decision and that the failure of the EDC forced the political aspirations of the founders to be set aside. EPC was seen as one step toward mending this cleavage and beginning the process of connecting the political with the economic. Yet, Title III of the Single Act furthered the distinction. Again, it could be argued that EPC would never have been incorporated into the Treaty without its vague language and separate nature, and that some mechanism to cope with cooperating in the political sphere is better than nothing. The fact remains that while these objections may be true to a certain degree, they do not detract from the consequences of the separation which has been the main theme of this work.

The foregoing analysis has clearly identified the difficulties with the system of political cooperation as it has developed since its early days. It has also shown the attempts by the Community to overcome these difficulties and the various methods, contrivances and artifices that have supported a flawed system. In spite of its defects, however, EPC has not been wholly unsuccessful at aiding in the accomplishment of some useful foreign policy goals and at

developing Community actorness, as has been seen in the previous pages. Yet certainly a more straightforward and systematic approach to political cooperation and to the political consequences of economic acts is required if political world role of the Community is to correspond with and support the economic world role.

Each case study in this thesis has shown the development of EPC and the international actor capability of the Community. With its involvement in the Central and East European States (CEES) the Community came full circle from its groping and rather faltering days of the Rhodesia crisis, to the uncertain but rather more coordinated actions and expectations in its relationship with Israel. In its relationship with the CEES, political responsibilities and actions were not separated from those of economics, and in fact were made inseparable through the conditionality clauses of the Europe Agreements. Certainly, the Community's actions in the CEES were a major contributor to both its actor image and its actor capability. Crucially, legitimacy was strengthened through this binding of economic strength with political restructuring. What had been ignored in Israel until the interference of the European Parliament, that economic decisions impact political actions, was brought right to the forefront in the Community's involvement in the CEES.

II. Post-European Union Developments: Questions for the Future.

This thesis has dealt with the specific time period before the implementation of the Treaty on European Union;[1] have any significant changes resulted since 1993 that resolve some of the weaknesses of EPC, and that diminish the gap between the economic and the political faces of the Community? In a Parliamentary report drawn up before the occurrence of the Maastricht intergovernmental conference (IGC) in which the European Parliament presented its strategy for European Union, changes regarding EPC were suggested.[2] The SEA "should be revised in order to provide for matters currently dealt with under EPC to be dealt with in the Community framework with appropriate structures."[3] Further, the report stated that:

> the current division between external economic relations handled by the Community institutions with the Commission acting as the Community's external representative, and political cooperation handled by EPC with the EPC President acting as external

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1 *Treaty on European Union* (Luxembourg: Office for Official Publications of the European Communities, 1992). Hereafter the *Treaty on European Union* will be referred to also as TEU.

2 European Parliament, "Second Interim Report drawn up on behalf of the Committee on Institutional Affairs on the Intergovernmental Conference in the context of Parliament's strategy for European Union." *European Parliament Session Documents*, Doc. A 3-166/90 (25 June 1990).

3 Second Interim Report, p. 7.

representative, is increasingly difficult to maintain in practice.[4]

The EP report called for prime responsibility for defining policy to lie with the Council, rather than the separate framework of foreign ministers acting in EPC, and for the Commission to have not only the right of initiative in proposing policies, but also to have a role in representing the Community externally. These changes would make the interaction of EPC or CFSP with external relations more consistent. Regarding the split between economics and politics, the EP report succinctly remarks: "any genuine attempt 'to assure unity and coherence in the Community's international action' must abolish this increasingly artificial distinction."[5]

The Treaty on European Union, or Maastricht Treaty as it is commonly known, was the result of the work carried out at the IGCs and came into force on 1 November 1993. It contains the latest list of objectives by the Twelve in their effort to establish a political voice, and to give that voice a treaty base. This base is laid out in Title V entitled Provisions on a Common Foreign Security Policy. But have the organisational changes brought about by the Maastricht Treaty addressed the real issues discussed by this thesis or are they merely cosmetic?

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4 *idem.*
5 *idem.*

The answer is that while the Treaty on European Union has provided some changes to the questions raised in this thesis, the fundamental issues have not changed. The Community may have added a few new clothes to its wardrobe, but the wearer is still the same old, although perhaps slightly better adorned, institution.

The Treaty on European Union eliminates the term European Political Cooperation altogether and replaces it with the Common Foreign and Security Policy. The language of the Single European Act, which called only for a commitment to endeavour to formulate and implement a European foreign policy, is replaced in the Maastricht Treaty by definitive wording: the Union and its member states shall define and implement a common foreign and security policy..."[6] The objectives of this policy encompass five major areas:

-to safeguard the common values, fundamental interests and independence of the Union

-to strengthen the security of the Union and its member states in all ways

-to preserve peace and strengthen international security,

-to promote international cooperation

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6 Article J.1, TEU.

-to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.[7]

However, once again both the Union and its member states are referred to in the Treaty's language, retaining the idea of separateness for the member states in the area of foreign policy. The member states:

shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that their combined influence is exerted as effectively as possible by means of convergent action.[8]

Although they remain free to determine their individual national policy stance, they are obligated in the Treaty to ensure that their national policies conform to the common position which is defined by the Council. Yet once again the question of enforcement of that obligation is not determined. Just as was the case for Title III of the Single European Act, (under which the member states had only to give due consideration to the desirability of common positions and give consideration to them as a "point of reference") Title V of the TEU is not governed by the Court of Justice so any explicit obligation is legally non existent.

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7 Article J.1.2, TEU.
8 Article J.2.1, TEU.

While not mentioned in Title V, which covers the Common Foreign and Security Policy, the Court is excluded from CFSP in Title VII of the TEU entitled "Final Provisions." Here it states that:

> the powers of the Court of Justice of the European Communities and the exercise of those powers shall apply only to the following provisions of this Treaty:
>
> (a) provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community;
>
> (b) the third subparagraph of Article K.3(2)(c);
>
> (c) Articles L to S.[9]

In Article L of the Final Provisions the whole of Title V is excluded, including Article J. The use of strong language such as, the member states "shall ensure that their national policies conform to the common positions",[10] is given no legal basis or procedural remedy. The only obligation is to carry out the foreign policy provisions in a "spirit of loyalty and mutual solidarity." This spirit is a quantity not only hard to measure, but also non-enforceable under Community law. The member states are encouraged to give this full support to the CFSP in Article J.1.4:

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9 Article L, TEU.
10 Article J.2.2, TEU.

> The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with.[11]

As to the issues on which consultation is required under CFSP, the Maastricht Treaty goes further than did SEA, outlining the foreign policy issues within its scope. Title III of the SEA did not define those issues of general interest on which consultation would be required. The only reference to the scope of EPC is specific inclusion of the "political and economic aspects of security." Maastricht's Article J.2 states that the Council decides, on the basis of general guide-lines from the European Council, that a matter should be the subject of joint action. Article J.2 is noteworthy because it provides potentially for a system of qualified majority voting for matters of the CFSP, although in practice the decision to make an issue the subject of a qualified majority vote is taken by unanimity. The Council "defines those matters on which decisions are to be taken by a qualified majority" (Article J.2.2) when adopting joint actions and at any stage during its development. However,

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11 Article J.1.4, TEU.

implicit in the subparagraph is that the Council may also conclude that a decision must be unanimous.

The member states have available a derogation from the joint action adopted by the Council. Paragraph 6 of Article J.2 states that:

> in cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action. The Member States concerned shall inform the Council immediately of any such measures.

The Single European Act went part of the way to provide a framework for consistency between external relations and the work of European Political Cooperation; but the language still kept the political aspects of the Community's relationships distinct from its economic and commercial relationships. The Treaty on European Union, while still tentative in this regard, goes further to bring the two together. Article J.2 of the Common Provisions pledges the consistency of external actions as a whole in the context of security, economic and development policies. The political role of the Community has been incorporated more fully into the text of the TEU. Article C states:

> The Union shall be served by a single institutional framework which shall ensure the consistency and the

> continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*.[12]

Yet once again these changes appear to have only cosmetic value because no real obligation exists to ensure legally for these provisions. In practice the changed wording can have no substantive effect because once again there is no remedy extant. The structure of the TEU is thus slightly less divided than was the SEA. While Title III of the SEA seemed almost an appendix to the rest of the Act, with its references to "High Contracting Parties" rather than member states, the TEU gives at least textual parity to the CFSP. However, conceptually it is not the organic whole represented by a solid Union tree with CFSP as one branch equal to all other branches. Rather, the TEU retains its divided structure with the CFSP standing as one pillar, still separated from the Union. The Commission is associated rather than involved with the work of the CFSP much as it was with EPC, having no right of initiative; as with Title III of the SEA, the European Court of Justice has no jurisdiction in CFSP and plays no role. The Treaty on European Union is a document full of dichotomies.

The Treaty on European Union itself provides the next phase of research on the interaction of Community and CFSP structures. While it is too early yet to see the full

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12 Article C, para. 1.

consequences of CFSP for the Union, there are signposts in the Treaty which will make interesting research. The first of these is Article 228a regarding economic sanctions. Will the new Treaty Article make a difference to the process whereby economic sanctions are implemented and to their effectiveness in providing a coherent Community position? As noted in chapter four of this thesis, Article 228a is not placed within the CFSP, therefore it involves a proposal from the Commission. This separation of economic sanctions from the CFSP is one clear demonstration that issues regarding the relationship of economics to politics have not been fully resolved in the TEU. Further, Article 228a is not excluded from the jurisdiction of the Court of Justice, another interesting complication to the continued attempt by the Community to keep politics at bay.

A second area of research based on the Treaty on European Union is the new language of the Treaty. This is a task of legal exegesis of the Treaty: the implications of the commitments laid out in the Treaty and the extent and nature of their obligation under law. An interesting point is that there is no equivalent in the Maastricht Treaty to Article 210 of the Treaty of Rome which explicitly states that the Community shall have legal personality. To what legal extent are the member states required to consult, cooperate and inform? What are the penalties of non-compliance? This type of analysis would (potentially) uncover some provocative implications regarding competences, obligations and rights

of member states under the new Treaty. But just as this thesis has attempted to confirm that the separation of the economic from the political is senseless, so too is the attempt at separating the legal from the political. Therefore, a research project of this nature must rest on an interdisciplinary foundation.

An empirical approach would aid another potential area for research: further investigation into the concept of actorness. Specifically, methodological analysis is needed to show how the Community and its attempts at a common foreign policy are viewed by third states. While assumptions are often made in the literature about the perceptions of third states about the Community, these are rarely backed up by evidence. Do more powerful third states view the Community as an international actor of significance? With the end of the cold war, the Community could step into the role of the second super-power. What implications does the decline of the Soviet Union have for the perceived actorness of the Community?

A fourth major research area involves a continuing study of the Central and East European states and how the effects of the initial Community involvement evolve in the future. Will the Community's manifestly normative and systemic objectives provide a model for future involvement in other parts of the world?

Fifth, an interesting study of EPC and CFSP would involve comparing the coordination, coherence and reactions specifically in war or intense conflict situations. Most studies of EPC in response to conflicts revolve around a one case study. More comparative work is needed. The Gulf War which erupted in 1991, the Falklands War of 1982, the ongoing conflict in the former Yugoslavia all provide excellent ground for a study of the similarities and differences or the existence of a common thread of reaction and response when conflict erupts.[13] A study of this sort could proffer some interesting analysis of EPC and CFSP, and its complex relationship to economic and commercial policy, as well as provide important policy prescriptives for the next IGC in 1996.[14]

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13 See, for an interesting evaluation of political cooperation in the Gulf War and Yugoslavia, Trevor C. Salmon, "Testing times for European political cooperation: the Gulf and Yugoslavia, 1990-1992," *International Affairs*, vol. 68 (1992) pp. 233-253.

14 For an interesting outline of potential research areas see, Christopher Hill, "Research into EPC: Tasks for the Future," in A. Pijpers, E. Regelsberger and W. Wessels, eds., *European Political Cooperation in the 1980s* (Dordrecht: Martinus Nijhoff, 1988).

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