

# Thinking Security in Europe

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## Is there a European Security and Defence Identity?

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# Zusammenfassung

In den neunziger Jahren ist vom Begriff 'Europäische Sicherheits- und Verteidigungsidentität' im sicherheitspolitischem Diskurs fleißig gebrauch gemacht worden. Vorstellungen darüber wie das Verhältnis zwischen der NATO und der EU zu gestalten sei und welche Rolle der jeweiligen Organisation zukommen soll, führt jedoch zu einer Dissens hinsichtlich der Frage was sich hinter dem Kürzel ESVI (bzw. ESDI) verbirgt.

Die Attraktion diesen Begriff als Ausgangspunkt für die Studie zu benutzen liegt darin, dass er mehrere konzeptionelle Veränderungen des Begriffs Sicherheit beinhaltet, die sich in der akademischen Welt kurz nach dem Fall der Berliner Mauer durchsetzten. In dem diese Studie der Frage nach geht in wie weit sich eine ESVI in der NATO und der EU herausgebildet hat und woraus diese besteht, lassen sich Schlussfolgerungen darüber ziehen wie Sicherheit gedacht und produziert wird. Dabei werden insbesondere zwei Aspekte ins Auge gefasst.

Erstens geht es darum in wie weit sich tatsächlich ein Verständnis von Sicherheit durchgesetzt hat, das militärische, kriminelle und ökonomische Bedrohungen nicht getrennt, sondern als Teile eines Ganzen behandelt werden. Häufiger Hinweise auf einen umfassenden Sicherheitsbegriff zu trotz, belegt die Studie, dass unterschiedliche politische Instrumente weiterhin von getrennten Entscheidungsprozessen gelenkt werden. Ein Ereignis wird demnach zerlegt, und unterschiedliche Bedrohungsaspekte von verschiedenen Sparten in mehreren Entscheidungsprozessen gesondert behandelt.

Zweitens, stellt sich die Frage ob Sicherheit in Europa als unteilbar gesehen wird. Tritt Europa in ein 'post-Westfälisches' oder 'post-national-staatliches' Sicherheitszeitalter ein? Die Momentaufnahme des aktuellen Standes zeugt von einer schwach entwickelten ESVI die nicht im Widerspruch zu Nationalen Sicherheits- und Verteidigungs- Identitäten steht, sondern diese ergänzt. Obwohl Nationalen Sicherheits- und Verteidigungs- Identitäten weiterhin eindeutig dominieren, wird eine langsame und bescheidene Weiterentwicklung der ESVI in der EU prognostiziert. Die NATO hingegen, wird bemüht sein, ihre ESVI zu erhalten.

Neben Souveränitätsansprüchen der Mitgliedstaaten hindern vor allem die geografisch unterschiedlich ausgelegten Sicherheitsinteressen der Mitgliedstaaten die Weiterentwicklung der ESVI (was gleichzeitig auch den Mangel einer ESVI widerspiegelt). Dies kommt besonders im militärischen Kontext zum Vorschein, wo sich die ESVI auf das Euro-atlantische Gebiet beschränkt. Demnach müssen Mitgliedstaaten mit globalen Sicherheitsinteressen diese außerhalb der Organisationen wahrnehmen, im Rahmen der UN wenn möglich oder im Alleingang (vorzugsweise in einer 'coalition of the willing') wenn nötig. Sowohl im Inland als auch im Ausland wird dadurch die Vorstellung genährt, dass der betroffene Staat alleine für die Sicherheit verantwortlich ist, und verantwortlich zu machen ist. Damit wird der ESVI entgegengewirkt.

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## Abbreviations

<b>Abbr.</b>	<b>Meaning</b>
ACP	African, Caribbean, and Pacific Group of States
AWACS	Airborne Warning And Control System
BENELUX	Belgium, Netherlands and Luxembourg
CAP	Common Agriculture Policy
CFSP	Common Foreign and Security Policy
CM	Crisis Management
CTBT	Comprehensive Nuclear Test-Ban Treaty
DCI	Defence Capability Initiative (NATO)
DG	Directorate General (EU)
DG RELEX	Directorate-General External Relations (Relations exterieure)
DPC	Defence Planning Committee (NATO)
DSACEUR	Deputy SACEUR
EAG	European Air Group
EAPC	Euro-Atlantic Partnership Council
EBPCU	External Borders Practitioners Common Unit
EC	European Communities
ECB	European Central Bank
ECBG	European Corps of Border Guards
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
ECT	The Consolidated Version of the Treaty Establishing the European Community (if nothing else is mentioned, this refers to the Treaty of Amsterdam)
EEC	European Economic Community
EJN	European Judicial Network
EMU	European Monetary Union
ERF	European Refugee Fund
ERM	European Exchange Rate Mechanism
ESCB	European System of Central Banks
ESDI	European Security and Defence Identity
ESDP	European Security and Defence Policy
EU	European Union
EUMC	European Union Military Committee
EUMS	European Union Military Staff
EUPM	European Union Police Mission
GAC	General Affairs Council (EU)
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNI	Gross National Income
GTP	Generalised Tariff Preferences
HFC	Helsinki Force Catalogue (EU)
HHC	Helsinki Headline Catalogue (EU)
HPC	Helsinki Progress Catalogue (EU)
HQ	Head Quarters
HUMINT	Human Intelligence
ICC	International Criminal Court
ICTY	International Criminal Tribunal for former Yugoslavia
ILO	International Labour Organisation
ILSA	Iran and Libya Sanctions Act
IMF	International Monetary Found
IMINT	Imagery Intelligence
IMS	International Military Staff (NATO)
IS	International Staff (NATO)
JHA	Justice and Home Affairs
LCD	Least Developed Countries
LPD	Landing Platform - dock
MC	Military Committee (NATO)
MoD	Ministry of Defence
NAC	North Atlantic Council
NAPMO	NATO Early Warning and Control Programme Management Organisation
NATO	North Atlantic Treaty Organisation
NPG	Nuclear Planning Group (NATO)
NSDI	National Security and Defence Identity
ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
OJ	European Union Official Journal
OOA	Out of Area
OSCE	Organisation for Security and Cooperation
PARP	Partnership for Peace Planning and Review Process (NATO)

PfP	Partnership for Peace
PPEWU	Policy Planning and Early Warning Unit (EU)
PSC	Political and Security Committee (EU)
R&D	Research and Development
SACEUR	Supreme Allied Commander Europe
SACLANT	Supreme Allied Commander Atlantic
SDI	Security and Defence Identity
SEAD	Suppression of Enemy Air Defence
SHAPE	Supreme Headquarters Allied Powers Europe
SIGINT	Signals intelligence
SIS	Schengen Information System
SITCEN	Joint Situation Centre (EU)
TEU	Consolidated version of the Treaty on European Union (Amsterdam 1997)
UK	United Kingdom
UN	United Nations
UNMIK	United Nations Mission in Kosovo
USA or US	United States of America
WEU	Western European Union
WTO	World Trade Organisation

# 1 Introduction

## GENESIS AND 'ABUSE' OF THE TERM ESDI

Although the term 'European Security and Defence Identity' (ESDI) did not appear in official documents until 1991,<sup>1</sup> the notion of an ESDI cannot be thought of as originating in the revolutionary events of 1989/90. It does not even represent a new line of thought. The end of the East-West Conflict simply gave new impetus to old ideas that can be traced back to the initiative of the European Defence Community, Winston Churchill, Count Richard N. Coudenhove-Kalergi, Victor Hugo, Emanuel Kant, the Abbé de Saint-Pierre or even further back, although under different labels.<sup>2</sup>

From a political perspective, the term ESDI proved useful and was frequently employed in the discourse on the future European Security architecture throughout the 1990s. The expression has a positive ring, without being, nor needing to be, clearly defined. As a vague term it left a broad space open for interpretations, could reconcile various opinions and be applied in international politics to suggest a more extensive consensus among participating governments than their actual positions reflected. In addition, it could calm negative reactions. Thus, diverse representatives of governments and international organisations used the expression ESDI for various reasons and with different stresses, without anyone delivering a precise clarification of what they really meant by an ESDI. In the beginning, the term ESDI was used to circumscribe the processes within the WEU, the EU and/or Alliance in which the Europeans sought to take a greater share of responsibility for their security.<sup>3</sup> At that time, member states of the EU, WEU and NATO had either vague or differing ideas about how this could be accomplished. Since an increasing European role in security policies implied growing European autonomy, this development was seen as an opportunity at the same time as it raised some concern. The risk of a transatlantic drift apart was apparent. In an attempt to prevent a transatlantic split and to tie the ongoing European development to the Alliance, the North Atlantic Council (NAC) 'hijacked' the term ESDI at its 1996 Berlin summit. With the formula 'ESDI within the Alliance' the phrase mutated into a technical term that bore the Alliance's imprint.<sup>4</sup> Of course, this nomenclatural manoeuvre did not dissolve differences among the member states, nor did it prevent the militarisation of the Union. The result was simply that the term ESDI has been applied ever since to describe an internal NATO development, and that an additional term was introduced for the development within the EU - the European Security and Defence Policy (ESDP).

This development is also reflected in the literature. Before 1996, the term ESDI was used to recapitulate the bi- and multilateral institutional build-up in and between NATO, WEU and EU; and after 1996 more specifically to describe the strengthening of the European pillar within

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<sup>1</sup> The first official document that utilised the term was the WEU Council of Ministers, *Presidency's conclusions: WEU's role and place in the new European security architecture*, Paris, 22.02.1991, article 9.

<sup>2</sup> An informing collection of earlier concepts of a European unification is provided by Foerster, Rolf (ed.), *Die Idee Europa 1300-1946: Quellen zur Geschichte der politischen Einigung*, Munich 1963. See also chapter 2 in McCormick, John, *Understanding the European Union: A concise Introduction*, Basingstoke 1999. An informing history of Europe as an idea is presented by Heikki, Mikkeli, *Europe as an Idea and an Identity*, London 1998.

<sup>3</sup> The three organisations' own utilisation of the term has varied. The Alliance, for instance, began by referring to the process within the EU when speaking of the "development of a European Identity in the domain of security". See NAC, *Declaration on a Transformed North Atlantic Alliance*. London, 06.07.1990, article 3. Shortly after the expression "The European security identity and defence role" was used to address the "construction of a European pillar within the Alliance". See for instance NAC, *Communiqué*. Brussels, 18.12.1990, article 5. After this, the ESDI was used to describe the parallel process within all three organisations. See NAC, *Final Communiqué*, Copenhagen, 07.06.1991, article 1-3; See also NAC, *Declaration on Peace and Co-operation*, Rome, 08.11.1991, article 6-8. NAC, *The Alliance's New Strategic Concept*, Rome, 08.11.1991, article 36.

the Alliance.<sup>5</sup> This technical use of the term leaves what I consider the most interesting aspects insufficiently addressed. The expression has much more to offer. The literature does not question to what extent the current cooperation actually results in, or reflects, an ESDI. The ESDI has been presented and spoken of as a social fact, without anyone scrutinising if what the term is used for, namely to describe the ongoing European integration in the field of security, does justice to the expression's constituent words. The use of the term has not been disputed. As we all know, a label does not necessarily have to match the contents. Developing a shared European identity in security matters proposes the creation of a pan-European security community, and therefore a new way of conceiving security. In contrast to the traditional concept of national security, an ESDI suggests that security is understood and thought of as pan-European security.<sup>6</sup> This study investigates to what extent such a change in 'thinking about security' has taken place in Europe. The central question is therefore:

- 'To what extent does an ESDI presently exist, and what is its nature?'

#### *THE APPEAL OF THE TERM ESDI*

The attraction of using the term ESDI as a starting point for this analysis is explained by the fact that it typifies the academic alterations in the conceptualisation of security that seemed to gain momentum shortly after the fall of the Berlin wall, when the term was introduced.<sup>7</sup> I am not suggesting that these changes originated in the fall of the wall and the rapid disintegration of the Warsaw Pact and the Soviet Union. Rather, these events provided a shock that, in combination with the intensified European integration processes, accelerated the discussion of a new security concept. The question is to what extent policy makers share this new way of thinking security, and what their altered security concepts look like. Is an ESDI reflected in political reality?

The term ESDI embraces several conceptual alterations. To begin with, the inclusion of the words 'security' and 'defence' in the phrase suggests an understanding of security that stretches beyond the military context. This reflects the modification of the European security agenda that followed the end of the East-West conflict. Before 1990, all policies were more or less subordinated to this bipolar confrontation. The block antagonism and the threat of mutual annihilation determined the limits of the political room for manoeuvre. All other issues were thus inferior and set in relation to military power balancing, which was seen as the only way to guarantee each state's own and the whole world's survival. Security was therefore mainly thought of in terms of military security, and security studies conceived as strategic studies.<sup>8</sup> The opposite or antonym of security was war, and the word peace used as a synonym for security. Following the collapse of the bipolar order, the military dimension lost its monopolistic position as determinant of secu-

<sup>4</sup> The Alliance applied this formula for the first time in the document NAC Ministerial Meeting, *Final Communiqué*, Berlin, 03.06.1996, article 2 and 7.

<sup>5</sup> See for instance: Maruhn, Thilo, *Building a European security and defence identity: The evolving relationship between the Western European Union and the European Union*, Bochum, 1996; Bailes, Alyson, 'NATO's European Pillar: The European Security and Defence Identity', in *Defense Analysis*, vol. 15, no. 3, 1999; *Defence-Eighth Report* ordered by the House of Commons April 2000. Posted 29.08.2000; Royal United Services Institute for Defence Studies, *International Security Review*, 1997, p. 1-18; See also Yost, David, 'France and West European Defence Identity', in *Survival*, Nr. 4, Juli/August 1991, p. 327-351; Fröhlich, Stefan, 'Der Ausbau der europäischen Verteidigungsidentität zwischen WEU und NATO', in *Zeitschrift für Discussion Paper*, nr. C19, 1998; Varwick, Johannes, *Sicherheit und Integration in Europa. Zur Renaissance der Westeuropäischen Union*. Opladen, 1998; Larrabee, Stephen (RAND), *The European Security and Defence Identity (ESDI) and American interests*, prepared statement for a hearing before the Committee On Foreign Relations, Subcommittee On European Affairs United States Senate, Washington, D.C. March 9, 2000.

<sup>6</sup> The terms 'European' and 'pan-European' are utilised as synonyms throughout the study.

<sup>7</sup> For an excellent overview of the conceptual transformation see McSweeney, Bill, *Security, Identity and Interests: A Sociology of International Relations*, Cambridge 1999. See also Tarry, Sarah, 'Deepening and Widening: An Analysis of Security Definitions in the 1990s', in *Journal of military and strategic studies*, Fall 1999; For different historical conceptions of security see Rotschild, Emma, 'What is security?', *Daedalus*, vol 124, number 3, 1995. See also Kolodziej, Edward, 'Renaissance in Security Studies?', in *International Studies Quarterly*, vol 36, no. 4. December 1992, pp. 421-38.

urity. Ever since, many professional theorists and policy makers have made allowance for a security concept that stretches beyond the military context.<sup>9</sup> Peace remains antipodal to war, but it is only a subset of the area covered by the term security and its counterpart insecurity.<sup>10</sup> Previously, non-military factors were only considered to the extent that they influenced the military dimension. With a widened concept, security becomes conceivable outside of the military context. Security cannot only be threatened by non-military factors, now it can also be produced through non-military responses. Thus, the term ESDI suggests a change in the view of what constitutes security, and with what instruments it can be produced. The subsequent investigation of the ESDI will therefore cover military as well as non-military contexts.

Furthermore, the word 'European' suggests a break with the traditional realist and neorealist security concept that focuses on the state and states' security. Accordingly, security is no longer an issue limited to the relations between judicially equal sovereign states. The state has lost its exclusive role as menacer, target and security guarantor. It has become quite clear that threats to the security of states as well as of other units are not necessarily posed solely by other states. Al Qaida's attack on the World Trade Centre has made the increasing role of non-governmental actors apparent. However, even before September 11<sup>th</sup>, it was quite clear that the vast majority of wars are intrastate and not interstate conflicts.<sup>11</sup> Thus, not even military threats are necessarily posed by states to states. In addition, security is no longer only a question of the security of states. Probably the most prominent example of this modification is the transition from 'nuclear security to human security' advocated by the United Nations Development Program in 1994.<sup>12</sup> With a security concept that extends to non-military contexts, the roles of other than state actors become even more significant. Additionally, increasing internationalisation,<sup>13</sup> intensified regional cooperation, and the emergence of multi-level governance also transform states' capacity to produce security. Their ability to guarantee security unilaterally decreases, as state borders become more pervious and interdependencies augment. Security relevant decisions are taken above, below and beside the national level. Security policies are therefore no longer exclusively determined by and between nation-states. This study does not neglect the central role of states. However, it rather focuses on the European level and scrutinises the way in which European organisations are involved in the definition of threats and the production of security in different contexts.

The word 'identity', finally, is appealing because it necessitates a discussion of how threats and security are perceived. The term has been widely applied in security studies since the beginning of the 1990s. The coupling of identity and security studies gained acceptance in this particular time because it offered a perspective to deal with the new intellectual challenges.<sup>14</sup> This resulted from the attempt to explain and understand the changing security order. Many scholars found traditional rationalist and positivist or objectivist approaches inadequate to explain and under-

<sup>8</sup> Some still took this position during the 1990s, see Walt, Stephen, 'The Renaissance of Security studies', in *International Studies Quarterly*, vol. 35, no. 2, June 1991. pp. 211-239, here p. 212; Greenwood, Ted, Godson, Roy and Shultz, Richard (ed), *Security Studies in the 1990s*, New York 1993, here p. 2.

<sup>9</sup> Earlier demands for a widened security conception posed by people like Richard Ullman and Barry Buzan gained broad acceptance at this time. See Ullman, Richard, 'Redefining Security', in *International Security*, vol. 8, no. 1, Summer 1983; Buzan, Barry, 'The Case for a Comprehensive Definition of Security and the Institutional Consequences of Accepting It', in Copenhagen Centre for Peace and Conflict Research, *Workingpaper 4/1990*.

<sup>10</sup> Earlier attempts to extend the focus beyond the peace-war dichotomy can be seen in Johan Galtung's introduction of the term 'structural violence' in the mid 1970s. See Meyers, Reinhard, 'Grundbegriffe und theoretische Perspektiven der Internationalen Beziehungen', in Bundeszentrale für politische Bildung (ed.), *Grundwissen politik*, Bonn 1997, pp. 313-434, here pp. 280-282.

<sup>11</sup> See Tickner, Ann, 'Re-visioning Security', in Booth, Ken and Smith, Steve (ed.), *International Relations Theory Today*, Pennsylvania State University Press, 1995, pp. 175-97. See also Ayoob, Mohammed, 'Defining Security: A Subaltern Realist Perspective', in Krause, Keith and Williams, Michael (ed.), *Critical Security Studies*, Minneapolis 1997, pp. 121-146.

<sup>12</sup> United Nations Development Program, *Human Development Report 1994*, Oxford, 1995, in particular chapter 2, pp. 22-40.

<sup>13</sup> I consciously avoid the term globalisation which suggests a universal participation at the web of interrelations that is being weaved with varying mesh size around the world.

stand the revolutionary changes of 1989/90.<sup>15</sup> The theoretical development can be illustrated with the help of a structure-agent argument. Surely, objections to theories that operate with rational (state) actors or agents led by the pursuit of power within a fixed structure have grown constantly since the late 1970s, and many alternative theories have been developed since. However, since most of these were normatively driven and demanded a more or less hypothetical change of structure they did make the breakthrough until the end of the Cold War. With the fall of Communism, the logic was turned around. The question was no longer how agents should influence and ameliorate the structure of the international system. Suddenly, the structure had changed and everyone wondered why and how this had happened. Traditional theories concerned with agents' behaviour within a given invariable structure are not particularly suited to deliver the necessary answers. The main concern of these conservative security studies was how states with fixed interests and static images of the enemy related to each other in a world ruled by states' struggle for relative or absolute power. Therefore, the only dynamics these theories have room for are agents' alterations of strategies in their pursuit of fixed interests. However, the end of the East-West conflict could not be convincingly explained by the adaptation of strategies. Additionally, the changing political reality raised new questions that required new clarifications. The main question became how amicabilities and animosities arise, change and dissolve. How do interests change, and not only strategies? The amplified European integration processes added further impetus to this discourse. What defines the international security order and how? Consequently, theorists availed themselves of the work from other disciplines within social science that dealt with dynamic change, in particular from sociology and psychology.

Obviously, the term identity must stand in the centre of an analysis of the ESDI. Before determining how the term is to be understood and utilised in this study, i.e. what aspects of identity I will actually investigate, the current combination of identity and security studies needs further clarification.

Identity studies, or if one prefers social constructivist approaches,<sup>16</sup> seem to offer a gateway to understand transformation. The achievement of this approach for security studies is that it accommodates changes of the logic applied in international relations (IR) as well as changes of the actors' basic interests. According to the constructivist approach, agents' interests and actions cannot always be traced back to human nature, as was proposed by classical realists such as Thomas Hobbes and Hans Morgenthau. Deriving self-interested power politics exhibited by states on the international arena from a given anarchic order, which prescribes certain interests and survival strategies to agents, as posited by structural realists and neorealists, are equally dismissed.<sup>17</sup> Identities, interests and structural constraints are not considered as exclusively material and exogenously given, but rather as something endogenous to interaction.<sup>18</sup> This line of thinking allows for changes of interests, identities, enmities and friendships and of alterations in the way of thinking about (or conceptualising) security. The methodological individualism, proposed by rational choice theories that operate with given interests, does not. On the one hand,

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<sup>14</sup> Identity studies do not exist as a proper discipline. I use this label to subsume diverse orientations directed against positivism including critical theory, feminist theory, postmodernism, constructivism and critical security studies. C.f. McSweeney 1999:30.

<sup>15</sup> See Aggestam, Lisbeth and Hyde-Price, Adrian (ed.), *Security and Identity in Europe: Exploring the new agenda*, London 2000, p. 4.

<sup>16</sup> Others use the terms critical, reflectivist or constructionist as synonyms for constructivist, e.g. McSweeney 1999, chapter 6.

<sup>17</sup> Wendt, Alexander 1992, 'Anarchy is what states make of it: the social construction of power politics', in *International Organization* vol 46, No 2, Spring 1992, pp. 391-425, here p. 395.

<sup>18</sup> See Wendt, Alexander, 'Collective Identity formation and the international state', in *American Political Science Review*, vol. 88, No. 2, 1994 pp. 384-396, here p. 384.

constructivism assumes that agents' identities and interests are shaped through interactions that follow a logic determined by the current material structure. On the other hand, the actions of agents influence that structure. The international order is regarded as a construct of actors led by interests that are determined by malleable identities, which in return are influenced by the structure. Changing identities can therefore influence the order at the same time as a changing order may influence the identities. The way security is thought is therefore not imposed and fixed, but variable. Agents can, if not steer, then at least influence its transformation. Combining a survey of changes in the security environment with an examination of the development of identities, therefore, appears promising if one is interested in explaining and understanding change. Rather than regarding identities and structures as given, this approach focuses on the dynamic and interplay between them, and can be expected to enhance the understanding of transformation as well as offering explanations for it. As a result, an abundance of literature on European Identity in general, and on the linkage between identity and security in particular, has been published since 1990.<sup>19</sup>

This does not mean that rational choice theories can be dismissed. On the one hand, changes in the material reality do not always alter agents' identities. On the contrary, variation and difference are antonyms of the word identical and thus of identity. Without continuity, durability and stability, identities will dissolve and cease to exist. Agents interpret and react to environmental changes based on their current identity. As identities are about perceptions, norms, legitimacy, confidence, allegiance and interests, they are vital for agents' conceptualisation of security. Identities influence what and who is perceived as a threat, what is cherished and considered worth defending, what countermeasures are regarded as morally appropriate, what precautions can be taken, how these can be organised, and thereby how efficiently the threats can be dealt with. Ultimately, identities are about whom we would kill, and what we would kill for.<sup>20</sup> An agent's identity gives him a pre-understanding and determines what parts of the environment he sees and how he interprets them. Changes in the external environment, therefore, do not easily effect changes in identity. Due to their existing patterns of selection and interpretation, identities tend to become self-fulfilling prophecies. A presumed enemy's attempts at rapprochement, for instance, will most likely be met with suspicion and possibly with hostility. This may well provoke a reaction that confirms the supposed animosity. In other words, the way agents think of security often determines how security is.

On the other hand, actions of agents do not necessarily cause structural changes either. The structure only changes if all, or at least most, agents involved modify their behaviour. Thus, the

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<sup>19</sup> Examples of work on European identity are: Nelson, Brian, Roberts, David and Veit, Walter (ed.), *The Idea of Europe: Problems of National and Transnational Identity*, New York 1992. Cerutti, Furio, 'Can there be a Supranational Identity?', in *Philosophy and Social Criticism*, vol 18, 1992, pp. 147-162. Smith, Anthony, 'National Identity and the idea of European unity', *International Affairs*, vol. 68, 1992, no. 1, pp. 55-76. Korte, Karl-Rudolf, 'Das Dilemma des Nationalstaates in Westeuropa: Zur Identitätsproblematik der europäischen Integration', in *Aus Politik und Zeitgeschichte*, no 14, 1993, pp. 21-28. Gidlund, Janerik (ed), *Den nya politiska konserten: Identitet, suveränitet och demokrati i den europeiska integrationen*, Malmö 1993. Dewandre, Nicole and Lenoble, Jacques (ed.), *Projekt Europa. Postnationale Identität: Grundlage für eine europäische Demokratie?*, Berlin 1994. Delgado, Mariano and Lutz-Bachmann, Matthias (ed.), *Herausforderung Europa: Wege zu einer europäischen Identität*, München 1995. Lipsius, M. Rainer, 'Bildet sich eine kulturelle Identität in der Europäischen Union?', in *Blätter für Deutsche und Internationale Politik*, no. 8, 1997, pp. 948-955. Pollack, Johannes, *Zur politischen Identität der Europäischen Statengemeinschaft*, Wien 1998. Jansen, Thomas (ed.), *Reflections on European Identity*, European Commission Forward Studies Unit, Working Paper, Brussels 1999.

Some examples for the coupling of Identity and security studies are: Bloom, William, *Personal Identity, National Identity and International Relations*, Cambridge 1990. Campbell, David, *Writing Security: United States Foreign Policy and the Politics of Identity*, Manchester 1992. Teune, Henry, 'Multiple group loyalties and the security of political communities', in Mlinar, Zdravko 1992 (ed), *Globalization and Territorial Identities*, Aldershot 1992, pp. 105-115. Neumann, Iver, 'Identity and Security', in *NUPI Notat paper*, No 468 1992. Wendt 1992. Buzan, Barry, Kelstrup, Morten, Lemaitre, Pierre and Wæver, Ole, *Identity, Migration and the New Security Agenda in Europe*, New York 1993. Wæver, Ole 1995, 'Identity, integration and security: solving the sovereignty puzzle in E.U.', in *Journal of International Affairs*, vol. 48, No. 2, pp. 389-431. Katzenstein, Peter (ed), *The Culture of National Security: Norms and Identity in World Politics*, New York 1996. Adler, Emanuel and Michael Barnett (ed), *Security Communities*, Cambridge 1998. McSweeney 1999. Burges, Peter and Tunander, Ola (ed), *European Security Identities. Contested Understandings of EU and NATO*, Oslo 2000.

<sup>20</sup> Farrands, Chris, 'Society, Modernity and Social Change: Approaches to Nationalism and Identity', in Krause, Jill and Renwick, Neil, *Identities in International Relations*. London. 1996, p. 2.

rationality or reasoning and the way of thinking security are not consistently modified in a way that would be noticeable or worth mentioning. Since humans have the ability to act rationally within the limits of their image of the world, arguments based on a linear causality can be valid in some confined contexts.

In fact, up to the present, constructivist approaches have largely ignored and failed to model the specific mechanisms through which structure (e.g. political institutions) connects to agents and influences their interests, rationality or reasoning, and behaviour, and inversely. Therefore, the concept of identities and security identities runs the risk of being used as a 'catch-all' *explanans* for variations, or lack thereof, in the real world. Although identity studies consider the interplay between objective reality and the subjective interpretation of it, they do not succeed in explaining the interplay. In constructivist approaches, changes in material reality tend to be but mirrored by matching identity modifications. Identity studies do not succeed in illustrating and explaining why and how alterations of identities come about and how the interaction of material reality and identities functions. This limitation can often be observed in attempts to explain the European integration process and the collective production of security.<sup>21</sup> The reason for this insufficiency is to be found in what is simultaneously the strength and the difficulty of social constructivism - its ontology is one where agent and structure are mutually constitutive. Neither agent nor structure is reduced to the other and made ontologically primitive.<sup>22</sup> Based on this premise, it is very difficult to construct a model that can map the course of change and deliver an exact and consistent explanation for it. In constructivist approaches, the identity and interests of agents as well as structures are at once dependent and determinant variables. (I will return to the difficulty this poses in chapter four.) Thus, constructivism has demonstrated that the reasoning or rationality of agents can change, but it has not succeeded in delivering an explanation for dynamic change, i.e. how the agents' way of 'thinking security' changes.

#### *THIS STUDY*

The aim of this study is not to address flaws in the constructivist approach, nor to make the dynamics and the development of an ESDI comprehensible. Neither will I attempt to explain how the ESDI is formed or how changes in identity influence the European integration process, institution building and politics. As I will argue in chapter four, this is unachievable. My approach is inverted and my objective more modest, but attainable. Rather than entering disputes on the dynamics behind the development of the ESDI or on what variables dominate its evolution, I will address a more basic aspect. I seek to determine to what extent European agents presently conceive security as a European question, and if they do, how is it conceived. In other words, I will examine what kind of ESDI currently exists, and what its magnitude may be. Has the political concept of security reached a turning point? Is security perceived and handled as something indivisible in Europe? Are we entering a new 'post-Westphalian' or 'post-nation-state' European security age? Is security thought of as something restricted to the military context? Do European organisations operate with the traditional peace-war dichotomy or do they have a broader and more comprehensive approach to security? Do intergovernmental or supranational European organisations recognise and counteract threats outside of the military context? Is the

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<sup>21</sup> This is for instance the case in the work of Michael Kreft who uses the expression 'cultural institutional context' instead of ESDI. See Kreft, Michael, *Die Europäische Union als Sicherheitsgemeinschaft: Die gemeinsame Außen- und Sicherheitspolitik und die Europäische Verteidigungsgemeinschaft im kulturell-institutionellen Kontext der Europäischen Integration*. Osnabrück 2002.



production of security based on a holistic approach in which military, economic, criminal and other countermeasures are synthesised at the European level?

Consequently, I will not utilise the ESDI as an *explanans* for change, i.e. to explain ongoing European integration in security matters. I start by questioning the existence of an ESDI altogether. The purpose of this study is to deliver insights on the ESDI that can be used in rational choice models to explain and understand contemporary European security policies. It may appear contradictory to apply identity studies to provide insight to be used in rational choice theories. This coupling of two quite different approaches is, nevertheless, both feasible and permissible if one assumes that identities and the way of thinking security change gradually and at a low speed. A constructivist approach could be said to have a much longer time frame than one that operates with rational choice. When investigating shorter periods, it may be more illuminating to use a rational choice approach, which assumes that agents act in a stable structure and have consistent identities, interests and ideas on security.

The direct way of determining the current state of the ESDI would be to turn immediately to the agents' identity, interest, and the rationality they apply. However, this would require a method that provides direct access to each involved agent's collective identity, or at least an approach that allows me to determine how each agent thinks of security, how he conceives security and what rationality he applies. In addition, I would need to find a way to aggregate the different agents' varying notions in order to draw conclusions on the state of the ESDI. The methodological and practical problems of such an undertaking are obvious.

Therefore, I have chosen to concentrate on what might be labelled the European security structure, i.e. the institutional framework and processes in which threats are defined and security is produced. According to constructivism, this structure is shaped by the agents involved and should reflect the 'common' way of thinking security. In the first part of the study, chapter two, I provide the basis for further investigation by scrutinising the expression ESDI as such. Starting with a clarification of the terms collective identity, security and defence, a definition of a Security and Defence Identity is presented, and a model for the investigation of the current state of the ESDI elaborated.

Chapter three contains an empirical examination of the current state of the ESDI in three different contexts according to the model developed in chapter two. The examination of each context ends with an evaluation of the current state of the ESDI.

In chapter four, I turn to two secondary objectives: explanation of the current state of ESDI, and prognostications for its future. Bearing in mind the reservations noted above, I attempt to explain the current state of the ESDI, e.g. why security is or is not thought of in terms of European security. Thus, the current state of the ESDI is treated as *explanandum*, and not as *explanans*. I also discuss future developments in the ESDI. Certainly, this cannot be done with the same precision as the investigation in chapter 3, which outlines the present state of the ESDI, and this discussion can therefore rightfully be viewed with scepticism. Nevertheless, I have chosen to include these two secondary objectives not just from curiosity, though curiosity would be an acceptable motive in itself, but because merely defining the current state of the ESDI would not complete the investigation. What is the point in investigating the ESDI, if one does not even try to answer why it has its current shape? And why should I leave the speculations on the future

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<sup>22</sup> Checkel, Jeffrey, 'Social Construction and integration', in *Arena working papers*, no 14, 1998.

development of the ESDI to others who have invested even less time than I in understanding the current state? As will be argued in the chapter, all discussions on the dynamic development of identities are bound to become more speculative and therefore somewhat less scientific. However, if this is necessary to answer these questions, I will gladly make that move. The fourth chapter can thus be regarded as a bonus and a service to the reader, rather than a strictly scientific account, and will not be referred to in the conclusions.

The conclusions, finally, recapitulate the account of the current state of the ESDI and address some implications of its present status.

## 2 ESDI – definition and model of investigation.

In this chapter, I will construct a definition of the term ESDI and design a framework that allows an empirical survey of it. To answer what a European security and defence identity is and how it can be investigated, one must begin by outlining what one understands when talking about a collective security and defence identity (SDI). Therefore, I will clarify the meaning of the terms identity, security, and defence, and assemble them to a coherent SDI concept. I begin by answering what and how identity is, explaining what happens when we make identifications, and by outlining the functions and features of collective identities. In the next step, I turn towards the question what security and defence is. By linking these two terms to the collective identity, the expression SDI will be defined.

Having done that, a way to examine and classify the ESDI is outlined in section 2.2 'Investigating the current state of the ESDI'. I will address some of the difficulties linked to the investigation of mass-identities, and argue that the ESDI is manifested in the articulated interests, the actions and in the institutional framework of the European intergovernmental organisations that deal with security questions. The importance of the institutional framework for the investigation of the ESDI is emphasised, although the analysis of the polity must be complemented by the categories politics and policy.

### 2.1 Defining the ESDI

Trying to define the ESDI as a term is a tricky matter because each individual letter of the abbreviation opens for legion of definitions and different understandings. I have decided to approach the expression backwards and begin by specifying my definition of an SDI. Thereafter I will consider where a European SDI might be found, i.e. within which organised framework a European security process may take place. Consequently, I start by defining the nature of the shared identity that I am interested in, and then I ask who might be a part of it. Who is a member of the ESDI is deduced from the participation at a collective security process at a European level. Had I chosen to begin the survey by defining Europe, i.e. by determining the members of the group to be investigated, the outcome of the examination would have varied largely depending on what countries I had classified as European. The validity of such a study is restricted to whether or not the selected countries share an SDI. It cannot answer the question if there is some group of European countries that share an ESDI, and to what extent they do so. This cognitive interest definitely speaks for the approach chosen.

#### 2.1.1 What is Identity?

It seems reasonable to begin an answer to this question by taking a glance at what dictionaries have to say about the word.

*The lexicographical meaning - identity as uniformity.*<sup>1</sup> The word identity can be traced back to the Latin '*idem*', which means 'the same' and '*id*', meaning 'it'. Late Latin contains the word '*identitas*', which is influenced by the Late Latin '*essentitas*', meaning 'being', and '*identidem*',

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<sup>1</sup> For an overview of the changing use over the time of the word *identity* in the philosophical discourse, see Pollack 1998:35-44.

'repeatedly'. Today the word is used in two main senses, both of which refer to different ways of uniformity, of being the same.<sup>2</sup> The first derives from the identity in mathematics, described as  $A \equiv A$ . It refers to the quality of being the same in all that constitutes the objective reality of separate things (*idem*).<sup>3</sup> Hence, strictly speaking a thing can only be identical with itself. In this sense of selfsameness, the word identity is also used as a synonym for individuality, to describe the distinct personality of an individual regarded as a persisting entity. The second use of identity is to describe the quality or condition of being the same as something else (*essentitas* and *identidem*). In this sense of sameness, the word identity is used to outline the set of behavioural or personal characteristics by which an individual is recognisable as a member of a group. The ESDI is of course to be understood in this second sense, i.e. as a collective identity formed by members that share some specific features.

*Uniformity requires differentiation, awareness and recognition.* Both collective and individual identity is linked to the awareness of being the same. The uniformity has to be recognised and therefore made a subject. Humans, who have the gift of self-awareness, can become aware of their own sameness, that they are the same and that they are identical with themselves, as well as that they share some features with others. To develop this self-awareness, to enable a mind to think of himself as himself or as a part of a group, he must become conscious of that which he is not, the different. This requires the recognition of the other's existence. It is logically impossible to think in the category 'uniformity' without the counterpart 'different'. Thus, the recognition of the otherness and the conscious differentiation from it is a prerequisite for the subject (be it a group or an individual) to make out its own identity.<sup>4</sup> The individual or collective self-identification is therefore always produced in a social context. The formation of identities is a part of the socialisation-process.<sup>5</sup>

*The relativity of uniformity.* The use of the word identity to describe both the collective and the self-sameness suggests that what is defined as being the same diverges. What uniformity (identity) is significant varies with the context. In some situations, we act as individuals, in other cases as members of a group and sometimes as members of a large-scale community. In each situation a different identity dominates. Hence, uniformity and difference are two relative qualities. Depending on the situation, the question of what is seen as different and what is perceived as the same varies.<sup>6</sup> Kluckhohn & Murray made this point clear by stating that to some extent all people are the same (the species - human beings), some people are the same (groups – Europe-

<sup>2</sup> See The American Heritage Dictionary. Third Edition. Version 3.6a. 1994 SoftKey International Inc. Also available at: <http://www.allwords.com/>; Webster's New Complete Thesaurus. New York 1995; Oxford English Dictionary Online. Available at: <http://dictionary.oed.com>

<sup>3</sup> This '*principium identitatis*', the logical principle of the identity was already presented in the philosophy of Plato and Aristotle. See Pollack 1998:35.

<sup>4</sup> According to Niklas Luhman, "all identity constitutes itself through negation" [Authors translation], See Niklas Luhmann, 'Sinn als Grundbegriff der Soziologie', in Jürgen Habermas and Niklas Luhmann, *Theorie der Gesellschaft oder Sozialtechnologie*, Frankfurt am Main 1971, p. 60.

<sup>5</sup> The great thinkers of the 17<sup>th</sup> and 18<sup>th</sup> century argued about whether the identity is a result of the self-reflection allowed by a pre-identity (Leibniz rationales Ich) or if the identity evolves from the experience (Locke), that is if identity exists ahead of the physical functions (continental European philosophy) or if it is the result produced through the physical functions (Anglo-Saxon philosophy; Hume). This 'hen and egg' discussion is not decisive for this study and will therefore be left an open question. One can note though, that a conscience cannot evolve to a self-awareness in isolation. In fact a conscience can probably not even arise in isolation, and therefore no self-identification can be made. Amongst others G.W Leibniz constructed this linkage between identity and awareness. According to him the identity is a question of the subject referring to it self as being the same over the time, of being identical with itself. This requires the recognition of something that is not the same, the awareness of the 'other'. See G.W, Leibniz, *Philosophische Schriften*, edited by H. Holz, Darmstadt 1959, vol. 3/1, p. 405. (Quoted by Pollack 1998:36.)

<sup>6</sup> Strictly speaking, one might suppose that, as argued above, an object can only be identical with itself and that different objects only can resemble each other or be similar. But if the time is entered as variable into the argumentation, it will even be difficult to adhere to that contention, in particular with regard to persons, who constantly change. Thus, the logical claim that  $A=A$  is correct, but in real life it will always be a question of estimation if A still is A after a certain time. This judgement will depend on the observers question, that is which of A's features are considered as relevant.

ans, Bavarians, members of an orchestra), and no people are the same (individuals – Blair, Delors, Mozart).<sup>7</sup> This depends on the angle from which one looks upon a situation and with what question one approaches it.<sup>8</sup>

Sharing a common or collective identity with others, but not with all others, is interlinked with the act of making categorisations, following some kind of classificatory system. Objective features can play a role in this categorisation, but the sharing of any characteristics is not enough to evoke a group identity. That all humans, with a few pathological exceptions, share the same basic physiological configuration does not automatically generate a collective identity. That they all belong to the same species and all of them are able to make identifications does not mean that they all make the same identification and identify with each other.<sup>9</sup> The constitution of a collective identity is based on two elements. First, the features upon which a group defines its uniformity must be selected. Since different groups stress different features, nature does not prescribe the selection, i.e. what features are used to determine uniformity and to separate members from non-members. In principle, a group can found its uniformity on any features and any combinations of features, be it the colour of the eyes, clothing, weight, race, dialect, gender, descent, education, the possession of a membership card or some other characteristics. The selection, i.e. the classificatory system, and the identity are therefore not naturally given, but socially constructed.<sup>10</sup> Secondly, those who share the features must somehow understand themselves as members of a group. The group must develop some kind of self-awareness in order to function as a group.

#### 2.1.1.1 Forming identity - internalisation of external settings

The socialisation process is the melting pot of both the individual and the collective identity. By providing social experience, surrounding people transfer social input to and influence the individual. One could say that they transmit collective features into the individual.<sup>11</sup> This interaction and the transport of some kind of common elements are the gateway to the study of collective identities.

Although Sigmund Freud concentrates on the individual identity, his model of Id (Es), Ego (Ich) and Super-ego (Über-Ich) can be used to clarify what a collective identity is.<sup>12</sup> Taking the individual as a starting point, Freud states that the identification begins in the childhood. The child's first contact with the environment will (normally) be with its parents. It will identify them as agents satisfying its physical needs and wishes, as well as sanctioning actors. As the child

<sup>7</sup> See C. Kluckhohn, HA Murray, 'Personality formation: the determinants', in C Kluckhohn and HA Murray (ed.), *Personality: in nature, society and culture*, New York 1948, pp. 35-48.

<sup>8</sup> To clarify the relativity of this individual aspect of identity one might as well refer to the 'not different' instead of to the 'uniformity'. A child for example, will normally develop his self-awareness in its contact with the family. When being alone with the mother, it will learn to perceive itself as different from her. In terms of self-awareness their differences are emphasised. But when encountering strangers together with the mother, she will appear as more familiar than them and thus, what is different will be measured according to another scale. The mother will be placed at the common end, and the strangers in the field of being different. Now the not-different between the child and the mother will be stressed, not as before the different. Hence, what is perceived as different depends on the circumstances. An old saying clearly describing this states: "I against my brother. My brother and I against our neighbour. My brother, our neighbour and I against the stranger...".

<sup>9</sup> A collective identity including all humans would require a differentiation to non-humans, and the internalisation of a general human ideal pattern. One must differentiate between the ability to identify with *any* human and the actual identification with *all* humans. That we can pity and feel compassion with fellow humans that suffer is not to be mistaken for a shared identity including all humans. This feeling is based on our ability of identifying with the other, of placing ourselves in the sufferings role, that we can imagine the feeling of hunger or pain. However, in these cases we do not identify with all, but only with some, namely the suffering, fellow humans. In fact, there is no example of any collective identity (value, idea or ideal) shared by all humans. The closest one gets to an expression of a collective human identity might be the world wide recognition of human rights. However, there is an immense difference between textual declarations about shared values or ideal patterns and the interpretation of them.

<sup>10</sup> For a comprehensive analysis of this process, see Berger, Peter and Luckmann, Thomas, *The social construction of reality: a treatise in the sociology of knowledge*, London 1991.

<sup>11</sup> For an extensive theory on this subject, see Elias, Norbert, *Über den Prozeß der Zivilisation. Soziogenetische und psychogenetische Untersuchungen*, 2<sup>nd</sup> volume, 'Wandlungen der Gesellschaft. Entwurf einer Theorie der Zivilisation', 2<sup>nd</sup> edition, Frankfurt am Main 1976.

experiences the parents affection and their dissatisfaction, it will advance towards self-control by laying down prototypes of the parents in its own mind, that is by internalising their regulatory patterns, in order to avoid sanctions, to get its needs satisfied, and to benefit from their appreciation. These earliest 'parental imagos' or ideals provide the basis of the Super-ego and represent the first steps towards a collective identity. The child reproduces certain social elements of its environment in the own mind, thereby establishing a self-critical faculty that judges the Ego's actions and thoughts according to the duplicated external scale.<sup>13</sup> The installation of the Super-ego is a successful instance of identification with the parental agency. In it, the parental influence is resumed.<sup>14</sup> Thus, the individual projects external values and behavioural patterns in his Super-ego and makes them his own. Thereby the individual acquires a new set of references and accompanying wishes of social origin.

*Collective Identity as the 'generalised other'.* Although Freud did not develop the idea of the collective identity further (his primary interest was divergence and abnormalities rather than the evolution of common identities) one can spin on this thread a bit longer.

When the infant reflects the parent's ideal pattern in its mind, it does not make an entire copy of the parent's personality. This is not only impossible because of the limited physical capacity of the brain (copying just one other brain would not leave any space left for the own mind). But, also out of the fact that parents cannot communicate their entire personality and make it accessible to the child for copying. Only certain aspects of the parents personality are being communicated and thus, exposed for imitation. The most basic reason for this is that the amount of information that can be communicated at once is limited. Thus, we always select which information we want to transmit. The same argument is valid for the incoming information. We must always choose which incoming signals we want to pay attention to, which ones we consciously want to receive. That means concentrating on the essential for the situation. We always make these selections, be it consciously or unconsciously. When we move between different groups and contexts, we seem to be able to change our selective patterns. The mother will pay attention to different signals, and communicate and act in different ways when interacting with her child as a family member, with colleagues at work as a member of the team, or when being alone with close friends.

The reason for this is that each group develops and provides an own 'imago'. The contents of such an imago can be very precise and comprehensive, such as in the family, or extremely rudimentary. When we identify with a group, we copy the setting that prescribes what part of the personality members can communicate. That is the selection pattern of what is essential in the

<sup>12</sup> This model is explained in Sigmund Freud, *Abrisse der Psychoanalyse. Das Unbehagen in der Kultur*, Frankfurt am Main 1993. For those who are not familiar with the model I recommend the concise but informative description by George Boeree: Sigmund Freud. Available at: <http://www.ship.edu/~cgboeree/freud.html>.

<sup>13</sup> According to Freud there are two merging motivations for the identification, the partly emulative and partly defensive. The emulative, imitating one, represented by the daughters affectionate bonds to the mother and the defensive, adapting one, where the son internalises the fathers attributes to neutralise the threat from the father and to have a share in the fathers exclusive relation ship to the mother (Oedipus complex). Whether emulative or defensive the purpose of the identification is survival. What is being internalised is the being who supplies food and warmth, who offers gratification of the primary needs. If the infant does not internalise the parental models it could be sanctioned or even ostracised, which would be fatal. See Bloom 1990:28-29

<sup>14</sup> As far as the Super-ego separates from the Ego and confronts it, it constitutes a third force that the Ego has to consider. "One can see that, as different as they are, both the ID and the SUPER-EGO represent the influence from the past, the ID the inherited ones, and the SUPER-EGO essentially the ones adopted from others, whereas the EGO is mainly formed by the own accidental and current experience." (Authors translation). Sigmund Freud, *Abrisse der Psychoanalyse. Das Unbehagen in der Kultur*, Frankfurt am Main 1993, p. 11. That the border between the Ego, which can be made conscious, and the unconscious Super-Ego, where Freud located the identification as internalised external patterns, is fluid was recognised by the scientist himself. He was well aware of the model character of this division, stating: "When you think of this dividing up of the personality into ego, super-ego and id, you must not imagine sharp dividing lines such as are artificially drawn in the field of political geography. We cannot do justice to the characteristics of the mind by means of linear contours, such as occur in a drawing or in a primitive painting, but we need rather the areas of colour shading off into one another that are to be found in modern pictures. After we have made our

situation when the group comes together as a group. Groups can develop specific rules for the communication determining how and what shall be communicated as well as a set of values prescribing and condemning certain behaviour. This codex or setting, which one might call the group's common denominator, corresponds to Freud's ideal patterns and is that which is internalised by the group members.<sup>15</sup> The codex of different groups can be more or less restrictive and allow various forms and scopes of communication. Instead of setting or codex, George Herbert Mead spoke of the group's 'generalised other' being internalised.<sup>16</sup> Here, the other is understood in opposition to the individual, not as the other being different from the group.

Individuals that share experiences within a group often reproduce the same or at least similar ideal patterns. They produce and internalise that groups generalised other. This is the basis for uniformity, and thus, for a common or shared identity. A group that shares a collective identity can be defined as one in which the individuals have internalised the same ideal pattern or generalised other.<sup>17</sup> This clarifies why we must differentiate between technically defined assemblages of people and groups or collectives with a shared identity. One can certainly consider oneself as a member of a category defined by certain attributes without necessarily identifying with it. For instance, all people wearing glasses would probably say that they belong to the mass of far- and short-sighted people. However, this does not mean that a specific ideal pattern exists that those with bad eyesight could internalise. A classification based on objectified attributes is obviously not enough to evoke identification. Without an ideal pattern, the mere recognition of uniformity is not enough to evoke a group identity either. Moreover, even if a group defined by special attributes offers an ideal pattern, all individuals carrying these features do not necessarily have to internalise it and identify with the group. Hence, to evoke identification, a group has to offer an ideal pattern, allowing the members to recognise and experience their uniformity. Then, the members have to internalise the ideal pattern and become aware of that some other individuals have done the same. The family can serve as an example for a group in this sense.

#### 2.1.1.2 Functions and features of internalised settings

Although humans have a predisposition to make identifications, the process is neither coincidentally structured nor is the resulting contents predetermined.<sup>18</sup> Whom we identify with and what ideal patterns or which generalised other we internalise is not foreordained. Nevertheless, the identification does not take place in an empty space either. As it depends on what social experiences and what choices we make, the identification will always draw on existing patterns. Irrespectively of what group setting we internalise, they all share some general features.

*Identities offer perception patterns and create contexts.* Identities influence the reason, the perception, the interpretation and they give sense. By defining sameness and by making categorisa-

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separations, we must allow what we have separated to merge again. Do not judge too harshly of a first attempt at picturing a thing so elusive as the human mind." See Sigmund Freud: An Outline of Psychoanalysis. 1940. Available at: <http://dept.english.upenn.edu/~dwadsworth/freudst.html>

<sup>15</sup> Furio Cerutti calls this the model of the group identity. Furio Cerutti, 'Identität und Politik', in *International Zeitschrift für Philosophie*, No. 2, 1997, pp 175-201. This is comparable to Bourdieu's 'Habitus'.

<sup>16</sup> Habermas used the term 'identity securing interpretative systems'. See Bloom 1990:47.

<sup>17</sup> According to Freud's model, the identification is located to the Ego and the Super-ego. Just as other experiences that an individual makes, the imagos from different groups, i.e. different generalised others, are transmitted to the individual through his conscious mind (the Ego's 'eye') and then treated, memorised and reflected in the Ego and Super-ego. Consequently, the different internalised generalised others only form a part of the individual's personality, of his individual identity. The individuality consists of the individual's conscious mind, his unique Ego and Super-ego, all of which make him identical only with himself. This is so because different experiences have been transmitted through each individual's conscious mind, and forcefully a singular Ego and Super-ego is formed. The collective identity consists of a group's generalised other, reproduced as a copy in each member's Super-ego.

<sup>18</sup> See André Bertin, 'Europäische Identität – Einzahl oder Mehrzahl? Überlegungen zu den Entstehungsprozessen von Identität', in Dewandre and Lenoble 1994:55-65. Here p. 59.

tions, the complexity of the world is reduced. A group's generalised other does not merely serve to make a differentiation between 'us' and 'them' based on some more or less objective features. The definition of what characteristics distinguish 'us' from 'them' also determines what features are regarded as relevant in relation to them. Thereby, the generalised other provides the individual with a framework to identify certain situations and to interpret them. By internalising a group's pattern or setting, the individual copies an understanding of what is judged as important and what incoming signals he should pay attention to in a special situation and what he can ignore. Thus, through the group identity the individual is sensitised for various aspects of the reality. His perception is educated in the group. He is taught and learns certain information selecting patterns. These patterns are not necessarily limited to the groups encounter with the 'other'. The way of thinking of the reality can also be applicable when group members meet, or when they relate to their environment, to the reality apart from the specific 'other(s)'. Since different groups have different settings, they emphasise different aspects of the reality and interpret it differently. Contexts are thus created by the identity.<sup>19</sup>

Language is an example of a setting. As a child grows up the adults around it teach the language, giving name to some things while others remain nameless. By doing this, they open up a new dimension to the child's imaginability, at the same time as they set limits to the infants thinking. They provide the child with an instrument to develop the ability of perception and thinking. But, when thinking more and more in language, the child loses the ability to think of the unspeakable. At the same time as a group's setting offers a selection pattern, it also provides an interpretation pattern. Thus, identification is closely linked to interpretation of the course of events and to acquire a sense out of it. Individuals with different identifications interpret and give different sense to the same occurrence. By offering an interpretation of how reality is and how it works, it rationalises the choice of behaviour. Consequently, each group's setting prescribes an own rationality, an own way of thinking and a specific logic, which influences the way the environment is understood, and also how the individual reacts. Hence, identity simultaneously enables and constrains the perception and thinking, and thereby the action.

By suggesting how reality is, and in particular, how the group's internal and external relations are, the identity provokes the group members to interpret the reality in a specific way and to act accordingly. Thereby the suggested reality is created. Hence, identities have a tendency to result in self-confirming, self-fulfilling prophecies. However, identities are also influenced by the environment and have to adapt to changes. Since there are numerous collective identities and legions of acting groups following different reasons, the reality is influenced in many different ways. The change provoked by one identity can affect the reality in such a way, that the circle of the self-fulfilling prophecies of another identity is interrupted. In this case, the selection and interpretation pattern of the latter has proven inadequate and needs to be adapted if the identity is to last. Both personal and group identities are always in a process, never an artefact. Turning the argument around, in new context, new group constellations and new identities can evolve. Therefore, identities create and influence situations, at the same time as they are shaped and influenced by them.

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<sup>19</sup> Different ways of interpreting the reality can be exemplified by the different way a botanists and a football player would look upon, perceive and judge a meadow. Whereas the first would notice the vegetable variety and see all the different species, the latter might remark the grounds unevenness, perceive puddles as water damage and all the plants as a mass of insufficiently mowed green grass.



*Identities are context bound.* Each individual is equipped with several group identities and various perception and interpretation patterns. These group identities do not only offer different perception patterns that the individual can choose among. Since they also provide different sense-giving interpretation patterns, a specific group identity is likely to dominate in a certain context. Or differently put, varying external situations can emphasise different collective identities. During neighbour quarrels, the family setting may dominate and steer the individual's behaviour, whereas another setting matters in the football arena. In the same way, being Scandinavian can matter and evoke a feeling of shared identity when Scandinavians meet in Africa, but much less so, had they met in Norway. Thus, which identity, which 'we', dominates and which interpretation pattern is used, is influenced by the situational context. However, events do not necessarily have to describe a single context. On the contrary, situations do not appear as isolated phenomena with clear borders, but as chains of events, influencing each other. They effect other situations along what one might picture as context or thinking lines, which connect and surpass the intertwined events. Therefore being context bound means both depending on the 'objective' situation and on the 'subjective' interpretation of it. Or to put it differently, the 'objective' situation influences which identities are 'suitable' and dominate, at the same time as the internalised selection patterns, the set of identities, influences the interpretation of the 'objective' situation. The context is thus, produced both through the real events and through the individuals interpretation of these.

*Different identities can coexist, be compatible or compete.* Since a group constitutes the own identity by defining its uniformity and by differentiating itself from others, different group identities are likely to occur in the same context. The most obvious example may be the simultaneous appearance of so-called pair -identities (Labour- Tory, French-German, Male-Female). The interests of these groups do not necessarily have to contradict each other. In these cases, the collective identity of the group and the membership in of the collectives is not stressed. But, the larger the discord between the groups, the more important the collective identity and the group membership become. In fact, the competition between collectives makes it easier to distinguish the group from other groups. From an identity perspective, conflicts between groups that composed of different individuals are rather unproblematic since they can strengthen both groups' identities.

We have all internalised different collective identities that steer our behaviour and the different roles we play. Often we only act in one role, and apply the setting of a single collective identity. In other contexts, several internalised collective settings can be used. In some cases, being male and a member of the labour party can matter at the same time. For the individual, this does not pose a problem as long as the norms that the two identities suggest are compatible. On the contrary, they can support each other in the demarcation vis-à-vis a third 'other'. Within the same context, identities can also be organised in a compatible hierarchical order. Being English, British, and European can be compatible if standing in opposition to being Chinese. As long as these different internalised settings are compatible and suggest the same kind of rationality it is both impossible and irrelevant to determine which one dominates. It is much more interesting to examine situations where they differ. In these cases, compromises between them have to be found and/or one identity will dominate. The outcome of such a situation allows the observer to distinguish what identities are involved and which one is predominant.

*Preliminary application on ESDI.* Comprising the word identity, an ESDI must encompass both uniformity and distinction.

It is uniform in the sense that its members share a common codex, a set of features, a common interpretative pattern, influencing their perception of a certain situation. Furthermore, the ESDI must offer a setting of shared norms and standards according to which the security is judged and that steers the collective actions. Hence, the ESDI creates a specific context. In addition, the term suggests that it is bound to a specific security context with a European attribute.

As all collective identities, it is also distinct. Most obvious is the external demarcation vis-à-vis the non-European, representing its 'other'. But, there are also internal distinctions to be made. As any collective identity is different from the members' individual identity, the ESDI is distinct from the citizens' individuality as well as from the different national security and defence identities (NSDI). Therefore, an ESDI should be able to coexist, be compatible or compete with other, e.g. national, security and defence identities.

### 2.1.2 What are security, defence, and a SDI?

The aim here is not to invent the wheel again and to add a new definition of security and defence.<sup>20</sup> Instead, I have borrowed some ideas and terms from the concept elaborated by Buzan, Waever and de Wilde,<sup>21</sup> without however, applying their concept altogether. Some alterations are necessary because I intend to investigate the ESDI, and not to analyse the security of European states or any other entity (for which their framework for analysis was designed). In addition, their understanding of identity deviates from mine.

The concept of Waever et al. is regarded as a suitable base, firstly, because it includes a broader approach to security than just the military dimension. The expressive inclusion of both the terms 'security' and 'defence' in the locution ESDI suggest such an understanding. Had one restricted the meaning to the military dimension, one could have settled for terms such as ESI, EDI or European military identity. For this reason a security definition that goes beyond the military dimension should be applied. Secondly, the collective nature of the term European in ESDI requires a definition that refers to a community's rather than to a single individual's security. Thirdly, the use of a subjective rather than an objective notion of security indicates that the perception of threats and security can vary with different identities. In other words, it suggests that identities matter.

*Security: referent objects, security process and security actors.* Normally, security is understood as an estate of freedom from risk or danger, from doubt, anxiety, or fear, as safety and confidence.<sup>22</sup> Just as one cannot think 'we' without the 'not we', it is logical impossible to think of 'security' without the counterpart 'insecurity' or the antonym 'threat'. Logic prescribes that anyone who speaks of security has to refer to something that can be threatened. If a threat is not a threat to something, it is not a threat. When speaking of threats and security these two words must always refer to something that is threatened or secure. Waever et al. call this the *referent*

<sup>20</sup> For a brief overview of the debate between the so-called traditionalists and non-traditionalists about what an adequate definition of the term security should include, see Tarry 1999. See also Walt 1991 or Edward Kolodziej 1992.

<sup>21</sup> See Buzan, Ole Waever and Jaap de Wilde, *Security. A new framework for analysis*, Boulder 1998.

<sup>22</sup> See The American Heritage Dictionary. Third Edition. Version 3.6a. 1994 SoftKey International Inc. Also available in the internet at: <http://www.allwords.com/>. See also Webster's New Complete Thesaurus. New York 1995.

*object*, be it the territorial integrity of a country, the health of group members, a principle value, the stability of economic system, the preservation of a cultural heritage or something else.

Collective referent objects, perceived security and defined threats are not given by nature, but intersubjectively and socially constructed. This does not mean that they are not real. But, they have to be determined, made a subject and be spoken. Threats have to be communicated in order to be perceived as threats. Moreover, we are neither aware of all dangers that surround us, nor can we estimate their severity or rank them objectively. Since we are not omniscient, threats and security are not objectively ascertainable, let alone quantifiable. Security and insecurity are determined and estimated by actors based on their momentary knowledge, not on total knowledge. In this respect, security and threats are always a subjective impression and always relative. This impairs on the validity of security analyses to the extent that some threats are bound to be falsely estimated and some overseen. We can see threats where there are none and ignore others that actually exist. However, when analysing human behaviour and interactions it is not the objective, but the subjective (in)security that is of interest. It is the awareness or the impression of the reality, of threats and security that guide our actions and those of others. Not the accuracy of our impression is decisive, but our interpretation of reality itself.

According to the terminology of Waever et al., bringing up an issue and pointing it out as a threat is a *securitizing move*. When the audience accepts it, if the community is convinced that there is a threat and that precautions are taken, they speak of a *securitization*. Thus, the estimated security, insecurity, or vulnerability is defined during the securitization. Those who achieve in securitizing issues are called *security actors*. By 'speaking' security, they determine the perception of threat and security. To this nomenclature I add the *security process*. The security process is not limited to the act of defining threats, it embrace the whole chain of events from the definition of threats and the referent object, to the action of counteracting the threat and producing security. Hence, the security process and thereby the production of security is always attached to at least three elements, a security actor who points out a perceived threat and achieves to convince others that action is necessary (securitization), a referent object and the countermeasures taken.<sup>23</sup>

*Defence: safeguarding the referent object.* In the widest sense, defence can be interpreted as safeguarding a referent object from threats. The word defence includes the organised precautions taken in order to prevent the threat from affecting the referent object or at least to diminish its impact. This does not necessarily require the perceived threat to be fought directly. The organisation of a defence in peacetime can also be regarded as a precaution and a countermeasure against a securitized threat. An army does not have to be engaged in combat in order to ward off threats. The mere activity to set the military instruments up may be enough to complete a security process within a community. In this way, the word defence is already included in the security process and describes the act of taking countermeasures against an identified threat. The logical consequence is that the DI is a subset of the SI. Thus, an SDI has to meet the same conditions as a SI.

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<sup>23</sup> Apart from these, there can also be *functional actors*, affecting the issue more or less 'en passant' without securitizing it or being a referent object. An example could be a polluting company that produces the threat to the environment without securitizing the environmental issue nor being the referent object. If it securitizes something, it is more likely to do so with reference to safeguarding the employment, thereby entering a new security issue.

*What can be understood by a collective SDI and ESDI?* When investigating the ESDI, one must separate the individual from the collective identity, and consequently the individual from the collective security. This does not only mean differentiating a single member's security from the one of the group, but also to distinguish a group's security from the individual security of one or several singular members. The security of the group and the individual do not have to be incompatible, but they are different.

We can speak of a security identity (SI) or a security and defence identity (SDI) if two conditions are met. First, a security process has to take place within a Community. This means that threats have to be made an issue within a group. They have to be securitized. However, the mere recognition of threats is not enough. The security process requires that the risk is understood to be serious enough that countermeasures are deemed necessary and defensive actions are taken. Without perceived threats, security will not become an issue. If threats and security are not on the agenda, the community will remain outside of the realm of the security conceptualisation, and remain in a situation that can be labelled a-security.<sup>24</sup> In this case, we cannot speak of a security and defence identity but merely of a collective identity.

Second, the group's generalised other as a whole or certain aspects of it have to be used as referent objects. Unless this is the case, an act of speaking security would not result in a common countermeasure. When the community's communication platform is used to securitize threats directed against other entities, the speech act will remain but a securitizing move. A completed security process will always use a common referent object that can be interpreted as a part of the participants' shared identity.

I choose not to define an SDI alone on the basis of the speech act and the use of a common referent object (as Waever et al. do). Limiting the identity question to this condition would mean that one must speak of an ESDI as soon as any constellation of European states agree on countermeasures against threats with reference to the European Security, or some other common referent object. According to this logic, any collective European countermeasure reflects a shared ESDI, irrespectively of how short-lived the coalition is and how general the referent object used is defined. This is so, because the mere identification of a common threat creates a common referent object, be it that 'freedom' is threatened. Accordingly, any alliance, coalition of the willing and concerted action among some European states reflects an ESDI shared by the participating actors. This would result in a multitude of continuously changing ESDI-constellations.

To clarify my position and to avoid the concept of an SDI in general, and of the ESDI in particular, from flowing apart completely and become meaningless, I return to the first prerequisite of the definition, which suggests the existence of a Community within which the security process takes place. Of course, this approach is also problematic. Properly speaking it would mean that the ESDI is merely a security dimension of an existing European Identity. However, common sense tells us that the security process and the ESDI might be the very place where a European identity is formed in the first place. What the EI and the ESDI have in common is that durability is important for both. To comprehend themselves as a community and to develop a collective self-awareness, the members of a community have to apperceive the community as something that is lasting, something that is uniform over time. This permanence allows them to grasp the

collective as an entity with which they can identify. Just as in the every day life, a perceived uniformity only evokes identification if it is lasting. Sporadic functional relations do not. Unless the aspect of continuity is integrated in the ESDI concept, then what is defined as the ESDI will change contents and constellation in the same pace as the specific coalitions change. If one would ignore the continuity and the past, then the identity would only be reflected in the constantly changing behaviour of the present. An identity conceived in this way gives little guidance on the reason behind the production of security, and on how security is and will be thought. Without durability a 'generalised other' cannot take form and an existing one cannot evoke identity and be internalised by new members. A security process among a loose ad hoc coalition cannot influence the actors' thinking and rationality in the same way as a persisting firmly institutionalised one. If a group of states choose to cooperate and to take collective countermeasures against a number of threats during a long period, they have an opportunity to discover and define uniformity and may internalise the idea of solving threats collectively.

## 2.2 Investigating the current state of the ESDI

When trying to grasp the ESDI or any other identity, one will always be confronted with a general methodological problem. Basically, it is a question about choosing the starting point. Should I begin by defining where to look for the ESDI or by determining what to look for? Do I begin by defining who is a member and who is not and thereafter investigate what kind of ESDI the members share, i.e. what features the group's 'generalised other' has and to what extent the ESDI prevails? How then am I to define the membership constellation that should be investigated? Or, should I start by defining a set of exclusive ESDI characteristics and investigate in what security process the true ESDI is found, in order to define who belongs to the community? How then am I to define these specific ESDI features? I have opted for the first solution because, starting with an objectified definition of the European Identity appears much more problematic due to the inconsistency of collective identities.

*Inconsistency of collective identities.* Defining what constitutes a collective identity, i.e. determining the substance of the 'generalised other', is difficult because a collective identity is not based on objective sameness, but on the perception of uniformity. Identification requires recognition of uniformity. Since this is a conscious act, the shared identity does not necessarily have to be founded on objective uniformity and differences. Decisive is that individual group members perceive that they share some features with other members, and that these characteristics differentiate the collective from others groups. Collective identities are not distinguished by the objective similarity of the members or some kind of 'actual' connectedness among them, but rather their self-conscious idea of being a community. The connectedness is created and the community works as a community if the members choose to behave as if they share a collective identity.<sup>25</sup> To use Benedict Anderson's expression, a community exists as such as soon as it is imagined.<sup>26</sup> Thus, although the members share the idea of forming a community, their image of the group's 'generalised other' may diverge. This is all the more probable the larger the community is. One can picture the generalised other as a mosaic consistent of a large quantity of pieces. Due to the large number of members and the lack of dialogue between them, varying mosaic pieces

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<sup>24</sup> See Ole Waever, 'Insecurity, security, and asecurty in the West European non-war community', in Adler and Barnett 1998. pp. 69-118. Here p. 81.

<sup>25</sup> See Waever 1998:77.

are ascribed to a mass-identity, such as a European or a national one. Surely, people will have different images of Europe and hence the internalised European mosaics are likely to differ. Theoretically, it would be possible, that two European individuals do not share a single internalised European mosaic piece and that their image of what the community consists of can be two completely different ones.

Moreover, the identity is also inconsistent in itself. There is not necessarily an absolute hierarchy among the different internalised values, principles and objectives (mosaic pieces). Therefore, they can be incompatible and conflict in certain situations. In some contexts, a specific value A can be given priority over another value B, whereas B is given priority over A in another situation. It can also happen that internalised principles or objectives that have harmonised well can prove to be contradictory in a new situation.<sup>27</sup> The inconsistency of one and the same value can also be displayed. One example is that a community, which generally condemns violence, sometimes uses force to defend another value. Thus, the possibility to outline a tangible, consistent image of the community's 'generalised other' is not only contested by the fact that different individuals have internalised different values. The internalised values can also be incompatible.

In addition, it can be difficult to determine the contents of the European Identity based on what referent objects are used in a security process. How precise the common referent object, i.e. the shared identity, is defined in a security process can differ from case to case. When states cooperate in security matters, they are well aware of that any attempt to specify the shared uniformity easily can result in the clarification of differences rather than of sameness.<sup>28</sup> In the event of a commonly perceived threat, they may therefore choose not to specify the referent object more than needed to launch a security process. In order to mobilise broad support for a combined countermeasure referent objects tend to be formulated in general terms whilst the commonly perceived threat and, if applicable, the aggressor are clearly outlined. It is much easier to form alliances against a commonly perceived threat than to define, unite around and defend a common referent object. This approach is particularly suited for security process that focuses on a limited context and a specific threat. Here the uniformity, the referent object, only needs to be defined and redefined vaguely without requiring much more specification. It may be sufficient to use general (ambiguous) terms such as democracy, the rule of law, human rights or simply to state that security is at stake. Drawing a more elaborated image of the referent object would be politically irrational since this involves the risk of revealing differences instead of common similarities and raise opposition.<sup>29</sup> In contrast, the threat and the aggressor can be identified with great precision. This allows the actors to concentrate on the threat and the countermeasures, rather than to clarify what the referent object consists of. In these cases, the own equality is de-

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<sup>26</sup> Benedict Anderson, *Imagined communities: reflections on the origin and spread of nationalism*, London 1991.

<sup>27</sup> Maja Zehfuss has shown how the notion of 'Germany' or 'German' was raised both inside and outside of Germany after the end of the cold war. As military crisis management grew to be an urgent task, the German self-image of being a non-military international actor became untenable. For Germany, this was difficult, because the principles of 'never again war' and 'never again dictatorship', both part of the general self-image, proved incompatible. Zehfuss, Maja, 'Constructivism and Identity: A Dangerous Liaison', in *European Journal of International Relations*, vol. 7, no 3, p.315-348.

<sup>28</sup> This was illustrated by the attempt of the German Foreign Minister Fischer to clarify the "finalité Européenne" during Autumn 2000. His speech started a debate throughout Europe emphasising the differences among the EU countries rather than the common. The modest result from the Nice European Council shows how delicate these discussions are. See Joschka Fischer, 'Das Ziel ist die Europäische Föderation', Speech from 12 May 2000 at the Humboldt-Universität in Berlin, *Frankfurter Allgemeine Zeitung*, 2000-05-15, p.15.

<sup>29</sup> One can draw a parallel between the determination of that which is common, of the referent object used in the security process, and the definition of interests. Logically, the interests of nations or any other entities require a referent object, be it something that is worth protecting or a goal that should be achieved. The interests of a collectivity can always be traced back to that nebulous something called the common. However, due to its inconsistency this common will always remain more or less vague. Every attempt to outline and define the common, would mean to break the spell of the unity (Entzauberung), and runs the risk of being contra productive. Thus, it is wise to learn from the function of symbols and to avoid fixed definitions of the common. Thus, the declared interests will and must always remain at an operative level. For instance, a country's wish to maintain its influence or play a leading role in Europe, is often presented as a national interest. This is however a struggle for a mechanism rather than for promoting a certain contents. It does not contain a description of the program the country stands for, its generalised other.

fined by outlining the 'other', rather than by defining the shared setting.<sup>30</sup> This procedure is especially advantageous for mass-identities because defining external differences requires lesser efforts, than to produce internal uniformity by rectifying educational moves. Determining stereotypes of the 'other' is easier than to design and define a commonly accepted one of the own community, i.e. of a potential common referent object.<sup>31</sup> Nothing can bring people together as easily as a commonly defined enemy and threat, because internal differences can be left concealed.

Finally, an examination of the ESDI that takes a predetermined shared identity as a starting point neglects the dynamic, adaptation and development of that identity. By defining the constituents of the identity in advance, one only allows for that specific configuration and thus only for a single 'true' European Identity and ESDI. An empirical study could show to what extent a counterpart matches this specific identity in reality. Most likely, however, it would not allow any conclusions to be drawn regarding to what extent a differently conceived European Identity and ESDI exists.

Starting the examination of the ESDI by identifying the European security process that is to be investigated, seems more promising. Nevertheless, the task to determine different European security processes, i.e. to decide which ones to investigate, remains. This basic difficulty is made much easier if the criterion durability is added to the selection procedure. Accordingly, one has to identify enduring collective security processes with a European scope. Or better, one has to distinguish stable constellations of European members (states) in which a single or several security processes take place. I will therefore concentrate on intergovernmental or supranational organisations with a European attribute.

Before continuing, I want to make two clarifications. The first concerns whose identity I am interested in. Whose common setting does a European security process reflect? Obviously, it mirrors the one of the political elite rather than the one of the European public. The citizens are neither directly involved at national, nor at European security processes, but only indirectly and at the margin. Focusing on the level where the security and defence is actually managed seems reasonable since this is where the processes that I am interested in take place. Trying to determine the citizens' notion of an ESDI, and to what extent they have internalised it, would pose some practical research problems and not be very conclusive regarding the development of the European security perception and management. Since the internalised images differ, polls on the European identity and the ESDI would not allow any conclusions on the distinctiveness, the strength or the homogeneity of the European, national or any other identities, nor on their impact on different security context. Polls could merely result in the knowledge that a European community and an ESDI are imaginable.<sup>32</sup> Of course, it matters whether the ESDI is only existent among the political elite, or if the population is included. But, European democracies have an inherent control mechanism limiting the political elite's freedom of action. One may presume that the secularisation and the enlightenment have resulted in a situation where the democracy as system has become an internal part of the collective identities of the European nation states.

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<sup>30</sup> Furio Cerutti (1997) uses the metaphor of a wall and the mirror to describe the two different ways to define sameness.

<sup>31</sup> "Collective identities are constructed through contact with, defence against and exclusion of the outsider." Scholte 1996:63.

<sup>32</sup> Surveys made by the European Commission show, that people think in both national and European identities. See European Commission: *Eurobarometer. Report no. 52*. April 2000. Chapter 1.3. European and national identity. p. 10-13. According to these, there are many EU citizens who say they feel European when asked how they see themselves in the near future. Although only 4% of EU citizens view themselves as

Building on this assumption, one can argue that the democratic system assures that the 'Politik'<sup>33</sup> cannot deviate too much from the public's internalised ideal pattern. Institutional arrangement within which the decisions are taken (polity), outspoken goals and justifications of actions (policy), and countermeasures (politics) reflect that which is regarded as legitimate by the majority of people (at least those eligible to vote). If not, the citizens would vote the government out of office. Naturally, the impact and the inner dynamic that the ESDI can evolve are affected by the broad support it can mobilise. But, it is the political elite that steers the integration process, formulates visions and sets new standards, thereby influencing the population. Thus, as dependent as the political elite is of the electorate, the forward-looking decisions are made by the powerhouse and the politicians can move ahead of the electorate, although not too fast. How the European security process is organised will always reflect the political elite's notion of the ESDI. They cannot move ahead of themselves.<sup>34</sup>

The second clarification concerns my view on the nature of the ESDI. I regard it as a civic context bound identity. The attraction of using a civic rather than a cultural identity as point of departure lies in the idea that it conceives a new identity. It seems reasonable that the European integration process was born out of national reason and the nations' will to survive, rather than out of a newly discovered European consciousness or some kind of European community striving for and claiming own institutions and authorities. The Second World War certainly did not reveal a commonly shared ideal pattern to the people of Europe, but underlined differences. It was not until the clash between the east and the west became apparent that the integration process made considerable progress. The basic difference between the institutions of the nation states and those of the European organisations is that the European ones are bound to a limited field of policies, defined by the nation states. Their authority and status is confided to them by the sovereign nation states. Thus, European organisations cannot widen their authority by themselves to comprise fields outside of the authority that the nation states gave them. Consequently, the potential identification with the European organisations is linked to the limited policy fields in which they are active. Therefore, it bears the characteristics of a context bound identity rather than of a general omnipresent one, such as a cultural identity.

### 2.2.1 Model of analysis

#### *CATEGORIES OF ANALYSIS: POLITY, POLITICS AND POLICY*

European governmental organisations are at the same time agencies, producers, and products of the ESDI. Enduring European security process are located to and institutionalised in these organisations. They offer the necessary stable communication platform where shared referent objects and common threats can be defined, and the uniformity can grow. Collective countermeasures and precautions are also set up within and/or initiated by organisations. In addition, they make a clear differentiation between the 'we' and the 'others', thereby providing the basis for the imaginability of an ESDI. Once the organisations and security process that are to be investigated have been defined, the question of how the ESDI is to be grasped remains.

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exclusively European, more than half of the EU-citizens feel somewhat European. Many Europeans also believe that there is a European cultural identity shared by all Europeans.

<sup>33</sup> The German word 'Politik' is used because the German language does not differentiate between polity, politics and policies.

<sup>34</sup> Thus, a function follows form argument, claiming that the organisation of the security process is set up to influence the development of the ESDI is only valid for the broad public. How the political elite decides to organise the security process reflects their present notion of an ESDI.



A main difficulty when investigating any identity is that there is no direct access to it. There is no way to observe or measure a personal identity or a 'generalised other' immediately. Thus, one has to content oneself with investigating the symptoms and drawing conclusions from the identity's consequences. The question is how the ESDI is reflected and has effect in the tangible reality?

The ESDI is manifested in the European security processes, i.e. in the articulation of preferences, wishes and interest, in the countermeasures and in the organisation of the security process. Preferences, wishes and interest (policy) are articulated when threats and referent objects are defined or when the participants discuss the organisation of the security process. The action can result in direct countermeasures against a threat (politics), and in the organisation of instruments and security processes (polity). In reverse, the organisation of security processes and instruments can influence what threats are identified, what referent objects are used and against whom what countermeasures are employed.

The polity is particularly important, because it reflects the durability. A change of articulated security interests (policy) and of actions (politics) can reflect or induce a change of identity. But, due to hidden agendas or because the positions are not fixed, they do not necessarily have to. Thus, the production and reproduction of the ESDI, that is the declared policy and the politics, also create a lot of 'noise'. By introducing the dimension of continuity, this can be filtered out. The institutionalised organisation (polity) does not reflect the temporary and varying case-by-case coalitions, but the settled, established European security relations and identity. Although lagging behind the daily security constellations, it reflects and influences the long-term development of how security is thought of in Europe. The development of institutional arrangements reflects the evolution of the ESDI, because the organisations are structured and shaped in accordance with the grown common setting. Or better, the distribution of the authority and the institutional organisation mirror that, which is regarded as legitimate. The structure indicates to what extent European security is thought and produced with reference to a national or a European identity and reason. Nevertheless, one cannot content oneself with the investigation of the institutional arrangements, the polity, of European security processes. There are several reasons, why one also has to consider the policy and politics.

An investigation that focuses on but the institutional arrangements can lead to false conclusions about the ESDI. It could be, that the organisational framework, within which a security process takes place, was actually designed for another purpose. If the structure cannot be explained by the ESDI, then it is also difficult to draw conclusions concerning the ESDI from the structure. Thus, the motives (policy) behind a security co-operation within an organisation are important. Furthermore, the organisational structure could be a remnant from past co-operation. One cannot draw any valid conclusions on the ESDI from a sleeping organisation's institutions. The actual production of security (politics) is an essential part of the ESDI. Finally, the categories policy and politics also allow for classification of the ESDI and a specification of its nature (see 2.2.2 Classification of different ESDIs). Since the ESDI is manifested in the polity, policy and the politics of the European security process, all three categories will be investigated.

The examination of the polity (organisation/institution) of the security process will focus on three aspects. Are threats first defined at the national level, and then adjusted at the European level, or are they defined within a European framework? The investigation will secondly, concentrate on the internal decision-making structure of the organisation, and on how the formal

authority and responsibility is distributed between the national and European level (political dimension). Thirdly, the structure of the defence instruments that have been set up as precaution against threats (operational dimension, e.g. the armed forces) will be scrutinized.

The politics (action/authority) will reveal to what extent European organisations produce security, and thereby which organisation is likely to evoke identification through the ability to project its responsibility and authority. Due to the democracy deficit of international organisations, an output-oriented legitimacy is crucial for the public's identification with European institutions.<sup>35</sup> I will study how the organisation and the member states have been involved in the production of security and to what extent outspoken ambitions are met and filled with substance. The functioning of the polity and the implementation of the policy will unveil how the nation states and the European organisations relate to each other and to common goals when it comes to the crunch. This will show which identity and which institution dominates.

By studying the policy (program/common setting) of the security process, the declared reasons for the necessity of a European security process will be explored. The justification of collective defence actions will also be revealed. This will display whether the collective production of security is justified with reference to European or national interests and rationality. Or better, it will demonstrate what common European referent objects are used. In addition, I will scrutinize if the national policies comply with the idea of an ESDI. Here I focus on 'non-members', i.e. those countries that choose to remain outside the organisations as a whole, or of parts of the security processes within them.

#### *DETERMINING THE SECURITY CONTEXT TO BE INVESTIGATED*

In order to allow an investigation of the categories policy, polity and politics the security contexts, i.e. the security processes, which are to be examined, must be specified. Inevitably, the result of the examination will depend on the security contexts chosen. The definition of security and, thus, the security context must neither be too vast nor too narrow. An extensive definition will raise analytical problems since it will be difficult to handle. A very restricted definition would simplify the analysis, but the result of that investigation would only be valid for the very limited and specific security context chosen. To avoid a generalisation of the terms security and threat, and to distinguish them from the normal run of the merely political, Waever and his companions added some criteria's limiting their use. According to them, security is about survival. They speak of security when a securitizing actor presents an issue as an existential threat to a specific referent object, thereby generating endorsement of emergency measures beyond rules that would otherwise bind.<sup>36</sup> Of course, what threats are to be defined as existential ones and what is regarded as emergency measures remains a matter of opinion. Decisive is that they choose to describe the securitization as something that takes an issue out of the 'normal politics', and that they limit it to the survival of the referent object.<sup>37</sup>

Applied on the SDI this definition would mean that threats are such occurrences directed against the shared identity, that threaten the survival of the 'generalised other' and thus of the community as such. Emergency measures, could be defined as such defence activities that disregard the codex prescribed by the generalised other, which is to be defended. Most typically

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<sup>35</sup> The output-oriented legitimacy can also be called efficient policy performance. See Antje Wiener, 'Forging flexibility – the British 'No' to Schengen', *Arena Working Papers*, no. 1/2000.

<sup>36</sup> Waever et al. 1998:5 and 21

would be the use of violence to put a stop to physical violence. For the investigation of an SDI, this definition is problematic for two reasons.

First, it suggests a 'normal' setting of norms and behavioural rules that deviates from the ones used in the case of securitization. This implies a split of the collective identity. There is the 'normal' one, functioning as referent object, and the SDI with another frame of reference and a detached set of behavioural rules that is activated in times of emergency. However, this separation denies that the security process plays an important role in the formation of the collective identity. As a social act, the securitization does not take place outside, but inside of the collective identity. In fact, defining threats is one of the most efficient ways to suggest sameness and to define the 'other'. The referent object, the collective identity, can be formed and the self-image changed during the security process.<sup>38</sup> A separation between the SDI and the 'normal' identity is therefore always problematic.

The second and decisive difficulty is the limitation of the concept of security to the question of survival.<sup>39</sup> Although this may seem to be a straightforward definition, it is rather confusing, when applied together with the concept of identity. This may be clarified with the Argentine invasion of the Falkland Islands. What referent object did the British use in their security process? What was existentially threatened? What made the British military engage in the war? Although the Falklands' belonging to the United Kingdom was at stake, this did not threaten the survival of the United Kingdom itself nor of its 'generalised other'. Surely, passivity might have influenced and changed the British self-image, but the survival of the shared identity was not threatened. In the security process the Falklands represented a part of the British self-image. The defence against a military invasion of British territory represented another part. Thus, it was not the survival of the British identity as a whole that was at stake, and that was used as referent object, but the preservation of certain parts of it. Therefore, the security cannot be limited to the question of survival, and the counterpart existential threats.

It seems more adequate to picture the definition of threats and security at the right end on a line of interests. At the left end of the scale, one could place wishes. The further towards the security one moves (right on the line), the higher is the priority given to the concern, with the interest of survival at the far right end.

As the figure below demonstrates, the attempt of Waever et al. to limit the concept of security to the right end of the scale is not convincing. Drawing a vertical demarcation through the interest line, leaving all matters concerned with existential threats to the right, and defining these as security, does not seem applicable when investigating security and defence identities. When the threat is perceived as existential, it will surely be given higher priority, but an event does not have to endanger the survival, in order to be regarded as threat, and to get a security process started. The line between a community's non-securitized interests and the securitized threats remains indistinct.

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<sup>37</sup> See Barry Buzan, Ole Waever and Jaap de Wilde, *Security. A new framework for analysis*, Boulder 1998. pp.23-.

<sup>38</sup> A country that perceives a threat can choose to intervene outside of its own territory in order to meet this threat. This action can change the nation's self-image in the sense that interventionist politics is 'something we do'. If the interventionist politics become a part of the national self-image and identity, the ability to intervene can be securitized.

<sup>39</sup> See Barry Buzan, Ole Waever and Jaap de Wilde, *Security. A new framework for analysis*, Boulder 1998. p. 21.

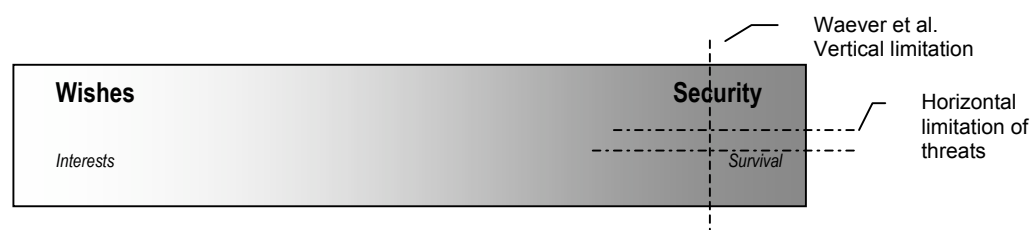


Figure 2-1. Interest line

McSweeney's argument for a specification of the concept of security can clarify why this differentiation is difficult. By arguing, that security must not be extended to include "...all possible sources and causes of insecurity, resulting in a security policy so wide that it lacks the focus necessary to direct the allocation of scarce resources to it",<sup>40</sup> he unintentionally addresses the core reason, why there is no way to clearly separate security and security interests from any other interests. There can never be a separate allocation process in the society for security policies, because the shortage is definite and penetrates all areas. The discussion over the current defence budgets in Europe exemplifies that the security questions cannot be detached from the rest of the political life. Like other conditions, security is produced and this production claims resources. In terms of allocation, security interests compete with other interests. They are always balanced to their significance in relation to the overall quality of life. There is no way around the 'guns versus butter' trade-off.<sup>41</sup> That there is no such thing as a maximising strategy in political life, but only optimising strategies, is also valid for security. It is not possible for a collective to eliminate all threats, even if it allocates all its resources to countermeasures. The reallocation of resources to counteract one threat can cause deficiencies in other areas, and open up for new threats. The countermeasures can therefore turn into a threat themselves. The state of complete absence of threats, of a-security, cannot be achieved. What can be reached is a-security in certain relations and regarding certain threats. Overall, however, a community must settle for reaching an acceptable level of countermeasures and security to meet the perceived threats. Everything else is utopian. When this state is reached, it has attained what we can call security. It is a state where threats are perceived, but where the community's defence capabilities are regarded to be sufficient, taking all other concurring wishes into account.

In this investigation, one can obviously not separate between the ESDI, allowing some kind of emergency measures, and the normal 'European Identity' consisting of the setting that is to be defend in the European security process. Nor can one isolate the security concept to the survival of the referent object, or draw a clear separation between the security context and other conflicting interests. I accept the fact that security interests cannot be clearly separated from other interests, and content myself with a less precise definition of security. Namely, that the context of security and threats is located at the right end of the interest scale.

To make the concept of security analytically somewhat more practical, the field of security that will be scrutinised in this study is narrowed down, by limiting the investigation to three types of security contexts. In the image above this could be pictured as a limitation of the examination to three horizontal layers. A prerequisite is that the threats within the security context are managed

<sup>40</sup> Bill McSweeney 1999:89.

<sup>41</sup> Richard Rosencranse, 'Economics and National Security: The Evolutionary Process', in, Roy Godson, George Quester and Richard Schultz (ed), *Security Studies for the 21st Century*, London 1997, pp 209-252. Here p. 210. See also Terriff, Terry et al., *Security Studies Today*, Oxford 1999, p. 137-141.

in a European security process that utilises European referent objects. If these conditions are not met, there cannot be an ESDI within that security context. The three contexts that will be investigated are the military, economic, and criminal ones.<sup>42</sup> Each of which will be scrutinized separately. Furthermore, the analysis concentrates on how identified threats are dealt with. Preventive measures are only analysed as far as they can clearly be related to a specific referent object within the investigated security context. Most of the time this is not the case, because the motives behind such measures are not mono-causal. Counteracting poverty and improving the educational situation, for instance, may be the most efficient way to counteract criminality. However, it cannot be explained by this motive only. Extending the investigation to preventive measures that are not explicitly related to a defined threat runs the risk of diluting the security context to the extent that it covers all political choices and thus the whole interest line. This would make the survey unmanageable.

It is obvious that the separation of the three security contexts is somewhat artificial. Just like the different categories of analysis (polity, politics and policy) that depend on and affect each other, military, criminal and economic threats are also interrelated and frequently occur simultaneously. Accordingly, the development in one security context is not isolated from the others. As always when an observer attempts to divide and structure an 'organic' entity into different parts, this cannot be done with clear cuts and the analytic sections are bound to blend to some extent. It is therefore not always obvious to what chapter a certain part of the investigation should be assigned. Sometimes the text in a chapter can therefore contain information that might also fit under another headline. I have opted for the following solution.

The chapter on military threats comprises direct military threats and military countermeasures, i.e. the organisation, development of military forces and their operations, and what could be called flanking countermeasures in crisis regions to which military forces have been deployed. This includes financial and economic support as well as police assistance. Since the security process within European organisation stands in the centre of the analysis, the military context will focus on collective defence and crisis management operations. When investigating economic threats I focus on some regulations at the macro economic level (e.g. regulations of the Common Market, stability of the common currency, security of supply) and on the use of economic means to protect certain interests and to export specific values (Geo-economics). Criminal threats include countermeasures against criminal activities within Europe and at the European borders. Hence, this chapter also includes the control of illegal migration and migratory threats.

In contrast to military threats, which are met with single operations, economic and criminal threats are directly counteracted continuously with innumerable interventions. These interventions are not decided upon at the European level on a case-by-case basis. Instead legal decisions have been taken that regulate the responsibilities and the authority between the national level

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<sup>42</sup> For the analysis of security Buzan, Waever and de Wilde (1998) suggest a division of the examination into five security sectors: the military, the political, the economic, the societal and the environmental one. "In this view, the military sector is about relationships of coercion; the political sector is about relationships of authority, governing status, and recognition; the economic sector is about relationships of trade, production and finance; the societal sector is about relationships of collective identity; and the environmental sector is about relations between human activity and the planetary biosphere." (Buzan 1998:7). Obviously, when analysing for instance a nation state's security, these sectors, these different perspectives have to be reassembled again. However, my aim is not to analyse the security of Europe, but to what extent there is a ESDI. Thus, the approach of this study differs from the one they suggest. Environmental and societal threats (sectors), will not be investigated. Societal threats disqualify themselves since the referent object would be the community, that is the mass-identity itself. What I am trying to do in this investigation is to detect indicators of such an identity, but one cannot study that identity itself. It is not possible to find out to what extent the ESDI is established and what it consists of, by starting an analysis from the threats against the same. This would put me in a catch 22 situation since it does not offer any consistent point of departure. Trying to outline to what extent a referent object exists and what it consists of cannot be done by defining that it exists and by looking at threats against it. This is impossible since the threat cannot be defined without the referent object being specified. This would be like trying to find out if one is surrounded by a cloud, by investigating the threats against that cloud. The environmental threats become obsolete because the referent objects of the environmental security processes are either local, regional or global. There is no European environmental referent object and hardly any national one.

and the European institutions. Assuming that these regulations are respected in the European constitutional states, the polity and politics can be examined together under one headline. This will also prevent the text from becoming too fragmented. The structure of the investigation could roughly be sketched as follows:

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity			
	Politics			
	Policy			
Conclusion ESDI				

Figure 2-2. System of investigation

### 2.2.2 Classification of different ESDIs

The existence of several organisations and several different security processes suggests that there are several different ESDIs, or at least that the ESDI is differently developed in different security contexts. Just like any other identity, the strength of the(se) ESDI(s) cannot be measured on a numeric scale. To what extent it exists cannot be answered by putting it in relation with other SDIs. Assuming that the institutionalisation of the security process reflects the ESDI, one can expect differently organised security processes to reflect different forms of ESDIs. Or better, the reflected and expected security rationality varies with the form of the institutionalisation.

To categorise differently organised European security processes and different types of ESDIs, I have modified the model of Security Communities presented by Adler and Barnett,<sup>43</sup> who specified the one introduced by Deutsch et al..<sup>44</sup> The main difference is that I separate between external and internal threats. This differentiation is necessary for two reasons. First, the handling of internal and external threats represents two different ways of producing and reproducing uniformity. The identification and defence against external threats is based on a common definition of the non-conform and the 'other'. The handling of internal threats, in contrast, results in a rectification of a Community's members. Here the common standards have to be outlined, and not simply that which is not the same.<sup>45</sup> In addition, there may be large differences in an organisation's handling of external and internal threats. Depending on the threat and whether it is external or internal, the European security process can be differently organised. In either case, I differentiate between four types of security processes.

*External threats.* When classifying external threats, one can begin outside of the ESDI context with Strategic Alliances. Here, different countries come together for a limited time to defend themselves against the same threat (enemy). However, the threat has not been identified and defined at a European level, nor are the national countermeasures co-ordinated there. Thus, there is no European security process and no ESDI in play, only parallel national ones. The alliance against Nazi-Germany can be used as an example for this category.

<sup>43</sup> Emanuel Adler and Michael Barnett, 'A framework for the Study of Security Communities', in Adler and Barnett 1998:29-67.

<sup>44</sup> Karl Deutsch, Sidney Burrell; Robert Kann, Maurice Lee, Martin Lichterman, Raymond Lindgren, Francis Loewenheim, Richard van Wagenen, *Political Community and the North Atlantic Area: International Organization in the Light of Historical Experience*, Princeton 1957.

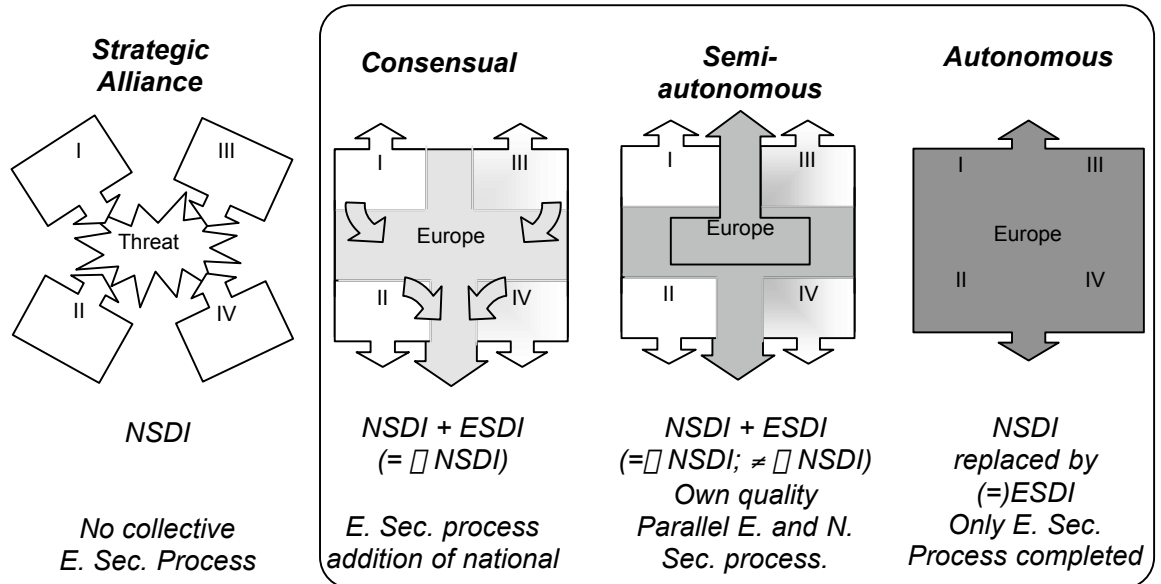


Figure 2-3. ESDI – Classification External Threats

The next category is referred to as the *Consensual*. This is the loosest form of an ESDI. Here threats are determined at the national level but also discussed in a European forum. If the states identify a common threat, they will try to co-ordinate the defence against it by acting through the common organisation and by synchronising national countermeasures. National security processes are compared with each other at the same time as attempts are made to harmonise national positions and interest in a way that allows concerted actions. The European security process can thus be described as an aggregation of the national ones. The ESDI then reflects the common denominator of the National Security and Defence Identities (NSDI).

One can speak of a *Semi autonomous* ESDI, when there are parallel European and national security processes. In this case, the European security process has not only developed an own momentum. Countermeasures and preventive actions can also be launched at the European level independently of, and possibly in contradiction to national interests. The ESDI can still reflect the common denominator of the NSDIs, but it can also follow an own reason. This is so, because the semi-autonomous European security process does not consider specific national experiences, allegiances, and security concerns. The European referent object can correspond to the common national denominator, but it does not have to. Here the security of the organisation as a whole is put in the centre and this can sometimes contradict some particular national security interests/preferences.

In the figure above, the countries III and IV in the consensual and the semi-autonomous category are shaded in grey. This represents their conviction that they must seek to solve their national security challenges at the European level. The state's integration in the European framework is thus recognised and taken into account in the national security process. However, that the NSDIs become more European is not to be mistaken for an evolving ESDI. As claimed earlier, the ESDI is distinct from the sub-identities of its constituents, just as any group identity is different from the members' individuality. Even if the demarcation between the ESDI and the NSDIs becomes vague, more 'European' NSDIs do not represent an own, new quality in the

<sup>45</sup> This can be compared with the difference between prohibition (the non-conform) and commandments (the conform).

European security politics. It represents a change of thinking at the national level and thus, of the NSDI, but it is still a matter of a NSDI, not an ESDI.

The *Autonomous* ESDI, finally, is established when a European security process replaces the national one. Security can still be 'spoken' and be an issue at the national level, but the security process is only completed at the European level. The determination of threats and the defence takes place at the European level and using European referent objects. Thus, the ESDI has replaced or assimilated the NSDI.<sup>46</sup>

*Internal threats.* The security process of internal threats is also classified in four different categories. Here the threats identified are posed by a state or by other actors within the Community.<sup>47</sup> The categories describe different ways of how the Community meets threats and rectifies the activities of those that poses threats.

To begin with, there is the *Consensual* category that is the loosest form of an ESDI. Within the community, perceived threats are not only discussed with those who distinguish the same menace, but also with the opponent. The management of security concerns within the Community is based on accords and regulations agreed in consensus and voluntarily implemented. Based on confidence-building measures the security dilemma can be offset. Thus, the national security processes are being co-ordinated at the European level, with the ambition to reduce the mutual threat perception. The consensual ESDI therefore consists of the common denominator of the NSDIs.

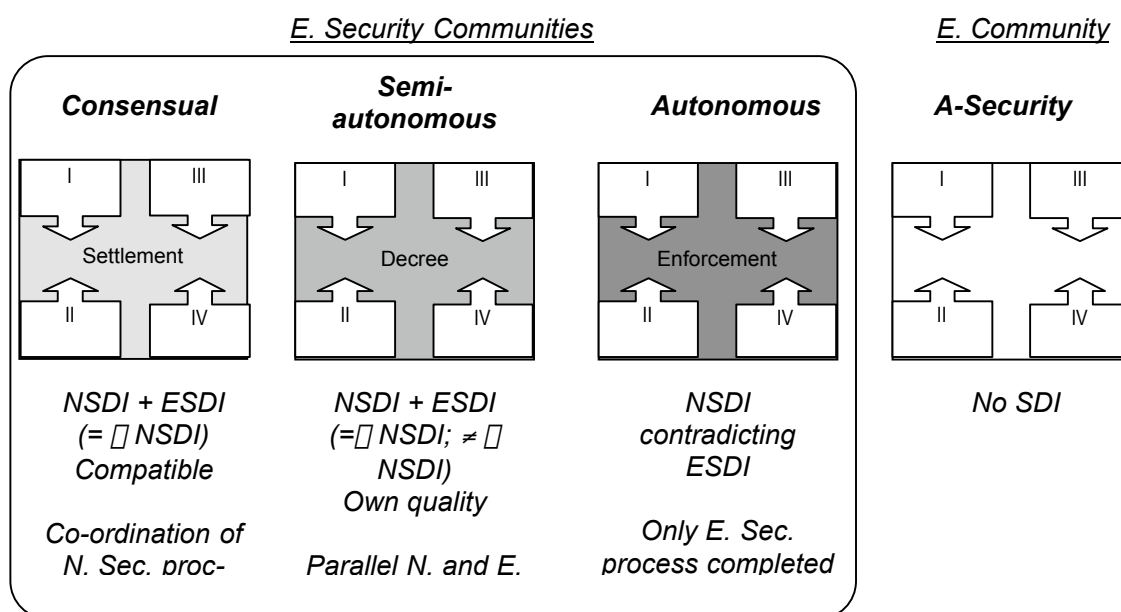


Figure 2-4. ESDI – Classification Internal Threats

A *Semi autonomous* ESDI is established, when the European security process can result in an outcome that opposes to a national position. It requires parallel European and national security processes. This form is found, when the community can come to a conclusion without consensus. The community can express this by condemning a member's behaviour or by issuing a de-

<sup>46</sup> Emanuel Adler and Michael Barnett first follow the distinction Karl Deutsch made between pluralistic (roughly corresponding to the consensual and semi-autonomous) and amalgamated (autonomous) Security Communities. In addition, they separated the pluralistic ones into loosely coupled (consensual) and tightly coupled (semi-autonomous).

<sup>47</sup> Usually the non-governmental actors are subject to a state's authority. Thus, the security matter can be discussed and agreements arranged between states. When a state collapses, this is not possible. But the way the Community interacts with the new 'authoritative' actors follows the same pattern as described in this section. Therefore the categories can also be applied for this case.



cree, urging a state to change the actions that are perceived as a threat. Thus, the semi autonomous ESDI represents an own quality, as it can opposes to the member's NSDI.

One can speak of an *Autonomous* ESDI, when the Community does not only criticize a member's actions, but has the authority to enforce its decisions. When the NSDI contradicts the ESDI, the latter is imposed on the former. Security issues can still be on the national agenda, but the security process is only completed at the European level. Thus, threats are determined, and the defence against them organised by the European community.

The highest level a Security Community can reach is when the mutual threats are abolished. This situation is characterised by mutual trust, where no member thinks of the other members as potential adversaries, and none of them prepares for the case that the other members would pose a threat to them. In this case the relations have been desecuritized. Since threats are not an issue in their relationship, one cannot speak of security but of a-security.<sup>48</sup> In this case, members can form a community, but not a security community. Thus, in terms of internal threats, there is no security process and no ESDI. Here one can only speak of a European Identity.

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<sup>48</sup> See footnote 24 on page19.

### 3 Empirical examination of the ESDI's current state

#### 3.1 Military Context

Outlining the context of military security appears rather simple. This chapter covers the international organisations' management of threats posed by military forces. It focuses on military operations against such threats led by European organisations and on the processes concerned with the coordination of efforts against military threats within and among the organisations themselves. The special feature of military threats is that they are immediate existential and located at the far right end of the interest line in figure 2.1. By threatening the survival of members, they pose the most serious menace to any collective identity. Both external and internal military threats are therefore more serious and more significant for an organisation's shared identity than any other threats addressed in this study. Like other existential perils, external military threats can reinforce the affiliation within the community and evoke identification at the same time as a military threat among a community's members questions the identity all together. Since military threats are directly existential, they tend to polarise feelings and leave much less room for transitional grey zones than economic and criminal threats.

#### *SELECTING ORGANISATIONS*

There are not many organisations with a European attribute and own security processes that deal with military threats. These are NATO, the EU/WEU and the OSCE.<sup>1</sup> Of these three, I exclude the OSCE. The fact that it plays an important role in the inner-European security process would speak for its inclusion into the investigation. However, given that it is assembled of very different member-countries, one can dispute whether it can be regarded as a European organisation at all. It is difficult to see how the politicians (let alone the citizens) of Iceland and Kyrgyzstan could understand themselves as members of a European community. Furthermore, the OSCE fully focuses on internal threats and lacks an external dimension. Therefore, it cannot display an image of an external 'other' that generates the feeling of connectedness and makes the 'generalised other' imaginable. The purpose of the OSCE is rather to regulate the peaceful coexistence among its member states and their opposing identities by agreeing on confidence- and security building measures. Alone the fact that the confidence-building measures rate so highly reflects how scarce the basis for a common identity is. Thus, in contrast to the EU and NATO who have overcome the state of internal military rivalry and conflicts, and successfully created something common, the OSCE has merely agreed on a *modus vivendi* among states that remain more or less adversary. The process of shaping a shared identity has thus hardly even started within the OSCE.

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<sup>1</sup> The Council of Europe is excluded from this list because it barely launches any countermeasures and certainly no military operations. Thus, no complete military security process takes place within it.

### 3.1.1 Category polity - Organisation

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity	X		
	Politics			
	Policy			
Conclusion ESDI				

The polity is interesting because it clearly shows the limits of how far the states are prepared to go in terms of co-operation, to formalise a security process at the European level and to organise the countermeasures and precautions against military threats within a European framework. The polity is easy to detect and mirrors the degree of mutual trust, reliance, attachments, solidarity and voluntary interdependence. It reflects to what extent military threats are defined and counteracted at the European level. In this section, I will examine the organisation of the security process in a chronological order, answering the following questions:

- How are military threats defined? How is the military intelligence produced in Europe? Are military threats detected and determined at the European or at the national level?
- How is the political decision-making organised? Do the states transfer any responsibilities to European institutions? Can the European organisations take decisions that contradict a member's opinion? Can the organisation take decisions and conduct an own military policy complementing the national ones?
- How are the military capabilities organised? What means do the organisations have to conduct their own operations? Is the principle of sovereignty and independence reflected in the organisation of the military command structures and the military forces?
- To what extent does the polity reflect a unity of EU and NATO in the security process? How do the organisations include non-members in general and the allied non-EU members, respectively the non-allied EU members in particular?

#### 3.1.1.1 Defining military threats - ESDI and intelligence co-operation

Although military threats cannot be defined and qualified objectively, decision-makers want to make well-informed definitions and decisions. This information is provided by military intelligence services. They determine the military potential of others and estimate their willingness to use the capabilities against the referent object. In addition the services follow and assess current events. Thus, the main task of military intelligence services is to appraise military threats. Investigating how military intelligence is produced allows for conclusions on the referent objects used. Such a survey is also important because all political and military decisions regarding the initiation and conduct of military countermeasures are based on intelligence. It is obvious that the availability of intelligence (or the lack of it) influences what occurrences are defined as military threats and against which developments countermeasures are launched. Just like ill informed rules are likely to make inadequate decisions, differently informed politicians are likely to take

different stances in a question.<sup>2</sup> Theoretically, uniform knowledge can be achieved in two ways, either by transferring the responsibility for the production of military intelligence to the European level, or by assuring that the member states share all intelligence they have produced. Of course, none of the two reflects the actual situation. Nevertheless, some movements towards both can be noted. The organisations have certain (although very limited) assets to produce their own intelligence, and to some extent, the national intelligence production is coordinated within the organisations. Moreover, the organisations have procedures and facilities that allow the member states to share their information with each other. This section examines how the intelligence that is used in the European security process is produced.

The production of intelligence can be divided into five steps: collection, processing of raw information, analysis, dissemination and tasking and control. Each one of these steps influences what threats are being identified and the quality of the information the decision-makers can take into consideration when drawing conclusions and formulating instructions.

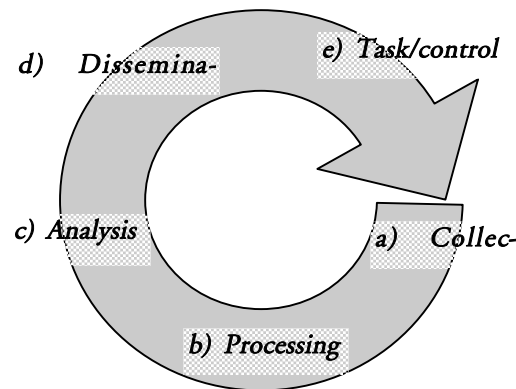


Figure 3.1-1 The intelligence circle

#### COLLECTION

In terms of ESDI, the organisation of the collection is of interest because different degrees and forms of co-operation reflect varying degrees of mutual confidence, shared interests and priorities. There are two basic ways of co-operating when collecting intelligence, both of which offer economic and professional benefits.

The first is to collaborate during the acquisition of military equipment. The closest form of this co-operation can be seen in the Airborne Warning and Control System fleet (AWACS) of the Alliance.<sup>3</sup> It was not only procured through a common funding. Its operation is also financed collectively. Moreover, all participants share all the information gathered by this common asset. The advantage of veritable common assets is that the countries can acquire expensive equipment and gather information, which they could not afford unilaterally. But, such an endeavour is also confronted with all the usual difficulties of armaments co-operation. The initial problem of common assets is that countries must find partners that have to identify the same needs. Fur-

<sup>2</sup> It must still be clarified to what extent divergences between EU capitals are rooted in different interpretations of available evidence, if they reflect that different information has been taken into account, or if differences persist in spite of a common assessment of the situation. See Becher, Klaus, 'European intelligence policy: political and military requirements', in Lenzi, Guido (ed.), *Towards a European intelligence policy*, Institute for Security Studies Western European Union. *Chaillot Paper*, no. 34, Paris 1998, pp. 29-36, here p. 36. Some authors even argue that better intelligence does not necessarily improve foreign policy decisions because the politicians do not always follow the advice they get. C.f. Sir Michael Alexander, 'Does better intelligence improve foreign policy decisions?', in *RUSI Journal*, October 1999, p. 1-6.

<sup>3</sup> For more information on NATO's Airborne Warning And Control System see page 53 in the section on European integrated forces.

thermore, the countries must want to procure the same sort of equipment. Next, they must believe that the others will set similar or at least compatible priorities concerning what information is to be collected. There is no point in participating in a satellite program if one cannot task and control its use according to the own needs. This is why the AWACS have remained the only example of their kind.

The second form of co-operation is to co-ordinate the collection. Since no European country can afford to keep the entire world under intensive surveillance, they can agree on dividing responsibilities, either by specialising on different capabilities/sources or by concentrating on different geographical areas or observation objects. Such coordination reduces the duplication of efforts and allows for a more efficient use of existing resources. Consequently, the participating states concentrate on developing their expertise in more limited fields.

Obviously both forms imply an (inter)dependence that requires a basis of mutual confidence. The larger the unison, the stronger the trust and the more alike the identified and expected needs are, the closer can the co-operation be. The degree of co-operation indicates the level of mutual commitment.

*Actual co-operation.* The EU disposes of some proper assets for collecting intelligence, however, only in the sphere of HUMINT.<sup>4</sup> With the Commission's 126 diplomatic missions worldwide, the EU Monitoring Mission on the Balkans consisting of more than 100 monitors and the special representatives,<sup>5</sup> the European Union has an own network that can be used to collect information. However, the EU does not dispose of any specialised technical capabilities to collect military or any other intelligence. It does, however, obtain some information from police and military operations it leads.

With the exception of the AWACS, Allied intelligence is based entirely on national contributions.<sup>6</sup> Since the Alliance does not dispose of any other proper intelligence gathering resources, all additional intelligence is collected with national means under full national control. Exceptions from this rule can only be found at lower operational levels in a mission area, where national forces with collection capabilities can operate under a common command.

The EU and NATO have not established any other collective resources for intelligence collection, nor have any formal agreements been reached on intelligence specialisation, be it in terms of a functional or a geographical division.<sup>7</sup> Member states are merely ready to declare, from which geographical areas the intelligence they may be prepared to provide to the respective organisation is likely to come from. In principle this means saying the obvious, namely that everyone will continue to concentrate the national intelligence efforts on the own areas of interest. Roughly speaking, the northern countries are likely to survey the north and the southern ones the south. This cannot be classified as a co-ordinated specialisation or division of labour, aiming at maximising the intelligence collection. Thus, in the field of intelligence collection, the organisations themselves only play a minor role, and the national element clearly dominants.

<sup>4</sup> HUMINT, which is derived from human sources, is the oldest form of intelligence collection. It can be obtained through espionage, but the bulk is provided by diplomatic reporting, the own field staff, or by the local population.

<sup>5</sup> In November 2002 the EU had appointed the following special representatives: Aldo Ajello -EU Special Envoy for the African Great Lakes Region (Joint Action, OJ L 87, 4.4.1996); Lord Ashdown - EU Special Representative in Bosnia and Herzegovina (Joint Action 2002/211/CFSP, OJ L 70 of 13.03.2002); Alexis Brouhns - EU Special Representative in the Former Yugoslav Republic of Macedonia (FYROM) (Joint Action 2001/760/CFSP, OJ L 285, 23.10.2002); Erhard Busek - EU Special Representative to Stability Pact for South Eastern Europe (Joint Action 2001/915/CFSP, OJ L 337 of 20.12.2001, p. 62); Miguel Ángel Moratinos - EU Special Envoy for the Middle East peace process (Joint Action, OJ L 315, 4.12.1996); Francesc Vendrell - EU Special Representative in Afghanistan (Joint Action, JO L 167, 26.6.2002).

<sup>6</sup> See 'Study on NATO enlargement issued by the Heads of State and Government participating in the meeting of the North Atlantic Council', Brussels 03.09.1995, article 69, in: *Nato Handbook 1999*, Part III, Key Policy Documents, pp. 335-369.

## PROCESSING

The co-operation in the field of processing raw information is not particularly controversial. Whether it is processed by the organisation, or made accessible for analysis by the national units that have collected it, does not really make a difference from an ESDI perspective. The collective processing only matters if the single countries do not have this ability themselves. It should however be noted that the processing is not one of the striking shortfalls in the intelligence process. With the exception of IMINT,<sup>8</sup> most collected information is either directly accessible for analysts and does not need to be processed, such as HUMINT, or, as in the case of SIGINT,<sup>9</sup> the intelligence is feed into the Union and the Alliance intelligence structure in processed form.

The only institutionalised collective processing of raw information is done at the Torrejon Satellite Centre that has been integrated into the EU and in the NATO Airborne Early Warning and Control Programme Management Organisation (NAPMO).<sup>10</sup> Despite its name, the Satellite Centre neither owns nor operates any satellites. Instead it purchases commercial imagery and analyses it for the EU and individual EU governments who request it.<sup>11</sup> Although none of them is an exclusive SIGINT respectively IMINT resource, both produce intelligence that most member states do not produce at the national level. Crucial is also that the organisations can order intelligence from the two.

## ANALYSIS AND EVALUATION

Setting up collective analysis units offers many advantages and can have a severe impact on the definition of threats and thus on the development of the ESDI. An obvious practical gain is of quantitative character. The amount of accessible information, in particular from open sources, is increasing to a size that cannot be fully evaluated at the national level.<sup>12</sup> Moreover, the European states cannot survey and analyse all military developments in detail. Producing analysis within the organisation would also entail qualitative gains.

First, a situation would not, as traditionally, be examined through a single pair of "national glasses". Approaching a question from the different national pre-understandings means that the issue is treated, scrutinised and evaluated in different manners. Hence, new ways of thinking and various arguments would be included into the assessment. This is likely to make the critical analysis more balanced and extensive.

Secondly, all members would have access to and participate in producing the assessments of the organisation. The articulation of different national concerns is likely to promote the mutual understanding. If the organisation's assessments are used when defining military threats at the national and the European level, one may assume that the threat perceptions are more likely to become compatible. Harmonising the knowledge is the first step in harmonising the views and

<sup>7</sup> For a comment on the multinational satellite venture, see the section on European bi- and multinational forces on p.54 .

<sup>8</sup> Imagery intelligence (IMINT) is information from various kinds of images (photographic, radar, infra-red and other types of imaging devices) that are taken by e.g. persons, Aircraft or satellites.

<sup>9</sup> Signals intelligence (SIGINT) intercepts electronic signals of all type. It provides the ability to 'listen' to communications (when needed after encryption), as well as to locate the source of the emission.

<sup>10</sup> See 2001/555/CFSP, Council Joint Action of 20 July 2001 on the establishment of a European Union Satellite Centre, OJ L 200, 25.7.2001 p.5-11.

<sup>11</sup> By 1998, approximately 40 % of the Center's imagery came from France's SPOT 1 and 2 satellites, 20 % came from India's IRS-1C satellite, 17 % from Hélios 1 (owned and operated by France, Spain, and Italy), and 15 % from Russian imagery satellites. The Satellite Center also orders imagery from ERS-1 and 2 (European Space Agency), Landsat 4 and 5 (USA), and Radarsat (Canada). The Satellite Center has a budget of \$11 million, and has a staff of 68 persons. See Villadsen, Ole R, 'Prospects for a European Common Intelligence Policy', in Central Intelligence Agency, *Studies in Intelligence*, no. 9, Summer 2000. Since it has been transferred from the WEU to the EU, it does not represent a new, additional European capability. The EU already availed itself of the WEU to elaborate and implement decisions and actions of the Union which have defence implications. See TEU article 17(3).

<sup>12</sup> See Politi, Alessandro, 'Why is European intelligence policy necessary?', in Lenzi 1998:5-13. See also Villadsen 2000.

security interests. Thus, a collective analysis is of special interest for the prospect of a cohesive common security policy.

Finally and most important, a European unit would conduct its analysis from the perspective of the European organisation. This means that it would have to evaluate the situation with a view to the security of and effects on the organisation (not the single nation-state) and formulate its recommendations with reference to the organisation's ability to act. In addition, a European unit could adjust its flow of work to the overall activity of the rest of the organisation. It is easier to co-ordinate the activities of the organisations own units, than to adjust the timelines and the contents of the national services' work to the process within the organisation.

*Analysis within the EU.* The EU seems to have the ambition to develop a crisis detection and early warning function, and to support decision-makers with information that will allow them to prevent and manage military crisis with both military and non-military means. In this sense, the scope of the Unions intelligence circle appears to be wider than the one of the Alliance. Obviously, military intelligence and civil information must be synthesised if the Union is to co-ordinate and use the available civil and military instruments efficiently. The institutional build-up of the EU has therefore mainly expanded the analysis capacity. Today, a multitude of units belonging to the Council's General Secretariat are involved in the production of situational analysis and evaluations: the Policy Planning and Early Warning Unit (PPEWU), the Joint Situation Centre, the EU Military Staff, the Directorate- General of external relations and the Institute for Security Studies. (See Annex for an organisational chart of the CFSP and ESDP institutions.) Although the necessity of having a capacity for analysis to evaluate the flood of collected and accessible information is undisputed, the need of having five separate units can certainly be questioned. However, the fact that most of the units are being physically co-located will facilitate the co-operation among them and may be interpreted as the first step towards a merger of some.<sup>13</sup> Despite of this, the organisational charts look more impressive than the actual capability for analysis:

- The PPEWU<sup>14</sup> comprises 21 diplomats (one from each country, 3 to 4 from the General Secretariat, 1 from the Commission and one expert on WEU/NATO relations). With this composition and size, the PPWEU has no prospect of meeting the requirements of a veritable early warning function. Instead, it is mainly concerned with formulating advice on how the EU may react on current developments. This explains why it is often simply called the policy unit.
- In normal times, the Joint Situation Centre<sup>15</sup> is run with a staff of 7 drawn from the PPEWU and the EU Military Staff (EUMS) and one seconded analyst from each of the following countries: France, Germany, Italy, the Netherlands, Spain, Sweden and the United Kingdom. Although the centre is meant to be *the* point where military intelligence and civil information is synthesised, its seven analysts can only produce a limited amount of veritable analysis. The other part of the staff is largely busy compiling incoming information to daily reports and formulating press summaries.

<sup>13</sup> Since late may 2001 the EUMS has been working in the new, specially adapted, Cortenbergh building together with the Directorate General for External relations VIII, the PPEWU and the civilian EU Situation Centre. Moreover, the CEUMC has his office in the building.

<sup>14</sup> Often called the Policy Unit (PPU or PPEWU). The staff is drawn from the Council Secretariat, the member states, the Commission and formerly an expert from the WEU. The Treaty of Amsterdam contains a declaration which functions as a steering document for the establishment of a Policy Planning and Early Warning Unit.

<sup>15</sup> There is no official document on the JSC yet.

- The EUMS has a volume of almost 140 persons. Of these around 30 belong to the intelligence division that produces security analysis based on information from the respective capitals.<sup>16</sup>
- Within the Directorate- General of external relations,<sup>17</sup> security analyses are made by the Directorate VII- Security and defence policy. With a staff of 11, and quite a few administrative tasks to fulfil, there is not much room for any broad analysis within the General Secretariat either.
- The EU Institute for Security Studies,<sup>18</sup> finally, has a complete staff of 28, with 9 analysts/researchers. Although being politically supervised by the Political and Security Committee (PSC), the intellectual independence of the institute is granted. Therefore, the institute's seminar and research activities can be seen as a valuable contribution to, but not as a part of, the Unions analysis capacity for crisis prevention and management.

Hence, the current size of the Council's apparatus for analysis cannot even match the one of a smaller EU country. If it tried to digest all the incoming information, the apparatus would certainly drown in it. Thus, the Council's so-called analysis capacity mainly compiles information and can only produce a limited amount of own analysis.<sup>19</sup> These analyses by no means have the global or even regional coverage required for an early warning function.

Apart from these units the Commission is also an important actor and represents a serious capacity in the sphere of military crisis prevention and management with civilian means. In particular involved are the Commissioners for External Relations (RELEX), Development and Humanitarian Aid, Trade and Enlargement as well as their respective cabinets and Directorates General (DG). Although the task of the Commission in the CFSP is of executive character, the staffs of more than 5 000 involved in external relations<sup>20</sup> also have to analyse the situation and the effects of different policies. Therefore, the Commission constitutes a considerable part of the Union's overall capacity for analysis in the field of crisis prevention and management. However, its resources are not convincing from an intelligence perspective. The Commission does neither dispose of an early warning function (let alone one including all four CFSP DG's), nor is the mechanism for co-ordinating the Commission's activities in the area of conflict prevention impressive. This consists of the so-called Committee of Four, which is chaired by the External Relation Commissioner. He is responsible for the Commission's role in the CFSP and the co-ordination of all the Commission's external relation activities.<sup>21</sup> In this task, he receives support from Directorate A (CFSP Directorate) of the DG RELEX. Within this directorate a Conflict Prevention and Crisis Management Unit is responsible for the conflict prevention analysis. With a foreseen staff of 12, and lacking an early warning function, it will be difficult for the Commission to co-ordinate all its CFSP activities in such a way that their synergetic effects can be used

<sup>16</sup> See Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Annex V: European Union Military Staff Organisation (EUMS).

<sup>17</sup> See ECT, article 207(2). See also Göteborg European Council, *Presidency report on the strengthening the Common European Security and Defence Policy (ESDP)*, 16.01.2001, article 21, 22, 24 and 25.

<sup>18</sup> 2001/554/CFSP, Council Joint Action of 20 July 2001 on the establishment of a European Union Institute for Security Studies, OJ L 200, 25.07.2001, p.1-4.

<sup>19</sup> Even if the comparison is not quite adequate, it may be interesting to point out that the human body disposes of around 5 million nerve cells functioning as sensors and processing stimuli. But about 500 billion nerve cells are specialised on analysing and evaluating the stimuli. Thus, for each point of contact between the human and the environment, the body disposes of hundred thousand points of contacts within the own system. See: Kneer, Gerog and Nassehi, Armin, *Niklas Luhmanns Theorie sozialer Systeme. Eine Einführung*, München 1997, p. 53.

<sup>20</sup> Of the Commission's 26 590 posts and/or man/years almost 20 % are involved in the CFSP (5 271 External Relations, 1 749 Development, 462 Trade, 632 Enlargement, 151 Humanitarian Aid. Altogether 5 271 Person Years). Source: General Budget of the European Union for the Financial Year 2001, January 2001, p. 24.

<sup>21</sup> See International Crisis Group Issues, *EU Crisis Response Capability. Institutions and Processes for Conflict Prevention and Management*, Report no. 2. 26.06.2001, p. 18.



efficiently for conflicts prevention. In addition, the Commission is not directly involved in the ESDP, and therefore not in the process where military threats are defined.

Thus, neither the EU nor its members will define the security threats based on assessments produced within the Union. Just as within the Alliance this will mainly be done with reference to information and analysis provided by national intelligence agencies.

*Analysis within NATO.* The Intelligence Division of the International Military Staff (IMS) is the linchpin in the intelligence circle of the Alliance. It is responsible for estimating the strengths and disposition of military forces that could represent a risk to NATO's security interests and for monitoring and reporting on worldwide events of interest to the Alliance.<sup>22</sup> However, its main task is to co-ordinate the production and dissemination of NATO agreed intelligence. In principle, this consists of nationally produced intelligence that has been adopted by NATO.

The NATO Situation Centre monitors political, military and economic matters of interest to NATO and its member states on a 24-hour basis. Its Communication Branch serves as the focal point within the Alliance for the daily receipt, exchange and dissemination of political, military and economic information. The Situation Centre assists the North Atlantic Council, the Defence Planning Committee and the Military Committee in fulfilling their respective functions in the field of consultation. The NATO Situation Centre also provides facilities for the rapid expansion of consultation during periods of tension and crises. In addition it maintains and updates relevant background information during such periods.<sup>23</sup>

Despite of the ambitious tasks given to these two divisions, it is hard to see how they should be able to produce extensive intelligence analysis, given their size. The Assessments Branch and the Current Intelligence and Warning Branch of the Intelligence Division each comprise less than ten members, and the Watch/Staff Support Branch of the Situation Centre consists of around 20 persons.

The intelligence circle within the Alliance's Military Command Structure is designed to provide intelligence support to military operations, once a concrete target has been defined.<sup>24</sup> NATO staffs estimate potential military threats and the expected resistance for different operative options. Thus, the intelligence co-operation within the Alliance is not geared towards elaborating own definitions of threats against the Alliance, nor to offer an early warning function. These matters are certainly discussed within the Alliance, but this is done by national representatives based on information and analysis provided by national intelligence agencies, and not on the basis of assessments produced by the Alliance. Therefore, the security process in NATO mainly relies on national intelligence assessments.

#### *DISSEMINATION*

Sharing intelligence with others is the essence of intelligence co-operation and at the same time the main problem. It lies in the nature of secrecy that states will not share all their intelligence with all others. By choosing what and how much intelligence they pass on to the organisation as a whole or to some selected partners, states reveal their allegiances and whom they trust. The dissemination is therefore a good indicator for how close member states actually are to each

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<sup>22</sup> Cf. Nato Handbook 1999, p. 240.

<sup>23</sup> Cf. Nato Handbook 1999, p. 241.

other. It indicates to what extent they support the idea of defining military threats collectively within the organisation, i.e. the idea of defining military threats based on uniform information.

One can assume that a member state that perceives a military threat would want all other members to perceive that occurrence as a military threat as well. At the same time, one can assume that harmonised knowledge is one important factor that makes a harmonised threat perception more probable. How then, can a state's unwillingness to share national intelligence within the organisation be explained?

The first reason is *distrust* towards others. All intelligence collectors are concerned about the security of their sources and their method of collecting information. If being uncovered, the access to the information will be jeopardised. In addition, they may want to protect the information as such. Partly, because they are afraid of so called Trojan horses, i.e. members sharing the information with non-members who have not obtained the providers security clearance.<sup>25</sup> Partly, because they do not want other member states to get the information. Total transparency between, for instance, the Greek and Turkish intelligence is not quite feasible. The main obstacle to the exchange of information is mistrust towards the Organisation and other member states. The concern is directed against both the ability and the will of the people involved to keep the secret.<sup>26</sup> Even when a country has defined a military threat and tries to mobilise support for a countermeasure, it will approach its closest allies on a bilateral level and share more information with them than they reveal when making their case within the organisation as a whole.<sup>27</sup> A first 'circle argument' can be seen to emerge here. States with different threat perceptions have different security interests. They will therefore not trust each other and be reluctant to share secrets. Consequently, states base their security perception on different intelligence, which results in different threat perceptions, etc..<sup>28</sup>

The second motive is closely linked to the first. No country wants to jeopardise its *bilateral relationship* to other member or non-member states, with which they exchange information. Most significant is the relationship with the USA, which by far has the largest collection capacity. It seems irrational to share more information with others if this could prompt Washington to reduce or to stop its flow of information. This is the Union's catch-22. As long as there is no European alternative to the intelligence collected by the Americans, the Europeans will not create an own capability, because they fear that they will get less information. Due to the dependence, independence cannot be achieved.

The third explanation could be categorised as *financial*. Those carrying the expenses will be unwilling to let others become free riders. This does not prevent countries from exchanging intelligence with some selected countries. They do not necessarily do this in a tit for tat manner limited to the field of intelligence, but in a general *donnant-donnant* exchange.

<sup>24</sup> This does not hinder NATO staffs to start preparations and assessments before the NAC has formally taken the decision to launch an operation.

<sup>25</sup> One reason for a member state to pass on the information to a non-member might be that they have a friendly relations although their membership in international organisations is asymmetric, the Scandinavian states could be an example of that. Another reason may be the exchange of information. This kind of information flow does not always have to contradict the interests of other member states. The decisive factor however, is that it cannot be controlled by those who collected the information in the first place. Moreover, the states passing the information cannot be aware of the consequences of sharing the information, since they do not know what other intelligence the receiver disposes of. What appears as harmless information might turn out to be a decisive piece in a larger puzzle.

<sup>26</sup> Although states usually worry less about that third parties could acquire the information unintentionally. Sometimes it is argued that the EU, with its culture of transparency would have difficulties handling classified information. This argument is not convincing. Firstly, just as national intelligence agencies, a European one could be separated from the open administration. Secondly, there is no reason to suspect that those persons who obtain the secret information could not handle it. The secrecy does pose some practical problems, but just as on the national level, these can surely be handled. Even in Sweden with its public-principle (Offentlighetsprincipen), which makes almost all files from public administration accessible for anybody, handling secret documents has not posed any serious problems or endangered Sweden's security.

<sup>27</sup> This was shown during the 2003 Iraq-crisis, where the USA shared more information with the UK than with NATO as a whole.

<sup>28</sup> This is not to say that all intelligence services always present different information. But, having different national referent objects as starting point, they are likely to emphasise different occurrences and to scrutinise them from different perspectives.

A fourth purpose can be to assure the own *influence* within the organisation. The question is what information one should pass on and when. Intelligence is largely a fresh product. A lot of classified information will become irrelevant if too old and/or become public later anyhow. As shown during Operation Allied Force, information superiority was both a vital ingredient for operational success, and used to assure US control. By withholding information from Allies or by delaying it, the US commanders remained the best-informed decision-makers throughout the operation.

Thus, an extensive and continuous exchange of intelligence reflects trust and tight bonds at the same time as it promotes a harmonised perception of military threats. The exclusion of some member states, on the other hand, mirrors the lack of confidence and solidarity.

Because of the reasons mentioned above, most military intelligence is still exchanged on a bilateral level among the member states of the two organisations. That the bilateral bonds and allegiance between member states vary is not a secret. So does the intensity of intelligence co-operation among them. Often countries are prepared to share information with some member states, but not with all of them and therefore not with the organisation as such. Although both organisations acknowledge that national representatives within the different units must have access to all the information provided to or produced by the organisation, a state can easily avoid this principle by sharing information on a bilateral level only. Such discrimination even takes place within the Military Command Structure during operations. It happens that national intelligence is shared with officers from some selected countries only, and not with all members of a multinational staff.<sup>29</sup>

Of course, member states feed the organisation with some intelligence and share certain information and assessments with all member states. But, the participants at the European security process remain unequally informed. Furthermore, the decision to harmonise the knowledge is taken at the national level. Naturally, decisions on dissemination are taken by the nation that produces the intelligence.

#### *TASKING, CONTROL AND DEVELOPMENT*

This final step in the intelligence circle is at the same time the one that has the largest impact on the national sovereignty and on the member states' own security and defence policies. The first thing that has to be underlined is that no government has given up the full and exclusive control over national intelligence agencies. This means that the two organisations can request intelligence from member states, but, with the exception of the Union's own field staff and the Alliance's AWACS, they cannot task any national intelligence production. This is also valid for the development and procurement of intelligence gathering equipment. The Union and the Alliance can analyse and address shortfalls, but they cannot redress them.

Hence, the organisations are left with the control and tasking of the own, rather modest, intelligence apparatus. Of course, national representatives play the most important role when decisions are made on the development and use of the organisation's own resources. In both organisations, guidelines that steer what topics and geographical areas should be investigated, and general organisational and procedural decisions are adopted with the agreement of all national repre-

sentatives. However, the influence of the respective organisation's Secretary General must not be underestimated. There is no single incumbent in either organisation that holds as many threads in his hands, nor is there anyone who will be better informed of the organisation's activities than the Secretary General. Due to his broad involvement throughout the organisation a Secretary-General's actual influence is likely to surpass his formal authority. It will be difficult for any unit within the organisation to ignore his requests for information.

The Secretary-General/ High Representative of the EU stands under the tasking and control of the Council. The Council also decides on the organisation of the General Secretariat.<sup>30</sup> However, the Secretary-General/ High Representative can task and control the General-Secretariat and the PPEWU. He also chairs the boards of the EU Institute for Security Studies and the Satellite Centre. Moreover, he may chair the PSC, especially in the event of crisis.<sup>31</sup> Thus, he is involved in the entire spectrum of the Council's civil intelligence process. In addition, he is also involved in the Union's military intelligence process. He can influence the PSC's tasking of the European Union Military Committee (EUMC) and thereby indirectly the EUMS. Moreover, he can request information from the EUMS, since the EUMS is tasked to provide him with military expertise. Finally, he can influence the input into the EUMS, both indirectly via the civil input into the Joint Situation Centre (SITCEN) and through his operational direction of the Satellite Centre.

The Secretary General of NATO is responsible for directing the international staff and with it the NATO Situation Centre. As a part of the IMS, the Intelligence Division is subordinated to the Military Committee (MC), which advises and assists the North Atlantic Council as well as the Defence Planning Committee (DPC) and the Nuclear Planning Group (NPG), all chaired by the Secretary General. However, the Secretary General is not directly involved in the process where the MC provides guidance on military matters to the major NATO Commanders. This is where the military command structure's assessment and evaluation of the intelligence provided by the AWACS and the national units and agencies are organised.

It must be underlined that the organisations only produce a small proportion of the total intelligence that is available to the Countries. Member states and their national representatives within the organisations are therefore not likely to base their definitions of military threats on information provided by the EU or NATO. The definition is most likely based on national intelligence and on the information that states have exchanged on a bilateral level. Hence, military threats are primarily defined outside of the organisations' framework by unequally informed nation states, whose security interests stretch across different (geographical) areas. Within the Union and the Alliance, member states merely agree on what developments all of them consider a military threat. What occurrence the organisation recognises as military threats is hardly dependent on the intelligence produced by collective institutions, but rather on national assessments. The organisations' intelligence will most likely merely support the views that the countries agree upon.

Consequently, the common European referent object must not be defined in advance. Given scarce resources, national intelligence services focus on areas and events that may affect their national security interests, thus, primarily using national referent objects. Hence, the common European referent object can be determined in two ways. Either it is defined in consensus when

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<sup>29</sup> This is an experience several members of NATO staffs have described. For instance did a German officer tell the author about how he would be asked to leave the room, when British and American officers were to discuss intelligence, during his time in one of the SFOR HQs.

<sup>30</sup> See TEU, article 207.

<sup>31</sup> See Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Annex III.

the national representatives come together in the organisation, collate their national perceptions and recognise a military threat collectively. Or, the member states agree on its contents in advance. In this case, they could let the organisations own intelligence use those referent objects as starting point and/or order national services to do the same. However, the latter has not come true. The organisation's production of intelligence is not geared towards an early warning function. Once a military threat has been recognised by the organisation, the units producing intelligence engage in preparing decisions on collective responses and in supporting the political and strategic guidance of the operations.

### 3.1.1.1 Political dimension: decision making

The political co-operation and decision-making within both the Alliance and the CFSP of the Union are of intergovernmental character and lack supranational elements. This witnesses of the participating governments' unwillingness to renounce the control over a main pillar on which states' sovereignty rests.

Nevertheless, contenting oneself with that observation does not do justice to the way security questions are handled in Europe. The consensual security-processes deserve some more attention, and additional differentiation.

#### *DECISION-MAKING WITHIN THE EU*

The Union counteracts military threats within the framework of the second pillar. EU institutions conduct the military crisis management (CM) operations and conflict prevention activities under the authority of the Council as a part of the Common Foreign and Security Policy. Below the decision-making procedures in the Union's different institutions are described starting from the top. For larger clarity, it may be helpful to consult the organisational chart of the CFSP and ESDP institutions in the Annex.

The European Council stands at the peak of the hierarchy in the EU security process. It is composed of the Heads of State or Government of the Community member states and the President of the Commission.<sup>32</sup> It defines the principles of and general guidelines for the common foreign and security policy (CFSP) and decides on common strategies for its implementation.<sup>33</sup> These political agreements are reached by consensus and common accord. This is achieved when no party opposes to a proposition. Consensus is not to be confused with unanimity, which requires formal voting. Accordingly, the president of the Commission formally participates on equal footing with all other participants.

The Council of the European Union is responsible for the implementation of CFSP in accordance with the European Council decisions.<sup>34</sup> It is made up of representatives of the governments of the member states.<sup>35</sup> In this responsibility, the Council meets as a General Affairs Council (GAC), composed of Foreign Affairs Ministers and when appropriate assisted by the Defence Ministers.<sup>36</sup> The GAC can adopt joint actions<sup>37</sup> and common positions<sup>38</sup>, conclude

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<sup>32</sup> See TEU, article 4 . Although it is not a community institution, it can act as Council in the community sense. See ECT, article 11(2) and 121(4), as well as TEU, article 7.

<sup>33</sup> See TEU, article 13.

<sup>34</sup> See TEU, article 13(3).

<sup>35</sup> See ECT, article 203.

<sup>36</sup> EU defence ministers have had their own meetings, for instance during the Capabilities Commitment Conference in November 2000. However, their decisions had to be formally adopted by a subsequent meeting of the General Affairs Council. See WEU Assembly Document A/1733, *The follow-up to the Nice decisions on the ESDP and the completion of the project for European defence*, Submitted on behalf of the Political Committee by Mr Liapis, Rapporteur, 18.06.2001, article 26. These meetings were foreseen by the Helsinki European Council. Under the

international agreements<sup>39</sup> and appoint special representatives<sup>40</sup>. The GAC normally makes decisions unanimously, but the TEU also allows for a 'constructive abstention'. According to this mechanism, an abstention by a member does not prevent the adoption of the decision. If a member of the council qualifies its abstention by a formal declaration, it is not obliged to apply the decision; but must accept that the decision commits the Union as a whole. In a spirit of solidarity the member concerned must agree to abstain from any action that might conflict with the Union's action under that decision. The constructive abstention enables the council to agree upon a decision even if a consensus cannot be reached among all member states.<sup>41</sup> By derogation from the general rule of unanimity, the Council of the European Union can also act by qualified majority in some cases.<sup>42</sup> However, qualified majority voting does not apply to decisions having military or defence implications.<sup>43</sup> The Council determines the purpose and duration of any EU-led military operations and decides on any extension and prolongation.

To give the EU the ability to conduct crisis-management operations, the Union has established the PSC within the Council.<sup>44</sup> The PSC is composed of national representatives of senior/ ambassadorial level.<sup>45</sup> The Council may authorise the PSC to take the relevant decisions and exercises political control and strategic direction of EU-led crisis management operations. Since such decisions have military or defence implications, the PSC makes them unanimously, leaving room only for a 'constructive abstention'.

To increase the Council's military competence, the Military Committee and the Military Staff were founded.<sup>46</sup> The EUMC is composed of the Chiefs of Defence, represented by their military delegates. It gives military advice and makes recommendations as required by the PSC. It also provides military direction to the EUMS. It takes decisions in consensus based on the work of the EUMS. With a staff of around 140, the EUMS makes military situation assessment, designs a POL/MIL framework for an operation and draws up strategic military options for the Council.<sup>47</sup> The EUMS has neither the capacity to exercise command responsibilities, nor to conduct detailed operational planning. For those functions, the EU will have to rely upon national (or NATO) commands and headquarters. I will return to this when addressing the operational dimension.

#### *DECISION-MAKING WITHIN THE ALLIANCE*

The striking difference between the Alliance and the Union is that the former disposes of a military command structure that can plan and lead military operations. The policy of NATO, however, is decided upon in the civil parts of the organisation. That is if one understands policy as the formulation of the organisation's purpose and aim, the adoption of general guidelines for

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Headline 'Decision-making' in Annex 1 to Annex IV of the Presidency Conclusion the following sentence can be found "Defence Ministers will be involved in the common European security and defence policy (CESDP); when the General Affairs Council discusses matters related to the CESDP, Defence Ministers as appropriate will participate to provide guidance on defence matters."

<sup>37</sup> See TEU, article 13 and 14.

<sup>38</sup> See TEU, article 13 and 15.

<sup>39</sup> See TEU, article 24.

<sup>40</sup> See TEU, article 18(5).

<sup>41</sup> According to TEU, article 23 this mechanism does not apply if the member states abstaining in this way account for more than one third of Council votes weighted in accordance with article 205(2) of the ECT.

<sup>42</sup> See TEU, article 23(2).

<sup>43</sup> See TEU, article 23(2).

<sup>44</sup> See Helsinki European Council, *Presidency Conclusion*, 10/11.12.1999, Annex 1 to Annex IV. See also Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Annex III-V.

<sup>45</sup> Most of whom also represent their countries in the WEU Permanent Council. See WEU Assembly Document A/1734, *Implementation of the Nice Summit decisions in the operational area of the European Security and Defence Policy (ESDP)*. Submitted on behalf of the Defence Committee by Mrs Bakoyianni, Rapporteur. 19.06.2001, article 14.

<sup>46</sup> See Helsinki European Council, *Presidency Conclusion*, 10/11.12.1999, Annex 1 to Annex IV. See also Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Annex III-V.

<sup>47</sup> See WEU Assembly Document A/1733.

preparations against potential military threats, the collective recognition of an existing military threat and all decisions on launching operations against an identified military threat. The policy and decision-making process of the Alliance does not deviate from the Union's general principle of assent. However, all decisions are made by consensus and silent approval. A decision is thus regarded as approved if no member raises an objection within a certain period of time.

Policy decisions are taken by the North Atlantic Council (NAC) and in the senior level policy committees, principally the DPC and the NPG. All three units meet at the level of the permanent representatives of the member states, and sometimes at higher levels involving Foreign or Defence Ministers. The NAC also meets at the level of Heads of State or Government at so-called Summits. Subordinated specialised committees support these senior bodies. The latter formulate policies and make recommendations upon which the principal decision-making bodies can base their decisions. The committees consist of national officials that represent their respective country. Consequently, all member states are represented in every body that prepares or makes policy decisions.<sup>48</sup> However, national representatives are not the only participants at these bodies.

The Secretary General chairs the NAC, the DPC, the NPG and a number of other bodies.<sup>49</sup> He is also responsible for directing the International Staff (IS) that shall support the work of the NAC and its subordinated committees. The IS consists of personnel from member countries, either seconded by their governments or recruited directly by the organisation (as in the EU's CFSP structure). IS staff members are not national representatives. They are independent of national directives and perform their duties without having to consult national authorities for their opinion.

The NATO Military Committee is subordinate to the North Atlantic Council and Defence Planning Committee but has a special status as the senior military authority in NATO. In order to assist and advise the NAC, the DPC and the NPG on military matters, senior military officers serve as national Military Representatives (Milrep) to NATO and as members of the Military Committee. The MC is the focal point in the Alliance where the military expertise meets the political objectives. In difference to the EUMC, the Alliance's MC stands in permanent contact to Major Commanders (SACEUR and SAACLANT) providing them with guidance on military matters. These two Major NATO Commanders are responsible to the MC for the overall conduct of Alliance military matters in their areas of command. The MC performs this responsibility under the authority of the Council.

The MC is supported by the IMS, which is responsible for planning, assessing and recommending policy on military matters for consideration by the MC. The IMS consists of military personnel that have been sent by their nations to take up staff appointments at NATO Headquarters. They perform their duties in the capacity of MC officers, not as national representatives.

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<sup>48</sup> The only exceptions to this rule are bodies that prepare policies in fields of NATO activities at which all states do not participate. France, for instance, does not participate at the Defence Planning Committee, the Nuclear Planning Group, the Defence Review Committee and the High Level Group. Iceland and Luxembourg do not participate at NATO Air Command and Control System Management Organisation Board of Directors. The Central Europe Pipeline Management Organisation Board of Directors only comprises the seven participating member countries (Belgium, Canada, France, Germany, the Netherlands, United Kingdom and the United States).

<sup>49</sup> For instance of the the Euro-Atlantic Partnership Council and of the Mediterranean Cooperation Group. He is also Joint Chairman (together with the representative of Russia and the representative of the NATO country acting as Honorary President) of the NATO-Russia Permanent Joint Council, as well as of the NATO-Ukraine Commission together with the Ukrainian representative, See NATO Handbook 1999: 217.

It is obvious that no national government has renounced any competency to the Union's second pillar or to the Alliance. As expected, collective decision on what constitutes a military threat and what countermeasures should be applied are taken on a truly intergovernmental basis and thus in assent. This does not mean that member states simply send national messengers with fixed national positions to the decision-making bodies of the organisations. Both the Alliance's and the Union's security processes start before the actual decision-making. The institutionalised continuous consultations that precede the actual decision-making allow member states to take the concerns and interests of other states in consideration while formulating own positions. In addition, the organisations own representatives participate in the preparatory work and in most decision-making bodies. The organisations can thus make their voice heard on equal terms with national representatives. There is not a guarantee that this will result in common views and uniformity, but it certainly increases the chances.

A country that perceives a military threat may raise other member states' interest for the issue, bring them and the organisation to investigate the situation and obtain support for its views. This produces uniformity and can result in collective countermeasures against an aggressor.

It is however unlikely that a state, which has identified an external military threat, will be convinced of the opposite through consultations in the organisation. Why should any state trust the intelligence of other states more than the one produced by its own services? Given that national assessments are not based on nationally collected intelligence only, this becomes all the more improbable. If a state perceives a military threat it will take the necessary decisions, make preparations and launch countermeasures at the national level with or without the support of the other member states.

Finally, although running the risk of stating the obvious, one should underline that neither NATO nor the EU can recognise or undertake any countermeasures against military threats, if any member state opposes.

### 3.1.1.2 Operational dimension: Military integration

Two aspects of the European military structure are relevant for the ESDI. First, the organisation of the defence planning reveals the balance between national self-sufficiency and optimisation of the community's overall capabilities. Second, scrutinising integration of military bi- and multinational military forces will expose how dependent member states are of the collective military structure and display their ability to act and produce security autonomously.

#### *DEFENCE PLANNING*

Defence planning begins with the intelligence services that estimate the military threat. As shown, this intelligence is mainly produced at the national level. Thereafter the need for security must be balanced against other interests and preferences and a budget for its production determined. The financial contributions to NATO and to the Union's second pillar are decided upon collectively. As they only make out a negligible part of the overall defence expenditure, it is safe to say that budgetary decisions are taken at the national level. These decisions do not only depend on the national security assessments but also on the other specific concerns each state faces. Variations in the development of national defence budgets can therefore be explained by varying threat perceptions, as well as with varying societal challenges. Finally, one must elaborate what



affordable defence capabilities are adequate to encounter the estimated menace. The budget must be used to adapt the composition and structure of the armed forces to the perceived threat. The cooperation during this step is the subject of this section. Member states of the two organisations coordinate their defence planning in three different processes at the European level. In order of intensity, these are the defence planning processes within the Partnership for Peace (PfP), the EU and the Alliance.

The Partnership for Peace Planning and Review Process (PARP) is designed to provide a basis for identifying and evaluating forces and capabilities that might be made available for multinational training, exercises, and operations in conjunction with Alliance forces.<sup>50</sup> NATO and each partner state have jointly elaborated Partnership Goals. The Partnership goals contain measures that the Partner needs to introduce to improve the interoperability, i.e. the ability of its defence forces to operate in conjunction with Allied forces. These goals are formulated as qualitative standards. They merely aim at enhancing the interoperability, and thereby increasing the pool of forces that can reinforce the allied troops during an operation. They do not include any formulations where the partners commit themselves to provide a certain quantity of troops that meet the jointly defined standards. The Partnership Goals will also assist those aspiring to NATO membership to prepare their forces for the entry into the Alliance.<sup>51</sup> Accordingly, each Partner decides which forces it adapts to the standards of the partnership goals and at what pace. Its defence planning process will therefore remain almost completely independent. It is not influenced by the developments in other Partner or member states. Unless striving for NATO-membership, attempts to enhance the interoperability with Allied forces will be done where it complies with the national requirements.

In addition to qualitative goals, the defence planning processes among member states within the EU and NATO also involve quantitative goals. The fundamental difference is that they have defined the totality of the military capabilities needed to meet the military threats they consider that they should be able to handle. This represents another level of integrated defence planning.

The EU certainly benefits from the results of the PARP. But, since they have adopted the Headline goal and identified the needs in terms of the military capability and forces to attain it (as outlined in the Capability Catalogue) the members of the Union cannot content themselves with a definition of qualitative goals. They must also reach an agreement on who will contribute with what units and of what size. This was first done at the Capabilities Commitment Conference in Brussels on the 20 November 2000. The member states' commitments have been set out in a catalogue known as the Force Catalogue. Since an analysis of this catalogue confirms that certain capabilities need to be improved both in quantitative and qualitative terms,<sup>52</sup> the member states will have to co-ordinate their national defence planning to a higher degree than within the PARP. This is done on a voluntary basis. But each member state must consider the overall European capabilities in its defence planning, if the Headline goal to which it has agreed is to be achieved. This is a first move towards an integrated defence planning.

The defence planning process within the Alliance follows the same principle. The fundamental difference to the EU Headline Goal is, that NATO's defence planning is geared to meet much

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<sup>50</sup> C.f. NAC/NACC Ministerial Meeting, *Partnership for Peace: Framework Document*, Brussels 10/11.01.1994, article 7.

<sup>51</sup> See Report by the Political Military Steering Committee on Partnership for Peace, *Towards a Partnership for the 21st Century. The Enhanced and more Operational Partnership*, 15.06.1999, Appendix B. Expanded and Adapted PARP. article 2.

<sup>52</sup> C.f. Council – General Affairs/ Defence, *Military Capabilities Commitment Declaration*, Brussels 20.11.2000, article 4. Press Release: Brussels (20.11.2000) - Nr: 13427/2/00

broader military tasks. They stretch from the so-called Petersberg tasks to the deterrence and defence against any threat of aggression against any NATO member, as provided for in Articles 5 and 6 of the Washington Treaty.<sup>53</sup> The Alliance does not just set up an intervention force consisting of a fraction of the members' entire capabilities, as the EU does. Due to the Article 5 commitment, the defence planning process has a much broader scope. At least theoretically, the defence process of the Alliance concerns the entire national forces. Although all forces of the allied countries do not stand under the command of NATO, they form a part of the Alliance's overall capability that could be engaged in the case of collective defence. The need to co-ordinate the national defence planning is therefore much larger within NATO than in the EU, both in volume and intensity.

Although this description of the three processes basically is correct, it does not say anything about actual co-ordination performed. A glance at the practice lets the differences between the levels diminish somewhat.

The PARP is based on a voluntary mechanism without formal commitments or moral obligations. Nevertheless, some Partners have made large efforts to adapt their forces to NATO standards and reached interoperability levels that are comparable to, or even higher than, some NATO-members'.

As for the EU, the existent military capabilities seem to have been just as important when formulating the Headline goal as the considerations for what challenges the Union might face in the future. Thus, the result of previous national defence plans weighed just as much as any changes of the security environment. Or differently put, the Headline goal was kept at an attainable level because all, or at least some, member states did not perceive a change of military threats that would call for a reallocation of resources to the defence sector. Nevertheless, the EU has identified some deficits. That non-members have offered complementary contributions to the Force Catalogue does not make up for this.<sup>54</sup> At the time of writing, no efforts had been made to co-ordinate the remedy of these shortfalls at the EU level. Despite of the Review Mechanism for Military Capabilities<sup>55</sup> the Union has not launched any EU programs or planned any collective financing. Thus, it is up to the member states to steer their investments in order to develop the needed capabilities, be it alone, in co-operation with others or within the framework of the defence planning process of the Alliance.<sup>56</sup>

The defence planning process of the Alliance, finally, is going through a low. As the centre of gravity shifted from Article 5 tasks to multinational crisis-management operations, the force requirements changed and interoperability became indispensable at much lower levels than previously. Before, under the pressure of the perceived threat from the Warsaw Pact, the interoperability requirements concentrated on assuring that Armies or Corps could interact. Now, interoperability has become vital at brigade and battalion level. Consequently, NATO's defence planning apparatus has had much to do. In order to adapt NATO to the new challenges Force Goals have been elaborated based on the Alliance's Ministerial Guidance. However, in the late

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<sup>53</sup> Cf. NAC, *The Alliance's Strategic Concept*, Washington D.C. 24.04.1999, article 10.

<sup>54</sup> Cf. The Helsinki Force Catalogue 2000 Supplement. For the contents see WEU Assembly Document A/1734 p. 22 and 23.

<sup>55</sup> Cf. Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Appendix to Annex 1. The Helsinki European Council spoke of a "regular review of progress made". See Helsinki European Council, *Presidency Conclusion*, 10/11.12.1999, Annex 1 to Annex IV.

<sup>56</sup> Although the Helsinki European Council pointed out that "Member States would use existing defence planning procedures, including, as appropriate, those available in NATO and the Planning and Review Process (PARP) of the PfP", this was to be made in addition to the regular review of progress of the Union. Helsinki European Council, *Presidency Conclusion*, 10/11.12.1999, Annex 1 to Annex IV, Military capabilities for Petersberg tasks. This means that the door for a collective defence planning mechanism was foreseen. However, that mechanism has not yet been developed, let alone shown any effect.

1990s the national replies to the Defence Planning Questionnaire showed that many member states did no longer meet the adopted Force Goals. As a senior national representative in the Military Committee pointed out, the 1999 Defence Capabilities Initiative (DCI) was a result of and an answer to this divergence. The DCI had never become necessary if the Force Goals had been met. It appears that the imperative to adapt the national forces to the recognised military threat has diminished. One explanation is that the threat has changed and with it the urgency and willingness to counteract it. Obviously, instabilities and wars in the vicinity do not affect the own security in the same way as an impending invasion of the own territory. Member states do not give the same priority to crisis-management operations and to the adaptation of their national forces to these tasks, as they previously gave to the national defence when their own survival was threatened. As the perceived military threat against a society decreases, other issues will be given more room on the political agenda. Crisis management is only one such issue and has to compete with other challenges that the society faces. Thus, NATO's defence planning process reflects a shared commitment and a will to prepare against a military threat collectively. However, this is put into perspective through the praxis. The national defence policy of some states does not comply with what they have agreed on in the Alliance. It would however be rash to interpret this divergence among the member states as decline of the notion of a shared European security and a move towards re-nationalisation. The member states' different geo-strategic positions and varying threat perceptions are not the only explanation for the discrepancy. It is also obvious that some states have larger adaptations to perform than others. The costs for the adaptation therefore vary among the members. This becomes very clear when comparing the British and French interventionist forces with the more stationary German defence structure.

Despite of the limited disharmony in NATO's defence planning process, the Alliance's defence planning procedures remains much more far-reaching and is closer coordinated than the commencing co-operation within the EU. It is also clear that the Union's defence planning will not be disconnected from the one of the Alliance. This is logically impossible, as long as both organisations fall back on the same forces. Actually, one of the outspoken goals of the EU review mechanism is to achieve consistency between the pledges undertaken in the EU framework, the NATO planning and the PARP.<sup>57</sup> The need to ensure the compatibility of the commitments taken on in the EU framework with the force goals accepted in the framework of NATO planning or the PARP has thus, been recognised.<sup>58</sup> De facto however, the Defence Planning Process of the EU will remain subordinated to the one in NATO. The reason for this is obvious. The Alliance already has an established procedure and disposes of an efficient integrated military structure that can conduct and requires a collective planning. In addition, it undertakes Article 5 preparations that affect the member states security directly.

#### *EUROPEAN INTEGRATED FORCES*

There are no veritable European forces composed of European (instead of national) soldiers. Governments have not renounced their full command over national troops, nor have they abandoned the option to use the own forces for national purposes. The aim of this section is to scrutinise to what extent member states have chosen to transfer the responsibility to counteract mili-

<sup>57</sup> See Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Appendix to Annex I, article 4 (c).

<sup>58</sup> See Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, article 6 (f).

tary threats to the organisation. Have member states organised their military assets in such a way that they *must* solve tasks collectively, or do they maintain a complete national defence that *can* obtain support from other member states? Do the organisations represent an additional option where security is produced or is it the only option? Have the member states relinquished their sovereignty and become dependent of each other to meet military threats?<sup>59</sup> The military structure within the EU was not set up to and does not have the ability to take on the operational lead of any military operations. Therefore, the inquiry is limited to the cooperation within NATO and to bi- or multilateral initiatives among member states. The latter is included because such arrangements can be seen as a step towards a shared SDI among the participating nations, and as a step towards an ESDI. Decisive is whether the force structure reflects the notion that security can be produced nationally or if it indicates that military threats must be counteracted collectively. Examples of permanent bi-or multinational structures are of interest that:

- lessen the national autonomy (understood as the ability to use the national military assets and capabilities independently) and/or
- offer a capability that cannot be found at the national level,

be it for territorial defence tasks or for crisis management operations. Such examples are scarce.

Since I am interested in the nation-state's sovereignty and its military autonomy, or better the resignation of military autonomy, I begin the examination at the national level and at the high end of dependence. It appears suitable to start with two examples where the NSDI is not at all, or only feebly, reflected in the military structure.

- Iceland is the only country of the 23 NATU and/or EU members that has renounced national armed forces all together. For defence matters it relies on the US protection.<sup>60</sup> This reflects a high degree of confidence and speaks for a shared security and defence identity with the US, at least in the context of safekeeping Iceland's territory. Other military threats that require crisis-management operations are expected to be managed by the US or NATO.
- Luxembourg has not even attempted to build up a force that could act autonomously. It merely disposes of two operational reconnaissance companies. The A company stands under the operational command of the 1<sup>st</sup> mechanised Division of Belgium and is assigned to the Eurocorps. The D company is a part of the Allied Mobile Force Land, which is responsible directly to SACEUR.<sup>61</sup> Thus, Luxembourg relies on Belgium and NATO and expects to manage military threats and to produce security through them.

The next level of integration is an extensive task sharing that creates interdependence. Such cooperation consists of a co-ordinated specialisation of forces in combination with mutual assurances of assistance with the respective specialised capabilities. Although the case of Luxembourg could be interpreted as an extreme task sharing, it is rather a question of a one-sided dependence. The form of co-operation where one country autonomously decides to develop a certain capabil-

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<sup>59</sup> Axel Sauder discusses this linkage between the sovereignty of a state and the organisation of its armed forces in depth, when constructing the paradigm integration and the one of sovereignty. See Sauder, Axel, *Souveränität und Integration. Französische und deutsche Konzeptionen europäischer Sicherheit nach dem Ende des Kalten Krieges (1990- 1993)*, Baden-Baden 1995.

<sup>60</sup> In July 1941 the first US - Icelandic defence agreement was signed, passing the responsibility for Iceland's defence to Washington. In October 1946 the Icelandic and US governments agreed on terminating this responsibility. The second and still valid agreement was signed in May 1951 pursuant the request of NATO military authorities.

<sup>61</sup> According to "déclaration d'intention politique" signed by the two ministers involved 06.09.1996.

ity and to provide it to others, who do not possess it, also belongs to this category. This one-sided dependence of military capabilities is characteristic for the transatlantic cooperation between the US and European states. Of course, a specialisation can take place at different levels and with different degrees, thus, having varying consequences for the interdependence of the participating countries. A veritable interdependence is established when none of the countries can replace the other's special competence with proper national resources and that the other's assets are indispensable for an operation. Agreeing on establishing an interdependent military structure must therefore not be confused with a mutual assistance where the parties ease each other's burden. Often different countries choose to contribute with different national assets to a multinational unit. Such a unit can only function if all participants fulfil their obligations and contribute the assigned forces. But, this does not necessarily generate a mutual dependence among the member states. As long as one state can replace the assets another state withholds, and as long as the multinational unit only represents one among several options to counteract a military threat, the production of security does not become dependent of the cooperation among member states. There is not a single example of a specialisation that is based on an agreement between at least two member states stating that they will develop different capabilities and that they commit themselves to provide the capability when the other party needs it.

Creating collective assets together with others represents the next degree of integration and dependence. To determine the interdependence of the member states, several distinctions must be made. First, one must differentiate between the creation of *exclusive* multinational capabilities and the *duplication* of existing national functions. The multinational duplication of existing national capabilities can ease the national burden, but it does not affect the national autonomy and is therefore the loosest form of integration. An additional capability merely represents a new option. However, while some member states may dispose of the asset themselves, others may not. A collective capability may therefore appear as duplication for some, while being exclusive for others. Second, exclusive bi- or multinational capabilities can represent a surplus that facilitate national and multinational operations, fulfil a function that is only needed when states cooperate on the multinational level, or be indispensable for the performance and use of national forces. It is difficult to classify the organisation's capabilities and the single bi- and multinational projects objectively, since they affect the dependence and interdependence of the participating states differently. Small countries rely more on the cooperation, as well as the collective capabilities and the national resources of fellow member states than larger ones do. The USA clearly has a different ability to counteract perceived military threats unilaterally than Luxembourg. Nevertheless, one can present the different multinational capabilities in a more or less consistent order starting from the top, with the most intense form of integration, and interdependence.

Although the Benelux and Germany keep the full command over their national troops, these countries have combined their headquarters in such a way, that none of them can lead all the own forces under a national joint command. Thus, in short term they depend on each other to launch large-scale operations that require the complete range of national military capabilities. In difference to the rest of the NATO and EU states, these countries rely on the multinational cooperation in order to use their own forces:

- The Admiral Benelux is the only examples where two European countries have joined entire branches of their armed forces and put them under a permanent combined staff. Following

the Co-operation Agreement between the Belgian Navy and the Royal Netherlands Navy<sup>62</sup> the operational staffs were merged into the single integrated operational staff in Den Helder (the Netherlands). The operational fleets of both countries now operate jointly both in peacetime and in wartime under the combined command of Admiral Benelux.<sup>63</sup> However, any form of task specialisation of the two navies will be avoided.<sup>64</sup>

- Due to its history the German case is unique. Germany depends on NATO-staffs to lead the entire national forces under a joint command. Until the Einsatzführungskommando was founded on 9 July 2001, the German Federal Republic had no headquarter at all with the ability to lead joint forces. The Einsatzführungskommando was formed out of the last purely national Corps HQ, the IV Corps in Potsdam, and will plan and lead the international missions of the German armed forces.<sup>65</sup> It can also function as an operational Headquarter of the EU. With this move Germany has somewhat regained the ability to lead the national forces under a joint command. The German ambition is to establish a HQ with the same capabilities to lead international Peterberg operations as the British Permanent Joint Headquarters in Northwood or the French Centre Operational Interarmées in Creil. However, the intention is only to create a HQ able to lead at army level. It is not meant to develop the capability of leading the complete national forces as the French and the British staffs can.<sup>66</sup> Here the difference between territorial defence and crisis management tasks becomes clear. In case of the former, all national forces will be put into action, and the German forces put under NATO command as previously. Thus, for the territorial defence Germany still does not dispose of a central HQ able to lead the national forces. Although the disability to lead national forces under a joint command is a consequence of the historical development, one might interpret sovereign Germany's commitment to that arrangement as a pledge to the collective production of security. On the other hand, the establishment of the Einsatzführungskommando might also be seen as a first step to regain the capacity to act autonomously.<sup>67</sup> Thus, with this move Berlin has achieved to combine the reinforcement of the ESDI with the strengthening of the NSDI.

The next step on the integration ladder is the establishment of new multinational assets and capabilities that do not exist on any national level, and which are essential for multilateral operations.

- The most obvious example of this is the integrated military structure of NATO. Member states developed the common multinational staffs to allow them to co-ordinate the entirety of their forces in a collective defence against a common adversary. Thus, these resources were not needed at any national level and represent an exclusive capability. The multinational staffs express the member states will to co-operate in defence matters. NATO headquarters are indispensable both for the collective territorial defence and for multinational large-scale crisis-management missions. At present, no national staff can match the Alliance's ability to

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<sup>62</sup> Signed 28.03.1995 by the Belgian and Dutch Ministers of defence.

<sup>63</sup> The Admiral Benelux became operational 01.01.1996. C.f. 'Naval Force update, BENELUX fleet could lead to a Euro Navy', *Jane's Defence Weekly*, 06.03.1996.

<sup>64</sup> See Admiral Benelux at <http://www.mod.fgov.be/> (10.03.2001)

<sup>65</sup> The other German Corps all continue to be multinational.

<sup>66</sup> C.f. 'Das Einsatzführungskommando nimmt die Aufgabe eines Generalstabs wahr', *Frankfurter Allgemeine Zeitung*, 10.07.2001.

<sup>67</sup> Germany is not necessarily striving to act single-handedly. But, by strengthening the own capability it strengthened both the overall European capability and its own position in the ESDP and maybe even in the Alliance.

plan and lead combined joint operations at the same time as they provide an adequate and acceptable integration and representation of the contributing countries' in the staffs. The workload that NATO headquarters have taken on during the operations on the Balkans and the discussion about the EU's guaranteed access to the Alliance's planning capabilities mirror NATO's unique ability. Thus, with the exception of the USA, no allied country (or non-allied European state) disposes of the necessary national resources to launch and run a large-scale military operation OOA. For such operations they depend on the US

The integrated military structure of NATO provides the necessary means that permit the co-operation and increases the potential use of national forces. It allows nation-states to participate in a security production that they could not perform unilaterally. Thanks to the integrated military structure, national forces can also be coordinated in a way that they achieve more collectively than the sum of what they could perform unilaterally. The Alliance is thus indispensable for tasks that require collective military operations. Other collective assets are not necessary indispensable in the same way, but they can facilitate the cooperation and increase their ability to conduct combined operations efficiently:

- As mentioned earlier, the Alliance disposes of veritable collective military assets in the form of AWACS (apart from staffs and administrative bodies). These are collectively owned, financed maintained and operated. Over the period 1982-85 eighteen E-3A AWACS Aircraft were acquired by the 13 full-members of the NAPMO.<sup>68</sup> The 13 participating countries finance all expenditures collectively. The organisation reports directly to the NAC and takes all decisions in consensus. Representatives of the NATO Secretary General, the Major NATO Commanders, the NATO Airborne Early Warning and Control Force<sup>69</sup> Commander and other NATO bodies, can also attend meetings of the organisation, if required, but cannot block a decision. The NATO AWACS Force Command Headquarters is co-located with Supreme Headquarters Allied Powers Europe (SHAPE). The budget which funds the NATO Airborne Early Warning and Control Force is governed by a 13-nation and a 14-nation formula which reflect the industrial/commercial orientation of the cost sharing arrangements for the related procurement organisation.<sup>70</sup>
- Another example of collective military assets is found in space. The current bi- and multinational satellite initiatives in Europe are however not directly linked to the EU or NATO. The only operative system at present is the French-Italian-Spanish Hélios programme. In difference to the NAPOM, the participants do not have access to all the information gathered. Originally, each contributing country would order and receive imagery in direct proportion to its shares, which amount to 79, 14 respectively 7 %. The imagery they ordered was specially encrypted for exclusive national use. Thus, although collectively owned and operated the Hélios program does not really function as a common asset. It shares many characteristics

<sup>68</sup> One of which crashed after an aborted takeoff on July 14, 1996, in Greece. Source: Boeing, E-3 AWACS in Service Worldwide, at <http://www.boeing.com/defense-space/infolect/e3awacs/index4.htm>

With the exception of France and Great Britain all 'old' 15 NATO members are full-members of the NAPMO. The United Kingdom attends all Board of Directors' meetings and other NAPMO committee meetings, as required, and provides six E-3D aircraft as a "contribution in kind" to the NATO AEW&C Force. France attends NAPMO meetings in an observer role, based on its acquisition of four national E-3F aircraft. Representatives of NATO's three newest members, the Czech Republic, Hungary and Poland, attend meetings of the Board of Directors as observers. See NATO Basic Fact sheets: NATO Airborne Early Warning & Control Programme. Update 27.01.2000.

<sup>69</sup> The NAEW&C Force consists of the 18 AWACS owned by the NAPMO and the seven E-3D aircraft owned and operated by the United Kingdom. See NATO Handbook 2001. NATO Airborne Early Warning Force (NAEWF). Update 17.05.2001.

<sup>70</sup> See NATO Handbook 2001, Cost Sharing, Update 29.04.2001.

with normal armaments co-operation where each country acquires its proper equipment and controls its use. During 1999, however, 17 % of Hélios images were produced for all three countries. This figure is expected to increase.<sup>71</sup> The latest example of European space cooperation that includes military use is the multinational satellite venture, including the French-Belgium Helios II<sup>72</sup> and the German SAR-Lupe<sup>73</sup> programs as well as an Italian military-civil satellite project.<sup>74</sup> Together these will increase the European ability to collect intelligence. It must however be noted, that this venture merely aims at interconnecting three technically, financially, timely and politically completely separate programs. The different programs do not result from a co-ordinated European effort, and the venture is not an attempt to establish a centre that will take on this function.

Finally, one can find the different bi- and multinational units at the lowest end of interdependence.<sup>75</sup> Many bi- and multilateral units have no military significance. They are merely symbolic and express a political will to co-operate.<sup>76</sup> Others, such as for instance the 1. German-Netherlands Corps, Eurocorps, the Multinational Division Central or Allied Command Europe Mobile Force Land, represent veritable units led by permanent combined staffs.<sup>77</sup> With the exception of the HQ Staff, all national forces that are assigned to these units are double hatted and can solve tasks both under national and bi- or multinational command. This does not affect the national autonomy. However, they allow the smaller participating states to develop the ability to lead larger units than they themselves have on the national level. This may be enriching. It is however a competence that they only need when operating in the framework of the multinational unit in question.

On the whole, two features are striking. First, the degree of dependence varies with the size of the countries and their defences. The smaller they are, the smaller is their ability to counteracting military threats and to produce security by themselves. Second, and in a way this contradicts the former, there is no correlation between the size of a state, respectively its defence forces, and the preparedness to integrate the military forces with others. This hinders rationalisation potentials from being exhausted. States in general try to maintain their autonomy and maintain a complete range of forces instead of specialising on some specific capabilities. The Benelux and Germany are the only states that to some extent deviate from this rule. Two explanations can be given for the widespread unwillingness for closer integration, both of which contradict the notion of an ESDI. To begin with, member states may simply not recognise that they depend on each other's help and that military threats must be counteracted collectively. Organising the defence as effi-

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<sup>71</sup> Villadsen 2000.

<sup>72</sup> At the time of writing, the Helios II satellites is a French - Belgian project (BE 2,5 % shares) which Spain is likely to join. The first of the two Satellites, having means for optical (god weather) and infrared (at night) observation, is expected to be launched into the orbit in march 2004. The resolution of the Helios 2 is expected to be significantly higher than the one of the two French-Italian-Spanish Helios 1 satellites, which have been in the orbit since 1995 respectively 1999. The Helios 1b has a resolution of about 1 meter. In comparison, some American satellites can make out the number plates of cars from a altitude of 680 km. C.f. Isnard, Jaques, 'La Belgique rejoint la France dans le projet de satellite-espion militaire Helios 2', *Le Monde*, 12.07.2001. See also Ulfkotte, Udo, 'Durchblick verloren', *Frankfurter Allgemeine Zeitung*, 03.07.2001.

<sup>73</sup> The SAR-lupe is an all-weather radar satellite program consisting of six satellites planned to be put into orbit in 2004. See 'France, Germany and Italy set to make space pact', *Jane's Defence Weekly*, 21.06.2001.

<sup>74</sup> Italy intends to launch four radar satellites between 2003 and 2006. See 'France and Italy sign agreement on satellite sharing', *Jane's Defence Weekly*, 21.02.2001.

<sup>75</sup> Of course, combined coalitions of the willing used in crisis-management operation such as SFOR, KFOR and other provisional peacekeeping units, such as NORDBAT, must also be classified as multinational forces. But, these ad hoc forces are ignored at this place.

<sup>76</sup> There are legion of declared multinational units and other military forms of co-operation. Units such as SHIRBRIG, Ukrainian-Polish peacekeeping battalion, the Hungarian-Romanian battalion and SEEBRIG simply offer the involved governments additional options to use their forces. These are certainly not assembled with the ambition to optimise the military efficiency. They rather manifesting bonds between countries. In this sense they may have a symbolic value for an ESDI but cannot be said to reflect the notion that security cannot be produced unilaterally.

<sup>77</sup> For an overview of different permanent multinational forces see Müller-Wille, Björn 1999, 'Europeisk Säkerhets- och Försvarsidentitet (ESDI)', *Extra Orientering*, no. 6/99, Swedish Armed Forces HQ, Stockholm.



ciently as possible together with others at the price of entering interdependencies is a very difficult step to take unless it is seen as a necessity. As long as a state believes that it can produce its own security, any cooperation involving losses of autonomy will presumably appear to weaken rather than strengthen the state's ability to counteract military threats. Another explanation would be that the member states simply do not have enough trust in each other. Although they may be convinced of the necessity to cooperate, none of them wants to be at the mercy of others. The countries are just not sure that they will receive the assistance that they themselves consider necessary, but rather the support that others deem as adequate and are prepared to give. This implies that they anticipate that they will not have the same threat perception as the other member states. That does not only hinder the integration of forces but also the transfer of authority to European organisations.

### 3.1.1.3 Redefining the EU-NATO relationship

The EU and NATO have an interest in establishing a permanent and effective relationship. The most basic reason is that both organisations aim at conducting military crisis-management operations, and that both largely depend on the same member states' national military capabilities. In addition, the EU depends on collective NATO assets and capabilities to lead a larger operation. If the Union does not have access to these collective resources, it will have to duplicate them within the EU, or accept that it will not be able to conduct larger crisis-management operations. In addition, the EU has assumed the crisis-management functions of the WEU. The Union and the Alliance must therefore find a way to replace the relevant agreements between WEU and NATO with new agreements between the EU and NATO and develop them further. The two organisations must continue to redefine their relationship.<sup>78</sup> As long as the approach of the two organisations will be considered as mutual beneficial the linkage between them will be extended and deepened. This can either be the case if a closer cooperation enhances the efficiency of operations or that it hinders a rift between the two organisations.

An exploration of the linkage between the EU and the Alliance in the political and operational dimensions will display to what extent their security processes are organised as separate or interlocked processes. Since the collective territorial defence is not on the EU agenda, these advances are restricted (at least formally) to the area of crisis management. The two organisations seek to widen their security process by establishing contacts directly with the other organisation and/or with its member states. When one of the organisations allows other countries to participate in parts of its security process, it must not necessarily restrict this inclusion to the member states of the other organisation. Since both organisations may have an interest in forming broad coalitions, they can open up for all non-members. In these cases, member states of the other organisation do not necessarily obtain a special status or treatment. To grasp the whole width of the coordination of the security processes of the two organisations, one must therefore explore the whole range of measures aimed at including the other organisation and/or its member states.

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<sup>78</sup> C.f. WEU Assembly Document A/1720, *Report on The implementation of the Common European Security and Defence Policy and WEU's future role - reply to the annual report of the Council*, Submitted on behalf of the Political Committee by Mr Marshall, Chairman and Rapporteur, 06.12.2000, article 86.

### INCLUSION IN THE POLITICAL DIMENSION

The inclusion of non-members into the security process of the EU or NATO is restricted to consultations. These dialogues are important for the exchange of views and can prevent misunderstandings and tensions among the participants. The result can thus influence the decision shaping. However, only full members participate directly in the decision-making. Internal decisions on defence planning or decisions that initiate an operation are taken by the organisation and its members alone. This is also the case when an operation is to be conducted together with non-members. Both organisations are thus very strict about taking their political decisions autonomously. Non-members and other organisations can be heard and given a voice, but never a vote or a veto.

The EU has created different frameworks for dialogue, consultation and co-operation in the ESDP with non-EU members. These include meetings on Ministerial as well as on lower levels.<sup>79</sup> The EU has held meetings with non-EU European NATO members and the candidates for accession to the EU (EU+15 format) on ESDP matters and its possible implications for others.<sup>80</sup> These countries can also appoint interlocutors to the PSC as well as to the so-called points of contact at the EUMS.<sup>81</sup> This means that these countries have direct access to the EU bodies where decisions are prepared and taken. The Alliance has chosen a different method and created new institutions for political dialogue on military threats with non-members. These are located outside of NATO's own decision-shaping process. Only one of these forums includes non-allied EU members, the Euro-Atlantic Partnership Council (EAPC).<sup>82</sup> EU members do not have a special status within the EAPC.

In addition, the two organisations have direct relations with each other. The two organisations hold regular meetings between the North Atlantic Council and the Union's Political and Security Committee, as well as between the respective Military Committee.<sup>83</sup> In view of his potential role in EU-led operations, DSACEUR can also be invited to meetings of the EU Military Committee.<sup>84</sup> NATO and EU have held joint meetings at Ambassadorial and Ministerial level,<sup>85</sup> and the Secretary General of NATO has briefed the EU General Affairs Council on NATO policies. Regular contacts between the Secretaries-Generals or their Deputies, the Secretariats and Military Staffs (based on directives from the Military Committees) will make a useful contribution to transparency and exchange of information. In addition, most allied EU countries send the same representatives to the EU Military Committee and to the NATO Military Committee (France

<sup>79</sup> On 15.05.2001. EU foreign EU Foreign Ministers and Defence Ministers, respectively, met with their colleagues of the non-EU European NATO Members and candidates for accession to the EU (the "15") as well as of the non-EU European NATO Members (the "6"). See Göteborg European Council, *Presidency report on the strengthening the Common European Security and Defence Policy (ESDP)*, 16.01.2001, article 42.

<sup>80</sup> Within this context, a minimum of two meetings are held during each Presidency with the six non-EU European NATO members (EU 15+6 format). The six non-EU European members of NATO are the Czech Republic, Hungary, Iceland, Norway, Poland and Turkey. The nine countries which are candidates for accession to the EU and/or NATO are Bulgaria, Cyprus, Estonia, Latvia, Lithuania, Malta, Romania, Slovakia and Slovenia. See Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Annex VI Arrangements concerning non-EU European NATO members and other countries which are candidates for accession to the EU. See also Göteborg European Council, *Presidency report on the strengthening the Common European Security and Defence Policy (ESDP)*, 16.01.2001, article 42. Such dialogues are also held at the various meetings with Russia and the Ukraine. Especially in the framework of Summits following the Partnership and Co-operation Agreement (PCA), but also in the Northern dimension with Russia and at other meetings.

<sup>81</sup> See Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Annex VI Arrangements concerning non-EU European NATO members and other countries which are candidates for accession to the EU. See also Göteborg European Council, *Presidency report on the strengthening the Common European Security and Defence Policy (ESDP)*, 16.01.2001, article 43.

<sup>82</sup> The EAPC succeeded the North Atlantic Co-operation Council. See NACC, *Basic Document of the Euro-Atlantic Partnership Council*, Sintra 30.05.1997, article 1. Other examples of permanent institutions were non-members are included are the NATO-Russia Permanent joint Council the NATO-Ukraine Commission, the Mediterranean Co-operation Group.

<sup>83</sup> See Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Annex VII. (II). See also WEU Assembly Document A/1734, article 40. The first formal meeting between the Alliance's and the EU's military committees was held 12.07.2001.

<sup>84</sup> In view of his potential role in EU-led operations, DSACEUR can invited to meetings of the EU Military Committee.

has opted for a separate representative) in order to facilitate a close co-ordination.<sup>86</sup> Furthermore, EU/NATO ad hoc working groups have been established. At the time of writing there were four. These deal with questions of security, capabilities, EU access to NATO assets and capabilities, and permanent arrangements for relations between the two organisations.<sup>87</sup> Hence, the interlinkage of the security processes has been intensified during the last years. Obviously, the necessity to do so has been recognised and the political will generated. However, this should not be mistaken for a significant step towards a merger of the two security processes in the political dimension, let alone a merger of the organisations themselves. Decisions on either organisation's activities are still taken by the member states alone.

#### *INCLUSION IN THE OPERATIONAL DIMENSION*

The preparations for non-member's participation at NATO-led operations are elaborated in the EAPC and Pfp. Since the Alliance does not depend on, nor is likely to draw on any of the Union's capacities for military operations, the non-allied EU-members do not obtain any formal special status in NATO-led operations due to their membership in the Union. They are treated as all other contributing EAPC members. It is nevertheless presumable that the crisis will be made a subject within the EU as well. As a result, the Union may decide to utilise its civil instruments in order to stabilise the situation in the crisis-area. This means that all EU members will be more involved than other non-allied countries in the overall management of a particular crisis. However, neither the Alliance nor the Union or any other collective body carries the overall responsibility for the co-ordination of the military and civilian crisis-management efforts.<sup>88</sup> Therefore, the EU and NATO will operate in parallel. Lacking a collective decision-making body that synchronises the two organisations' activities, there is no forum in which the EU and its members could have more influence on the military operation of the Alliance than other participating non-members. In return, NATO and its members have no special status or influence on the Union's civilian crisis management.

For EU-led operations one must differentiate between those conducted with, and those conducted without access to the Alliance's assets. In autonomous EU operations the allied non-EU members will formally be on an equal footing with all other non-EU contributors. They will participate in the Committee of Contributors and may send a liaison officer to the EUMS. If however the EU-led operation requires recourse to NATO assets and capabilities, the Allies obtain a special status. In this case, officers and representatives from the NATO member states will carry out the operational planning in the Alliance's planning bodies in accordance to NATO procedures. Consequently, the Allies have the same influence on the planning of an EU operation as they have during the preparation of proper NATO operations. The question is therefore not if allied states participate on equal footing with EU members during the operational planning, but if the non-allied EU members participate on equal footing with NATO states during these EU led operations. To assure that non-allied EU members are not discriminated, they can send experts to the NATO staff that will handle the Union's request once the staff has been ap-

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<sup>85</sup> The first formal joint NATO-EU Ministerial Meeting was held in Budapest, Hungary, on 30 May 2001.

<sup>86</sup> See WEU Assembly Document A/1733, article 21.

<sup>87</sup> These were established at the EU summit in Feira. See Feira European Council, *Presidency Conclusion*, 20.06.2000, Appendix 2 to Annex I.

<sup>88</sup> The UN does not have this responsibility. In contrast to the military operations, many civilian crisis management activities do not require a UN mandate, or better, they are not affected by a UN mandate.

pointed.<sup>89</sup> Of course, these experts will function as liaison officers and will not be involved to the same extent as ordinary staff members.

In order to simplify the co-operation amongst the organisations and single contributing states, each organisation identifies assets, capabilities and forces that the organisation itself, its member states or other countries are prepared to make available for crisis- operations on a case by case basis. For NATO-led operations, a pool of forces is identified within the Operational Capability Concept for NATO-led PFP operations. Work on pre-identifying the collective assets and capabilities of the Alliance that may be used for EU-led operations is carried out together by EU and NATO experts.<sup>90</sup> The WEU elaborated the Audit of Assets that was later transformed into the EU Force Catalogue. These pool-lists are continuously being updated.

It should be noted that NATO was involved when the WEU and EU lists were established. NATO's International Staff prepared a report on forces that the Allies participating in the NATO Defence Planning Process and the WEU observers participating in PARP (=non-allied EU members) could make available for WEU-led operations. The Alliance was also engaged in the development of the Helsinki Headline Goal. It helped to define the Helsinki Headline Catalogue (HHC) that outlines the assets and forces needed to meet the Helsinki Headline goal, to compile the Helsinki Force Catalogue (HFC) that lists the available forces and to elaborate the EU Exercise Programme.<sup>91</sup> Moreover, it participated in the framework of the Headline Goal Task Force plus.

The pools are interesting because they reflect the European countries' intentions. Almost all members of the EU respectively NATO have announced that they may participating at an operation led by either organisation. The only exceptions are the USA and Denmark. None of them has declared themselves prepared to contribute to EU crisis-management operations.<sup>92</sup> This does not mean that they definitely have excluded the possibility of supporting a EU-led operation with national resources, but both clearly prefer operations to be conducted by NATO.<sup>93</sup> The USA will most likely make sure that an operation with significant US contributions, especially if US ground forces are involved, will be conducted by NATO or as a US-led coalition of the willing. With this stance, the two countries stand out from all other members of the Alliance, including Turkey. They seem wary of an independent European force that could erode US dominance and call into question NATO's primacy for collective defence and its role as the 'option of first resort' in managing future crises. The United States also wants to reserve its right to a final say or 'first refusal'. However, such an arrangement cannot gain any support by the Union since it would subordinate the EU activities to a NATO decision.

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<sup>89</sup> See Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Appendix to Annex VII (1).

<sup>90</sup> Each organisation's Military Committee then validates the result.

<sup>91</sup> See Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Appendix to Annex I, article 4.

See also Göteborg European Council, *Presidency report on the strengthening the Common European Security and Defence Policy (ESDP)*, 16.01.2001, article 33.

<sup>92</sup> Although Canada has not committed any forces to the Helsinki Force Catalogue it has declared readiness to contribute to crisis management efforts undertaken by the Union. See Göteborg European Council, *Presidency report on the strengthening the Common European Security and Defence Policy (ESDP)*, 16.01.2001, article 45.

<sup>93</sup> The US has even advocated the idea of making DSACEUR the commander of European forces for all operations and considers that EU/NATO meetings should be held at 23 (the 19 members of NATO plus the four EU countries that do not belong to NATO) instead of at 15+6. See WEU Assembly Document A/1734, article 44.

### REMAINING CHALLENGES

Although some progress has been made, severe differences remain between the organisations. The major issue is the question of the EU access to NATO assets and capabilities. In Nice the EU suggested that it should have guaranteed permanent access to NATO's planning capabilities without case-by-case NATO authorisation.<sup>94</sup> Only six days later at the North Atlantic Council meeting Turkey used its veto to refuse the European Union automatic access to NATO operational planning capabilities.<sup>95</sup> This was repeated at the NAC meeting in Budapest in spring 2001.<sup>96</sup> The reason for this is quite obvious. Following the transfer of the WEU's crisis-management functions to the EU, the status and influence of the associated WEU members has decreased. Turkey is especially affected. It is the only European NATO-member that does not remain outside of the EU voluntarily. As a contributor to EU-led operations, Turkey will be a full member of the Committee of Contributors, established in case of an operation to monitor the operation's progress on a day-to-day-basis. But, in difference to the constellation of WEU-led operations it will not have a vote in the decisions taken by the Council or the PSC on the strategic control and political direction of the operation. The Committee of Contributors merely provides these two bodies with opinions and recommendations. To underpin its stance, Ankara has pointed out that this arrangement contradicts the decision taken at NATO's 1999 Washington Summit. Article 9(d) of the Washington Summit Communiqué Article 9(d) states that NATO attaches "...the utmost importance to ensuring the fullest possible involvement of non-EU European Allies in EU-led crisis response operations, building on existing consultation arrangements within the WEU".<sup>97</sup> In addition, NATO's 1999 Strategic Concept determines that the Alliance will make its assets and capabilities available for operations under the political control and strategic direction either of the WEU or as otherwise agreed, on a case-by-case basis and by consensus, taking into account the full participation of all European Allies if they were so to choose.<sup>98</sup>

This together with American reservations about the autonomy of the ESDP, i.e. the stance that NATO must be the 'option of first resort', has led to a rather meagre results and a situation where the negotiations on the EU-NATO relations are likely to continue for a long period. So far, no information has been forthcoming about arrangements for EU/NATO relations in times of crisis, the role of DSACEUR and the guaranteed recourse to NATO's planning capabilities. At the time of writing, access to NATO assets and capabilities was still subject to a political decision by the NAC.<sup>99</sup>

These disputes reflect the current limits of the consolidation of the two security processes in both the political and operational dimension. It is apparent that the will to maintain the separation of the operational part of the two organisations' security processes stems from the EU, which insists on its own autonomy. This seems to be a wish that both allied and non-allied EU-members share. The EU is promoting a policy where it wants to have guaranteed access to NATO's capabilities, but without being prepared to concede full and equal involvement of Turkey in the decision-making concerning an operation for which it needs NATO assets. Imagine

<sup>94</sup> See Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000, Appendix to Annex VII(1).

<sup>95</sup> See WEU Assembly Document A/1734, article 58.

<sup>96</sup> See 'Ringgen um einen Kompromiss mit der Türkei. Umstrittene Mitsprache bei der EU-Sicherheitspolitik', *NZZ*, 31.05.2001

<sup>97</sup> NAC, *Washington Summit Communiqué. An Alliance for the 21st Century*, Washington D.C., 24.04.1999, article 9(d).

<sup>98</sup> Cf. NAC, *The Alliance's Strategic Concept*, Washington D.C. 24.04.1999, article 30. How delicate this matter is shown by the contents of the article 10 of the 1999 *Washington Summit Communiqué*, which addresses the assured EU access to NATO planning capabilities.

<sup>99</sup> See WEU Assembly Document A/1734, article 43.

such an agreement between to companies! The argument that a duplication of NATO's assets within the Union only can be avoided if the EU's maintains its full decision-making autonomy is not convincing, given the EU members' moderate efforts in enhancing their capabilities.<sup>100</sup> In contrast NATO, and foremost the USA, has shown itself anxious to incorporate the whole military security processes into the Alliance, including the operational part of it. Even if the US fears to lose influence if it allows a purely European pillar to develop in NATO, the concept of an 'ESDI within the Alliance' has included suggestions to set up a European chain of command, that the European Union could activate when it sees fit.

### 3.1.2 Category politics – Authority

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity			
	Politics	X		
	Policy			
Conclusion ESDI				

A complete security process includes countermeasures. The efficient production of security is vital for the identification with an organisation that has been given this task. An organisation that fails to serve the security needs of a member state runs the risk of losing credibility in that state, and thus its support. In this case, states will be forced to complete a security process outside of the organisation. This undermines the notion that the security of the member states is indivisible. It is also likely to impair on the commitment towards the organisation and thus the function of the organisation's security process. Consequently, the idea of an ESDI and the chance to develop it will erode. But, if the organisation performs and achieves in producing security, the dynamic may be turned around.

This section investigates two aspects of the organisations' function as security producing authorities. First, it scrutinises to what extent the EU and NATO appear as security producing authorities.

- What military operations have the two organisations conducted? Do they appear as security producing authorities?
- Why are military threats sometimes dealt, and thus the security process located, outside of the organisations?
  - Do the two organisations satisfy the security needs of their members? Are member states forced to counteract military threats outside of the organisations?
  - Do member states voluntarily counteract military threats outside of the two organisations?
- Do the organisations utilise civilian means to produce security?

The second aspect concerns the two organisations future prospect of acting as security producing authorities.

<sup>100</sup> C.f. Rainer, Hermann, 'Die Türkei fordert mehr, als ihr zusteht. Emotionen bestimmen die Diskussion um die Europäische Eingreiftruppe', *Frankfurter Allgemeine Zeitung*, 06.07.2001.

- Does the adaptation of national military forces match the declared ambitions and new challenges?
- Do the countries make use of the synergy effects a co-operation offers and accept the resulting limitations in their own capacity to act?

### 3.1.2.1 NATO and the EU - producing security

The EU, the Alliance and their member states have tried to meet military threats by coordinating military and civilian countermeasures.

#### *PRODUCING SECURITY WITH MILITARY OPERATIONS –NATO DOMINANCE*

Since the end of the cold war, European countries have been engaged in various military operations around the globe. For some of the operations they have made use of the Alliance or one of the two Unions (WEU and EU). With the exception of the EU led operation to promote peace in Congo, the two organisations have only conducted significant military operations on the Balkans. These operations are shown in the figure below.

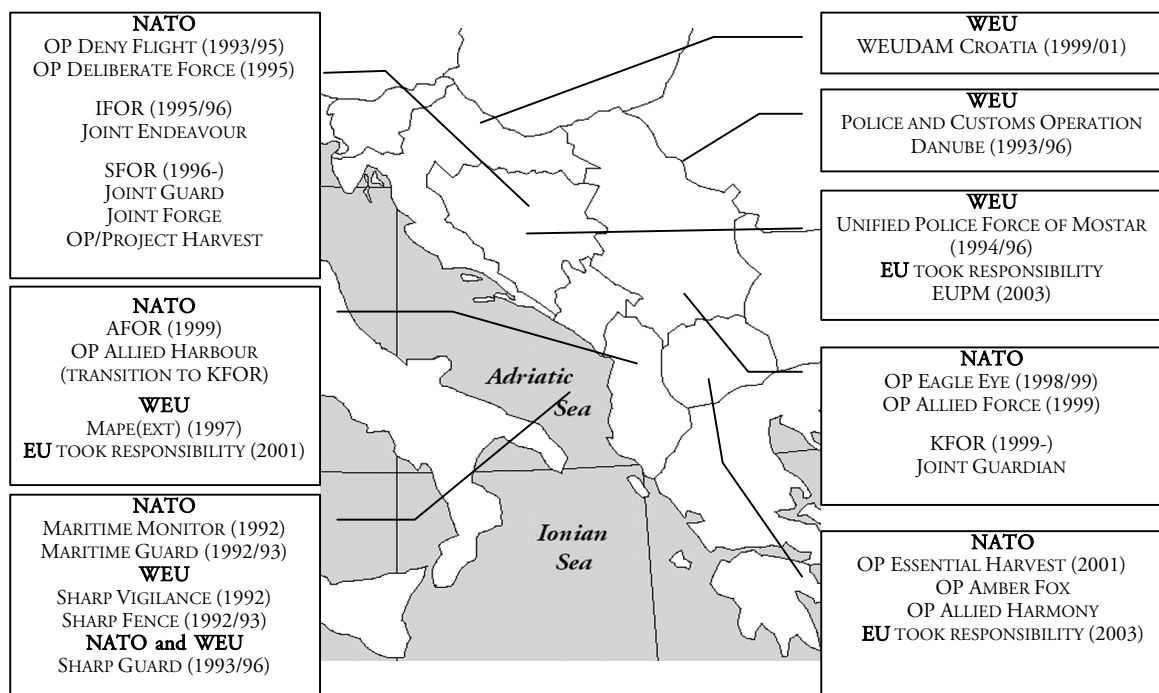


Figure 3.1-2 NATO and EU/WEU operations on the Balkans

The dominance of the Alliance in the field of armed peace-operations in the crisis area is not surprising given that its capabilities outshine those of the EU/WEU. With the exception of the WEU's operation in the Adriatic (1992-1993) and the Italian lead Operation Alba (1997), NATO took on the lead in the beginning of all joint military crisis management operations in the Euro-Atlantic area.<sup>101</sup> The only exceptions are those led by the UN and those taken over from NATO by the EU. On the 31 of March 2003 the EU launched its first military operation in the FYROM to follow NATO's operation 'Allied Harmony'. At the time of writing, a possible take over of SFOR was also being discussed. It should be noted that both of these are/would be

<sup>101</sup> Non-armed military monitoring missions excluded.

conducted with access to NATO assets. Military operations on the Balkans have been complemented with civilian ones. The WEU has conducted police and customs missions on the Danube (1993-96), in Mostar<sup>102</sup> (1994-96) and in Albania (1997-01). The latter was taken over by the EU in June 2001. The European Union Police Mission (EUPM) in Bosnia and Herzegovina started on 1 January 2003. It followed on from the UN's International Police Task Force. It should be noted that these were not primarily operative missions, but aimed at assisting local authorities to develop own forces. A comparison of NATO led and WEU/EU led operations in terms of size and the number of contributing countries underlines how much larger the military role of the Alliance has been. The table in the Annex clearly indicates that only NATO has lead large scale combined military operations. The Alliance has also conducted all major operations at the high end of the intensity scale on the Balkans. In terms of identification, this means that the EU/WEU have not conducted any military operations that could demonstrate their military authority. Only the Alliance has done so.

It would be false to explain the Unions' idleness by NATO's dominance alone, by the capability gap between the organisations or by some kind of 'first right of refusal' privilege of the Alliance. The Italian led Operation Alba (also called Sunrise) contradicts such an interpretation. The organisation of the Multinational Protection Force, which eventually relied on the national capabilities of Italy, proved that the Unions' and their members did not lack the military capabilities to conduct the operation. It rather exposed both organisations' political inability to make a decision, become involved in a crisis and mount a military operation when the United States (and with it the Alliance) chose not to get involved.

#### *WHY DO MEMBER STATES COUNTERACT MILITARY THREATS OUTSIDE OF THE ORGANISATION?*

There are two reasons why member states can counteract military threats outside the security process of the organisations. Member states can be forced to do so against their own will, e.g. if the organisation does not fulfil its task to serve the members' security needs. In other cases, member states choose to locate the security-process outside of the organisation.

*Organisations neglect security concerns of member states' – Operation ALBA.* In March 1997 the Albanian Prime Minister Bashkim Fino called for international intervention to restore order in the country. Italy and Greece, the two countries directly affected by the stream of refugees, tried to prepare the political ground for a stabilisation force.<sup>103</sup> However, they were not able to mobilise the necessary support in the EU or in the WEU. Germany and Britain, in particular, expressed their reluctance to act. They opposed the request for a Special Session of the WEU Council that should be convened to confide the WEU authority of a military operation.<sup>104</sup> The British and German reluctance might be explained with fears of yet another Balkan imbroglio, the critical phase in the IGC negotiations or the forthcoming British elections (May 1997). Lacking American support the Alliance did not respond to the South European Allies concerns either.<sup>105</sup> Consequently Italy and Greece sought a UN Security Council authority for a "coalition

<sup>102</sup> This was the first mission conducted by the WEU on request by the EU, in accordance with the article J.4.2. of the Maastricht Treaty.

<sup>103</sup> C.f. Kubicek, Paul, 'Albania's collapse and reconstruction', in *Journal of international Affairs*, Volume III - Number 1. March-May 1998.

<sup>104</sup> Cf. Tanner, Fred, *Conflict Management and European Security: The Problem of Collective Solidarity*. Paper prepared for the First GCSP-Yale (ISS) Seminar in Leukerbad, Switzerland. 21/22.08.1998.

See also Missiroli, Antonio, 'CFSP, Defence and Flexibility', in Institute for Security Studies of WEU [Now European Union Institute for Security Studies], *Chaillot Paper*, no. 38, February 2000.

<sup>105</sup> Although the inactivity of the Alliance has been explained in a more diplomatic way by the Americans. According to US Permanent Representative on the North Atlantic Council, "...a decision will emerge, first, on whether a military operation should be launched and, second, on



of the willing" operation. Getting it after only one day,<sup>106</sup> they launched a co-operation outside of any International Governmental Organisation's framework.

Thus, the member states did not make the same security assessments as the Italian and Greek analysts. Italy and Greece did not manage to start a security process at the European level. They did not even succeed in putting the issue on the Unions' or the Alliance's official agenda. There was no process in which those non-willing tried to reassure and calm Italian and Greek fears. There was no common evaluation at all and thus no attempt to formulate a common stance in either organisation.<sup>107</sup> Since this was the first real test to the Union's Common Security Policy, its inability to act caused much disappointment and some harsh reactions. Carl Bildt, who at the time was the international community's High Representative in Bosnia and Herzegovina,<sup>108</sup> remarked that the events in Albania showed that any talk of a common foreign policy for Europe was "pathetic".<sup>109</sup> In retrospect, having seen the successful end of the operation, it seems like all EU and WEU states, including Great Britain, Germany and the non-aligned, regret not to have acted through the EU/WEU.

In this case Italy and Greece were obviously forced to start a security process outside of the institutional framework of the European organisations against their own will. Thus, the organisations denied meeting their security needs. In other cases, the unwillingness to handle a military threat in one of the organisations security processes seems to derive from the member states. They can chose to launch operations outside of the organisations' framework.

*Why are security processes outside of the organisations' framework needed?* It is quite clear that the two organisations are not able to meet all military threats in a way that satisfies the security needs of all member states. The reason for this is that the security perceptions of different countries vary. Different states do not feel the same responsibility and necessity to counteract certain developments. One important difference is the varying geographical scope of security politics. Obviously, some members can condemn and oppose distant military developments, but without regarding them as threats that need to be counteracted decisively and with ultimate (military) force. Other members, in contrast, can perceive the same development as a threat against national referent objects that need to be defended vigorously. It appears that most EU and NATO members have a rather regional perspective on military threats, whilst others take on own responsibilities around the world. The latter foremost concerns the USA, which has a global scope, but also smaller countries like France and the United Kingdom. In distant parts of the world, these countries act outside of the NATO and EU structure. Occasionally they do so within the framework of UN operations, but often operations are launched outside the setting of any international organisation.

This has recently been demonstrated in so called 'war against terrorism' (Operation Enduring Freedom in Afghanistan and the war against Iraq). The members of the EU and NATO did

who is best positioned to take charge of that operation. When there was an intervention in Albania, 'Operation Alba', there was never a NATO decision to refuse that mission. It was simply understood that this was not something that NATO should do, and so it was done by a European coalition. Unfortunately it was not done by the WEU -- the WEU missed an opportunity to test its capabilities." C.f. speech by Ambassador Alexander Vershbow, *Next steps on European Security and Defence: a US view*, delivered at the conference on "The Development of the Common European Security and Defence Policy: The Integration Project of the Next Decade," organised by the Institute for European Policy (Bonn and Berlin) and the Representation of the European Commission in the Federal Republic of Germany, Berlin. 17.11.1999.

<sup>106</sup> UN Security Council resolution 1101 (28.03.1997) and 1114 (19.06.1997).

<sup>107</sup> The EU did send a high-level mission into the area, but the recommendations of the mission were never made a subject to a decision taken by the European Council.

<sup>108</sup> For more information about his status see: *The General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement)*, Annex 10.

<sup>109</sup> C.f. 'What common foreign policy?', *The Economist*, 22.03.1997.

neither use the organisations as prime forum for the security nor for leading the military operation. Although the NAC agreed to operationalise Article 5 of the Washington Treaty in the wake of the 11 September attacks against the United States,<sup>110</sup> no NATO operations were launched. Instead the military war on terrorism started as a US operation. Thus, when the core of the Washington Treaty and the fundament for the collective defence was concerned, the Alliance merely reacted with declarations and by sending five AWACS to the United States and deployed its Standing Naval Force Mediterranean consisting of 9 ships to the Eastern Mediterranean. During the first months of the attacks on Afghanistan US officials and the British Prime Minister Tony Blair tried to mobilise support for it on a bilateral level. They jetted around the world from capital to capital, not as NATO but as national representatives. In addition, the US turned directly to some NATO allies for military assistance in support of the operation, not to the organisation or at least through it.<sup>111</sup> Thus, NATO and the EU only represent two of several optional platforms for a security process.

Nevertheless, with the exception of operation ALBA all military threats that directly influence the somewhat nebulously defined Euro-Atlantic area are dealt with and managed by NATO and/or the EU. This includes both Article 5 threats, which are always directed against at least one member state and therefore per definition fall within the Euro-Atlantic area, and crisis management operations, which the two organisations only conduct within this area. One could argue that Operation ALBA can be seen as a mistake and "a missed opportunity"<sup>112</sup> that would not be repeated by the EU today, given the development of the ESDP. If one settles for this explanation, the context of the ESDI in the sphere of military threats appears to be limited to the Euro-Atlantic area.<sup>113</sup> Therefore, member states will have to address those military threats that are located outside of the organisations' geographical realm elsewhere.

#### *PRODUCING SECURITY WITH CIVIL MEANS – EU DOMINANCE*

To say that the EU does not play any role in meeting military threats would not do justice to the organisation. Even if the Union's account on military operations is not impressive (yet), it has made considerable civil contributions to the stabilisation and reconstruction of crisis areas.

On the most general level, the EU counteracts military threats by advocating the respect for democratic principles, human rights and the transition towards market economy in all its external relations. It has particularly active in doing so in its vicinity, thereby supporting the stability the region. The engagement in the enlargement process, with the three financial pre-accession instruments PHARE, ISPA and SAPARD flanked by the Twinning programme,<sup>114</sup> together with

<sup>110</sup> The day after the attack on the World Trade Centre the NAC stated that if the attack was directed from abroad against the United States, it shall be regarded as an action covered by Article 5 of the Washington Treaty. On the 2 of October 2001 the USA provided information to the North Atlantic Council determining that the attacks had been directed from abroad. On the 4 October the NAC invoked and operationalised Article 5 of the Washington Treaty. Sources: NAC, *Statement*, Brussels 12.09.2001; Statement by NATO Secretary General, Lord Robertson. Brussels 02.10.2001; Lord Robertson (NATO Secretary General), *Statement to the Press on the North Atlantic Council Decision On Implementation Of Article 5 of the Washington Treaty following the 11 September Attacks against the United States*, Brussels 04.10.2001.

<sup>111</sup> Cf. The declaration by the US Defence Minister Donald Rumsfeld as quoted at: <http://www.bundeswehr.de/news/aktuelles/preview.php?id=422> (07.11.2001).

<sup>112</sup> Mr. Cutileiro, José (WEU Secretary General) in his Introductory Statement at the 50th Anniversary of the Brussels Treaty, Brussels 17.03.1998.

<sup>113</sup> Not that the two organisations ignore military developments outside of this region. Both have condemned actions and expressed their concern about certain developments in other parts of the world. But, none of them has articulated the ambition to become a global military actor. Although the organisations and their members can disapprove of distant military developments, they do not seem to perceive them as threats against European referent objects that have to be defended with any conceivable means, including military forces.

<sup>114</sup> The PHARE program started in 1989, intending to help Poland and Hungary to reconstruct their economies. It has however been gradually extended, at its height comprising 13 states (Albania, Bosnia-Herzegovina, Bulgaria, the Czech Republic, Estonia, FYROM, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia). For more information see: <http://europa.eu.int/comm/enlargement/pas/phare/index.htm>. The Special Accession Programme for Agriculture and Rural Development (SAPARD) came into effect on the first of January 2000, aiming at helping candidate countries to deal with the problems of the structural adjustment in their agricultural sectors and rural areas, as well as in the implementation of the *acquis communautaire* concerning the CAP (Common Agricultural Policy) and related legislation. For more information see: <http://europa.eu.int/comm/enlargement/pas/sapard.htm>. The Instrument for Structural Policies for Pre-Accession (ISPA) in transport and

the TACIS programme<sup>115</sup> clearly surpasses the declaratory approach it uses in other regions. However, these efforts are not triggered alone by the fear of potential or perceived threats. Other motives stretch from the preparation of new markets for EU products to the genuine wish to bring the countries into their proper place in a veritable European community. The Union's activities on the Balkans, in contrast, are linked to the management and repulse of concrete military threats in a more direct way than in other regions. I therefore focus on these.

The Union has been represented in the region with various delegations and taken on a multitude of functions. The European Union Monitoring Mission (former ECMM) has been present since July 1991 (now closely co-operating with the Alliance and the OSCE in Macedonia) and the EU Administration in Mostar from June 1994 until June 1996. Since June 2001 the Union also conducts the Multinational Advisory Police Element in Albania. Furthermore, the Union has led the IV pillar (Reconstruction and Economic Development) of UNMIK in Kosovo since June 1999 (closely co-operating with the UN and the OSCE) and established headquarters for the European Agency for Reconstruction in Pristina in Kosovo. The Union plays an important role in co-ordinating the EU assistance and reconstruction aid provided by its member states and other countries. By initiating the Stability Pact for South Eastern Europe in June 1999, the Union took a leading role in replacing the international communities previous reactive crisis prevention policy with a comprehensive long-term conflict prevention strategy. Together with the World Bank, the European Commission is co-ordinating the economic assistance measures for the region.

Its main contribution is of financial character. The EU is the largest provider of Official Development Assistance (ODA) in the world.<sup>116</sup> Through its various aid programmes, it has also by far become the largest single financial donor to the western Balkans as a whole. To obtain the figures for the total assistance from the EU area, the national contributions must be added. Altogether, the EU and its member states clearly carry the lion's share of the aid and assistance burden in Southeast Europe. In analogy to the military capability gap between the US and the countries on the European continent, one could speak of an inverse donor gap in terms of financial support to the region. In Bosnia, for instance, the US provided roughly 25 % while the Europeans paid around 50 %. For Kosovo, the U.S. pledged 14 % of the aid while the Europeans contribute 73 %. In Serbia the Europeans covered 80 % versus 18 % from the US.<sup>117</sup> This transatlantic assistance gap cannot only be noted in the whole region, where the EU is the dominant donor, but also on a global level. The US net ODA considerably smaller both in absolute and relative terms. The US proportion ODA/GNI amounted to 0.11 % compared to the EU total of 0.33 % in 2001.<sup>118</sup>

The development of the ESDP display the Union's wish to complement its civilian role with the ability to lead credible and effective military operations. On paper, nothing prevents this. Within the CFSP it has already addressed several military conflicts/threats. In total, 3 Common

environment infrastructure. For more information see: <http://europa.eu.int/comm/enlargement/pas/ispa.htm>. These three financial Twinning, the principal tool of pre-accession assistance for Institution Building, was launched in May 1998. Through the secondment of EU experts, known as Pre-Accession Advisors, It aims to help the candidate countries in their development of modern and efficient administrations, with the structures, human resources and management skills needed to implement the *acquis communautaire* to the same standards as member states. For more information see: <http://europa.eu.int/comm/enlargement/pas/twinning/index.htm>

<sup>115</sup> The Technical Assistance to the Community of Independent States (TACIS) programme was launched by the EC in 1991 to provide grant-financed technical assistance to 13 countries of Eastern Europe and Central Asia. It comprises the countries Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan, mainly aiming at enhancing the transition process in these countries. For more information see: Council Regulation (EC, Euratom) no. 1279/96, (expired on 31 December 1999) and Council Regulation (EC, Euratom) no. 99/2000. See also: [http://europa.eu.int/comm/external\\_relations/ceeca/tacis/index.htm](http://europa.eu.int/comm/external_relations/ceeca/tacis/index.htm)

<sup>116</sup> See European Commission: *The EU and the UN - Overview*, Brussels April 2001.

<sup>117</sup> See White House, *Fact Sheet U.S. and EU Assistance to Southeast Europe*, Washington 14.06.2001.

Strategies, 121 joint Actions and 139 Common Positions have been adopted within the CFSP.<sup>119</sup> However, the member states have only been able to agree on some relative uncontroversial cases and measures. Common positions regarding East Timor, Ruanda/Burundi and Angola, some small-scale WEU operations, including the maritime blockade of Iraq (1990-1) and sanctions against Yugoslavia may serve as examples.<sup>120</sup> One explanation for the inability to make decisions and undertake decisive countermeasures in the form of larger operations could be explained by lacking capabilities and that the ESDP was not yet fully developed. The question is therefore what the European countries are doing to remedy the shortfalls. Are the military capabilities developed in such a way, that the ESDP and the strengthening of the European pillar of the Alliance gain credibility?

### 3.1.2.2 Preparing for the future - matching ambitions with capabilities.

When looking at the political declarations made by the European countries during the last years, one might draw the conclusions that they have learned a lesson from their failure to take full responsibility for and to lead military operations in the Euro-Atlantic area. Although the Europeans have carried their share in terms of deploying forces,<sup>121</sup> the operations on the Balkans have shown that they lack a number of key capabilities, i.e. equipment, which had to be provided by the USA.

As long as the Union and NATO do not have their own procurement budgets, the required acquisitions must be made and financed at the national level. The military deficiencies are therefore not isolated to one of the two organisations, nor can they be remedied alone through new creations or correction at the organisations' institutional level. Hence, the future credibility of the EU and NATO as crisis managers depends on the development of national capabilities.

*What capabilities are needed to assure the credibility?* Whether or not the European forces are credible depends on what performance one expects from them. It is thus advisable to use the declared ambitions as a point of reference in a credibility argument. This seems all the more suitable, as it is difficult to foresee future challenges and the capabilities necessary to handle them. During the last years, three assessments that define an ambition for crisis-management operations and identify capability flaws were made.

The first one was the WEU's Audit of Assets based on five illustrative mission profiles. The most challenging of them being a 'separation of parties by force' scenario with a duration of 12 months, a deployment range of 6000 km from Brussels and a force comprising 2 divisions and equivalent air and maritime components.

The second one was made within the EU, which could define the Helsinki Headline Goal using the insight from the Audit of Assets. Since the EU member states could not agree on any

<sup>118</sup> Source OECD, *Official Development Assistance in 2001*. See also OECD, *A Mixed Picture of Official Development Assistance in 2001*.

<sup>119</sup> 139 Common positions as of 08.10.2001, 121 Joint Actions as of 26.07.2001 and 3 Common Strategies as of 19.06.2001. Source: Academy of European Law European University Institute, Florence: European Foreign Policy Bulletin database. Available at <http://www.ewarc.iue.it/BASIS/efpb/all/rec/SF>

<sup>120</sup> This inefficiency of the CFSP has been object of harsh internal criticism. In a confidential document from December 2000, the high Representative Solana expressed strong criticism against the way the EU foreign policy goals are being formulated. According to this the common strategies had failed to produce a stronger and more effective EU, since they are defined too vaguely. They are barely more than an inventory of existing policies and activities. See Black, Ian, 'Solana slates EU foreign policy', *The Guardian*, 23.01.2001. See also WEU Assembly Document A/1733, article 69-73.

<sup>121</sup> For 1999-2000 EU member states had committed the largest number of military troops in both Kosovo and Bosnia-Herzegovina: 65 % of the 46,000 KFOR troops were from EU member states, with total European (EU and non-EU) troop contributions at 75 % , vs. 15 % for the U.S. 60 % of the 20,000 SFOR troops are from EU member states, vs. 21 % for the U.S. EU contributions to all troops in Kosovo and Bosnia-Herzegovina represented 63 % of the total, vs. 17 % for the U.S. According to an analyst at the Swedish Armed Forces Headquarters, this rela-

scenarios of their own, they adopt the existing WEU scenarios in order to move ahead.<sup>122</sup> The generic forces required were defined and presented in the Helsinki Headline Catalogue (also called the Capability Catalogue) in November 2000.<sup>123</sup>

The third assessment was made within NATO. Following the DCI, the Alliance expressed its ambition in the NATO Ministerial Guidance 2000 (adopted at the Meeting of the North Atlantic Council in Defence Ministers Session held in Brussels on 5 December 2000).<sup>124</sup> Based on this, a Force Structure Review was launched that identifies what capabilities are required to meet the new ambition in the Force Goals 2002. Although neither the Military Guidance 2000 nor the Force Goals 2002 have been made public, there is no doubt, that the ambition of the Alliance by far surpasses the one of the Union's. According to one NATO official, the Military Guidance 2000 envisaged the ability to deploy and sustain three separate Corps-operations during two years, supported by equivalent air and Maritime components.

Although the third one includes the US forces, all three declared ambitions have a less demanding military scope of action than the national ones of the USA.<sup>125</sup> Europeans do therefore not necessarily have to build up an overall capacity comparable in size and effectiveness to the American one to become credible.<sup>126</sup> Nevertheless, they must remedy the military shortfalls identified.

*Halting remedy of identified shortfalls.* All three initiatives identified the same essentially shortfalls. The major remaining gaps between the Force Requirements and the Forces committed to the Helsinki Headline Catalogue by EU countries can serve as example:

Type of asset	Force Requirements	Forces Committed
<b>Army</b>		
Light infantry Brigade	8	5
<b>Maritime</b>		
Strategic Sealift	61	6
<b>Air force</b> (including Maritime Aviation)		
SEAD	60	28
AWACS	12	5
Air/Air refuelling	73	29
Electronic Intelligence	12	10
Strategic Airlift	188	166

Source: Hans-Christian Hagman Swedish MoD

*Figure 3.1-3 Major discrepancy between Force Requirements and EU Forces committed to the Helsinki Headline Catalogue.*

The considerable flaws in the capability of deployment stands in harsh contrast to the declared ambition of a rapid reaction force. Note that 162 of the 166 planes committed, are actually tac-

tion was roughly maintained until 2002. Source: Delegation of the European Commission to the United States, 'The European Union and South Eastern Europe', November 2000. Available at <http://www.eurunion.org/legislat/extrel/formyugo/kosovo/Kosovoppt.ppt>

<sup>122</sup> Hagman, Hans-Christian, 'European Crisis Management and Defence: The search for Capabilities', in IISS, *Adelphi Paper*, no. 353, 2002, p. 46.

<sup>123</sup> There are four different Helsinki catalogues. The first one is the Helsinki Headline Goal Catalogue (HHC), describing the force requirements. The second one is the Helsinki Force Catalogue (HFC), listing the military forces and capabilities that EU states have committed to the Union. The HFC has been complemented with the HFC supplement including the contributions from non-members. The third catalogue is the Helsinki Progress Catalogue (HPC). Set up in June 2001 it aims at identifying the capability shortfalls on an annual basis by comparing the HHC with the HFC. Finally, there is a Military Force Catalogue, listing the forces and capabilities that can be made available before the year of 2003. For a concise summary of the HFC and the HFC 2000 supplement see Assembly of Western European Union Document A/1734 p. 22 and 23.

<sup>124</sup> This document gives guidance on defence planning in general and force planning in particular. Following the Military Guidance 1998 this was the first Military Guidance document based on the Strategic Concept adopted in Washington in 1999. Thus, the first one to include crisis management as one of the fundamental tasks of the Alliance.

<sup>125</sup> The US Joint Vision 2010 set the goal of 'full spectrum dominance'. This was further emphasised in the Joint Vision 2020. See Director for Strategic Plans and Policy, J5; Strategy Division, Joint Vision 2020, Washington DC June 2000. See also Garamone, Jim, 'Joint Vision 2020 Emphasizes Full-spectrum Dominance', American Forces Press Service, Washington, 02.06.2000.

<sup>126</sup> For a study on the estimates of the economic and political costs of such an endeavour see Seidelmann, Reimund, 'Costs, Risks and Benefits of a Global Military Capability for the European Union' in *Defence and Peace Economics*, Vol 8. 1997, pp. 123-143.

tical airlift (C-130/ C-160/ CN-235). Only the four C-17 leased by the United Kingdom are wide-body planes capable of transporting a main battle tank and suitable for long-range strategic airlift.<sup>127</sup> It must also be underlined, that these flaws do not simply reflect a reluctance to contribute forces to the EU, but result from veritable shortages (with the exception of light infantry brigades).<sup>128</sup> The required key capabilities can simply not be made available because there are not enough of them.<sup>129</sup>

Given the lasting shortages in the European states, NATO does not seem to be much more successful either. According to an interim report<sup>130</sup> on the DCI, Allies have little in the way of success to report. The report states that only 14 of the 59 action items listed in DCI are so far in a stage of being "nearly or fully implemented", and that in non-critical areas.<sup>131</sup> As many as 21 of the DCI areas, most of which concern "effective engagement" and "survivability of forces", have not advanced. "Examples include capabilities against weapons of mass destruction; suppression of enemy air defence and support jamming; combat identifications systems; and nuclear, biological and chemical protection and detection means."<sup>132</sup> All in all, the current spending plans of NATO member states will only enable them to meet 35 % of DCI goals, the review states.<sup>133</sup> What are the European Countries doing to match the declared ambition with the required capabilities?

The UK plans to improve its strategic sealift service through a co-operation with a civil company, AWSR Shipping. Six Ro-Ro ships are to be built, crewed and maintained by the contractor over a 25-year period, with the first ships made available in 2004. The Netherlands is considering joining a UK Private Finance Initiative between 2006-09. If this goes ahead, the investment by the Netherlands would be 136 million, either co-finance the project or to increase the number of ships.<sup>134</sup> In addition, the Belgian Ministry of Defence is projecting the Belgian/Luxembourg Transport Ship.<sup>135</sup> It is however only a single LPD-type military ship with amphibious capacity for transporting troops and floating installations, that is capable of helicopter operations.<sup>136</sup> Of the estimated 173.6 million programme, Belgium will pay 75 % of the costs and Luxemburg 25 %.<sup>137</sup> According to the Belgium MoD's website, the projected is planned to be in-service in 2006. However these initiative are far from filling the 61 to 6 gap as set out in the in the Helsinki Progress Catalogue. Concerning the Strategic Airlift, a seven-nation program for 212 A400M transport Aircraft, comprising Belgium (7), France (50), Germany (60)<sup>138</sup>, Italy (16), Luxembourg (1), Portugal (3), Spain (27), Turkey (10), United Kingdom

<sup>127</sup> This was kindly pointed out to me by Hans-Christian Hagman from the Swedish Ministry of Defence.

<sup>128</sup> In fact, the Europeans offered more forces to the Helsinki Force Catalogue at the Capabilities Conference than they had done to NATO non-§5 tasks (which in part correlate with NATO Rapid Reaction Forces). For example, Greece and Belgium provided a whole brigade to the Helsinki Force Catalogue and only one battalion to NATO sustained operations. The Netherlands committed one brigade (EU) versus two battalions (NATO) and both the Netherlands and Belgium offered considerably more ships to the Headline Goal. Great Britain, Germany and Turkey committed more than twice the number of combat aircraft to the EU. Cf. Hagman 2002:22.

<sup>129</sup> That the deployment of 40 000 troops to Kosovo took about five months demonstrates the lacking ability to deploy forces rapidly. Cf. IISS, *The Military Balance 2001-2002*, p. 287.

<sup>130</sup> This report was prepared by NATO military staff as part of a presentation on 26 April 2001 to partner nations.

<sup>131</sup> "These include: resource implications for joint logistical centres; requirements for multinational logistic formations; interoperability through standardisation; strengthening of multinational exercise programmes; concept development and experimentation; NATO policy on training, evaluation and exercises; clearing house mechanisms for multinational formations; exercises for multinational forces to promote command and control procedures and common doctrine; and the need for a Wide-Area Network." Hill, Luke, 'NATO initiative progress lags', in *Jane's Defence Weekly*, 30.05.2001.

<sup>132</sup> See Hill 2001. In these 21 areas, the work either started late, more studies need to be completed before further activities can be launched or, progress depends on procurement of resources not forthcoming.

<sup>133</sup> Cf. 'Armies of Europe Failing to Meet Goals, Sapping NATO', *New York Times*, 07.06.2001.

<sup>134</sup> Janssen, Joris, 'Dutch increase spending to support Europe', in *Jane's Defence Weekly*, 25.07.2001.

<sup>135</sup> Also called Navire de transport stratégique belgo-luxembourgeois (NTBL).

<sup>136</sup> WEU Assembly Document A/1757, *European strategic lift capabilities –reply to the annual report of the Council*, 05.12.2001, point 70.

<sup>137</sup> Toremans, Guy, 'Requirements emerge for Belgian-Luxembourg sealift ship', in *Jane's Defence Weekly*, 05.09.2001.

<sup>138</sup> The original order comprised 73 Aircraft, but Germany reduced it to 60 in March 2003. See <http://www.heute.t-online.de/ZDFheute/artikel/6/0,1367,POL-0-2025734,00.html>.

(25).<sup>139</sup> However, the A400M, carrying a payload of 32 tons, will mainly replace the elder transport aircraft Transall and Hercules (carrying 16 tonnes respectively 22,6 tonnes <sup>140</sup>), and therefore it remains to be seen whether the overall lift capacity will really be boosted. Moreover, the members of the European Air Group (EAG) signed a binding agreement in February 2001 to share each other's airlift and air refuelling assets in order to use the existing assets more efficiently.<sup>141</sup> I have already mentioned the European bi- and multinational satellite initiatives.<sup>142</sup> These capabilities, available at the earliest in 2004, will not even approximately match the American one. They will not increase the overall capability considerably. They will however allow the involved countries to verify or put the information provided by the US to a test. It may also meet the needs of some low level EU operations.<sup>143</sup> In the field of Suppression of Enemy Air Defence (SEAD), AWACS and electronic intelligence the prospect of progress is small.

All things considered, the increase of the overall European crisis management capabilities will be modest in the next years to come. Considering the development of defence expenditure, it seems likely that the European countries will continue to concentrate their efforts on low budget solutions, such as co-ordinating the use of existing assets. This will only result in minor improvements, and leave the 'expensive' capability gaps open. Despite the common goals and although some of the 23 EU and NATO states increased their procurement spending, the overall acquisition expenditure of the member states has decreased every year since 1998.<sup>144</sup> Admittedly, the US boost has broken the trend, but no other European state has followed and undertaken similar dramatic changes in national defence budgets. In addition, a large part of the envisaged investments are in fact reinvestments, since aged equipment will be replaced. Thus, only a limited amount of the already restrained procurement budgets actually results in new additional capabilities. Therefore, the shortfalls listed in the table above will not be corrected during a foreseeable future. In fact, even with budgetary increases it would hardly be possible to sort out these flaws within this period, since the procurement and production of the capabilities would require more time. Thus, the European countries will not make the necessary investments and provide the required capabilities to meet the ambitions they have expressed in the Helsinki Headline Goal. The NATO Ministerial Guidance 2000 cannot be met either, because the resources of the allied non-EU members, including the US, will not be enough to fill the capability gap left open by the allied EU states. Provided the Force requirements are correctly estimated, neither the EU nor the Alliance will be able to handle the most ambitious tasks they set themselves as an objective.

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<sup>139</sup> This decision was taken by the nine participants at the Le Bourget air show in June 2001. WEU Assembly Document A/1757, point 31. At the time of writing Germany evaluated whether or not to decrease its orders from 73 to 60 planes. See 'Weniger Militär-Airbusse für die Bundeswehr', *Der Spiegel*, no. 40, 28.09.2002.

<sup>140</sup> Source *Försvarsmakten, Flygplankort*, Stockholm 1999. This book sets the range of the C-160 Transall at 4 500 km and the one of C-130 Hercules at 3600 km. Other figures are also available. The WEU Assembly document A/1757, for instance, presents the following data: C-160 Transall 16 tonnes/1 800 km, C-130 Hercules 17 tonnes/3 200-5 000 km, and for the A400M 35 tonnes/3 700 km.

<sup>141</sup> The agreement, known as the Air Transport and Air Refuelling Exchange of Services, was signed by the EAG members: Great Britain, France, Belgium, Italy and Spain, Germany and the Netherlands. See Janssen, Joris, 'Extended European Air Group signs to share airlifters, tankers', in *Jane's Defence Weekly*, 14.02.2001.

<sup>142</sup> See page 54.

<sup>143</sup> The enhanced co-operation among the European countries will not change this either, be it the co-operation in European Space Agency (ESA), the French-Italian co-operation (decided in at the French-Italian summit in Turin 29.01.2001) or the French German co-operation (decided in Mainz on 09.06.2001).

See 'France, Germany and Italy set to make space pact'. *Jane's Defence Weekly*, 21.06.2001. See also 'USA: Europas hochfliegende Weltraumpläne mit militärischem Anstrich', *Frankfurter Rundschau* 10.07.2001.

<sup>144</sup> Source: IISS, *Military Balance 2000/2001*, p. 41.

### 3.1.3 Category policy -Program

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity			
	Politics			
	Policy	X		
Conclusion ESDI				

The category policy is concerned with what referent objects are used in the security processes within NATO and the EU. But, how does one investigate what referent objects are used in the organisations security processes? Since a security processes must include countermeasures, it seems natural to begin scrutinising the referent objects used to justify the most obvious countermeasures against military threats – the operations led by the EU and NATO. I therefore begin by asking:

- What referent objects are used to justify operations led by the organisations?

However, military operations are not the only way of counteracting military threats. The enlargement process is also a way to target military threats. Furthermore, the forming of NATO and the EU, or more precisely the decision to manage military threats together with other countries within them, can also be interpreted as a way to counteract both internal and external military threats.

- Why do states want to co-operate in the military sphere? What are the motives behind the development of the ESDI in the Alliance and the ESDP in the Union? Why are the reorganisation and the "Europeanisation" of the security structures deemed to be necessary and what reasons/referent objects are used when justifying this?

Since the referent object and the uniformity is not always clearly outspoken, one should also scrutinise if the different policies offer a basis for a common security process. To this end, I ask two additional questions. The first is concerned with the relationship between the two organisations and a possible merger of their security processes.

- With whom do the member states want to co-operate? Why do the security processes of the EU and NATO remain separated? Why do they not grow together?

The second question addresses the policy of the voluntary non-members.

- To what extent do they want to co-operate? Do national membership-policies comply with an ESDI? Does 'ad hoc neutrality' comply with an ESDI?

#### 3.1.3.1 The referent objects used in the military security process.

It can be expected that the EU and/or NATO justify the production of security with reference to the defence of specific norms and values or to the organisation's own survival. The identifica-



tion of the referent objects currently used when undertaking actions to counteract military threats might indicate what the common setting and thus the ESDI consists of.

*Crisis management operations – no self defence but defending 'universal' values.* Military operations out of area (OOA) could be linked to the credibility, the *raison d'être* and thus, the survival of the organisations themselves. However, the organisations' own survival has only been used as a referent object in internal debates, and in the academic discussions. It has not explicitly been presented as such in official documents.

In general, NATO and the EU do not justify their engagement in crisis areas to the public by outlining European referent objects, but rather by referring to a legal basis. Normally, the aim of the action is only outspoken in the mandate under which the personal in the field acts. However, the mandate merely outlines their authority and operative task in the crisis area, not what values they are to protect. So far, operations have not been justified with reference to the security of the member states or said to be defending some kind of specific EU or NATO standards. Of course, the threat is being securitized and discussed among the member states within the organisation before an operation is launched. But, defining and outlining some kind of specific European referent object does not seem to be necessary in these talks. Considering that a national stance towards a crisis is not determined and a condemnation of a possible aggressor not always made with reference to national referent objects either, this is not so surprising. Just as single states, the organisations can perceive an event as a crisis, define atrocities and call for action with reference to general norms such as democracy, human rights and the rule of law. In concentrated form, the logic presented to the public reads as follows: there is a crisis in our vicinity where the values we stand for are violated.<sup>145</sup> Thus, we have to act, and we can do so on the legal basis of this specific UNSC resolution, memorandum of understanding or some other form of agreement with the local authorities.<sup>146</sup>

On the whole, it is remarkable how rarely European referent objects are specifically mentioned, even if considering the political tactfulness of avoiding definitions of the organisations shared setting. The occasions where the organisations have expressed their concern for the crisis on the Balkans with reference to their own security certainly are rare. Only two WEU ministerials point out the conflict in the former Yugoslavia as a threat to European security and/or underline the risk of spill over effects and the spreading of the crisis.<sup>147</sup> The NAC declared its concern over the grave consequences that a spill over of the conflict would have, in one single document.<sup>148</sup> The Council of the European Union has not done so even once. Considering how often the expression "European Security" is used in Ministerial documents, it is surprising that NATO and the EU have not even presented the most general form of a European referent object –the European security- as referent object, whereas the WEU at least achieved to do so twice.<sup>149</sup> In no NATO or EU ministerial have their operations been set in direct relation to, or said to aim at contributing to, the European security. At the most the NAC presented them as a contribution to the stability

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<sup>145</sup> NATO and the EU have condemned the violation of these standards in almost all their declarations concerned with the former Yugoslavia. See for instance NAC *Statement on Kosovo*, Washington D.C. 23/24.04.1999; and Berlin European Council, *Presidency Conclusions*, 24/25.03.1999, Statements on Kosovo.

<sup>146</sup> See annex for an overview over the legal basis for EU/WEU and NATO operations.

<sup>147</sup> C.f. WEU Council of Ministers, *Common Reflection on the new European security conditions*, Lisbon 15.05.1995, article I.8.5 and II.3.8.; Extraordinary Council of Ministers, *European Security : a Common Concept of the 27 WEU Countries*, Madrid 14.11.1995 article 13 and 99.

<sup>148</sup> NAC, *Final Communiqué*, Athens 10.06.1993, article 1 and 2.

<sup>149</sup> WEU Council of Ministers, *Lisbon Declaration*, Lisbon 15.05.1995, article 13; WEU Council of Ministers, *Madrid Declaration*, Madrid 14.11.1995, article 6.

and security of the region.<sup>150</sup> The closest one gets to an official document from the European Council, where the humanitarian, peacekeeping and other crisis management operations are presented as a contribution to European security is the Reflection Group's Report from Messina, which was not drawn up by the Council itself.<sup>151</sup> References to the overall European security and stability are not even made in the broadest of all initiatives, the Stability Pact for South Eastern Europe. In its founding document, signed in Cologne 10 June 1999, the described aim is "...strengthening countries in South Eastern Europe in their efforts to foster peace, democracy, respect for human rights and economic prosperity, in order to achieve stability in the whole region".<sup>152</sup> If adding the explanations and declarations of national governments it becomes evident, that the engagement of the organisations and the single countries on the Balkans, is presented to be driven by humanitarian considerations, with the aim to end the atrocities and to promote stability and security in the region, period. The operations are not presented as a way to promote the own security, but only to defend and export certain values.<sup>153</sup>

Since the organisations' justifications and explanations do not contain any declarations using specific European referent objects, one can draw the conclusion that the violation of the general standards was quite enough to mobilise support and to launch the operations. Moreover, the same general or 'universal' values have been used in the security processes of both organisations. Consequently, the same uniformity has been defined in both of them. This uniformity is by no means exclusive. With a UN mandate, the two organisations have acted with the support of a much broader basis than their own member states. This does not preclude that the member states share a more detailed common identity and referent object. But, there was obviously no need to make further specifications and to define the uniformity in more detail.

*Enlargement.* In contrast, the Enlargement processes of both the EU and NATO have (amongst other things) been presented as vital moves for the security and stability in Europe as a whole. Ever since the 1993 Copenhagen European Council, the Union has underlined the security dimension of the enlargement, claiming that peace and security in Europe depend on the success of applicant countries' reform process.<sup>154</sup> The Alliance has stated that it will continue to welcome new members in a position to contribute to security in the Euro-Atlantic area.<sup>155</sup> The arguments of single member states follow the same lines.<sup>156</sup> In contrast to the military operations OOA, the enlargement process presents itself with a double purpose. It is an important step in exporting, defending and cementing the general values mentioned above, all of which are included in the organisations' treaties and rules. In addition, it is also presented as a way to enhance the organisations' and their member states' security. However, the referent objects for the latter have not been clarified. In other words, the uniformity has not been specified. Consequently, the general or 'universal' values as outlined in the official documents of the organisa-

<sup>150</sup> C.f. NAC, *Final Communiqué*, Brussels 05.12.2000, article 2.

<sup>151</sup> European Council, *Reflection Group's Report, Messina 02.06.1995*, Brussels 05.12.1995, article 168.

<sup>152</sup> *Stability Pact for South Eastern Europe*, Cologne 10.06.1999, III Objectives.

<sup>153</sup> C.f. Blair, Tony (British Prime Minister), 'Our responsibilities do not end at the English Channel', in *The Independent on Sunday*, 14.02.1999. See also *Rede des Verteidigungsministers Volker Rühe (1992 – 1998) anlässlich der Debatte im Deutschen Bundestag zum Einsatz der Bundeswehr im Rahmen der militärischen Absicherung des Friedens im früheren Jugoslawien*, 30.11.1995.

<sup>154</sup> C.f. Copenhagen European Council, *Presidency Conclusion*, 21/22.06.1993, article 7; Essen European Council, *Presidency Conclusion*, 9/10.12.1994, Relations with the countries of Central and Eastern Europe; Madrid European Council, *Presidency Conclusions*, 15/16.12.1995, III. A; Helsinki European Council, *Presidency Conclusion*, 10/11.12.1999, article 10.

<sup>155</sup> C.f. NAC, *Declaration of the Heads of State and Government*, Brussels 10/11.01.1994, article 1.

NAC, *Madrid Declaration on Euro-Atlantic Security and Cooperation*, Madrid 08.07.1997, article 8.

NAC, *Washington Summit Communiqué. An Alliance for the 21st Century*, Washington D.C. 24.04.1999, article 7.

<sup>156</sup> C.f. Parlement Européen Groupe de travail 'Élargissement', *Livre Blanc sur l'Élargissement de l'Union Européenne*. Volume II. Rapport sur les positions des États membres et des États candidats sur l'Élargissement de l'Union Européenne. Luxembourg 1999. Updates presented at: [http://www.europarl.eu.int/enlargement/members/default\\_en.htm](http://www.europarl.eu.int/enlargement/members/default_en.htm)

tions remain the only declared common referent objects. They also constitute the only uniformity that has been defined.

### 3.1.3.2 Why are military threats on the European agenda?

When scrutinising the motives behind the European coordination of national countermeasures against military threats one must make a clear separation. On the one hand, one has the creation of collective defence organisations at the beginning of the East-West conflict, such as NATO and the WEU. On the other, one has the 'Europeanisation' of the Alliance and the introduction of military elements into the EU at the end of the East-West conflict. I will return to this duality and outline the difference between the two from an ESDI perspective later when addressing the non-members' policies. At this point, I concentrate on the 'Europeanisation' of the last decade. Why has it taken place? Several arguments/incitements are used to explain the need for, respectively the advantages of, the development of the ESDP and the "ESDI within the Alliance".<sup>157</sup>

First, the threat perception has changed in the post-Cold War era. Military conflicts and organised ethnical cleansing came back on the European agenda. Basically, all European actors have an interest in stopping the crisis on the Balkans, hindering it from escalating and spreading, and preventing similar developments to evolve elsewhere. Hence, the demand for preventive actions and crisis management capabilities accelerated. Since no country disposes of the necessary resources alone, this challenge can only be solved multilaterally. Therefore, there is a general consensus concerning the need for an enhanced multinational co-operation and a coherent European security and defence policy.<sup>158</sup>

Second, the co-operation and co-ordination of national foreign and security policies are seen as a goal in themselves. The success of NATO and the EU has proven that inclusiveness is the most successful strategy to counteract a re-nationalisation.<sup>159</sup> As shown above, this is one of the arguments used to justify the enlargement process. Even if a-security has not been reached among all NATO members, i.e. between Greece and Turkey, consultations and the exchange of views among the members within the organisations, as well as with non-members, is seen as the most efficient way to clear up misunderstandings and to prevent armed conflicts. The institutional frameworks of the two organisations are particularly suited for this, as they guarantees a continuity that allows dialogues before conflicts evolve and in harsh times when they are needed the most. An institutionalised exchange is likely to support the confidence building, the development of shared behavioural codices and the establishment of a common approach to security. Those organisations that have succeeded in creating stability towards the inside have a special responsibility to project this stability towards the outside. Thus, to prevent a re-nationalisation the successful European security co-operation had to be further developed and deepened as well as opened in order to assure that the Central and Eastern European Countries become solidly integrated into the European security structures.

Third, an intensified Europeanisation is needed in order to cope with the asymmetry in the transatlantic relationship. In the military sphere all countries have limited capabilities to conduct crisis management operations, but the main share of shortfalls is found on the European side of

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<sup>157</sup> The arguments presented are those used by EU- and NATO-officials, as well as by national representatives in Brussels, when answering my questions.

<sup>158</sup> Even if not presented in this exact way in ministerial declarations, this argument seems to be commonly accepted in the political establishment. Most persons interviewed have used this argument themselves and no one has opposed to it.

the Atlantic. Although Lord Robertson's statement that the European members of NATO spend almost two-thirds of the United States' defence budget – while having nothing like two-thirds of the real capability of the US,<sup>160</sup> must be put into perspective, it gives a hint about the disproportional burden-sharing. Therefore, it is foremost up to the Europeans to increase their military crisis management capabilities and thereby to enlarge their contribution to European security and to take more responsibility. This is needed to ensure the credibility of NATO and the EU, as well as to assure the US commitment in Europe. American resentments about burden sharing can only be avoided if the United States does not always have to carry the lion's share and foot by far the biggest bill for military operations in Europe.<sup>161</sup> In addition Europe has to increase its capabilities in order to remain an interesting strategic partner to Washington.<sup>162</sup>

These three general and consensual reasons indicate that the European countries have identified and perceive that they are confronted with the same external military threats. They also seem convinced that these can only be managed collectively. Thus, they share the responsibility to counteract them and to project stability into their vicinity. Nevertheless, more specific arguments that reveal differences are also used. Here the opinions of allied non-EU members, foremost the USA and Turkey, differ from the ones of the EU-members'. Whereas Washington and Turkey have argued that the Alliance should be the focal point for the 'Europeanisation' of defence policies, the EU has decided to develop the ESDP.

*Why ESDI within the Alliance? The view of allied non-EU members.* The US has urged the Europeans to increase their contribution to the responsibility they share. First and foremost by enhancing the military European capabilities for crisis management.<sup>163</sup> In qualitative terms, because the technical gap between European and US forces threatens the interoperability. Already today, the American forces cannot fully utilise the capacity of their high-tech equipment when interacting with European forces. In quantitative terms, because this might relieve the US from engaging in all European crisis. This would allow Washington to concentrate on its commitments and interests elsewhere in the world.<sup>164</sup>

Of course, the US and other allied non-EU countries, especially Turkey, which cannot rely on joining the EU in foreseeable future, want the European Allies to take on more responsibility and to increase their capabilities within the framework of NATO. Their reasons for preferring a strengthening of the 'European pillar' of the Alliance are obvious. As NATO-members they can influence a process within the Alliance directly, but not the one in the EU. In addition they fear

<sup>159</sup> C.f. Cutileiro, José (WEU Secretary General), speech at the WEU Colloquium 'European Defence and Security Identity'. Madrid 06.05.1998.

<sup>160</sup> See Lord Robertson (NATO Secretary General) in front of the NATO Parliamentary Assembly in Amsterdam, 15.11.1999.

<sup>161</sup> See Talbott, Strobe (Deputy secretary of State), *America's Stake in a Strong Europe*, Remarks at a Conference on the Future of NATO, The Royal Institute of International Affairs, London 07.10.1999.

See also Lord Robertson (NATO Secretary General), *ESDI and Transatlantic Defence Co-operation*, Speech at the Conference on "The Globalisation of Defence Industry: Policy Implications for NATO and ESDI" at Chatham House, London 29.01.2001.

<sup>162</sup> "Only a stronger Europe will help ensure the continued US commitment to European security. Only a stronger Europe can become the strategic partner North America seeks for managing global security challenges.(...) A European Security and Defence Identity within the Alliance is a prerequisite for the future of a vibrant NATO, a NATO for the 21st century. Europe and North America, together, are a formidable combination. NATO reflects their combined operational and political potential. This potential can only be enhanced by a Europe able to play a greater political and operational part in facing challenges of ensuring peace and stability in the new security environment." Dr. Javier Solana (NATO Secretary General), *A European Security and Defence Identity within NATO*, speech at the WEU Colloquium 'European Defence and Security Identity'. Madrid 06.05.1998.

<sup>163</sup> "Our interest is clear: we want a Europe that can act. we want a Europe with modern, flexible military forces that are capable of putting out fires in Europe's backyard and working with us through the Alliance to defend our common interests." Secretary Albright quoted by Wayne, E. Anthony (U.S. principal deputy assistant secretary of state for European Affairs), *The European Union: U.S. perspectives*, Remarks at the industrial College at fort McNair, 08.11.1999.

<sup>164</sup> See Talbott, Strobe (Deputy secretary of State), Speech 1999a. In this speech he also said: "It's in our interest for Europe to be able to deal effectively with challenges to European security well before they reach the threshold of triggering U.S. combat involvement." At a later occasion he made an even clearer statement: "There should be no confusion about America's position on the need for a stronger Europe. we are not against; we are not ambivalent; we are not anxious; we are for it. we want to see a Europe that can act effectively through the Alliance or, if NATO is not engaged, on its own. Period, end of debate." See Talbott, Strobe (Deputy secretary of State), *The state of the Alliance: an American perspective*, speech held at the North Atlantic Council in Brussels 15.12.1999.

that the ESDP might weaken the commitment to NATO and thus, the Alliance altogether. They are therefore alarmed by all attempts to move security policy out of NATO and into the EU.<sup>165</sup> If the EU builds up an own veritable military capacity, then the complete security process can be conducted within the Union. In the long run, two parallel security processes may result in two separated ESDIs. A senior official from the State Department made this fear clear by pointing out that the US is interested in burden-sharing but not in a division of labour in the Euro-Atlantic area because the latter might lead to a division of perception. In the worst case, the EU could come to one result and NATO to another, or non at all if a transatlantic consensus cannot be reached. This would make tensions inevitable. Moreover, if the EU-members would decide to act within the framework of the Union when the result in NATO does not suit them quite as well, the two organisations would present themselves as competitors. In the worst case the Alliance could be degraded to a coalition of the willing on EU terms, and the non-EU-Allies become second-rate members in the Alliance. This would jeopardise the bond within the Alliance, its SDI and the US commitment in Europe altogether. To avoid this situation, the former secretary of state, Albright, summarised the pro-NATO arguments with her 3 D's:<sup>166</sup>

No decoupling: As all countries, Washington wants to participate in the discussions about the necessity and purpose of a CM operation, before deciding if it wants to participate in it and defining who is best placed to take the lead if military action is necessary. An exclusive discussion among the EU-members in order to finalise EU positions before discussing security in the transatlantic context, would seed a potential for disagreements and conflicts into the transatlantic link.<sup>167</sup> In principal this is not different than the inclusiveness argument described earlier.

No duplication really means avoiding duplicating the things that have been built up in NATO at great cost (such as military command structures and large planning staffs) and that would not result in an increase of the needed capabilities if being copied. In the long term duplication will not only lead to a competition between EU and NATO (can you really have two common defences?).<sup>168</sup> Duplication is also undesirable in terms of cost-efficiency. New institutions cost money, which is not invested in more capabilities.

No discrimination is the logical consequence as well as a prerequisite of the other two D's. If NATO's command structure remains unduplicated, CM operations under the Union's lead would have to fall back on NATO assets and capabilities. These would however only be released for EU-operations, if the non-EU Allies are satisfied with the detailed arrangements for their involvement. Otherwise countries such as Turkey might block the "assured access" and thereby jeopardise the basis for the other two D's. Turning the argument around, if the EU craves the capacity for autonomous actions, it must duplicate NATO assets and capabilities if the access is not assured. Frequently the no discrimination is also explained with reference to the Article 5 commitments. It cannot be that allied countries are not involved in EU operations of low intensity, while having the responsibility to help the allied EU-members, should the crisis escalate to

<sup>165</sup> For a detailed survey of the American hopes and concerns regarding the ESDP see: Stanley R. Sloan, 'The United States and European Defence', Institute for Security Studies of WEU [Now European Union Institute for Security Studies], *Chaillot paper*, no. 39, April 2000.

<sup>166</sup> See Albright, Madeleine K. (US Secretary of State), 'The Right Balance Will Secure NATO's Future', in *Financial Times*, 07.12.1998.

<sup>167</sup> See address by Mr Gordon, Philip (Assistant Under-Secretary and Director for European Affairs, National Security Council, Washington) at the WEU Parliamentary Assembly Document (45) CR 2, Forty-Fifth Ordinary Session, *Official Report of the Second Sitting*, 15.06.1999.

<sup>168</sup> According to Richard Tyler, Strobe Talbott said of the European Security and Defence Identity (ESDI): "We would not want to see an ESDI that comes into being first within NATO but then grows out of NATO and finally grows away from NATO, since that would lead to an ESDI that initially duplicates NATO but that could eventually compete with NATO. That's a long-term concern, obviously, but NATO, after all, is about the long term, and so is this conference" (emphasis in the original). Quoted by Tyler, Richard, *US State Department warns against European military independence from NATO*, 12.10.1999.

an Article 5 operation.<sup>169</sup> Ankara has also pointed out that 13 of 16 probable conflict- and crisis scenarios are located in Turkey's neighbourhood and that an intervention is likely to have considerable consequences for the country, be it in form of refugees or economic effects. Therefore, Ankara must be fully involved in the decision-making. Another worry is that the EU could be influenced by Greek preferences and start interventions that could contradict Turkish interests.<sup>170</sup>

Developing an ESDI within the Alliance only, would mean that the Europeans had to make larger contributions, and in consequence take more responsibility and gain influence within the Alliance. In terms of ESDI the most important consequence of this development would be that military threats would be managed in a single European security process. Nevertheless, the militarisation of the EU has brought the opposite about. A parallel security process has been established. It is obvious that the pro-NATO stance comes close to a subordination of the EU to the Alliance in security matters. Therefore, it is not surprising that the Council of the EU had a different point of view. Interesting is that the driving force behind the development of the ESDP steams from the allied EU-members, already involved in the collective security process of the Alliance.

*Why ESDP within the EU?* The first argument for the development of the ESDP within the EU is that it is a *natural step* in the evolution of the European Union, following Schengen, the European Monetary Union (EMU) and the CFSP. Whereas the European Union disposes of respectable funds and much diplomacy, the CFSP lacked the third instrument normally used in international politics to apply pressure within the military context - soldiers. To meet the external challenges posed by armed conflicts efficiently, the EU has to be able to back up its diplomacy with a credible threat of military action.<sup>171</sup> With a complete range of instruments for crisis management, it is argued, the EU will be given a unique opportunity to prevent and deal with crisis that goes far beyond the abilities of the Alliance. Usually this is backed up with the argument that the European Union has to shoulder the responsibilities conferred on it by its economic weight, political role and historic destiny. In addition, the European public does not understand, nor accept, that Europe is incapable of managing crisis in our vicinity like the one on the Balkans.<sup>172</sup> In addition, third parties expect the EU to get involved in foreign affairs. As an economic giant the EU can become one of the few protagonists on the international arena that can put other actors under considerable pressure.<sup>173</sup> Having the means to exercise influence is accompanied with the responsibility to do so and to make use of the instruments. Since military elements are involved in the crisis being securitized in the EU, the Union must also take these into account in its considerations. Military and civil elements cannot be treated in isolation from each other. Therefore, the Union must eventually also require military elements. Making the

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<sup>169</sup> We also believe that those Allies who, like us, are not members of the EU but who, unlike us, live on this side of the Atlantic deserve special status in the EU's security and defense deliberations. Why? For three reasons: first, because of their Article 5 commitment in the event that a crisis should escalate; second, because of their readiness to contribute NATO and national assets to EU-led operations; and third, because they are both willing and able to contribute to European security in their own right." Talbot, Strobe (Deputy secretary of State), speech 1999b.

<sup>170</sup> See Bacía, Horst, 'Ankara will mitwirken – nicht nur gehört werden', *Frankfurter Allgemeine Zeitung*, 29.05.2001.

<sup>171</sup> Blair said that events in Kosovo clearly demonstrated that the EU had to be able to back up its diplomacy with a credible threat of military action. AFP 25.10.1998. Frederic II of Prussia once said: "Diplomacy without weapons is like an orchestra without instruments." Quoted by General Klaus Naumann Chairman of the Military Committee, *NATO—A Military Perspective*, address to the XVth International NATO Workshop, Vienna, 20.06.1998.

<sup>172</sup> de Decker, Armand (Chairman of the Defence Committee of the WEU Assembly), *Summing-up the WEU Colloquium 'European Defence and Security Identity'*, Madrid 06.05.1998.

<sup>173</sup> See for instance 'Peres fordert eine aktivere Rolle Europas beim Friedensprozess im Nahen Osten', *Frankfurter Allgemeine Zeitung*, 10.05.2001; and Lerch, Günter, 'Stärkeres Engagement der Europäer im Nahost-Konflikt gefordert', in *Frankfurter Allgemeine Zeitung*, 28.05.2001.

whole range of complementary diplomatic, economic and military crisis management instruments available to the EU is thus, simultaneously used as efficiency and responsibility argument.<sup>174</sup>

Here the American logic presented above is turned around. Since the allied non-EU-members would never agree to a subordination of NATO to the EU and let the Alliance take over the role and function as the military arm of a self-responsible EU, the ESDP must be developed. Thus, the second argument often used is that the EU *has to* develop the ESDP. Moreover, the global scope of the USA foreign and security policy prompted the European countries to develop the ability to act autonomously in order to be on the safe side. The Europeans cannot rely on the Americans to take the main responsibility for the European security.<sup>175</sup> Be it that the transatlantic partners do not want to become directly involved and to intervene in every regional crisis on the European continent, or that their troops are engaged elsewhere so that they cannot get involved.<sup>176</sup> This is actually a diplomatic way of saying that US and European interests and priorities are likely to differ at times. However, that the Americans and Europeans engage to varying degrees in a crisis operations and that they attach varying importance to specific military threats, would not hinder the European Allies from developing and strengthening their capabilities within the framework of the Alliance. Unless, the EU-Allies suspect that their interests may contradict American ones, and that the USA (and other allied non-EU countries) might hinder them to look after their interests in the way they desire, they could continue to develop their ability to act without military support from Washington within NATO. This leads to the next argument.

The third and final argument is that EU countries *want to* develop the ESDP in order to counterbalance Washington. The operations on the Balkans have revealed the Europeans' dependence of the US and the American dominance. Washington has successfully dictated the terms of some of the most important security policies over the past decade (NATO enlargement; Dayton; Balkan peacekeeping; relations with Russia). What the US sees as 'leadership,' is often seen as 'unilateralism' in Europe. This is also valid in a wider context. Some examples of US unilateralism criticised by Europeans are: Helms-Burton, ILSA, Kyoto, landmines, UN dues, Iraq, CTBT, IMF chief, Echelon, National Missile Defence, the International Criminal Court and captives held in Guantanamo Bay on Cuba. The two latter in particular have feed the perception in Europe that the United States expects others to submit to rules that shall not apply to America. It seems as if Washington thinks it can have its way on all issues in a unipolar world. This is not a new impression generated by the events in Iraq. After a first peek was reached in Kosovo, many Europeans seem determined never again to feel quite so dominated by the US.<sup>177</sup> Despite of all the diplomatic formulas, such as "without unnecessary duplication" and "mutual reinforcement", it is obvious that EU-countries want to obtain the ability of acting without the US and to make the EU an alternative to the Alliance in the area of crisis management.<sup>178</sup> This is

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<sup>174</sup> See for instance the French Prime Minister Lionel Jospin at the 53th session of the Higher Institute for National Defence Studies (IHEDN).

<sup>175</sup> "We Europeans should not expect the United States to have to play a part in every disorder in our own back yard." Blair, Tony (British Prime Minister), *NATO, Europe, and our future security*, speech held at the NATO 50th Anniversary conference, Royal United Services Institute, London, 08.03.1999.

<sup>176</sup> The Byrd-Warner amendment (threatening to pull US troops out of Kosovo if Europeans do not do their share) and statements by US politicians such as Kay Bailey Hutchison of Texas, suggesting that Europeans should do European peacekeeping so that the US can focus on the wider world (where Europeans don't help the US) underline the substance behind these European worries. Here we could also remind of the Mansfield amendment, proposing to pull out US troops from Europe. See Lindley-French, Julian (ed.), 'European defense - European and American perceptions', in Institute for Security Studies of WEU [Now European Union Institute for Security Studies], *Occasional paper*, issue 17, July 2000.

<sup>177</sup> See Talbott, Strobe (Deputy secretary of State), speech 1999a

<sup>178</sup> A fourth argument sometimes used is that the repeal of the restraints earlier laid upon the German security policy also opened new perspectives for the EU. See also Ischinger, Wolfgang, 'Die Gemeinsame Außen- und Sicherheitspolitik nach Amsterdam - Praxis und Perspektiven', *Zeitschrift für Außen- und Sicherheitspolitik*, C14, 1998. p. 6.

often subsumed in diplomatic formulations such as making "Europe able to shoulder more responsibilities in a fairer and more equitable transatlantic partnership".<sup>179</sup> Due to its 'militarisation', the instrumental catalogue of the EU now corresponds to the one of a state, including the USA. By pooling national and collective assets, the European Union does not only have the perspective of being able to manage crises. With its common foreign and security policy, supported by credible military capabilities, the EU can also be put in the same power-category as the USA, or at least approximate to it. Moreover, it can be argued that the development of the ESDP will enhance the European integration-process and uphold its momentum, improve the coherence of the CFSP, meet the new challenges in the European area and increase the Unions influence and power.

### 3.1.3.3 Why do the security processes of NATO and EU remain separated?

It is obvious that no one is interested in letting the EU and the Alliance become direct rivals. That situation is unlikely to become true. Both organisations and all countries involved have been keen on linking the security processes of the two organisations.<sup>180</sup> In fact, it would be difficult to isolate the security processes of the two organisations from each other. The same threats/crisis in the Euro-Atlantic area are on the agenda of both organisations. In addition, the same countries constitute the majority of participants in both organisations. The two organisations also complement each other. While the Alliance alone disposes of the necessary military assets for leading CM operations the EU is equipped with civilian instruments.<sup>181</sup> As both organisations draw upon the same national European forces for their respective operations, they are obliged to coordinate their efforts. Obviously, parts of both organisations' security context seem to overlap in the sphere of military threats.

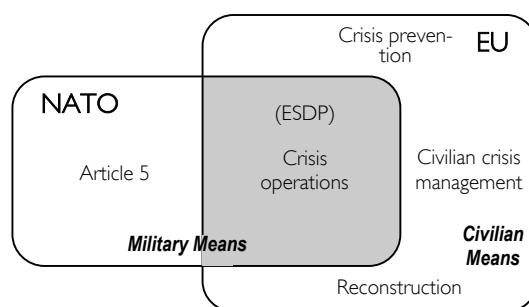


Figure 3.1-4 Activities in the military context.

Thus, one could expect the two processes to be integrated, at least in the context of military crisis management. Since neither the EU nor the Alliance is willing to include non-members in their proper decision-making,<sup>182</sup> a harmonised membership constellation appears to be a prerequisite for a merger of the two organisations' processes. It is important to remember that all EU-members have the option to become NATO-members, but all allies cannot join the EU even if

<sup>179</sup> See address by NATO Secretary General, Lord Robertson at WEU Ministerial Luxembourg, 23.11.1999. . Robertson has also stated that: "Europe needs to develop the capacity to take action where NATO as a whole is not involved, so that the Alliance is not dragged into conflicts simply because Europe has no capacity to handle them on its own. The 'NATO or nothing' option is no longer sustainable." Lord Robertson (NATO Secretary General) Speech 2001a.

<sup>180</sup> As shown in the section on polity, the two organisations have even gone further and established means to involve eastern European countries into parts of their security processes.

<sup>181</sup> Cf. The EU Presidency and the NATO Secretary General, *Joint Press Statement on the Western Balkans*, Released after the first formal NATO-EU Ministerial Meeting in Budapest, Hungary. 30.05.2001. NATO Press Release (2001)080.

<sup>182</sup> This does not hinder them from making the organisations activities dependent of a mandate from the UN or OSCE. It only means that non-members cannot prescribe them to do so.



they wish. This is not only valid for Turkey that does not fulfil the Copenhagen criteria. It is also difficult to imagine that the Union would accept a US or Canadian membership. This alone makes an integration of NATO into the EU impossible. A merger of the two security processes is therefore only possible if the ESDP is integrated into NATO. Therefore, the non-aligned EU-members have a key position. If they joined NATO, the two security processes could be consolidated. This would not automatically dissolve the differences between Europeans and Americans, but it would do away with one hinder to the inclusion of the ESDP into the Alliance. At first glance, it also appears to be possible since the formulas presented in the Alliance allow such a merger. The ideas labelled "separable but not separate capabilities" and "the strengthening of the European pillar within the Alliance" might not aim at such a solution, but they make it conceivable that EU-states could form a core or, if one prefers, a sub-EU-SDI within the larger NATO-SDI. But, as the examination of the polity displayed the two processes remain separated. Several reasons hinder an integration of the ESDP into the Alliance.<sup>183</sup>

First, there is a resistance from the side of the Alliance. It is obvious that allied non-EU members want to avoid a situation where the EU-members co-ordinate their position in advance and act as a joint block within the Alliance. Such a development would degrade the security process of the Alliance since it would have to succeed the one held in the EU, from which the allied non-EU members are excluded. Furthermore, some allied EU-members also oppose to this structure. Not only, because such a two-piece security process would be more time consuming. Since allied EU countries are not always of the same opinion, sometimes some of them may prefer to align with the position of the US or other non-EU allies, rather than with the majority of the EU-members. These countries prefer the EU to be more of an institutionalised coalition of the willing, an alternative to the Alliance in case the European interests differ from the American ones.

There is also resistance from the EU. Apart from the motives behind the development of the ESDP presented in the preceding section, one can also speculate about the different ways security is thought in the two organisations and on the two sides of the Atlantic. While NATO tends to treat military threats as a more or less isolated military phenomenon, the Union takes a much wider approach. One reason for this can be found in the asymmetry of the two organisations' field of activity as presented in the figure above. The Alliance is not involved in the civilian crisis prevention and in the reconstruction in the same way as the EU is. Given the origin of the two organisations, this is not surprising. NATO was founded to counteract the perceived military threat from the Soviet Union, and this in a time when the military security dimension overshadowed all other security interests. The EC in contrast, started as a civilian organisation aiming at preventing military threats from occurring among the participants. Another reason for this divergence can be found in the transatlantic capability gap. Since the Europeans do not have the ability to enforce their interests with military force around the globe to the same extent as the Americans can, they have no option than to produce security with different instruments. Consequently, the European understanding of how security is to be produced may diverge from the American one. Therefore, the Europeans want to be able to launch an own security process.

The third reason returns to the asymmetric membership. As long as the non-allied EU states remain outside of the Alliance, they will oppose to an integration of the ESDP into the Alliance

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<sup>183</sup> When analysing why the Europeans maintain two parallel collective security processes within the same context, it can be difficult to determine what is a cause and what is an effect of the separation. The arguments presented might therefore also be interpreted as indicators of diverging SDIs.

(unless France or some other allied EU country is faster). Turning the argument around, one may claim that their voluntary non-membership in the Alliance is a main obstacle to the merger. Why do these countries reject the mutual defence guarantees that a membership implies? How does the refusal to give mutual defence guarantees influence the notion of an ESDI? Can a convincing distinction between crisis management and Article 5 operations be made?

#### 3.1.3.4 Do the national membership-policies comply with an ESDI?

Member states of both organisations carry the responsibility for the variable geometry. Iceland and Norway can, but refrain from joining the EU, and the four non-aligned EU countries Finland, Sweden, Austria and Ireland can, but refrain from joining the Alliance. The two Allies' unwillingness to join the Union has fairly little to do with military threats and defence considerations. The management of military threats only constitutes a small proportion of the Union's activities. The voluntary non-membership can therefore not be interpreted as a rejection of the ESDP. On the contrary, Norway has declared its willingness to contribute forces to the Helsinki Headline Goal. An examination of Norway's and Iceland's refusal to join the EU would therefore not be very informative regarding the ESDI. In contrast, the refusal of some EU members to join NATO can be explained almost exclusively with security relevant considerations. Their rejection of Article 5 commitments seems to conflict with the idea of a shared ESDI. Therefore, this section focuses on the non-alignment policies of these EU-members.

#### *DOES 'AD HOC NEUTRALITY' COMPLY WITH AN ESDI?*<sup>184</sup>

The non-alignment of Finland, Sweden, Austria and Ireland has been a source of concern for some, be it that they are 'free riders' profiting from the security projected by the Allies or that their stance in the defence policy hinders the evolution of the CFSP.<sup>185</sup> The label 'non-aligned' clearly implies maintaining a distance from others and a reservation as to the degree to which the countries are committed to joint demarches in the field of security.<sup>186</sup> However, through their contributions to crisis management operations, these non-allied countries have shown that they are reliable partners, and willing to participate in the collective production of security, even if this includes the use of military force. This raises two questions. Are these four countries only formally or also de facto non-allied? How does that influence the Union's ESDI compared to NATO's?

*De facto or formal non-alignment?* The non-alignment of the four countries consists of two elements. They reject formally agreed mutual defence guarantees, and they deny any foreign

<sup>184</sup> See the Annex for a brief overview of the concept of neutrality.

<sup>185</sup> See, e.g., the Commission's opinion on Finnish membership application: "The question is whether the Finnish policy of neutrality – even reduced as it is to its core of military non-alignment and credible, independent defence – might stand in the way of a full acceptance of the Union's external policies. Moreover, in respect of the CFSP, the question arises to what extent Finland which, as an armed neutral, has always laid great emphasis on the capability of defending the national territory, can fully share some of its objectives, such as the safeguarding of the independence and security of the Union, and the evolution towards a common defence policy of the Union." And, "The Community would need [...] to ascertain further the full nature of the present Finnish policy in order to be satisfied that this would not hamper the possible evolution of a common European defence. [...] 'specific and binding assurances will be sought from (applicant countries) with regard to their political commitment and legal capacity to fulfil the obligations' of the Common Foreign and Security Policy." The same wording was used in the Commission's opinion on Sweden's membership application. See also the pointed Reuters way of putting it: "Neutral EU states – including Sweden – dropped objections to plans to merge the WEU into the EU earlier this year on the condition that they would not have to assist fellow members who were under military attack" In: in Latest news, Press and information service, Western European Union, 13 October 1999: Solana seeks to reassure Sweden on defence role. The President of the European Parliament Nicole Fontaine said in Le Monde of 7 October 1999: "Ces deux chantiers – nouvelles adhésions et réforme institutionnelle – doivent être menés parallèlement. S'agissant du second, nous serons fermes: on ne nous referra pas le coup de la Suède, de l'Autriche et de la Finlande. Nous pensons que le fait de faire rentrer ces trois pays, qui présentaient un certain nombre de problèmes, comme leur position sur la défense commune, n'était pas la bonne solution." All three quotes by Ojanen, Hanna, 'Participation and Influence: Finland, Sweden and the post-Amsterdam development of the CFSP'. Institute for Security Studies of WEU [Now European Union Institute for Security Studies], *Occasional paper*, issue 11, January 2000.

troops to be stationed on their territory. Their averseness to give mutual defence guarantees to fellow European countries is based on two assumptions. First, it assumes that an EU membership does not include any obligations of mutual defence assistance. Secondly, it postulates that a clear and distinct separation can be made between crisis management and territorial defence.

The former argument can rather easily be refuted. Due to the militarisation of the EU, the non-alignment has to be redefined all together.<sup>187</sup> As pointed out by Risto E. J. Penttilä, the further the EU goes in building a common foreign and security policy, the less room is there for non-alignment and neutrality.<sup>188</sup> The obligation of mutual assistance is just as strong within the EU as it is within the Alliance. As the report issued by the Finnish Council of State in March 1997 noted, the membership in the EU does not provide guarantees of military security, but entails protection based on common solidarity. The report continues to present the EU as a de facto obligation of mutual assistance:

"The Union is founded on the concept that its own and its Member States' security are inseparable. (...). As a member of the Union, she [Finland] cannot be impartial in a conflict between the Union and a third party. Besides that, membership strengthens our security position and raises the threshold that would have to be surmounted in order to exert pressure on us."<sup>189</sup>

The Austrian Chancellor Schüssel went even further by explaining that Austria has to assist a fellow EU country if being attacked. According to him, the solidarity within the European family must have priority over the Austrian neutrality.<sup>190</sup> The formulation in the Irish White Paper on Defence 2000 goes in the same direction, although it is not quite as clearly outspoken.

"The EU Treaties do not provide a mutual defence guarantee. It is clear, however, that the security interests of Member States are increasingly interdependent. There is a security impact in terms of political solidarity between Member States, reinforced by agreement on the progressive framing of a common defence policy which might lead to a common defence."<sup>191</sup>

Thus, as Jan Oberg argues, although the non-aligned have not signed any formal mutually binding obligations, there is something called political signals, credibility, non-binding duties and moral obligations.<sup>192</sup> It is most unlikely that any of the non-allied EU members participating in the CFSP, would declare themselves as neutral and withdraw from a situation when the international security environment, they have actively been influencing through the CFSP, gets out of control and the military situation gets tough. Therefore, it is legitimate to ask in what way the moral obligation within the EU is weaker than NATO's Article 5 guarantees? Formally, an Ally is only held to assist a member attacked, by taking forthwith such action itself deems necessary.

<sup>186</sup> See Ojanen 2000.

<sup>187</sup> The continuous reformulation of the Swedish policy of non-alignment reflects this need.

<sup>188</sup> Risto E. J. Penttilä did this with reference to the formula: "The more collective security there is in an international system, the less room there is for neutrality", which was written by H. Lauterpacht *Neutrality and Collective Security*, *Politica*, Vol. 2, 1936, p.133. See Risto E. J. Penttilä, 'Non-alignment – Obsolete in Today's Europe?', in Jopp, Mathias and Ojanen, Hanna, *European Security Integration. Implications for Non-alignment and Alliances. Programme on the Northern Dimension of the CFSP*, Helsinki, Bonn and Paris 1999. pp. 174-7.

As pointed out by Dr. Solana, Neutrality as such is a concept of the past. Quoted in 'Neutralität bedeutet keinen Beistand im Krisenfall', *Das Presse-Online Archiv*, Publication date 19.01.2001.

<sup>189</sup> Report by the Finnish Council of State to the Parliament, *European Security and Finnish Defence*, 17.03.1997.

<sup>190</sup> Cf. 'Streit in Wien über Neutralität', *Frankfurter Allgemeine Zeitung*, 01.06.2001. This, as Wolfgang Böhm puts it, naive Austrian dream of remaining neutral, not joining NATO, but aiming at a commitment of mutual assistance among the EU states was already included in the agreement of the coalition between SPÖ and ÖVP, and was taken over in the coalition pact between ÖVP and FPÖ. Cf. Böhm, Wolfgang, 'Virtuelle Neutralität', *Das Presse-Online Archiv*, 02.06.2001.

<sup>191</sup> Government of Ireland, *White Paper on Defence*, 2000. Chapter 2.2.4.

<sup>192</sup> Oberg, Jan (TFF director), 'Sweden in the militarisation of the European Union'. *PressInfo no. 109*, 12.12.2000.

No ally has resigned any sovereignty to the Alliance.<sup>193</sup> The difference between the EU and NATO is that the Allies have written the obligation of mutual assistance down on paper and that they have set up collective capabilities and assets to conduct the collective defence. The moral commitment, however, is the same.

Separating crisis management from Article 5 operations is also difficult. The four countries concerned try to make their engagement in the ESDP consistent with their non-alignment by drawing a line between crisis management and collective defence.<sup>194</sup> In their view, military crisis management could be interpreted as being in accord with their own previous activism in UN Peacekeeping operations. Thus, they all supported the Finish-Swedish initiative to include the Petersberg tasks into the EU.<sup>195</sup> In fact, they could all present this as their own policies.<sup>196</sup> According to their logic the territorial defence would be a national responsibility, dominated by the NSDI, whereas the responsibility for crisis management is shared with others. This separation reflects the different referent objects used. Crisis management operations seek to defend and enforce general universal values. Territorial defence, in contrast, is directly concerned with the own survival. The question is if this separation is valid. Can identified military threats be classified and assigned to these two isolated categories. Can a clear distinction be made between crisis management operations and territorial defence?

It may be difficult to draw a line between the high end of Petersberg tasks and territorial defence. The simplest argument is that preparing for and conducting crisis management through the Union can be seen as the most efficient collective defence. But, there is more to it. It is not likely that a military attack against an EU member would come completely out of the blue. Tensions would probably grow continuously, and crisis management efforts start before a military armed assault is launched. Thus, the non-aligned are likely to be involved throughout the escalation, maybe even with military troops in a crisis management operation outside of the EU-treaty area. Where is the line between crisis management and defence to be drawn on-site? When the EU reaction force is attacked? When attacks are being launched on EU-territory? Can such a differentiation be made at all? What if the adversary does not separate between in- and out-of area and between different nationalities within the EU-reaction force?

The geographical limitations of NATO and EU crisis management operations is another reason indicating that there is no distinct line between the referent objects used in crisis management and Article 5 operations. The reason why European crisis management efforts are restricted to the Euro-Atlantic area is not that violations against the universal values are exceptionally grave within this region. Offences in the European neighbourhood are regarded as especially serious, because they have a much larger effect on the stability in the member states' vicinity, and thus on their security, than more distant irreconcilable behaviour.

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<sup>193</sup> This is de facto also the case for the WEU's article V. Although it does not leave much room for interpretations, no country can be forced to assist another with all the military and other aid and assistance in its power.

<sup>194</sup> Actually the term 'defence' when used in the EU-context, does not seem to mean defence to the neutrals, but rather crisis management. Ojanen 2000.

<sup>195</sup> Cf. Herolf, Gunilla, 'The role of Non-Aligned States in European Defence Organisations: Sweden and Finland', in Jopp and Ojanen 1999:137-166. Here p. 142.

<sup>196</sup> Austria had proposed participation in WEU missions earlier and Ireland had actively prepared the Swedish-Finish initiative during its EU presidency. Cf. Austrian Foreign Policy Yearbook 1996. See also Donoghue, Jill, 'Irish confirmation: Support to other small and neutral members', in Bonvicini, Gianni, Vaahtoranta, Tapani and Wessels, Wolfgang (ed), *The Northern EU - National Views on the Emerging Security Dimension*, Vol 9, Berlin Helsinki 2000, pp 93-112, here 106.

*Non-alignment's influence on the ESDI.* Since the distinction between non-alignment and alignment is so vague, the four countries' refusal to give defence guarantees to others does not suggest that the security process of the European Union generates an ESDI of a inferior quality than the one that is created in the Alliance. In the case of the EU and NATO, one can even suggest the opposite.

Mutual defence guarantees do not require a more detailed or sophisticated definition of uniformity, on the contrary. As indicated in the classification of different ESDIs, an alliance directed against an identified adversary can be held together simply by a collective alienation from and definition of the 'other'. Crisis management operations that are not defending specific national referent objects, in contrast, require a definition of the common values and norms that the coalitions of the willing defend. They are thus based on an identified uniformity, and if only expressed in most general terms. However, as a lasting organisation, NATO was created and has continued to develop to something more than a convenient alliance. Throughout the lasting cooperation, not least during its crisis-management operations, the Allies have had to define common values and norms. This uniformity largely matches the one expressed in the Union. Considering the double membership of many countries, it is not surprising that the Alliance and the EU share and advocate the same basic values such as democracy, rule of law and market economy. Nevertheless, the example of Turkey displays that the demarcation from the 'other' (the Soviet Union) was much more important in the Alliance's definition of uniformity, than for the Union's. While Turkey qualifies for NATO membership, it cannot join the EU, yet. A main reason is that it does not meet the Union's standards concerning human rights and the rule of law.<sup>197</sup>

There is no doubt that Article 5 has a symbolic value. It is an unmistakable affirmation that each participating states regards the survival of the others to be vital for its own survival and that the security of all Allies is indivisible in this sense. It is also true that the four countries exclude themselves from parts of the Alliance's activities by choosing to remain non-members. But, this does not necessarily mean that they feel a weaker security commitment vis-à-vis other EU or even NATO countries, nor that they are less confident to receive assistance when in need. When it comes to the crunch help does not always come from those who have expressed their solidarity in advance. The impact, which the refusal to speak out guarantees has on the SDI, should therefore not be overestimated. The non-aligned must not forcefully 'think' of security differently than the Allies. This is all the more probable in a time when crisis management even stands in the centre of the Alliance's collective security production.<sup>198</sup> Since the WP vanished, NATO members do not believe that they will have to defend NATO's territory collectively in a foreseeable future. This is also reflected in the NATO Ministerial Guidance 2000 that explicitly excluded a large-scale invasion against the Alliance. Consequently, Article 5 obligations lose significance and voluntary participation in crisis management operations becomes more important, even within the Alliance. This voluntarism correlates well with non-alignment.

It is therefore not surprising that the four non-aligned countries are eager to adapt and increase the interoperability of forces with those of other European states. This allows them to participate actively in the collective production of security, i.e. crisis management operations. It should be

<sup>197</sup> C.f. Commission of the European Communities, *2001 Regular Report on Turkey's progress towards Accession*, Brussels 13.11.2001, p. 15 ff.

<sup>198</sup> This is not only valid for NATO members. Defence of national territory is no longer the over-riding security policy consideration for non-aligned states either. C.f. Lindh, Anna (Swedish Foreign Minister), *Sweden in Europe. Swedish Foreign and Security Policy in a New Europe*, speech at the National Conference of the Central Defence and Society Federation in Sälen, 24.01.2001.

noted that their contribution to EU as well as NATO led crisis management operations does not lag behind the average of NATO states'.

Hence, the formal non-alignment of the four EU members does not necessarily contradict the notion of an ESDI. Whether non-alignment is compatible with an ESDI depends on the motives for the chosen non-alignment. Given that the difference between non-alignment and alignment is so indistinct, not to say negligible, the question why these countries want to remain formally non-aligned really becomes interesting.

*Why maintaining formal non-alignment?* Countries will only apply for NATO membership, if they expect this to be advantageous. Whereas national representatives may have to explain and justify their non-membership in international organisations, the domestic need of explanation is turned around. Here the burden of persuasion lies on those who are in favour of the Alliance. They have to explain to the public what it is a membership would give the country, which it does not already profit of. Hence, for a non-aligned country the question cannot be 'why *not* join NATO?' but 'why join NATO?'. In what way will membership serve our security? Given that the non-participation in NATO only excludes the non-aligned from parts of NATO's security process, and hardly restricts their opportunities for co-operation,<sup>199</sup> this certainly is a difficult task.

The change of governmental policy of all four countries during the last decade, i.e. the acceptance of the militarisation of the EU and the approach to the Alliance, can be seen as a *de facto* alignment within the Union and even as a move towards NATO-membership. Therefore, when discussing the non-membership, it must not be seen as a permanent status. If it is of an instrumental character rather than ideologically based, non-alignment characterises a particular moment in time and is not necessarily an indication for the future.<sup>200</sup> Hence, a shared SDI with the other European states, the Alliance and the US cannot be excluded. If the nonalignment serves the common European interests, it can very well be compatible with an ESDI. Therefore, it is not surprising, that voices advocating a membership in the Alliance are heard in the parliament of all countries, with the exception of Ireland.<sup>201</sup>

The core argument used to advocate a NATO membership in Finland, Sweden and Austria, is similar to the one used during the debates when they joined the EU – the fear of marginalisation. The Alliance's actions influence both members and non-members. The major difference is that an insider is directly involved in the decision-making and thus, has more influence. If you are playing the game anyhow, you should be fully involved in the process where the rules are being formulated and the major moves are planned. Moreover, the importance of the transatlantic link is often pointed out as an essential bond that must be maintained and strengthened. Thus, an application for NATO membership is usually motivated both with national interests and with shared values and responsibility.

What arguments are used for sustaining the non-alignment until further notice? Both Sweden and Finland have explained that the non-participation in military alliances is not an end in itself,

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<sup>199</sup> Lindh, Anna speech 2001a.

<sup>200</sup> Cf. Herolf 1999:139.

<sup>201</sup> According to Daniel Keohane no Irish political party is advocating mutual military security obligations, and no debate on the issue exists where there is a clear choice between joining an alliance or not doing so. Cf. Keohane 2001:17.

but best serves the security, both for themselves and the world around them.<sup>202</sup> It is an important instrument that contributes to security and stability in Northern Europe.<sup>203</sup> As for military threats, their main concern seems to be the Baltic States' relation to Russia. They are both anxious not to cause unnecessary irritations in Moscow. By remaining formally non-aligned they obviously expect to avoid unnecessary tensions in the region. That a Swedish and Finnish NATO-membership would make the integration of the Baltic States into the Western organisations even less acceptable for Moscow seems convincing. However, following this line of argument Sweden and Finland will join the Alliance once the Baltic States have become full NATO members. Due to public opposition, this is not likely for several years to come (see page 86). In addition, the two Scandinavian countries have given military support to the Baltic States, helping them to build up their proper defence. This witnesses of a remaining cleavage between Russia and its non-aligned Scandinavian neighbours that show solidarity with the Baltic States. Moreover, both countries expressly articulate their support for the US commitment to European security.<sup>204</sup> They wish to and do maintain close relations and close co-operation with the US and NATO in order to carry out tasks within the large area which is unrelated to Article 5.<sup>205</sup>

Although the Austrian neutrality is the only one that is prescribed by law, it can also be classified as instrumental. In the legal texts, Austria's neutrality is presented as a mean to assure its independence and inviolability.<sup>206</sup> As early as 1997, the former Austrian Defence Minister Dr. Werner Fasslabend underlined the instrumental character of the neutrality by stating that "...Austria's neutrality was a product of the Cold War and has lost its function with the end of bipolar confrontation".<sup>207</sup> Furthermore, Austria has made a clear and undiminished concession to European solidarity in defence and security, and even advocated the inclusion of the WEU Article 5 into the EU.<sup>208</sup> In the government statement from 2000, chancellor Shüssel also made clear, that he aims at deepening Austria's relations to NATO in order to keep the option of a later membership open.<sup>209</sup>

The Irish policy of non-alignment (although formally referred to as "military neutrality"), finally, is the only one that has not been questioned by the own political elite. The reason for this is that the motive behind the non-alignment has not changed. Ireland's non-alignment did not result from the second world war, as the Finnish and Austrian did, nor was it utilised to avoid an invasion or to obtain a special position between the two blocks during the cold war, as the Swedish one. Thanks to its geostrategic position behind the belt of European Allies and Ireland has been well protected. The White Paper on Defence 2000 stated that "[t]he threats to the security of the State which have required an operational response from the Defence Forces over the

<sup>202</sup> "Our policy of non-participation in military alliances is not an end in itself. It is an important instrument that contributes to our ambition to achieve security policy stability in Northern Europe." Lindh, Anna (Swedish Foreign Minister), *Sweden in Europe*, speech at the Swedish Institute of International Affairs (SIIA), Stockholm 16.12.1998. See also Halonen, Tarja (Finnish Minister for Foreign Affairs) and Hjälm-Wallén, Lena (Swedish Minister for Foreign Affairs), 'Finland and Sweden on the Approaching Enlargement of NATO', in *International Herald Tribune*, 15.03.1997. See also von Sydow, Björn (Swedish Minister of Defence) and Taina, Anneli (Finnish Minister of Defence), 'Finland and Sweden Hand in Hand', in *Helsingin Sanomat* and *Dagens Nyheter*, 13.06.1998.

<sup>203</sup> Lindh, Anna speech 1998. See also Lipponen, Paavo (Finnish Prime Minister), *Statement to Parliament on the new Government Programme*, 20.04.1999.

<sup>204</sup> See for instance Lindh, Anna (Swedish Foreign Minister), *Enlargement: a priority for the European Union*, Opening Statement to the Centre for Strategic & International Studies. 07.03.2001. See also Lindh, Anna speech 2001a.

<sup>205</sup> Cf. Herolf 1999:158.

<sup>206</sup> Bundesverfassungsgesetz vom 26. Oktober 1955 über die Neutralität Österreichs. article 1.

<sup>207</sup> He continued: "Today, neutrality provides neither security nor stability. Although neutrality remains a constituent part of Austrian identity for a considerable part of our population, opinion polls have shown that the perception of its importance is dwindling fast." Quoted by Sauerwein, Brigitte, 'Interview with Dr Werner Fasslabend Austrian Defence Minister', *Jane's Defence Weekly*, 26.02.1997.

<sup>208</sup> See Scheibner, Herbert (Austrian Minister of Defence) in *Jane's Defence Weekly*, 08.03.2000. Its goal of mutual assistance under the European Union initiative did not obtain a majority within the EU, because the allied EU members do not wish to separate the WEU commitments from those within the Alliance. See 'Neutralität bedeutet keinen Beistand im Krisenfall', *Das Presse-Online Archiv*, Publication date 19.01.2001.

<sup>209</sup> Cf. Dr. Schüssel, Wolfgang (Austrian chancellor), *Österreich neu Regieren. Regierungserklärung*, 09.02.2000, p. 10.

last thirty years have all been in the internal security domain."<sup>210</sup> The Irish neutrality can best be described as 'neutrality against the United Kingdom'. In combination with the EC/EU membership, the policy of non-alignment has helped Ireland to emancipate itself from dependence of and subordination to the United Kingdom. From this perspective, the end of the East-West conflict has not changed the function of non-alignment, as it has in the other three states. The Irish participation in the ESDP and EAPC support such a conclusion.

*Differences between the population and the political elite.* The public opinion does not seem to match these explanations. There is still a firm opposition against NATO membership in all four countries.<sup>211</sup> It is difficult to say if this really results from the instrumental reflections presented above. Can, for instance, the resistance in Sweden among both the population and in the parliament<sup>212</sup> be explained simply by peoples' considerations for Russian reactions?

It appears more likely, that the rejection against NATO-membership is based on the myth of being neutral, which is deeply rooted and positively associated with the national identity.<sup>213</sup> The resistance against the Alliance's weapons of mass destruction and the self-image of having a unique and important ability to mediate in crisis are probably important factors. The function as bridge builders has vanished in the unipolar world. Following the logic of the CFSP, the non-aligned have channelled their foreign policy through the EU and thus, not taken on any special mediating role in any crisis that has been subject to the Union. There seems to be a gap between the self-image of the people and the actual integration pushed through by the political elite. The notion of an ESDI and an indivisible European security seems to be much further developed in the minds of the responsible decision-makers than among the electorate. This is why all four countries maintain their status of pseudo non-allied countries. The political elite seems to have realised that there is no clear dividing line between crisis management and Article 5 operations and that defence obligations towards others states are a fact. It is therefore not surprising that they adapt to and prepare for a collective security production. Claiming that it only is a matter of time until the non-aligned join NATO would however be saying too much. This depends on the development of the ESDP. Even if this becomes the political elite's goal, it will take a long time and be difficult to convince the population of the benefits of a NATO membership or of the introduction of an Article 5 in the EU.

#### *DOES A PARTIAL PARTICIPATION COMPLY WITH AN ESDI?*

The variable geometry is not only a question of membership. The fragmentation is also known within the two organisations. All member states do not participate at the organisations' entire security process. Denmark never chose to become a full member of the WEU (it is the only Al-

<sup>210</sup> Government of Ireland, *White Paper on Defence*, February 2000, headline 2.3.1.

<sup>211</sup> The percentage of the Swedish population that expresses the wish to join NATO has constantly been around 24 % during the last years, whereas the support for the non-alignment has remained at about 60 %. See Styrelsen för psykologiskt Försvar, Stütz, Göran (ed.), *Opinion 2000*, Den svenska allmänhetens syn på samhället, säkerhetspolitiken och försvaret. p. 58. In latest corresponding Finnish survey 66 % of the respondents expressed being in favour of non-alignment while 24 % wanted to join an alliance (average result in the period 1996 to 1999). This stands in contrast to the fact that 60 % are in favour of, and only 29 % oppose to, the question if the EU treaty should contain an obligation of giving military support to another EU member state, should it be attacked. See Planeringskommissionen för försvars-information in Finland (PFI), *Informationsblad och översikter*, 2/2000. Quoted in Styrelsen för psykologiskt Försvar, Stütz, Göran (ed.): *Opinion 2000*. p.13.

<sup>212</sup> The last time the NATO-membership was taken up in the Swedish parliament 25.04.2001, only thirteen members of parliament voted for a membership.

<sup>213</sup> This would follow the argument of Daniel Keohane, who claims that the popularity of Ireland's military neutrality policy is more a function of identity than instrumental, and demonstrates the importance of maintaining national sovereignty for the Irish public. See Keohane, Daniel, 'Realigning Neutrality? Irish defence Policy and the EU', Institute for Security Studies of WEU [Now European Union Institute for Security Studies], *Occasional Paper*, issue 24, March 2001, p. 17. The Irish emotional relation to their military neutrality was also reflected in the Anti-Nice campaign in the run-up to the Irish referendum on the Treaty of Nice held 07.06.2001. Although the Nice-Treaty has nothing to do with an Irish membership in the Alliance, slogans like "No to NATO, No to Nice" where successfully used (for instance by the Peace and Neutrality Alliance - PANA).



lied European country with the status of an observer) and has decided not to participate in the elaboration and the implementation of decisions and actions of the EU having defence implications.<sup>214</sup> Within the Alliance, France has chosen to remain outside of the integrated military structure and several committees.<sup>215</sup>

*Danish opt-out from the EU.* Although Denmark does not have reservations against the ESDP as such,<sup>216</sup> it has put itself in a very ambiguous, not to say inconsistent, political position. Denmark has distanced itself from the Union's military production of security within the EU in a much clearer and more definite way than the non-aligned states have from NATO. The non-aligned can choose to participate at NATO led operations on a case-by-case basis, but Denmark's defence exemption applies to all EU decisions that include the use of military units. There is no room for exceptions. Even Norway and Turkey, who in contrast to Denmark are prepared to contribute forces to the ESDP, have larger possibilities to participate at military activities within the EU framework, ranging from exercises to operations.

This can appear as a clear rejection of an ESDI within the EU. Such a view is also supported by the fact that Denmark enthusiastically participates in military crisis operations in other organisational contexts. Nevertheless, such a conclusion is contradicted by the Danish support to the Union's role as security producer. Denmark is represented in all bodies of the ESDP structure<sup>217</sup> and participates in all aspects of the security process that does not include the use of military units. Furthermore, it advocates the integrated military and civilian approach to crisis management within the EU.<sup>218</sup> The latter appears particularly contradictory. Although the government will try to distinguish on a case-by-case basis between civilian and military elements, Denmark seems to promote its own exclusion from ESDP activities. Thus, Denmark has voluntarily stepped off the pitch and started to cheer for the development of an ESDI within the EU from the sideline.

An explanation for this contradictory policy may begin with the polity. The Danish exemptions from EU policies emanate from the political convention that lets any major changes in Denmark's formal relationship to the EU be decided by referendum. The Danish defence exemption came about and can only be changed by a new referendum.<sup>219</sup> Thus, a conservative and status quo orientated electorate limits the freedom of action of the more pro-European political elite. I am well aware of that any attempt to elaborate a logical explanation for public opinion and the outcome of a referendum is daring. The motives and considerations that brought about the result are legion. The fact that the referendum was not held on the defence exemption in isolation, but as a package of all four opt-outs, makes it even more difficult to identify the reason. Nevertheless, the combination of two main arguments may explain why the defence exemption was made an issue in the first place.

The idea of each state's right of self-determination is well established in Denmark. Normally, Danes in general oppose to international power politics in the sense that one state forces its own will upon another. Consequently, they also reject the creation of an international or suprana-

<sup>214</sup> See Edinburgh European Council, *Conclusions of the Presidency*, 11/12.12.1992, Part B. Denmark and the Treaty on European Union. SECTION C. Defence policy. See also TEU, Protocol on the Position of Denmark, article 6.

<sup>215</sup> For instance the DPC, the NPG, the Defence Review committee and the High Level Group. C.f. NATO Handbook 2001.

<sup>216</sup> Udenrigsministeriet, *Redegørelse om forsvarsforbeholdet op til det danske formandskab*, May 2001.

<sup>217</sup> Denmark is represented and participates in the PSC, EUMC as well as in the EUMS.

<sup>218</sup> Larsen, Henrik, 'Denmark and the EU's defence dimension: Opt-out across the board?', in Graeger, Larsen & Ojanen 2002:90-153, here p. 113-114.

<sup>219</sup> Larsen 2002:125.

tional superpower that could take on such a role. The rejection of the militarisation of the EU can therefore be explained with the unwillingness to contribute to the transformation of the EC into a superpower, and the wish to limit the Union's influence on Denmark. In this situation, an opt-out appeared as the only option. Small Denmark should not enforce its opinion upon other EU states and block the militarisation all together. Another reason is that the public's image of how security was produced deviated from the one of the political elite that participated directly in the European security process and that failed to explain the changes to the electorate. Denmark had participated in different international organisations with separate areas of responsibility since the Second World War. This functional compartmentalisation could be upheld as long as security only was thought of as hard security, which lay in NATO's sphere of responsibility. Apparently the Danish public was not convinced that a shift from hard to soft security issues actually took place during the early 1990s. The opt-out reflects that the Danes still believed in the possibility of separating the military from the civilian security production. In other words, security was still thought of as military security at the time of the referendum.

As the EU has taken over WEU functions and its military role grew, Denmark's influence diminished. The conflict between the Danish non-participation on the one hand and its support of the Union's increasing role as a security actor with both civilian and military means on the other, has become clearer with time, and so has the marginalisation of Denmark. This has had a pedagogical effect on the public opinion, which is changing in favour of lifting the defence exemption.<sup>220</sup> Hence, the Danish boycott of the military cooperation within the EU contradicts the notion of an ESDI within the Union. But, this stance is beginning to fade.

*The french policy of semi-alliance.* The situation of France is more complex than the one of the states mentioned above. Just as Denmark, France has partly withdrawn from the security process in an organisation of which it is a full member, although not in the form of a boycott. Just like the non-aligned states, France can always opt in. Although, it cannot be hindered to participate at the Alliance's security process as non-aligned states can. What makes France's position special is that it did not reject further integration, but chose to disintegrate from NATO's security process. Furthermore, it became the main advocate of an alternative European security process.

The French withdrawal can easily be interpreted as a rejection of an ESDI within the Alliance. However, the opposite seems more plausible. Under the presidency of Charles de Gaulle, France strove for a position from which it could play an independent role that corresponded to its self-image as a 'Grand Nation'. The partial exit from NATO became necessary because France could not fulfil this aspiration within the Alliance. The reason for this was that the security process had not been lifted to the level of the Alliance. The Alliance was not the main production plant for security. While the allies prepared for Article 5 within NATO, the negotiations with the WP-countries were held on a bilateral level, in particular between the Soviet Union and the USA. Instead of conferring with Eastern Europe collectively in and through NATO, the allies

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<sup>220</sup> The last extensive Eurobarometer survey that included NATO as an alternative to the EU in the questionnaire was made in autumn 2000 (Eurobarometer wave 54.1). Here Denmark was among the three least pro-European countries. The only 27 % of the Danes were of the opinion that decisions concerning European defence policy should be taken by the European Union (UK 22 and IE 29 %). With a support of 40% to NATO, Denmark is the only country where NATO clearly comes first. See Manigart, Philippe, *Public opinion and European Defence*, Brussels 2001. However, the support for a common defence and Security policy (as an alternative to NATO) amounted to 56% in Denmark according to Eurobarometer 54. This figure raised to 65 % in spring 2002 (Eurobarometer 57). This finding is supported by Henrik Larsen (Larsen 2002:127), who amongst other things refers to a poll from September 2001 that showed a majority of 52% for and 32% against lifting the defence exemption (presented by on the internet site DR-nyheder the 22 September 2001).

found themselves in a situation where they added their military and political weight to the American negotiators without being asked. The two super powers de facto negotiated on behalf of all countries on their side of the iron curtain. Thus, all other states on either side were effectively degraded to satellites. So was France. France's pullout can therefore be seen as a reaction on the American dominance, its own marginalisation and the lack of ESDI within the Alliance.

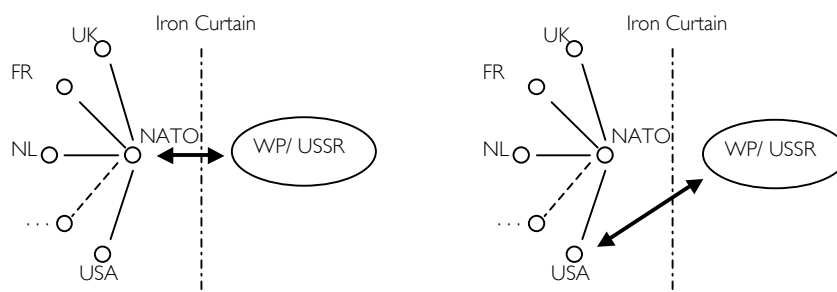


Figure 3.1-5 US marginalisation of fellow Allies.

This does not mean that France has rejected the security process within the Alliance and the American engagement in European Security as a whole, or that it devoted itself unconditionally to the development of an ESDI outside of NATO. Why did and does France remain outside of NATO's integrated military structure, and why has it favoured the development of the ESDP?

In the 1960s France considered both the American presence in Europe and the existence of NATO to be necessary. Lacking confidence in Germany is one reason why France advocated the American engagement. But, the perceived threat from the WP remained the most important factor that influenced the French support of NATO and the American involvement. Although the French 'défense du faible au fort' is based on the idea of becoming militarily self-sufficient, France never refrained from its own Article 5 commitments nor did it claim that the Alliance had become obsolete. France always considered that armed conflicts with the WP must be fought together with the Americans in the Alliance.<sup>221</sup> Nevertheless, France wanted to be fully involved in the whole security process before the East-West conflict escalated to war. Obviously, Paris could not achieve this within the Alliance, nor could it do so on its own. The attention it was given by the USSR could not be taken for a full involvement in the security production between East and West. Although Moscow nursed what it considered a rift in the Western unity, it still regarded the USA as the decisive partner in talks.<sup>222</sup> Consequently, France had to promote the development of an ESDI outside of the Alliance. It has done so in bilateral relations, within the WEU and finally in the ESDP of the EU. This approach has been particularly attractive for France. As one of the larger European countries, France is guaranteed severe influence in any Western European security process at which the Americans do not participate. Acting collectively

<sup>221</sup> In fact, immediately after deciding to withdraw from the Alliance's integrated military commands, Paris signed a series of agreements with NATO concerning the French participation alongside its Allies in a European conflict. Notable among these were the Ailleret-Lemnitzer and Valentin-Feber accords. Cf. Menon. Anand, *From independence to cooperation: France, NATO and European security*, in *International Affairs*, no. 71, I, 1995, pp. 19-34. Here p. 19.

<sup>222</sup> France did not always tune its security policy with other Allies and searched to play a own role. This was most clearly demonstrated by President Giscard d'Estaing when resisting the participation in the MBFR-negotiations. He explained that the participation at negotiations confirming the division of the world into two blocks was not compatible with the French role as the third Force. Cf. Woyke, Wichard, *Frankreichs Außenpolitik von de Gaulle bis Mitterrand*, Opladen 1987, p. 109. The French resistance to be tied up in the Alliance's forward defence in Germany and its procurement of the tactical nuclear arsenal (Pluton ranging 150 km and Hades ranging 350 km) stationed in France, exemplifies that France did not even tune its defence planning with others. Underlining its independence, France primary planned for the national defence and not for the one of the Allied Germany which would be the target of these arms.

with other European countries would thus give French policy more weight and multiply French power.<sup>223</sup>

From a French point of view, this is not simply a question of maximising the French influence and to protect French security interests. The French self-image does not allow for a separation between French and European interests. France natural role as a great power<sup>224</sup> is not simply founded on its past as distinguished colonial power, its status as one of the four victors of the Second World War<sup>225</sup> or its permanent seat in the United Nations Security Council. These are just externals. The French revolution is the most important event that formed the national self-image. It did not only cause great changes in France, but in all of Europe and throughout the world. The French see the revolution as the birthplace of modern European thinking.<sup>226</sup> From a French perspective, France stands for that which is genuine European (often seen in contrast to what is American). In this sense, France is Europe and Europe is France. The French discourse is therefore characterised by a synonymous notion of France and Europe. Like no other country the French project the image of the own nation on Europe, ascribe the role of a trailblazer to France and tend to blend French and European interests.<sup>227</sup> It can therefore be difficult to distinguish French from European referent objects. Although Paris seems to picture a European security process as an extended French security process, it does not simply confuse national and European positions. France sees its own role in a European context and argues in European terms. The French policy is often seen and presented as a European policy. In other words, France can only realise its proper NSDI in a European context.

The French are of course by no means naive. They are well aware of that other EU countries do not necessarily share the French view. The fears of a strong Germany display the realisation of differences among European ideas.<sup>228</sup> This is one explanation for why France has never been keen on renouncing sovereignty and/or its own autonomy in the European integration process. In fact, the other allied EU-members' fidelity to and their prioritising of the transatlantic bond may clarify the French opposition to supranational elements in the field of security and defence policy. As long as Paris does not see a possibility to establish its own notion of an ESDI outside of NATO, it cannot renounce its autonomy.

France's 'rapprochement' to the Alliance during the 1990s is a defeat from the French perspective. It became necessary because France could not win support for its own ideas among the allied states. France had promoted a division of labour between the Alliance and the EU/WEU. NATO was to concentrate on the Article 5 and the EU/WEU were to take responsibility for the crisis management in the European area.<sup>229</sup> Paris sought to prevent an extension of NATO's tasks in order to boost the Union's political importance at the cost of the Alliance's.<sup>230</sup> The EU/WEU were to take over high profile crisis operations, and still be able to call for Washing-

<sup>223</sup> C.f. Sauder 1995a. See also Sauder, Axel, 'Alles neu macht der Mai? Die Zukunft der deutsch-französischen Sonderbeziehung', in *Blätter für deutsche und internationale Politik*, No.4, 1995, p.438-449. This view was also underlined by Jaques Chirac who stated: "Il ne fait aucun doute que la France est plus grande dans l'Europe qu'elle ne le serait sans l'Europe." Quoted by Chambraud, Cecile and Saux, Jean-Louis, 'Jaques Chirac se porte à la tête des Européens de la droite', in *Le Monde*, 1999-03-03.

<sup>224</sup> This self-image was demonstrated by François Mitterrand after the second Golf War with his statement: "La France a tenu son rôle et son rang". [France has regained its role and status. Authors translation]. 'Le «rang» de la France.' *Le Monde*, 05.03.1991.

<sup>225</sup> Although the country did neither participate at the conferences on Jalta or in Potsdam, France was formally elevated to the equal status with the three victorious- and occupying powers, USA, United Kingdom and USSR.

<sup>226</sup> When French officials speak of "la mission civilisatrice" or of France's special vocation, they refer to the country's role and responsibility for the spreading of France cultural and political heritage.

<sup>227</sup> Cf. Schmitt, Burkard, 'NATO à la française. Dimensionen einer sicherheitspolitischen Wende', in *Blätter für Deutsche und Internationale Politik*, no. 5, 1997, pp. 567-575. Here p. 569.

<sup>228</sup> Always when Germany's strength threatened to outgrow the French one, Paris has initially taken a restrictive, not quite solidarity position, be it in the case of the reunification, a permanent German seat in the UN security council or voting modalities within the EU.

<sup>229</sup> In the attempt to make NATO continue to concentrate on the collective defence, France was given strong support from Norway and the other allied countries closest to the former Soviet Union. Although their aim apparently was not to restrict the Alliance's influence, but to assure their own security.

ton's help if crisis management was unsuccessful and the situation escalates to an Article 5 situation. When France saw that it could not convince the other European allies of this solution, and that NATO adapted to the new situation and took on crisis management tasks, Paris followed the motto 'if you can't beat them, join them'. France decided to move closer to the Alliance in order to assure and strengthen its influence at the centre of events. This does not mean that France abandoned its own idea of an ESDI. It only 'returned' to the extent needed to avoid being placed at the sideline, and to make sure that the 'new NATO' was modelled with respect to French preferences. Within the Alliance, Paris advocated the European element. That is the structural strengthening of the European pillar and making the Alliance's assets and capabilities available for EU/WEU-led operations.<sup>231</sup> At the same time, it pushed for the merger of the EU/WEU and the strengthening of the autonomous European capabilities.

During the 1990s, the French idea of a transatlantic relationship and its notion of an ESDI became clearer than ever. France certainly regards the European security as indivisible from the French security and that which France stands for. Instability and armed conflicts in Europe concern France security and fall in the sphere of responsibility of the 'Grande Nation'. Moreover, France wants to have the USA as a reliable big brother. A big brother that minds his own business elsewhere as long as not called upon. Thus, France wants to build an ESDI without American participation and involvement, but with the American security guarantees.

The French status as semi-allied country does therefore not contradict the notion of an ESDI. It reflects a very specific idea of an ESDI.

### 3.1.4 Current state of the ESDI in the military context

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity			
	Politics			
	Policy			
<b>Conclusion ESDI</b>		X		

The term ESDI implies the existence of a European security process. Within such a process, military threats against common referent objects would be identified, the referent objects themselves defined, and the threats counteracted. This does not only suggest a collective definition and production of security. It also denotes that military threats against a common referent object concern all Europeans, and thus, that the European security is indivisible.

The survey above has shown that such a collective production of security takes place. Both organisations have been involved in the projection of stability into eastern and especially south

<sup>230</sup> See Woyke, Wichard, *Deutsch-französische Beziehungen seit der Wiedervereinigung. Das Tandem faßt wieder Tritt*. Opladen 2000, p. 133.

<sup>231</sup> The introduction of a European DSACEUR goes back on an initiative from the French Defence Minister Charles Millon (12.09.1996), who suggested that the deputy should be selected by the WEU.

In the 1996 NATO Berlin Communiqué, for instance, France wanted to describe ESDI as a "permanent and visible" part of NATO. A formulation that was not accepted by all delegations. See Walker, Colin-Norman, 'Security Concerns remain a priority in a changing Europe', in European Commission: *European Dialogue: 1997 supplement: NATO and EU options*. Moreover France attempted to put the Allied Forces Southern Europe (AFSOUTH), under a European commander with the argument that "France considers that Europe's strategic interest in the Mediterranean justifies the Southern command being exercised by a European". The French President Chirac concluding the Franco-Spanish summit in Marseilles (05.11.1996). Since this initiative would have relieved the USA from its only operational command in Europe (CINCSOUTH), it failed on American resistance and is made one argument for why France has not completed its return to the Alliance. An American Diplomat explained the US stance with the words: "If they don't want to come in then, that's fine with us. If the French think we will give in on this, they're crazy." Both quotes in. RUSI, *International Security review 1997*, p. 15.

eastern Europe. Due to the decision-making procedures in the Union and the Alliance, it is quite easy to classify these security processes as consensual ones. However, I would not even go that far and prefer to call them quasi-consensual ones. The unanimous or consensual decisions on military operations are not legally binding. Therefore, their implementation fully depends on non-binding national contributions. Not only do all member states have to agree on a decision, they can also disregard the decision at any time. In addition, none of the two organisations accommodates a full security process. Thus, the security process has not fully been lifted to the European level. Neither NATO nor the EU disposes of proper means for intelligence production or own troops. Even when the member states approve of a countermeasure, the successful implementation depends on the national contributions to an ad hoc operation. What the two organisations have are assets and capabilities that do not exist and are not needed at the national level. With the exception of some few assets that complement the national resources (e.g. AWACS), the organisations' assets consists of staffs that were created to enable member states to co-operate. Nevertheless, the operational dimension largely remains nationally structured and organised. Military capabilities remain national assets, although a collectively financed and organised defence could offer large rationalisation and efficiency benefits.<sup>232</sup> Not even the attempts to coordinate the national defence planning have proven efficient. Member states have neither made full use of the synergy effects cooperation offers, nor have they harmonised priorities or remedied acknowledged flaws. The development of National forces is not being streamlined at the European level. With the exception of the Benelux and Germany, all member states strive for an autonomous and self-sufficient national defence. Thus, the two organisations' capabilities have not replaced but been added on top of the national defence. The Union and the Alliance offer an alternative to national operations without limiting the national autonomy.

The reluctance of member states to accept a common defence or to form an obliging central defence planning process can be explained in many ways. At this point, I want to concentrate on arguments that are limited to the military context. It seems like all accounts derive from the fact that that the NSDIs and the ESDI do not always match. In other words, member states do not consider *all* security within the military context as indivisible.

The geographical scope of the national and the European security production can differ. Those countries that have security interests and responsibilities beyond the Euro-Atlantic area are thus compelled to keep own forces. There are, however, also hinders within the Euro-Atlantic area. The variable geometry certainly obstructs such a development. As long as all EU members have not joined the Alliance, a common European defence cannot be established, nor will the responsibility for defence planning be transferred to any of the organisations. It cannot happen within NATO, because this would de facto result in a subordination of the EU to NATO. Likewise, it is impossible to create a common EU defence that is partially bound by NATO's Article 5. In addition, the participants at the EU defence would have to institute their own Article 5 to guarantee that the common army defends all member states. Nevertheless, the most plausible explanation for the upholding of national forces and the main obstacle to a European defence is a lacking confidence in the mutual defence guarantees.

Member states cannot accept dependencies and limitations in their own capacity to act as long as they do not trust that other member states will make the same assessments, define the same

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<sup>232</sup> A common European defence could boost the development of an ESDI, but it can only come true, if the ESDI has developed further. This

military threats and perceive security in the same way. The defence structure suggests that few European countries rely on that support. NATO members prepare for Article 5 operations and they hope to receive help when in need, but they do not trust the guarantees. A cooperation, which exceeds the current voluntary coordination of national defence planning processes described above, is not possible as long as member states do not have confidence in that their fellow members consider all security as indivisible.<sup>233</sup>

Although territorial defence is the main reason for states to keep military forces in the first place, crisis management tasks have become more important. Following the decline of the WP and the end of the block confrontation, crisis management has also gained significance for the shaping of the ESDI. Despite all collective preparations for Article 5 tasks, the collective defence remains hypothetical. Crisis management operations, in contrast, are given much attention and show that member states produce security together within the framework of the organisations. NATO and the EU have identified military threats, taken collective decisions and led operations to counteract these threats. Furthermore, they have defined common referent objects in the form of norms and values (In general subsumed under the terms democracy, human rights and the rule of law). As central as this is for the development and formation of an ESDI, it has also caused complications.

The Turkish membership in NATO and its non-admission to the EU displays the inconsistency of the Western States' interpretation of these values. Not that Turkey's NATO membership would be difficult to explain. The strategic military motives that led to the country's admission during the cold war (1952) are obvious. Nevertheless, it discredits the uniformity and the community of values. This discrepancy becomes all the more problematic as NATO conducts crisis management operations to enforce these values outside of the own territory.

Beside the Alliance difficulties to define the values in a consistent way, both organisations are confronted with the problem to give them universal validity. The credibility of these values as universal norms is curtailed by the limited geographical scope within which the two organisations can enforce them. The extent to which they are enforced within the Euro-Atlantic area raises further doubt. Not that the Serbian activities in Kosovo were acceptable, but other serious breaches of the universal rules are overseen both within and outside of the Euro-Atlantic area. In fact, some member states even support undemocratic regimes.<sup>234</sup> Thus, the uniformity that is produced during crisis management operations is rather built on the collective identification of the aggressor and his 'otherness', than on the presumable agreement on universal inviolable values. Just as during the cold war, the definition of the common ideal pattern, i.e. of the substance of the ESDI, seems to fall by the way side.

It appears to be particularly difficult for NATO to define and preserve that, which is common. Not that the Alliance cannot produce security (it has proven far more capable of conducting military operations than the Union), but it is difficult to see what the common referent object would consist of. To the specific Turkish interpretation of the advocated universal values, one must add the tensions within the Alliance. Turkey and Greece are the only EU or NATO members that seriously consider a possible military confrontation with each other, and that prepare

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possibility is expressly mentioned in the preamble and in article 17 TEU.

<sup>233</sup> The experiences France made during the two World Wars and during the Suez crisis, when it did not receive support from its allies, may exemplify this.

<sup>234</sup> The American support for Saudi Arabia is only one example.

for such a case. The Alliance certainly stabilises their relation, but it has not been able to dissolve the oppositeness. This is hardly the best substratum for a collective identity to sprout and uniformity to take shape. Moreover, there is the transatlantic strain that initiated the creation of the ESDP. This leaves the Alliance with its Article 5 and the fact that it has proven successful in crisis management operations on the Balkans. Although the mutual defence commitments have never been put to a serious test, there is no doubt that the NATO structure is fit to meet its declared Article 5 and crisis management ambitions, both of which are strictly operational. While no distinct perceptible European referent object has been generated within the Alliance, its capability to counteract military threats using military instruments is credible.

The European Union, in contrast, has elaborated a much more detailed and comprehensive description of the fundamental values, not least due to the enlargement process. The acquies that applicants have to accept goes much further than the short formulas used during the operations on the Balkans. However, although the EU members' uniformity is more perceptible, the Union will have larger problems to live up to the goals it has set itself. Although the Union's ambitions concerning military operations lag far behind those of the Alliance, the EU wants to take on a broader role. The Union has chosen to counteract military threats with civilian instruments, and has thereby widened the period of time in which it counteracts military threats. In contrast to NATO, the EU has taken on a role in crisis prevention and reconstruction. In chapter four and five, I will return to how this influences the thinking of security within the EU and the further development of the ESDI within the Union. At this point, it is only necessary to point out the danger of a credibility gap from occurring. At present, the Union is only a credible reconstructor. Lacking a veritable early warning function, it is far from adequately equipped to serve as a crisis preventer. EU's modest military capabilities, the failure to meet the Helsinki Headline Goal and its record of operations does not reinforce the image of the Union as military security producer either. Finally, some member states' overt rejection of a common defence and mutual security guarantees hamper the notion that the European security is indivisible and that all military threats within the Euro-Atlantic area concern all Europeans.<sup>235</sup> If one regards the military context in isolation, the development of an ESDI within the EU does not seem to stand on solid ground.

In the West, military threats and 'military security' seem to be thought of primarily in national terms. The notion of security as an indivisible European security does not convince in the military context. The member states of NATO and the EU do not support the idea of transferring the responsibility or the capability to counteract military threats with military means to the European level. The NSDI is clearly still dominant in the context of military threats, at least as far as military countermeasures are concerned.

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<sup>235</sup> That the ESDP does not imply the forming of a European army has been assured repeatedly. See for instance Helsinki European Council, *Presidency Conclusion*, 10/11.12.1999, II Common European Policy on Security and Defence. In the draft from the 6 December 1999, Sweden and Ireland suggested the sentence "Nor will it mean forming of a European Army. See also General Affairs Council, *Military Capabilities Commitment Declaration*, Brussels 20.11.2000; Nice European Council, *Presidency report on the European Security and Defence Policy (ESDP)*, 7/8 and 9.12.2000.



### 3.2 Economic Context

The concept, contents and meaning of economic threats and economic security are likely to be less obvious and clear than the notion of military threats. Economic security is not only a less common term in political science, it is also utilised in a less distinct and conform manner than military security. One of the main reasons for this is that the number of economic policies and instruments by far surpass the ones applied in the military context. All these economic policies pursue different aims, seek to protect different referent objects and are implemented by a multitude of actors. Another explanation lies in the discipline's fondness of separating the security context from a somehow defined 'normal' one. When defining the economic security context, one must therefore consider far more variables than in the case of military security. Under these circumstances, it is only logical that a multitude of understandings and definitions of economic security occur. It seems adequate to begin this section with a specification of what I mean when using these terms.<sup>1</sup>

To fit into the ESDI concept, the understanding of this study must build on the assumption that economic variables pose a threat to a shared European setting, and that these economic threats are managed in a security process in a European organisation (the EU as will be shown). I assume that the members of the community can identify with their economic system, and that its stability and functioning can be used as referent object in a security process. In addition, I presume that economic instruments can be used to promote and advocate the collective's general (or universal) values internationally, including the extension of the market system and free trade.

Before turning towards this thought, I want to outline and distance myself from another view on how security and economy are linked. This approach remains in the military context and regards economy and economic security as a sub-function of military security.<sup>2</sup> When security is thought of in terms of military security, economics only matter to the extent that they provide the material and financial means for military defence.<sup>3</sup> The economy is thus regarded as the base for military power. In this conception, the economic development influences the military security in two ways. First, security is threatened if the economic development affects the military capability. Although the economic strength influences the amount of resources that can be made available for military use, economic growth and prosperity do not represent referent objects in this view. This is so, because a strong economy is no guarantee for military power and performance.<sup>4</sup> Economic security is instead concerned with the efficiency of military expenditure and the amount of resources devoted to defence. Second, the combination of globalisation (or better, internationalisation of markets) and the growing dependence of the military capability of commercial inputs, increases the vulnerability of the state despite reduced risks of a military attack against the country. In both cases, economic threats and security are linked to the own, and to the potential opponent's, supply of goods for military use, not to the development of wealth as

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<sup>1</sup> In the widest sense, economic threats (and security) can simply be described as the existence of shortage. Using this definition, economic threats will always be present as long as we do not live in the land of Cockaigne. For an analysis of the category economic threats such a definition would be unpractical and run the risk to be meaningless. As long as economy (understood as the management of resources) exists, there cannot be such a thing as an economic security. Speaking of economic security would then be a contradiction in terms.

<sup>2</sup> For an excellent discussion on different views on economic security, see Crawford, Beverly, 'Hawks, Doves and Owls: International Economic Interdependence and Construction of the New Security Dilemma', in Lipschutz 1995, pp. 148-185.

<sup>3</sup> See Giacomo, Luciani, 'The Economic Content of Security', in *Journal of Public Policy*, Volume 8, no. 2, 1998, pp. 151-173. Here p. 153; Cable, Vincent, 'What is international economic security?', in *International Affairs*, Volume 71, No. 2, 1995, pp. 305-324. Here p. 306; Terriff, Terry et al., *Security Studies Today*. Oxford 1999, pp. 137-141.

<sup>4</sup> Giacomo Luciani underlines how easy it is to point out a series of cases "...in which large, rich, powerful countries met military defeat at the hands of smaller, poorer, worse armed opponents". He mentions the Russian defeat against the Japanese in 1905, the American defeat in Vietnam, the Soviet defeat in Afghanistan, and the Libyan defeat in Chad. Giacomo 1989:154.

such.<sup>5</sup> Consequently, economic security policies are about assuring the own, and preventing a potential opponent's, access to goods that are essential for warfare and the defence industry. Import restrictions to protect the own production and export restrictions concerning proliferation of weapons and dual use goods are typical policies in this context. Stockpiling oil and other vital resources is another. This chapter does not follow this line of thought. I am not interested in examining the economic aspects of the military context. Instead, I will study the economic context as such. Consequently, the referent object used is changed. Whilst territorial integrity, autonomy and self-determination stand in the centre of the traditional military context, the economic context uses wealth and economic growth as point of departure. Economy can therefore not be regarded as something that is subordinated to military defence. On the contrary. Taking the economic context as a starting point for the survey, military instruments present themselves as means to gain economic security. This does not mean that I will not examine any of the policies that are relevant for those that regard economic security as a sub-function of military security. Policies aiming at the supply of goods, for instance, do not become irrelevant. However, I do not focus on the access to goods that are essential for warfare and for the defence industry, but on the access to goods that are essential for the economic prosperity.

*The referent objects in the economic context.* Humankind has always struggled to meet needs and wishes in an environment characterised by shortage. The shortage of resources and the unsatisfied needs have driven people to interact. Not only because co-operation is a way to please some needs directly, but also because it is a way to please them more efficiently. We have seen that the satisfaction of needs and the interaction among people are basic ingredients of the formation of a collective identity.<sup>6</sup> This is why economics are closely linked to identification.

Acting under the restriction of shortage requires an allocation mechanism, an economic system, that regulates which wishes are to be served by the limited resources and which are not. To a large extent, the mechanism chosen determines the interactions within a group and a community. By defining the rules for exchanges, property and by regulating who can make such decisions, the economic system sets the framework for the community's 'way of life'.<sup>7</sup> The prevailing allocation mechanism for mass-communities in Europe and in the larger parts of the world is the market system. Allowing decisions to be taken decentralised, the market system facilitates the division of labour and has proven efficient in supporting the growth of welfare. However, this system is not self-sustaining. Traditionally, states play a key role in establishing, maintaining, securing and regulating the market system. By issuing national currencies and enacting national regulations, states have provided the basis for domestic markets and established national economic systems. Although the national markets are not closed and self-sufficient, but relatively open systems, they have facilitated and favoured the domestic economic interactions. Thereby, they have had a severe impact on inner state relations and, thus, on the formation of a collective identity and the development of a self-image of the nation state as a community.

The notion of a special 'way of life' that is connected with an economic system is not the only basis for identification. The performance of the economic system is the second variable. People

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<sup>5</sup> Given that military capabilities increasingly depend on commercial products and innovation, falling behind in commercial competition, and thus in the development of wealth, ultimately means falling behind in military competition as well. See Crawford 1995:152.

<sup>6</sup> One might argue that there would be no such thing as a collective identity without the shortage of resources. However, since some needs comprise the interaction as such, this argumentation is only valid for mass identities, since mass collectives would lose their function.

can identify with a system of which they are part and that provides goods that allow them to please their needs. If regarded as efficient and good,<sup>8</sup> the economic system and the institutions that uphold it can evoke identification. The debate about the D-Mark patriotism, with the currency as unifying symbol for the entire German economy, has shown how people can identify with their own economic system. The affection to, and the faith in, the D-Mark were based on the very practical function it played in Germany's post-war economic recovery and prosperity.<sup>9</sup> In fact, the absolute and relative prosperity of an economic system can become a part of the community's self image. If wealth and material means form part of the internalised image, economic performance as such can be used as a referent object in a security process. The absolute economic growth does not only reinforce the domestic consensus and political stability, it has become part and parcel of the essential values that the community stands for. For a rich state, belonging to the wealthy and influential states can also be an important part of the self-image. This makes relative economic growth important, or better, that others do not outstrip the country's economic performance and threaten its position among the rich. To achieve all this, the influence on the international stage is important. Here 'geo-economics' come into play.

'Geo-economics'.<sup>10</sup> The idea of 'geo-economics' is basically a prolongation of Clausewitz<sup>11</sup> argument, and understands economics as a source of power.<sup>12</sup> Economic policies represent one set of instruments beside military, diplomatic and other means, in a community's 'stick and carrot' toolbox by which it can defend and assert its economic and other interests. It is therefore not surprising that scholars of the realist line of thought commonly use the term 'geo-economics'. Nevertheless, as the EU has shown, friendly states can co-operate, establish common markets and conduct collective economic policies in order to support their economic prosperity.

I have chosen to investigate 'geo-economic' policies of the Union because one motive behind the European economic integration was to increase the influence on the international stage.<sup>13</sup> The Union is therefore likely to utilise its economic policies vis-à-vis third states to maintain the own position among the rich(est) and to exercise power. This would allow the participating members to play their 'proper' role on the world stage and promote the export of 'essential values'. Thus, one can expect the Union to promote universal values and/or to protect its economy from negative external influences by using economic instruments. For the former, the referent objects would be the same as for crisis management operations, and for the latter, the stability and performance of its economic system.<sup>14</sup> The criticism against the concept of conducting geo-

<sup>7</sup> In this sense, the industrial revolution was not only ground-breaking in the technological field, but just as much in the societal area. The development of the market system, replacing the former rural community, gradually enabling mobility and providing people with the freedom of choice significantly changed our way of life.

<sup>8</sup> What is efficient and good depends on the preferences, and which needs are highlighted. Therefore any allocation mechanism can theoretically be regarded as legitimate and be internalised. Within the family, for instance, the distribution of goods is normally determined by the parents and not by some market system.

<sup>9</sup> As Helmut Kohl expressed it, the D-Mark symbolised 50 years of peace, freedom and stability in prosperity for the west Germans and the new democratic beginning for those in the newly formed German states. See Kohl, Helmut (German Chancellor), *Regierungserklärung anlässlich der Debatte im Deutschen Bundestag über die Konvergenzberichte zur Teilnahme an der Europäischen Währungsunion*, Bonn 02.04.1998.

<sup>10</sup> The Expression is borrowed from Luttwak, Edward, *Disarming the world's economies*. (Washington DC: Centre for Strategic and International Studies, unpublished CEO paper, 1990). Quoted by Cable 1995:308.

<sup>11</sup> Clausewitz's most famous argument, widely quoted, is that War is a continuation of 'politik' by other means. von Clausewitz, Carl, *Hinterlassenes Werk vom Kriege*, 18<sup>th</sup> edition by Halweg, W, Bonn 1973. Quoted in Meyers, Reinhard, *Grundbegriffe der Friedenswissenschaft I: Krieg, Wandel des Kriegbildes, Gewalt*, 1994.

<sup>12</sup> The school of 'geopolitics' started with Alfred Thayer Mahan's *The influence of Sea Power on History*, 1660-1783, Boston 1890, in particular pp. 29-87. A more modern version is presented by Samuel Huntington: "Economists are blind to the fact that economic activity is a source of power as well as well-being. It is, indeed, probably the most important source of power an, in a world in which military conflict between major states is unlikely, economic power will be increasingly important in determining the primacy and subordination of states." Huntington, Samuel, 'Why international primacy matters', in *International Security*, Volume 17, no. 4, Spring 1993, pp. here p. 72.

<sup>13</sup> See section 3.2.2.1 on page 124.

<sup>14</sup> Often the motives, respectively the referent objects, can be difficult to disentangle. The introduction of the market system as allocation mechanism and free trade can be promoted outside of the own system either as part of the essential values that the community stands for (like democracy, rule of law etc.), or in order to assure access to resources outside of the own territory (security of supply), thereby securing the stability of the economic system.

economic policies makes it even more interesting to see how the EU handles the issue. I will return to this criticism at the end of the section on geo-economics.

#### SELECTING ORGANISATION

The EU is the only organisation with a European attribute that has established a common market<sup>15</sup> and a common economic system, and the only one that embodies security processes dealing with economic threats. Therefore, the EU presents itself as the only suitable organisation to investigate.

*Investigating economic security.* Economic security processes differ from the military ones in several ways. It is quite clear that the Community is faced with a larger number of diverse economic threats and that these have to be counteracted with a vast number of different economic policies, instruments and measures. These widely surpass the amount of policies utilised in the military context. Decisions on the different policies do not result from a single forum that carries the political overall responsibility and that takes decisions according to a standardised procedure. Countermeasures are not co-ordinated within a single command structure, and are not conducted as consistent operation that pursues a single defined aim, i.e. to counteract *the* military threat. In difference to military instruments, economic instruments are not applied in emergencies but as preventive measures to avoid emergencies. Safeguarding the referent object, i.e. the stability and performance of the economic system, requires continuous and predictable state interventions. Moreover, the stability and performance of the economic system is more difficult to define and therefore also the threats. The stability and function of the economic system is assessed with reference to the development of a number of indicators or secondary referent objects, such as price stability or employment levels etc.. Security is produced through different policies, each of which pursue different aims, i.e. seek to protect a different secondary referent object. These secondary referent objects can even conflict.<sup>16</sup> This is one reason why it can be difficult to objectify when a secondary referent object is threatened, and thus when the stability is threatened. When does the level of unemployment become a security threat? In addition, and this is more important for the security process, the non-fulfilment of, for instance, economic growth, can be noticed and classified as a menace to the stability of the system, without necessarily allowing a clear identification of the source of the threat. This makes it difficult to elaborate and implement adequate policies, and nearly impossible to estimate the efficiency and the effect of single countermeasures.

Since I have placed security policies at one end of the interest line, without making a clear separation between security and other issues, I run the risk of including almost any policy into the economic security context. To avoid this, I must specify the economic security context. A policy must meet the following requirements to qualify as a security policy in a security context: it must either counteract a defined threat against a secondary referent object, or, if the threat cannot be defined, it must aim at counterbalancing the negative effects on a defined referent

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<sup>15</sup> The introduction of the Euro might be seen as the step from a common to a single market. However, the meaning of the three terms (single, internal and common), used in EC documents to describe the market remains disputed. Only the 'internal market' has been legally defined (ECT, article 14). In some cases, the countries of the European Economic Area are said to be part of the single market, since they have adopted the European Community legislation in most areas. This terminology is not used in this study. See for instance: European Commission: Trade policy instruments. Existing instruments: Anti-dumping. How to introduce an anti-dumping complaint? Available at: <http://europa.eu.int/comm/trade/policy/dumping/compl.htm>

<sup>16</sup> One example is the disputed Philips Curve, suggesting a trade-off between employment and inflation.

object. Consequently, a security policy must be directly involved in the production of security, i.e. in the protection or enhancement of the secondary referent object.

To start the investigation of the Union's economic security process the policies to be investigated must be selected. Outlining the full spectrum of EU policies that may fall under the headline economic policy of stability would go far beyond the scope of this study. I must therefore concentrate on the most prominent and important ones. In order to assure that the investigated policies are relevant for the security production the selection is made with a specified referent object as point of departure. Based on the economic objectives as declared in article 2 of the EC-Treaty<sup>17</sup> and considering the areas in which the Union has responsibilities for the economic policies, I have divided the general referent object, i.e. the stability and performance of the economic system, into four secondary referent objects. This chapter investigates the European economic security processes concerned with defending the following secondary referent objects: *maintaining competition, economic cohesion and high level of employment, price stability and the supply of essential goods*. These secondary referent objects are not necessarily defended by a single actor or by a single type of policy. Since it is impossible to grasp the influence of all imaginable policies and actors, I do not claim to present a complete picture of the different economic security processes. Nevertheless, I consider the main European and national economic policies involved in each security process. Where fitting, I will also indicate some of the threats to the secondary referent object that are not covered by these policies and point out other actors with responsibility for the protection of the referent object.

In addition, I will examine the so-called 'geo-economics' comprising policies that display the Union's economic power on the international arena. They include protectionist and commercial defence measures that seek to protect the domestic production and markets, as well as policies used to reward or punish an actor and to induce or coerce him to behave in particular ways.

Due to this partition, I speak of different economic security processes within the same organisation. This does not mean that the economic context or the economic system is fragmented. All parts and policies are interconnected. But, the production of economic security is organised in several separate economic security processes at the European level, each of which must be investigated in detail and classified. Thus, this chapter does not only analyse two security processes, as the previous chapter on military threats did (NATO and EU), but several processes within the EU.

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<sup>17</sup> In article 2 of the EC-Treaty, the community has declared to promote among other things the following economic objectives: a harmonious, balanced and sustainable development of economic activities; a high level of employment and of social protection; sustainable and non-inflationary growth; a high degree of competitiveness and convergence of economic performance; the raising of the standard of living and quality of life; and economic and social cohesion and solidarity among member states. These objectives are to be achieved by establishing a common market and an economic and monetary union supported by the implementation of common policies or activities, all conducted in accordance with the principle of an open market economy with free competition (ECT, article 4(2)). These are all goals that correlate well to the economic objectives of the member states' national economic policies, which they have declared in their stability or convergence programs, issued by the Stability and Growth Pact. Thus, in a European security process either the general objectives themselves can be used as referent objects, or, as a way to attain these, the functioning and the stability of the Common Market and the EMU.

### 3.2.1 Category polity and politics- Organisation and Authority

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity		X	
	Politics			
	Policy			
Conclusion ESDI				

The aim of this section is to explore to what extent the ESDI is reflected in the EU polity and politics by outlining and scrutinizing the Union's authorities within the field of economic security policies. The examination aims at determining whether the institutional structure allows us to speak of a consensual, semi-autonomous or autonomous European security process dealing with economic threats in the areas of the EU competencies. I concentrate on how and by whom threats are defined, decisions on countermeasures are taken and who implements them. Can decisions that contradict national preferences be taken? What role does the EU play in the different economic security processes? How are the responsibilities shared between the European level and the member states?

#### 3.2.1.1 Economic policy of stability

This section assesses the security processes of three referent objects, maintaining competition, economic cohesion and a high level of employment, and price stability. All three represent functions that are vital for the continuous operation of the market and that tend to be threatened by market forces. The policies involved in the protection of these secondary referent objects are therefore concerned with controlling the market and restraining market forces. I chose the maintenance of competition because it is one of the most important secondary referent objects. Without competition, the advantages from the liberalisation of the internal market, such as the incentive to increase efficiency, are nullified. Economic cohesion, a high level of employment and price stability are all directly linked to the Union's economic objectives as expressed in article 2 ECT. The first two are treated together because the EC largely uses the same policies to deal with both.

#### *MAINTAINING COMPETITION*

Anticompetitive practices, such as the division of markets and price agreements, represent one of the main threats against the function and stability of the single market. This is why the ECT contains general principles on competition.<sup>18</sup> The Council, acting by a qualified majority, has adopted the appropriate regulations or directives to give effect to these principles.<sup>19</sup> Although free competition is seen as a means to enhance economic efficiency and prosperity, anti-competitive practices can be attractive for both companies and national authorities. Therefore, the Commission has been tasked to assure that these actors do not prevent, restrict or distort the competition

<sup>18</sup> ECT, article 81 and 82.

within the Common Market.<sup>20</sup> The Commission does not only have the task of ensuring that the EC competition rules are respected. It also has the competency to interpret the regulations on competition, to grant exemptions when anti-competitive actions are acceptable and desirable, or to authorise them on certain conditions. Thus, the Commission defines if an isolated case is to be regarded as a threat and it decides suitable countermeasures.

Concerning the governmental policies, the Commission surveys state aid. A complete ban of state aid is impossible since it is sometimes needed to correct imbalance and help in emergencies. Therefore, article 87 ECT lists a number of exceptions from the general prohibition when state aid is, or may be, compatible with the Common Market. New aid must be reported to and be authorised by the Commission, and existing aid kept under constant review.<sup>21</sup> If the Commission observes infringements, it decides a period of time, within which the State concerned shall abolish or alter such aid.<sup>22</sup> But, the Commission can neither penalise the State concerned, nor allow a State to grant aid, that would normally be prohibited. The latter can only be made by the Council, acting unanimously, under exceptional circumstances.<sup>23</sup> Thus, concerning state aid, anti-competitive practices are surveyed and threats determined at the European level, but no countermeasures enforced.

As for the activities of businesses, the Commission surveys restricted agreements and concerted practices, as well as the abuse of a dominant position and mergers that create or strengthen a dominant position as a result of which effective competition would be significantly impeded. However, the Commission is not the sole guardian of competition rules for businesses. It is only responsible to watch those activities that may affect trade between member states. If a company's practices only affect the trade within a state, the competition authority of that country will proceed against the infringements of competition rules. In the cases of mergers, the question whether or not the trade between member states is affected, is determined with reference to the turnover of the company.<sup>24</sup> If these quantified criteria are met, the companies involved have to notify the Commission that has to authorise the merger, which it also does in most cases.<sup>25</sup> For the Antitrust policies, in contrast, there are no clear rules defining how much of a market a company must control to have a dominant position that it could abuse.<sup>26</sup> This depends on the nature of the product, substitute products and consumers' perception. In this case, the Commission decides whether or not to engage in a case. If it finds that an infringement has occurred, it can order its cessation, and even impose a fine or penalty.<sup>27</sup> This means, that it also takes on a quasi-judicative role. Thus, infringements fall under the exclusive control of the Commission if the quantitative criteria are met, or if it considers that a company abuses its dominant position on a market. Consequently, anti-competitive practices are surveyed and counteracted on both the national and the European level, although the Union is responsible for the 'bigger' cases.

As for the politics, the Competition Directorate-General can certainly be said to fulfil its task as guardian of the European competition rules. Since listing the single cases and decisions would

<sup>19</sup> ECT, article 82.

<sup>20</sup> ECT, article 85.

<sup>21</sup> ECT, article 88 (1 and 3).

<sup>22</sup> ECT, article 88 (2).

<sup>23</sup> ECT, article 88 (2).

<sup>24</sup> For the precise and rather complex definition of how big the turnover has to be, see the Council Regulation (EEC) no. 4064/89 and 1310/97 and their amendments.

<sup>25</sup> European Parliament Fact Sheet: Abuse of a dominant position and investigation of mergers.

[http://www.europarl.eu.int/factsheets/3\\_3\\_2\\_en.htm](http://www.europarl.eu.int/factsheets/3_3_2_en.htm)

<sup>26</sup> Article 82 of the ECT gives some examples of such abusive practices.

<sup>27</sup> The Commission's 1998 decision in the Volkswagen case is one example. The Commission fined Volkswagen AG 102 million for restricting the cross-border trade in motor vehicles. Another example is the Tetrapak case from 1991, in which the company was fined ECU 75 million.

not add value to the examination I refrain from presenting such a record.<sup>28</sup> It can however be noted, that the amount of cases that are examined by the Commission is constantly growing.

Consequently, the competition is guarded in three independent security processes. The Commission defines threats to the competition rules stemming from governmental policies autonomously, but since the competition rules cannot be enforced, this autonomous European security process remains incomplete. Anti competitive behaviour of undertakings in contrast is defined, counteracted and penalized in parallel but separated national and European security processes.

Level	Legislative Security Process (Rules)	Executive Security process			Classification Security process	Applied to counteract threats?/ Efficacy
		Situation assessment	Decision	Enforcement		
European	EC competition legislation Council QM	Government aid Commission			Autonomous incomplete	Yes/De jure limited De facto yes
		Business (European 'big' cases) Commission			Autonomous	Yes
National	National laws (Compatible with EC legislation)	Business (National cases)			Autonomous	Yes

Figure 3.2-1. Security process: defending competition rules

#### ECONOMIC COHESION AND A HIGH LEVEL OF EMPLOYMENT

Article 2 ECT defines the promotion of a harmonious development of economic activities, a high level of employment and economic and social cohesion among member states as one of its objectives. Since there is a direct linkage between unemployment and poverty, the two issues are closely related. Although they are presented as part of the fundamental aims of the Community's activities, they can also be interpreted as modal targets that have to be reached in order to fulfil the more general final target – the stability of the economic (and political) system. Or differently put, if the unemployment and the social disparity assume large proportions, the system will lose legitimacy and become unstable. This was recognised at local and national level, long before it came on the EC agenda. All European states have engaged in employment policies and constructed national systems for redistributing financial means to increase the economic cohesion. The EC has devoted almost 35 % of its budget for cohesion and employment policies ( 34 billion in 2002). Nearly all of these means are distributed through the Structural Funds<sup>29</sup> ( 30,9 billion in 2002) and the Cohesion Fund<sup>30</sup> ( 2,8 billion in 2002).<sup>31</sup> The Common Agriculture Policy (CAP) can be interpreted as a policy that serves the same aim. I will return to the CAP below.

In terms of ESDI, it is interesting to note, how and by whom the economic threat is defined. By emphasising the economic and social cohesion, the Community has indirectly defined eco-

<sup>28</sup> Complete lists are available on the Commission's Competition homepage at: [http://europa.eu.int/comm/competition/index\\_en.html](http://europa.eu.int/comm/competition/index_en.html)

<sup>29</sup> For the period 2000-2006 three objectives have been defined for the Structural Funds: Objective 1 promotes the development and structural adjustment of regions whose development is lagging behind, i.e. those whose average per capita GDP is less than 75% of the European Union average. Two thirds of Structural Fund operations concentrate on this objective and almost 20% of the Union's total population will benefit from the measures taken. Objective 2 contributes to the economic and social conversion of regions undergoing economic change, declining industrial and rural areas, depressed areas dependent on fisheries and urban areas in difficulty. No more than 18% of the Union's population is covered by this objective. Objective 3 gathers together all the measures taken reduce unemployment and to enhance employment opportunities taken under the Title VIII of the ECT on employment and under the European Employment Strategy. Regulation (EC) no. 1260/1999.

<sup>30</sup> The Cohesion Funds, in contrast was set up to provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure (ECT, article 161). It is reserved to members whose per capita GNP is less than 90% of the Community average. At present four members are eligible to benefit from it, Greece, Spain, Ireland and Portugal.

<sup>31</sup> European Commission: General Budget of the European Union for the year 2002. Brussels and Luxembourg 2002. Title B2. p. 9.



conomic and social gaps as an economic threat. As for the countermeasures, the Council defines the tasks, priority objectives, organisation, general rules and coordination of the Structural Funds and the Cohesion Fund unanimously.<sup>32</sup> From a security perspective these regulations seem to be defined in a backward manner. The EC has not specified the referent object. It has not defined a cohesion or employment target that has to be reached, suggesting that a drifting apart beyond a certain limit poses an economic threat, and must be counteracted. What it has done is to define how the Funds are to be distributed. By setting the objective criteria by which member states or regions qualify for funding from the Funds (these are not dependent on employment levels, but exclusively of the economic cohesion<sup>33</sup>) the Council has not defined the threat and referent object, but a level of economic cohesion that can be regarded as secure, i.e. the point beyond which levelling countermeasures are no longer required. This means that the Council has decided at what degree of cohesion countermeasures become superfluous, but without setting a target that is to be reached. The mechanism is therefore not geared towards defending a specified referent object, to achieve a cohesion (security) goal and to lift all regions/countries to a certain level. All that has been said is that the funding will stop if a certain level of cohesion is reached. One can picture this as a leaking pond, in which the EC pours water with the explanation that it does not want the surface to sink too low. It has also defined the upper water level at which the Community will stop pouring in more water. But it has not defined under what level the water must not sink, that is the lower water level, which represents a danger. Consequently, the gap between regions can continue to grow, despite of the funds.

The division of responsibility between the European and the national level for the economic and social cohesion and the regional development can explain this approach. A general principle for Community assistance is that it may not substitute for national funds.<sup>34</sup> Thus, the Community does not relieve member states from any responsibility. It merely complements national efforts. The logic behind the European funding suggests that the primary responsibility lies with the nation state. This impression is reinforced when looking at how the member states are involved in the European security process, i.e. in the decisions on European cohesion and employment policies.

The Commission is responsible for the implementation and distribution of both Funds in accordance with the objectives and restrictions defined by the Council. However, the Commission only has a very limited ability to define threats on its own within the prescribed framework. Only around 5 % (ca. 10 billion in 2000-2006) of the Structural Funds are earmarked for so called Community initiatives, which the Commission can instigate. However, these are subject to strict regulations that severely limit the Commissions freedom of action.<sup>35</sup> The rest of the Structural Funds and the entire Cohesion Fund are allocated to projects proposed by member states or regions that qualify for funding by fulfilling objectified criteria. Although these projects are discussed with, and must be approved by, the Commission before obtaining Community funding, the Union does not initiate them.<sup>36</sup> The role of the Commission is to estimate the effi-

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<sup>32</sup> ECT, article 161.

<sup>33</sup> Funding from the Structural Funds for projects that promote the development and structural adjustment of regions whose development is lagging behind can only be granted to regions where the average per capita GDP is less than 75% of the European Union average. Funding out of the Cohesion Fund is only granted to members whose per capita GNP is less than 90% of the Community average.

<sup>34</sup> SCAD plus: Regional Policy. General provisions on the Structural Funds. Point 13. Available at: <http://europa.eu.int/scadplus/leg/en/vvb/l60014.htm>

<sup>35</sup> Council Regulation (EC) no. 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds. OJ L 161, 26.06.1999. p. 1-42.

<sup>36</sup> European Commission: Regional Policy-inforegio. At the service of the regions. How does it work? Available at: [http://europa.eu.int/comm/regional\\_policy/intro/regions7\\_en.htm](http://europa.eu.int/comm/regional_policy/intro/regions7_en.htm)

ciency and to help the applicants to elaborate the projects. Thus, the Community does not even conduct its own process autonomously, but in close co-operation and consent with the recipients.

An examination and estimation of the importance of the EC activities compared to the national efforts cannot be provided in this study. It is however quite clear, that the allocation of around 30 billion a year for structural measures has a considerable impact on the secondary referent object. Concerning the effects, one should however differentiate between the goals of economic cohesion and a high level of employment. The EC and the member states could target a specified goal of economic cohesion directly through programs aiming at adapting and modernising the regional infrastructure and economy or by transfer payments. In contrast, it is more difficult to promote the increase of sustainable employment. Considering the limits of public budgets the bulk of new sustainable jobs must be created in the private sector. Therefore, it is decided on the labour market, which can only be influenced indirectly by the governments and the EC. Apart from the direct funding of projects through the European Social Funds (which is a part of the Structural Funds), the governments have also agreed to co-ordinate their employment policies at the European level. The aim is to avoid competition of economic policies at the expense of the labour force, at the same time as they can benefit from each other's experiences. Since the member states maintain their exclusive competence in the field, the co-operation is based on non-binding guidelines, recommendations and dialogue.<sup>37</sup>

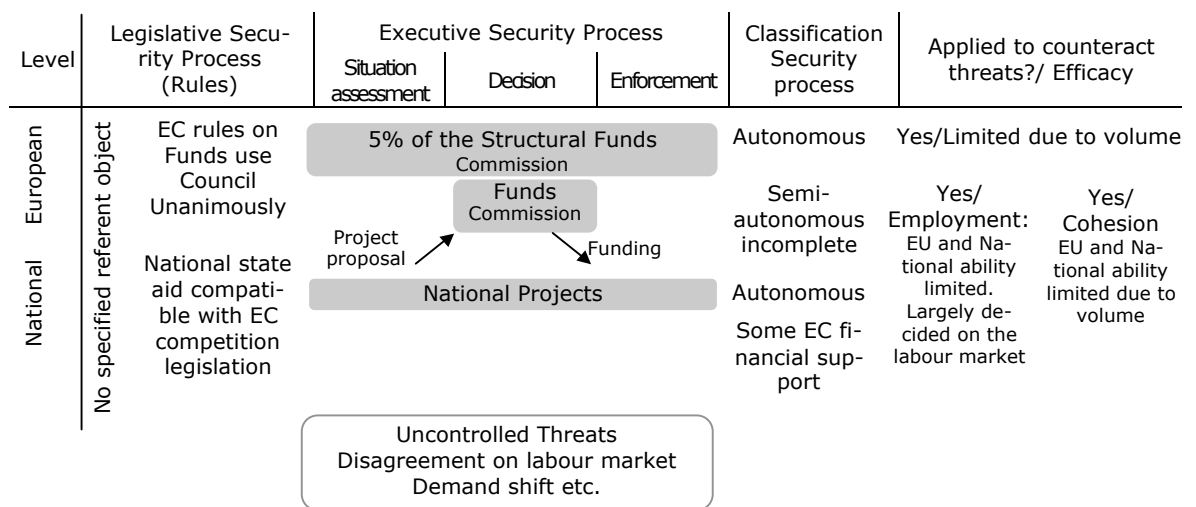


Figure 3.2-2. Security process: defending economic cohesion and high level of employment

Lacking specifications of the referent objects, i.e. the cohesion and employment goals, it is very difficult to make assessments of the security production. Nevertheless, one can note that the member states and the Community share some responsibilities for the cohesion and employment levels. Due to the division of responsibility, the security process concerned could be described as semi-autonomous. The EC can take decisions that contradict national interests, but only to the extent that the Commission decides not to fund a project proposed by a member state. There is no room for a fully autonomous European policy, which is conducted in parallel to the national ones, and that the receiving member state rejects. When considering this and the involvement of

<sup>37</sup> SCAD plus: Employment. Current Situation and outlook. Available at:

the member states and regions in the Community's own process, the label semi-autonomous even appears a bit exaggerated. The limited role the EU plays in terms of employment must also be emphasised.

### *PRICE STABILITY*

The stability of the currency can be influenced by both internal and external economic threats. In the same way as the responsibility for the national currencies lies with the respective national central bank, the European Central Bank (ECB) has been confided the responsible maintaining the stability and, thus, the confidence in the Euro. Consequently, the Euro-countries have transferred the responsibility for monetary policy and thus, the security process, to the European level.

In terms of security, the purpose of the ECB is clearly defined. Its primary objective is to maintain price stability. The state of security and the targeted goal has been defined by ECB itself as "a year-on-year increase in the Harmonised Index of Consumer Prices for the Euro-area of below 2%".<sup>38</sup> Events that may endanger this goal can therefore be defined as threats and will be counteracted by the Bank. To implement its tasks, the ECB has been equipped with instruments to handle internal threats to price stability posed by the activity of governments and commercial banks. It can regulate the money supply by controlling the commercial banks ability to grant credits and to create money through e.g. its open market and credit policy or its minimum reserve policy.<sup>39</sup> The ECB can make regulations and take decisions that are binding in this area<sup>40</sup> and it is entitled to impose fines or periodic penalty payments on undertakings for failure to fulfil obligations arising from these.<sup>41</sup>

Although, the goal attainment is verifiable by everyone consulting official statistics, the ECB independently decides on its policy and countermeasures. The Euro system exercises its tasks in independence. According to article 108 EC-treaty, "...neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Community institutions or bodies, from any government of a member state or from any other body". In addition, it has its own budget, independent from the one of the European Union. The personal independence of the members of the ECB's decision-making bodies is also granted. The governors of the national central banks are assured a minimum renewable term in office of five years, and a non-renewable term in office of eight years for members of the executive board.<sup>42</sup> The process of decision-making in the Euro system takes place within the Governing Council and the Executive board of the ECB. In both of them decisions are normally taken by simple majority of the votes cast by the persons present, each of whom has one vote.

Thus, the ECB defines whether or not the current development poses a threat to the attainment of the referent object that it has objectified with a reference value. If the development is regarded as a threat, the European System of Central Banks (ESCB) alone delineates the threat

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<http://europa.eu.int/scadplus/leg/en/cha/c00002.htm>

<sup>38</sup> ECB press release: A stability-oriented monetary policy strategy for the ESCB. 13.10.1998. Available at: [http://www.ecb.int/press/pr981013\\_1.htm](http://www.ecb.int/press/pr981013_1.htm)

<sup>39</sup> Protocol on the Statute of the European System of Central Banks and of the European Central Bank (annexed to the TEU), article 18 and 19. In addition the ESCB can impose sanctions in the form of fines and periodic penalties for failures to comply with obligations under its regulations and decisions. See *ibid*, article 34.3.

<sup>40</sup> According to article 34 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank the ECB can make binding regulations to implement the monetary policy of the Community, the minimum reserve policy, the clearing and payment systems and for the supervision of credit and other financial institutions with the exception of insurance undertakings.

<sup>41</sup> Protocol on the Statute of the European System of Central Banks and of the European Central Bank (annexed to the TEU), article 19 (1) and 34 (3). See also: Recommendation of the European Central Bank for a Council Regulation (EC) concerning the powers of the European Central Bank to impose sanctions. Published in the ECB Compendium 1999. p. 103-106. Also OJ C 246, 6.8.1998, p.9ff.

and chooses a policy to counteract it. Hence, the Euro system has an autonomous exclusive authority within its sphere of responsibility. Since the ECB defines its own goals and manages all activities from threat detection to countermeasures alone, one may speak of an entirely autonomous security process. This does, however, not mean that the ECB can ward off all threats to price stability.

As for external monetary threats to price stability, the ECB can only compensate for the rise in prices of imported goods to a limited extent by influencing the exchange rates through its foreign exchange policy. Given that European countries only can control internal threats to price stability directly, it is not surprising, that the ESCB above all tries to achieve its primary objective through an internal monetary policy and avoids regulatory interventions on the foreign exchange market.

The ECB cannot even counteract all internal threats. It cannot prevent the financial policy of the Euro-zone governments, which may have severe impact on price stability. A government could be tempted to stimulate the national economy by increasing the state demand, financed by deficit spending. In this case, the state could profit from all the benefits of that policy, while sharing costs in the form of the resulting demand driven inflation with all other Euro countries. To prevent such behaviour, the Council may impose sanctions in the form of fines on a Euro state with a government deficit larger than 3% of GDP.<sup>43</sup> This decision is taken on a recommendation from the Commission by a majority of two-thirds of the votes of its members weighted in accordance with Article 205(2), excluding the votes of the representative of the member state concerned.<sup>44</sup> As the case of Ireland showed in 2001, the EU cannot impose any sanctions on a government if they conduct an expansive policy, kindling the inflation as long as they meet the deficit spending criteria.<sup>45</sup> Neither can the EU or the ESCB (nor the national governments) control other internal demand or supply driven inflation. Thus, the ECB shares the responsibility for price stability with the Council and with the member states.

Level	Legislative Security Process (Rules)	Executive Security Process			Classification Security process	Applied to counteract threats?/ Efficacy
		Situation assessment	Decision	Enforcement		
European	ECB defines price stability goals	ECB monetary policy			Autonomous	Yes/Limited, depending on threat.
	Council defined deficit spending limits	Stability Pact (deficit spending) Comm. Council 2/3 majority			Autonomous	Limited/ EC Enforcement possible
National	No regulated limits	Uncontrolled governmental threat Balanced National expansive spending (demand push)  Other Uncontrolled Threats: National demand shift External price rise			Autonomous	Full National responsibility

Figure 3.2-3. Security process: defending price stability of the currency

<sup>42</sup> The Institutional Framework of the European System of Central Banks. ECB Monthly Bulletin. July 1999. p. 55-63. Here p. 57-58.

<sup>43</sup> ECT, article 104 (11); Resolution of the European Council on the Stability and Growth Pact. Amsterdam. 17.06.1997, article 3-5.

<sup>44</sup> ECT, article 104 (13).

<sup>45</sup> In this case, the Council may make recommendations to the member state concerned and decide to make these public. ECT, article 99 (4). See also Blome, Nikolaus, 'EU-Länder stellen Irland an den Pranger', in *Die Welt*, 13.01.2002.

### 3.2.1.2 Supply of essential goods - Security of energy supply

It is not possible to investigate the Union's role in securing the supply for every single product separately. Therefore, I have chosen to display its responsibility for the most fundamental goods - energy. For no other product is the dependence as large and inescapable. The Union's dependence on external energy sources is constantly growing. The European Commission considers this to be problematic and has written a Green Paper called "Towards a European Strategy for Security of Energy Supply", which it adopted in November 2000.<sup>46</sup> According to the Green Paper the share of imported energy covering Union's energy requirements will grow from the current 50% to 70% in the next 20 to 30 years, unless measures are taken. At the same time, the total energy consumption is expected to grow with 2-4% annually, which means that the dependence will increase in both absolute and relative terms.<sup>47</sup> Interruptions in supply of energy products such as oil, gas, coal, nuclear energy or renewable resources would have severe effect on the entire economy. Although the economic activity as a whole need not come to a halt if the supply of energy is reduced, a substitution of energy sources and a conversion to more efficient energy consumption is an expensive and time-consuming process. One must only imagine replacing oil with another source of energy in the transport sector. Thus, the Union's economic system will become even more vulnerable towards erratic fluctuations in the price of imported energy products and towards their physical availability. This is probably why the term security has been frequently used in the energy context lately. I accept that the supply of certain goods can be a security matter; water is a well-known example. However, I am not prepared to accept that the supply of even the scarcest goods is treated as a security matter at the European level without further ado. I must therefore not simply scrutinise the European energy policies, but also answer whether or not they can be regarded as security policies. Security of supply can be pursued by two complementary strategies. While the first aims at reducing the risks linked to dependencies, the second one seeks to enhance self-sufficiency.

#### *REDUCING THE RISKS OF DEPENDENCE*

Since nobody has any illusions about the Union's ability to become self-sufficient in the energy sector in foreseeable future, the first strategy is essential. The vulnerability of the European economy can be reduced by diversifying the external sources of supply, both in terms of products (e.g. oil, gas) and in terms of suppliers. Strategic stockpiling of essential goods is a second method that can cushion the impact of temporary shocks.

The EC supports the development of supply networks directed towards the Union. To this end, the Union has set up the technical assistance INOGATE programme (Interstate Oil and Gas Transport to Europe). The financial volume of these programs displays the modest role the Community plays in achieving the security of supply. Since 1994, 26 INOGATE programs have been launched. Of these, 25 projects were funded by TACIS with a total budget of 58 Million and only one project PHARE with a budget of 300 000.<sup>48</sup> All these infrastructure measures aim at encouraging and facilitating private investments. The EC programs thus only complement

<sup>46</sup> European Commission: Green Paper. Towards a European Strategy for Security of Energy Supply. Luxemburg 2001. (COM(2000) 769 final).

<sup>47</sup> European Commission: Green Paper. Towards a European Strategy for Security of Energy Supply. Luxemburg 2001. (COM(2000) 769 final) p. 14.

<sup>48</sup> The funding of INOGATE programs depends on the geographical location of the investment. Funding is foreseen from TACIS (projects involving countries from the NIS and Mongolia), PHARE (Central and Eastern European countries) and MEDA (countries from the Mediterranean). A list of all INOGATE programs can be found of the INOGATE Website at: <http://www.inogate.org/html/resource/resource1.htm>

member states' and the private sector's efforts. Consequently, the EC does not take on the full costs of any pipeline, harbour or the like.

Strategic stock management of energy products is another area that the EC has regulated by law. At present, EU members are held to maintain a level of stocks equivalent to 90 days' consumption for each of the three main categories of petroleum products.<sup>49</sup> Since EC law has fixed this level, there is no continuous ongoing security process at the European level. The EU does not keep or finance any of its own stocks, nor is it the main body dealing with oil shortage. In the wake of the 1973/74 oil crisis, the International Energy Agency was formed. It has similar rules concerning stockpiling and mechanisms for re-allocation among the countries of the International Energy Agency in case of a crisis. The role of the Union concerning the stockpiling of oil is also put into perspective by the fact that the EU states keep larger national stocks than foreseen by the Union.<sup>50</sup>

#### *SELF SUFFICIENCY - RESEARCH AND DEVELOPMENT*

Self-sufficiency can be enhanced in several ways. The first and most obvious method is to expand the domestic production. This is not the goal of any EC policies, because the question of what domestic energy sources are adequate is highly charged. One must only consider the national debates on nuclear power to understand how difficult it would be for the Commission or the Council to regulate how much nuclear energy is to be produced within the Union or even to finance the expansion of nuclear energy production. The second way is to utilise Energy more efficient, and thereby to reduce the consumption or at least its growth. To this end, the Commission has launched the SAVE (I and II) programmes.<sup>51</sup> A third procedure is to substitute the imported energy with domestic alternatives. This can be achieved if new and renewable energy sources are developed. For this purpose, the ALTENER programmes were established.<sup>52</sup> Both programs finance educational as well as research and development activities in the respective area. Some of these actions are fully funded by the Community, whilst others (i.e. pilot actions and measures proposed by third parties) can obtain a maximum Community contribution of 50%, with the rest made up from public and/or private sources. Educational as well as Research and Development (R&D) activities are amongst, if not *the*, most important instrument to promote self-sufficiency and reduce dependency. Given the total volume of these programs, it is however also quite clear that the member states and the private sector carry the main responsibility in this area.<sup>53</sup>

<sup>49</sup> Directive 68/414/EEC, as amended by Directive 98/93/EC.

<sup>50</sup> Occasionally some countries fall below this level, but the sum of European oil stocks usually exceed the equivalent of 90 days. See for example *The European Union's Oil supply*, 2000.10.04. Available at <http://europa.eu.int/comm/energy/library/commen.pdf>

<sup>51</sup> Council Decision no. 647/2000/EC of the European Parliament and of the Council of 28 February 2000 adopting a multiannual programme for the promotion of energy efficiency (SAVE) (1998 to 2002). Available at: <http://europa.eu.int/scadplus/leg/en/lvb/l27017.htm>

<sup>52</sup> Decision no. 646/2000/EC of the European Parliament and of the Council of 28 February 2000 adopting a multiannual programme for the promotion of renewable energy sources in the Community (Altener) (1998 to 2002). Available at: <http://europa.eu.int/scadplus/leg/en/lvb/l27016b.htm>

<sup>53</sup> The limited role of the EU in the area of R&D is also reflected by the fact that the European Commission finances less than 5% of all publicly funded research in Europe. Source: Commission's research web site at <http://europa.eu.int/comm/research/faq.html>

1998-2002 Energy Framework Program			Commission Proposal for 2003-2006				
Aim	Program	Budget	Budget				
			2003	2004	2005	2006	Total
Promotion of energy efficiency	SAVE	66	21	18	18	18	75
Promotion of renewable sources	ALTENER	77	23	21	21	21	86
International promotion of renewables and energy efficiency	COOPENER		2	5	7	5	19
Total		143	46	34	36	34	180

Source: European Commission: Intelligent Energy for Europe. Proposal of the Commission for a multiannual programme for actions in the field of energy (2003-2006). [http://europa.eu.int/comm/energy/intelligent/index\\_en.html](http://europa.eu.int/comm/energy/intelligent/index_en.html)

*Figure 3.2-4. EC energy self-sufficiency funding programs (in million Euro)*

*Supply as security issue at the European level?* Since the Union does not produce energy itself, it is quite clear that it neither has the exclusive competency or the full responsibility for the security of supply of energy. Just as with economic cohesion and employment, it is laborious to objectify the referent object, i.e. the level of energy supply that is secure. One explanation for this is that neither energy nor the energy supply is a public goods. The consumers' vulnerability varies because their price elasticity as well as their ability to adapt the consumption of energy varies. To objectify the security of energy supply, one would therefore have to answer how much energy must be produced and at what price it must be sold within the EC. This is not possible without determining what amount of energy what actors should be able to afford. It is also difficult to identify what threats the EC programmes aim at counteracting. What threats are counteracted when the risks of dependence are reduced and when self-sufficiency is enhanced? As such, the shortage energy and the dependence of external producers can hardly be seen as a threat. Shortages of private goods as well as dependencies are essential elements of a market economy. Without shortage of private goods no market will develop, and without dependencies the whole idea of division of labour becomes redundant. In a situation where neither the referent object nor the threat can be defined it is difficult to see how the EC programs can be presented as defence measures in a European economic 'security of supply' context. To some extent, this argument is also valid for the economic cohesion and employment policies. In the case of energy, however, the EC does not intervene to 'correct' the outcome of the market. Instead, the EC energy policies aim at supporting the development of the market. Apart from reducing the growth of demand (SAVE) and enhancing the competition and the supply (alternative sources ALTNER, and suppliers INOGATE), the EC has also made efforts to complete the internal market in order to enhance the competition in the energy sector. The Commission has adopted a set of measures to open the gas and electricity markets fully by 2005. This includes infrastructure measures within the Union that interconnect the different European supply networks. Rather than arguing that that energy supply would be handled as a security issue at the European level, I prefer to describe the EC energy policies as measures that seek to develop the market where the supply of energy is regulated. Although the energy supply is addressed at all political levels, undertakings carry the responsibility for the energy supply to the European market.<sup>54</sup> The EC does not produce supply security. This role is incumbent on undertakings. EC policies do not counteract and restrain any forces that threaten the supply of essential goods (at least not within the economic context), nor

do they rectify or alleviate an insufficient supply. The European policies merely seek to make the allocation of energy over the market possible by supporting the development of a competitive European market. By doing so, the EC may reduce its dependence on specific sources. It is difficult to say whether or not this objectively decreases the vulnerability, but even if it seems to make the supply of energy more reliable, the EC policies only increase the opportunity for undertakings to import energy. The policies do not automatically increase the supply nor do they directly counteract a reduction. The supply of EU external energy is still completely managed by undertakings and therefore they carry the full responsibility for the 'security of supply'.

### 3.2.1.3 'Geo-economics'- protectionism and export of values

This section turns towards the external dimension of the economic context. It examines to what extent the Union uses commercial and financial policies in relations with third states as geo-economic instruments. The EC could utilise its economic toolkit to exercise power over third parties in two different ways. First, it could protect the own economic development. This can be done by counteracting protectionist policies of others, by protecting the domestic producers from competition, and by supporting the domestic production. Second, the Union could defend the general (or universal) values outside of its own territory and influence others through an economic 'carrot and stick policy'. The EC could use favourable trade agreements and development policy as incentives, and impose sanctions as coercive measures.

'Geo-economics' are based on the idea of economic power politics. Security could therefore be understood as self-determination and economics as one means by which it can be assured. International relations are then implicitly understood as a competition for power and a zero sum game. Just like physical force, economic pressure represents a way of exercising power to achieve political ends. The more powerful the economy is, the larger is its ability to exert influence on others and to resist efforts by others to influence it. Thus, a strong economy is not only the basis for maintaining a strong military force. It also provides a greater range of instruments of influence.<sup>55</sup> In this view, economic security and economic threats are seen in the context of dependency and relative economic gains. Economic weakness leaves a country vulnerable to outside forces that restrict and erode its autonomy. This may result in foreign imposition that threatens the own sovereignty and freedom of action. Economic security policies will therefore pursue the maintenance of relative economic strength, attempt to limit own economic dependence and vulnerability, promote the dependence of others and elaborate ways to exercise economic influence on them.

As will be shown below, geo-economics are not easily implemented, not by single states and not by the EU. The reason for this is that contradicting ambitions have to be handled. Dependencies have to be minimised in order to reduce the vulnerability. In a mercantilist fashion, trade deficits can be interpreted as economic threats, leading to dependency, accumulation of external debt and inward investment and ownership. Competition is not seen as a synonym for productivity, but rather as a threat to the national production, that can result in increasing dependence and exposure. Consequently, the government will pursue a protectionist trade policy. This con-

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<sup>54</sup> For more information on, and an argument around, the move of the prime responsibility for achieving security of supply from governments (and the EC) to market participants in liberalised markets, see Report of a CEPS Working Party: Security of Energy Supply. A Question for Policy or the Markets. Brussels 2001.



trasts with the ambition to promote the own economy's relative strength. Since economic co-operation has proven beneficial for the economic development, the protectionist policy can be regarded as a threat to both the absolute and the relative economic growth.<sup>56</sup>

In addition, the efficiency of a 'geo-economic' policy can be contested. The critics do not only concern the contradiction outlined above.<sup>57</sup> The effectiveness of an economic 'carrot and stick' policy to exercise power is also questioned. The impact of economic instruments will vary with the targeted actor's dependence of the 'mastering' party. Over time, sanctions may stimulate local production of the embargoed commodity or result in substitution of the product. Boycotts and import restriction will encourage the targeted to find alternative markets. Moreover, economic rewards and punishments have a reciprocal influence, with both the targeted and the initiating state suffering costs.<sup>58</sup> Most important however, is that economic instruments have proven ineffective to impose one's will on antagonist states. From Cuba, Iran to Burma, US sanctions have failed to achieve the goal of changing the behaviour or the nature of target regimes.<sup>59</sup>

#### *PROTECTIONISM AND COMMERCIAL DEFENCE MEASURES*

Protectionism and commercial defence measures on the one hand, and trade liberalisation on the other, are two sides of the same coin, although opposite ones. As for the ESDI, the following questions are of interest:

- In what cases/areas is the EC an actor in trade conflicts?
- What instruments can it apply?
- How is the security process within the EC organised? How and by whom, are the external threats defined and the necessity to act determined? Who decides what countermeasures are appropriate and whether or not they are to be applied? How is this decision taken?

*EC as an actor in commercial conflicts.* With growing trade flows among them, states have shown an interest in regulating trade. The most prominent package of such regulations was the General Agreement on Tariffs and Trade (GATT), which was succeeded by the World Trade Organisation (WTO) in 1995. The EC is a WTO member in its own right, just like the 15 EC members and 128 other countries.<sup>60</sup> The use of commercial defence and support measures is regulated by WTO rules. Consequently, the EC regulations for commercial defence measures comply with the WTO regulations. If the EC and other parties disagree on the interpretation of WTO agreements and the use of commercial defence measures, they resolve their differences according to the procedures of the WTO Dispute Settlement Understanding.<sup>61</sup> If the parties cannot agree on a solution, the case is taken to a Dispute Settlement Body that rules or recom-

<sup>55</sup> Terriff 1999:148.

<sup>56</sup> Beverly Crawford (1995) calls this connection between the economic growth and dependency/vulnerability the 'New Security Dilemma'.

<sup>57</sup> Another criticism is that this conception contradicts the logic of the market. It assumes a similarity of interests between the domestic firms and their national governments, although the autonomy of enterprises and their ability to move capital contradicts such a view. Furthermore, the firms are concerned with absolute rather than relative gains.

<sup>58</sup> Kuttner, Robert, 'How 'National Security' Hurts National Competitiveness', in *Harvard Business Review*, Vol 69, no. 1, January-February 1991, pp 140-149; Sweeney, John P., 'The High Costs of Clinton's Trade War with the European Union', in *The Heritage Foundation: Executive Memorandum*, No. 584, 26.03.1999; Schavey, Aaron, 'Avoid a Trade War over U.S. Antidumping Measure', in *The Heritage Foundation: Executive Memorandum*, No. 713, 26.10.2001.

<sup>59</sup> Moreover, thinking of economics as a source of, and competition for, power is doomed to frustration, since the emerging markets are almost certainly bound to grow faster than the established strong economies such as the US and the EU. Consequently, the rich countries share of the world GNP and trade will shrink steadily and thereby also their relative strength. See Cable 1995:312.

<sup>60</sup> In total the WTO had 144 members in January 2002, 15 of which are EC members and the EC itself.

<sup>61</sup> Available at: [http://www.wto.org/english/docs\\_e/legal\\_e/final\\_e.htm#dispute](http://www.wto.org/english/docs_e/legal_e/final_e.htm#dispute)

mends a solution.<sup>62</sup> Thus, the members have institutionalised a security process within the WTO. But, since the WTO is not a supranational organisation, it can neither issue or enforce trade regulations nor define the duties applied. The authorities of the WTO members do this. Hence, the members must conduct their own security process. This is not only necessary in order to function as a party within the WTO, but also to allow them to interact with non-WTO members on a bilateral level. Therefore, the WTO represents the main forum where the EC seeks to defend the Community's interests, but not the only one.

The EC has competencies for supporting and shielding commercial defence measures, to react on obstacles to trade and fair competition that are adopted or maintained by third parties, and which cause or threaten to cause injury or otherwise adverse trade effects to Community enterprises. The EC acts as party in every case where Community subsidies are involved and where exports and imports from the Community as a whole are concerned.

However, the EC is not responsible for all external commercial policy. The regulations for services, for instance, which remain under national responsibility within the Common Market, also remain under national authority in terms of extra EC-policies. This is the case for activities connected with the exercise of official authority and in the area of education, social and human health, public policy and public security.<sup>63</sup> The individual states determine the technical requirements for these services. In other words, they decide what qualifications a person must have in order to exercise certain professions or to offer specific service (in some cases including the nationality), and how the qualification is to be verified. In addition, the EU can decide on collective defence measures within the framework of the CFSP. This possibility is, for instance, explicitly expressed for urgent measures on the movement of capital and on payments.<sup>64</sup>

Third countries do not always treat the EC as a whole. In the vast majority of cases, member states and industry are the direct participants to procedures carried out and countermeasures applied by third countries.<sup>65</sup> For example, if European firms practice 'predatory pricing' to boost their market shares in foreign countries and to drive competitors out (industrial dumping). In these cases the Commission can play an advisory role. But, since it is not a party in the conflict, the Community will not engage directly in the negotiations.

*The commercial defence instruments at the EC's disposal.* There are several motives for implementing commercial defence measures and a range of instruments to be utilised. By instating *shielding* defence measures the EC can protect the domestic production from foreign competition. To balance so called 'unfair' external competition, i.e. when a foreign product is sold on the world market at a price that is held low artificially, be it in consequence of governmental subsidies or as a result of dumping on behalf of the exporters (often made possible by subsidies), the EC can apply countervailing duties (anti-subsidies) or anti-dumping duties. However, shielding measures are not only applied against 'unfair' competition. Drastic changes on markets can also call for protection. If, for instance, a product is imported in greatly increased quantities and on such terms or conditions as to cause, or threaten to cause, serious injury to the own producers, the EC can apply temporary safeguard measures in the form of customs duties or import quotas.

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<sup>62</sup> Amongst WTO members, cases involving anti-dumping, subsidies and countervailing measures as well as safeguards, can all be taken to the Dispute Settlement Body.

<sup>63</sup> ECT, article 45-47. This is also clarified in the article 133 (6) of the Nice Treaty.

<sup>64</sup> ECT, article 60 and 301.

<sup>65</sup> European Commission: Trade policy instruments: Monitoring of third country commercial defence actions. (January 2001). Available at [http://europa.eu.int/comm/trade/policy/third\\_c/thirdcountries.htm](http://europa.eu.int/comm/trade/policy/third_c/thirdcountries.htm)

The aim is to enable the domestic producers to survive shocks and to facilitate their adaptation to a changing environment. In addition, some permanent technical trade barriers also restrict the access to the market. Some of them can protect the domestic producers from external competition all together. For instance, this is the case for the services falling under the national regulation. They can also consist of technical regulations, standards, testing and certification that are supposed to guarantee the protection of the health and safety of consumers, the environment and the product quality. Normally these rules apply for all products regardless of their origin. Other bureaucratic or legal non-tariff barriers, such as the procedures concerning import licensing, the valuation of goods at customs etc. can also be subsumed under the group of permanent technical trade barriers.

Subsidies, understood as financial contributions by a government, represent *supporting* defence measures. They aim at promoting or at least preserving domestic producers' competitiveness on the domestic and/or world market. From a security perspective, it can be prudent to use subsidies, if one seeks to protect 'strategic' industries, maintain employment or promote the reconstruction of elder, respectively support infant industries, so that they can become competitive.

Apart from these defensive and supportive commercial measures, the EC can also seek to counteract the protectionism of others in order to gain access to their market. It can either do so within the framework of the WTO, as pointed out above, or by suspending any favourable trade concessions it has made to the country in question. The figure below displays the distribution of competencies between different actors involved in extra European trade conflicts and what instruments can be used at each level.

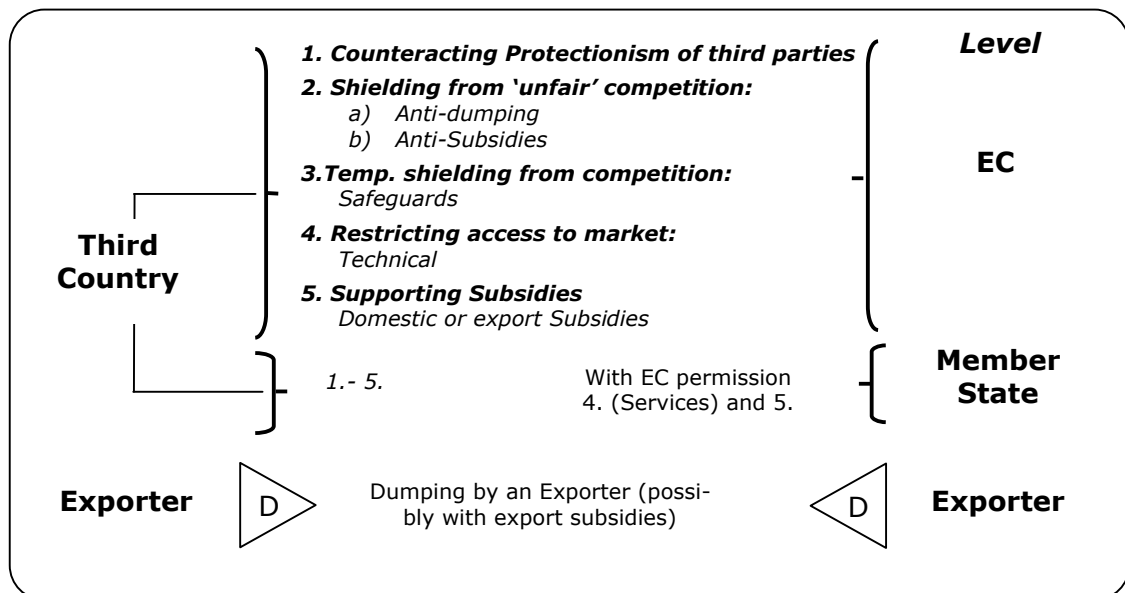


Figure 3.2-5. Extra-EC trade conflicts at different levels

*The EC commercial security processes.* The EC procedures concerning the measures 1-3 in the figure above are much alike. These comprise measures to counteract third parties protectionism (1), dumping (2a), and subsidies (2b), as well as safeguard measures (3). Within the EC, the security process for these commercial countermeasures consists of three steps (see table in the annex for details). In the first step, a case is brought forward to the Commission by the member

states, the community industry or a community enterprise.<sup>66</sup> Based on the information presented, the Commission decides if it will investigate the issue. If it suspects that an economic threat is posed to EC producers, it will define this and elaborate upon countermeasures to be proposed to the Council. In the second step, the Commission can decide to endorse provisional duties while it continues its investigation of the case. In the third step, the Commission presents the result of the investigation to the Council, which decides on the final countermeasures with qualified or simple majority voting. The final quotas are then surveyed and the final duties collected by the national authorities that implement all customs regulations. Throughout the process, the Commission is expressly held to act in the interest of the Community as a whole, including the industry, users and consumers, and to weigh the benefits of a countermeasure against the benefits.<sup>67</sup> Since the EC members have adopted a customs union, the Community is responsible for all retaliatory and shielding measures that involve duties. The EC is also responsible for all quotas on goods.<sup>68</sup> This means that the EC member states cannot take any of these measures against third parties unilaterally. Consequently, the security processes described above are autonomous European ones. Although the Council can overrule the Commission's decisions, the decision-making procedure allows for a single member's interests to be subordinated to the majority's.

It should be noted that these retaliatory and shielding measures are not often implemented. Between January 1995 and May 2003 the EC only dealt with 19 anti-protectionist cases, and without making use of any direct countermeasures.<sup>69</sup> In March 2003, 163 different anti-dumping duties were applied by the EC, covering around 0,5% of the EC imports. Anti-subsidies duties were applied in 17 cases during the same time.<sup>70</sup> Safeguard measures, finally, only applied to certain types of footwear and ceramic and porcelain tableware during the same period.

The fourth type of countermeasures, are those that restrict access to the Common Market by instating technical standards and essential requirements, as well as regulations and certification procedures. These regulations exclude many products from the community market, and could be seen as 'back door' protectionism. The EC does however not seem to exploit these measures as retaliatory instruments in commercial conflicts. If it would, one could expect the counterparts to put complaints against the EC forward in the WTO. However, no such complaints have been made.<sup>71</sup> The US and Canadian procedures against EC measures prohibiting the importation of livestock and meat from livestock that have been treated with growth hormones, is the only case among them that may appear as a such. Certainly domestic EC producers profit from the exclusion of these products from the European market, but so do all other producers that have not used these hormones. To present this as a commercial dispute rather than a health question is

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<sup>66</sup> Member states can always take a case to the Commission (1-3). A legal person acting in behalf of the Community industry can do so with the exception for safeguard measures (1-2). Individual enterprises can only bring a third parties protectionist policies to the Commissions attention (1.)

<sup>67</sup> This is done in all four treaties referred to in the table 4.2.X. The Injurious pricing instrument in the area of shipbuilding, as foreseen in the Council Regulation no. 385/96 of 29 January 1996 on protection against injurious pricing of vessels, is not included here. For details see: <http://europa.eu.int/comm/trade/policy/vessels/adreg08a.htm>

<sup>68</sup> ECT, article 26,37 and 133.

<sup>69</sup> These are cases treated according to the Trade Barrier Procedure of the EC (Council Regulation N°3286/94), which came into effect on 1 January 1995. Most cases were settled on a bilateral level, or in the WTO Dispute Settlement Body. Only in two cases, both against the USA, has the EC submitted a request to the WTO to implement countermeasures, one in the form of suspension of concessions, and the other in the form of suspension of obligations against the US. For more information see: European Commission: Trade policy instruments. Trade Barriers Regulation. List of cases. Available at <http://europa.eu.int/comm/trade/policy/traderegul/cases.htm>

<sup>70</sup> A list updated weekly (in Excel format) of all anti-dumping and anti-subsidy measures either in force and or under current investigation is provided by the European Commission at: <http://europa.eu.int/comm/trade/pdf/dbminforce.xls>

<sup>71</sup> Of the twenty-five complaints that had been launched against the EC by June 2003, none belonged to this category. For a list and detailed information see: <http://mkaccdb.eu.int/miti/dsu>

therefore not convincing.<sup>72</sup> In fact, it is difficult to see how the EC could use any of the measures subsumed in the fourth group as a 'weapon' in trade disputes. Although having external effects, they result from mainly inward looking EC processes that focus on the internal harmonization as a step in forming the Common Market. It would, for instance, be very difficult for the Commission to formulate a proposal on technical harmonization directives and lay down essential requirements for products that exclude certain foreign products from the Common Market without also prohibiting some domestic ones. It is difficult to apply technical requirements to protect the domestic production from foreign competition without harming some national producers. Instead, these proposals aim at prohibiting such goods access to the market, be they domestic or foreign, which may pose a threat to the health and safety of the user. Such proposals are more likely to be adopted by the Council (acting by qualified majority) in co-decision with the European parliament.<sup>73</sup> The mutual recognition agreements on conformity assessment signed between the EC and Australia, Canada, Israel, Japan, New Zealand, Switzerland and USA also contradict arguments suggesting that the EC uses the technical requirements as protectionist instruments.<sup>74</sup> Hence, the fourth group of measures does not really play any role as an instrument in EC-'geoeconomics'.

Subsidies constitute the fifth type of countermeasures. Subsidies can affect the international trade, especially when given in a form that encourages over-production. Domestic products oust imported ones off the internal market and the surplus may be dumped on world markets with the help of export refunds (subsidies). As shown above, the EC does not only subsidise inner European production, it also controls state aid. The CAP and the structural operations represent the by far largest expenditures in this context, together amounting for more than 3/4 of the Union's total budget. However, as indicated in the section on Economic Cohesion and Employment, the EU does not primarily subsidise the domestic production or allow certain state aid to enhance the domestic producers' extra European competitiveness. Most measures should rather be interpreted as means to solve rural, regional problems to achieve an inner European cohesion. It is more difficult to determine in what security process one should place the CAP. Agriculture subsidies can certainly be regarded as commercial defence measure that favours European products. In addition, the EC only applies export subsidies to support the agricultural sector. It is, however, no longer regarded as a particularly efficient and cost effective tool. Therefore, market price support and export refunds are successively being replaced by direct payments to the producers (which do not stimulate production) and by production limiting programmes.<sup>75</sup> The share of export refunds of the CAP expenditure is also sinking and reached a level of 12% in the year 2000 as opposed to 25% in 1992.<sup>76</sup> From another angle, the CAP could be interpreted as a policy that aims at securing inland production and thereby the supply of agricultural goods. However, given the overproduction and the fact that export subsidies are needed to sell European products on the world market, this does not convince. A security of supply argument would

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<sup>72</sup> The EC has treated the issue as a measure falling under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures all along. See [http://www.wto.org/english/docs\\_e/legal\\_e/15-sps.pdf](http://www.wto.org/english/docs_e/legal_e/15-sps.pdf)

<sup>73</sup> ECT, article 95 and 251.

<sup>74</sup> According to these agreements all test reports, certificates and marks of conformity issued by the conformity assessment bodies of one of the parties of the agreement are accepted by the second, if issued in conformity with the legislation of the second party. For more information see: European Commission: Mutual Recognition Agreements. Available at <http://europa.eu.int/comm/enterprise/international/indexb1.htm>

<sup>75</sup> In 1989-1991 market price support and export refunds accounted for over 90% of the Agricultural budget, whereas they are estimated to be brought down to approximately 21 % in 2006. In 1995-1997 the share was already down to 36,9%. European Commission Directorate-General for Agriculture: EU agriculture and the WTO. September 2001. Available at: <http://europa.eu.int/comm/agriculture/external/wto/newround/preface.pdf>

<sup>76</sup> European Commission Directorate-General for Agriculture: EU agriculture and the WTO. September 2001. Available at: <http://europa.eu.int/comm/agriculture/external/wto/newround/preface.pdf>

only be believable if the CAP aimed at assuring a particular secure (minimum) level of domestic production. This is however neither the goal of the CAP, nor is it organised according to this logic. Another way of regarding the CAP is to see it as a security policy that utilises the social and geographical cohesion and a high level of employment as referent object. However, I prefer not to interpret the CAP as a security policy at all. It is rather a burden from the past and can be explained by the history of the European integration process. In short and somewhat simplified, the CAP was the price that industrial Germany had to pay rural France for the continued integration process.<sup>77</sup> In total, EC subsidies do not seem to play a significant role in external trade conflicts. Subsidies are not utilised as supporting defence measures in any of the commercial conflicts within the WTO in which the EC is involved. On the contrary, the Community is reducing its export refunds and market price support and thereby its most distorting subsidies. As mentioned earlier, the European agriculture has been protected through the exclusion from the WTO agreements and from other economic concessions made to third parties rather than through subsidies. EC subsidies should therefore not be seen as an instrument used in EC-'geo-economics'.

Level	Legislative Security Process (Rules)	Executive Security Process			Classification Security process	Applied to counter-act threats?/ Efficacy
		Situation assessment	Decision	Enforcement		
European	Council QM	<div style="border: 1px solid black; padding: 5px;"> <p>1. COUNTERACTING PROTECTIONISM Comm. Council QM Member State.</p> <p>2A. ANTI DUMPING Comm. Council SM Member State</p> <p>2B. ANTI SUBSIDIES Comm. Council SM Member State</p> <p>3. SAFEGUARDS Comm. Council QM Member State</p> </div>			Autonomous	Applied in limited amount against EU external threats
European	Council QM	4. RESTRICTING ACCESS TO MARKET Comm. Council QM Comm.			Semi Autonomous	Not applied as defence against EU external threats
National	Compatible with EC	NATIONAL STANDARDS				
European	Council QM	5. SUBSIDIES Comm. Council QM Comm.			Semi Autonomous	Not applied as defence against EU external threats
National	Compatible with EC	NATIONAL SUBSIDIES				

*Figure 3.2-6. Security process: Defending the Union's economy against external commercial threats*

The Union's commercial instruments can clearly be regarded as defence instruments in commercial conflicts and in this sense as countermeasures in a security process. However, they cannot be regarded as geo-economic power instruments that can be applied at free will. Their use is rigorously restricted by WTO regulations. Not only would violations of these rules evoke criticism and countermeasures from the affected parties. The pressure to comply with WTO rules is also very high because an open 'commercial war' would endanger the function of the WTO alto-

<sup>77</sup> Given the proportion of the CAP, one can even argue that it curtails the overall economic growth, perpetuates an uneconomical production and prevents economically sane adaptations in the agriculture sector. It could therefore even be argued that the CAP counteracts the in the stability and performance of the economic system in the long term.

gether. Given that all states' economies are integrated in an international web, no party would benefit from such a development. Thus, the only commercial policy of the Union that really deserves the label geo-economics is the one that exempts agriculture and textile products from the WTO agreements.<sup>78</sup>

#### *ECONOMIC CONCESSIONS AND SANCTIONS*

Just as shown in the military context, the Union can be expected to utilise economic instruments to export, protect and promote its general values, most generally expressed in the form of democracy, the rule of law, human rights or, somewhat cryptically, good governance.<sup>79</sup>

The Union can utilize the economic concessions and sanctions in three different ways to influence the conduct of third states: The first way is to undertake actions in direct support of the values. It can, however, be doubted if these activities form part of the EU 'geo-economics' understood as power politics. Certainly, the Union<sup>80</sup> finances and conducts human rights and democratisation activities, be it in the form of electoral observation and assistance, institution building or human rights education and training.<sup>81</sup> Thereby it promotes and makes the general values gain acceptance in third countries. But, given the nature of these direct activities, conducted with the approval of the local government, it is quite clear that they do not initiate policy changes. By supporting the ongoing democratisation processes the Union does not impose its own values against those of others. By supporting the democratisation processes and spreading the knowledge on human rights, it rather satisfies a domestic demand in the beneficiary countries. This is an important activity, especially in countries that are in a reconstruction phase, but does not necessarily fit under the label of power struggle or subordination.

The second way is to use an incentive conditionality during the negotiations of trade and/or development agreements.<sup>82</sup> The objective of this incentive conditionality is to reward those countries that show a commitment to what the EC understands as an improvement of governance with economic concessions. This selectivity is based on a positive and rewarding form of conditionality. In this case the EC would grant preferential tariff agreements and accord development aid<sup>83</sup> to those countries that take, or promise to take, certain defined policy actions.<sup>84</sup>

The third way is to penalize non-conformist behaviour. The use of punitive conditionality<sup>85</sup> implies that granted economic concessions are precluded if certain predefined conditions are not met. If the development in a country takes a course that does not please the EU, e.g. an inter-

<sup>78</sup> Negotiations on agriculture are taking place within the WTO. At the November 2001 Doha Ministerial Conference, the agriculture negotiations became part of the single undertaking in which virtually all the linked negotiations are to end by 1 January 2005.

<sup>79</sup> Together with a sustainable economic development these values form the basis for a democratic structural stability and can therefore also be regarded as a means of crisis mitigation and conflict prevention. See for instance Göteborg European Council, *European Programme for Conflict Prevention*, 16.06.2001.

<sup>80</sup> The term Union is used here, because the actions in direct support of the democratisation are not exclusively located to the first pillar. The European parliaments own monitoring of elections may serve as an example.

<sup>81</sup> These activities are mainly conducted within the framework of the European Initiative for Democracy and Human Rights and the European Development Fund for ACP countries. This direct support for governance and civil society amounts to around 7 % of the total EU aid budget. The latter according to Cox, Aidan, and Chapman, Jenny: *The European Community External Cooperation Programmes: Policies, Management and Distribution*. Brussels 1999. Quoted by Santiso, Carlos, 'The Reform of EU Development Policy', in *CEPS Working Document*, no 182, March 2002, p. 10

<sup>82</sup> That the development policy shall contribute to the objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms, is laid down in article 177(2) of the ECT.

<sup>83</sup> It should be noted that humanitarian assistance is not used to put recipient governments under pressure. According to Council Regulation (EC) no. 1257/96 of 20 June 1996 concerning humanitarian aid, "humanitarian aid decisions must be taken impartially and solely according to the victims' needs and interests". Therefore, ECHO provides the humanitarian aid of the EC to all victims of crises, unconditionally, impartially and independently of the recipient countries' political records. It does not aim at promoting value conform conduct.

<sup>84</sup> Concessions are not necessarily rewarded on the perceived level of democracy or the fulfilment of predefined goals, but rather on the direction of change. In other words, striving for coherence with the general values, such as the rule of law, democratisation, respect of human rights, is rewarded.

<sup>85</sup> The literature usually displays two sets of conditionality that might be used to impose the Union's general values: the incentive conditionality (selectivity) and the punitive political conditionality. For an overview see: Santiso 2002; Beynon, Jonathan, *Policy Implications for Aid Allocations of Recent Research on Aid Effectiveness and Selectivity*, OECD Paris 2001; Youngs, Richard, 'Democracy Promotion: The case of European Union Strategy', *CEPS Working Document*, No. 167, 2001.

ruption of democratic procedure, the Union can suspend the concessions. As punitive political conditionality is usually activated if the violations are considered as severe, the withdrawal of a preferential treatment is usually complemented with additional punitive restrictions in the form of a combination of political and diplomatic, cultural, commercial or financial sanctions against the offender.

In terms of polity, the main difference between the decision-making ('security') processes involved when granting and withdrawing tariff concessions and development aid, and when launching sanctions, lies in the distribution of responsibility between the EU and the member states. As for tariff concessions, they fall in the exclusive competency of the EC and are prepared and decided at the European level alone. In difference to the tariff policy, the individual EU member states conduct a more than considerable own aid policy in parallel to the Community's. In 2001, the ODA provided by the EC amounted to around \$US 5.9 billion, while the member states combined provided about \$US 26 billion.<sup>86</sup> This makes the EU the largest ODA provider in Europe. The responsibility for the sanctions, finally, is also shared between the member states and the Community. Consequently, sanctions are decided both within the first and the second pillar and unilaterally by the member states. This section scrutinizes how the EC can and does use these economic instruments to export its values. I begin with the incentive and rewarding measures, and finish with the suspension of economic concessions and other punitive sanctions. (See the annex for an overview chart)

*Incentive Conditionality.* The EC grants Generalised Tariff Preferences (GTP) to lesser-developed economies on a non-reciprocal and thus non-contractual basis. Every three to four years, the Council, acting by qualified majority,<sup>87</sup> adapts a regulation applying a scheme of GTP, prepared and presented by the Commission. This regulation contains the rules and procedures for granting EC tariff preferences and sets out on what grounds these shall be withdrawn.<sup>88</sup> The tariff preferences are accorded to the developing countries and the least developed countries (LCD) on the grounds of their economic performance. Whether a country belongs to the first category depends on the classification made by the World Bank, and on the development index calculated for the country.<sup>89</sup> The Commission makes this calculation, estimation and classification on a yearly basis. The definition of the LCDs, in contrast, follows the classification made by the UN.<sup>90</sup> Thus, the GTP is not granted to these countries as a reward for, or an incentive to achieve, political compliance.

During the last decade the Community scheme of GTP has also contained three arrangements in support of developing countries, one aiming at combating drug production and trafficking, and two special incentive arrangements aiming at exporting what one might call European values.

The special arrangements to combat drug production and trafficking are not granted with reference to any conditionality. Their purpose is to support the transition from cultivating drugs to 'legal' agricultural products. In this way, it is more a question meeting a criminal and social threat at its root, than of exporting values. Beneficiaries are the Andean Community (Bolivia,

<sup>86</sup> Source OECD, *Official Development Assistance in 2001*. See also OECD, *A Mixed Picture of Official Development Assistance in 2001*.

<sup>87</sup> ECT, article 133.

<sup>88</sup> At the time of writing Council Regulation (EC) no. 2501/2001 was valid (applying a scheme of generalised tariff preferences for the period from 1 January 2002 to 31 December 2004).

<sup>89</sup> Council Regulation (EC) no. 2501/2001, article 3 (1). The formula of the development index is presented in Annex II of the regulation.

<sup>90</sup> Council Regulation (EC) no. 2501/2001, Introduction (5).



Colombia, Ecuador, Peru and Venezuela), the member states of the Central American Common Market (Costa Rica, Guatemala, Honduras, Nicaragua, and El Salvador), Panama and Pakistan.<sup>91</sup> The Commission has been tasked to monitor and evaluate the effects of the special arrangements.

The other two special arrangements, finally, are the only cases where the GTP is linked to an incentive conditionality. These concern the protection of labour rights in accordance with the standards laid down in the International Labour Organisation (ILO) Conventions<sup>92</sup> and the sustainable management of tropical forests.<sup>93</sup> In both cases, the Commission examines applications and decides if the special incentive arrangements are to be granted to the applicant.<sup>94</sup> The Council can stop the implementation of the Commissions' decisions in both cases.<sup>95</sup> Both these incentive arrangements are linked directly to the recipient's political performance in the form of the national legislation. It cannot be determined whether or not the special incentive arrangements are the main cause for the legislative adaptation. Since they only consist of partially reduced duties this can be doubted, but they support and encourage such a change. To what extent they really result in compliance with the ILO Conventions and environmental goals depends on the implementation of the national legislation. Thus, although the impact of these special incentive arrangements is difficult to assess, it seems more likely that it is overestimated than underestimated.

The EC has not only reduced tariffs through the GTP. The Community has also concluded, and the Commission is in process of negotiating, a number of association and partnership agreements that, amongst other things, include tariff reductions and regulate the Union's aid policy vis-à-vis these countries. The Council adopts these by qualified majority.<sup>96</sup> To what extent rewarding conditionality is used during the negotiation phase of partnership and association agreements is difficult to say. It is however quite clear, that the Union does not use some kind of 'conditionality catalogue' containing a list of requirements concerning human rights, democracy or good governance, that have to be met before an agreement is signed. On the contrary, several ACP partners and some associates neither fulfil the most basic standards nor have they made much, or any, progress towards fulfilling these standards. Given that that many non-reformers have been allocated significant development and trade provisions, and that reformers have not been significantly rewarded, the application of incentive access conditionality can be doubted altogether.<sup>97</sup>

<sup>91</sup> Council Regulation (EC) no. 2501/2001, Annex I.

<sup>92</sup> Council Regulation (EC) no. 2501/2001, article 14 (2) refers to ILO Conventions no. 29 and no. 105 on forced labour, no. 87 and no. 98 on the freedom of association and the right to collective bargaining, no. 100 and no. 111 on non-discrimination in respect of employment and occupation, and no. 138 and no. 182 on child labour and which effectively applies that legislation.

<sup>93</sup> The frame of reference when granting special incentive arrangements for the protection of the environment are not quite as clear. According to Council Regulation (EC) no. 2501/2001, article 21 (2) these "...may be granted to a country which effectively applies national legislation incorporating the substance of internationally acknowledged standards and guidelines concerning sustainable management of tropical forests".

<sup>94</sup> Council Regulation (EC) no. 2501/2001, article 16, 18, 22 and 23

<sup>95</sup> Council Regulation (EC) no. 2501/2001, article 38; Council Decision (EC) no. 468/1999, article 5.

<sup>96</sup> ECT, article 181 and 300. A complete list of EC trade agreements is provided on the European Commission's Web site at : <http://europa.eu.int/comm/trade/pdf/ecrtagr.pdf>. During the 1990s the EC started to negotiate Euro-Mediterranean Association Agreements with the aim to replace the co-operation agreements from 1978. With Tunisia, Israel, Morocco and the Palestinian Authority (interim) these have been concluded and entered into force. At the time of writing, negotiations continued with Syria, had been concluded with Algeria (Dec. 2001) and Lebanon (Jan. 2002), and agreements had been signed with Egypt (June 2001) and Jordan (Nov. 1997). However, none of them had yet entered into force. With the countries participating in the Barcelona process that have a (at least formal) prospect of EU membership, Turkey, Cyprus and Malta, the EC envisages a Customs Union. With Turkey and Cyprus an agreement on a Customs Union that obliges the two to adopt the Union's Common Customs Tariff is already in force. With Malta an agreement has been signed that visualizes the establishment of a customs Union. Outside of the framework of the GDP and the Partnership and Association agreements, the EU can also grant Macro-financial assistance and offer Rapid Reaction Aid. Since release of the Macro Financial Assistance (administered by the Commission's DG Economic and Financial Affairs) is not linked to the fulfilment and export of the general values, but to subject to the fulfilment of economic policy conditions, it does not form part of the export of values. As for the Rapid Reaction Aid, the commission grants and controls Once-off or Kick-Start projects in emergencies. Since it merely disposes of a budget around 20million/year within the Rapid Reaction Mechanism (RRM), the RRM can be neglected in terms of geo-economics.

<sup>97</sup> See Youngs 2001:26 and 28.

However, it is not only the use of rewarding conditionality that can be questioned, but also the utility of it. The example of so called 'rouge states', such as Libya and formally Iraq, demonstrate that the attraction of trade and aid agreements with the EU is not always strong enough to convince countries to adopt conform behaviour. The EU has imposed sanctions on some of these countries. Thus, instead of using the carrot the EU swings the stick.

*Punitive Conditionality and Sanctions.* In contrast to sanctions, which in principle can be applied at will, punitive conditionality is always defined in advance, i.e. when concessions are concluded in agreements. In this case, the EC defines the political conditions that disqualify a country from the benefit of granted economic concessions. These could for instance include certain criteria with respect to democracy (holding free and fair elections) and the compliance with human rights. Since the punitive suspension and sanctions are not used separately, they are discussed together at this point. The EU has defined political conditionality in both the GTP and Partnership and Association Agreements.

The EC has defined what clearly unacceptable practices may result in a temporary withdrawal from the GTP.<sup>98</sup> The reasons listed are linked to practices such as slavery or other serious violations of the ILO Conventions, goods made by prison labour, unfair trading practices and lacking countermeasures against criminal behaviour such as drug traffic and fraud. The Council decides on the temporary withdrawal from the preferential arrangements with qualified majority, based on a proposal of the Commission.<sup>99</sup> However, other violations of human rights and democratic governance are not listed as criteria that have to be met in order to become and/or remain a beneficiary of the EC preferential arrangements.

As for Partnership and Association Agreements, a clause defining respect for fundamental human rights and democratic principles as 'essential elements' has been included in all such agreements signed by the EC and third countries since 1992.<sup>100</sup> This is the clearest attempt (at least formally) to export the general values through conditionalities. The notion of 'essential elements' has the legal status as a binding commitment and is associated with 'suspension' or 'non-performance' clauses. If not observed, the clauses can affect the validity of the agreement and ultimately lead to its suspension.<sup>101</sup> Since the Council signs the agreements concerned, their suspension also lies within the Council's responsibility (see the figure in the annex).<sup>102</sup>

Suspensions of economic concessions are often accompanied by sanctions. Usually, whole sets of political and diplomatic, cultural, commercial and financial sanctions are applied.<sup>103</sup> Political sanctions can consist of the suspension of official visits, visa restrictions and selective travel bans. Diplomatic sanctions can range from the reduction and scale of diplomatic representation to the severance of all diplomatic relations. Cultural sanctions can be used to reduce cultural and sports contacts or scientific cooperation. Commercial sanctions affect the trade relations. Normally such trade embargoes have the largest impact on the subject. These can be complemented by financial sanctions that include bans of movement of capital and payments or the targeted freez-

<sup>98</sup> Council Regulation (EC) no. 2501/2001, article 26. This applies for the first four preferential arrangements listed above. The safeguard provisions can naturally not apply on the arrangements to combat drugs. Neither are they likely to be cancelled due to unacceptable behaviour, since that is exactly what they aim at combating.

<sup>99</sup> Council Regulation (EC) no. 2501/2001, article 29-32.

<sup>100</sup> European Commission: Communication from the Commission to the Council and the European Parliament. The European Union's role in promoting Human Rights and Democratisation in third countries, COM(2001) 252 final, Brussels, 8 May 2001. p. 4

<sup>101</sup> Santiso 2002:16.

<sup>102</sup> As the Council Decision of 18 February 2002 concluding consultations with Zimbabwe under article 96 of the ACP-EC Partnership Agreement (2002/148/EC) showed, this is done with qualified majority in accordance with article 300 of the ECT.

ing of assets in the Union. A recent example of combined EU sanctions was directed against Zimbabwe.<sup>104</sup> Commercial and Financial sanctions are of special interest, because they fall within the competency of the first pillar and thus under Community jurisdiction.<sup>105</sup> They are decided upon with qualified majority on a proposal from the Commission. However, such a decision can only be taken if provided for in a common position or in a joint action adopted in the second pillar.<sup>106</sup> Thus, just like all other types of European sanctions, they depend on a unanimous CFSP decision. The difference is that the member states cannot implement Commercial or Financial sanctions at will.<sup>107</sup> In addition, collective political, diplomatic and cultural sanctions must be implemented by the member states' domestic legal provisions. This is also the case for arms embargoes; since armaments export policy is excluded from the EC competency.<sup>108</sup>

*Difficulties using Conditionality and Sanctions (Geo-economic instruments).* Despite the intention to start 'imposing' political values on other countries, the EU has made little use of the instrument of conditionality and sanctions. In his study on democracy promotion, Richard Youngs points out that neither sanctions nor the rescinding of contractual aid and trade provisions have been employed systematically against simply non-democratic states during the last decade. The EU has not targeted democratic shortfalls isolated, but applied punitive actions in cases where several values were seriously violated, often in combination with direct physical violence. Furthermore, the conditionality applied by the EU was not matched by member states on a bilateral level.<sup>109</sup>

The conduct of a coherent and consistent European aid, trade and sanction policy is complicated by two factors. The first is the fragmented decision-making process, which characterised by the division between national and EC competencies. The constellations of the Union's and its members' interests can differ from country to country. The national aid and arms delivery policies of the different EU member states, for instance, do not always match. The reason for this is that the promotion of the general values must compete with many other national and European interests, not at least economic ones. This is the main reason why neither the EU, nor the member states, always achieve to advocate the general values in a coherent, consistent and therefore efficient way.<sup>110</sup> The disagreement between France and the Commission during the Fall 2001 over the resumption of aid to the Democratic Republic of Congo is only one of many examples.<sup>111</sup>

The second factor that complicates the use of conditionality and sanctions is the uncertainty about what measures are appropriate. Although it appears as a perfectly clear concept at first glance, the practical use of conditionality remains problematic. There are difficulties at the conceptual level in defining criteria for assessing the performance of the beneficiaries and setting up adequate targets. This does not only concern concepts such as democratisation processes and

<sup>103</sup> Information on, and an updated list of all EU sanctions in force are provided by the Delegation of the European Commission to the United States: European Union Sanctions Applied to non-member Countries. Available at <http://www.eurunion.org/legislat/Sanctions.htm>.

<sup>104</sup> Council Decision of 18 February 2002 concluding consultations with Zimbabwe under article 96 of the ACP-EC Partnership Agreement (2002/148/EC)

<sup>105</sup> A list of financial sanctions taken by the European Community is available at: [http://europa.eu.int/comm/economy\\_finance/about/activities/activities\\_freecapitalmovement\\_sanctions\\_en.htm](http://europa.eu.int/comm/economy_finance/about/activities/activities_freecapitalmovement_sanctions_en.htm) A list of embargoes is available at <http://ue.eu.int/pesc/legislation/texten.htm>

<sup>106</sup> ECT article 60 and 301.

<sup>107</sup> See ECT article 60 for EC restrictions concerning unilateral measures against a third country with regard to capital movements and payments.

<sup>108</sup> ECT, article 296.

<sup>109</sup> Richard Youngs offers an excellent empiric overview of how the instruments discussed in this section have been used during the last decade. See Youngs 2001:18 ff.

<sup>110</sup> For a broader critic see Santiso 2002.

<sup>111</sup> See Santiso 2002:33.

good governance that do not follow a natural, orderly and linear sequence of positive and progressive political transformation.<sup>112</sup> It can also be difficult to monitor concrete targets, such as fiscal deficits, since the non-fulfilment must not necessarily result from poor governmental performance, but can be caused by external shocks or other developments.<sup>113</sup> The largest difficulty, however, is the uncertainty about how the EC can influence countries to adopt a certain course of action. This is also valid for the use of sanctions. As can be expected, there is no ready-made solution for how to apply the available means, if one seeks to bring bad performers on to the desired track and to project the general values in an efficient way. Each recipient's situation is singular and must be examined separately. The withdrawal of economic concessions and the implementation of sanctions is not necessarily always the best solution, nor is the granting of economic incentives. Criticism has in particular been directed against the effectiveness of using punitive aid conditionality as a means to influence a third state's policy and to promote sustainable reform.<sup>114</sup> The basic conclusion is that the punitive conditionality and sanctions cannot substitute or circumvent domestic ownership of and commitment to reform.<sup>115</sup>

Altogether, the EC does not seem to utilise the granting of tariff reductions or the threat of withdrawing them as means to persuade actors to tolerable behaviour. That trade agreements primarily are built on the logic of trade, and that the ambition to export/secure certain values is given a secondary role, may explain this to some extent. However, the main reason seems to be, that both the Commission, the Council and the member states are aware that they cannot enforce coherent behaviour through suspensions or sanctions. What the Union can do is to support ongoing and wished transitions towards more democracy and the respect of human rights in third countries. Sanctions and suspensions are merely used to express disapproval and to avoid supporting an oppressive governments economic development. They do not necessarily enhance the acceptance of the general values in third countries, but have a disciplinary function, and may therefore counteract the erosion of these values. This may explain why the Commission considers a positive and constructive partnership with the responsible governments to be the most efficient way of achieving sustainable change and conformist behaviour,<sup>116</sup> and why the EU favours an approach based on partnership and co-operation, rather than sanctions and other negative measures.

Thus, it is difficult to see how economic concessions and sanctions are used in a sense that could be described as Geo-economics with the aim of imposing one's own values. Nevertheless, one may say that the Union does seek to protect and export the general values to some extent by these means. It is however difficult to distinguish a coherent security process in which this is done. Often the ambition to export these values and the condemnation of inconsistent behaviour seems to be subordinated to other interests. Speaking of one 'security process' would therefore be benevolent. If however one chose to do so, it should be defined as semi-autonomous, since the member states can apply their own conditionality and sanctions. Tariff reductions alone fall

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<sup>112</sup> Santiso 2002:22 and 35

<sup>113</sup> World Bank, *Assessing Aid: What Works, What Doesn't and Why*, 1998, p. 50.

<sup>114</sup> A prominent conclusion is that published by the World Bank: "The lesson? A conditional loan is no guarantee that reforms will be carried out—or last once they are." Source: World Bank 1998:51.

<sup>115</sup> Santiso 2002:25. However, the analytical validity of the separation between incentive and punitive conditionality can be question. From the perspective of recipients, there is not necessarily a qualitative difference between a reward-based commitment and punitive measures. If having established an 'entitlement mentality', those countries that were not offered a periodic upgrading in their relation to the EU perceived this as a punishment. Thus, it can be questioned if the criticism against punitive conditionality does not also apply on incentive conditionality. C.f. Youngs 2001:28.

<sup>116</sup> European Commission: Communication from the Commission to the Council and the European Parliament. The European Union's role in promoting Human Rights and Democratization in third countries, COM(2001) 252 final, Brussels, 8 May 2001. p. 8.

within the Union's exclusive competency. But, as shown, it cannot be said that these are granted and withdrawn with reference to the promotion of the general values.

Level	Legislative Security Process (Rules)	Executive Security Process			Classification Security process	Applied to counteract threats?
		Situation assessment	Decision	Enforcement		
European	Council QM	<i>TARIFFS</i>			Autonomous	Incentive cond.: No Punitive cond.: Limited
		<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                     General Tariff Preferences                      Comm. Council QM Member State.                 </div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">                     Incentive arrangements                      Commission                 </div> <div style="border: 1px solid black; padding: 5px;">                     Association/partnership agreements                      Comm. Council QM Member State.                 </div>				Incentive (and punitive) conditionality: Yes
National		non				Incentive cond.: No Punitive cond.: Yes
European	Council QM	<i>AID</i>			Semi Autonomous	Incentive cond.: No Punitive cond.: Limited
		<div style="border: 1px solid black; padding: 5px; text-align: center;">                     EuropeAid and Pre-accession aid                      Comm. Council QM Member State                 </div>				
National	National law	<div style="border: 1px solid black; padding: 5px; text-align: center;">                     National Aid                 </div>				
European	CFSP unanimously or Council QM	<i>SANCTIONS</i>			Semi Autonomous	Applied
		<div style="border: 1px solid black; padding: 5px; text-align: center;">                     Sanctions                      Comm. CFSP Council QM Member State                 </div>				
National	National Law Compatible with EC regulations	<div style="border: 1px solid black; padding: 5px; text-align: center;">                     Sanctions                 </div>				

Figure 3.2-7. Security process: Defending general values with commercial and financial 'carrot and stick' policies.

*ENLARGEMENT*

The enlargement process can be seen as the most efficient way for the EU to export its values and the Union's 'way of life'. However, even if the fulfilment of the Copenhagen criteria<sup>117</sup> is a precondition for opening accession negotiations, it cannot be argued that the Union imposes these values on the applicant countries. Such a statement would only be valid, if these countries did not stand for these values by themselves.

Certainly, the candidate countries carry the lion's share of the adaptation necessary for the enlargement. The efforts demanded of the applicants to qualify for membership widely surpass those required of the EU to qualify for the reception of new members. The EU is also an unevenly strong partner in the negotiations held. While it obliges the applicants to adopt the entire *acquis communautaire*, they cannot oblige the Union to do much at all. Nevertheless, there is a severe difference between the Union's relation to states that are involved in the enlargement process and its relation to other countries. Imposing and exporting values is not the same thing as growing as a Community. Through the enlargement, new members will obtain direct influence on and be part of the process in which the Union's values are formulated. Thus, the EU is

<sup>117</sup> Amongst other things, the Copenhagen criteria prescribes the stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities.

not simply projecting its values into the candidate countries nor is it expanding in an invasive manner, replacing former governments by a new one located in Brussels. The Union is embracing the countries and is prepared to receive them as equal, not as defeated, conquered or suppressed, members.

Again, the Union's power in the enlargement process does not lie in its ability to influence the applicants to perform a certain conduct, but rather in its ability to support the development towards goals that the Union and the affected country agree upon. This does not mean that the enlargement does not have a security dimension. It is however not convincing to present the enlargement as a part of the Union's Geo-economics. In fact, it is even difficult to argue that the enlargement is a step in an economic security process. The only economic threat that is counteracted through the enlargement would be the widening social and economic gap between east and west. But, it would certainly be a challenge to formulate a firm argument explaining that the purpose of the enlargement is to counteract that threat, to produce cohesion, and that the enlargement is the most efficient way to do so. Thus, the enlargement process should not be explained as a question of economic European security. Certainly the military security argument can be used to some extent, but most convincing is the simple conviction of the EU members, that the Eastern Europeans belong to the 'family' and should join the Union.

### 3.2.2 Category policy -Program

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity			
	Politics			
	Policy		X	
Conclusion ESDI				

This section inquires to what extent the EU can be seen as an organisation set up with the purpose of handling the security process of economic threats. Therefore, it asks the following questions:

- What motives stand behind the economic European integration? Can the justification be interpreted as a security process?
- Do the member states' policies comply with the idea of a common economic system and thus with an ESDI?

I do not ask what referent objects are used in the security processes. This question becomes superfluous since I deduced the concept of economic security from the function and performance of the economic system. I did thus take the referent object as a starting point for the examination.

#### 3.2.2.1 Why are economic threats on the European agenda?

The simple answer is that economic threats are on the European agenda because of the Common Market. Establishing and maintaining a common market per definition means that some economic threats have to be treated centrally. This is not only so because they affect the eco-

conomic area as a whole, but also because they require common responses. Without common rules and countermeasures, a common market would not be a common one and not exist as such. The creation of a common market is therefore inextricably linked to the collective management of economic threats to the common economic system.

Nevertheless, the question why the economic integration was initiated and what motives lie behind the creation of the Common Market are still of interest. Three main arguments have been put forward: a strive for peace, a pursuit of economic growth and the will to regaining influence. Striking is that, that which geo-economics describe as a new security dilemma, i.e. the connection between economic growth on the one hand and dependency and vulnerability on the other, was regarded as a solution and not as a problem by the founding fathers of the Union.<sup>118</sup>

The fear of renewed military confrontations on the European continent was without doubt the main reason for the initiation of the European integration process that evolved to the European Union. That the cooperation began in the coal and steel industry, which forms the basis for the armaments industry, is not a coincidence. Nevertheless, the general economic peace argumentation stretches far beyond controlling the production of arms.<sup>119</sup> The idea is based on the neo-liberal conviction that competition and the division of labour within a functioning market system in principle is beneficial for all participants, and functions as a positive-sum game.<sup>120</sup> Being mutually advantageous, the economic integration is an ideal way to increase the mutual interdependence. This results in a situation where it would be counterproductive to assert one's own interests by violence, let alone with military instruments. Thus, the economic integration was utilised as a means to overcome mutual threats in the military context.<sup>121</sup>

The member states also viewed the EC in a plain economic context and expected to gain economic advantages from the integration.<sup>122</sup> The creation of a common market was to induce a stable economic development and increase welfare and prosperity in all participating states. In addition, the economic growth can be seen as the basis for societal stability, defusing distribution fights and offering a prospect – 'things are getting better'. By supporting economic growth, the economic integration was to secure both the economic and political stability.<sup>123</sup>

The foundation of the EC can also be interpreted as a result of a security process, in which the former status and influence of the European countries and the self-image of Europe as the central world organiser was used as a referent object.<sup>124</sup> During the first phase of the economic integration, European countries were losing their key position in world politics to the USA and the Soviet Union, both in military, political and economic terms. After the military and political merger of the European Defence Community and the European Political Community had been cancelled, the economic co-operation suggested itself as the only realistic way to restore or at least to enhance the Europeans' influence. The EC was to enhance the combined economic performance of the EC states both in absolute terms and in comparison to other economic systems. By

<sup>118</sup> See footnote 56 on page 111.

<sup>119</sup> The promotion of the market economy in Eastern Europe during the last decade shows how the economic system is linked to the peace and stability argument. See also Laeken European Council, *Presidency Conclusion*, 14/15.12.2001, article 53.

<sup>120</sup> In general, the opponents of the Common Market and the EMU share this conviction. However, they disagree on how welfare is most efficiently produced and secured.

<sup>121</sup> The idea that war cannot merely be made unthinkable, but materially impossible, through economic co-operation was already presented in the Schuman Declaration in 1950.

<sup>122</sup> This goal was clearly formulated when the plans on the European Economic and Monetary Union began to take concrete form. See the so-called Werner-report (EC document no. 16.958/II/70-D) adopted by the Council on 22 march 1971. A German version of the Werner-report is printed in: Jürgen Schwarz (ed.), *Der Aufbau Europas. Pläne und Dokumentationen 1945-1980*, Bonn 1980, pp. 429-444, here p. 431.

<sup>123</sup> Economic growth is fundamental for the legitimacy of both the economic and political institutions. Of course, the economic growth can also be linked to the peace argument above. Peace and prosperity are coupled in the same way as survival and well-being. Well-being cannot be achieved without survival and survival is not worthwhile without well-being. Therefore the two go hand in hand.

acting together on the international stage, the EC members were also to strengthen their position in negotiations and enhance their influence.

With varying intensity, these three arguments have been presented at each 'relance Européenne'.<sup>125</sup> The first relance took place in the mid 1950s. At the 1955 Messina conference the member states described the development of common institutions, the progressive fusion of national economies and the creation of a common market, as indispensable, if Europe is to preserve the standing, which she has in the world, to restore the influence and her prestige, and to improve steadily the living standard of the population.<sup>126</sup>

The second relance took place as the end of the transitional period for setting into practice the Common Market came closer (31 December 1969). At that time, the discussion on a political as well as an economic and monetary union was given new impetus. In The Hague, the French President Pompidou underlined the external argument, saying that the Europe of the six must strive for a common stance vis-à-vis the IMF, come to a common monetary policy and thereby make their full weight to bear in international negotiations.<sup>127</sup> The German Chancellor Brandt expressed himself in a similar way, although not quite as explicitly: "By unifying its resources she [the EC] shall enable Europe to stand its ground economically, in science and technically alongside with the Superpowers and thereby preserve its identity".<sup>128</sup> Due to 'Euro sclerosis', characterised by high inflation and persisting unemployment, setting in after the break up of the Bretton Woods system and the first oil crisis in 1973, the project of a monetary Union was postponed.

The third relance started in the late 1980s. On 1 July 1990 the first of three stages towards the EMU began. It is understandable that the peace argument was highlighted during this time of revolutionary changes,<sup>129</sup> although the other two motives were far from forgotten.<sup>130</sup>

Thus, the creation of the Common Market implied a transfer of security processes that deal with some specific economic threats to the European level. There is no doubt that the member states have gained internal military security through this move. It is also clear that their position in international negotiations has been strengthened, even if the EC does not use its economic instruments to project power in the way suggested by 'geo-economics'. That the Common Market has stimulated the economic growth is also probable. The attraction the Union has for new members reflects this. However, the member states disagree on how economic growth is most efficiently produced, i.e. what economic threats have to be dealt with at the European level in order to secure prosperity.

<sup>124</sup> This was underlined by the German Chancellor Adenauer, who saw the close unification of the old European states as the only chance for Europe to regain and to preserve its old position in the concert of powers. C.f. Erklärung der deutschen Bundesregierung zum Vertrag über die Europäische Wirtschaftsgemeinschaft. 21.03.1957. In: Schwarz 1980: 337.

<sup>125</sup> I refrain from presenting opposing positions or to enter a discussion about the validity of the arguments favouring the economic unification.

<sup>126</sup> C.f. Schlusskommuniqué der Konferenz von Messina vom 3. Juni 1955. In: Europa-Archiv 05.07.1955. p. 7974. A non-official English translation is available at <http://www.let.leidenuniv.nl/history/rtg/res1/messina.htm>. In the original Treaty of Rome and in the Amsterdam version of the ECT the 'internal' economic goals were highlighted. In the original treaty the peace argument was more or less left out. Article 1 of the treaty, describing the promotion of closer relations between the states as one of the community's tasks, is the nearest the original treaty comes to a peace argument. C.f. 'Die Europäische Wirtschaftsgemeinschaft und die Europäische Atomgemeinschaft', in *Europa-Archiv*, 05.06.1957, pp. 9897-9923. Here p. 9901. One explanation for leaving out the peace argument in this document may be that the major threat to peace was not considered to come from inside of the community. Military peace was determined by the block confrontation and thus treated within NATO. Refraining from declaring 'external' economic goals could be explained by political tactfulness, given the parallel trade negotiations within other forums such as the GATT.

<sup>127</sup> C.f. 'Französische Verlautbarung über die Erklärung von Staatspräsident George Pompidou auf der Konferenz der Staats- und Regierungschefs der Mitgliedsstaaten der Europäischen Gemeinschaften in Den Haag am 2. Dezember 1969', in *Europa-Archiv* no. 2, 1970, pp. D40-41. Here p. D41.

<sup>128</sup> C.f. Brandt, Willy (German Chancellor), speech at the conference of the Heads of state and Government of the member states of the European Communities, held in the Hague, 2.12.1969, in *Europa-Archiv*, no. 2, 1970, pp. D36-D40, here p. D40. [Authors translation]

<sup>129</sup> See Kohl, Helmut 1991 (German Chancellor), 'Erklärung der Bundesregierung zu den Ergebnissen des Europäischen Rates in Maastricht', in *Presse- und Informationsamt der Bundesregierung, Bulletin*, Bonn 17.11.1991, no. 142, pp 1153-1158. Here p. 1153.

<sup>130</sup> According to Mitterrand, "the introduction of a single currency is the only means of ensuring that Europe remains a great economic and monetary power, and it is the best means of ensuring the sustained growth of our economies". Mitterrand, François: Programme of the French Presidency. Speech in the European Parliament. In: Debates of the European Parliament. Luxembourg, 17.01.1995, no. 4-456. Official Publications of the European Community. pp. 45-52. Quoted by Buzan 1998: 182.



### 3.2.2.2 Do the national membership-policies comply with the ESDI?

It is quite clear, that the economic integration was anticipated as a continuous process from the very beginning. Whether the European Coal and Steel Community (ECSC) nor the European Economic Community (EEC) were conceived as being final steps by their creators.<sup>131</sup> Although the finalité Européenne was not clearly outlined,<sup>132</sup> the question of the economic and monetary union was already a part of the discussion when the Common Market was conceived in the mid 1950s.<sup>133</sup> Ever since, some have seen the single currency as a vital complement to the idea of a common market, abolishing segmentation and fragmentation. The Euro is therefore not to be understood as new or separate idea, even if it was not introduced until 1999.<sup>134</sup> Moreover, the linkage between the intensified economic co-operation, the fusion of interests and the harmonisation of policies was also predicted from the start.<sup>135</sup> Therefore, the reluctance of Denmark, Great Britain and Sweden to fully join the economic integration and the Euro may seem rather surprising. However, when taking a closer look at the arguments used in the national debate, the linkage to the question of the collective identity will become clear.

*Pro EMU arguments.* It is interesting that the main pro-EMU arguments in all three countries underline the economic effects of the Euro. They are the same ones that have already been used to justify and explain the creation and completion of the common market.

With a common currency the transaction costs of the intra European trade will diminish and the potential advantage of the Common Market be better exploited. Exchange rates and currency fluctuations are eliminated at the same time as the transparency and the competitiveness increases. This will create lower prices and reduce the risks in trade and investment calculations. As the primary objective of the ESCB is to maintain price stability,<sup>136</sup> inflation and interest rates will also be stabilised. All things considered, the EMU will support the economic growth.

In addition, the stability in the international monetary system would increase. Given that nearly 80 % of the international transactions are made in US dollars, whereas the US only represents about a fifth of world exports, the present system is unbalanced. With the Euro as a third strong currency beside the dollar and the Yen, the international monetary system will be more balanced, and this is good for stability.<sup>137</sup> Moreover, due to its volume the Euro will be more resistant towards speculative attacks and have a larger potential to maintain the stability vis-à-vis

<sup>131</sup> When the ECSC was founded, the creation of a uniform European economic area was already conceived. "The goal when founding the European Coal and Steel Community was the creation of a common European economic area with 160 million people, which can assert itself among other economic powers." (Authors translation) Regierungserklärung des deutschen Bundeskanzlers Adenauer (Auszüge zur europäischen Einigungspolitik). 29.04.1954, in Schwarz 1980:269 and 271.

<sup>132</sup> The Schuman Declaration speaks of a first step in the federation of Europe.

In the final communiqué from Messina the member states spoke of the creation of a united Europe; See *Schlusskommuniqué der Konferenz von Messina vom 3. Juni 1955*. In: *Europa-Archiv* 05.07.1955, p. 7974.

<sup>133</sup> One example are the six characteristics of domestic markets that should also apply to the internal European market as outlined by the scientific advisory board of the German federal Department of Trade and Industry (Bundes Wirtschafts Ministerium). The common currency was one of them. Cf.

Schiffler, Gerhard, 'Vertag über die Europäische Wirtschaftsgemeinschaft (EWG)', in *Europa-Archiv*. 05/2.06.1957, pp. 9871- 9878. Here p. 9872.

<sup>134</sup> This approach to build Europe step by step was expressed by the foreign ministers of the EC member states in the article 8 of the so-called Davignon report 20.07.1970. Cf. Schwarz 1980:426.

<sup>135</sup> Cf. Schiffler 1957.

<sup>136</sup> Cf. Protocol on the Statute of the European System of Central Banks and of the European Central Bank, article 2.

<sup>137</sup> Cf. The interview with Yves-Thibault de Silguy in 'Everything You Need to Know About Europe's New Currency The Euro', in *Europe Magazine of the European Union*, Special Report, 1997.

In a speech in November 1999, the Danish Foreign Affairs Minister, Niels Helveg Petersen summarised these arguments saying: "A strong single currency for Europe will enhance the dynamics of the single market, benefit trade partners and protect Europe against international financial crisis and speculation. It will take some time before we see the full potential of the Euro. Having a third strong global currency beside the dollar and the yen will hopefully help in stabilising the world economy. This will benefit all economies and allow smaller states to have a say in international monetary policy." Cf. Niels Helveg Petersen (Danish Foreign Affairs Minister), *Small states can make a difference – Denmark in Europe*, speech held in Beijing, 10.11.1999.

other currencies.<sup>138</sup> Finally, the fear of marginalisation and loss of influence over a development that will have severe impact on the national economy has also been used as a pro-EMU argument. The Euro will give Europe, which is one of the world's largest trade partners and a leader in economic terms, a voice and existence on the world scene in monetary terms.

*Contra EMU arguments.* The EMU opponents in all three 'No'-countries have underlined political and more emotive issues, setting the loss of national sovereignty and the image of the evolving 'European super state' in the centre of their argumentation.

After the Maastricht treaty was rejected in a referendum in 1992, the Danish government negotiated four opt-outs at the Edinburgh European Council<sup>139</sup> and could therefore win the second referendum. Unlike Sweden and Britain, Denmark participates in the European Exchange Rate Mechanism II (ERM II), and has maintained a fixed exchange rate policy vis-à-vis the Deutsche Mark and the other core currencies within the European Monetary System since 1982.<sup>140</sup> Thus, the goal of the Danish monetary policy is to support Denmark's fixed-exchange rate towards the Euro. Consequently, the Central Bank has little freedom to follow an independent monetary policy. It is therefore not surprising that the Danish Economic Council assessed "...the purely economic costs and benefits for Denmark of EMU membership as being small and uncertain".<sup>141</sup>

Although the Danish Crown is directly linked to the Euro, the adoption of the Euro was rejected in a referendum held on 28 September 2000 (53,1% of the votes against and 46,9% in favour).<sup>142</sup> Despite the overwhelming support from the political establishment, with around 80 % of the parliament and both the Confederation of Danish Trade Unions (Landsorganisationen i Danmark, LO) and the Danish Employers' Confederation (Dansk Arbejdsgiverforening, DA) in favour of a membership, the Danes were not convinced.<sup>143</sup> It seems that the majority was persuaded by the Danish 'No' campaign, that disregarded the strictly economic reasoning and made the Euro question a proxy debate about the future of the Danish nation-state. The front figures of the No-movement, Pia Kjaersgaard of the Danish People's Party (Dansk Folkeparti) and the member of the European Parliament Jens-Peter Bonde, leader of the June Movement (Juni Bevægelsen), were successful in appealing to the preservation and defence of the national identity and societal system. It was not built on criticism against the expected contents or goals of the common and harmonised European economic policies, but opposed to the centralisation as such. The referendum was said to be about "Denmark's existence as an independent nation – not more nor less".<sup>144</sup> The Euro was not described as a currency that promotes trade, but one that pro-

<sup>138</sup> This argument is based on the assumption that the volatility of exchange rates inherent with monetary independence may be the cause of economic shocks rather than the means of adjusting to economic shocks. For a concise and clear summary of the argument see: Coleman, Andrew 1999, 'Economic Integration and Monetary Union', in *Treasury Working Paper*, no. 6, 1999.

<sup>139</sup> Apart from the EMU, the opt outs concerned the Union Citizenship (lifted through the new wording of the Amsterdam treaty), cooperation in the field of JHA, and the ESDP. See Edinburgh European Council, *Conclusions of the Presidency*, 11/12.12.1992, Part B, Denmark and the Treaty on European Union, Annex 1, Section B. (This conclusion was included in the Maastricht Treaty as Protocol no. 12.)

<sup>140</sup> In 1992 the krone became a member of the ERM, which fixed its value against a narrow band against the ECU. Since 1 January 1999 Denmark has participated in the ERM II agreed with the European Central Bank, with an of exchange rate fluctuation of 2.25% around a central parity rate. (The central rate of the Danish krone is kr. 746.038 per 100 euro. The upper and lower fluctuation limits are thereby respectively kr. 762.824 per 100 euro and kr. 729.252 per 100 euro. Cf. <http://www.bankofengland.co.uk/target2point5/mpframework/index.htm>).

<sup>141</sup> 'The EMU: Danish Exchange Rate Policy at a Crossroads', the English Summary of chapter II of Det Økonomiske Råd, *Danish Economy*, Spring 2000.

<sup>142</sup> For further information on the Danish referendum see: Miller, Vaughne, 'The Danish Referendum on Economic and Monetary Union', in *House of Commons Research Paper*, no. 00/78, 29.09.2002.

<sup>143</sup> Jørgensen, Carsten: Denmark votes no to the euro. Published 10.28.2000

<sup>144</sup> Kjaersgaard, Pia, *Grundlovstale*, speech held in Aastrup Mølle, 05.06.2000.

motes a new state.<sup>145</sup> The result of the referendum shows, that the strategy of setting the Danish economic system and identity in opposition to a European one, proved successful.

The starting position of Britain is quite different from the Danish. Just like Denmark, the UK also obtained an opt-out clause from the third stage of the economic and monetary union.<sup>146</sup> But, unlike Denmark the UK suspended its ERM membership on 16 September 1992. Ever since, it has pursued an own and independent monetary policy with the objective to deliver price stability instead of exchange rate stability. The official stance towards the Euro membership has been that the economic benefits have to be clear and unambiguous. To make this assessment, the Chancellor of the Exchequer has set out five economic tests, which have to be met before Britain enters.<sup>147</sup> The Government's decision to exercise its opt out from the third stage of economic and monetary union was made with reference to a statement to Parliament by the Chancellor of the Exchequer and an accompanying Treasury Paper in October 1997, noting that the five tests are not met.<sup>148</sup>

When Sweden joined the EU it did not obtain any opt-out clauses. Thus, formally it has already approved to become a member of the EMU. Nevertheless, in 1997 the Swedish parliament adopted the government proposition not to join the monetary union from its start on 1 January 1999, but to assure the possibility to join, if it so chooses through the pursuit of an economic policy that will enable the country to fulfil the convergence criteria. The government's proposal was not explained by critical arguments against the EMU, but rather with the low support among the population at the time being.<sup>149</sup> Just like the United Kingdom, Sweden does not participate in the ERM II (and did not participate in its forerunner ERM). The Swedish central bank can therefore pursue the objective of price stability through an independent monetary policy. Consequently, in both the 1998 and the 2000 Convergence Report of the EC Commission, Sweden was assessed as neither fulfilling the criterion on exchange rate stability nor the requirements for the Riksbank's legal integration in the ESCB.<sup>150</sup> These deficits cannot be explained by insufficient economic performance. They rather result from the intended Swedish policy.

It is quite peculiar that both Britain and Sweden intend to make the entry into the third step of the EMU dependent of a referendum. In the British case, it is strange, because the non-membership has been explained with the five tests that were presented as objectified criteria. A referendum would hardly clarify whether the five economic tests are met or not. The Swedish case is much worse, since a referendum was held on the entry to the EU. Since this included the EMU and no opt out was obtained, the Swedes have already voted on the issue once. Thus, the fact alone that referendums will be held shows that the issue is highly-charged and emotional rather than based on some kind of objective economic criteria. At the time of writing, the upcoming referendums were still distant and the Euro-question not lifted to top of the political agenda. The campaigns had therefore not been launched yet. Nevertheless, one can expect that

<sup>145</sup> Bonde, Jens-Peter, *The Danish Referendum on entry to the Single Currency*, Speech to the Fourth Congress for Democracy, held at Church House, Westminster 14.07.2000.

<sup>146</sup> Maastricht Treaty: Protocol on Certain Provisions relating to the United Kingdom of Great Britain and Northern Ireland. (Protocol 11)

<sup>147</sup> Covering cyclical convergence, flexibility, investment, financial service, and employment and growth.

<sup>148</sup> The feeble cyclical convergence of the British and the European economies was presented as one of the main reasons. C.f. Chancellor of the Exchequer, *Statement on Economic and Monetary Union*, 27.10.1997. HM Treasury, *UK Membership of the Single Currency - An Assessment of the Five Economic Tests*, October 1997.

<sup>149</sup> Regeringens proposition 1997/98:25, *Om Sverige och den ekonomiska och monetära unionen*.

<sup>150</sup> Cf. Report from the Commission: Convergence report 2000 prepared in accordance with article 122(2) of the Treaty. Brussels 03.05.2000. Both available at: [http://europa.eu.int/comm/economy\\_finance/index\\_en.htm](http://europa.eu.int/comm/economy_finance/index_en.htm)  
Thus, Sweden is actually violating article 109 of the Amsterdam Treaty. However, such a situation was foreseen in article 122 of the ECT (ex-article 109k), with the status of 'member states with a derogation'.

the Swedish and British debate will follow the Danish pattern. Opponents in both countries already highlight the democratic deficit and the loss of self-determination.<sup>151</sup>

*Assenting EU goals, but formally maintaining national self-determination.* The reluctance towards the participation in the third stage of the EMU reflects that it has to represent a new quality of integration. Although it remains disputed, whether or not the introduction of the Euro is a step towards a European super state, it certainly is a step from a national towards a European economic system in which an increasing share of the economic security is produced at the European level.

The Euro is important because it completes the single market. At present, the EU does not only have responsibility for internal and external regulations of the Common Market. Through the ECB it also provides and guarantees the common exchange medium used within that market. In this sense, the Euro-area can be regarded a cohesive economic system.

It is important to underline that the three member states that do not participate in the third stage of the EMU only have reservations concerning the Euro, the ECB and the single monetary and exchange-rate policy. Thus, they remain fully involved in all other EC-activities, including the coordination of the economic policy. They are bound by the general economic objectives that the Union has set itself in article 2 of the EC-Treaty.<sup>152</sup> In accordance with the Stability and Growth Pact all three countries have also presented convergence programs and conduct an economic policy that meets the requirements of the broad economic policy guidelines recommended by the Commission. Hence, they comply with the fulfilment of the economic convergence criteria as set out in Article 121(1) of the Amsterdam EC-Treaty<sup>153</sup> (with the exception of the British and Swedish exchange rate development vis-à-vis the Euro<sup>154</sup>).

Given that Denmark alone participates in the EMR II, and is the only one of the three countries that fulfils all the convergence criteria, it may seem ironical that the Danish no-campaign could use the sovereignty and identity argument so successfully. After all, Denmark could now be described as a complying quasi-member of the EMU, without full influence. By linking the Danish Crown to the Euro, Denmark has technically transferred competencies to the ESCB to the same extent as the Euro members have. Thus, it charges the ESCB with the responsibility to handle economic threats against the currency. In terms of ESDI, the Danish decision not to join the third stage is merely of symbolic character. The feigned separation between the Danish and the European economic system is compensated for by the EMR II. This could be explained by an identity gap between the political elite and the people. Nevertheless, Denmark has not won

<sup>151</sup> The threat of a Super state is used in the British Conservative Party's campaign to keep the pound "Five Reasons to Keep the Pound"-strategy ([http://www.keepthepound.org.uk/about\\_ktp/about\\_index.html](http://www.keepthepound.org.uk/about_ktp/about_index.html)). Speaking at the Kensington & Chelsea Constituency Association in 25.05.2001, the Shadow Chancellor, Rt. Hon Michael Portillo described what he called "the Blair vision of Britain" a defeatist agenda. He saw the "ceding more and more economic and political powers to un-elected officials in Europe" as a profound lack of confidence in Britain and "...in our ability to govern ourselves and influence the world without ceding authority to a more closely integrated European Union". The Conservative Leader, William Hague, has called the British pound "the currency that for centuries has been both the symbol and reality of our national independence". C.f. Hague, William, *Conservatives will fight tooth and nail to Keep the Pound*, speech held 08.02.2001; The Deputy Leader of the Conservatives in the European Parliament, Theresa Villiers, asked: "Do we want the people we elect at a general election to run the UK economy or do we want a one-size-fits-all euro-economic policy set in Frankfurt?" Source: "Tories attack 'flawed' euro", *BBC News*, 07.01.2002. As for the Swedish opponents, their arguments were clearly expressed in the EMU debate in the Swedish Riksdag. C.f. Sveriges Riksdag. Snabbprotokoll 1999/2000:36. 30.11.1999. 1§ Särskilt anordnad debatt om Sveriges anslutning till EMU.

<sup>152</sup> All of which are well compatible with the national economic goals. It promotes a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among member states. Cf. ECT, article 2.

<sup>153</sup> Cf. Danish Ministry of Economic Affairs and Ministry of Finance, *Updated Convergence Program for Denmark 2000*; Swedish Ministry of Finance, *Updated Swedish Convergence Program 2000*; HM Treasury: *Delivering Economic Stability, Convergence Programme submitted in line with the Stability and Growth Pact 2000*.

<sup>154</sup> Since Sweden and the UK have had a floating exchange rate, the exchange rate is not a monetary policy objective. In the short term the rate of exchange is decided by international capital flows and in the long term by economic fundamentals. Hence, it is rather regarded as the outcome of all other economic policies. The Exchange rate stability is therefore to be achieved through policies for achieving greater economic stability.

but lost autonomy through this choice. De facto, it has not only transferred, but also externalised the security process to the European level. Paradoxically, the Danish opt out complies very much with the idea of an ESDI.

The Swedish and British policies, in contrast, are more consistent. Both make a clear distinction between membership in the third stage of the EMU and an autonomous monetary and exchange rate policy. Thus, at present, for their part, they have rejected the idea of an ESDI concerned with the defence of price stability. Maybe it is more correct to say that they have not yet made their final decision.

### 3.2.3 Current state of the ESDI in the economic context

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity			
	Politics			
	Policy			
Conclusion ESDI			×	

Given that the EU is involved in several different security processes, it is more difficult to classify the ESDI in the economic than in the military context. In difference to the military context, the European uniformity is not defined during the security process, but rather the threats to, or threatening changes of the secondary referent objects. When defining the competencies of the EC, the member states have not only determined what countermeasures the EC may utilise and how decisions on their application shall be taken. They also resolved on the purpose of EC policies. Therefore, the secondary referent objects were defined in consensus before the European security processes started. If the common economic system were regarded as the common referent object resulting from a security process, one would have to classify the ESDI as consensual. However, as shown in the section on the policy, the security process conceived in this way cannot be classified as one that primarily takes place in the economic context. It is difficult to explain the integrative steps of the past as a response to economic threats. Presenting the creation of the common economic system as a measure aimed at protecting that very same common economic system is even more implausible. But, if one considers that the ongoing EC interventions are the security processes that are to be analysed in the economic context, then the ESDI is much further developed.

The survey has showed that the Union disposes of various economic instruments that could be used to counteract internal and external economic threats as well as to push 'general values' through outside of the Union's territory. However, the Union does not apply all economic instruments at its disposal for these purposes, nor has it taken responsibility for all economic policies within the Union. The table below summarises the Union's different security processes in the economic context.

The first column lists the different secondary referent objects and the respective EC policies in the same systematic order as presented in section 3.2.1. Each line represents one economic policy/countermeasure. Although several completely different policies can affect the same threat and

or aim at safeguarding the same referent object, each policy is presented as a separate security process.<sup>155</sup> This is so, because the division of responsibility between the European and national level varies for different policies, and because each policy is conducted separately. Although the utilisation of other economic instruments that affect a referent object may be taken into account when the Union decides on a countermeasure, each policy is determined following specific assessment, decision-making and implementation procedures. Since I do not classify the European policies analysed under the headline 'Supply of essential goods' as security policies, this category is not included in the table.<sup>156</sup>

Referent objects & Policies/ Instruments		Categorisation/ Division of responsibility	Applied in security process?	Executive security process			
				Assessment	Decision making	Implementation / Enforcement	
<i>COUNTERMEASURES AGAINST INTERNAL THREATS</i>							
Competition	Undertakings	Autonomous / Horizontal (EC 'big cases')	Yes	Commission	Commission ECJ final decision	Commission	
	State subsidies	Autonomous	Yes	Commission	Commission. Council overrules U(-)	No means of enforcement	
Economic Cohesion & Employment	Community projects	Semi-autonomous / Vertical	Yes	Commission	Commission	Member states	
	Community funding	Semi-autonomous	Yes	Members	Commission	Commission	
<i>COUNTERMEASURES AGAINST INTERNAL AND EXTERNAL THREATS</i>							
Stability of Currency	Monetary and exchange rate	Autonomous	Yes	ECB	ECB	ECB	
	Stability Pact	Autonomous	Yes	Commission	Council 2/3 majority	Commission	
<i>COUNTERMEASURES AGAINST EXTERNAL THREATS</i>							
EU production (Defence against external commercial threats)	1. Counteract protectionism	Autonomous	Yes	Commission	Council QM	Commission	
	2a. Anti-dumping	Autonomous	Yes	Commission	Council SM Com provisional	Members	
	2b. Anti-subsidies	Autonomous	Yes	Commission	Council SM Com provisional	Members	
	3. Safeguard	Autonomous	Yes	Commission	Council QM Com provisional	Members	
	4. Technical standards	Semi-autonomous / Horizontal and vertical	No	Commission	Council QM	Members	
	5. Subsidies	Semi-autonomous	Limited	Commission	Council QM	Members	
Universal values (Concessions and Sanctions)	Tariff	GTP	Autonomous	Limited	Commission	Council QM	Members
		Other agreements	Autonomous	Limited	Commission Negotiates	Council QM	Members
	Aid	Granting	Semi-autonomous / Vertical	Limited	Commission	Council Framework Comm. single Proj.	Commission + local actors
		Suspend-ing	Semi-autonomous / Vertical	Yes	Commission	Council QM	Commission
	Sanctions	Consensual/ Horizontal	Yes	Commission Members	Council U (CFSP)	Members	

ECJ = European Court of Justice; QM = qualified majority; SM = simple majority, U = unanimously

Figure 3.2-8. EU economic security process.

The second column indicates the categorisation of the different security processes and describes how the responsibility for each policy is divided between the Union and the member states. A security process is labelled autonomous when the European security process has replaced the national one. A horizontal division, as in the first line (competition policy dealing with the activities of undertakings), means that the EU has been given exclusive responsibility for some parts of the policy, while the members are in charge of others. In this case, the competencies of the EU and the member states do not overlap. The same cases/threats are not counteracted at both the national and the European level. I chose to call this a horizontal division, because, the

<sup>155</sup> Some of the policies, e.g. the monetary policy, utilise different instruments. Since they contain several measures they might also be described as a group of policies rather than a single one. But, for the sake of simplicity and clarity I have chosen to group them and present them as one policy. This can be permitted because a division into more policies would only extend and complicate the chart without changing my argument.

<sup>156</sup> According to the definition of security policies on page 99.

policy field can be divided in two separate levels, a 'lower' one where the member state is fully responsible, and a European one, where the Union conducts an autonomous security process. A vertical division describes the existence of parallel security processes at the European and national level that partly overlap. The same threat can thus be met with the same type of countermeasure/policy at both levels. These policies are labelled semi-autonomous because the European security process partly duplicates the national one, and because it represents a quality of its own. At least in theory, the European policy can contradict the interests of one or several member states. Sanctions, finally, are classified as consensual because they are decided upon within the CFSP.

An autonomous European security process/policy does not necessarily suggest that all kinds of threats to the secondary referent object are warded off. There is not even a guarantee that the European policy can counteract the targeted threat efficiently.<sup>157</sup> An autonomous security process merely indicates that the European process has replaced the national one. As the table displays, the autonomous security processes include those policies where parallel national policies would not be applicable: external trade regulations (tariffs and commercial defence), state control and the monetary and exchange rate policy of the ECB. If the states would conduct parallel policies in these fields, the Common Market and currency would be doomed to fall apart. Consequently, the states have maintained their own national security processes in all policy fields where national policies do not directly threaten to make the Common Market and the EMU dysfunctional.

The third column indicates if the policies are utilised to counteract threats to the referent objects described in the first column. The defence against external commercial threats is of special interest, because this is where the deviations are found. The first four policies (1, 2a, 2b and 3) constitute what one might call the EC's international competition policies. The main difference to the internal competition policy is that the external one is conducted within the institutionalised framework of the WTO. Consequently, the EC security process is embedded in another one at an even higher level. This is why these EC policies cannot be utilised as power politics in the fashion suggested by geo-economics. European technical standards are not utilised to protect domestic production against external commercial threats. If one wishes, these can be regarded as security policies in an insurance or health context, but hardly in an economic one, that puts the stability and performance of the economic system in the centre of the analysis. With the exception of export subsidies, which are decreasingly applied, European subsidies are not utilised to protect or enhance the competitiveness of domestic products within or outside the EU. Apart from those financed by the structural and cohesion funds, EC subsidies have not been introduced to protect any of the secondary referent objects considered in this chapter. The subsidies can certainly affect the secondary referent objects, but they should not be understood or explained as economic security instruments (exemptions as described). As for the Union's tariff concessions and aid policy, they are only moderately utilised to defend universal values outside of the EU area. With the exception of the two special arrangements (linked to labour rights and sustainable management of tropical forests) incentive conditionality is not utilised at all. Punitive conditionality, in contrast, is usually included in all tariff and aid agreements. However, just like sanctions, they are applied in a very inconsistent way. Economic sanctions represent the only

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<sup>157</sup> As mentioned in the beginning of the chapter, this is so because the threat cannot always be identified, i.e. what it is that affects the secondary referent object. Security policies are therefore often designed to counterbalance the identified effect instead of counteracting the threat directly. This is additionally complicated by the fact that a policy that serves to protect one secondary referent object, may have negative influence and threaten another secondary referent object.

consensual security policy. But, since EC sanctions depend on a CFSP decision and usually are applied in combination with other penalising measures, sanctions can be regarded as the point where security processes of the economic and other contexts blend. The external economic EC policies are led by the principle of an open market economy with free competition (with the exemption of the agriculture and the textile sector). In the external dimension this is more or less applied as a panacea and as a universal value of its own.

The Euro deserves special attention because it has both a practical and symbolic function as referent object. As common currency, it combines the Euro-countries to a single economic area in a more perceivable way than any other single feature of the EC. In addition, the price stability is the only European referent object for which an objectified and therefore controllable goal has been formulated. Reports on the exchange rate *vis-à-vis* the dollar and other currencies also give a daily indication of the performance of the European economy. The Swedish and the British non-membership in the third stage of the EMU are therefore particularly important from an ESDI perspective.<sup>158</sup> Although this may change once referendums have been held in the two countries, the non-participation impedes significantly on the idea of a shared European economic system and of an indivisible economic security.

The Community has definitely established a common economic system and it actively seeks to protect its stability and performance from internal or external economic threats. All things considered, a mixture of an autonomous and semi-autonomous ESDI has been established in the economic context.

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<sup>158</sup> The Danish non-membership does not really curtail on the ESDI since Denmark participates in the EMR II.



### 3.3 Criminal Context

Criminal threats and their relation to the SDI may require some clarification. This section begins by specifying what criminal threats are, how they are linked to the collective identity and how they affect a community's security.

*Crime, law, identity and threat.* Dictionaries define the term crime as an act "...punishable by law, as being forbidden by statute or injurious to the public welfare,"<sup>1</sup> or as an act "...committed or omitted in violation of a law forbidding or commanding it and for which punishment is imposed upon conviction."<sup>2</sup> This does not mean that the violation of any law is a criminal act. The legislation and the judicial system in the western world make a differentiation between criminal and civil law. Criminal cases involve prosecution by the government of a person for an unacceptable act that the state has defined as punishable by law. Thus, the community defines all potential conduct that it regards as threatening in advance in the form of criminal law. Criminal law defines the relation between the community (state) and the individual.<sup>3</sup> Therefore, the state initiates the investigation and suit. Persons convicted of a crime may be incarcerated, fined, or both. Civil law, on the other hand, regulates the relationships among the community's individuals and/or legal persons. Civil cases are not concerned with behaviour that is unacceptable to the community. Instead, individuals and organisations seek to resolve legal disputes among themselves. Here, the victim brings the suit. Real or legal persons found liable in a civil case may have to give up property and/or pay money. But, they are not being punished by the state and thus neither fined nor incarcerated. This is so, because civil cases are not concerned with the relationship between the community (state) and the individual.<sup>4</sup> Hence, the counterpart to crime is not any law, but criminal law.

Criminal laws simultaneously reflect and influence the general norms and values of the society and, thus, of the collective identity.<sup>5</sup> At least they can be expected to do so in democracies.<sup>6</sup> On the one hand, criminal law reflects the identity, as it determines what behaviour the society regards as intolerable. In democracies, criminal law does neither deviate too much from the moral understanding and the norms of the people, nor can it allow for actions that people in general regard as unmoral and unacceptable. In this sense, criminal law is derived from societal moral and reflects the collective identity. On the other hand, criminal law influences the identity through its rectifying function. Defining and fighting crime does not only serve to regulate inter-societal relations, it also plays a vital role in the production and reproduction of uniformity, i.e. of the society's setting of moral and norms and thus of the collective identity. Criminal law objectifies the moral and norms that are in effect in the society. In other words, criminal law prescribes what norms and values are given general validity within the nation state, both in space (throughout the state's territory) and in time (until they are changed). Therefore, criminal law

<sup>1</sup> The Oxford English Dictionary Online. Available at: <http://dictionary.oed.com>

<sup>2</sup> The American Heritage Dictionary of the English Language.

<sup>3</sup> Despite of this, measures have been taken, not at least at the level of the European Union, that foresee responsibility of legal persons for criminal acts. See for example article 3 of the Second Protocol to the Convention on the protection of the European Communities' financial interests, (OJ C 221, 19.07.1997); article 3 of Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (98/773/JHA); and article 8 of the Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro (2000/383/JHA).

<sup>4</sup> Legal Information Institute. <http://www.law.cornell.edu/topics/criminal.html>

<sup>5</sup> For a closer discussion on the relation between law and identity, see Burgess, Peter, 'Law and Cultural Identity', *Arena working Paper*, no. 14, 1997.

<sup>6</sup> Not that democracy is a prerequisite for this, but, while the laws in all democratic systems can be expected to reflect and influence the collective identity, the laws in undemocratic systems can only be expected to do so if the people regard the ruling elite and their governance as legitimate. Since a democratically elected government's remaining at power depends on the people's approval, it cannot govern in its own or its clientele's interest alone, but must comply to, or at least not deviate too much from, the interest of the governed people.

offers a uniform, standardised setting of codified moral and norms that can be internalised. Through its enforcement, criminal law maintains these norms and values, and the collective identity. In this sense, the moral applied is derived from what the law prescribes.<sup>7</sup> Hence, criminal law and its enforcement are not separated from, but rather a vital part of the (re)production of the collective identity.

*Crime and SDI.* As criminal law defines what behaviour is unacceptable and intolerable, it also delineates what behaviour is regarded as a threat to the community, its norms and its identity. A violation of criminal law is always a threat, i.e. a criminal threat. When a crime is committed, it does not only affect the victim directly (for instance a person who has been exposed to physical violence, burglary etc.), but also the society/state. This is why the state, not the individual victim, acts as aggrieved party and plaintive in criminal cases. From the perspective of the state, crime can be regarded as a threat to three different referent objects:

First, the specific law broken is a referent object, and with it, the particular norms and values it represents. Second, crime threatens the validity of the principle of rule of law. It is difficult to say, when the principle of rule of law endangered. In principle, every crime challenges this principle by disregarding the validity of a specific law. It would, however, be exaggerated to claim that a single crime overthrows the rule of law altogether. Surely, the principle is suspended at the specific point in time and space when the crime is committed. However, it can be restored and defended through the prosecution and punishment of the criminal. Single offences do neither threaten the collective identity as such, nor its production and reproduction. Rather than being suspended by a single event, the principle of rule of law can be said to erode gradually. The reason for this is that its validity and invalidity obviously varies in time and space. What can be said with certainty is that the government's legislation will cease to represent a set of generally binding rules if the law is not defended continuously. As long as criminals have reason to fear justice, and the apparatus of law enforcement has a deterrent effect on criminal activity, the rule of law is effective (at least it has some effect). When justice gradually loses its deterrent function, it also loses its ability to enforce compliance and uniformity. This does not only mean that crime is merely prevented by the applied moral, but also that this moral threatens to decay since the society has lost the means by which it can maintain the moral uniform, namely by standardised collective coercion. On the way to this stage, the third referent object is affected, the government's ability to govern. This can be clarified by arguing with organised crime, which is the most serious form of crime seen from the society's perspective.

Organised crime continuously and systematically challenges the rectifying function of the legal body more than any other form of crime. It also poses the major threat to the second and third referent objects mentioned above, since it can offer and impose an own regulatory system that competes with the one enacted by the state. When this happens, organised crime becomes a serious threat to the community as such and thereby to the collective identity. Organised crime targets the basis of the community as it prevents it from producing and implementing collectively binding decisions on society's behalf. With its own rules concerning the use of physical violence, corruption, intimidation and extortion, organised crime challenges the states supremacy and

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<sup>7</sup> This can be clarified by an experience that everybody has made. We have all been in a situation, where we have replaced the informal moral and personal responsibility by the moral codified in law. This is the case when we start to legitimise our actions with reference to legality instead of to some kind of internalised societal moral. -'Since it is not illegal, it is OK to do this'.

creates a system within or beside the state. Organised crime does not only neglect the law and place outside of the legal framework, it also uses and demands the state's services when it serves the organisation's interests, and can even achieve to manipulate and subordinate state activities to its own demands and interests.

Hence, crime, and in particular organised crime, threatens the existing society as it challenges the norms and values that constitute the democratic society's collective identity. By changing how, by whom, and in who's interest effective rules are defined, crime threatens the process in which the Community's collective identity is produced and reproduced, namely that part which consists of the enactment and enforcement of criminal laws. In addition, crime changes the economic life fundamentally. Using illegal means, crime abolishes the principle of the market and changes the mechanisms for attaining ownership. It is likely to drive out legitimate enterprises and deter investments. This will have negative effects on the productivity and result in a decrease of tax yield, both of which make a macro economic management more difficult.<sup>8</sup> Thus, at the same time as crime threatens the contents of the collective identity (moral, norms, allocation mechanisms etc.) it also undermines the foundation for the state's ability to enforce laws and maintain the system. Dysfunctional law enforcement is likely to shatter the confidence in central mechanisms of the state's system. With an undermined authority, the state as such and/or the democratic system may lose legitimacy. This means that the state loses its ability to govern, and with it the function as central rectifying institution and the role as security guarantor. This can cause a collapse at the macro level that can make the life unbearable at the micro level.<sup>9</sup> Together, these mutually reinforcing developments can result in decay of the society and a reformulation and reorganisation of the collective identity(ies) altogether.

Enforcing the rule of law and fighting crime, in particular organised crime, is therefore directly linked to the defence and the maintenance of the existing society and thus of the collective identity. Crime, and especially organised crime, simultaneously threatens the legal, political and the economic systems, and therefore the foundation of a societies' collective identity.

*International cooperation.* International cooperation in the fight against crime has become a necessity as criminals move across borders and crime operates internationally. Since criminals can travel between countries, states depend on the co-operation of other states in their struggle to defend the rule of law. Criminals could use other countries as 'safe havens' if they would not have to fear extradition or prosecution. Without a cross border judicial co-operation, and an efficient apparatus for law enforcement on both sides of the border, criminal activity would be made easier. This would certainly undermine the deterrent function of the law enforcement agencies in the state where a crime is committed. In addition, the geographical area of criminal activities does not follow country borders. Organised crime makes up a large proportion of the transnationally operating crime, which makes the international cooperation necessary in the first place. Organised crime has access to, and uses, the same facilities that enable legal businesses to operate internationally. Criminal activities in one country may even be led and controlled from a centre based in another country. To catch the leading figures and eliminate such criminal rings states must co-operate. Purely national operations would only interrupt, not stop, criminal ac-

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<sup>8</sup> Godson, Roy and Williams, Philip, 'Strengthening Cooperation Against Transnational Crime', *Survival*, vol. 40, no. 3, Autumn 1998, pp. 66-88, here p. 69.

<sup>9</sup> See Ohlemacher 2002:68.

tivities led from another country. Consequently, the decay of the legal system in one country is a concern for the affected as well as for the surrounding states.<sup>10</sup> Such a development can affect the stability and security of an entire region, as crime can operate freely from that lawless area. Due to transborder crime and its international repercussion the distinction between internal and external criminal threats is blurred.<sup>11</sup> This is why states have addressed the issue of transnational crime both on a bilateral level and various international forums (UN, Council of Europe, EU, G8, and OECD). They have also created common institutions for the purpose of crime fighting (e.g. Interpol and Europol).

However, states do not only support each other in the fight against crime. Sometimes, it is difficult to disentangle internationally organised crime and state activities. On the one hand, this results from governmental involvement in organised crime. Some states support criminal organisations and activities in other states.<sup>12</sup> On the other hand, it results from the involvement of organised crime in governance. In crisis regions where the rule of law has collapsed, the armed de facto authority often gets involved in criminal activities inside and outside the own territory. The differentiation between military threats and criminal threats can also be rather indistinct.<sup>13</sup> When freedom fighters turn into organised criminals, military and criminal threats blend. Organised crime also tends to be involved when states obtain weapons illegally. The proliferation of weapons of mass-destruction is particularly serious in this context. On the one hand, the same actor/organisation can simultaneously pose military and criminal threats.<sup>14</sup> On the other hand, the same institutions, procedures and instruments are used to counter both threats. The military apparatus, for instance, is operating in a policing mode in crisis areas, restoring order and some times even targeting groups that can be described as criminal organisations. Finally, it can also be difficult to separate internal criminal threats from external ones. That transnationally operating crime makes this distinction impossible is one of the main reasons for the international cooperation in combating crime.

#### SELECTING ORGANISATION

When searching for a European organisation that encompasses a security process aiming at counteracting criminal threats the choice falls on the European Union, which has adopted the goal to establish an area of freedom, security and justice to accompany the creation of the single market.<sup>15</sup> The Council of Europe Conventions are of greatest importance and will continue to serve as 'mother conventions' for many EU agreements.<sup>16</sup> Nevertheless, the centre of gravity and the dynamics of the international fight against crime are located to the Union and its so-called "co-operation in the field of justice and home affairs" (JHA). The creation of the Common Market and the abolition of internal borders have increased the opportunities for both legal and

<sup>10</sup> Godson and Williams 1998: 67.

<sup>11</sup> Alain, Marc, 'Transnational Police Cooperation in Europe and in North America: Revisiting the Traditional Border Between internal and External Security Matters, or How Policing in Being Globalized', *European Journal of Crime, Criminal Law and Criminal Justice*, vol. 9/2, 2001, pp. 113-129, here p. 117.

<sup>12</sup> History is also full of examples where states operated within the territory of another state, without considering the effective laws of that country. This is a natural part of the task of national intelligence services. It is quite obvious that the activity of spying often is connected to illegal activities. But states can also support more aggressive activities. The linkage between the Hizbullah and Iran, or the Lockerbie attack and Libya, may serve as examples.

<sup>13</sup> Peter Andreas and Richard Price describe this indistinctiveness by stating that the differentiation between military and criminal threats is gradually being reshaped. See Andreas, Peter and Price, Richard 2001, 'From War Fighting to Crime Fighting: Transforming the American National Security State', in *International Studies Review*, no. 3 (Fall 2001), pp.31-52.

<sup>14</sup> Economic threats are not entered as an additional form of threat here. As pointed out above, criminal and military activities can affect and threaten the economy. The economic dimension can therefore be said to be included within the two.

<sup>15</sup> article 61 ECT. Preamble and article 2 TEU.

<sup>16</sup> Schomburg, Wolfgang, 'Are we on the Road to a European Law enforcement Area? International Cooperation in Criminal Matters. What Place for Justice?', in *European Journal of Crime, Criminal Law and Criminal Justice*, vol 8/1, 2000, pp. 51-60, here p. 54.

illegal cross-border activities within the EU. Therefore, the integration process has been accompanied by compensatory measures including a more far-reaching co-operation in fighting crime than in any other European organisation. The EU has not only incorporated conventions concluded in the framework of other organisations. The member states have also surpassed this by completing own agreements and by harmonising their criminal laws and procedural standards. In addition, the EU is the only European organisation that has founded common institutions that are active in the operational dimension of the fight against crime.

This chapter focuses on the co-operation between European governments and law enforcement agencies in their attempt to fight crime within the EU and the Schengen area. From a European perspective, this cooperation can be regarded as directed against internal threats. Concerning the external threats it focuses on the efforts made to control the common external borders. Operations in crisis regions OOA conducted by European military or police units have already been dealt with in the section of military threats and are therefore not treated again at this place.<sup>17</sup> Illegal immigration forms a part of criminal threats, because it is directly linked to criminal law.<sup>18</sup> Given the freedom of movement within the EU, illegal migration would best be classified as external threats. Since the EU is the only European organisation that regulates migratory flows by common law and the only one that has set itself the goal to conduct a common asylum and immigration policy, the choice to focus on the EU is self-evident in this area.

### 3.3.1 Category polity and politics – Organisation and Authority

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity			X
	Politics			
	Policy			
Conclusion ESDI				

The aim of this section is to explore what kind of ESDI is reflected in the EU security processes in the criminal context, and to what extent it is reflected. This investigation must scrutinise how criminal threats are defined at the European level, as well as how they are counteracted.

Just as at the national level, there are two ways of defining criminal threats at the European level. First, there is a political dimension, in which what is to be regarded as a crime is formalised and objectified in a legal definition. Second, there is a judicial dimension, concerned with the interpretation, application and compliance of the defined rules. Here, decisions on how the common definition of criminal law is to be interpreted are taken, as well as whether a particular case can be defined as a crime. Within this *political* and *judicial dimension* the following main aspects are of interest for the ESDI:

- At what level are crimes (criminal threats) or the legal immigration (non-migratory threats) defined by laws?

<sup>17</sup> The main objective why armed military forces are used in a policing mode within crisis and conflict management operations is that they can resist military, paramilitary or other armed aggressors. Thus, in first line they can be said to counteract threats from military formations using military equipment. This is also the case if they are confronted with local criminal organisations.

<sup>18</sup> See further in section 3.3.1.2 *Regulating immigration* on page 157.

- What legislative instruments are used at the European level when deciding on common definitions of criminal threats and on collective countermeasures? How are these agreed upon?
- How is the compliance to the European rules controlled? What instance decides how definitions of criminal law are to be interpreted within the European Union? What role does the European Court of Justice (ECJ) have and what is its relation to national courts?

As for the *operational dimension* of criminal threats, EU initiatives to counteract crime are of interest for the ESDI. European co-operation has been established in areas such as resources for analysis (intelligence), databases, police co-operation and judicial co-operation. These initiatives must be examined with regards to what areas they cover (and do not cover), how they function and how they can be used.

As will be shown, migratory threats have some specific characteristics and differ from ordinary criminal threats. Therefore, I have chosen to examine migratory threats separately from other criminal threats in this section. This separation is also made within the EU, which treats the migration policy in the first pillar and the police and judicial cooperation in criminal matters in the third pillar. The first part of the survey is therefore concerned with what one might call 'ordinary' crime (3.3.1.1), and the second part with migratory threats (3.3.1.2).

#### 3.3.1.1 Defining and Fighting Crime within the EU (internal threats)

A common definition of what constitutes a crime, i.e. what is to be fought, is the basis and a prerequisite for all cooperation aiming at fighting crime. To this end, one must begin by an accord on how common definitions can be determined. The participants must agree on the procedures of negotiations and the form in which the common definitions of crimes and criminal threats shall be given. Once this has been done and common definitions have been found, the law enforcement agencies can commence to discuss how to cooperate in practice and start fighting crime together. This section seeks to reflect that chronological order.

#### *POLITICAL AND JUDICIAL DIMENSION: DEFINING CRIME AND CRIMINAL THREATS*

What constitutes a crime and by what means it can be prosecuted is defined by law. Fighting crime at the national level is therefore 'merely' confronted with the difficulty to detect criminal activities, collect evidence as well as to arrest and convict criminals. When several states attempt to join forces in the fight against crime, things become more complicated. First, they have to have the same opinion about what constitutes a crime. States cannot start to combat crime together without a common understanding of what is to be fought, i.e. what behaviour is unacceptable and criminal. This is defined by substantive (or material) criminal law. In order to make full use of the cooperation, it may also be necessary to agree on procedures for fighting crime. This is defined by so called procedural law. It may for instance matter how evidence is collected. Depending on the legal system in which a trial is held, one country's courts may allow for certain evidence, while others rejects it.<sup>19</sup>

Theoretically, there are two ways of achieving the required harmonisation of substantive criminal law and procedural law. Either the different nation states co-operate and approximate their laws on an intergovernmental basis, or they get together in a supranational organisation,

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<sup>19</sup> See Tak, Peter, 'Bottlenecks in International Police and Judicial Cooperations in the EU', *European Journal of Crime, Criminal Law and Criminal Justice*, vol. 8/4, 2000, p. 343-360, here from p.348-353.

which enacts common laws that define crimes and determine how they are to be prosecuted. In practice the latter is not an option, since criminal law and criminal procedure have remained in the nation-state's exclusive competency. No European country has transferred the sovereign right to an international institution that would give it the competence to set supranational criminal law. The supranational European Communities do not even have this competency.<sup>20</sup> No collective definition of crime formulated in EU/EC legislation has the status of criminal law. Formally, what constitutes a crime is, thus, defined at the national level alone. This does not prevent states from interacting with each other and to harmonise their laws on an intergovernmental basis. They may for instance draw up and sign international conventions that include common definitions of certain crimes and address how they are to be fought. However, strictly speaking, 'European criminal law' does not exist as direct binding law. It is rather a generic term under which the European criminal law developments that affect the national criminal law are gathered.<sup>21</sup> Whatever common definitions of criminal law and procedural law the sovereign states agree upon must therefore be converted into national criminal law. Initially the question of at what level crimes are being defined by laws is therefore easy to answer. Only states have the authority to enact valid criminal and procedural law.

#### *DEFINING CRIMINAL THREATS IN THE THIRD PILLAR.*

The national sovereignty in the sphere of criminal law is reflected in the structure of the EU. With a few exceptions, which will be returned to later, the judicial and police cooperation in criminal matters is located to the intergovernmental third pillar. Here the Council adopts all collective definitions of crimes and criminal threats unanimously.<sup>22</sup> In contrast to the second pillar, the third pillar does not allow for a constructive abstention. Although this may obstruct the decision-making in some cases, this rule can be advantageous in the long run. The mechanism of constructive abstention can be practical when deciding on single ad hoc measures that concern the relation to third parties. Applying it to regulate matters that concern the internal European relations in a more or less permanent way, however, could be damaging. Sticking to the rule of consensus hinders the legal fragmentation from being internalised into the EU legislation. Including the constructive abstention could lessen the incentive to reach consensus, end up in a European Union à la carte and result in more diversity rather than harmonisation. This would complicate future cooperation.

Thus, all common definitions of crimes and criminal threats result from a consensual security process.<sup>23</sup>

#### *THE FIRST PILLAR – CRIMINAL LAW IN DISGUISE*

At first sight, the separation between the first and the third pillars appears to be straightforward and clean. But, before dismissing the first pillar as completely negligible for the definition of

<sup>20</sup> Ligeti, Katalin, 'European Criminal Law: Administrative and Criminal Sanctions as Means of Enforcing Community Law', *Acta Juridica Hungarica*, vol 41, no. 3-4, 2000, pp 199-212, here p. 201.

<sup>21</sup> Albrecht, Peter-Alexis and Braun, Stefan, 'Deficiencies in the Development of European Criminal law', *European Law Journal*, vol. 5, no. 3, September 1999, pp. 293-310, here p. 297.

<sup>22</sup> When the treaty of Amsterdam entered into force on 1 May 1999, the Schengen Agreement of 14 June 1985 between the governments of the States of the Benelux economic union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders was incorporated into the European Union Framework under title IV of the ECT (Visas, asylum, immigration and other policies related to free movement of persons) and title VI of the TEU (Provisions on police and judicial cooperation in criminal matters) police and judicial cooperation). At the same time, the Executive Committee created under the Schengen agreement was replaced by the Council. The Council is therefore the only political decision-making body within the EU framework that deals with criminal matters.

<sup>23</sup> The only exception from the rule of consensus is when the Council adopts measures implementing Decisions and Conventions. It does so with qualified majority respectively a majority of two-thirds of votes. This does however not concern the definition of criminal threats.

crimes and criminal threats, one should explore how its legal instruments affect the endorsement of criminal law.

To begin with, one could expect the EC to have the ability to influence the national endorsement of criminal law indirectly. According to chapter three of the Amsterdam treaty, the Council can issue directives for the harmonisation of national legal provisions if this is necessary for the establishment and correct functioning of the internal market. Some directives suggest that criminal law can be a part of this market harmonisation process. The money laundering<sup>24</sup> and the insider dealing<sup>25</sup> directives may serve as examples. Both directives indirectly called national legislators to criminalise and penalise certain activities, defined by the Community, which were infringing Community legislation.<sup>26</sup> However, it seems quite clear that no legal binding obligation to enact any criminal legislation would arise from the directives for any member state.<sup>27</sup> This provision would otherwise give the Community the ability to extend its own competency beyond the field explicitly given to it in the Treaty of Amsterdam (or the Treaty of Nice).

Second, direct applicable EC regulations can themselves function like criminal law in the sense that they have punitive affect. The EC can apply sanctions against actors that infringe or misuse the provisions laid down in some of its regulations. Such regulations are widely used to protect the EU budget from misuses, especially in matters concerning EU subsidies or grants. Within the agriculture policy, for instance, unjustified use of subsidies and grant payments are not only neutralised through restitution, but also penalised through surcharges, reduction of payment claims and withdrawal of benefits to the disadvantage of the person who unjustly received a subsidy.<sup>28</sup> Competition<sup>29</sup> and the protection of the European Communities financial interests<sup>30</sup> are other examples of areas where penalties are imposed based on direct applicable EC regulations. It must however be underlined that these regulations and the imposed punishments are not classified as criminal law and criminal sanctions. Officially, the penalties are presented as administrative penalties or fines.<sup>31</sup> This technical differentiation can be made since they are not imposed by the judiciary or limited to natural persons, nor do they include the option of imprisonment. Nevertheless, administrative penalties are assimilated to and are bound to the same safeguards as criminal law. They are bound to the general principle of equity, proportionality and to the principles of '*ne bis in idem*' and '*nulla poena sine lege*'.<sup>32</sup> Moreover, the regulations and their enforcement are directed against activities that are covered by criminal law in the member states.

<sup>24</sup> Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering. (OJ L 166, 28.06.1991, p. 77 – 83.). Amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001. (OJ L 344, 28.12.2001).

<sup>25</sup> Council Directive 89/592/EEC of 13 November 1989 coordinating regulations on insider dealing. OJ L 334, 18.11.1989, p. 30 –32.

<sup>26</sup> The directives do not make any explicit reference to an obligation of the member states for enacting penal provisions, although reference is made explicitly to such measures. Nevertheless, in the German version of the attachment to the directive on money laundering, the representatives of the Governments of the member states obliged themselves ('verpflichten sich') to enact the necessary criminal legislation. Other examples of EC legislation that suggest a criminalization of certain activities are: Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (see article 2). Amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001; Council Directive 91/477/EEC of 18 June 1991 on control of the acquisition and possession of weapons (see article 16); Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods. According to article 9 "Each Member State shall determine the penalties to be applied for infringement of the provisions of this Regulation. The penalties shall be sufficient to promote compliance with those provisions"; Council Directive 92/109/EEC of 14 December 1992 on the manufacture and the placing on the market of certain substances used in the illicit manufacture of narcotic drugs and psychotropic substances (see article 8); More recent examples are: The Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law. Commission proposal COM (2001) 139 final (see article 3 and 4); The Proposal for a Directive of the European Parliament and of the Council on the criminal-law protection of the Community's financial interests. Commission proposal COM (2001) 272 final.

<sup>27</sup> Albrecht 1999: 302; Kaiafa-Gbandi, M., 'The Development towards Harmonization within Criminal Law in the European Union – A Citizen's Perspective', *European Journal of Crime, Criminal Law and Criminal Justice*, vol. 9/4, 2001, pp 239–263, here p. 248.

<sup>28</sup> As for the CAP, this practice is justified with article 34 (2) ECT. See Albrecht 1999: 300.

<sup>29</sup> Based on article 83 (2a) ECT.

<sup>30</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests. OJ L 312, 23.12.1995. This regulation is based on article 308 ECT.

<sup>31</sup> C.f. article 1 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995. The ECJ has also presented them in this way. C.f. Kaiafa-Gbandi 2001:245.

<sup>32</sup> The former describes the right not to be tried or punished twice in criminal proceedings for the same criminal offence. Although this principle appears clear, it may be difficult to define what is understood by 'idem' - 'the same facts' or 'the same case'. The latter states that no punishment can be imposed unless a criminal law has made provision for it in advance.



The purpose and effect of the supranational law enforcement and the administrative fines are therefore directly directed against what can be labelled criminal activities and they form part of the fight against crime. Most interesting is that the EC has developed an own system of administrative penalties and law enforcement to protect its own interests. In a way, this is a crime fighting apparatus in disguise. The EC does no longer rely on the member states judiciary to enforce its own legislation and to protect its interests against criminal activities. I will return to this supranational law enforcement below when examining the operational dimension.

Finally, community law sets certain limits to what the member states can define as a criminal threat and a crime.<sup>33</sup> Community legislation encroaches on national criminal law. The ECJ can neutralise domestic criminal law provisions and declare them inapplicable if they contradict Community law, e.g. the four freedoms.<sup>34</sup> It must however be underlined, that this is not the same as a common definition of criminal threats. In this sense, the EC legislation does not prescribe the definition of any criminal law. It merely exempts certain activities from criminalisation and determines what may not be defined as a criminal threat.

#### *JUDICIAL DIMENSION: INTERPRETATION AND CONTROL OF COMPLIANCE*

An examination of how the judicial interpretation of single cases is organised and how the compliance to the collective European definitions is controlled completes the survey of common European definitions of crimes and criminal threats.

The jurisdiction in single criminal matters is reserved exclusively to national courts. Thus, whether or not the evidence presented in a case is enough to lead to a conviction and a punishment lies in the full competency of national courts.<sup>35</sup>

Pillar	Instrument	Interp. Single Cases		Interpretation of common definition					
		Applied law	Jurisdiction	Annulment		Rule on Disputes		Preliminary ruling	
				Applies	Complainant	Applies	Complainant	Applies	Ruling on
3	Framework Decision	National law	National Court	ECJ	Member States + Commission	ECJ	Member States	ECJ Conditional	Validity and interpretation
	Decision	National law	National Court	ECJ	Member States + Commission	ECJ	Member States	ECJ Conditional	Validity and interpretation
	Convention	Can be direct binding	National Court	Non	Non	ECJ	Member States + Commission	ECJ Conditional	Interpretation
1	Adm. penalties	Direct binding	ECJ	ECJ	The Convicted	Not applicable			

*Figure 3.3- 1. ECJ jurisdiction in 'ordinary' criminal and administrative matters*

As for the first pillar, parties penalised by administrative fines following EC legislation can appeal to the ECJ. The ECJ has also been assigned the responsibility to decide on the interpretation of binding decisions taken under Title VI EUT (Provisions on police and judicial coopera-

<sup>33</sup> This has been shown in the ECJ Case C-203/80 Casati (Guerrino), (Criminal Proceedings Against) [1981] ECR 2595, [1982] 1 CMLR 365, 2618.

<sup>34</sup> Katalin Ligeti 2000: 200.

<sup>35</sup> The two exceptions from this rule, the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia can be excluded from this study. This is not because the jurisdiction of these UN courts is limited to what is labelled as the most serious crimes of concern to the international community as a whole. The main reason is that none of them represents or forms part of what might be seen as a judicial system with a European scope. The Statute of the International Criminal Court (ICC) was adopted on 17 July 1998 at the United Nations Conference in Rome and entered into force on 1 July 2002. The Court's jurisdiction is limited to states that become a Party to the Statute and only with respect to crimes committed after the entry into force of the Statute. The ICC has jurisdiction with respect to crimes of genocide, against humanity, war crimes and crimes of aggression (The Statute of the International Criminal Court article 5-8). The International Criminal Tribunal for the former Yugoslavia (ICTY) was established by Security Council resolution 827. This resolution was passed on 25 May 1993. The Tribunal is unique in the sense that it has not been conferred its powers by the concerned state (neither by Yugoslavia or its successor states) but by the Security Council. This means that the International Tribunal shall have primacy over national courts. Since the Security Council adopted the statute, it defined both the criminal law and the courts jurisdiction. Hence, there is such a thing as international criminal law. However, this will never apply to the permanent members of the Security Council against their will. The ICTY has the power to prosecute persons responsible for serious violations of international humanitarian law, breaches of the Geneva Conventions, violating the laws or customs of war, committing genocide and crimes against the civilian population.

tion in criminal matters – Pillar 3) and on the compliance of national legislation.<sup>36</sup> The jurisdiction of the ECJ varies depending on what legally binding instrument has been applied.

Title VI of the EU Treaty foresees three different ones: framework decisions, decisions and conventions.<sup>37</sup> Framework decisions function as the directives of the first pillar. They are applied for the purpose of approximation of national laws and regulations, and are binding to the member states as to the result to be achieved, while leaving the member states' authorities the choice of form and method. Consequently, they do not entail direct effect. Decisions can be adopted for any purpose in the policy field of the third pillar, except for those concerned with the approximation of the laws and regulations of the member states. Decisions are binding but explicitly do not entail direct effect. The Council adopts both Framework decisions and Decisions unanimously. In contrast, the Council cannot adopt Conventions. It can only unanimously adopt the text of a Convention that it recommends to the member states for adoption in accordance with their respective constitutional requirements.

The Court has jurisdiction to rule on any dispute between member states regarding the interpretation or application of the measures adopted and on any dispute between member states and the Commission about the interpretation or application of conventions established under the third pillar.<sup>38</sup> Thus, the Commission can only take a case regarding the interpretation of conventions to the ECJ. It has not legal means to dispute a member state's lacking compliance to a framework decision or decision. Only member states can take each other to the ECJ for this reason, and only if the dispute cannot be settled in the Council within six months. Since member states do not tend to accuse each other in front of the ECJ, this legal instrument is hardly ever applied. Furthermore, the ECJ reviews the legality of framework decisions or decisions brought before it by member states or the Commission. The ECJ can also annul these provisions.<sup>39</sup> Finally, the ECJ can give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions established under title VI EUT, and on the validity and interpretation of the measures implementing them. However, this only applies to those member states that have made a declaration accepting the jurisdiction of the Court.<sup>40</sup> Until present, all member states but Denmark, France, Ireland and the United Kingdom made such declarations.<sup>41</sup>

#### *OPERATIONAL DIMENSION: COUNTERACTING CRIME*

The fight against and the prosecution of cross-border crimes is the major challenge of the third pillar. The main problem seems to be that the European criminal law enforcement area is still too fragmented. Together the 15 member states have more than 120 police forces, dozens of separate legal jurisdictions, and a multitude of different judicial and policing traditions.<sup>42</sup> Cross-border crime is still counteracted by national police and judicial authorities that are empowered to act on their own territory only.<sup>43</sup> Clearly, this complicates the fight against crime. The necessity to make the mosaic of criminal-law systems more efficient and less complex is obvious.

<sup>36</sup> Article 35 TEU.

<sup>37</sup> Article 34 TEU. In the version of the Treaty of Maastricht, the Council could adopt joint positions, joint action and draw up conventions.

<sup>38</sup> Article 35(7) TEU.

<sup>39</sup> Article 35(6) TEU.

<sup>40</sup> Article 35(1 and 2) TEU.

<sup>41</sup> Information concerning the state of the declarations concerning acceptance has been published in OJ C 120, 01.05.1999, p. 24.

<sup>42</sup> See Hall, Ben and Bhatt, Ashish, *Policing Europe, EU justice and home affairs cooperation*, London 1999, p. 28.

<sup>43</sup> Exceptions to this are cross-border surveillance and hot pursuits regulated in bilateral agreements based on article 40 and article 41 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders. (Schengen Convention) (OJ L 239, 22.09.2000, p. 19-62).

A basic difficulty consists of determining under what country's jurisdiction a case falls. Per definition, cross-border crime stretches over several states. Thus, conflicting claims of jurisdiction or a conflicting disclaimer of jurisdiction can occur between the concerned states. However, this seems to be a minor problem. The major obstacle hindering an efficient management of "Europe's single market in crime"<sup>44</sup> is that responsible national authorities depend on legal assistance from other states. The information and evidence that can lead to a conviction is to be found and must be collected in different states. Thus, an efficient prosecution requires a well-organised co-ordination of, and co-operation between, national investigations. Given that every member state has its own particular laws and institutional system for law enforcement it is not surprising that this involves both legal and considerable practical difficulties.

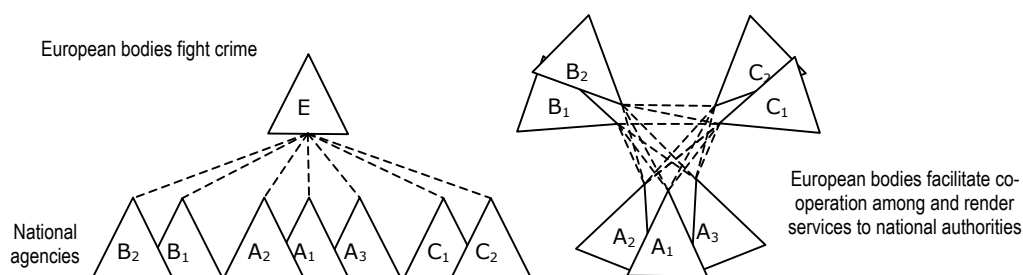


Figure 3.3- 2. Vertical and horizontal assistance

There are two basic strategies to make the European fight against crime more efficient. The member states can either build a system of vertical judicial assistance and police cooperation or seek ways to improve the horizontal co-ordination. Both of them can include the creation of European bodies. In the case of vertical assistance, certain authority is transferred from the national agencies to the European one (autonomous), or the European body is given competencies that are complementary to those of national authorities (semi-autonomous). In the case of the horizontal co-ordination, in contrast, the responsibility to fight crime fully remains at the national level. Here the aim of European initiatives is to improve the effectiveness and co-operation of the competent national authorities. If any collective bodies are set up, they merely render services to the national authorities, without having any own authority to influence the fight against crime

#### VERTICAL ASSISTANCE AND SUPRANATIONAL LAW ENFORCEMENT- FIRST PILLAR

The strategy of vertical assistance is much more ambitious from an ESDI perspective. Here the responsibility for the coordination of national investigations and operations is lifted up to the European level and given to a European institution. The advantage of this system is that the different national agencies only have to deal with one central point of contact in all cross-border crime cases of a certain type. Instead of contacting and cooperating with a multitude of foreign agencies with different procedural rules, each state only has to define its relation to the European agency. This allows national agencies to focus on the contents of the information they submit instead of finding out which specific foreign agency X is responsible in country Y and what special procedural rules Z must be respected when dealing with them. By giving a European agency the responsibility and authority to lead the investigation and prosecution of cross-border crime,

<sup>44</sup> Hall and Bhatt 1999: 27.

the information flow could be simplified and thus accelerated. A central agency would also do away with the problem of competing, partial or non-existent investigations and proceedings within the Union.<sup>45</sup> In addition, a central European agency could gain an overall picture of cross-border crime, have a better chance to detect linkages between different criminal activities and be well suited to lead the fight against organised crime.

However, for two main reasons the system of vertical assistance is difficult to establish. The first problem concerns the need for a common substantial criminal law. It is only feasible for a central European agency to take action against activities that are deemed as criminal in all member states. As shown above, such harmonisation can be difficult to establish and will forcefully be restricted to a limited field of criminal activities. The second difficulty concerns the relationship between European and national agencies. This is not primarily about the formalities of how national authorities shall submit information to the European agency, but rather the communication in the reverse direction. Member states have to determine the European agency's authority, i.e. its ability to instruct and lead investigations and/or its ability to conduct its own investigations on their territory. It is difficult to see a European agency emerge, that has the competency to order and lead investigations and operations in the member states, be it with European officers or by ordering the local authorities. These two reasons set clear limits to the 'federalisation' of investigations, prosecution and law enforcement. It is not surprising, that the only two examples that fall within the category of vertical assistance are to be found within the first pillar and are restricted to the protection of a referent object that can easily be identified as a European one - the Union's financial interests. Since this area primarily is of a European and not of national concern, it has also been easier for the member states to agree on the substantial law for its protection.

As with other laws, the compliance with EC legislation is controlled, and violations counteracted with punitive sanctions. The EC has built up own institutions to control that its rules are obeyed and to penalise those who break them. The Commission's function in the competition policy has already been addressed. The Court of Auditors is another well-known body involved in the control of compliance of the rules. However, it merely examines whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound.<sup>46</sup> It reports irregularities to European Parliament and the Council, and notifies the institutions concerned about its findings.<sup>47</sup> The Court of Auditors is not responsible for conducting further investigations of irregular acts likely to lead to administrative, penal or criminal proceedings. This task has been confided to the European Anti-fraud Office (OLAF), which is the first example to be examined. It goes beyond the concept of vertical assistance, representing a form of supranational law enforcement, but is formally excluded from criminal proceedings and may only conduct administrative investigations. The second example that will be scrutinised has been discussed for some time, but without being put into action, the European public prosecutor.

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<sup>45</sup> Additional Commission contribution to the Intergovernmental Conference on institutional reforms of 29 September 2000, The criminal protection of the Community's financial interests: a European Prosecutor, COM (2000) 608. Printed in Annex 1 to the Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor, COM (2001) 715 final, p. 77-86, here p. 78.

<sup>46</sup> Article 248(2) ECT.

<sup>47</sup> According to article 248 (1 and 4) ECT, all these reports are to be published in the Official Journal of the European Union.

*European Anti-fraud Office.* OLAF is the investigation unit of the Community, exercising the powers of investigation conferred on the Commission by the Community rules, regulations and agreements.<sup>48</sup> The administrative investigations conducted by the office aim at revealing illegal activity affecting the financial interests of the European Communities. This basically covers any infringement of a provision of Community law that has or would have the effect of prejudicing the general budget of the Community or budgets managed by it.<sup>49</sup> In other words, it includes any fraud against the Community budget. With a budget of nearly 40 million<sup>50</sup> and a foreseen staff of 300,<sup>51</sup> OLAF conducts internal investigations within the Communities' own institutions, bodies, offices and agencies, as well as external investigations in the form of on-the-spot inspections and checks of economic operators<sup>52</sup> in the member states and in some third countries.<sup>53</sup> In all member states, OLAF inspectors carry out on-the-spot checks of economic operators under the same conditions as national administrative inspectors and in compliance with national legislation. If the national authorities so wish, the inspections are carried out jointly. Nevertheless, it is remarkable that OLAF has operative competencies throughout the entire Community area and in some cases even beyond it.

This does not in any way free the member states from their responsibility to conduct investigations, prosecute and counteract criminal activities directed against the EC. According to article 280 ECT "Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests". Since all crimes fall under the jurisdiction of at least one of the member states, there is always a responsible national agency. However, the efforts undertaken by the member states are not regarded as sufficient to protect the financial interests of the Community. Therefore, the member states share the responsibility for the investigation with the Commission (through OLAF). For this purpose, member states are obliged to communicate to the Commission all cases of irregularity which exceed 4 000 ( 10 000 for own resources).<sup>54</sup> National judicial authorities also communicate the outcome of criminal proceedings to OLAF for the purposes of recovery of EC funds. In return, OLAF provides the concerned national authorities with documents and information likely to be useful in national criminal proceedings.<sup>55</sup>

In each particular case, OLAF draws up a report specifying the facts established, the financial loss, if any, and the findings of the investigation, including recommendations on the action.<sup>56</sup> On the basis of these reports, the Commission decides on administrative penal sanctions.<sup>57</sup> Nevertheless, all formal criminal proceedings that may result from such an investigation fall within

<sup>48</sup> article 1 (1) of Council Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF).

<sup>49</sup> Compare article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests.

<sup>50</sup> General budget of the European Union for the financial year 2002, Section III: Commission, Annex III: European Anti-fraud Office, OJ L 29, 31.01.2002, p. 553.

<sup>51</sup> Report of the European Anti Fraud Office, Activity report for the period 1 June 2000 - 31 May 2001. p. 33.

<sup>52</sup> Economic operators are such natural or legal persons and other entities on which national law confers legal capacity who have committed the irregularity and to those who are under a duty to take responsibility for the irregularity or to ensure that it is not committed. Article 7 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests.

<sup>53</sup> Council Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), article 3 and 4. Checks in third countries are conducted in accordance with the cooperation agreements in force.

<sup>54</sup> Article 1(2) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests. OJ L 312, 23.12.1995.

<sup>55</sup> To estimate the efficiency of a law enforcement agency is always difficult, as the number of unreported cases and 'successful' fraud never could be seized. For data concerning the activities (number of cases and amount) of OLAF, see Report from the Commission, Protection of the financial interests of the Communities and fight against fraud – Annual report 2001- COM (2002) 348 final/2.

<sup>56</sup> Council Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), article 9.

<sup>57</sup> The Commission has suggested the extension of the administrative penalties to the most sensitive sectors in order to avoid the development of irregular actions and strengthen compliance with Community legal provisions. Thereby adding to the administrative control provisions a system of administrative penalties. This should be done in accordance with the framework established by Council Regulation No 2988/95, and follow

the competency of national authorities. Thus, the supranational law enforcement is restricted to investigations of fraud against the Community budget and to the determination of administrative penalties.

*A European Public Prosecutor.* The idea of an international prosecutor is neither fantastic nor revolutionary. Such an institution is already applied at the ad hoc International Criminal Tribunals in The Hague and Arusha and foreseen for the International Criminal Court based on the Rome Statute. When considering the jurisdiction of these courts and the authority of international prosecutors, it becomes clear that their creation is less about transferring judicial responsibilities from the national to the international level, and much more a matter of creating a judiciary for a lawless space. In practice, EU states will most likely only have to defend themselves at very rare occasions in international courts of this sort.

The issue of a European prosecutor is far more sensitive for the member states. The idea of a European Public Prosecutor began to take concrete form under the label *Corpus Juris* in the mid 1990s.<sup>58</sup> The function of the European Prosecutor would be to coordinate and direct the investigation of offences against the financial interests of the Communities. As a self-contained organ within the EC, the European Public Prosecutor would also overtake the prosecution of these criminal offences. A European public prosecutor would therefore take over responsibilities currently assigned to and conducted by national prosecutors. Thus, it is not a question of establishing a common code of criminal procedure, but of a uniform European system of criminal prosecution. In contrast to OLAF, a European prosecutor would not complement but rather relieve the member states judiciary from certain responsibilities. In addition, the European prosecutor would be involved in formal criminal procedures, and not only in 'administrative' ones. In this sense, the European prosecutor can be seen as the judicial follow-up to the administrative investigations of OLAF.

However, the involvement in criminal procedures is explicitly prohibited by article 280 (4) of the EC treaty. Therefore the Commission proposed necessary alterations to the European Council of Nice.<sup>59</sup> The Council, however, was not ready to take this step and rejected the proposal. This does not mean that the idea has been abandoned. By releasing a Green Paper on the establishment of a European Prosecutor in 2001<sup>60</sup> the Commission demonstrated that it still considers the office as feasible and necessary. Thus, it is too early to dismiss the idea all together. From an ESDI perspective, the European Prosecutor is interesting, as it represents the first step in the institutionalisation of the operational dimension at the European level in formal criminal matters. As such, it would represent a milestone in the development of the ESDI in the criminal context.

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the model of the existing system for the common agricultural policy. Communication from the Commission - Protection of the Communities' financial interests - The fight against fraud - For an overall strategic approach. COM/2000/358 final. p. 9.

<sup>58</sup> On the initiative of the European Commission, a group of eight academic lawyers under the direction of Mireille Delmas-Marty produced the research report *Corpus Juris, introducing penal provisions for the purpose of the financial interests of the European Union*, Paris 1997.

<sup>59</sup> The Commission proposed the introduction of an article 208a. Additional Commission contribution to the Intergovernmental Conference on institutional reforms of 29 September 2000, The criminal protection of the Community's financial interests: a European Prosecutor, COM (2000) 608. Printed in Annex 1 to the Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor, COM (2001) 715 final, p. 77-86, here p. 84-86.

<sup>60</sup> Green Paper on criminal-law protection of the financial interests of the Community and the establishment of a European Prosecutor, COM (2001) 715 final.

*HORIZONTAL CO-ORDINATION AND CENTRAL ASSISTANCE – THIRD PILLAR.*

As a rule, surveillance and enforcement of penal law is a domestic issue. Even when the *actus reus* is predefined by Community law, the procedural law (regulating how police operations are conducted) and the definition of sanctions lies in the competence of the 15 member states.<sup>61</sup> Therefore, most European efforts that seek to strengthen the operational dimension follow the strategy of horizontal co-ordination. They do not attempt to lift the operational responsibility to a European level. The aim is to simplify, facilitate, enhance and ameliorate the co-operation between national authorities.

To improve the horizontal co-ordination the Union agreed on establishing a network of contacts with the help of Liaison Magistrates and by establishing the European Judicial Network (EJN). The setting up of Joint Investigation Teams has also been facilitated. These initiatives cannot do away with the difficulties involved in the horizontal assistance, nor do they lift any parts of the security process up to a European level. They merely seek ways to facilitate the contact amongst the different judiciary systems. In an attempt to exhaust the advantages of central agencies, without depriving the nation states from the full and sole responsibility for fighting crime, member states have also agreed on two initiatives that could be labelled 'hybrids'. *De jure* they follow the logic of the horizontal co-ordination, although the arrangements also provide for lifting parts of the security process up to the European level. The two initiatives are Eurojust and Europol. The Schengen Information System (SIS), finally, is a network containing uniform data on specific 'wanted' persons and property. In contrast to the initiatives mentioned above, it interlinks national authorities of the participating states directly. All police stations and consular agents have direct access to the network.

*Liaison officers.* In 1996 the Council agreed on a framework for the exchange of liaison magistrates with the aim to increase the speed and effectiveness of judicial co-operation, to promote the pooling of information of the member states' legal and judicial system and to facilitate better mutual understanding thereof.<sup>62</sup> The actual exchange of liaison magistrates or officers takes place among the member states that so wish and on the basis of bilateral or multilateral agreements. Thus, the joint action merely picked up a praxis that already existed. Therefore, the value added by the initiative only consists of the promotion of the exchange of liaison magistrates.<sup>63</sup> It is the task of the liaison officer to establish direct links with the competent departments and judicial authorities in the host nation. As an expert on his own country's judicial system, the magistrate provides the host nation's agencies with information concerning whom to contact in his own country and on procedural formalities that must be respected in order to receive assistance from them. This information can be given on a general basis or on request in a specific case. Following this concept, countries seek to increase the transparency by spreading knowledge of their own system through representatives stationed in other states. In some cases, the liaison officer can also function as a channel of information, but the contact is usually established directly between the

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<sup>61</sup> Katalin Ligeti 2000:211.

<sup>62</sup> 96/277/JHA: Joint Action of 22 April 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union. OJ L 105, 27.04.1996 p.1 – 2.

<sup>63</sup> The only novelty was that member states have to provide the Council each year with information on the respective liaison officer network. Article 3 of 96/602/JHA: Joint Action of 14 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union providing for a common framework for the initiatives of the Member States concerning liaison officers. OJ L 268 19.10.1996 p.2-4.

competent authorities. In this sense, a liaison officer fulfils the role of a 'qualified directory', answering whom to contact and how to approach them.

*European Judicial Network.* The establishment of the EJN serves the same purpose, namely to provide the necessary legal and practical information to enable judicial authorities to prepare an effective request for judicial cooperation or to improve judicial cooperation in general.<sup>64</sup> However, the EJN is differently structured. Here all member states are held to establish one or more contact points in their own country.<sup>65</sup> These contact points are interconnected with an own telecommunication network with a central data bank, which is located within and administrated by the General Secretariat of the Council. The national contact points are responsible to submit the required information<sup>66</sup> to the central data bank and to check that the information it contains is accurate. To obtain the required information, national authorities can either get in touch with a contact point in their own country or one in the country with which they want to cooperate. The contact point can also informally expedite requests for assistance in criminal prosecutions or investigations (so called international judicial orders or 'letters rogatory'). Once national authorities have obtained the necessary information and help from the contact point, the communication concerning the actual judicial co-operation takes place directly between the competent authorities and outside of the EJN. The function of the EJN and its national contact points can thus be described as a network of qualified central 'switchboards'. Following this concept, countries seek to increase the transparency by letting a national point of contact provide information on their system.

*Joint Investigation Teams.* The Council Framework Decision on joint investigation teams represents one of the latest European JHA initiatives.<sup>67</sup> Just like the rules for the exchange of liaison magistrates, this initiative does not add a new instrument to the European law enforcement cooperation, nor does it lift any part of the security process up to a European level. The Framework Decision merely highlights the possibility to set up joint teams for a specific purpose during a limited period.<sup>68</sup> The only novelty this initiative contains is that representatives from EU bodies can be included in such bi- or multilateral teams, in particular persons from Europol and OLAF.<sup>69</sup> Nevertheless, it also contains one provision that makes the practical co-operation somewhat simpler and smoother. National officers who have been seconded to a Joint Investigation Team shall be able to request (not order) their own national authorities to perform acts that are deemed necessary by the team. Thus, instead of letting the country where the team is operating start the lengthy process of making formal request for assistance to other countries, a team member can do so in his national function. This does not change that the composition and activities of a joint team are based on a mutual agreement among the competent authorities of two or several member states. Joint Teams cannot be set up by (or amongst) any European body(ies).

<sup>64</sup> Article 4(2) of Joint action 98/428/JHA of 29 June 1998, adopted by the Council, on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network. OJ L 191, 07.07.1998 p.4-7.

<sup>65</sup> Article 2 (2) of Joint action 98/428/JHA of 29 June 1998, adopted by the Council, on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network. OJ L 191, 07.07.1998 p.4-7.

<sup>66</sup> According to article 8 of 98/428/JHA the information available within the EJN consists of: "1) full details of the contact points in each member state with, where necessary, an explanation of their responsibilities at national level; 2) a simplified list of the judicial authorities and a directory of the local authorities in each member state; 3) concise legal and practical information concerning the judicial and procedural systems in the 15 member states; 4) the texts of the relevant legal instruments and, for conventions currently in force, the texts of declarations and reservations."

<sup>67</sup> 2002/465/JHA, Council Framework Decision of 13 June 2002 on joint investigation teams.

The same text is contained in article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, which was established by a Council Act of 29 May 2000. See OJ C 197, 12.07.2000.

<sup>68</sup> Article 1(1) 2002/465/JHA.

<sup>69</sup> According to point (9) of the introduction and article 1(12) of 2002/465/JHA.



A joint investigation team shall carry out its activities in accordance with the law of the member state in which it operates and be led by a representative of a competent authority from that member state. Each participating member state shall decide on what authority it confers to the foreign team members while operating on its own territory. Thus, the whole co-operation is set up and conducted directly between the competent authorities and outside of the EU framework.

*Eurojust - the first 'hybrid'.* With the establishment of Eurojust in The Hague (alongside with Europol) parts of the security process have been lifted up to the European level. In contrast to the systems described above, this arrangement does not only aim at helping national authorities to come in contact with their relevant counterparts and to observe the right procedures when doing so, nor does it merely consist of a legal framework facilitating the co-operation among the authorities of the member states. With Eurojust a body was founded that can initiate cooperation and actively assists national authorities in their efforts to coordinate their investigations and prosecutions.<sup>70</sup> Eurojust can also invite and recommend competent authorities to take actions in one member state to stop criminal activities carried out by criminal organisations directed against another member state.<sup>71</sup>

Eurojust is composed of one seconded prosecutor, judge or police officer of equivalent competence from each member state.<sup>72</sup> As such, Eurojust has neither operational powers nor the right to issue orders to national prosecuting authorities. But, it can ask the competent national authorities to undertake actions, e.g. to launch an investigation or prosecution, to coordinate their activities and to set up joint investigation teams.<sup>73</sup> Moreover, all national members of Eurojust are double hatted and can also act in their national function.<sup>74</sup> Thus, those member states who decide to give their representatives the power to initiate investigations in their national function, de facto allow the actual operational orders to be drawn up and coordinated within the Eurojust structure.<sup>75</sup> At the time of writing, Denmark was the only country that had clarified the competencies of its national member of Eurojust. It did however not grant its member this competency.<sup>76</sup> Moreover, if a particular case so requires, the concerned national members can ask their State to set up a joint investigation team and suggest that the Eurojust member from the member state in which the team operates shall be appointed as team leader.<sup>77</sup> In this sense, Eurojust can be described as a round table of national magistrates that can discuss concrete cases, exchange information, co-operate directly on a bi- or multilateral level and co-ordinate investigations. As a central unit, Eurojust provides a permanent framework within which the coordination of investigations can be launched. At best, linkages between different cases can be established and the necessity to bring various investigations together revealed. In addition, Eurojust shall assist co-operating national authorities on their request and offer them logistical support. Such support may include translation, interpretation and the organisation of coordination

<sup>70</sup> Moreover, while the EJN mainly aims at facilitating bilateral relations, Eurojust can deal with transnational matters concerning several Members. See the document presented by the Belgian delegation on this issue (Council document n° 11209/00 EUROJUST 11).

<sup>71</sup> According to the Swedish Member to Eurojust, Björn Blomqvist, Eurojust has already initiated such investigations.

<sup>72</sup> Article 2(1) of 2002/187/JHA: Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime. OJ L 63, 06.03.2002 p.1-13. According to article 2(2) Each national member may be assisted by one or several persons.

<sup>73</sup> Article 6(a) and 7(a) 2002/187/JHA.

<sup>74</sup> Each member state defines the nature and extent of the judicial powers it grants its national member. Article 9(3) 2002/187/JHA.

<sup>75</sup> For an argument concerning the competencies of the national members of Eurojust, see Council of the European Union document 9404/02, *Bringing Member States' national law into conformity with the Decision setting up Eurojust - Discussion paper*.

<sup>76</sup> According to Council of the European Union document 8740/02, *Denmark's national member of Eurojust*, the national member will not be competent to investigate and bring proceedings in criminal cases in Denmark, nor will he have competence as a judicial authority.

<sup>77</sup> Communication from the Commission on the Establishment of Eurojust. COM(2000) 746 final. p. 6.

meetings. From a national point of view, this is an elegant solution, because it makes use of the advantages of having a common central body without transferring any formal powers to it.

In order to fulfil this function and to enable it to assist the competent authorities of the member states, Eurojust has its own provisions concerning access to information. National members shall have access to the "...information contained in the national criminal records or in any other register of his member state in the same way as stipulated by his national law in the case of a prosecutor, judge or police officer of equivalent competence".<sup>78</sup> Moreover, they shall be empowered to exchange this information necessary without prior authorisation, among themselves or with their member state's competent authorities.<sup>79</sup> Consequently, Eurojust is the only point where national criminal records of all member states come together. In this sense Eurojust can both be regarded as a focal point and as a bridge. Although Eurojust as such only may exchange information with the consent of the member state that submitted it,<sup>80</sup> there are no restrictions concerning what parts of the information accessible to a national member may be submitted to his colleagues within Eurojust, and thus, what information they transmit to their respective national authorities.

Eurojust also has its own network structure and is fully integrated in the EJNI. In fact, the secretariat of EJNI forms part of the Eurojust secretariat.<sup>81</sup> Apart from these contacts, all communication between Eurojust and the member states is channelled through the national member. In their own country, a national member may either exchange information directly with the competent authorities,<sup>82</sup> or via so called national correspondents who simultaneously may be appointed as contact point of the EJNI.<sup>83</sup> Although the national authorities may address the national members directly, questions are usually sent via the national correspondents or the national EJNI contact points. This is done in order to avoid duplication of work and to prevent that Eurojust is overloaded with tasks for which the other units have been established. Eurojust is also responsible to maintain close cooperation with Europol and OLAF. It is worth noting, that OLAF explicitly is denied access to any information from Eurojust as such, and that the assistance is directed in one way only, from OLAF to Eurojust.<sup>84</sup> Through this arrangement, member states underlined the formal exclusion of OLAF from criminal matters, thereby calming fears concerning the expansion of OLAF's competencies. Finally, as a legal body, Eurojust may also conclude cooperation agreements with third states (provided that these are approved by the Council). These agreements may in particular concern provisions for the secondment of liaison magistrates or officers from third countries to Eurojust.<sup>85</sup>

Thus, with Eurojust the member states do not simply seek to enhance the transparency, but to increase the efficiency of the actual co-ordination of investigations. Eurojust represents a forum in which the contents of investigations are discussed, and where further co-operation is evaluated, initiated and supported.

*The European Police Office.* Europol was created to fill a functional gap that is not fully covered by any national authority. Although its objective, namely to improve the effectiveness and

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<sup>78</sup> Article 9(4) 2002/187/JHA.

<sup>79</sup> Article 13(2) 2002/187/JHA.

<sup>80</sup> Article 27(2) 2002/187/JHA.

<sup>81</sup> Article 26(2) 2002/187/JHA.

<sup>82</sup> Article 9(5) and 13(1) 2002/187/JHA.

<sup>83</sup> Article 12(1 and 2) 2002/187/JHA.

<sup>84</sup> OLAF may merely obtain information from the national members of Eurojust in their national capacity. Article 26 (3 and 4) 2002/187/JHA.

<sup>85</sup> Article 27(3) 2002/187/JHA.

cooperation of the competent authorities in the member states, clearly falls within the category of horizontal co-operation, Europol is more than a 'switchboard' or a mediator between competent national authorities.<sup>86</sup> Europol produces its own added value to the fight against crime. Initially it was set up as a 'clearing house' for the exchange of information between member states and given the task to collate and analyse information and intelligence on organised crime. It is the task of producing its own analysis that makes Europol more than an intelligence broker. By compiling and analysing the information from several states, Europol can detect patterns, make linkages between different criminal activities and draw conclusions that can be decisive in the fight against crime. The output from Europol can be said to represent more than the sum of the input. In this sense, Europol plays its own role in the fight against crime. But, although its organisation, tasks and mandate have been extended continuously over time, this role remains strictly limited.<sup>87</sup>

Europol has no power to command national authorities, no exclusive competency to fight any crimes and therefore neither the authority nor the facilities to plan or undertake police operations. It is thus far from being anything like a European FBI. In contrast to Eurojust, the staffs of Europol are not double-hatted, but directly engaged and dismissed by the Director of Europol.<sup>88</sup> As a consequence, Europol officials cannot compensate for Europol's lacking authority by acting in their national function. Europol is thus not a 'hybrid' in the same sense as Eurojust. Nevertheless, by creating Europol, member states have decided to lift certain parts of the security process up to a European level.

In its 1997 Action plan to combat organised crime, the European Council announced that Europol should be given 'operative powers', i.e. the ability to work directly together with national authorities.<sup>89</sup> This idea was entered into the Amsterdam Treaty that includes provisions with a view to extend Europol's competency. According to article 30(2) of the TEU, Europol shall be able to:

- initiate investigations by asking (not instructing) the competent authorities of the member states to conduct and coordinate their investigations in specific cases,
- develop specific expertise which may be put at the disposal of member states to assist them in investigating cases of organised crime, and
- participate in operational actions of joint teams in a support capacity.

This might sound impressive, but Europol has not been given any authority what so ever. No responsibilities have been transferred from the national level to Europol. National authorities are still fully responsible for the fight against crime. In practice it merely means that Europol will have more ways to communicate its findings. In other words, the range of services it can offer member states is widened.

Europol remains an intelligence unit without any competency for planning or leading operations. The recent extension of its mandate, to include forgery of money and other means of payment, does not change this.<sup>90</sup> Furthermore, as Europol lacks formal powers its ability to fulfil

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<sup>86</sup> Article 2(1) of the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), OJ C 316, 27.11.1995, p. 2 – 32.

<sup>87</sup> In 2002 it had a budget of 51,66 million and an own staff of 198 plus 44 liaison officers. In 2003 the staff will grow to a number of 350 including liaison officers and security personal.

<sup>88</sup> Article 30 (2) Europol Convention.

<sup>89</sup> Article 8 (10) of the Action plan to combat organized crime, adopted by the Council on 28 April 1997. OJ C 251, 15.08.1997, p. 1 – 16.

<sup>90</sup> The general competence of Europol covers the same types of crimes that Eurojust can be involved in ( article 1(1) 2002/187/JHA.). These cover computer crime, fraud and corruption and any criminal offences affecting the European Communities' financial interests, the laundering of the proceeds of crime, environmental crime, as well as the participation in a criminal organisation Where an organised criminal structure is involved and two or more member states are affected, Europol may also support law enforcement activity against: terrorism, drug trafficking,

its central task, i.e. of handling and analysing information, is also restricted. In contrast to Eurojust, no Europol official has direct access to national criminal records or other national registers. Of course Europol is free to accept or request information from other EU and international bodies, international organisations, third states and the member states. But, it cannot order any unit to provide it with information, not even the European Union's own bodies.<sup>91</sup> It is thus fully dependent on the cooperation of the member states to fulfil its tasks. In addition, Europol does not 'own' the information it has obtained. It can utilise the data provided by member states to perform its own tasks, but it cannot dispose freely of this information. It cannot use it in exchange for other information nor can it forward it according to its own liking. Information obtained from one member state may only be communicated to third parties with the consent of that member state. Other member states may only utilise that information to prevent and combat crimes falling within the competence of Europol. Moreover, all contacts between Europol and the competent national authorities are channelled through a central national unit set up in each member state.<sup>92</sup> Thus, with the exception of Europol officials participating in joint investigation teams, Europol has little direct contact with other police forces.

In a way, this 'isolation' from national information and operative authorities reflects Europol's position. It performs its tasks detached from the national security processes. The important factor from an ESDI perspective is that Europol's competency is very limited and that the basis for its performance, the communication with national authorities, is restricted to small points of contact or 'windows'. Informal contacts and the fact that Eurojust may assist Europol, in particular by giving feedback on Europol analyses,<sup>93</sup> may to some extent compensate for this. But, with the current provisions, only a very limited part of the security process can take place within Europol, and thus be lifted up to the European level. In fact, the work of Europol does not even have to be made a part of the actual security process at all. It is still up to the competent national authorities to decide on whether or not it will follow Europol's advice and make use of the assistance it offers. In the end, Europol represents but an optional bonus, of which the member states can avail themselves at free will.<sup>94</sup>

*Schengen Information System (SIS)*. When national authorities search for certain persons or goods, it can be difficult to know in which country they are located, and thus, which country they should ask for assistance. The abolishment of internal borders has made this even harder. To some extent, the SIS does away with this problem. The SIS is a network that interlinks national authorities of participating states directly. It contains more than 10 million items of data on persons and property.<sup>95</sup> This data relates to persons wanted for arrest for extradition (Schengen Convention Article 95); aliens who are reported for the purpose of being refused entry (Article 96); persons who have disappeared or who need to be placed provisionally in a place of safety

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trafficking in radioactive and nuclear substances, immigration networks, trafficking in human beings including child pornography, vehicle trafficking as well as forgery of money and other means of payment (See article 2 of the Europol Convention and the annex referred to in the same article). In contrast to Europol, Eurojust may also engage in any offences other than these on the request of a member state ( article 1(2) 2002/187/JHA).

<sup>91</sup> Although article 10(3) of the Europol Convention states that national units shall communicate to Europol all information which it may require for the performance of its tasks, this is subject to the reservations made in article 4(5). Accordingly member states can refrain from submitting the requested information if they consider that this would harm essential national security interests, jeopardize the success of a current investigation or the safety of individuals or involve information pertaining to organizations or specific intelligence activities in the field of State security. In other words, it is up to each state to decide what they submit.

<sup>92</sup> Article 4 (2) Europol Convention.

<sup>93</sup> Article 7(f) 2002/187/JHA.

<sup>94</sup> For more information about and a discussion on the tasks and role of Europol see Kneelangen, Wilhelm *Das Politikfeld Innere Sicherheit im Integrationsprozess, Die Entstehung einer europäischen Politik der inneren Sicherheit.*, Opladen 2001.

<sup>95</sup> Communication from the Commission to the Council and the European Parliament, Development of the Schengen Information System II, COM(2001) 720 final, p. 6.

in the interests of their own protection or in order to prevent threats (Article 97); witnesses and persons accused or convicted of offences (Article 98); persons and vehicles for the purpose of discreet surveillance or specific checks (Article 99); and objects sought for the purposes of seizure or of evidence in criminal proceedings (Article 100).

In difference to the initiatives described above the primary purpose of the SIS is neither to facilitate contact among the responsible national authorities nor to co-ordinate their investigations. It is rather a tool that allows the authorities of one state to obtain alerts regarding persons or property sought by the own or by another state. The system enables the users to run immediate checks and to ascertain if certain persons or goods are wanted or if a person should be refused entry into the Schengen area. In this sense the SIS can be described as a European 'wanted' list, a report system or a search instrument consulted by police, border police, customs and authorities responsible for delivering visas and residence permits.<sup>96</sup> The system is completely decentralised without any central agency. All police stations and consular agents have direct access to the network and can enter alerts into it in accordance with their national laws. Consequently, each responsible national authority can act directly on the basis of the uniform data contained in the SIS.<sup>97</sup>

The SIS currently used became operational in 1995. It was designed to include only eighteen states<sup>98</sup> and is now technically outdated. To allow for the forthcoming enlargement a SIS II is to be developed by 2006.<sup>99</sup> Discussions are now under way concerning both the technical development and the extension of the system with a view to make better use of its potential. Judging from the discussions at the time of writing, it seems likely that national authorities will be given the option to feed the system with more information, e.g. with new identification material such as photographs and fingerprints (deepening contents).<sup>100</sup> Moreover, new categories of entries will most likely be introduced (widening the contents).<sup>101</sup> Furthermore, the applicability of the system will be improved, amongst other things by enabling searches on the basis of incomplete information (e.g. with only parts of a chassis number). In addition, the question has been raised to introduce new databases within the SIS II. Suggestions include a terrorist data base, one for violent trouble-makers (hooligans), another detailing all visas issued (and refused) and one covering persons precluded from leaving the Schengen area (including suspects, prisoners on conditional release and children at risk from abduction).<sup>102</sup> Since the attack on the World Trade Centre the option to make full use of the potential of the SIS by transforming it from a mere record of alerts to an investigation tool has become more attractive. This is not a completely new development. The system already contains data relating to persons and vehicles for the purpose of discreet surveillance or specific checks. These items are not meant to result in direct police inter-

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The system

<sup>96</sup> Article 101 of the Schengen Convention.

<sup>97</sup> In the event of a hit (i.e. when a person/object is found) further information can be exchanged on a bilateral level through the network between the national SIRENE (Supplementary Information REquests at the National Entry) offices. In contrast to the SIS, the SIRENE network does not consist of a common database, and therefore, does not simultaneously provide all member states with uniform information. It is a system of central national contact points through which the agencies of the member states can exchange information that is related directly to the entries in the SIS, as well as other material in accordance with the respective national law. In this sense it merely simplifies the praxis of bi- and multilateral exchange of information, without lifting any parts of the security process to a European level.

<sup>98</sup> The fifteen member states, Iceland and Norway and one in reserve. COM(2001) 720 final p. 3.

<sup>99</sup> COM(2001) 720 final p. 3.

<sup>100</sup> According to article 1(1) of the Initiative of the Kingdom of Spain with a view to adopting the Council Decision 2002/.../JHA concerning the introduction of some new functions for the Schengen information system, in particular in the fight against terrorism, the items included with respect of alerts under article 95 of the Schengen Convention shall be extended with the type of offence(s) and in cases of alerts under article 95 and 99 with information on whether the person concerned absconded from a place of detention. See OJ C 160, 04/07/2002 p. 7.

<sup>101</sup> As for objects sought for seizure or of evidence property entries may be allowed for registered ships and aircraft, as well as for credit documents. In the area of discreet surveillance and of specific checks, the categories ships, aircraft and containers may also be added to the current entries on persons and vehicles. Article 1(4) respectively 1(2) of the Initiative of the Kingdom of Spain with a view to adopting the Council Decision 2002/.../JHA concerning the introduction of some new functions for the Schengen information system, in particular in the fight against terrorism, OJ C 160, 04/07/2002 p. 7.

vention, but rather in reports aimed at supporting ongoing investigations and surveillance. The move towards investigative support is reflected in the current proposals that aim at giving further institutions, such as Europol and Eurojust access to the SIS.<sup>103</sup> The tendency is thus clear. The tool providing uniform information is being extended in order to expand the options to cooperate and thereby to increase the efficiency of both controls and of investigations.

From an ESDI perspective the SIS is interesting for two reasons. First, and most important, the simplicity of the system and the uniform information it contains allows all European police and customs agencies to help each other fast and smoothly in the fight against crime. The SIS enables national agencies to engage directly in the enforcement of the laws of other member states and thus, in their security process and in the production of their security. In this sense the SIS clearly and directly erases boundaries between the different member states' efforts to counteract criminal activities.

Second, the SIS constitutes an essential tool allowing the application of uniform standards during controls at the Schengen area's external borders. For this sake, the member states can report illegal immigrants, persons wanted for extradition or persons whom they have classified as a threat to public order and national security via the SIS. In this sense the SIS forms an elementary part in the creation of a common area of freedom, security and justice. This is also one of the reasons why it was created in the first place.

However, the importance of the SIS as such must not be exaggerated. Surely, it is an important tool that can enable the authorities in all member states to consider and act upon the same alerts. But, the SIS has serious limitations and does not automatically generate a merger of the national security processes in the operational dimension. The first prerequisite for such a merger is that the SIS covers the crime concerned. But, even then, an entry into the system does not necessarily result in an intervention by one of the European law enforcement agencies. The second necessity is that a sought person or item is caught in a control and checked against the SIS. (It is up to each country to regulate under what conditions and to what extent the responsible national authorities must consult the SIS). Furthermore, the regulations establishing the SIS do not themselves oblige any national authorities to intervene and act in a specific way upon a matching entry. As such the SIS merely enables national agencies to act upon such a hit, without receiving any further formal request or concluding co-operation agreements with the country that entered the item. But the regulations concerning the establishment of the system do not compel them to do so. Such obligations result from other agreements. The member states have for instance decided to respect each other's security concerns to the effect that they mutually recognise national decisions on the expulsion of third country nationals,<sup>104</sup> as well as on the refusal to grant persons entry.<sup>105</sup> Here, the SIS is merely used as a tool to support the implementation of such arrangements.

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<sup>102</sup> SIS II takes ominous shape, *Statewatch*, 2002-04-04.

<sup>103</sup> Article 1(6) of the Initiative of the Kingdom of Spain with a view to adopting the Council Decision 2002/.../JHA concerning the introduction of some new functions for the Schengen information system, in particular in the fight against terrorism, OJ C 160, 04/07/2002 p. 7.

<sup>104</sup> Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, OJ L 149, 02.06.2001, p. 34 – 36.

<sup>105</sup> Schengen Agreement, Convention from the 19 June 1990 applying the Schengen agreement of 14 June 1985, article 5 (1d) and 5(2).

### 3.3.1.2 Regulating immigration (external threats)

The threat posed by certain migration and the linkage it has to crime and the collective identity is easiest explained by asking the question why free movement of persons has been restricted in the first place? Free migration can be seen as a threat to four basic referent objects.<sup>106</sup>

The first is the government's ability to enforce national laws, i.e. to fight 'ordinary' crimes (often labelled internal security). As mentioned earlier, a state can normally only enforce its laws and fight crime on its own territory.<sup>107</sup> Without border controls criminals could escape prosecution simply by crossing borders. The second referent object used in the context of migration is the cultural homogeneity. The third and fourth referent objects are both of economic character, and regard foreigners as rivals to national citizens. The national welfare system constitutes the third referent object. Granting all foreigners, including those who have not contributed to the system, unlimited access to a country's social assistance and welfare provisions would certainly undermine the welfare state. The fourth referent object is the employment of the own labour force that is needed to finance the state and its welfare system. A complete opening of the labour market to foreign competitors may drive out the national labour force and turn employed contributors to the welfare system into unemployed beneficiaries. Current arrangements would be threatened if foreign labour underbid the national one in terms of wages and other agreements. It is feared that this would erode the social standards and the welfare system.

The security process launched to deal with these migratory threats differs from other security processes in the sense that it is inverted. It begins by regarding all immigration as a threat to one or several of the referent objects mentioned above. To start with, all immigration is therefore illegal.<sup>108</sup> Despite of this, some immigration may be acceptable or even desirable. The reception of refugees in need of protection is one example. The immigration of skilled labour force is another. Given the demographic development in Europe, immigration may even be regarded as a necessity. According to a UN report, the number of immigrants would have to double in order to maintain the present size of the EU labour force, and quadrupled to keep the relation between retirees and workers constant. By the year 2050 only 2 active workers would finance one retiree unless the immigration increased (compared to 4.3 workers today).<sup>109</sup>

From a security perspective, there are two ways of looking at the accepted immigration. One could say that the legalisation is a process in which certain immigration is 'desecuritized' altogether, and no longer handled as a threat. But, one could also say that those immigrants who have entered legally may still pose a threat to cultural homogeneity, the welfare system and/or the labour market, and that this migratory threat has to be managed in one way or another. This is dealt with through a mix of domestic exclusion and integration. I prefer this idea of a security process in two steps, because it does not only ask who is let in, but also under what conditions those who have been granted access may stay. Thus, the security process does not only consist of defining the migratory threat, but rather of determining what immigrants do not pose a threat

<sup>106</sup> For a good overview of the different arguments see: Huysmans, Jef, 'The European Union and the Securitization of migration', *Journal of Common Market Studies*, vol. 38, no. 5, December 2000, pp. 751-777.

<sup>107</sup> If a state conducts a law enforcement operation outside the own territory without the explicit approval of the state in which the operation takes place, then it violates that state's laws and sovereignty. This does however not stop some countries from doing so.

<sup>108</sup> The EC policy does not deviate from this basic assumption with regards to third country nationals. See Guild, Elspeth, 'Primary Immigration: The Great Myths', in Guild, Elspeth and Harlow, Carol (ed), *Implementing Amsterdam: immigration and asylum rights in EC law*, Oxford 2001, p. 65-94, here p. 66.

<sup>109</sup> Meyer, Christoph, 'Europe and Immigration: Dancing on Eggshells. The Dilemma of the Borderless State', *Neue Zürcher Zeitung*, 05.12.2000.

and under what condition. The accepted immigration is therefore legally defined in two ways (political dimension).

First, there is an *external control*, defining who is allowed to enter the territory, i.e. determining the criteria a person must fulfil to be granted entry (e.g. refugees or economic immigrants). The external control consists of the set of rules and procedures under which entry into the country is granted to a non-citizen. It can be pictured as the legal and procedural 'filter' through which a person has to pass in order to be allowed in to the country. Following the establishment of an area of freedom, security and justice, special rules have been adopted for the migration within the EU. These include specific provisions for EU –citizens, as well as for so called secondary movements of non-EU citizens within the Union.

Second, the *domestic control* consists of the procedures and rules applied to manage the migratory threat posed by the legal immigrants once they are inside the country. It includes rules regulating under which conditions the immigrant may stay on the territory and when he has to leave. Third country nationals who reside in a country for a long time are usually granted extensive participatory and welfare rights in order to promote their assimilation and to prevent cultural separation and conflicts. In some cases, they are even offered full citizenship. The measures aiming at making immigrants less alien can be interpreted as attempts to dissolve the threat. Other foreigners, who are not expected or allowed to stay for a long period, are normally excluded from participatory rights and do not benefit from welfare provisions on the same conditions as nationals. This can be seen as a way to control and hold the perceived threat in check.

Illegal immigrants pose a somewhat different threat than legal immigrants. By entering and staying illegally in a state, they are committing a crime and pose a criminal threat. Since they move outside of the legal framework, they cannot take up a legal (self)employment and will commit further crimes when taking up any economic activity, even if the activity as such is not criminal, such as household work. In addition, they pose a different migratory threat once they are inside a country. Illegal immigrants cannot participate and integrate in social life in the same way as legal immigrants (not even as legal short term residents who are partially excluded from social life by law) and will remain more alien than these.

When considering countermeasures against the illegal immigration (operational dimension), one must differentiate between the enforcement of the law at the borders that prevent illegal entries and the controls conducted within the countries to track down illegal residents. It should be noted that most illegal immigrants enter the Union legally, but choose to 'overstay' when their visa runs out.<sup>110</sup> Internal controls are therefore an important part of the defence against migratory threats. Controls at the borders, on the other hand, are crucial because they have a preventive effect. Counteracting the illegal entries is also important because it is linked to organised crime. In most cases, those who bypass the external control and enter illegally are smuggled into the Union by organised criminal networks.<sup>111</sup> Fighting cross-border trafficking is, thus, a part of the fight against organised crime.

Concerning polity and politics the following aspects are of interest when investigating the ESDI concerned with migratory threats:<sup>112</sup>

<sup>110</sup> 'The European Union and immigration, Huddled masses, please stay away', *The Economist*, 2002-06-15, p. 39.

<sup>111</sup> COM (2001) 672 final, p. 5.

<sup>112</sup> The EU and its member states also seek to reduce the driving factors in the migrants' countries of origin that cause them to leave their homes in the first place. This prevention of migration is done with a combination of the policies that have already been discussed in the two previous sections on military and economic threats, and will therefore not be further explored here. Supportive measures, such as those directed against xenophobia and racism will not be regarded in this study either. I do not consider such measures to be defensive measures aimed at counteracting



- The political and judicial dimension, defining under what conditions what migration is not a threat. This includes the rules and procedures for the external and domestic control as well as for their interpretation by courts (compliance). From an ESDI perspective, it is interesting to see to what extent the process in which the standards for the external and the domestic control are defined takes place at the European level.
- The operational dimension, concerned with how the illegal migration is prevented at and within the external borders of the European Union.<sup>113</sup> Just as in the military context, this will reveal to what extent the security process is completed at the European level.
- Burden sharing regarding the stopping of illegal immigration at the borders. In addition, tides of refugees can pose a serious burden. If the community adopts common rules for the reception of refugees, it codifies the common European value of granting protection to those in need. Assuming that this norm is a part of the values that constitute the European identity, the member states would express the ESDI by managing the refugee question in a common process and as a common challenge. Thus, an ESDI would suggest that the Union 'defends' the common European value collectively and meets the burden involved when receiving humanitarian immigrants collectively.

#### *POLITICAL DIMENSION – LEGALISING NON-THREATENING MIGRATION*

The figure below displays what areas the effective and proposed EC legislation covers in the field of asylum and immigration policy. The EC competency may look impressive at first sight. But, when scrutinising the process of legalising specific forms of migration, it is not only important to determine whether decisions are taken at the European level. Since decisions are often required at both the European and the national levels, one must also clarify what kind of decisions are taken at what level, or better, to what extent the decisions taken at the European level actually restricts the national room for manoeuvre.

As the figure below shows, EU citizens, economic immigrants, long-term refugees and persons enjoying temporary protection are subject to different rules concerning their entry (external control), their freedom of movement within the EU (secondary migration) and their welfare conditions and participatory rights while residing in the EU (domestic control). To outline the actual scope of the European security process, the regulations and standards applied will be examined for each category of immigrants.

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migratory threats posed to society by the legally residing foreigners. In first line, they belong to the category of measures aiming at making the stay of those foreigners already accepted as agreeable as possible for all parties and at ensuring the rights of the foreigners while they reside in the host nation.

<sup>113</sup> The EU and its member states also seek to reduce the driving factors in the migrants' countries of origin that cause them to leave their homes in the first place. This prevention of migration is done with a combination of the policies that have already been discussed in the two previous sections on military and economic threats, and will therefore not be further explored here. Supportive measures, such as those directed against xenophobia and racism will not be regarded in this study either. I do not consider such measures to be defensive measures aimed at counteracting migratory threats posed to society by the legally residing foreigners. In first line, they belong to the category of measures aiming at making the stay of those foreigners already accepted as agreeable as possible for all parties and at ensuring the rights of the foreigners while they reside in the host nation.

	<i>External control (Entry into EU)</i>		<i>'Secondary' movement</i>		<i>Domestic control (Stay in EU)</i>		
	<i>'Filter'</i>		<i>Within the EU</i>		<i>Participatory rights</i>	<i>Welfare provisions</i>	
						<i>Working/ Res. permit</i>	<i>Non-Working/ No res. permit</i>
<b>EU Citizens</b>	Not applicable		No restriction EC Law 1		EC law 2	On same conditions as nationals: 3	Insured in last EC country of occupation. EC Law 4
<b>Economic immigrants</b>	Proposal EC standards for assessments 5		Allowing for 3 months travel EC law (Schengen) 6		Proposal 7	those working (having worked) and their family members + permanent residence permit (after 5 years) EC law	Not applicable
<b>Long-term Refugees</b>	Proposal EC Standards for assessments 8		Proposal 11		After 5 years same as EU citizens minus voting		Proposal 14 EC minimum Standards for those who have not yet carried out a profession in the country
<b>Temporary protection</b>	EC law & assessment 9		Allowing for family reunification EC law 10		EC Law 12		EC law 13

*National law covers all areas. European law does not prevent national provisions that are more favorable.*

Figure 3.3- 3. Proposed (grey boxes) and effective (3-D boxes) European legislation on migration

#### DESECURITIZING MIGRATION OF EU CITIZENS

In terms of migratory threats, the establishment of the single market must be considered as an extraordinary step.<sup>114</sup> The progressive codification and implementation of the single market was at first concerned with the abolition of restrictions (or filters) that had applied for EC citizens' immigration within the Community.<sup>115</sup> Since then, the external control regulating the entry into the EC only applies for non-EC country nationals. The right of EC citizens to move freely within the Community is an essential of the European integration process. Therefore, it has been laid down in the EC Treaty and thereby gained the highest possible legal status at the European level (box 1 in the figure above). Later the free movement was followed up with provisions concerning the *domestic control*, i.e. welfare and participatory rights of EC citizens while residing in another EU country.

Concerning participatory rights, member states can only define a few differences between their own and other EU citizens (box 2). Restrictions are limited to decisions on the eligibility and the right to vote in regional and national elections<sup>116</sup> as well as to regulations concerning the access to certain offices. The offices from which a foreign EU citizen can be denied access and thus be discriminated with reference to his nationality are strictly limited. These are basically restricted to

<sup>114</sup> Article 18 ECT.

<sup>115</sup> Freedom of movement of workers is based on Council Regulation (EEC) No 1612/68. Between 1973 and 1975 these provisions were extended to cover self-employed persons. See Council Directive 73/148/EEC. Originally the right of resettlement was related to economic activity (article 39 to 49 in the original EC Treaty), but it has been extended to include students (Directive 93/96/EEC), pensioners (Directive 90/365/EEC) and economically inactive ((Directive 90/364/EEC).

<sup>116</sup> Member states have agreed on giving any EU citizens the right to vote and to stand as a candidate in municipal elections and to the European Parliament under the same conditions as nationals of that State. Article 19 ECT. Where the proportion of citizens of the Union of voting age who reside in it but are not nationals of it exceeds 20 % of the total number of citizens of the Union residing there who are of voting age, that member state may be eligible for a derogation from the rule for municipal. See: Council Directive 94/80/EC. OJ L 368, 31.12.1994, p. 38 – 47. At present such a derogation is granted to the Grand Duchy of Luxembourg.

some official political functions, such as members of parliament and government, and to the employment within the military and some other national security services.<sup>117</sup>

As for welfare rights, EU citizens are entitled to all social security benefits under the same conditions as the nationals of the country in which they are insured, just like all other working non-nationals and their family members (box 3).<sup>118</sup> This provision does not only protect non-nationals from exploitation, but also the national working force from being undercut by foreigners that do not compete on the same conditions. Those economically active are insured in the country in which they carry out their occupation. In order to prevent non-working EU citizens from welfare 'shopping', students, pensioners and the economically inactive may only resettle under the condition that they do not burden the social security or assistance scheme of the host member state. Therefore, non-working EU citizens remain insured in their country of origin or where they have been economically active (box 4).<sup>119</sup>

Since the external control of EC citizens is abolished altogether between member states, and since their options of applying domestic control is severely limited, one could say that the migration of EU citizens within the Union is not regarded and treated as a threat by any national or European authority. Since EU citizens have the right to move to, or reside and work in another EU state without examinations or special permits, the EU citizens' migration within the Union is no longer a security issue. This has resulted from a process at the European level. If one assumes that legalisation of certain immigration defines what is regarded as a migratory threat and what is not, then the migration of EU citizens within the Union has been desecuritized once and for all with the decision to introduce free movement of persons.

#### *LEGALISING IMMIGRATION OF THIRD COUNTRY NATIONALS*

The immigration of third country nationals, in contrast, has by no means been desecuritized and legalised altogether. By doing away with the inner European border controls, EU countries opened a 'back door' for migration.<sup>120</sup> The result is an uncontrolled migration within the Union. The idea of free movement of persons has therefore always been accompanied with the idea of compensatory measures in the form of common regulations concerning third country nationals' primary immigration into and their secondary immigration within the EC. In addition, member states co-operate in fighting illegal immigration. Nevertheless, it took until 26 March 1995, when the Schengen Convention came into operation, before such common European rules were first put into action. With the Treaty of Amsterdam the Schengen acquis was then incorporated into the EU framework and subsequently split up between the first and third pillars to match the appropriate parts of the treaty.<sup>121</sup> Within the first pillar a new Title IV "Visas, asylum, immigration and other policies related to the free movement of persons" was introduced. While the ex-

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<sup>117</sup> According to article 39(4) EC, the principle of free movement of workers shall not apply to "employment in the public service". According to article 45(1) EC, the provisions on the right of establishment shall not apply to "activities which in a Member State are connected, even occasionally, with the exercise of official authority". "Both terms have been the subject of case-law of the Court of Justice of the European Communities which, in essence, restricted the possibility of using that derogation to those activities which involve the exercise of public authority and responsibility for safeguarding the general interests of the state or other public bodies." COM (2001) 386 p.18

<sup>118</sup> Employed workers, self-employed workers and students are guaranteed the same treatment in the field of social security as nationals of the host member state by Council Regulation (EEC) No 1408/71 and No 574/72. C.f. ScadPlus, Free Movement of workers, Introduction. Available at: <http://europa.eu.int/scadplus>.

<sup>119</sup> Guild 2001:67. See also the documents referred to in footnote 115.

<sup>120</sup> Article 62 (1) ECT.

<sup>121</sup> Roughly speaking, the parts of the Schengen acquis relating to the crossing of external borders by persons was incorporated into Title IV ECT, and provisions on compensatory measures into Title VI TEU.

ternal and domestic control regarding EU citizens is codified throughout the EC Treaty,<sup>122</sup> Title IV is specifically devoted to third country nationals.

At first glance, the communitarisation of the asylum and immigration policy seems to imply that the process of defining migratory threats, i.e. of defining under what conditions what immigrating third country nationals do *not* pose a threat, was lifted up to the European level and into the first pillar of the EC.<sup>123</sup> According to article 62 and 63 of the EC treaty, the Council shall define what standards and procedures member states shall apply concerning the entry of third country nationals (i.e. the criteria a person must fulfil to be allowed entry, as well as provisions for how this shall be controlled), as well as what minimum standards shall apply for their reception and residence in an member state (i.e. welfare and participatory rights). This means that the Council has the competency to determine the standards and procedures for both the external and the domestic control, as shown in the figure above.

However, as with most policy areas under the first pillar, the EC has not been given the exclusive legislative competency in matters falling under Title IV of the EC Treaty.<sup>124</sup> As always, all national legislation must comply with the standards defined by the EC. But, the external and domestic control also cover and affect a large number of policies that are still under full national authority. The member states are, for instance, fully responsible for the internal security, for the welfare (social security) system and for some participatory rights of third country citizens (i.e. regional and national elections).

This division of competencies has influenced the decision-making procedure of the Council. The Amsterdam treaty foresees a transitional period of five years (until 31 May 2004) during which the Council takes all decisions covered by Title VI unanimously.<sup>125</sup> After the period of five years, the Council shall act by qualified majority in accordance with article 251 ECT. However, this change will not take place automatically. It requires a unanimous Council decision.<sup>126</sup> Until the Council has taken this decision, the Commission will share its right to submit proposals with the member states. Consequently, the regulations concerned with the external and domestic control of third country nationals will result from a consensual European security process. As will be shown, the EU legislation merely defines boundaries that national provisions may not surpass. In this sense, it expresses the common denominator the member states can agree upon.

Concerning the external control, reference is usually made to international conventions that the states have already signed. In the field of domestic control, the EC usually uses a language that leaves large room for interpretation to the executive national authority. Soft words like 'necessary' or 'sufficient' are used to describe the standards that shall apply. Alternatively, they refer to the equality of treatment with nationals. This means that the national differences are accepted, but not a discriminating treatment. Surely, this is the only result that can be expected from a decision-making process building on unanimity. The fact that the common asylum and immi-

<sup>122</sup> See in particular Titel III ECT for the desecuritization of EU citizens' migration. The immigration of third country national family members of Community nationals are also covered under this title. See article 10 Council Regulation (EC) No. 1612/68.

<sup>123</sup> The call of the Tampere European Council for a common EU asylum and migration policy seems to support this assumption. See Tampere European Council, *Presidency Conclusion*, 15/16.10.1999, article 10.

<sup>124</sup> In some few areas, the exclusive legislative competency has been lifted up from the national to the European level. The definition duties and regulations concerning the European System of Central Banks may serve as examples.

<sup>125</sup> There are two exceptions to this rule with regards to visas for intended stays of no more than three months. Since the entry into force of the Amsterdam Treaty the Council decides by qualified majority on the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, and on rules concerning a uniform format for visas. Article 67 (3) ECT.

<sup>126</sup> Article 67(2) ECT. When the Council takes this decision, it is also held to decide on provisions relating to the powers of the Court of Justice. According to statement signed by the heads of state and government in Nice, the shift to qualified majority voting will take place automatically on 1 May 2004 for measures setting out the conditions under for free circulation of third country nationals legally resident on EC territory (article 62 (3) ECT) and for measures concerning illegal immigration and illegal residence, including repatriation of illegal residents (article 63 (3b) ECT).

gration policy also may affect policy fields that lie outside of EC competencies is another factor that sets limits the way in which proposed and adopted common standards and procedures can be formulated. EC legislation cannot interfere and prescribe standards that contradict national interests in policy fields that lie under national competency.

The division between national and European responsibilities also affects the jurisdiction of the ECJ.<sup>127</sup> Normally, all national courts can request the ECJ for a preliminary ruling concerning EC legislation. This makes up the bulk of cases ruled by the ECJ. But, according to article 68 (1) EC Treaty, cases falling under Title IV can only come before the ECJ for such a ruling if the highest national court "considers that a decision on the question is necessary to enable it to give judgement". This departure from article 234 of the EC Treaty will most likely relieve a great workload from the ECJ. However, it will also reduce the ECJ's possibility to clarify and consolidate the *acquis* of Title IV and, thus, ensure the uniform application of Community law. Consequently, the national and European judiciary are not interlocked in the same way as it is in other fields covered by EC legislation. The national judiciary competency has clearly been favoured in this area, since the national judiciary system must be exhausted, before the highest national courts might request the ECJ.<sup>128</sup> Thereby, lower national courts are uncoupled from the ECJ. Consequently, the ECJ will most likely not be requested to make the same kind and number of rulings. Admittedly, for the first time in the EC Treaty, the Commission, the Council and the member states have been given the power to request a ruling on a question of interpretation without a specific case. It would however be false to interpret this as an attempt to extend the authority of the ECJ. There is a more practical explanation. A ruling given by the ECJ does not apply to judgements of national courts or tribunals that have become effective.<sup>129</sup> A person who has been expelled or rejected asylum, and who has lost his case before a national court, is not granted the right to re-enter, even if the ECJ prescribes another interpretation of the legalisation on which the national courts judgement was based. It seems more plausible that abstract cases are allowed for and applied because they make the exemption from the normal European legal practice, which grants retroactive benefit, easier.<sup>130</sup> Without a real plaintiff, there is no person who could demand rectification directly. Moreover, the member states have obtained a saving clause. Article 64 ECT states that Title IV shall not affect the member states' exercise of their responsibilities concerning the maintenance of law and order and the safeguarding of internal security.<sup>131</sup>

The assessment of the legalisation of immigration from third states could be stopped here and classified as a consensual security process. But, since the treaty foresees a change of the decision-making procedures and the right of initiatives, it seems wise to examine the current development within Title IV further, in order to determine to what kind of security process it is developing.

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<sup>127</sup> For an excellent overview see: Guild, Elspeth and Peers, Steve, 'Defence or Defiance? The Court of Justice's Jurisdiction over Immigration and Asylum', in Guild and Harlow 2001:267-289.

<sup>128</sup> Apart from relieving the ECJ from being deluged by references, Joseph Weiler has also suggested to another motive for this restriction. The member states may have the belief that higher courts are more sensitive to the concerns of the interior and justice ministries and less likely to make radical references. Lower courts may be thought to be more tempted to do so, because this is a way for them to "...engage with the highest jurisdiction in the Community and, even more remarkably, to gain the power of judicial review over the executive and legislative branches even in those jurisdictions where such judicial power was weak or non-existent. Has not power been the most intoxicating potion in human affairs?". Weiler, Joseph, *The constitution of Europe. 'Do the New Clothes Have an Emperor?' and Other Essays on European Integration*, Cambridge 1999, p. 188-218, here p. 193.

<sup>129</sup> Article 68 (3) ECT.

<sup>130</sup> See Monar, Jörg, 'Ein Raum der Freiheit, der Sicherheit und des Rechts', in Jopp, Maurer and Schmuck 1998:127-155, here p. 146.

<sup>131</sup> As for the re-imposition of controls of persons at the internal borders for security reasons, article 68 (2) even rules out the ECJ jurisdiction. Although this grants the member states considerable rights in the case of emergency, they do not have a 'carte blanche'. Member states cannot undertake any measures disregarding the EC *acquis*, simply by referring to their internal security. For instance, if such actions would affect trade provisions, the case could be taken up in any EC state's courts or directly by the ECJ, which in their ruling would have to consider the proportionateness of the measures implemented by the state. This is clearly a very delicate matter, and it is not perfectly clear how the ECJ would deal with such a challenge, or how the member states would handle an ECJ ruling. Nevertheless, one must not forget that all member states have their own judiciary system that restrain the political freedom of movement, and that a government's protective actions would most likely be scrutinized in a national court that would have to rule on the commensurability of the measures.

To make a well-founded prediction on how the legalisation of immigration is likely to be conducted in the future, it is advisable to scrutinise the current *acquis* of the Title IV and the legal proposals made within this framework. The EC makes a clear distinction between the legalisation of wanted and welcomed economic immigration (non-threatening and gratifying) and the one accepted for humanitarian reasons (non-threatening but straining).

*'Economic' immigration.* Legalising 'economic' immigration is not a controversial issue among the member states. The selection of economic immigrants is made according to a simple cost-benefit analysis. At present, each member state decides how many and what kind of 'economic' immigrants it needs, whom it allows entry and grants working and/or residence permits, as well as under what conditions these are withdrawn and the immigrants have to leave the country (box 5 in the figure above).<sup>132</sup> A distinction is made between seasonal workers and long-term residents. Since the former only stay for a short time without settling down, they do not pose a veritable migratory threat and will not be regarded further in this study.<sup>133</sup>

Nevertheless, the Commission has made some proposals concerning the harmonisation of the external control. These proposals do not aim at relieving the nation states from their competency. Even in the future, member states shall be responsible for the selection of economic migrants and for deciding on how many of them are needed to meet national requirements.<sup>134</sup> The proposals do not even modify the conditions by which third country nationals should be admitted into a member state.<sup>135</sup> They are mainly concerned with simplifying and harmonising the procedures and with introducing common definitions. This is necessary to allow for the formulation of common rules concerning the domestic control of the third country nationals who reside within the EU.

The rules for secondary movements within the Union through the 'back door' are of particular interest. At present, the Schengen *acquis* grants all third-country nationals holding a residence permit the right to move for up to three months in the member states where the Schengen *acquis* applies.<sup>136</sup> This includes both economic immigrants and long-term refugees (box 6). However, third-country nationals holding a residence permit do not have an automatic right of residence in another member state. If they want to stay for longer than three months, they have to apply for a permit from that member state, just like any third-country national residing outside of the EU.<sup>137</sup>

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<sup>132</sup> An exception is made for third country nationals who work for a Community company, at least as regards service provisions. To clarify this right the Commission has proposed a Directive on the posting of workers who are third-country nationals for the provision of cross-border services (COM (1999) 3 and the amended version COM (2000) 271)

For an overview of the EU countries different policies, see the study carried out on behalf of the European Commission (Directorate General for Justice and Home Affairs) by Barzilay, Robin, Groenendijk, Kees and Guild, Elspeth, *The Legal Status of Third Country Nationals who are Long-Term Residents in a Member State of the European Union*, Nijmegen 2000.

<sup>133</sup> It can even be disputed whether they represent a concurrence to the national labour, or if they must be regarded as irreplaceable and vital contributors on which the national production depends.

<sup>134</sup> *Communication from the Commission to the Council and the European Parliament on an open method of coordination for the Community immigration policy.* COM (2001) 387. Headline 3.2. Admission of economic migrants.

<sup>135</sup> The Commission's 'Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, (COM (2001) 386 final 11.07.01) merely suggests the self-evident, namely that the admission of third-country nationals to employed activities and self-employed economic activities should be subject to an "economic needs test" and a "beneficial effects test. Third-country nationals should be admitted to self-employed economic activities if a test demonstrates an added value for employment or the economic development of the host member state. For admitting third-country nationals to activities as an employed person the logic varies slightly from the national one. The proposal suggests that the test should demonstrate that a post cannot be filled from within the domestic EU labour market, and not just from the nation state's domestic labour market. It is understandable that an EC initiative uses this formulation. But, in practice this difference is not likely to have more than marginal effect.

<sup>136</sup> This solves many practical problems for third state nationals in connection with both of professional and private activity. Long-term residents can undertake short-term trips within the EU without becoming illegal immigrants during temporary stays in another member state.

<sup>137</sup> Following article 63 (4) the Commission has proposed a Council Directive concerning the status of third-country nationals who are long-term residents. Amongst other things, it proposes that a long-term resident must "have possession of adequate resources available to avoid becoming a burden on the second Member State during the period of residence and sickness insurance covering all risks in the second Member State" in order to exercise the right of residence in the territory of member states other than the one which granted him the status. Whether or not he fulfils all the criteria necessary is checked by the second member state, following an application that the long-term resident submits to that

As for the domestic control, the EC legislation prescribes the non-discrimination principle in the field of welfare provisions for the economic immigrants and their family members (box 3). In contrast, member states still regulate the participatory rights. It is however likely that they are generous towards the wanted economic long-term immigrants, such as qualified labour or self-employed persons, in order to attract and integrate them. (I will return to box 7 further below.)

All in all, the legal economic migration is fully controlled by the member states and all proposals indicate that it will remain so. The explanation for the upholding of the member states' competency concerning both long-term and temporary economic migration (i.e. seasonal workers) is simple. A state will only allow someone into the country, if it expects this to be advantageous. Due to the varying situations in the different states the question of what economic immigration is needed and appropriate is best answered at the national level. Therefore, neither the member states, nor the Commission have articulated any desire to replace this national competency with a European one. Member states will continue to make their admission or non-admission dependent of the applicant's personal qualifications and the current national needs. Hence it is a process completely related to the national factors and steered by the NSDI, since it is not conducted with consideration of any European referent objects.

*Humanitarian driven immigration.* The logic of the humanitarian driven immigration differs from the one applied on economic migrants.<sup>138</sup> It causes a clear tension between the notion of having an obligation to host and help those in need of protection and the migratory threat resulting from the reception of these people.

The admission of humanitarian driven immigration is not based on a calculation of economic gain, but on values such as brotherliness, sympathy and the duty to act in solidarity. The duty to offer protection to those in need can be regarded as a shared European value. All European States have approved of the obligation to receive and harbour those in need of protection and have codified this shared norm. The Geneva Convention of 1951 on the status of Refugees and the 1967 protocol are maybe the most prominent examples of such codifications. This common value has also been expressed in various EU documents.<sup>139</sup> Consequently, the common asylum and refugee policy can be interpreted as a way to defend this common European value, and the protection of refugees seen as a way to defend that part of the collective European Identity.

Nevertheless, asylum seekers, refugees and displaced persons are merely tolerated. The receiving nations obviously do not expect humanitarian driven immigration to be beneficial, and do not promote or encourage this sort of immigration. If states would regard the entry as advantageous, refugees and persons enjoying subsidiary forms of protection could have entered as economic immigrants in the first place. Initially, they represent a financial and integrative burden. Their entry may be seen as a threat to all referent objects that were mentioned on page 157. De-

member state's competent authorities no later than three months after entering its territory (see COM (2001) 127 final, article 16 and 17). Given the financial condition, it is not quite obvious, how this procedure differs from the economic immigration to the first EU country.

<sup>138</sup> Theoretically EU citizens could apply for asylum in another member state. Nevertheless, I chose to treat the application for protections exclusively as an issue involving non-EU citizens. With the establishment of the free movement, there is practically no reason for an EU citizen to seek asylum in another member state. This becomes all the less probable as all member states can be regarded as safe countries. Belgium is the only country having declared that it will carry out an individual examination of any asylum request made by a national of another member state. See: *Declaration No 56 annexed to the final act of Amsterdam by Belgium on the Protocol on asylum for nationals of Member States of the European Union.*

<sup>139</sup> Article 63 (1) ECT, Tampere European Council, *Presidency Conclusion*, 15/16.10.1999, article 13; Charter of Fundamental Rights in the European Union, article 18 and 19(2); 96/196/JHA: Joint Position of 4 March 1996 defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term 'refugee' in article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees. The Commission has even suggested that the rights and entitlements enjoyed by refugees within the meaning of the Geneva Convention should be transposed into Community law. See Communication from the Commission to the Council and the European Parliament Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum (COM/2000/755 final), p. 12.

nying protection would certainly solve the perceived migratory security threat, but also conflict with fundamental values of the very community that is to be protected by such exclusion. This would pose a new, although different, threat to the collective identity. Consequently, the society will seek ways to balance these two threats by weighing the obligation to receive refugees against the burden and migratory threat they pose. Finding equilibrium is not always simple. In times of growing humanitarian driven immigration authorities are likely to counterbalance the growing migratory threat by tightening the external or the domestic control.

The question is to what extent member states' possibilities to tighten or loosen the external and the domestic control (national reaction to migratory threats) is restricted by European regulations (defending the European value). Are external and the domestic control steered by standards defined at the European level?

- Is the external control harmonised in such a way that an applicant has to pass through a standardised European 'filter', i.e. must fulfil certain conditions that are verified in specific standardised procedures?
- Is the domestic control constrained by European minimum standards guaranteeing the refugees specific rights?

*External control of humanitarian driven immigration.* Article 63 of the EC Treaty displays high ambitions regarding the harmonisation of the external control in matters of asylum, refugees and displaced persons. It sets out the objective to adopt "minimum standards with respect to the qualifications of nationals of third nations as refugees", "minimum standards on procedures in member states for granting or withdrawing refugee status", and "minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection".<sup>140</sup> The Tampere European Council reinforced this as it agreed to work towards establishing a Common European Asylum System.<sup>141</sup> In terms of external control the Council decided that this system should include the "approximation of rules on the recognition and content of the refugee status" and "common standards for a fair and efficient asylum procedure". Furthermore, it should be "completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection".<sup>142</sup> In other words, the Common European Asylum System aims at reducing disparities between member state's legislation and practice, and thereby to harmonise the protection regimes, i.e. 'filters', applied for external control. By doing so, member states would clearly define their common value, namely to whom and under what conditions they have an obligation to offer protection. To this end the Commission has presented three proposals to the Council. Two of which are concerned with long-term refugees, and a third one that deals with the granting of temporary protection.

The first defines minimum standards for the qualification for protection (box 8).<sup>143</sup> The Proposal uses the definition of who is a refugee, as contained in the 1951 Geneva Convention.<sup>144</sup> Drawing on the practise of the member states, it also adds subsidiary protection schemes com-

<sup>140</sup> Article 63 (1c), (1d) and (2a) ECT.

<sup>141</sup> Tampere European Council, *Presidency Conclusion*, 15/16.10.1999, article 13.

<sup>142</sup> Tampere European Council, *Presidency Conclusion*, 15/16.10.1999, article 14.

<sup>143</sup> Commission of the European Communities, *Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*, COM (2001) 510 final

<sup>144</sup> Article 1(A)(2) of the 1951 Geneva Convention and its 1967 Protocol. This definition has also been used within the Union at other occasions. See for instance the Charter of fundamental rights of the European Union and the Joint Position of 4 March 1996 defined by the Council on the



plementary to the protection regime enshrined in the Geneva Convention. But, "[r]ather than creating new *ratione personae* protection obligations incumbent on Member States, the Proposal is clarifying and codifying existing international and Community obligations and practice".<sup>145</sup>

The second proposal is concerned with minimum standards on procedures in member states for granting or withdrawing refugee status (box 8).<sup>146</sup> It seeks to assure fair and efficient procedures throughout the Union by dealing with procedural guarantees for asylum applicants and defining minimum requirements regarding the decision making process. Most interesting from a security perspective, is that the proposal determines when a country can dismiss an application as inadmissible or manifestly unfounded, i.e. when the obligation to receive an applicant is not effective and an applicant only poses a migratory threat. Most interestingly among the various rules is the definition of safe third countries and safe country of origin.<sup>147</sup> Although the proposal contains a list of common principles, according to which countries are to be designated as safe countries, no common European list of safe countries is to be drawn up. The member states are merely held to exchange their national views on the designation of safe countries and to notify the Commission of their national lists of safe countries.<sup>148</sup> Accordingly, the standards to which a person shall be granted the status as a refugee are being codified at the European level, while the actual assessment is conducted by the nation states. This is not just a question of letting the member states carry European regulations into effect. As the national lists of safe countries exemplifies, different national interpretations, evaluations and assessments are expressively accepted.

The third proposal (the only one of the three that had been adapted at the time of writing) is concerned with minimum standards for giving temporary protection in the event of a mass influx of displaced persons (box 9).<sup>149</sup> According to article 5(1) of the directive "[t]he existence of mass influx of displaced persons shall be determined by a Council Decision adopted by a qualified majority on a proposal of the Commission". This means that the Council takes a general decision on giving temporary protection to a specific group of persons. Consequently, all member states have to offer these persons protection, (even those that voted against the decision).<sup>150</sup> The Council also decides on the time when the temporary protection comes to an end. The external control and the process of defining of who shall be granted protection has thus been lifted from the national to the European level in the case of the largest migratory challenge, a mass influx of displaced persons.

*Secondary migration of humanitarian driven immigrants.* Concerning the freedom of movement, long term refugees and asylum applicants will have to stay in the country where they

basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term 'refugee' in article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees (96/196/JHA). OJ L 63, 13.03.1996, p. 2 – 7.

<sup>145</sup> COM (2001)510 final, p.6.

<sup>146</sup> Commission of the European Communities, *Proposal for a Council Directive on minimum standards on procedures in Member States for granting or withdrawing refugee status*, COM (2001) 578 final.

<sup>147</sup> Other reasons to dismiss an application are amongst other things if another member state is responsible for examining the application, another country (third state) is considered as a first country of asylum for the applicant, the application is fraudulent with respect to the applicants identity or nationality, he cannot provide sufficiently convincing information to determine his identity or nationality, the he does not explain his application by raising issues that justify international protection on the basis of the Geneva Convention or article 3 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. COM (2000) 578 final p. 6.

<sup>148</sup> COM (2000) 578 final p. 6.

<sup>149</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between member states in receiving such persons and bearing the consequences thereof.

<sup>150</sup> The directive also defines under what circumstances member states may exclude a person from temporary protection (article 28). Although these rules are expressed in very general terms (all relate to crime or to the security of the host member state), the states are not given a *carte blanche* that allows them to reject all refugees concerned. The state has to make an individual case against each person that it wishes to exclude from temporary protection and present evidence that supports the rejection on the grounds defined by the directive. No state will be able to do so

lodged their application while it is examined. Once granted a residence permit, they will be free to move within the Schengen area for up to three months (box 6). Persons enjoying temporary protection do not have the right to enter another member state's territory without that country's authorisation.

As derogation from these rules, secondary migration shall be allowed for family reunification.<sup>151</sup> For people benefiting from temporary protection in the event of a mass influx, this right has been laid down in law (box 10).<sup>152</sup> For long-term refugees rules have not yet been adopted, although the Commission has submitted several proposals (box 11).<sup>153</sup>

*Domestic control of humanitarian driven immigrants.* Just as in the case of external control, the domestic control must balance certain basic values concerning how the 'guests' must be treated against the perceived migratory threat they pose. Integration, assimilation and naturalisation of aliens into the national community seems to be particularly recommendable way of dealing with immigration of third country nationals that are most likely to remain permanently in the country, or at least for a very long time. At the European level, member states have agreed on applying different standards for different groups of third country nationals. A differentiation is made between those given temporary protection, and those with a long-term residents status.

The member states obligations towards persons enjoying temporary protection have been laid down in the Council Directive that deals with mass influx of displaced persons, which was mentioned above.<sup>154</sup> Concerning the participatory rights (box 12), the directive states that member states shall '*authorise*' the persons enjoying temporary protection to engage in employed and self-employed activities, educational opportunities for adults, vocational training and practical workplace experience while benefiting of the temporary protection.<sup>155</sup> However, the directive does not clarify how fast after arrival the authorisation shall be given, or if the authorisation is linked to an obligation to provide the opportunity to participate in these activities. The Directive only prescribes the equal treatment with nationals of the host nation in one case, the access to the education system for persons under the age of 18 years. Of course this non-discrimination principle also comes into effect with regards to welfare provisions if persons benefiting from temporary protection take on work in the host nation (box 3). The directive also defines the member states' responsibilities concerning welfare conditions for those who remain without occupation (box 13). But, it uses the terms '*suitable*' and '*necessary*' to describe the standards for accommodation, social welfare and medical care.<sup>156</sup> This does not affect the national competency in any way. Just as before, member states will provide what they consider to be suitable and necessary.

The Commission has also made some proposals addressing the welfare benefits and the participatory rights of long-term residents. In its proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in member states,<sup>157</sup> the Commission once again suggests that minor children shall have access to the education system under the same conditions as nationals (box 7).<sup>158</sup> Furthermore, member states shall not forbid applicants

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since the evidence must stand firm in a court. According to article 29, each person who has been excluded from the benefit of temporary protection shall be entitled to mount a legal challenge in the member state concerned.

<sup>151</sup> Decision No 1/2000 of 31 October 2000 of the Committee set up by article 18 of the Dublin Convention concerning the transfer of responsibility for family members in accordance with article 3(4) and article 9 of that Convention, OJ L 281, 07.11.2000, p.1.

<sup>152</sup> Council Directive 2001/55/EC, article 15.

<sup>153</sup> COM (1999) 638 final; COM (2000) 624 final and COM (2002) 225 final.

<sup>154</sup> Council Directive 2001/55/EC.

<sup>155</sup> Article 12, Council Directive 2001/55/EC.

<sup>156</sup> Article 13, Council Directive 2001/55/EC.

<sup>157</sup> COM (2001) 181.

<sup>158</sup> Article 12, COM (2001) 181.

to the labour market and vocational training for more than six months after their application.<sup>159</sup> The issue of self-employment, however, is not addressed. As for welfare conditions the proposal does not restrict the member states' competency in any way for refugees that have not yet taken up any occupation (box 14). Accordingly, member states shall ensure a standard of living "adequate for the health and well being of applicants".<sup>160</sup> Furthermore, the applicants shall be ensured a "sufficient" amount of allowances and vouchers to avoid them "falling into poverty".<sup>161</sup> Applicants shall also have access to primary and emergency health and psychological care.<sup>162</sup> Thus, exactly as the directive concerning those enjoying temporary protection, this communication only contains general standards and leaves the estimation of the refugee's actual needs to the national authorities.

*Harmonising domestic control - common status for all long-term residents.* In another proposal concerning the status of third-Country nationals who are long-term residents,<sup>163</sup> the Commission goes much further. The aim is to grant all long-term residents the same status, irrespectively if they immigrated for economic or humanitarian reasons, and grant them the rights and obligations comparable to those of EU citizens. A member state shall grant this European long-term resident status to third-country nationals who have resided legally and continuously in its territory for five years. When this is obtained, long-term residents shall enjoy equal treatment with other nationals as regards welfare conditions (box 14).<sup>164</sup> Concerning participatory rights (box 7), they shall enjoy equal treatment as regards access to employment and self-employed activity (provided such activities do not entail even occasional involvement in the exercise of public authority), education and vocational training (including study grants), freedom of association and affiliation and membership of an organisation representing workers or employers.<sup>165</sup> As for the free movement, the same rules as those mentioned above concerning economic immigrants shall apply (box 6). Finally, the proposal also suggests that a long-term resident only shall be expelled where his personal conduct constitutes a threat to public order or domestic security. This means that the person must have committed or be expected to commit serious crimes. Consequently, member states could not make the stay of a long-term resident dependent of the domestic situation or of the development in third country nationals' country of origin (box 8). Although the introduction of a common permanent residence status formally limits the member states' ability to decide freely on who is to stay in their territory, one must note, that they already practice a restrictive expulsion policy for long-term residents.

#### *OPERATIONAL DIMENSION: COUNTERACTING ILLEGAL MIGRATION*

The operational dimension is concerned with how illegal migration is counteracted. As mentioned above, there are two basic categories of illicit immigration. There are those who enter illegally by bypassing the border controls or by using false documents. Then there are those who enter legally, but become illegal immigrants by 'overstaying' when their visas terminate.<sup>166</sup> Un-

<sup>159</sup> Article 13 and 14, COM (2001) 181.

<sup>160</sup> Article 15, COM (2001) 181.

<sup>161</sup> Article 17, COM (2001) 181.

<sup>162</sup> Article 20 and 21, COM (2001) 181.

<sup>163</sup> COM (2001) 127 final.

<sup>164</sup> Amongst other things as regards: social protection, including social security and health-care, social assistance, social and tax benefits, as well as the access to goods and services and the supply of goods and services made available to the public, including housing. Article 12 COM (2001) 127 final.

<sup>165</sup> Article 12, COM (2001) 127 final.

<sup>166</sup> In contrast to the Commission I do not regard people that reside legally, but who violate the residence regulations, as illegal immigrants but as legal immigrants that commit a crime. C.f. COM (2001) 672 final, p. 7.

derstandably, there are no reliable figures on the proportions between the two categories. But, it seems clear that they are both significant.<sup>167</sup> Therefore, the active suppression of the phenomenon requires strict checks and surveillance at the Union's external borders to prevent illegal entries, as well as stringent controls within the territory of member states to detect and fight illegal residing.

It is striking that the vast majority of European proposals and measures aiming at improving the control of migration are related to the control at the external borders. The internal control of immigrants that reside illegally within the Union has hardly been addressed at all,<sup>168</sup> nor have any measures been suggested or standards proposed for how illegal secondary movements should be stopped.<sup>169</sup> On the one hand, this imbalance between external and internal control can be explained by the fact that one weak point in the external border affects the migratory threat towards all member states. To ensure that the common frontier does not become pervious at any point, the member states must define and submit to common control standards. This is a challenge that becomes all the more sensitive when the enlargement process is added to the equation. The new members must perform checks and surveillance at the new common external borders as efficiently as any current member does. Otherwise the enlargement will be associated with, and result in, an increasing migratory threat. Since the whole idea of an area of freedom, security and justice depends on a reliable and efficient border control, it is not surprising that the old and the new members are focusing on this area at present. On the other hand, illegal residence is a crime committed on a member state's territory. As with all enforcement of criminal law, the responsibility to counteract the crime lies in the exclusive authority of that member state. Illegal residence is no exception in this sense. National authorities conduct internal controls on their own in accordance with their specific national provisions in order to enforce the national law. If needed, national law enforcement authorities can cooperate within the framework of the European police and judicial co-operation described above. However, it should be noted that fight against illegal residence as such is not a priority at the European level but largely left to each national authority. This can be explained by the simple fact that the illegal residents primarily pose a threat to the state in which they reside, and that there is little the member states can do to help each other in these cases. States are most likely unaware of the illegal secondary movements that take place from their territory. If however the illegal residence is linked to other forms of cross border crimes, then the machinery of the European police and judicial co-operation may get started.

Although the checks and surveillance of the external borders lie within the full national authority, member states cooperate closely in this field.<sup>170</sup> At present, each member state is free to entrust checks and surveillance at external borders to the authorities of its choice, according to its own national structures. Until present there is no such thing as a European police or customs unit with the task to control and repress illicit immigration at the frontiers. So far, the cooperation between member states and the Commission has therefore focused on two other areas. First, they have sought to harmonise the standards and procedures that apply for counteracting illegal

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<sup>167</sup> An indication of the dimension of the problem has been given by Europol's estimation that 500 000 persons enter the EU illegally each year. See Meyer 2000.

<sup>168</sup> Since the Council Recommendation (non-binding) of 27 September 1996, on combating the illegal employment of third country nationals (OJ C 304, 14.10.1996, p. 1.), the issue of internal control has not been addressed by the Council again.

<sup>169</sup> Proposals made until present merely seek to reduce the incentives for such movements by harmonising the member states' migration policies.

<sup>170</sup> Article 6 of the Schengen Convention provides that checks in accordance with uniform principles are carried out "within the scope of national powers and national legislation".

law and taking account of the interests of all Contracting Parties".

border crossing, in order to avoid 'weak points' along the external border. This includes measures such as the definition of common rules on visas for intended stays of no more than three months,<sup>171</sup> the exchange of liaison officers,<sup>172</sup> the harmonisation of penalties so that would-be criminals have no reason to consider illegal entries to be relatively safer in one of the EC states,<sup>173</sup> and laying down common uniform principles for checks and surveillance at the external borders.<sup>174</sup> Second, they aim at enhancing the efficiency of external border controls. This includes measures aimed at avoiding unnecessary duplication of efforts, such as the adoption of criteria and mechanisms for determining what country is responsible for considering an application for asylum.<sup>175</sup> The thought is that an asylum seeker shall only be able to launch his application in one member state. To ensure this, a database called EURODAC has been established for the comparison of fingerprints of asylum seekers.<sup>176</sup> The foreseen European Visa Identification System is another database, envisaged to detect false travel documents and to help identifying persons without travel documents.<sup>177</sup> Furthermore, some centres for information exchange and discussions, such as the CIREFI<sup>178</sup> and the CIREA,<sup>179</sup> have been founded.

Clearly, these initiatives follow the strategy of horizontal co-ordination. None of them suggests an operational task sharing among members and no operational responsibility is transferred to the European level. Neither are there any European capabilities that can perform checks and surveillance at the borders or within the area of free movement, nor are there any units that can co-ordinate and lead operations or that produce common situation and risk analysis concerning illegal border-crossings or 'overstays'. The measures above merely facilitate and support the operations of national authorities based on national assessments.

However, there are proposals that go in the direction of vertical assistance. At present, the Commission is considering the creation of a European Migration Observatory, which could "monitor and carry out comparative analysis of asylum and legal and illegal migratory flows".<sup>180</sup> This would not necessarily change the way migratory threats are defined, i.e. what migration is legalised, but it may have an impact on the European policy against illegal immigration. If the Observatory would develop into a European migratory intelligence centre that assesses and maps out trends of migratory flows, it might influence the implementation of preventive measures in countries of origin, and outline how illegal immigration should be fought, i.e. where what kind of efforts should be concentrated. However, this idea has hardly even reached the blueprint stage and it would take many years to develop it into a European assessment centre with operational influence.

<sup>171</sup> Article 62 (2b) ECT. Council Regulation 2001/539/EC containing a list of third countries whose nationals must be in position of a visa when crossing the external borders, and Council Regulation No 1683/95 on a uniform visa format can serve as examples.

<sup>172</sup> 96/277/JHA: Joint Action of 22 April 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning a framework for the exchange of liaison magistrates to improve judicial cooperation between the Member States of the European Union. OJ L 105, 27.04.1996 p.1 – 2.

<sup>173</sup> Council Directive 2001/51/EC supplementing the provisions of article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 - Carrier Sanctions Directive, OJ L 187, 10.7.2001, p.45.

<sup>174</sup> See Chapter 2 of Title II of the Schengen Convention. The detailed rules are laid down in a confidential Common Manual for External Borders, which, however, is not a source of law. See COM (2002) 233 final, p. 6 and 12.

<sup>175</sup> Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, OJ C 254, 19.08.1997, p. 1. With the exceptions described in article 4 and 5 (family links or prior visas) of the Dublin Convention, cases will be assigned to the first EU country an applicant has entered.

<sup>176</sup> Council Regulation 2725/2000/EC concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of the Dublin Convention on the State responsible for examining applications for asylum lodged in one of the European Union Member States, 11 December 2000.

<sup>177</sup> C.f. COM (2001) 672 final, p. 13.

<sup>178</sup> Council Conclusions of 30 November 1994 on the organization and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi),

<sup>179</sup> Centre for Information, Discussion and Exchange on Asylum (Cirea).

<sup>180</sup> COM (2001) 710 final

The Commission's proposal to establish a European Corps of Border Guards (ECBG) goes far beyond this.<sup>181</sup> Between the lines two interrelated motives behind the proposal can be identified: a burden-sharing argument and worries about how an efficient external control can be assured, especially after the enlargement. As the Union's frontier moves towards the East, a large proportion of border control tasks move with it. Consequently, the richer 'inner' states are relieved from some obligations which will be performed by the poorer frontier states. The Commission proposes a financial burden-sharing mechanism that makes use of the existing national financing together with Union budgetary support.<sup>182</sup> Thereby, all countries benefiting of the control performed at the Union's frontiers would contribute to the production of this public good. In addition, the common financing could ensure that checks and surveillance at the Union's external borders are not dependent of each executing nation state's financial situation. Currently the relative number of border guards, their education and training, as well as the quality and quantity of their equipment vary among the states. Common financing would promote uniform control standards along the Union's entire external border.

In its proposal, the Commission outlines a development that in many ways reminds of and surpasses the discussions in the second pillar on the ESDP. The Commission recommends that the ECBG shall support national services, initially by exercising surveillance functions and subsequently by handling checks at border crossing points. To lead the corps, an External Borders Practitioners Common Unit (EBPCU) is to be created, consisting of representatives from the member states' services ensuring controls at the external borders. This unit would not only develop to a permanent headquarters staff charged with the operational command of the ECBG and the management of its personal and equipment, but also be confided with duties concerning the national services involved in checks and surveillance at external borders. To ensure that common standards apply along the Union's external borders, the communication suggests that the EBPCU should: have the power to exercise inspections of all services involved, in order to verify the proper implementation of the common rules for the crossing of external borders; develop a common basis for training of border guards, and eventually set up a European guards college; lead the development of a system for common intelligence and information exchange between the authorities concerned with checks and surveillance at external borders;<sup>183</sup> and monitor the development of risks with a view to draw conclusions for the deployment of personnel and equipment at external borders. The proposal also addresses capability issues. The Commission underlines the need of interoperability between the mobile equipment of the Nation States and suggests a common procurement on behalf of the ECBG, a common policy on fixed infrastructures and common measures concerning the development of new technologies. Although the Commission does not address the scope of the capability management, it seems to lay much more emphasis on the central procurement and R&D, than has been done in the military sphere.

The proposal is very ambitious as it suggests that the European Union and the member states should share the operational responsibility at the European borders. It does however not clarify the relationship between the European and national authorities, especially under ongoing opera-

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<sup>181</sup> Communication from the Commission to the Council and the European Parliament, Towards integrated management of external borders of the Member States of the European Union, COM (2002) 233 final.

<sup>182</sup> COM (2002) 233 final, p. 19.

<sup>183</sup> The Commission calls this a 'permanent process of data and information exchange and processing' labelled PROSECUR ('PROcedure of SECURity').

tions. Although this question is central for an ESDI argument, it is quite understandable that the Commission has avoided the issue. It is most likely that the whole idea will be given much more thought and time before anything of the kind can be implemented. The proposal of an EBPCU and an ECBG clearly surpasses the framework covered by Title IV of the EC Treaty and concerns the most delicate issue of exercising the sovereign right of law enforcement. Clearly the staff of the ECBG must be given the necessary powers, irrespectively of their nationality and place of deployment, in order to perform the tasks suggested by the Commission. All in all, the proposal could be seen as the first step towards transferring the responsibility for border controls to the European level. But, as the European integration process has shown many times, articulating an idea is not the same thing as realising it. This is all the more true when it concerns transferring authority from the national to the European level.

#### *BURDEN SHARING*

As indicated above, burden sharing can be regarded as question of efficiency and/or as a matter of solidarity. Institutionalised burden sharing arrangements only make sense in two cases. Either they contribute to the defence of a shared common value, i.e. if the referent object used is a common European one. Or they are necessary to counteract the threat that the migration poses to national referent objects. The EC treaty addresses the burden sharing issue in a rather attenuate way, as it speaks of "promoting a balance of effort between member states in receiving and bearing the consequences of receiving refugees and displaced persons".<sup>184</sup> This formulation does neither suggest a European funding of all the activities related to visa, asylum and immigration policies, nor does it imply a mechanism for a fair and even distribution of costs and refugees among the member states. It does however allow for some form of redistribution to ease the burden of those who carry the largest load.

Although burden sharing has been on the Council's agenda at several times since the beginning of the 1990s,<sup>185</sup> member states could not agree on a concrete measure until the year 2000. The European Refugee Fund (ERF) was established as a first means of financial burden sharing.<sup>186</sup> Though its budget is still limited to the rather modest sum of 216 million,<sup>187</sup> which does not even correspond to the beginnings of the member states' expenses, it represents a first step. However, almost the full amount of the funds is distributed to the member states according to a fixed key.<sup>188</sup> Following a unanimous decision by the Council, the funds may also be used to finance emergency measures in case of mass influx of refugees. In this case, the allocation of the ERF is adapted to a situation assessment and can be interpreted as an attempt to defend the shared value expressed in the obligation to receive refugees in need. Nevertheless, the unwillingness to institute a European burden sharing mechanism in the sphere of migratory threats still prevails. The current system and the lacking solidarity among the states can be explained by different national identities, i.e. with the use of national referent objects rather than European ones. Here a differentiation must be made between the repression of illegal immigrants at the borders, the internal control and the reception of persons in need of protection.

<sup>184</sup> Article 63 (2b) ECT.

<sup>185</sup> See for example: Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, OJ C 262, 07.10.1995, p. 1-3; 96/198/JHA: Council Decision of 4 March 1996 on an alert and emergency procedure for burden-sharing with regard to the admission and residence of displaced persons on a temporary basis OJ L 63, 13.03.1996, p. 10-11.

<sup>186</sup> 2000/596/EC, Council Decision of 28 September 2000 establishing a European Refugee Fund.

<sup>187</sup> 2000/596/EC, article 2.

As the Commissions proposal for a European Corps of Border Guards shows, a European funding and an even cost sharing as well as a European implementation is feasible for the control of illegal border crossing. There is a practical and a principal reason for this. It is practically possible because these tasks and costs can be identified and isolated from others fairly easily. It is principally reasonable, because the control at the external European borders is producing a public good for member states. Illegal immigrants will pass the border at its weakest point irrespectively of their intended country of destination. Since it is relatively easy to move within the Union, the way in will not necessarily be chosen with respect to the final goal. Thus, the control along the entire external border affects the migratory threat posed to every member state, i.e. its national referent objects.

Concerning the internal control of illegal residents, member states are less willing to share the burden. This could be explained by the simple fact that it is more difficult to separate this task from others performed by national security agencies (e.g. fighting organised crime) and to isolate the costs. However, the reluctance to share these expenses can also be explained in other ways. An illegal immigrant in Portugal does not pose a perceivable threat to any Finnish referent object, so why should Finland contribute to the costs in Portugal and vice versa? One can spin this thread further when looking at the reception of refugees in need of protection.

As shown above, member states have agreed on and codified common values that can be used as a referent object (in particular in the case of mass influx). This may also explain why the reception is the only part of the asylum and immigration policy that contains an element of common funding at present. However, the ERF is purely of financial nature and still very limited both in size and scope. There is no mechanism that can regulate the even distribution of refugees and asylum seekers among member states.<sup>189</sup> Even in the case of a mass influx the Council merely discusses each member states capacity to receive refugees. If the number of refugees exceeds the reception capacity indicated by the member states, the Council shall "examine the situation and take appropriate action, including recommending additional support for member states affected".<sup>190</sup> This does not mean more than that the representatives of the member states will try to find a common solution in the Council. Although member states assert the general obligation to receive those in need, they have not been able to agree on a mechanism for allocating the refugees that arrive in the Union fairly among the member states and thus to spread the migratory threat that these refugees might pose evenly. Theoretically, this means that one country could have to host all refugees in a case collectively defined as a mass-influx. A system that equalises the burden among the member states would require a whole new way of thinking about the refugee question.

One difficulty that complicates such a development is that the perceived migratory threat varies among the member states and that the perceived burden cannot simply be expressed in financial costs or volume of refugees. This makes a definition of what is a fair distribution problematic. The volume of refugees that a country can receive and the expenses it can carry without risking that the situation transforms into an unmanageable and intolerable migratory threat is not a fixed quantity. Cultural and historical bonds with the refugees can greatly influence a

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<sup>188</sup> 210 of the total 216 million Euros are allocated in nominally equal shares on an annual basis to the 14 member states (Denmark opted out). 2000/596/EC, article 10.

<sup>189</sup> The ERF tries to take the allocation of refugees into account, by distributing the financial contributions to a member state in proportion to the number of persons received. 2000/596/EC, article 10.

<sup>190</sup> Council Directive 2001/55/EC, article 25 (3).



state's receptivity. The tolerance is likely to vary among the EU states for different groups of refugees, as they threaten the national referent objects to different degrees.<sup>191</sup> This suggests that migratory threats are thought of and perceived with reference to the national rather than to a European identity.

### 3.3.2 Category policy - Program

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity			
	Politics			
	Policy			X
Conclusion ESDI				

That the European co-operation in the criminal context largely is driven by the aim of counteracting crime is obvious. It is also clear that all member states regard crime as a threat. I have already addressed what referent objects crime and migration may threaten. All countries utilise the same principle referent objects such as the rule of law, the government's ability to govern, cultural homogeneity and the maintenance of the welfare system (see p. 136 and 157). In addition to these, each criminal law also seeks to prohibit a specific action and to protect a specific referent object. These can be expressed in the form of general norms and principles such as the rejection of violence or the protection of ownership rights, which are generally accepted in all European states. But, the legal texts contain a much more detailed description of when the legislator considers that a violation has taken place, how the perpetuation of evidence may take place, and what consequences this may have for the criminal. These differences in the 'detail' complicate the European cooperation. This section does therefore not begin with a survey of what referent objects are used at the European level. Instead, it starts by exploring what common definitions on criminal threats the European states have agreed upon.

- According to what principles are the criminal legislation and the definition of criminal threats harmonised among the EU states (mutual recognition or common definitions)?
- What definitions of criminal threats have been achieved at the European level?

Thereafter the driving force behind the cooperation against crime will be scrutinised. Why it has developed within the EU and not some other framework will also be discussed:

- Why is crime and crime fighting on the European Union's agenda?

Finally, the specific political difficulties involved in international co-operation in criminal matters are examined. Here, Ireland's, Great Britain's, and Denmark's reasons for opting out of some of the JHA co-operation will be analysed.

- Does non-membership comply with the idea of an ESDI?

<sup>191</sup> Nevertheless, in the case of mass influx, the reception tolerance may be influenced by the amount of refugees that other EU states receive. In this case states are likely to be concerned with not receiving more than their 'fair' share.

### 3.3.2.1 Common European definitions on crime.

Common definitions of crime and regulations concerning the fight against crime are adopted within the first and the third pillar. Since the European laws on migration adopted under title IV of the ECT have already been thoroughly displayed in the previous section, these will not be addressed here. Apart from them, the first pillar only contains criminal law in disguise. EC legislation cannot oblige member states to enact criminal law. As long as the Community is not given the 'competence of competence', and as long as the Treaty is not changed, formally the EC will not have the authority to endorse its own criminal law nor to oblige the member states to enact criminal legislation. Thus, the definition of criminal threats and the endorsement of criminal laws are still conducted by the nation-states. This can either result from purely national security processes using and defining specific national referent objects and criminal threats, or from a consensual European security process in the third pillar using and defining European referent objects and common criminal threats. The substantial and procedural law resulting from this collective process and the methods used to determine collective definitions stand in the centre of this section.

#### *COMMON DEFINITIONS OR MUTUAL RECOGNITION?*

Within the third pillar, member states try to approximate the substantive criminal law and procedural law in two ways. On the one hand, they seek to align the substantive criminal law by adopting common definitions on the constituent elements of criminal acts. On the other hand, they concentrate on enhancing the compatibility of national provisions. Instead of rectifying national laws, this method builds on the formula of mutual recognition of judicial decisions and requests, as well as on searching ways to prevent conflicts of jurisdiction between the member states.<sup>192</sup> Accordingly, national authorities are held to recognise and enforce judgements, as well as to acknowledge and to comply with requests from the authorities of other member states, as long as these fulfil certain specified formal requirements. From an ESDI perspective, these two methods appear to pole apart, as they are based on differently structured security processes.

*Common definitions.* By agreeing on common definitions of crimes and criminal threats, common standards and values are objectified. By determining these, member states delineate common European referent objects and formalise their uniformity. In this sense, the common consensual security process results in the formation of an ESDI and the European Identity. In many cases the cost for this will be the duplication of the process already held at the national level and the adaptation of national legislation to the agreed European provisions. To allow an efficient application, these common definitions of substantial criminal law must be accompanied by common definitions of procedural law.

Until present, the Council has adopted common definitions for two categories of crime and criminal threats. The first might be labelled as the most serious and highly immoral crimes. Here, general values are used as referent objects. This category includes activities related to the participation in a criminal organisation, terrorism, racism and xenophobia, drug trafficking, human trafficking and sexual exploitation of children.<sup>193</sup> Current proposals also address serious

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<sup>192</sup> Article 32(c and d) TEU

<sup>193</sup> Joint action 98/733/JHA of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union; Council Framework Decision

environmental crime and cyber crime.<sup>194</sup> The second category is not directly concerned with defending certain moral values. Instead it targets economic crimes directly related to the financial interests of the European Communities and the functioning of the Common Market such as corruption, fraud and counterfeiting.<sup>195</sup> The referent objects used here are thus of a more 'technical' and functional nature. (I will return to the use of different referent objects further below.)

In both categories, the approximation of criminal laws always begins with a common definition of the constituent elements of the threats/criminal acts that are to be punishable in each member state. For the production of security, these common definitions are important, because they include provisions to ensure that member states can apply other legal instruments that have already been adopted on judicial cooperation, e.g. concerning extradition or confiscation of instrumentalities and the proceeds from crime. Since these instruments build on the principle of mutual recognition, member states have found a way to evade the adoption of common procedural law even when agreeing on common definitions of substantial criminal law.

*Mutual recognition.* Mutual recognition merely states that national authorities shall acknowledge the outcome of the security processes held in another member state. The decisive difference from an ESDI perspective (at least in theory) is that the method of mutual recognition does not entail common definitions of what constitutes a crime and criminal threat. It does not include the definition of sameness. Therefore the referent objects used when defining a crime are only national ones. They do not consist of, nor are they made European ones.

This is not to say, that the method of mutual recognition cannot be advantageous if the goal is to fight crime. By adopting the principle of mutual recognition, member states can avoid difficult and extensive negotiations on common definitions and evade the issue of standardising their different national judicial systems. The latter would be extremely time consuming and, at least in the short term, limit the co-operation to a smaller field than desired. With the concept of mutual recognition vast areas of criminal law are covered at once, at the same time as the harmonisation of procedural law can be bypassed. From a law enforcement perspective the largest advantages are speed and simplicity.

Traditional judicial co-operation in criminal matters is based on a request-principle that allows the requested state to refuse to recognise and execute the decision taken by the requesting states judicial bodies, if there is no dual criminality.<sup>196</sup> In other words, a state will not comply with a request if the offender is charged for an action that is not regarded as a crime in the requested

of 13 June 2002 on combating terrorism (2002/475/JHA); 96/443/JHA: Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia; Proposal for a Council framework decision on combating racism and xenophobia, COM(2001) 664 final; Joint Action 96/750/JHA adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking; Council Resolution 97/C 10/02 of 20 December 1996 on sentencing for serious drug-trafficking; Proposal for a Framework Council Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, COM(2001)259 final; Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children; Proposal for a Council framework decision on combating trafficking in human beings, COM(2000)854.

<sup>194</sup> Initiative of the Kingdom of Denmark with a view to adopting a Council framework Decision on combating serious environmental crime. Proposal from Denmark CNS2000/801; 1999/364/JHA, Common position of 27 May 1999 adopted by the Council on the basis of article 34 of the Treaty on European Union, on negotiations relating to the Draft Convention on Cyber Crime held in the Council of Europe.

<sup>195</sup> Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union. (OJ C 195, 25.06.1997); Protocol to the Convention harmonization of sanctions for corruption offences. (OJ C 313, 23.10.1996); Joint Action 98/742/JHA of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector; Initiative of the Federal Republic of Germany with a view to the adoption of a Council Framework Decision on criminal law protection against fraudulent or other unfair anti-competitive conduct in relation to the award of public contracts in the Common Market. CNS/2000/812; Commission Communication dated 21 May 1997 to the Council and the European Parliament on the Union policy against corruption. COM(97) 192, 21.05.1997; 2001/413/JHA Council framework decision of 28 May 2001 on combating fraud and counterfeiting of non-cash means of payment. (OJ L 149, 02.06.2001); Council Resolution of 28 May 1999 on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro. (OJ C 171, 18.06.1999); 2000/383/JHA Framework Decision of On 29 May 2000 on increasing protection by penal sanctions against counterfeiting in connection with the introduction of the euro. (OJ L 140, 14.06.2000); Council Framework Decision amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro. (OJ L 329, 14.12.2001).

state. The dual criminality clause basically amounts to the same thing as a common definition of the crime and the criminal threat. The difference is, that it is not defined in advance, but must be tested case by case. Each request must be tried in order to assure that the requirement of dual criminality is fulfilled. Consequently, an extensive validation (*exequatur*) procedure is launched each time. With the introduction of an automatic mutual recognition that renounces the principle of dual criminality, this comprehensive procedure is reduced to a minimum and concentrates on the validation regarding the formal correctness (comprehensibility) and the authenticity of the request. This allows the European fight against crime to start in all fields in which the principle of mutual recognition applies without delay. In this sense, the mutual recognition can be regarded as a 'kick start' solution. The formula allows member states to conclude the political dimension in one stroke and to enter the operational dimension directly. This efficiency argument is one explanation for why the Tampere European Council decided that the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.<sup>197</sup> Spinning on this thread, it can be argued that the production of (national) security (the fight against crime) is given priority to the formalisation of the European identity and the ESDI.

However, the introduction of the mutual recognition can also be difficult, in particular in some sensitive areas (e.g. abortion, euthanasia, press and soft drugs offences). It is hard to picture the British authorities refraining from the dual criminality principle and that British police enforce a ruling of an Irish court in an abortion suit. Recognition of a decision also functions in the inverse direction, as it implies the use of the '*ne bis in idem*' principle.<sup>198</sup> In this sense, it is difficult to imagine that a court of one member state would accept the acquittal or a very low sentence ruled by another country's court in which the concerned action is not punitive or only regarded as a minor offence. Countries can only acknowledge the principle of mutual recognition if they are convinced that they share the same basic values. The differences between their judicial systems must therefore be of a technical rather than a fundamental nature. Without the notions of equivalence and trust one state could not recognise another's decisions.<sup>199</sup> It could be argued that the principle of mutual recognition is only applied when a notion of sameness is assumed to exist and the European uniformity and identity is taken as a fact, although it is not spelled out and formalised. Moreover, the application of the principle of mutual recognition does not exclude the formulation of common definitions at a latter point.

In practice the question whether the use of the principle of mutual recognition reflects the inability to agree on common definitions of criminal threats, or if it rather mirrors the notion of common values and definitions, becomes superfluous in the case of the EU. A glance at the practical interpretation and use of the principle of mutual recognition displays that it is not easily established. Whereas the '*ne bis in idem*' principle is given general validity by article 54-58 of the Convention applying the Schengen Agreement,<sup>200</sup> member states seem to find it much more difficult to skip the dual criminality clause. As pointed out by the Commission, "[o]ne way to overcome this difficulty might be to exclude from the scope of mutual recognition, some behav-

<sup>196</sup> See for example article 5(b) of the 1991 Brussels Convention between the EC Member States on the enforcement of foreign criminal sentences, and article 4(1) of the 1970 Council of Europe Convention on the international validity of criminal judgments (ETS 70).

<sup>197</sup> Tampere European Council, *Presidency Conclusion*, 15/16.10.1999, article 33 and 36.

<sup>198</sup> See footnote 32 on page 142.

<sup>199</sup> Communication from the Commission to the Council and the European Parliament: Mutual recognition of final decisions in criminal matters. COM(2000) 495 final.

<sup>200</sup> Other instruments merely use the principle in the sense that it can be used by a requested state to refuse to comply with a request.

ious, which are criminalised in certain member states, but not in others".<sup>201</sup> This approach would allow the principle of mutual recognition to be given general validity, with a few exempted cases. However, the member states have opted for the opposite approach and apply the principle of mutual recognition as a means to speed up and simplify the judicial co-operation in a limited amount of precisely listed and defined cases. The specification of the issues for which the principle of mutual recognition applies, can be regarded as a substitute for the common definition of what constitutes a crime and a criminal threat, although it is a bit less detailed. Either the context, within which the member states agree to refrain from the use of the dual criminality principle, is very limited and clearly outlined,<sup>202</sup> or what appears as a general and broad provision turns out to consist of a list of specifications.

The European arrest warrant is a good example for the latter. The Council adopted a general specification of the cases when a member state may issue a European arrest warrant that gives rise to surrender without verification of the dual criminality.<sup>203</sup> But, instead of defining certain exceptions from this rule, the Council presents a long list of offences for which the provision applies.<sup>204</sup> This procedure therefore rather resembles a common definition of criminal threats and a common moral basis. The member states have clearly listed the offences for which the standards of the different nations' legislation are regarded as being compatible, i.e. where they have found a uniform moral ground. Apart from basic offences such as murder, grievous bodily injury and kidnapping, the list largely reflects the crimes for which common definitions have already been adopted (see the list below).

The Convention relating to Extradition between the member states of the European Union<sup>205</sup> reveals yet another way to make the application of the principle of mutual recognition dependent of the dual criminality clause. According to article 2, extradition shall be granted in respect of offences that are punishable in the issuing member state by a custodial sentence or a detention order for a maximum period of at least 12 months. However, the same article states that the offence also must be punishable under the law of the requested member state by deprivation of liberty or a detention order for a maximum period of at least six months. This means that the full automatic recognition is not granted.

Since neither the applicable legislation, nor the pending initiatives foresee the use of the principle of mutual recognition as a generally applicable rule, but only in clearly limited areas in which the member states expect their legislation to be compatible, the use of the principle is based on the same logic as common definitions. The difference is merely that the common definitions are spelled out in more detail.

Thus, although member states basically decide on how crimes are to be punished, they have found different ways to agree on common definitions of material criminal threats at the same time, as they have managed to keep common definitions of procedural law, and thus the har-

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<sup>201</sup> Communication from the Commission to the Council and the European Parliament: Mutual recognition of final decisions in criminal matters, COM(2000) 495 final, p. 11.

<sup>202</sup> See for instance the Initiative by the Governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium for the adoption by the Council of a Framework Decision on the execution in the European Union of orders freezing assets or evidence (CNS/201/803). Article 6 confines the grounds for non-execution to formal deficit regarding the request.

<sup>203</sup> The offence must be punishable in the issuing member state by a custodial sentence or a detention order for a maximum period of at least three years. 2002/584/JHA Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, article 2 (2).

<sup>204</sup> 2002/584/JHA Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, article 2 (2).

<sup>205</sup> Council Act of 27 September 1996, adopted on the basis of Article K.3 of the Treaty on European Union, drawing up the Convention relating to Extradition between the Member States of the European Union. (OJ C 313, 23.10.1996).

monisation of the different national judicial systems, to a minimum.<sup>206</sup> On the one hand, the principle of mutual recognition, which makes the adoption of common procedural law superfluous, has been applied restrictively for a number of criminal threats that they have specified together. On the other hand, common definitions for criminal threats have been complemented with provisions that allow the use of instruments that are based on the principle of mutual recognition. Thereby, a common definition procedural law is no longer needed.

#### EUROPEAN DEFINITIONS OF CRIMINAL THREATS.

It is laborious to compile and present a complete list of the criminal threats that have been defined within the EU. The list presented below displays the offences that give rise to surrender pursuant a European arrest warrant.<sup>207</sup> It is the single most comprehensive compilation of offences that the Council has drawn up and it largely covers all areas for which some sort of common European definitions of criminal threats have been defined. The offences for which an explicit common definition has been determined are marked with a star (\*).

- participation in a criminal organisation,\*
- terrorism,\*
- trafficking in human beings,
- sexual exploitation of children and child pornography,\*
- illicit trafficking in narcotic drugs and psychotropic substances,\*
- illicit trafficking in weapons, munitions and explosives,
- corruption,\*
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,\*
- laundering of the proceeds of crime,\*
- counterfeiting currency, including of the euro,\*
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,\*
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,\*
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,\*
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

It is worth noting that the bulk of common definitions of crimes and criminal threats, concern areas to which organised crime can be linked directly (drugs, human trafficking, fraud, money laundering, corruption etc.).

#### 3.3.2.2 Why are criminal and migratory threats on the European agenda?

International co-operation among justice, police, customs and border guard authorities is by no means a new occurrence. The EU is neither the first nor the only forum for such co-operation, but certainly the most far-reaching and dynamic one. One must therefore ask two questions. First, why do states in general cooperate in defining and combating crime (including illegal immigration)? Second, why has the EU developed a particular dynamic? There is a risk of stating the obvious when answering these questions, but it is necessary in order to complete the survey.

In general, countries *want* to cooperate to fight crimes and illegal border crossings more efficiently. As for 'ordinary' crime, the exchange of information allows national investigators to find

<sup>206</sup> Examples of common procedural law are: Council Resolution 97/C 10/01 of 20 December 1996, on individuals who cooperate with the judicial process in the fight against international organised crime; 2001/220/JHA, Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

<sup>207</sup> 2002/584/JHA Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, article 2 (2).

out if they are actually dealing with internationally operating crime and criminals. If this is the case, further cooperation is advisable. This will allow different national agencies to get a full picture of the activities of internationally operating criminals and their organisations. At best, efforts can be concentrated on the centre of the organisation in order to break it up all together. But, even if this is not fully achieved, joint efforts can be a prerequisite for a successful prosecution. It may for instance be necessary to collect evidence in different countries. A more basic situation occurs when a criminal flees the country, must be caught elsewhere and then extradited. This is where the cooperation among the authorities that monitor borders comes into play. Just like the fight against almost all internationally operating crime and criminals, an efficient control of borders requires joint efforts. At least joint efforts make it much easier to produce security. It is therefore not surprising that there are legion examples of cooperation agreements concluded between countries on a bilateral, regional (within the Council of Europe) or global (within Interpol or the United Nations) level.

Two basic reasons *necessitate* an even closer cooperation within the EU. The first is the introduction of the free movement of goods, persons and capital. The cooperation within the EU is especially dynamic because the conditions for international crime and migration are particularly favourable within the Union. The more the frontiers open, the more they open to criminals and criminal activities the larger is the need for a criminal prosecution that stretches across borders. A complete abolition of internal border controls, as applied within the Schengen-area, potentiates this need as well as the one for a common migration policy. Since illegal secondary movements within the Union are not controlled, member states must agree upon what third country nationals shall be admitted into the Union, under what conditions and by whom decisions in the individual case shall be taken. The second reason is the development of the EC to an institution with own financial interests that need to be protected. As demonstrated, the EU has been equipped with some own instruments for 'self-defence'. In addition, the Union's financial interests are also protected by criminal law that is enacted and enforced at the national level. The member states also attempt to harmonise the concerned national criminal laws in order to assure that the financial interests are equally defended throughout the Union.

Accordingly, there are several explanations for the JHA cooperation in the third and first pillar. Crime (including illegal immigration) is on the European agenda because it constitutes a commonly perceived security threat. The main purpose of the cooperation is thus to enhance the efficiency of the fight against crime within the Union and the Schengen area. Moreover, the cooperation can be regarded as the sum of compensatory measures, introduced to reconcile the integration in other areas. Unless international crime and illegal immigration are efficiently counteracted, the entire integration process may be jeopardised. It is doubtful whether European citizens will be ready to pay for the 'four freedoms' with a considerable increase in criminal and migratory threats. Fighting crime and illegal immigration efficiently is thus also a way to protect the integration process. In addition to this functional 'spill-over', some EU countries also regard the deepened cooperation in the sphere of JHA as a proper part of the integration process. The will to cooperate is thus also motivated by a general strive to further and cement the integration and to make the Union feasible to the people.<sup>208</sup> This motive is also valid for the introduction of

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<sup>208</sup> See Jörg Monar, 'Ein Raum der Freiheit, der Sicherheit und des Rechts: Die Innen- und Justizpolitik nach Amsterdam', in Jopp, Maurer and Schmuck 1998:127-154. here p. 128.

freedom of movement and for the abolition of internal border checks, which necessitate the intensified cooperation in the first place.<sup>209</sup>

### 3.3.2.3 Do national policies comply with the idea of an ESDI?

Differentiated integration is also characterising for the JHA cooperation. In this sphere, the EU comprises two forms of asymmetric membership that partly overlap. The first concerns the Schengen agreement signed by all EU members but the UK and Ireland, as well as by the non-EU members Iceland and Norway. The second concerns Title IV of the EC treaty in which neither the UK, nor Ireland or Denmark participate fully.

*Schengen participation.* On 19 December 1996, all members of the Nordic Passport Union (Finland, Sweden, Denmark, Norway and Iceland) signed the Schengen Convention and accepted the full Schengen acquis. The three EU members obtained full membership, whilst Norway and Iceland were given an associated status. This solution did not only make it possible to maintain the Nordic passport Union. From a Nordic perspective, at least to some extent, it can also be interpreted as an extension of that Union since the Schengen agreement allows the freedom to travel throughout the rest of Europe. In addition, all countries obtained access to the SIS. At present, negotiations have also started with Switzerland, foreseeing the same associate status as Norway and Iceland. If successful, this would leave the UK and Ireland as the only traditional western European non-Schengen countries

Why do they choose to remain outside of Schengen? What is the threat/ referent object used in this argument? Just like any chosen non-membership, British opposition to Schengen can be seen as a part of a general Euro scepticism and a defence of the national sovereignty. This general argument is probably valid to some extent, but there are also some more concrete reasons. The British position can be clarified by two arguments, one referring to national security and the other to civil liberty.

The security argument could be summarised with the slogan 'most value for money'. Passport controls at the external borders are seen as a vital weapon in fighting crime, drug smuggling and illegal immigration. The physical barrier that surrounds the country –the sea – is regarded to be particularly efficient. In this way, the UK distinguishes itself from continental Europe. Abolishing the external border checks would deprive the UK of what it considers an effective means of control. Redirecting the resources currently used for EU internal border controls to perform domestic checks would be less effective. It would not result in the same level of control and thus of security. This argument is based on two assumptions. First, controlling the traffic of goods and persons into the country is an efficient way to combat cross-border crime. Second, thanks to its geographical location, the UK can control the cross border traffic. This implies that the criminals that operate on the continent are stopped at the British borders. Maintaining border checks is thus regarded as essential for the production of British security. Admittedly, this is also a way of separating British from continental European security, but this is merely the result of the specific geographical position, not of some political strategy. If combating cross-border crime is interpreted as a way to defend shared European values and the EI, than one might even argue

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<sup>209</sup> This had already been regarded as an important measure to make the Union feasible to the citizens when plans for the European Union were outlined in the mid 70s. See for instance the so-called Tindemans-report on the European Union from 29 December 1975, published in Schwarz 1980:527-552, here p. 545.



that the UK simply utilises its comparative advantage as an island when doing so. British border controls stand in no contrast to the ESDI and may even be seen as a part of it. This security argument would also explain why the UK has opted in and participates at those parts of the SIS that it considers essential in the combat against crime. However, this whole argument is not convincing. It is doubtful that the British themselves fully believe in the assumptions on which it is based. Not only are the majority of criminals involved in cross-border crime likely to pass the borders legally or not at all. It is also questionable whether the UK really can control the most serious illegal traffic.

The liberty argument provides a more credible explanation. If the UK joined Schengen and replaced controls at the internal EU borders with domestic checks, it would have to impose continental European style registration laws and introduce the obligation to carry personal identification papers. This would oppose to the specific British liberal model, raise all sorts of civil liberty issues and evoke much opposition. If this is the real reason for why the UK has decided not to sign the Schengen Convention, it has done so to defend a specific national referent object. In this case, the British choice can only be explained with the NSDI. Not that the NSDI would oppose to an ESDI, but the UK makes a clear separation between the own security and the one of continental Europe. In this context the British NSDI remains clearly separated from the ESDI since it does not take part in the European security process. British visa regulations, for instance, are likely to differ from the ones that the Schengen members agree upon. From a security perspective, the British option for a tight border policy and relaxed controls within the country is paradox. It is the lack of internal control, which makes the UK an attractive destination for people seeking to live illegally in the West. Once entered (legal immigration), they can relatively easily disappear and stay hidden.

The explanation for the Irish position is different. If it wants to maintain the Common Travel Area with the UK, Ireland has no choice but to follow the British position.<sup>210</sup> For Ireland, a one sided membership in Schengen would de facto result in a closure of borders rather than an opening, since the vast majority of Irish travels to EU destinations go to or via the UK.

The integration of the Schengen acquis into the framework of the European Union further clarified national positions. Whilst those parts of the acquis dealing with police and judicial cooperation in criminal matters were integrated into the third pillar, those parts dealing directly with the abolition of checks on persons at the internal borders and with immigration policy were placed under Title IV of the first pillar.

*Third Pillar - Title VI TEU.* The UK and Ireland have declared that they want to participate fully in the intergovernmental police and judicial cooperation within the third pillar.<sup>211</sup> Hence all EU members take part in all proposals and initiatives pursuant Title VI TEU. There are only a few exceptions to this. The UK and Ireland both maintain their border checks and therefore do

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<sup>210</sup> The upholding of the CAP was explicitly mentioned in the Protocol on the application of certain aspects of article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland (annexed to the Treaty on European Union), article 2.

<sup>211</sup> With the following exceptions: neither the UK nor Ireland allows for hot pursuit across the border (article 41 Schengen Convention). Ireland does not even authorise foreign officers to continue their surveillance on Irish territory (article 40 Schengen Convention). This may be explained by the reluctance to allow British officers to operate in Ireland. For details see: 2000/365/EC: Council Decision of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (OJ L 131, 01.06.2000, p. 43 – 47). 2002/192/EC: Council Decision of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20-23.)

not need to allow for hot pursuit across the border.<sup>212</sup> In contrast to the UK, Ireland does not even authorise foreign officers to continue their surveillance on Irish territory.<sup>213</sup> This may be explained by the reluctance to allow British officers to operate in Ireland. Furthermore, the two countries do not participate in those parts of the Schengen cooperation in the third pillar that affect personal identification and registration laws,<sup>214</sup> nor in those parts of the SIS related to immigration aspects.<sup>215</sup>

*First Pillar - Title IV ECT.* Nevertheless, the UK, Ireland and Denmark participate on a case-by-case basis in the cooperation concerning visas, asylum, immigration and other policies related to free movement of persons pursuant Title IV of the first pillar. As a Schengen signatory, Denmark has a somewhat smaller room for manoeuvre than the other two. Denmark was against the communitarisation of the Schengen acquis. With the exception of the common visa policy, that requires continuous adaptation,<sup>216</sup> it has opted out of any decisions taken under Title IV of the ECT.<sup>217</sup> Although bound to the acquis that was adopted before the 1 May 1999 when the treaty of Amsterdam entered into force, Denmark can choose whether or not to adopt and apply any new decisions.<sup>218</sup>

The UK participates in most of the few provisions adopted under title IV that are not related to visa regulations, whilst Denmark has chosen to remain outside. Ireland takes a position in between the two.<sup>219</sup> It is tempting to explain the Danish non-participation with the general rejection of majority voting in the field of JHA. This position is well in line with the results from the so-called Edinburgh agreements.<sup>220</sup> One of the opt-outs restricted Denmark to intergovernmental cooperation in the field of JHA. Following this argument, the reason for why Denmark maintains its position could be that lifting any of the Danish opt out clauses, including the full participation under title IV ECT, would require another referendum. However, this does not explain why Denmark does not choose to opt in and participate in some of the provisions. This can only be explained by the contents of the past initiatives and proposals, or by a principle reluctance against that these decisions are taken at the European level. The latter seems most plausible. It matches the outspoken opposition against the transfer of title IV policies into the supranational first pillar. As shown earlier, it has its counterpart in the Danish rejection of the ESDP, which is also based on a principle rather than on the contents of the decisions taken. Thus, this Danish stance is based on Euro-scepticism and on the protection of the national identity.

*Compliance with ESDI.* Since all member states participate fully in the intergovernmental third pillar, the consensual ESDI dealing with internal European criminal threats comprises all EU members. The voluntary non-membership only affects the ESDI dealing with the external European dimension, i.e. migratory threats.

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<sup>212</sup> Article 41 Schengen Convention.

<sup>213</sup> Article 40 Schengen Convention

<sup>214</sup> I.e. article 45 of the Schengen Convention prescribing the producing a valid identity document when registering in a hotel, and provisions regarding firearms and ammunition, article 77-91 of the Schengen Convention.

<sup>215</sup> Both countries explicitly opt out from all provisions relating to article 96 of the Schengen Convention. Article 1 (a)(ii) 2000/365/EC and article 1 (a)(ii) 2002/192/EC.

<sup>216</sup> To be exact, only in article 62 (2) (b) (i) and (iii) ECT. See article 4 of the Protocol on the position of Denmark (annexed to the Treaty on European Union).

<sup>217</sup> Article 1 of the Protocol on the position of Denmark (annexed to the Treaty on European Union).

<sup>218</sup> Article 5 of the Protocol on the position of Denmark (annexed to the Treaty on European Union).

<sup>219</sup> The following examples clarify the positions: Council Regulation 2725/2000/EC (EORDAC): Denmark no; Council Regulation 407/2002/EC (Eurodac): Denmark no; Council Decision 2000/596/EC (European Refugee Fund): Denmark no; Council Directive 2001/40/EC (Mutual recognition expulsion of third country nationals): Denmark and Ireland no; Council Directive 2001/51/EC (Carrier Sanctions Directive): Denmark and Ireland no; Council Directive 2001/55/EC (temporary protection in the event of a mass influx): Denmark and Ireland no.

The British (and Irish) choice to remain outside of the Title IV cooperation can clearly be interpreted as a separation between British and continental European security. However, one may also interpret this as the only way for the UK to guarantee that its National security concerns can prevail over the ESDI. In other words, from its current position, the UK has assured that it only takes part in a European Security process on a consensual basis. It can and does opt-in when EC initiatives match the national security interests. The UK does cooperate with other EU-states on migratory threats; it participates in the definition of common standards (e.g. obligations to receive those in need for protection) and defends these within the EU framework. However, it can refrain from all suggested norms, regulations or countermeasures that oppose parts of its national identity (e.g. registration laws). Thus, even when majority voting is introduced under Title IV in the future and the ESDI is given an autonomous character, the UK will not participate in an ESDI that may contradict its NSDI.

The Danish position is more difficult to understand. Denmark seems to attach more importance to where a decision is taken, than to its contents. Although it is a bit early to say, it seems like Denmark completely opposes to a further development of an ESDI within the EU in the area covered by title IV. It is not only against the forming of an autonomous or semi-autonomous ESDI. So far its consistent non-participation in decisions taken under title IV also displays reluctance against a deepened consensual ESDI. Denmark does not only refuse to deepen the European cooperation dealing with migratory threats it also declines to formulate common standards in this area and to defend them collectively.

### 3.3.3 Current state of the ESDI in the criminal context

		<b>Security context/threats</b>		
		Military	Economic	Criminal
<b>Category of analysis</b>	Polity			
	Politics			
	Policy			
<b>Conclusion ESDI</b>				X

#### *WHAT KIND OF SECURITY PROCESS?*

The European security process in the criminal context differs from the ones previously analysed. To clarify the differences between the criminal, military and economic context, one can divide the security process into a legislative, an executive and a judiciary part. The terminology utilised in the previous chapter on the economic context is thus extended (see for instance figure 3.2.1). I have chosen to wait with the introduction of this partition until the criminal context, because it is not until here that the security process stretches across the three powers and involves their separate functions (from the definition of a threat to the implementation of countermeasures).

The legislative part consists of two sections. The first largely corresponds to the political dimension and consists of the legislation that determines the competencies of different bodies and

<sup>220</sup> Adopted by the Edinburgh European Council on 12 December 1992.

their decision-making procedures (e.g. national constitutions and European treaties). The other can be described as 'security' legislation'. It is concerned with enacting substantial and procedural law, or, as in the third pillar, with agreeing on common definitions of these. It can be argued that the legislative part has little to do with a security process. In the criminal context it is not concerned with the definition of concrete threats, but rather with defining common standards and thus uniformity. This is valid at the national as well as at the European level. At both levels agreements are reached upon what conduct is regarded as unacceptable and what behaviour constitutes a crime, would it occur. The legislative part of the security process does not assess whether parties in a concrete situation commit crimes and pose a threat. However, this argument is not fully valid. The enactment of criminal law does belong to the security process, because it defines anticipated threats. It does not only determine detected misconduct as a criminal threat, but all anticipated misconduct. In this sense, criminal threats are the only threats in this study that are (pre)defined in a fixed objectified form. This objectification is a prerequisite for the validity of the principle of rule of law. In contrast to the military and economic context, the pre-definition of crimes constitutes the basis upon which the executive and legislative parts of the security process build. The executive part covers the operational dimension and is concerned with determining and counteracting concrete threats. The judiciary part, finally, controls the compliance of enacted laws with valid legislation as well as the legality of countermeasures. It determines if a crime has been committed in concrete cases, and decides on punishments and executes sentence.<sup>221</sup>

In the criminal context the security process stretches across the legislative, executive and judiciary parts because it does not end with countermeasures against threats. Criminal threats are not only stopped or prevented. The persons held responsible are also punished.<sup>222</sup> The act of committing a crime has a prosecution as consequences even after the crime has been committed and the threat directly posed has ceased. The reason for this is that the rule of law and the government's ability to govern is used as a referent object and not only the actual norm that the criminal violates or the individual victim's safety. The prosecution and punishment of criminals form part of countermeasures, because this deters and prevents other violations of the law to occur where law enforcement agencies are not present and can stop crimes from being committed. This is also why the separation between the three parts of the security process is much clearer in the criminal than in other contexts. In the military and economic contexts, threats can be defined and counteracted as they occur. In the economic context, for instance, the Council (or the European Council) does not only agree on the distribution of competencies and the creation of new institutions. It also counteracts many economic threats by taking legally binding decision in concrete cases. The latter is not possible in the criminal context. The principle of the rule of law prescribes that crimes must be defined in the form of general rules. Criminal law that only applies to isolated cases is compatible with arbitrary rule and despotic systems, but not with EU or any of its member states. Thus, countermeasures cannot be launched against an unwanted occurrence based on a decision that is legally binding for that concrete case only. Both the substantial criminal law and the procedural law are therefore predetermined in the form of general rules.

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<sup>221</sup> Although the sentence is not executed by courts, but by penal institutions, I have ascribed this function to the judiciary for the sake of simplicity. This does not change outcome of the analysis.

<sup>222</sup> Even if the sentence often includes therapeutic treatment, resocialisation programs and the like, I simply the argument by speaking of punishments only.

Of course, the judiciary also needs to be engaged in a different way in the criminal context. In the military and economic context, the judiciary is merely concerned with controlling the authorities. It is responsible for the interpretation of security legislation (disputes and preliminary rulings) and determines if concrete countermeasures and new legal provisions are compatible with effective law (annulment).<sup>223</sup> In the criminal context, it also determines if a crime has been committed and sentences criminals to punishments. Even if all punishments are not based on a court decision, all punishments and the application of all countermeasures can be tried in court. The parties targeted by countermeasures in the military and economic context do not have this option.<sup>224</sup>

Therefore, the legislative and the judiciary parts of the security process play a much more distinct and prominent role in the criminal context than is the case in the military and economic contexts. In the two latter, the executive and legislative are both directly engaged in counteracting concrete threats, and the judiciary is normally not engaged in the security process at all.

The special feature of the security process at the European level in the criminal context is that it is almost exclusively located to the legislative part of the security process. Rather than determining when a concrete threat occurs or ends, the member states are primarily concerned with defining what kinds of events constitute threats. Thus, with a few exceptions, the executive and judiciary parts of the security process remain at the national level. The principle differences between the three contexts are displayed in the somewhat simplified figure below.

The shaded fields mark the actual security processes at the European level. The security processes concerning migration and the financial interests of the EC represent special cases and are displayed separately. As they are conducted within the first pillar, they do not match the description of the security process in the third pillar as presented in the figure.

One explanation for why the European security process in the criminal context and in the special case of migration is concentrated to legislative part is that the cooperation in criminal questions is rather new. Given that the executive and judiciary build upon the legislative part, it is only logical that the European cooperation begins with the legislative definition of crimes, respectively of permissible migration.

The way in which the whole cooperation is structured and conducted is nevertheless remarkable. The communality trumpeted in the criminal context suggests an organisational communality and an ESDI, which as yet does not exist.<sup>225</sup> An ESDI requires a security process at the European level, which means that the EU has to be involved in the production of security. Moreover, parts of the collective identity must be utilised as referent objects. The question is to what extent this is the case.

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<sup>223</sup> Within the first and third pillar, the judiciary is also concerned with the disputes on the interpretation between member states as well as of the compliance of national legislation with EU or EC security legislation (e.g. framework decisions and directives).

<sup>224</sup> Competition cases are the only exception, since victims of administrative penalties may have their case tried by the ECJ.

<sup>225</sup> Pronk, Maarten and Schalken, Tom, 'On joint Investigation Teams, Europol and Supervision of their Joint Actions', *European Journal of Crime, Criminal law and Criminal Justice*, vol. 10/1, 2002, pp. 70-82, here p. 70.

Context	Legislative		Executive (Operational Dimension)			Judiciary (Judiciary Dimension)	
	Regulation of competencies decision-making procedures (Political Dimension)	'Security' legislation or agreements	Situation assessment	Decision-making	Implementation	Control of authorities	Determination of threat
Military	Treaties define unanimous decision-making in the second pillar respectively NAC.	Council of the EU/ NAC defines single threat and countermeasure(s)	Identical National+EU identification of existing threat	*	EU led implementation of countermeasure(s)	National Courts control national activities	none**
Economic	Treaty defines EC decision-making and competencies, i.e. what countermeasures the ECB, the Commission and the Council may apply.	Council of the EC defines single threat and countermeasure(s) or only the threatening development and countermeasure(s)	Many decisions as legislation National+EU identification of existing threat or deviation from ref. value	National + EU define single threat and/or countermeasures	National or EU implementation of countermeasure(s)	ECJ rules on EC legislation National courts on national leg.	
EC financial interests	EC Regulation 1073/1999 regulating OLAF competencies	Council of the EC enacts provisions of Community law regulating EC expenditure and of possible administrative measures and penalties	OLAF assesses suspected irregularities	OLAF decides on administrative measures and penalties	OLAF	ECJ	ECJ Appeal against administrative penalties
Crime Third Pillar	Treaty defines unanimous decision making in the third pillar.	Council of the EU agrees on general definitions of crime (Converted into national substantive criminal law)	Decision as legislation National Identification of a suspected crime	National authorities define countermeasure against suspected crime	National implementation of countermeasure(s)	Primarily National courts ECJ limited	National courts determine crimes and punishments
		National Procedural law: General regulation of the application of countermeasures	(Assistance from Europol, Eurojust and SIS))				
Migration First Pillar	Treaty defines unanimous decision making and EC competencies in migration matters.	Council of the EC legislates on minimum standards for granting protection and for procedures to verify an applicants need of protection	National assessment of who meets the criteria for legal immigrant	National rejection or allowing for migration	National expulsion or granting resident permit	Limited ECJ National courts	If possible appeal against rejection at National Courts
		Temporary protection		National reception			
		Council of the EC legislates on control of illegal immigration at external borders	Identification of illegal immigration	Defining countermeasures	Implementing countermeasures	National courts: Crimes apart from the mere illegal entry or stay	
		National legislation on internal control					

\* The decision on when a military operation is to be launched and suspended is political. The determination of threats and the decision on countermeasures performed by responsible commanders during the operation is then subordinated to, and must be separated from the political decisions taken at the European level. \*\* ECJ appeal in competition cases. The competition policy follows the pattern of OLAF.

Figure 3.3- 4. Structure of European Security processes

*Protecting the Communities' financial interests.* Here it seems quite clear that one can speak of a complete and autonomous European security process, although strictly speaking, it does not belong to the criminal context. EC legislation regulates the correct use of the EC budget. The threat consists of any irregularities that infringe on these provisions and the EC budget constitutes the common referent object. The whole process including the legislative, executive and judiciary is conducted at the European level. Even if OLAF can obtain support from national authorities in the executive part of the security process (apart from criminal acts) the 'case' is fully handled by the European body. Classifying the ESDI as autonomous in this context is therefore easy.

*Third Pillar.* The common definitions in the legislative part of the security process can be interpreted as a formally agreed uniformity that constitutes a part of the European identity. By agreeing on common definitions on what constitutes a crime member states outline the shared

uniform moral standards that could be used as common referent object in a security process. This can be seen as a step in the development of an EI and an ESDI. But, since there is no such thing as a direct binding European criminal law, the common definitions are converted into slightly different national criminal law. Each country also has its own procedural law that regulates the activities of the authorities in the executive phase. Two identical acts will therefore be treated differently in two different countries. How and what evidence against the suspect is collected may differ. Since the 'third power' is still assigned to national level, the suspect will be judged against two different criminal laws, by courts belonging to different judicial systems and probably to different sentences. The uniformity is nevertheless somewhat restored by the fact that most EU countries have accepted preliminary rulings by the ECJ on the interpretation of the European definition of crime. Thus, the common European definitions could be used as a referent object when security is produced. In contrast, it is difficult to argue for an ESDI that utilises the rule of law as a referent object. Since European criminal law does not exist, the production of security can only be concerned with protecting and enforcing the national rule of law (rule of national law).

The involvement of the European Union in the production of security is very limited. In contrast to the military and economic contexts, the 'security legislation' does not automatically imply that security is produced, because the actual threat has not been identified when the general rules are formulated. The production of security is therefore located to the executive and judiciary parts. These lie fully in the national competency. This is why common definitions of procedural law have been avoided at the European level. The entire cooperation of the third pillar, including the common definition of crimes, is geared towards supporting the horizontal assistance. This does not generate a security process at the European level in concrete cases. EU bodies such as Europol and Eurojust merely support national authorities in their work. They do not lift the security process up to a European level. Neither does the SIS, although it can be seen as a step towards a merger of the national security processes. This is not to be confused with a European security process, as the referent object used here are still national ones. What is European, is the tool used to integrate the national security processes, and the fact that national agencies engage directly in the enforcement of the laws of other member states and in the production of their security.

Thus, the European identity is elaborated within the third pillar, but lacking a European security process, one can hardly speak of an ESDI.

*Migration.* The member states of the EU must be given credit for desecurizing the migration of EU citizens within the Union. Arguing with common standards, one could say that the member states have formalised a part of the European Identity by doing so. Today, the EU internal migration of EU citizens is no longer a security issue, and can therefore be excluded from an ESDI context. What remains is the regulation of migrants from third countries and the fight against illegal immigration. The latter represents the external dimension of criminal threats.

From an ESDI perspective, the question of what referent object the European migration policy utilises is interesting. When investigating the three parts of the security process, two things become quite clear. The first is that migration is not primarily treated as a threat at the European level. The security process is rather concerned with defining the obligation to receive those in need of protection. This common value of allowing for humanitarian driven immigration is

codified in EC legislation. Thus, either this common value as such, or the safety of each individual applicant is used as a referent object. In contrast, the migratory threats involved in the legal and illegal immigration (cultural heterogeneity and economic burden) remain national concerns.

A glance at the legislative confirms this. As shown, all proposed and effective EC legislation concerned with the legal entry, i.e. the 'filter', is formulated in the form of minimum standards that allow for more generous national provisions *vis-à-vis* immigrants. EC legislation has by no means changed the standards already applied by the member states when assessing whether or not a third country national shall be allowed entry. The minimum standards defined by the EC do not surpass or change the obligations already prescribed by the Geneva Convention on Refugees, the European Convention on Human Rights and the anti-torture convention. The EU has only (repeatedly) defined the minimum size of the 'door' into the Union (comparable to substantive law) and how applications for humanitarian immigration shall be examined (comparable to procedural law). The actual size of the national 'doors' will therefore vary. A State will obviously make the decision on a more favourable stance towards asylum applicants, refugees and economic immigrants dependent of the own national situation and values, and thus of the national perception of migratory threats.

Since the EC does not set any limits to the member state's generosity in respect to third country nationals, it is still up to each member state to define what it will continue to regard as a threat. Apart from the humanitarian driven immigration each country decides what immigration shall be allowed and desecuritized. This is also the reason why the EC does not need to define more than minimum standards in the sphere of secondary migration. Third country nationals with a permanent residence permit in one member state are not automatically granted the right to resettle freely within the Union. They may only do so with the approval of the new host nation. With the exception of family reunifications, the new host nation treats applications from third country nationals as a case of economic migration and will make its decision dependent on its national needs alone. Thus, even if it is 'easier' to obtain a permit in one member state, immigrants cannot make this detour to reach their country of preference. There is no 'back door' for legal immigration. Consequently, the creation of the area of free movement has not created a direct need for common European standards and procedures ('filter') for granting permanent resident permits. As long as the secondary migration is subject to a national assessment, the EC can continue with its current policy and content itself with defining minimum standards to assure that those in need are offered protection.<sup>226</sup> Nation States are then let to decide on any additional immigration into their territory.

As for the illegal immigration, the Union has merely defined common standards for how the control shall take place at the points for external border crossings. This is the only EC legislation that relates to migratory threats. However, what is controlled, i.e. who shall be granted and who shall be refused entry is still defined by the member states.

The EC does not address the migratory threats in its regulations of the domestic control either. Two different sets of referent objects are applied here. EC legislation protects the rights of third country nationals by defining minimum standards concerning the participatory rights and welfare provisions that restrict the member states' freedom of action. However, so far the legislation refrains from protecting the most vulnerable, the refugees who do not work and therefore cannot



support themselves. The proposed and adopted common European legislation does not prescribe any required minimum standards that would limit the member states' freedom of action in terms of welfare provisions.<sup>227</sup> Third state nationals' engagement in professional activities, in contrast, is much clearer regulated. This allows the conclusion that the European legislation in the field of domestic control is not primarily concerned with protecting the well being of third country nationals, but rather with protecting equal treatment of all participants in the market system. No EU resident shall have to or be able to compete under different conditions. The referent object has therefore nothing to do with migratory threats, little with humanitarian values and much with economic referent objects.

The internal control of illegal immigrants finally, lies totally in the member states own competency.

In the executive part of the security process, the EC plays a very limited role. It does neither handle applications for the legal entry nor does it dispose of any law-enforcement agencies with any operative authority to intervene, control and counteract illegal immigration. The responsible national authorities, also make entries into the SIS that aim at refusing certain persons entry into the Schengen area on criminal grounds.<sup>228</sup> The only exception in the executive part is when the Council decides on mass influx of displaced persons with qualified majority.<sup>229</sup> This is the only example where the assessment and decision in an actual migratory case is taken at the European level. It is also the only one where a decision is taken for a group of people based on a mass-assessment. Lacking a structure for individual assessments, the EC can only take these mass-decisions.

	ENTRY		STAY
	'FILTER'	ASSESSMENT	DOMESTIC CONTROL
LEGAL	EC defines minimum standards for granting protection: Member States can be more generous	EC defines minimum standards for procedures to verify an applicants need of protection Member States can be more generous	EC defines minimum standards for participatory rights and welfare  Member States can be more generous
	Member States regulate Economic immigration	Member States define procedures for allowing economic immigration	
	EC defines minimum size of the 'door' to the Union. Each Member States defines the full size of its own door		EC defines minimum standards of integration, Member States define own actual integration.
ILLEGAL	BORDER CONTROL		INTERNAL CONTROL
	EC defines uniform principles for checks and surveillance at foreseen border crossing points.		National regulations
	Member States regulate control of border where transits are not foreseen		

Figure 3.3- 5. EC Legislation on migration

From an ESDI perspective, the decision of granting mass-protection is certainly significant, as it represents an autonomous security process. However, it must be underlined that the decision is not taken in a security process dealing with migratory threats. The referent object that is used and defended at the European level consists of the common value. Migratory threats in the form of cultural heterogeneity and economic burden do not occur until after the EC has decided on

<sup>226</sup> It should however be noted, that this is quite unfair towards asylum applicants. While some member states are more, and some are less generous when granting protection, a refugee can no longer decide freely upon were to lodge his application.

<sup>227</sup> One reason for this may be that this group poses the largest financial burden on member states.

<sup>228</sup> The SIS serves objectives that fall within the scope of Title VI of the EU-Treaty as well as some that fall under Title IV of the EC Treaty, here I refer to article 96 of the Schengen Convention, which allows for the storage of data relating to aliens who are reported for the purpose of being refused entry in the SIS.

<sup>229</sup> Article 5, Council Directive 2001/55/EC

granting temporary protection to a group of people. Since no European burden sharing mechanism has been institutionalised,<sup>230</sup> member states have to carry the burden alone and deal with the migratory threats posed by immigrants. Hence, the EC has disentangled the obligation to receive refugees from the burden and migratory threat they pose. While the security process that uses the obligation to offer protection to those in need as a referent object has been lifted to the European level, threats posed by legal and illegal migration are still only dealt with in national security process.

The legislative part of the security process, finally, lies almost fully in the responsibility of the national judiciary. Even if the ECJ gives a ruling on the interpretation of the EC legislation that regulate migration, it shall not apply to judgements of courts or tribunals of the member states which have become *res judicata*. The European judiciary therefore never does have direct effect on a concrete case. Thus, the European security process in the migratory context is not concerned with fighting crime but with defending the common value expressed in the obligation to offer protection to those in need, as well as fair competition in the Common Market. Migratory threats are defined and counteracted in national security processes (or better what migration does not pose a threat). The security processes dealing with these threats are therefore national ones.

With the exception of the Communities' financial interests, crime and migration are thus not thought of and handled as European, but as national threats.

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<sup>230</sup> The ERF does not fulfil this function.

## 4 Dynamic development of the ESDI

The previous investigation determined the current state of the ESDI in the military, economic and criminal context. It demonstrated that the ESDI is differently pronounced in different contexts. There are variations as to what referent objects are used and how the security processes are organised and how security is produced. The previous chapter answered the question to what extent or rather what kind of ESDI exists in the different contexts. By taking what one might call a candid shot of the ESDI's current state,<sup>1</sup> it has shown that security is thought of, perceived and produced more as a European security in some settings, while less so or not at all in others. The candid shot outlined in the previous chapter can be applied for such research that utilises models in which the ESDI can be treated as fixed, i.e. in models that analyse a limited period of time in which the ESDI is not likely to undergo significant changes. Such 'static' models assume that current events are interpreted with reference to a given SDI, and that any response will be based on that interpretation (see the figure below). Here, the ESDI is primarily seen as the security dimension of a collective identity, and not as a process shaping that identity. Countermeasures will be launched to ward off identified threats and to preserve the status quo. For these models, the candid shot of the ESDI clarifies to what extent and in which settings security is currently thought of, perceived and produced as a European security.

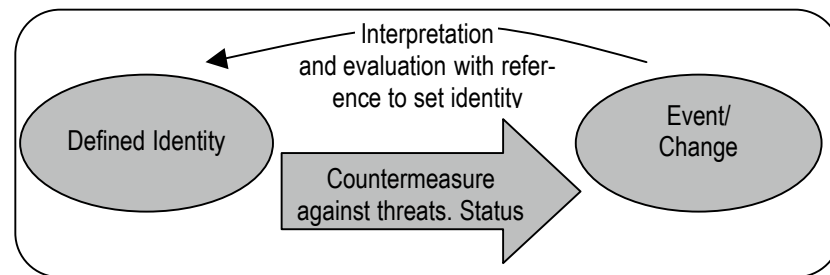


Figure 4-1 Static ESDI

However, as the study has shown, the ESDI is the product of several interdependent variables. Attempts to explain and elucidate the development of the ESDI and of the mechanisms that steer its transformation would therefore have to be built on equivalent explicatory models, if they were to do justice to the object of analysis. Such 'dynamic' models would only contain dependent variables.

I'm not disqualifying 'static' models that work with some dependent and some independent variables, e.g. that operate with a static ESDI. But, one has to be aware of their limited scope. By declaring one or several variables to be independent, 'static' models forcefully display a linear causal chain of reaction. This can be very useful. In economic studies, for instance, such an approach is well established. However, emphasising one particular variable and displaying what happens in a thought model *ceteris paribus*, is not the same thing as explaining the dynamics of the market (or identity in the case of the ESDI). This only demonstrates a one-way move, while neglecting all other movements that may amplify, counteract or redirect the motion examined in the model. One must be aware of the validity of 'static' models that assume dependent variables

<sup>1</sup> That the chapter occasionally touched upon the historical development of the security processes in the different contexts does not change the static nature of the analysis

to be independent. They can merely be used to stress and display certain variables and mechanisms that are involved in different processes, be it the market, the European integration process or the formation of the ESDI. As in all science, their validity can be measured against the past development of the process. However, such a trial merely states whether or not the influence of the examined variable can be used to explain the development. Strictly speaking, an explanation cannot even be *proved* to be right. One may merely substantiate and strengthen an argument. Such a test can never confirm whether the considered variable is more important than those that are excluded. Since all models exclude some variables they cannot give any guidance in determining what variable is dominant. An approach that explains the European security polity, politics and policies as a response of an existing invariable common European Identity may be just as valid as one that regards them as a result brought about by external changes and challenges to the nation states. Clearly different approaches of identity and integration theories will offer varying explanations for the development of the ESDI, depending on what variables they stress.

My ambition is not to remedy this flaw. Constructing a model that could explain the dynamics of the ESDI in such a way, that it could be used to make valid predictions, lies way out of the scope of a single thesis.<sup>2</sup>

This chapter addresses the dynamic development of the ESDI and therefore how the thinking of security changes. An instability-of-the-object is introduced. The ESDI is not regarded as a predetermined setting that withstands and opposes to all change. Investigating the formation of the ESDI follows the constructivist understanding and thinking of security and international relations. It assumes that actors on the international scene have transformable adaptive identities. The way in which security and international relations are thought of can therefore change. The epistemology and terminology of the static approach is unable to comprehend the dynamics of intra-group identity formation because it assumes what is to be explained, the existence of the collective identity.<sup>3</sup>

Of course, the process(es) in which collective (security) identities are formed is far too complex to allow the development of a well-founded and indisputable scientific model that fully explains the changes of the ESDI. Like other identities, the ESDI is not formed based on a linear chain of causality, but rather in a process characterised by interactions. Whilst the principles displayed in the figure above are not dismissed, further variables must be added if the dynamic change of SDI's is to be included. Internal as well as environmental changes can induce new forms of threats, of security, of referent objects and of SDIs. Countermeasures do not only preserve the status quo. They also affect the environment and thereby future events and threats. In return, these events may influence the identity itself and the way security is thought. Defensive actions aiming at preserving one identity can cause unintended environmental changes that bring about the modification of that same identity. The European integration process has shown that the security processes are sometimes adapted to new situations and that this may influence the SDI. In contrast to the static approach, this one allows for the possibility that a referent object is not defined before a threat is identified. This may, for instance, be the case if a new type of threat occurs. Therefore, identity does not always have a causal role for the behaviour. Sometimes be-

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<sup>2</sup> The question is if it is possible at all. The larger the validity of the model, the more variables must be included. But even if the model duplicated the entire reality (which is not only practically, but also logically impossible, since it would have to duplicate itself, and again once duplicated...), it would only be a valid model, if all reactions can be explained with a causal chain reaction.

<sup>3</sup> See Patricia Owens, *Reflectivist and Constructivist IR Theory and the 1999 Kosovo Crisis*.

haviour can be triggered by events that (re)define the identity and the way security is thought. This does not mean that the continuity of the identity is lost. The actors on the international arena will always judge a situation, drawing on their internalised setting, but these settings are not fixed and can occasionally be redefined.

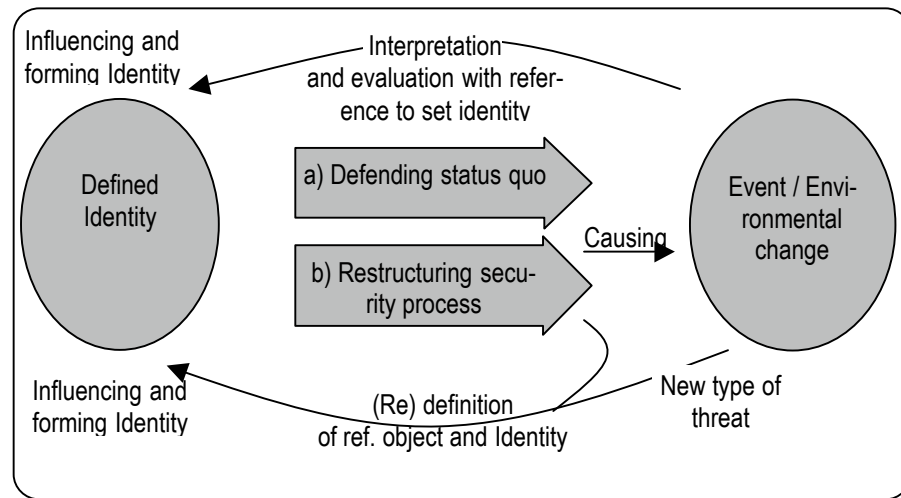


Figure 4-2 Dynamic ESDI

It would be presumptuous to believe that one could identify all events that influence the development of a collective SDI, to determine how they affect it and how the Community's response influences the chain of events. Fully revealing the mechanisms that steer the evolution of a SDI is impossible. In contrast to the static utilisation of the ESDI outlined above, it is not possible to identify a dependent variable and a determinant when investigating the dynamics of the ESDI.<sup>4</sup> If this were not the case, it would be much easier to make predictions and to tell the future. The fact that influential events never occur in isolation further complicates such endeavour. The same input may be interpreted, understood and influence the identity in different ways, depending on the wider context in which the event is embedded. Finally, it is difficult to determine how different members of a Community react on a specific external stimulus, since their uniformity is relative rather than absolute. The range of influences on the collective identity and the SDI is therefore too vast to be calculable.

Consequently, statements on the dynamics of a SDI can never claim to be complete and they always contain a speculative element. This is why I have decided to discuss the dynamics of the ESDI in a separate chapter. The candid shot of the ESDI taken in the previous chapter is largely based on observations that describe the current state. An assessment of the ESDI's dynamics, in contrast, must almost fully rely on interpretations of observations. What can be observed quite easily is the state of the ESDI at time  $t_1$  and the new state at time  $t_{1+x}$ . It is a totally different venture to determine the exact causes for the change, i.e. what has brought the change about.

What I can and will do in this chapter is to highlight some aspects that in my opinion play a decisive role for the development of the SDI in the different security contexts. This chapter seeks explanations for *why* the ESDI has evolved the way it has in the different contexts. Why is security thought of and produced in different manners in different settings? Based on this, it outlines

<sup>4</sup> In models utilising a static ESDI, the events are the determinant and the collective's reaction the dependent variable.

how the ESDI is likely to develop in the *future* and identifies some indicators of major shifts in the different contexts. These predictions cover a period of around ten to fifteen years.

#### *CRIMINAL CONTEXT*

The lack of common European referent objects in the criminal context is striking. So is the incompleteness of the security process at the European level. The only exceptions are when the European Communities' financial interests or the obligation to grant protection to those in need are defended. In all other cases, internal and external threats are defined and counteracted in national security processes and with reference to national referent objects. Crime challenges and threatens the rule of national criminal law and the national government's ability to govern. The same is also valid for illegal immigration. In addition, migration only poses an integrative and economic burden on the host nation (not on the European Community) and is regarded as something that primarily affects the national (not the European) cultural homogeneity.

The simplest explanation for why the security process in the criminal context has not been lifted to the European level is that it is not necessary, nor would it increase the efficiency of the fight against crime. At present, European institutions offer assistance, service and support to national security processes and member states agree on common formulas to facilitate the cooperation among national authorities. These efforts can certainly be further developed, but there is no need for a complete European security process. Member states do not strive for a European FBI with operational responsibilities or a unified European judicial system.

One reason is that current arrangements serve and function well enough to enforce the general validity of the principle of the rule of national law. As long as a national security process can defend and protect the national referent objects, there is no functional necessity to install a European security process. This would only become indispensable if the judicial system in one state would erode and affect the ability of other member states to protect the rule of law within their own territory. Such developments have already taken place in some lawless crisis areas, where international forces have taken over responsibility for the fight against crime. The EU states are however far from such an emergency.

The establishment of a complete European security process would also involve major practical and principle hinders. The lingual and cultural European diversity would obviously pose severe problems to any European investigator. Guaranteeing the democratic control of and giving a European system legitimacy is another difficulty. Much more important, however, is that an institution of European criminal law and the establishment of a European judicial system would contradict the aim of the current national security processes. The main problem from a security perspective is that the current security processes aim at protecting the national government's ability to govern on behalf of the national legislator. The exclusive national right to enact criminal law is a central piece of that ability. Transferring this competency to the European level would therefore not make the security process more efficient. On the contrary, it would seriously infringe on the national referent object that is to be protected in the first place. It is not surprising that the governments and parliaments of member states oppose to such transfers of responsibilities as long as they achieve to defend the rule of national criminal law. In addition, national criminal law reflects the national identity. Following a transfer of the competency to enact criminal law, national and European identities might find themselves in positions where they conflict instead of complement and reinforce each other.

As the current European cooperation aims at making the national security processes more efficient, it serves to conserve the national security process rather than to prepare for the establishment of a European security process. To fight crime efficiently national authorities must cooperate. But, it is not necessary to transfer the security process to the European level in order to preserve the rule of national law.

Nevertheless, functional incentives that suggest further integration can be identified in three areas. The first concerns the economic interests of the European Communities and the idea of the *Corpus Juris*. The creation of an own European judicial system in this area is feasible as long as it does not concern criminal law and as long as the aim is limited to the protection of the common European referent object. A European public prosecutor is likely to be introduced in this area to complement OLAF. Within the next fifteen years, we may even get an own European court that rules in these matters. It is thus probable that the EU will arm itself with an autonomous security process to defend the Communities' financial interests.

The second area concerns the granting of temporary protection in the case of mass influx of displaced persons. Since these decisions are taken at the European level with qualified majority, it is likely that the burden-sharing mechanism will be further developed for such cases. The system of financial compensations is likely to be increased and if necessary complemented with a ratio of distribution of those in need of temporary protection. For other areas of legal immigration, however, the cooperation is not likely to surpass the current common definitions of minimum standards. Persons enjoying temporary protection do not confront the host nation with the same integrative burden as long-term refugees. Nor do they pose the same migratory threat to national referent objects since they will leave in a foreseeable future. This makes it easier for member states to allocate the competency to decide on mass influx to the European level. It should also be noted, that it is the only mass-assessment that is made in the context of migration, and therefore the only one that can be performed by the Council. As long as migration only poses threats to national referent objects, it is difficult to see how and why the decision on who shall be allowed to immigrate to a European country should be lifted to the European level. Both primary migration into the Union and secondary migration within it will remain subject to a national assessment performed by the anticipated new host nation.

The third and final area where functional incentives can be identified concerns the control at external European borders. The illegal crossing of external border is a common concern of all member states. By stopping illicit immigration border guards produce a public good. One member state cannot compensate for the inefficiency of another member state's border control. While member states will continue to determine what immigration shall be legal, the illegal immigration must be hindered with equal efficiency along the whole external border of the common area of freedom, security and justice. Since internal border controls are abolished, the weakest spot along the common external border determines the control over cross-border traffic to the entire area. A member state could of course protect itself temporarily by reinstating inner-European border controls. In the mid-term, an improved internal control could also be used. In the long-term, however, equal standards must be applied along the Union's entire border if the area of free movement is to be maintained. The creation of the proposed European Border Guard is therefore not fictional. Initially it would probably be set up as a complement to national units. In contrast to the police cooperation, the European Border Guards may also obtain operational

responsibilities. It is nevertheless difficult to imagine that the responsibility for border security will be transferred from the national to the European level altogether. Why should any member state resign responsibilities, and accept that the fight against illegal crossings of the country's own borders becomes dependent of the priorities set by a European Headquarter (with limited resources), while it retains the responsibility for the internal security. The security process in the sphere of external border controls has the potential to develop to a semi-autonomous one that is co-ordinated with and compensates national efforts. But, there is no prospect of an autonomous European security process within the next ten to fifteen years.

#### *ECONOMIC CONTEXT*

The remarkable thing about the European cooperation in the economic context is that it was launched to counteract mutual military threats. Robert Schuman and his colleagues deserve much credit. They did not only seek remedy for the insufficient national security processes at the European level. In addition they sought and found a solution for military threats outside of the military context. That they did so in a time when the traditional recipe of power balancing was still implemented, i.e. in the conflict between the Soviet Union and the Western powers, honours them even more. What makes the ECSC and its successors brilliant, is that they achieved to dissolve the perception of military threats among the participants altogether. This was accomplished through the development of a European referent object - the common economic system and its stability.

This does not mean that the entire development of the economic cooperation within the EC has been driven and steered alone by the idea of overcoming internal military threats. As the cooperation intensified and internal military threats vanished, economic events and interests became increasingly important for the economic integration.

One thing that has not changed over the years, is the belief in market economy and free trade as keys to prosperity, and as universal countermeasures against military and many other threats. This trust in market economy and free trade characterises the Union's security processes in the economic context. It determines what is regarded as a European economic threat, what responsibilities the Union has, and how the Union produces security. Meantime the functioning, subsistence and stability of the Common Market have gained the status of an ideal, and turned into something that is best described as an end in itself. This ideal has become the primary European referent object. Safeguarding the stability of the common European economic system is regarded as the best way to dissolve internal military threats, attain prosperity and to delegate the responsibility for supply to the market.

In relation to third countries, the Union's policies of course primarily seek to increase the prosperity of the Community. Nevertheless, it also advocates free trade and market economy on the international arena. Although the Union does not lose sight of its own advantage in relation to third states, these principles are regarded as main ingredients to solve both European and other international security challenges. As the section on geo-economics revealed, the Union seems to prefer economic co-operation to economic and military power projection. This clearly influences how the EU has and will utilise its economic might on the international arena. Apparently, economic co-operation is regarded as the more efficient way to protect the Union's economic interests, as well as to export and promote common values. I cannot see any reason why the principle of free trade and market economy would lose their central position in the European



security process. The development outlined above is therefore not likely to change during the next fifteen years.

Why are some European security processes in the economic context autonomous and others semi-autonomous or consensual? While it has become an end in itself to protect and sustain the common European economic system, transferring responsibilities to the European level has not. Security processes that defend the Common Market from internal and external threats are organised according to a functional logic. Member states prefer to retain responsibilities for the production of security as far as the existence of a common market allows.

Countermeasures do not only result in the protection of the referent object. They also influence their environment and are therefore directly or indirectly linked to other events and contexts. This is one of the reasons why it is so difficult to isolate security contexts from 'normal' policies. Launching a European security process does not only imply that decisions on when and what countermeasures shall or shall not to be implemented are taken at the European level. A European security policy can also limit the member states' political room of manoeuvre within the same or in other contexts. Autonomous European security processes potentiate this problem. Here member states are at the 'mercy' of EU. They can neither compensate for European defaults or inadequacies, nor can they set own priorities when the protection of two referent objects is incompatible.<sup>5</sup> Where the Common Market allows, member states therefore always prefer semi-autonomous to autonomous security processes. National and consensual security processes are applied where the production of security (efficiency) and the stability of the system allow.

Concerning the future, I hardly see any qualitative change of the ESDI in the economic context. I am not suggesting that the European economic integration process has reached its final stage. The security processes will continue to develop, but none will shift from one class to another, e.g. no semi-autonomous process will transform into an autonomous one.

There are only two functional incentives for instating autonomous European security processes. In both cases, a common, indivisible referent object is used and the economic security is produced as a public goods. The first applies when security cannot be produced through semi-autonomous security processes. The functioning of the Common Market, for instance, may require a single policy in some fields, e.g. a single customs or monetary policy.<sup>6</sup> However, the areas within the economic and monetary union to which this applies have already been defined. Therefore, none is likely to be added as long as a 'fourth step' of the economic and monetary union is not introduced. The second incentive applies when member states have to be disciplined. The Stability Pact and the Commission's role in competition matters are two examples where member states have submitted to the control of an autonomous European security process. I do not see any other areas within the economic context where member states cannot be sufficiently disciplined by European legislation.<sup>7</sup> I recognise the necessity of improvements, e.g. to develop the Stability pact. But, since the European security processes in this setting already are autonomous, this does not imply a qualitative change of the ESDI. Hence, I cannot think of any

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<sup>5</sup> The disputed Philips Curve, for instance, suggests a trade-off between employment and inflation.

<sup>6</sup> The Commission's role in competition matters concerning 'larger' cases is another example. A merger of companies, for instance, requires a single and unambiguous decision. It cannot be allowed in some and rejected in other national security processes.

<sup>7</sup> It should be noted that the Stability Pact does not have the status of European legislation, and that the foreseen decisions of the Council cannot be tried in court.

European security processes in the economic context that will have to be made autonomous in the next fifteen years.

The same thing is basically valid for the semi-autonomous security processes. The volume and scope of the current semi-autonomous processes may be extended, but I can only see one field where an additional semi-autonomous process may develop. Even if the export of arms and dual use goods rather belongs to the military context, I address it here. In the long run, European regulations that can be complemented with more restrictive national ones may become necessary. Common export regulations are indispensable for an efficient cooperation amongst the European arms industry. In addition, it will avoid tensions and splits among member states. There are examples where some European member states have made profits by exporting weapons and/or dual use goods to some regimes, and where all member states had to share the burden when that country turned into a 'trouble maker'. Finally, it is an essential step towards a global, or at least international, proliferation policy.

As for consensual security processes, economic sanctions is one of the few issues that require a collective European decision to become efficient and represent more than a moral rejection of a country's regime or policies. This does not hinder member states from trying to securitize other issues within the economic context at the European level. In some cases, the European Union may consensually decide on a common response to the challenges addressed. However, at present I cannot identify any specific security policy within the economic context apart from economic sanctions, that necessitates the establishment of a consensual European security process for efficiency reasons within the next fifteen years.

To conclude one should underline that Union most likely will continue to rely on the market to regulate the security of supply, and refrain from geo-economics. Thus, in the economic context no remarkable change of the ESDI is to be expected.

#### *MILITARY CONTEXT*

Thanks to the development of the European Union and the Alliance, a state of a-security has been established among the member states. Consequently, the military security context is only concerned with external threats. Despite of all differences and tensions among the member states within the two organisations, this is not likely to change.

There are many reasons why the European security process is only consensual in the military context. Semi-autonomous and autonomous European security processes would require forces that can operate autonomously and that stand under a European command. Such a development is therefore unfeasible for the same reasons that prompt nation states to keep own forces and to reject the idea of a veritable European army.

Throughout history, military forces were set up to enforce the interests of their erector. The primary purpose of today's national military forces is still to deter aggressors and to defend the national territory or interests. Military force is the strongest power instrument and therefore the only means by which a state ultimately can defend its own sovereignty. No wonder that the own military strength and formal military autonomy form part of several European states' self image. Replacing national with European forces would strip the member states of this instrument and oblige them to rely on a European security process to defend their sovereignty and interests. The crucial reason why this will not happen is that member states may not be able to correct European deficiencies. When the European security process proves unable to defend a state's sover-

eignty, that state may no longer exist as a state. A European army could for example have to surrender certain parts Europe in order to defend the entity. Even the thought of this is unacceptable for the people in most member states. It is not an option for the governments either, which are responsible to the national electorate and have to guarantee for their country's security. In many countries, it would therefore be difficult to justify a transfer of the military responsibility to the European level.

Creating standing European military forces that complement the national armies is also difficult. The main hinder to such a development is not necessarily the theoretical possibility of having European and one or several nation's forces on opposing sides in a conflict. It is rather a question of economics. European taxpayers must finance European as well as national forces. It is not likely that a European defence budget would be added on top of national ones. Why should taxpayers or decision-makers be ready to spend additional sums on a European force, if they are not prepared to augment current national defence budgets? A European army would have to be set up at the expense of national forces. This would be unproblematic, as long as all member states share the same interests and set the same priorities. However, they cannot assume that this will be the case. The simple fact that the geographical scope of the member states' military security policies varies refutes such presumptions. To this, one can add historical, cultural and other variations that may result in differences. Countries like France, Great Britain and the USA prefer to spend their money on national assets, because they want to be sure to have access to them when needed. Who would reallocate financial means from national to European forces, if one cannot be sure to utilise the European resources at will? Without participation of the big military powers, there is of course no perspective to set up a semi-autonomous security process within the EU or NATO.

The resistance against standing European police forces for OOA operations can be explained with similar arguments. Apart from the economic reasons, one must also ask what responsibilities those parts of the force would have that are not on an international mission. Recruiting police officers to such a force would not be possible without a rotation system. It would not be acceptable to finance a European police force of which at least 3/4 would not be involved in law enforcement. On the other hand, it would be difficult for the member states to accept a system in which the European Union could draw on national police forces at will. Member states will not give the EU the competency to dictate when and how many national police officers it needs from which country. Not only is this incompatible with the current voluntary recruitment system of national police officers for OOA missions. Most important is that each country will reserve the right to dispose of its national police force and to decide if national officers can be spared for international missions.

NATO and the EU have merely built up and will maintain the collective assets that are necessary for a consensual security process and for the co-ordination of multinational military (and within the Union police) operations within the Euro-Atlantic area. There are of course incentives to intensify cooperation in some areas. States may for instance choose to acquire specific capabilities together with others, if they cannot afford to do so unilaterally. However, this will not generate an autonomous or semi-autonomous European security process. In the military context, NATO and/or EU members will therefore not abandon the current national line of thought for a European one. Security will not be thought of as an indivisible European security.

The two European consensual security processes are nevertheless in a transition phase that can result in severe changes. Even if no qualitative change of the ESDI can be expected, I want to address the current dynamic because it will influence the transatlantic relationship, the internal development of the Union and the Alliance, as well as the relation between the two organisations. In other words, it may effect the definition of 'us' and 'them'.

*Geographical fragmentation.* The abolition of the commonly perceived military threat from the Warsaw Pact has released some trends that can have unifying effects and others that may unravel the ESDI. Until 1990, the military context was dominated by the East-West conflict. The security interests of the European countries were therefore embedded in and subordinated to the bipolar order. Consequently, all their military activities within or outside of the Euro-Atlantic area were placed in the wider context of the block confrontation. At the time, NATO was an organisation that prepared for collective military countermeasures in the geographical area where the main theatre of war was expected in case of an open military conflict. The end of the East-West conflict dissolved the unifying force that had brought Western European military security policies in line worldwide. As a result, NATO's security process no longer matches the security concerns of its member states. The overhanging Soviet threat does no longer synchronise the member states' global security interests with the Alliance's security process. I am not suggesting that all Allies used to agree with all fellow member states' security policies outside of the Euro-Atlantic area before the 1990. Transatlantic differences have occurred from time to time. Since the Second World War, the USA has had an ability to engage and utilise military force around the globe that widely surpasses those of other allies. It is therefore not surprising that Washington defined and defended security interests throughout the world in a different way than European states. Arguing that the US to some extent did so on behalf of the entire West, does not change the fact that the American security agenda always differed somewhat from the one of other NATO members. These differences, or better the suspicion that Washington might set different priorities than the continental European countries, already induced a closer French-German cooperation in 1980's. The end of the cold war allowed these differences to take larger proportions and opened for divergent security interests and threat perceptions. This did not only start the development of what was to become the ESDP. All of a sudden, NATO was no longer the organisation in which the member states manage all their external military security concern. As the imperative of collective defence diminished, NATO has turned into an organisation that only deals with certain security concerns, namely those within the Euro-Atlantic area. This geographical limitation is also valid for the ESDP. Thus, neither the ESDP nor the Alliance satisfies the global security interests of some member states.

Today, member states seek to meet threats that occur within the Euro-Atlantic area in two parallel European security processes, while they try to safeguard those security interests that lie outside of the Euro-Atlantic area through the UN and/or ad hoc coalitions of the willing. This is problematic for the ESDI, because differences concerning the production of security outside of the organisations' scope can strain the relations among member states and influences the collective security process that deals with threats within the Euro-Atlantic area. In addition, the geographic division results in a situation where member states obviously do not primarily try to produce security through the collective security process of the two organisations. This is only done when threats occur within the Euro-Atlantic area. All member states carry the responsibility for this.

On the one hand, member states with regional security interests have not been prepared to give the organisations a global military role, let alone to procure the necessary capabilities that would allow the organisations to operate world wide. Thus, the two collective security processes only partially meet the security needs of those member states that pursue a global military policy. Therefore, these member states are obliged to acquire other capabilities than the fellow members and to pursue their global security interests outside of the organisations' framework. Different security interests and different capabilities result in different actions. This provokes different reactions from the targeted parties that most likely will concentrate their countermeasures against those countries that participate in the coalition of the willing against them. As a result, the threat perception among member states will drift apart even more. This is how an unravelling dynamic could gain speed.

On the other hand, those states with global interests have not always attempted to raise their security concerns within the organisations, let alone to lift the security process to a European level altogether. The 2003 Iraq war is a good example of this. Neither the USA nor any other member state made attempts to launch and complete a security process in NATO.<sup>8</sup> The USA took the decision to act and invade Iraq unilaterally and sought support for the impending war from other states on a bilateral level, while Germany declared that it would not be part of any military operations what so ever against Iraq, not even with a UN mandate. Thus, both countries entered the international arena with fixed positions, basically claiming that they would only be a part of a collective international security process if the outcome corresponded to the predefined national position. This approach hindered any attempts to start a security process within NATO.

Consequently, the thinking of security as something essentially national is preserved and even strengthened. In other words, neither the Alliance nor the Union has achieved to harmonise their members' thinking of security. Externalising these varieties from the two organisations will not dissolve the differences, nor does it contribute to a rapprochement or to the development towards a thinking of security in terms of a European security. For the evolution of the ESDI, it would therefore be important to harmonise the scope of the two organisations with the one of their member states. The Union's decision to send forces to Congo can be seen as a first move towards counteracting such a development and widening its geographical scope in the military context.<sup>9</sup> However, while both organisations are likely to take position or comment military conflicts world wide, none is likely to engage and launch military operations all around the globe within the next 15 years.

*Functional unification.* Even if the abolition of the East-West conflict did away with a unifying threat, it also caused a shift within the organisations from Article 5 to crisis management tasks that favours unification. The crisis on the Balkans has revealed severe deficits of the European security processes and prompted member states to search for collective solutions. Crisis management in the Euro-Atlantic area can of course be regarded as 'Article 5 prevention'. However, the effect of crisis management operations on each member states' security is indirect and impossible to assess. The prevention and management of crisis is therefore best described as a public good. Unless a country perceives a direct threat, it will not be prepared to carry the whole burden of crisis management and prevention efforts alone. A unilateral extensive engagement

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<sup>8</sup> Since the USA were the driving force behind the invasion, launching a security process within the EU was not an option.

<sup>9</sup> Council Decision 2003/432/CFSP of 12 June 2003 on the launching of the European Union military operation in the Democratic Republic of Congo.

over a long time would overstretch a country's resources and hardly be justifiable vis-à-vis the own electorate. Above all, it is impossible for a single member state to handle a crisis. This is not simply a question of military insufficiency. The main reason is that one cannot solve a crisis with military means alone. Crisis management operations never aim at helping one party to victory. On the contrary, per definition they prevent such a development. Consequently the tensions and the conflict as such will remain. A stabilisation of the resulting situation does therefore require civilian efforts. In no other setting is the linkage between military, economic and criminal contexts as close and obvious as in the prevention and reconstruction phase. Single member states cannot offer the necessary support, because the Union decides on some of the most important issues in this context. Trade regulations is only one issue where member states cannot act unilaterally. Incentives for closer cooperation at the European level and in particular within the EU are therefore obvious.

*Maintained capability gap.* The question of capabilities poses another challenge to the ESDI. Paradoxically, one could interpret the transatlantic capability gap as an indicator for a strong ESDI. The European countries may be seen as free riders that refrain from increasing their defence budgets and to enlarge their military capabilities because they can rely on the USA to pull the chestnuts out of the fire if necessary. There is something to this argument, but above all, the capability gap seems to strain the transatlantic relations and the ESDI. It is quite clear, that the decline of defence expenditure during the last decade largely was caused by a changing threat perception. On the other hand, it is also obvious that a country's military capability influences the scope of the national security agenda, what options for the production of security it may consider, what importance it attaches to the military force as foreign policy instrument and what efforts it is willing to undertake to maintain its military capacity. Those who possess more military power think differently of the use of military power. Most European countries do not only think of security in a different way than the USA (and to some extent the UK and France). European troops also have difficulties to operate together with technically more advanced American forces. For certain operations, Americans may therefore sometimes see European contributions as a burden rather than a support. If a coalition of the willing is set up, the American lead is never questioned. Disagreements concerning the use of different national forces may therefore arise. As the American technological advantage may be particularly suited for high intensity tasks, while European forces at times are assigned to flanking measures with low medial profile.

Lasting European capability flaws will not only continue to cause distress in Washington, where European declarations will lose credibility. It will also endanger the credibility of the two organisations themselves, and in particular of the ESDP. Setting up common goals and not achieving them is one thing. The EU, however, has not only adopted the Helsinki Headline Goal, which sounds modest in numbers, and yet remains unattainable due to supplement "militarily self-sustaining",<sup>10</sup> and made it public in order to avoid misunderstandings and uncertainty. The Union has also given assurances that the goal can and will be achieved.<sup>11</sup> This public strategy certainly is hazardous. It is wise, if the aim is to increase the pressure on the responsible governments. But, if the goal is not met, exactly that which initially was used as a lever to encourage performance, will be exposed, namely the inability of the member states to co-ordinate their

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<sup>10</sup> Which is not clearer than the contentious word autonomy which often

<sup>11</sup> C.f. Defence Ministers from European Union Member States at the Capability Improvement Conference: Statement on improving European Military Capabilities –European Capability Action Plan. Brussels 19.11.2001, article 2 and 4.

efforts and to provide the necessary national resources to achieve a common objective. That the capabilities of the member states and the headline Goal do not add up, will surely be a subject in the public debate during years to come. The worst-case scenario would be that a large-scale Headline Goal fitted conflict of high intensity occurred while the American resources were employed elsewhere in the world and NATO choose not to engage. In that case, EU members would have to admit that they cannot deliver. This would damage the credibility of the EU as a military authority and with it the CFSP. The military inferiority makes the Europeans dependent of US resources if they want to conduct own operations. The problem is not that the Europeans are unable to conduct own large-scale operations of high intensity. They already carry a large share of the military crisis management burden, and their capabilities are not diminishing. In addition, the defined force requirements are merely estimates. Since every crisis is different, the listed forces might not match the actual needs anyhow. Turning the argument around, the committed forces, in some categories exceeding the requirements, might be able to achieve far more than expected. In any case it would be difficult to estimate which crisis requires 60 000 soldiers and which would require 65 000. Could the EU really remain inactive arguing that the crisis requires 70 000 troops? Of course not. When it comes to the crunch, the defined force goals of both organisations merely indicate estimated requirements and do not represent exact figures. Nevertheless, as leading military power the USA sets the standards for what is required for an operation and what the public expects from such operations. High-intensity zero-casualty-operations can only be performed with American support. If the public does not adjust its expectations to the European capabilities the dependence on the USA will last.

Nevertheless, capability flaws that hamper the Europeans' ability to produce security and the dependence on the USA are also incentives for further and intensified cooperation among European states. However, the affect of this development should not be overestimated. The transatlantic capability gap is not likely to be closed within the next fifteen years. On the contrary, it will most likely grow. On the one hand, the defence expenditure gap is likely to remain. On the other hand, the USA can spend its money more wisely and use its resources more efficiently because it only maintains a single national defence structure. The procurement volume is larger than the European one and relevant decision-making procedures less complicated than any coordinated European one. As long as the Europeans do not set up a single defence, they will never be able to rationalise procurement and use of military assets to the same extent and as easily as the USA can. Surely, the European arms-industry can expect further deregulation that will facilitate cooperation amongst the European manufacturers. A closer cooperation on the demand side, i.e. the member states is also likely. The trend towards coordinated procurement and training will continue. But, the upholding of separate national forces always involves duplication of assets. In addition, each state has a separate national procurement planning and decision making processes that is dependent of and must be coordinated with other national policies and expenses. The example of the German acquisition of the A400M has displayed these difficulties. Veritable European assets will only be acquired if a) they are exclusively needed at the European level, b) they are only needed for crisis management tasks, or c) when member states cannot afford to procure them unilaterally or together with their closest partners.

*Preserved separation.* Finally, the separation of the two organisations' security processes obstructs further development of an ESDI in the military context. Overcoming the separation of the two parallel security processes is a main challenge in the years to come, and a necessity to

prevent a gap from opening across the Atlantic. A merger of the two processes would certainly resolve that situation. However, the empirical study has already dismissed such a development. A division of labour therefore appears as the only option. This approach will only work if the division is given a form that does not result in a division of perception. A geographical partition of responsibilities is therefore not suitable. A functional division where the EU would lead all civilian, and the Alliance all military countermeasures, is not a realistic option either. Thus, a way must be found where both organisations take on military tasks, where their security processes become interlocked and where duplication becomes superfluous. The last point is central because the duplication of NATO abilities within the Union allows the two security processes from detaching and remaining separate. To prevent this, the Alliance must give the Union guaranteed access to NATO staffs, while the Union has to develop capabilities that add value to NATO's military crisis management operations and a way to integrate all allied states into the Union's crisis prevention and reconstruction policies. As for the latter, the Stability Pact for South Eastern Europe is a step in the right direction and an example for how the security processes of EU and NATO states can be coordinated and integrated. Concerning the added value, the Union has the potential to develop an ability to coordinate civilian with military crisis management instruments.<sup>12</sup> In addition, the EU and its member states could focus on a 'constructive duplication', i.e. on the development of transport, communications and intelligence capabilities that are scarce even in US forces.<sup>13</sup> The big problem seems to be the involvement of non-members in the Union's preventive policies, above all commercial and trade policies, and for the Alliance to guarantee the Union access to NATO capabilities. Although efforts will be made to bring the two organisations closer to each other, it is unlikely that any solution will be found to interlock the two organisations' security processes in such a way that they will produce security together in a coordinated manner. Thus, what the division boils down to, namely the transatlantic division, will not be overcome. Consequently, two different ESDIs will continue to develop in two separate organisations.

#### *ESDI IN NATO OR EU?*

I want to conclude this chapter by asking which organisation has the larger potential to develop the ESDI further. Although it is difficult to give a straightforward answer, current trends seem to favour the EU, even if the Union's potential should not be exaggerated.

To begin with, the Union's potential can be explained with the common economic policy. Although the Union does not apply its commercial, trade and development policies in a 'stick and carrot' manner, it appears reasonable that these policies influence the security production. For instance, they form a crucial part of crisis prevention and reconstruction/stabilisation efforts. The Union is responsible for commercial and trade policies vis-à-vis third states worldwide. Thus, geographically EU policies also match the security interests of those members that have a global scope. I am not saying that the Union always applies these measures as security policies. But, if member states with global security interests want to complement their national military efforts with economic policies, they will also turn to the EU. I am not suggesting that this will boost the ESDI. The EU will have difficulties to sell its civil crisis prevention policies as successes

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<sup>12</sup> C.f. Müller-Wille 2002.

<sup>13</sup> C.f. Schake, Kori, 'Constructive Duplication: Reducing EU reliance on US military assets', in Centre for European Reform, *Working Paper*, January 2002.



stories. Their efficiency is much more difficult to assess and they are more arduous to propagandise than military interventions. In addition, civilian instruments strive to include and support local authorities and actors. It is therefore more difficult to ascribe the credits among those involved. My point is that member states depend on the EU to implement commercial and trade policies, in security as well as in other contexts.

The shift from Article 5 to crisis management tasks favours international cooperation in general, and the cooperation within the EU in particular. Whilst NATO has adapted its military apparatus to the new tasks, the EU has entered a new field by developing a military capability and stands at the beginning of designing a structure in which civilian and military instruments are to be orchestrated.

As for the capability gap, finally, it will most likely assure that NATO will remain the centre of gravity for the coordination of European military forces. The Alliance will be able to keep its position as the main military organisation thanks to the integrated military structure and the US membership. The main dynamic, however, will be located to the Union. As described above, the transatlantic capability gap has both dividing and unifying effects. While the dividing influence threatens to increase the transatlantic differences, the unifying influence only affects the Europeans who are driven to cooperate even closer.

Consequently, NATO will struggle to maintain the ESDI it has developed, while the ESDI will continue to evolve further within the EU. This does not mean that the evolution of the ESDI will rush ahead in the EU. All hindrances and limits displayed above will remain in the three security contexts. EU members will neither replace the national security processes with a European one to fight internal threats, nor will they do so to counteract external threats. The ESDI will thus not replace the NSDIs. Security will not automatically be thought of as European security either. Nevertheless, the ESDI will progress within the EU, while NATO will try to prevent the erosion of the one it has established.

## 5 Conclusion

This conclusion addresses to what extent an ESDI presently exists in the EU and NATO, and what its nature is. Some implications of the current state of the ESDI are also outlined. Of specific interest is in what areas, to what extent, and to what degree, security is conceived as a pan-European security. How is European security conceived and produced?

The study in hand is subdivided into three main parts that reflect different concepts of security – a military, an economic and criminal one. Moreover, internal threats are differentiated from external ones in order to display differences in the definition, production and reproduction of uniformity and identity. The figure below displays the arrangement of various security challenges in the resulting six sub-fields.

		European Security processes/policies	
		Internal European security/ threat	External European security/threat
Context	Mil.	a) a-security no ESDI	b) NATO/EU
	Econ.	c) EU	d) EU
	Crim.	e) EU	f) EU

*Figure 5-1. Six fields of security*

European organisations and the member states define and respond to threats that occur in these fields through differing national and European security processes. The occurrence of several European security processes suggests that several European SDIs may exist.

The study displays that the scope and capabilities of the Union differ from the Alliance's. The EU defines and counteracts threats in all three examined contexts, which the Alliance does not. (box c-f). Additionally, the two organisations' range of action differs within the military context in which both are active (box b).<sup>1</sup> As a security producer, the EU utilises a broader range and more clearly outlined referent objects, deals with a larger variety of threats, and counteracts them with a wider array of instruments. When arguing in terms of referent objects, it becomes quite clear that the Alliance is more heterogeneous than the Union. As the Union counteracts both internal and external threats in the economic and criminal contexts, it determines sameness and its own identity in a different way than the Alliance. The ESDI of NATO, which only deals with external threats, is based on a collective definition of that which is different, i.e. the non-conform and the 'other'. The EU, in contrast, not only defines uniformity by distancing itself from external others, it also accommodates processes in which common internal rules and values are defined, and in which uniformity is produced through internal rectifying moves.<sup>2</sup> Consequently,

<sup>1</sup> See figure 3.1-4.

<sup>2</sup> The presentation of general values that were used as referent objects during crisis management operations does not change this argument. While both organisations oppose to and counteract violations of democracy, human rights, rule of law etc., the member states have not elaborated a common interpretation of these, nor advocated any specific model solutions that should be applied. They have agreed on the definition of

the Union's ESDI extends far beyond that of NATO because it operates within a wider area and its referent objects (the uniformity and identity) are more substantial.

Before addressing the limitations and difficulties of the Union's ESDI, I will further discuss the military context (box b) within which both organisations are active and outline some similarities, differences and implications of the ESDIs displayed.

#### *MILITARY CONTEXT – NATO AND EU*

With the exception of Greece and Turkey, military conflicts between NATO and/or EU member states are not on the organisations' agenda. This does not mean that the two organisations do not have an internal dimension in the military context and that a-security among member states could be taken for granted. Nevertheless, the ongoing cooperation within both organisations has effected and maintains a situation in which mutual military threats are not an issue. Speaking of an ESDI in the internal dimension of the military context would therefore not be useful. Both organisations' production and reproduction of the ESDI in the military context is thus fully based on external threats (box b). The ESDIs of NATO and the EU are best classified as quasi-consensual ones. Consensual, due to the way in which threats and referent objects are defined, and quasi, because none of them possesses the means to complete an autonomous security process. One could therefore be tempted to describe the ESDI as the sum of the congruent national security interests. However, this does not do full justice to the ESDI. To draw a complete and clear picture of the current state of the ESDI in the Alliance and the Union, and how it develops in the military context, one must make further specifications. To begin with, collective defence is losing significance for the ESDI, while crisis management tasks become more important. Furthermore, the ESDI is geographically limited to the Euro- Atlantic area. Finally, it seems as if the ESDI can develop further within the EU than in NATO.

*Article 5 and crisis management.* From an ESDI perspective, crisis management operations are particularly interesting because they result from European security processes in which threats and countermeasures are defined collectively. It should be noted that no member state has launched military crisis management operations within the Euro-Atlantic area outside of one of the two organisations' framework or against the expressed opposition of another member. This is possible because crises do not pose direct threats to any member states' territory, people or resources. General European referent objects can therefore be applied and adhered to. Thus, within the Euro-Atlantic area, member states do not simply utilise the two organisations as *one* option to assert national security interests, but as *the* option to assert shared European security interests consisting of congruent national values. Experience shows that all member states are committed to the idea of dealing with crisis challenges collectively within that geographically limited area. Thus, although most countries have an autonomous military apparatus, no member regards single-handed national efforts within the Euro-Atlantic area as an option.<sup>3</sup> In other words, the NSDIs have been Europeanised, at least as far as crisis management within the organisations' operational range is concerned. Here, differences between national and European security conceptions are vanishing since general values are applied as referent objects. No member state

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violations, i.e. what behaviour is not conform, rather than on the contents of the values and what conduct is appropriate. Thus, even here member states agree on what they oppose to, and if one so pleases, construct shared images of the 'other', the opponent, against whom they unit.

<sup>3</sup> Operation Alba does not really contradict this, since the Italians tried to launch it within the organisations and finally conducted it with the silent consent of all other member states.

would conduct a unilateral crisis management operation and produce security within the Euro-Atlantic area without the consent of its fellow members.

To what extent such a 'Europeanisation' of NSDIs applies to collective defence is uncertain. As argued in chapter 3.1, the significance of formal defence guarantees for the ESDI should not be exaggerated. Although NATO is the only organisation that prepares for it, all European countries, including the non-allied, consider collective defence an option. One might suspect that allies would be more likely to assist each other and act collectively in the case of a military attack on one of them. However, the Alliance's collective territorial defence and the mutual loyalties have never been set to a real test, nor has the role of the non-allied states been tried in such a situation.<sup>4</sup> During the cold war, (allied) member states probably saw national and European security as two sides of the same coin. The collective defence against the Warsaw Pact seemed to be the only realistic option. Not because no member state could have resisted an attack unilaterally (maybe those with nuclear weapons might have), but because a potential attack was expected against the West as an entity and not against one state alone. Nevertheless, with few exceptions, NATO and EU states have never relied on the support of allies to defend their specific national referent objects. Almost all member states kept and keep a defence structure that allows for an individual, nationally organised self-defence, because they are not sure that their national referent objects match those of other member states at all times or in all situations.<sup>5</sup> This is the first hindrance to the creation of a veritable European defence, a complete security process at the European level, and thus an autonomous ESDI in a military context. When the Warsaw Pact dissolved, the West also 'lost' the adversary that treated and threatened it as an entity. The unity among Western states was thus no longer ascribed to them by an external other. The lack of a perceived enemy has already hampered NATO's collective provisions against an external attack.<sup>6</sup> Even if the Alliance's arrangements for collective defence are substantial and real, preparations against a non-identified aggressor are not exactly the best ground on which to produce and reproduce an ESDI in the long run. All of this together sets the significance of Article 5 commitments for the ESDI in perspective. The shift in national and European security processes from territorial defence to crisis management operations, which followed in the wake of the collapse of the Soviet Union, has had the same affect.

Of course, the upgrading of crisis management tasks can be interpreted as a method to prevent escalations that could affect the member states security directly. In this sense, crisis management represents a collective defence against discernible indirect threats, and can be seen as a preliminary stage of collective defence. Article 5 commitments will not be disregarded (nor activated and tested), but non-Article 5 efforts will most likely continue to become more significant as long as no direct external military adversary and threat can be identified. Hence, the ESDI is formed by NSDIs that are in the process of becoming more European. This is one side of the ESDI within the military context.

*Geographical limitations.* It is quite clear that the EU's and NATO's collective consensual security processes do not represent an option outside of the two organisations' operational scope,

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<sup>4</sup> The activation of Article 5 after September 11<sup>th</sup> does not really clarify whether or not security would be produced collectively if one member state were attacked.

<sup>5</sup> Not only can the referent objects as such vary, e.g. the territory. Referent objects shared by different member states may also be given different priorities.

<sup>6</sup> As argued in chapter 3.1, NATO's Defence Capability Initiative must be interpreted in this way.

i.e. beyond the Euro-Atlantic area. The diverging geographical range of member states' security interests is directly linked to varying threat perceptions and self-images, i.e. what responsibilities and roles different countries attribute to themselves. These divergences are a second hindrance to a European security process replacing the national one in the military context, and have severe implications for the development of an ESDI.

Member states with the capability of worldwide engagement (e.g. USA, UK and France) tend to have security interests around the globe. These states neither wish to confine, their power within a European organisation (above all the USA, with its clear capability of acting alone), nor are they given the option to do so. In default of a European alternative, they have no choice but to counteract perceived threats within the UN if possible, and unilaterally or within coalitions of the willing if necessary. The logic of an indivisible collective European Security does, thus, not apply outside of the Euro-Atlantic area. Here, security processes of the two European organisations merely result in political declarations. They are not engaged in the production of security in the military context outside of their geographical range of action. Unfortunately, the UN does not always suggest itself as an alternative. UN efforts cannot, or will not, always succeed in making those who perceive a threat feel secure.<sup>7</sup> Lacking European and global alternatives, individual states have to fall back on a national concept and production of security. This influences the ESDI in two ways.

First, the separate countries' various security policies provoke different reactions from those affected by them. The terrorist attack on September 11<sup>th</sup>, for instance, was deliberately directed against an American symbol and not against NATO, the EU or a Danish target. Due to their different geographical scopes states subjectively perceive threats differently, at the same time as threats objectively directed against them vary. This can develop an own dynamic. What defence expenditure states consider necessary varies. This influences their military capabilities and engagement around the world, the reactions they provoke, what resources are perceived to be required to produce security and so on. The growing gap between US and European defence budgets is an obvious case of such divergence. The dispute on the war against Iraq in the beginning of 2003 is another striking example of the extent to which the perceptions of threat can diverge.

Second, this divergence is transferred to the European security processes that focus on security issues within the Euro-Atlantic area. The repercussions of some member states' global security engagements do not halt at the Euro-Atlantic area's border. External threats directed against a member state will affect that state's production of security, as well as its defence preparations and disposition of resources. This will not necessarily match the security interests of those member states with strictly regional security interests. In addition, member states pursue their security interests in- and outside of the Euro-Atlantic area within the same national security process. That states sometimes have no choice than to act outside of a European framework reinforces the image of their own independent role and responsibility as security producer. Since global threats and countermeasures are defined in an autonomous national security process, security interests outside of the Euro-Atlantic area are handled as national security interests and security thought of as national security. The notion of security as a national concern may be transferred to the European security processes as a counterpoise to the idea of a collective and indivisible European

security, and strain the ESDI. The relapse into a strictly national conception of security is thus a continual feedback loop. Specific threats that are only directed, or at least are perceived to be directed, against a single member state's core national referent objects, are likely to be a response to that state's unilateral security policies. In such a case, other member states might not perceive the same threats against their national referent objects, nor be prepared to counteract the threats together with and in the manner that the affected state prefers. If the other member states have a different view of the appropriateness of the affected state's unilateral security policy that provoked the threat, they will most likely also disagree on what countermeasures are apposite and efficient. Consequently, the affected member state will continue to act unilaterally, and so on and on. The ESDI will not be sustainable unless the organisations, in which European security process take place, are given a global scope and those states that have the capability to act unilaterally begin to co-ordinate their global policies with other member states. This is the other side of the ESDI within the military context.

*EU versus NATO.* I have already addressed many of the obvious differences between NATO and the EU in chapter 3.1, e.g. the military capability, Article 5 commitments, and the different membership constellations. These need not be repeated at this place. What I would like to emphasise here is the Union's advantage over the Alliance in terms of the development of an ESDI.

I am not suggesting that the rift among NATO states, caused by diverging threat perceptions, is a strictly transatlantic one or that this is a problem of the Alliance only. The separating movement can also be found within the Union, as the security interests of the EU members have varying geographical scope within the military context. Admittedly, the extent to which the USA can and does engage around the world wildly surpasses the capacity of any other state. Nevertheless, the United Kingdom usually supports and often contributes to US-led operations. France does so as well, although it tends to take its own stand more often than the United Kingdom. The detachment from the collective security and the recourse to a national concept of security can therefore also be found within the Union.

However, as mentioned at the beginning of this chapter, the EU deals with internal threats and produces uniformity in a different way than the Alliance. In addition, its member states pursue common external policies in far more areas than the allies do through NATO. Given that some of the Union's policies already have a global scope, e.g. trade policies, the EU is already a global actor. The ability of EU members to act unilaterally vis-à-vis third states is therefore already restricted. EU countries cannot act autonomously towards third parties in the same way as non-EU-members, such as the USA, can. In addition, the CFSP offers a framework for common global policies (with the exception of the ESDP), which the Alliance is still lacking. Thus, as the Union is involved in far more security processes than NATO, the notion of the Union as a security producer is more widely spread. Security is therefore conceived as a collective security in a much wider range of security-processes and more often within the EU than within the Alliance. Even concerning military operations, which is the only field where the Alliance still has an advantage over the Union, the EU is building institutions and is gaining access to NATO-capabilities. Thus, the EU is catching up even here.

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<sup>7</sup> This was recently demonstrated by the quarrel on the war against Iraq during the beginning of 2003. In this particular case, the USA declared that it was prepared to act alone if necessary.

The first conclusion to be drawn is that an ESDI within the Union is still confronted with some limitations and problems. It by no means flourishes to the extent that an ESDI is about to replace the NSDIs of the member states. The study has demonstrated that the distribution of responsibilities between the national and the Union levels are different depending on the context. Some threats are defined and counteracted within a pan-European security process only, other EU efforts complement or merely support national ones, while yet other threats are not addressed at the European level at all. There are two primary issues concerning the relationship between the NSDIs and an ESDI. First, what does this ESDI consist of and what areas does it cover? Second, how is European uniformity and thus the ESDI produced and reproduced?

As for the first, manifold European security processes utilise, define and defend varying referent objects, and identify different threats in different contexts. The produced and reproduced European uniformity and ESDI are therefore best pictured as a disjoint patchwork of similarities. The referent object used in a European security process can vary. Sometimes, an EU institution itself and/or its resources are utilised, in other cases it is the implementation of EU policies, whilst in yet other security processes common general values are defined and defended. In contrast to the national uniformity, the European 'sameness' and the limits of the Union's responsibilities are quite well defined. The ESDI is therefore of a technical, civic nature, and cannot be described as a cultural identity. In difference to national identities, which are grown and constructed on an omnipresent cultural heritage, using symbolism and myths, the ESDI does not offer a complete 'mosaic' image that can be internalised. Consequently, its scope is far more restricted than that of NSDIs. The ESDI can therefore not develop detached from the NSDIs, let alone display its own dynamic with the potential to replace the NSDIs altogether - at least not in my lifetime.

As for the second issue, the European uniformity and the ESDI is produced and reproduced in different ways in the varying security process that can be divided into three groups, autonomous, consensual and semi-autonomous security processes. When investigating these three groups, the first central conclusion that can be drawn concerning the relationship between the ESDI and NSDIs is the following. It would be wrong to believe that there is such a thing as 'true' European interests and a 'veritable' European ratio, which can be set against and seen in opposition to national ones. The ESDI does therefore not oppose to or menace the NSDI of any member state.

Autonomous EU security processes do not have an equivalent at the national level that deals with the same threats, referent objects and countermeasures, i.e. the same cases. Here, security is thought of and produced as a European security. EU countermeasures can of course affect and interfere with other national interests. But, since the security process has not been duplicated at the national level the ESDI is not confronted with a parallel and opposing national one. European and national policies do not conflict because they operate in different spheres, utilising different security conceptions, and varying referent objects and ideas concerning how security should be produced. It is simply a matter of two completely separate and different security processes, in which different (even if at times incompatible) securities are produced. In other words, there is no opposing national counterpart to the applied European rationality.

In the case of consensual security processes, the European interests and rationality are formed and constructed by the member states in consent. Consequently, the ESDI is produced by the member states. Whatever shape the member states give the ESDI, that one constitutes the true and only ESDI. In consensual security processes, security is therefore only conceived and produced as pan-European to the extent that the member states can reach consensus. The ESDI does thus not conflict with the NSDI.

The Union's semi-autonomous security processes are the only ones where the national and the European concepts of security and the rationality applied can conflict. Differences can thus occur concerning referent objects used, the threats perceived and what countermeasures are regarded apposite. Here the Commission prepares and presents the propositions that national representatives can adopt or reject in the Council. The possible contents and function of the ESDI (potential referent objects and countermeasures against identified threats) are therefore elaborated at the European level. Nevertheless, the member states still decide whether or not they will accept a proposal. The ESDI will only take the shape suggested by the Commission with the consent of many member states (depending on the decision-making procedure). For those countries that are outvoted, the ESDI could conflict with the NSDI. However, the significance of these potential conflicts is put into perspective when one considers which EU security processes are semi-autonomous.

In the figure below, different European security processes are superimposed on the matrix presented at the beginning of this chapter. As the contextual division followed in this study was not undertaken with reference to the different instruments applied to produce security, a little tweaking was necessary to fit in the Union's three-pillar structure and the organisation of EU security processes.<sup>8</sup>

It should be noted that autonomous European security processes have been instituted only where the Common Market does not allow for another solution. The ESDI has only replaced the NSDIs within the economic context where there is no alternative.<sup>9</sup> With the exception of these, all European security processes displayed in the figure above are duplicated at the national level. Additional national security processes, apart from the European ones, exist in all five contextual fields (box b-f).<sup>10</sup> This is most evident in box e, in which the activities of OLAF represent the only European security process. In default of a veritable European security process, cooperation within the third pillar does not even result in a consensual ESDI.

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<sup>8</sup> I refer to the summaries on the current state of the ESDI at the end of the empirical examination of each context (3.1.4, 3.2.4 and 3.3.3) for a detailed overview, assessment and classification of the Union's different security processes.

<sup>9</sup> The strictly limited security process that is run by OLAF is the only case that to some extent might be regarded as an exception from this rule.

<sup>10</sup> The national defence structure would even allow a security process in box a, even if this is not an issue at present.



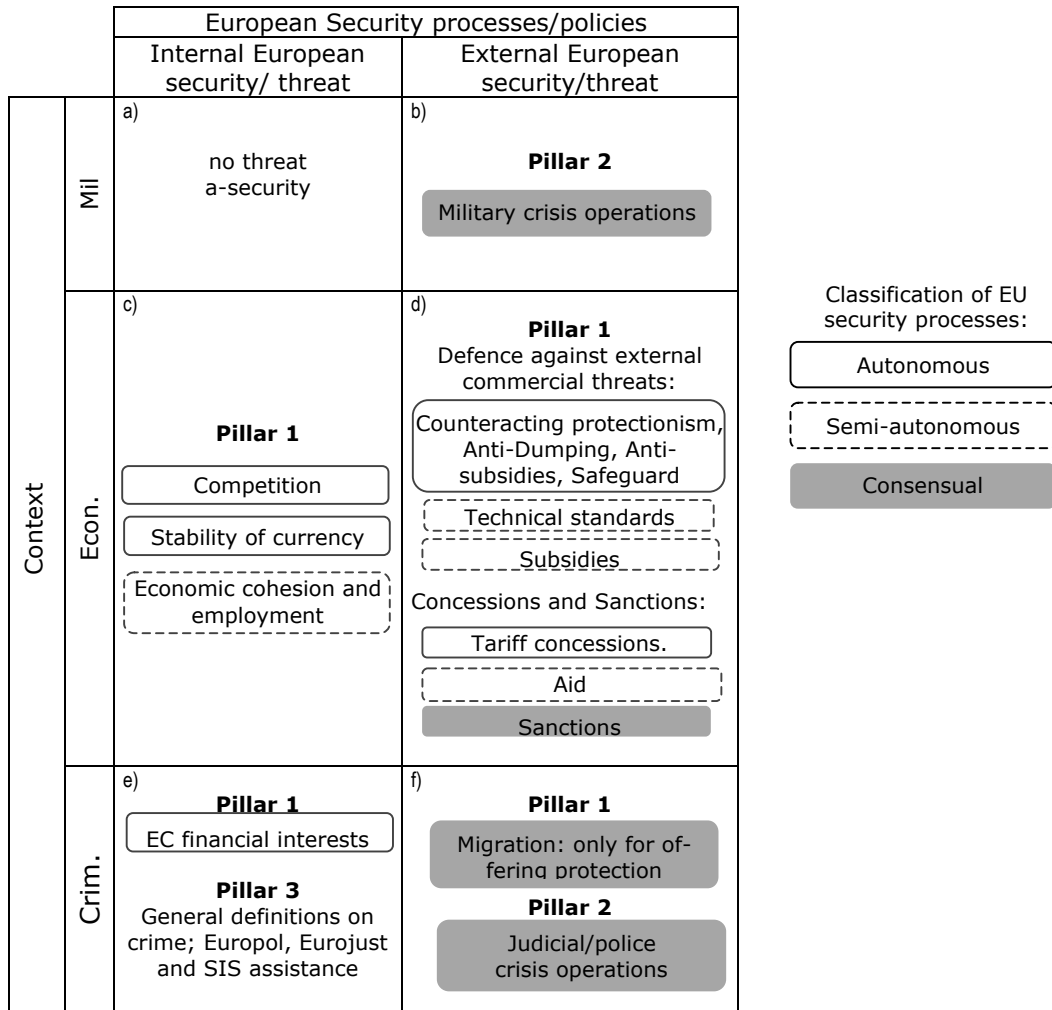


Figure 5-2. Security processes in the six fields of security.

Claiming that we are entering a new "post-nation-state" or "supranational" security age would therefore be just as incorrect as declaring that European security processes are nothing more than a complement to the traditional national ones. The EU is not simply a vehicle for solving national security concerns, nor does the ESDI replace the NSDI. Member states construct the ESDI together, and in those areas where they establish and develop the ESDI, the concept of security as a pan-European security is transferred to their NSDIs, i.e. the notion that security should be produced collectively through the EU in these fields.

The second conclusion to be drawn from the survey of EU security processes is that the Union does not have a comprehensive approach to security. Despite its many instruments and its engagement in five of the six contextual fields outlined above, the different security processes are not interlocked. The ESDI therefore remains fragmented in a double sense. It does not have full coverage, nor are the existing security processes coordinated.

Just as at the national level, the organisation of European security processes is determined by the countermeasures and policies that are used, and not by the type of threat that is to be dealt with. Different security processes are therefore synonymous with different security policies and instruments, not necessarily with different events and threats. The Union's security processes do not take a specific source of threat or a common referent object as an organising principle. Rather, separate security processes are launched for each specific countermeasure/instrument.

This structure of the security processes/policies does not necessarily impede on or make the production of security inefficient, but it determines how security is understood. It has severe consequences for the conception and production of security within the EU, i.e. how and what threats are identified, and how they are counteracted.

In the Union's different security processes, the environment is interpreted with reference to the respective security policies/instruments. The same event is thus construed differently in the various security processes. Which properties of the environment are considered in the different security processes (i.e. how the security context that is dealt with in each process is defined and separated from the ongoing development), is not primarily steered by common values or threatened referent objects. Rather, the respective instrument/policy is made the point of reference for the interpretation of the security environment in each security process. The reality is thus dismantled in such a way that each security process only selects and considers those aspects, and defines those threats and referent objects, that stand in direct relation to and are relevant for the countermeasures that it can apply.

This instrumental compartmentalisation of the security processes hinders a comprehensive approach to security. I am not saying that a contextual separation of security is permanent – especially not in the sense that I have utilised the term 'context' here. The separation into six fields used in this study is far too coarse. Since security is defined and produced within each security process with reference to the specific countermeasures available to it, the classification of internal and external military, economic and criminal security would refer to the applicable instruments/countermeasures. But, since there are many different economic and criminal instruments, there is no such thing as a criminal or economic security. These are generic terms for several separate security conceptions. I suggest that it is more appropriate to claim that the EU has many different, separate and parallel approaches to security, even when various threats are directly connected with each other and originate from the same source. The Union's 'three pillar'-structure makes the development of a comprehensive approach to security even more difficult. Just like nation states, the Union does not have a holistic but rather a multiple approach to security.

I do not imply that a comprehensive security concept, i.e. the direct interlocking of several security processes within or across the different pillars, would be indispensable or preferable in all situations. It can be difficult to identify direct connections among some of the threats that are counteracted by the Union's different security processes. For example, it could be difficult to make a case for a comprehensive approach in which the competition policy and the obligation to grant protection to those in need (migration policy) should be united in a single security process. Sometimes, however, the connection is evident. It makes good sense to interlock those security processes that deal with threats originating from the same source. Crisis management operations may serve as an example. Admittedly, an exception has been made in this particular area, in that military and police operations OOA can be coordinated within the second pillar, but this is an exception. This is a sensible solution, since military and criminal threats tend to blend in crisis areas. Once military forces are deployed to a crisis area, threats from military forces are often replaced by violence from criminal organisations. However pragmatic and logical this coordination is, other relevant security processes, such as development and trade policies, are still run separately.

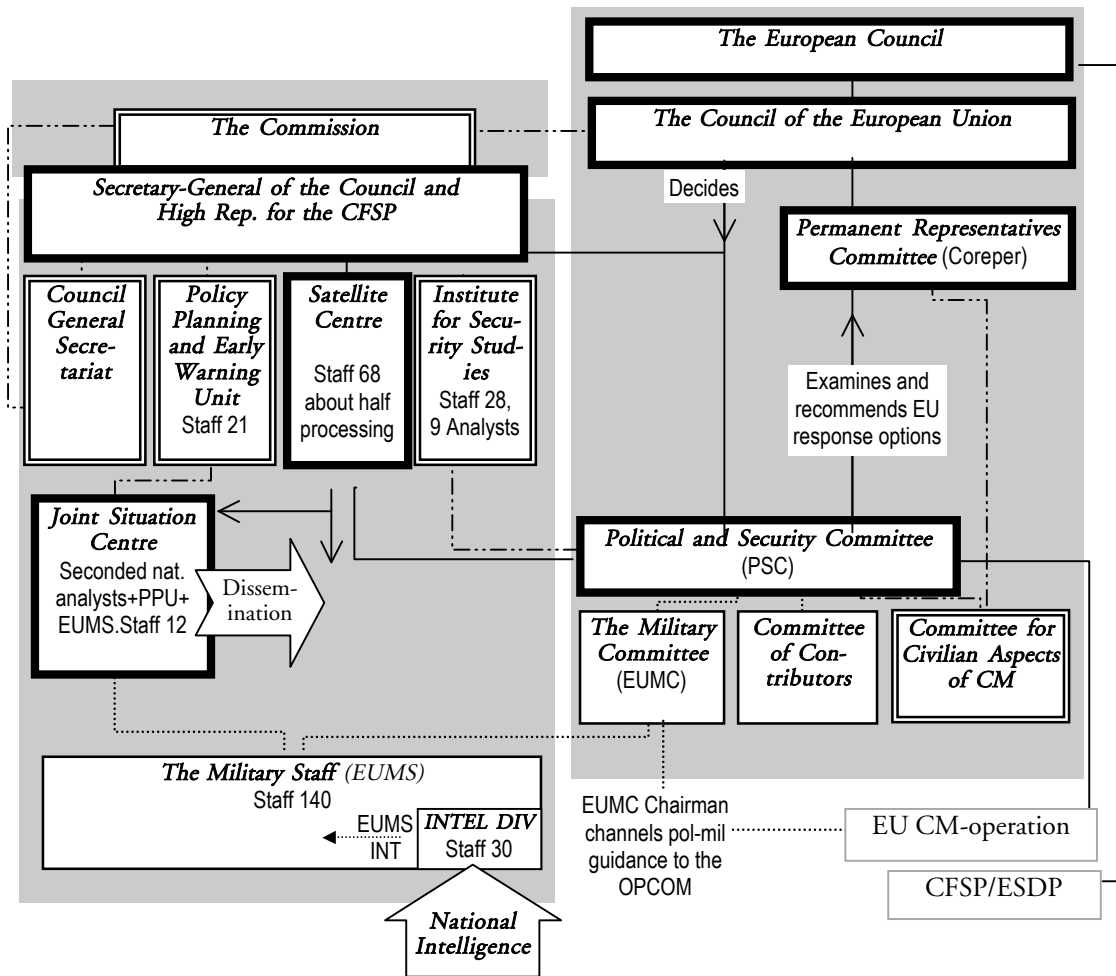
It would not necessarily always be feasible nor a simple matter to interlock different security processes and/or to take a specific identified source of threat or referent object as a starting point

when organising security processes. However, I suggest that it is clear that the current fragmentation of the European security processes do not allow for a sufficiently comprehensive approach to security.

In short, the ESDI does not stand in opposition to the member states' NSDIs. Rather it complements the dominating NSDIs. Although it is still fledgling, the ESDI is further developed and has a larger perspective of thriving within the EU than in NATO. Still, security processes in Europe, and thereby the ESDI, suffer from excessive compartmentalisation. This does not necessarily result in inconsistent national and European security policies, but makes a targeted and efficient production of security virtually impossible to formalise.

6 Annex

CFSP AND ESDP INSTITUTIONS



1. Frames
- units dealing with civil and/or open information.
  - units dealing with military intelligence
  - units dealing with both civil and military intelligence
2. Lines                      The lines mark the flow of information
- - - - - civil and/or open information.
  - ..... military intelligence
  - both civil information and military intelligence

## NATIONAL CONTRIBUTIONS TO 'EUROPEAN' CRISIS MANAGEMENT OPERATIONS UNTIL 2002.

Member-ship <sup>1</sup>	ORG	WEU					W EUN ATO	NATO								
		Start End	93- 06-18 96-09-24	94-07-23 96-10-15	97-06-24 01-06	99-05-10 01-11		92-07-16 96-10-02	B-H			Alb.	Kosovo		Macedonia	
									93-04-12 95-12-20	95-12-20 96-12-20	96-12-20	99-04-10 99-09-01	99-03-24 99-06-10	99-06-12	01-08-22 01-09-26	01-09-26
OP	Danube Op <sup>2</sup>	UPFM <sup>3</sup>	MAPE (EXT) <sup>4</sup>	WEUDAM Croatia <sup>5</sup>	Adriatic Sea <sup>6</sup>	Deny flight Del. Force <sup>7</sup>	IFOR <sup>8</sup>	SFOR <sup>9</sup>	AFOR <sup>10</sup>	Allied Force <sup>11</sup>	KFOR <sup>12</sup>	Essential Harvest <sup>13</sup>	Amber Fox <sup>14</sup>			
(N)	CZ			■				■	■	■		■	■			
	HU							■	■	■		■	■			
	PL			■				■	■	■		■	■			
N	CA					■	■	■	■	■	■	■	■			
	IS					■	■	■	■	■	■	■	■			
	NO			■		■	■	■	■	■	■	■	■			
	TR					■	■	■	■	■	■	■	■			
	US					■	■	■	■	■	■	■	■			
N, E	DK			■		■	■	■	■	■	■	■	■			
N, E, W	BE			■	■	■	■	■	■	■	■	■	■			
	FR	■	■	■	■	■	■	■	■	■	■	■	■			
	DE	■	■	■	■	■	■	■	■	■	■	■	■			
	GB	■	■	■	■	■	■	■	■	■	■	■	■			
	GR	■	■	■	■	■	■	■	■	■	■	■	■			
	IT	■	■	■	■	■	■	■	■	■	■	■	■			
	LU	■	■	■	■	■	■	■	■	■	■	■	■			
	NL	■	■	■	■	■	■	■	■	■	■	■	■			
	PT	■	■	■	■	■	■	■	■	■	■	■	■			
	ES	■	■	■	■	■	■	■	■	■	■	■	■			
E	AT		■	■	■			■	■	■	■	■	■			
	IE							■	■	■	■	■	■			
	SE							■	■	■	■	■	■			
	FI		■	■	■			■	■	■	■	■	■			
Participants	7	12	25	8	14	12	32	36	24	13	35	14				
Max. Deployed	250	182	139	9			60000	32000	8080		50000	3500	1000			
Type of Operation <sup>15</sup>	PE	PB	PB	HUM	PE	PE	PS	PS	HUM	WAR	PS	PB	PB			

<sup>1</sup> Only full membership. N= NATO; E = EU; W = WEU; (N)= Members since 1999.

<sup>2</sup> Participants according to General Horst Holthoff (former Deputy Secretary General, WEU): The Role of WEU in the New European Security Architecture. In: Joulwan, George A. and Weissinger-Baylon, Roger (editors): European Security: Beginning a New Century. XIIIth NATO Workshop On Political-Military Decision Making Warsaw, Poland 19-23 June 1996. Available in the internet on URL: <http://www.csd.org/96Book/Holthoff.htm>

<sup>3</sup> Unified Police Force of Mostar. Source: Assembly of WEU: Document 1609. WEU police forces – reply to the annual report of the Council. Report submitted on behalf of the Defence Committee by Mr Giannattasio, Rapporteur. 13 May 1998. p. 11. Available in the internet on URL: <http://int-serv.weu.int/assembly/WEU/newwebsite/docu/e-1609.htm>

<sup>4</sup> Multinational Advisory Police Element. Apart from NATO and EU states, Bulgaria, Estonia, Latvia, Lithuania, Romania and Slovenia also contributed with personnel. Source: <http://www.weu.int/eng/mape/info.htm>

<sup>5</sup> Western European Union Demining Assistance Mission to Croatia. Apart from NATO and EU states Bulgaria also contributed with personnel. Source <http://www.weu.int/eng/info/weudam.htm>

<sup>6</sup> The maritime operations in the Adriatic Sea began in 1992 as two parallel WEU (Sharp Vigilance and Sharp fence) and NATO (Maritime Monitor and Maritime Guard) operations. On 15 June 1993 the two were merged to the joint NATO/WEU Operation Sharp Guard under NATO command. Source: <http://www.afsouth.nato.int/FACTSHEETS/SharpGuardFactSheet.htm>

<sup>7</sup> Source: <http://www.afsouth.nato.int/FACTSHEETS/DenyFlightFactSheet.htm> <http://www.afsouth.nato.int/FACTSHEETS/DeliberateForceFactSheet.htm>

<sup>8</sup> Implementation Force. Apart from NATO and EU states, Albania, Bulgaria, Egypt, Estonia, Jordan, Latvia, Lithuania, Malaysia, Morocco, Pakistan, Romania, Russia and Ukraine also contributed with personnel. Source <http://www.dtic.mil/bosnia/fs/multinat.html>

<sup>9</sup> Stabilisation Force. Apart from NATO and EU states, Albania, Argentina, Australia, Bulgaria, Egypt, Estonia, Jordan, Latvia, Lithuania, Malaysia, Morocco, New Zealand, Romania, Russia, Slovakia, Slovenia and Ukraine have or still do contribute with personnel. Sources <http://www.nato.int/sfor/docu/d981116a.htm> ; <http://www.nato.int/sfor/nations/>; <http://www.nato.int/sfor/nations/pastnation.htm>

<sup>10</sup> Albania Force. Apart from NATO and EU states Latvia, Slovakia, Slovenia, Switzerland and the United Arab Emirates also contributed with personnel. Source: <http://www.afsouth.nato.int/operations/harbour/>

<sup>11</sup> Source: <http://www.afsouth.nato.int/operations/deforce/Force.htm>

<sup>12</sup> Kosovo Force. Apart from NATO and EU states Argentina, Azerbaijan, Bulgaria, Georgia, Jordan, Lithuania, Morocco, Russia, Slovakia, Slovenia, Switzerland, Ukraine and the United Arab Emirates have or still do contribute with personnel. Source: <http://kforonline.com/kfor/nations/default.htm>

<sup>13</sup> Source: <http://www.afsouth.nato.int/operations/skopje/harvest.htm> <sup>14</sup> <http://www.afsouth.nato.int/operations/skopje2/FOX.htm>

<sup>15</sup> Type of operation PE= Peace Enforcement, PB= Peace Building, HUM= Humanitarian Operation, PS = Peace Support, WAR = War. Definitions following those used in the PHF Exercise Viking 1999. See <http://www.mil.se/pfp/viking99/concpcso.html>

## EC PROCEDURES IN SECURITY PROCESS USING COMMERCIAL COUNTERMEASURES.

	<b>1. 'Anti-protec.'</b> <sup>1</sup>	<b>2(a) Anti-dumping</b> <sup>2</sup>	<b>2(b) Anti-subsidies</b> <sup>3</sup>	<b>3. Safeguard clause</b> <sup>4</sup>
<b>Situation assessment/Investigation</b>				
Decision to launch I.	Commission (§5(4)).	Commission (§5(3))	Commission (§10(3))	Commission (§6(1a))
Conducted by	Commission (§8(1c)).	Commission (§6(1)).	Commission (§11(1))	Commission (§6(1)).
Decision to terminate I.	Commission (§11(1))	Commission (§9(2))	Commission (14(2))	Commission (§7(2))
Overruling decision	Council with qualified majority (§14(4))	Council with qualified majority (§9(2))	Council with qualified majority (§14(2))	-
<b>Provisional measures</b>				
Defining & deciding	-	Commission (§7(4, 5)) (§8(1)).	Commission (§12(3,4,5))	Commission (§8(1))
Form & Duration	-	Duties imposed for max 9 months (§7(7))	Duties imposed for max 4 months (§12(6))	Duties (§8(3)) imposed for max 200 days (§8(2)) Surveillance (§7(3))
Overruling Commission's Decision	-	Council with qualified majority (§7(6)).	Council with qualified majority (§12(5))	Council with qualified majority (§16(8))
<b>'Definitive' measures</b>				
<i>Defining and deciding</i>	Council by qualified majority on proposal from Commission (§13 (3)).	Council by simple majority on proposal from Commission (§9(4)).	Council by simple majority on proposal from Commission (§15(1))	Commission (§7(3)); (Overruled by Council by qualified majority) Council by qualified majority on proposal from Commission (§17)
<i>Form</i>	Suspension of concessions; duties or other charge on imports; quantitative restrictions or other measures modifying import/ conditions. (§12(3))	Individual duties on imports from exporters or producer or country wise (§9(6))	Individual duties on imports from exporters or producer or country wise (§9(6))	Quotas (§16 (3)) or customs duties
<i>Decision on suspension</i>	-	Commission (9-12 months) (§14(4))	Commission (9-12 months) (§24(4))	-

<sup>1</sup> According to the so-called 'Trade Barriers Regulation'. Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organization

<http://europa.eu.int/comm/trade/policy/traderegul/adgreg06a.htm>

<sup>2</sup> According to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community. A consolidated provision is available at:

[http://europa.eu.int/eur-lex/en/consleg/pdf/1996/en\\_1996R0384\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1996/en_1996R0384_do_001.pdf)

<sup>3</sup> According to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community.

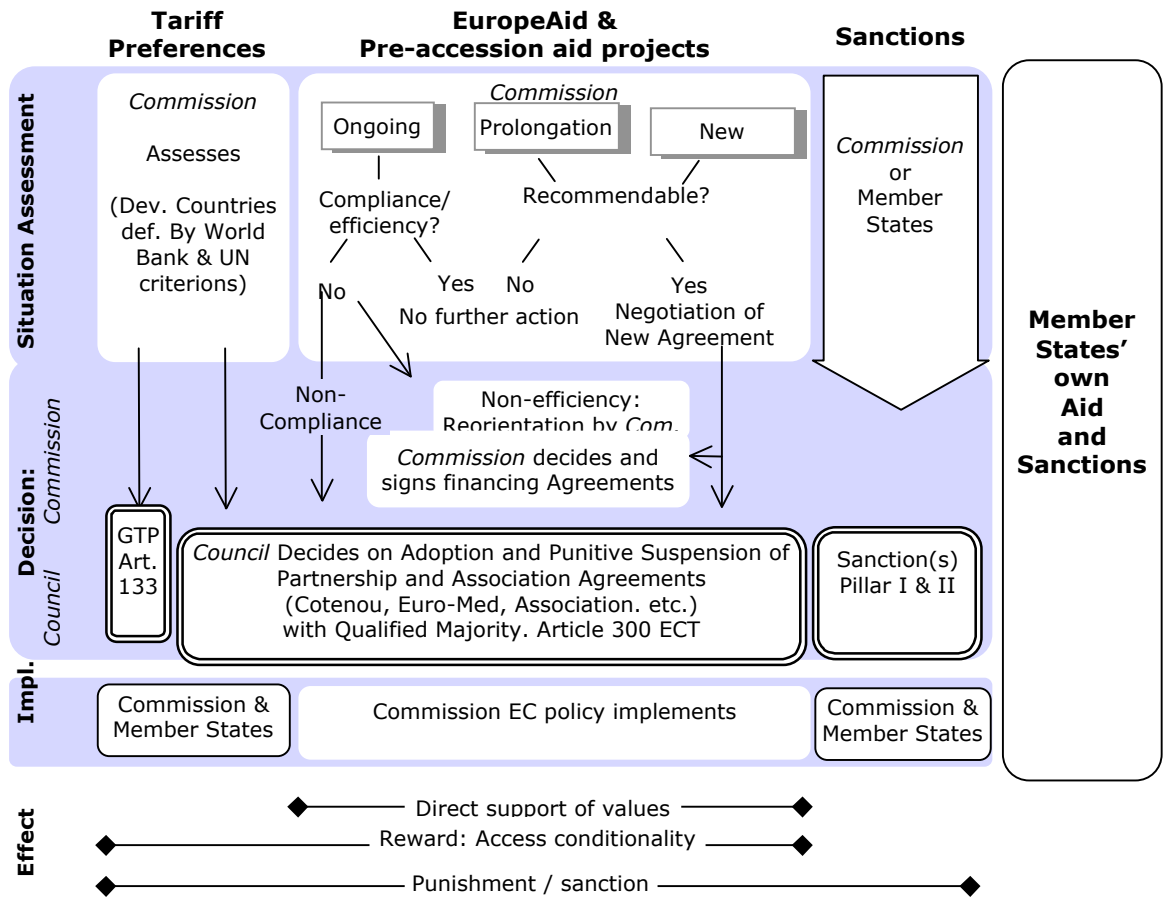
<http://europa.eu.int/comm/trade/policy/subsidy/adgreg04a.htm>

[http://europa.eu.int/eur-lex/en/lif/dat/1997/en\\_397R2026.html](http://europa.eu.int/eur-lex/en/lif/dat/1997/en_397R2026.html)

<sup>4</sup> According to the so-called 'Safeguard Clauses/ Common Import and Export Regime - Emergency protection'. Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94. A consolidated provision is available at:

[http://europa.eu.int/eur-lex/en/consleg/pdf/1994/en\\_1994R3285\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1994/en_1994R3285_do_001.pdf)

EU 'SECURITY' (DECISION-MAKING) PROCESS  
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## Lebenslauf

Ich, Björn Wilhelm Müller-Wille, wurde am 18 November 1969 in Münster Westfalen geboren. Dort habe ich mit meinem Vater Wendelin, meiner Mutter Karin (geboren Göransson), und meinen beiden Geschwistern Per und Annika meine ersten Jahre verbracht. Da meine Mutter Schwedin ist, habe ich sowohl die deutsche als auch die schwedische Staatsbürgerschaft erhalten. Im Herbst 1975 wurde ich an der St: Steffanus Schule in Münster eingeschult. Ostern im Jahre darauf ist meine Familie nach Schweden gezogen, wo meine Eltern den Hof meines Großvaters in der Nähe von Stockholm übernahmen.

Hier bin ich auch zur Grundschule gegangen, die in Schweden neun Schuljahre umfaßt. Während der ersten sechs Schuljahre habe ich die Skolsta Schule besucht, und dann zur St: Ilian Schule in Enköping gewechselt. Dabei habe ich die Hälfte des siebten Schuljahrs an der Hebbelschule in Kiel, und die Hälfte des achten Schuljahres an der Chambly County Highschool in Montreal verbracht. Nach abgeschlossener Grundschule wählte ich am Westerdlandska Gymnasium in Enköping die sog. Technische Linie, mit Schwerpunkt Maschinenbau. Diese Ausbildung habe ich 1989 am Fyrisgymnasium in Uppsala abgeschlossen.

Nach der Schule folgte der Militärdienst am Kungliga Hälsinge Regimente (I14) in Gävle, und die Ausbildung zum Offizier an der Offiziershochschule der Infanterie in Halmstad. Da der Offizierskurs in den Sommern 1991 und 1992 stand fand, besuchte ich im zwischenliegenden Jahr den Cours de Civilisation Française, an der Sorbonne Universität in Paris. Nach abgeschlossener Offiziersausbildung habe ich zunächst als Stellvertretender Zugchef und Instrukteur an meinem damaligen Regiment in Gävle gearbeitet.

Im Herbst 1993 begann ich mein Studium an der Westfälischen Wilhelms Universität (WWU) in Münster, mit Politikwissenschaft als Hauptfach und den Nebenfächern Soziologie und Wirtschaftspolitik. Während des Sommersemesters 1994 wurde ich als schwedischer UNPROFOR Soldat in Tuzla in Bosnien –Herzegowina stationiert. Nach dem Magisterexamen 1998, habe ich dann als Analytiker an der Analyseabteilung im Hauptquartier der Schwedischen Streitkräfte gearbeitet. Diese Tätigkeit habe ich 1999 beendet, um mit meiner Dissertation an der WWU zu beginnen. Nachdem ich die erste Zeit in Münster verbracht habe, konnte ich mit Hilfe meines Doktorvaters Prof. Dr. Wichard Woyke, und Prof. Anand Menon, meine Forschung an das European Research Institute an der Universität von Birmingham verlegen, wo ich im Studienjahr 2001-2002 als Honorary Research Associate tätig war. Ein zweiter Aufenthalt an einem ausländischen Forschungsinstitut wurde mir am Institut für Sicherheitsfragen der Europäischen Union in Paris gewährt, wo ich als Visiting Research Fellow im April und Mai 2003 arbeiten konnte.