

New Frontiers in European Studies

Guildford, 30 June - 1 July 2011

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EU Foreign Policy – A No-fly Zone

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June 2011**

Paper to be presented at the UACES Student Forum 12th Annual Conference, University of Surrey, Guildford, 30 June – 1 July 2011

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“ One reason for creating the European Community was to enable Europe to play its full part in world affairs.”

Walter Hallstein

Introduction:

No sooner had EU Member States declared at Maastricht that “A common foreign and security policy is hereby established” than the limitations of that policy was cruelly exposed by the Union’s failure to prevent civil war in the Balkans. Indeed, the unilateral recognition by Germany of the breakaway Croatian and Slovenian states made civil war more rather than less likely. Twenty years and three treaties institutionalizing a common foreign policy later, the EU has again failed to present a united front, this time in relation to the uprisings in North Africa, a region that it has repeatedly declared to be a priority.

Foreign Policy has been the black hole of European integration: from the Pléven Plan through the Fouchet , Davignon and Copenhagen reports and the Maastricht, Amsterdam and Lisbon Treaties, the formation of a Common Foreign and Security Policy has been the most intractable area of European integration.

The rebellions in Tunisia, Libya and Egypt have been the first major foreign policy test of the EU since the Lisbon Treaty came into force in December 2009 and, as such, they provide an opportunity to reassess EU foreign policy.

In 1993 Christopher Hill wrote an influential article about the capability-expectations gap with regard to Europe’s international role. By analyzing the events and the dramas over the Gulf, the Uruguay Round and Yugoslavia he concluded that the European Community was not an effective international actor as it did not have the capacity to produce decisions and thus impact on events

(Hill, 1993, p.306). His argument was that the expectations which the Community was presented with did not match the outcomes of the Community's actions. The Community's foreign policy suffers from a capability-expectations gap.

The capability-expectations gap has three determinants; the ability to agree, resource allocation and the tools available at the EU's disposal by which the effectiveness of foreign policy and the width of the gap to be assessed. The ability to agree is based on the convergence of preferences of the Member States, especially the UK, Germany and France and their willingness to provide the necessary financial and personnel resources. The defence budget of Member States has been declining and the EU still relies on American military hardware. Moreover, the EU's foreign policy has been nested within existing international foreign policy regimes, namely NATO, the UN and (until June 2011) the Western European Union. The resource allocation thus represents a set of 'pick & mix' possibilities ranging from the domestic, the EU and the external regime resources.

The EU's foreign policy developments are path dependant, deriving from the past co-operations and experiences with these regimes which makes it difficult for the EU to become an independent actor in its own right. Moreover, the EU sees its position within these regimes as an alternative to its own foreign policy capability and often chooses to incorporate itself based on strategic decision making backed up by costs considerations. Similarly, the tools available to make 'difficult choices' (Hill, 1993: p.306) range from intergovernmental to (since the treaty of Lisbon) somewhat institutionalized decision making procedures topped by the role of the High Representative. As Wagner points out, the competencies in foreign policy-making are dispersed across a variety of actors, and it could also be argued that

there are too many masters to serve (Wagner, 2003: p.577). The Lisbon Treaty has not improved this situation since, although it combined the roles of Commissioner for External Relations and the High Representative by creating a permanent President of the Council it created an alternative locus of authority on the international stage. When Osama bin Laden was killed in May 2011, EU officials put out no fewer than four announcements setting out (sometimes contradictory) positions for the Union. (Castle, 2011) The first, from Jerzy Buzek can be dismissed since, as President of the European Parliament, he has little Foreign Policy competence. A joint statement was then issued by Manuel Barroso and Herman van Rompuy which, after some negotiation, presented a united front between the Commission and Council. This was, however, undone when Catherine Ashton put out her own (less bombastic) statement. A further statement was issued by Giles de Kerchove, the EU's counter-terrorism co-ordinator.

Hill is certainly right in illustrating the EU's foreign policy as incapable of achieving results, however the capabilities-expectations gap does not fully explain why this is so. Furthermore, Hill's concepts of actorhood and presence which he uses to further evaluate capabilities, do not fit neatly with the 'nature of the beast' and are more suitable to analyze a nation state's capabilities. 'Actorhood', writes Hill, 'provides us with a theoretical perspective which can incorporate both the internal dynamics of institutional development (in this case CFSP) and the changing nature of the international environment in which it has to operate' (309). Hill deliberately chooses to avoid conceptualizing the EU and theorizing its international role. Instead he chooses 'to conceptualize the patterns of activity' (Toje, 2007: p.123). The EU's foreign policy, especially CFSP, is conducted in an intense

transgovernmental fashion (Wallace et al. 2010) and as such lacks the main prerequisite of 'actorness', being an autonomous actor. With regard to the Yugoslav crisis, Nuttall commented that '... it did not have the capacity to function as an independent actor alongside the United States and Russia, the UN Security Council, NATO or even the WEU' (Nuttall, 1994: p.12). For Hill (1993: p.318) this is due to the lack of 'full actorness' and the lack of existence of a coherent system.

The EU's nesting within the NATO creates an ambiguous situation where on the one hand it prevents the EU from acting independently, but on the other hand offers different prospects. Menon (2009) sees this as an opportunity for the EU to use NATO and the UN for that matter, as tools available to it, by the use of which the EU could become a powerful actor in international security. He argues that 'in some instances, the most effective way for Europeans to deploy outside Europe would be to provide forces directly to UN missions rather than acting through the ESDP' (Menon, 2009: p.242). This could potentially overcome problems of 'laundering', i.e. initiating a mission based on national interests such as EU interventions in sub-Saharan Africa. Some claim that the 2003 operation Artemis, for which France supplied 1,785 out of 2,200 troops, was 'more a French operation with an EU cover, than an EU operation led by the French' (Menon, 2009: p.240).

Since the 1949 Treaty of Washington, NATO was seen as the provider of European security with the US assuming the leadership and acting as a purse of the organization, content to maintain this status until the early 1970s. With the collapse of Breton Woods, the oil crisis and the Vietnam War, the transatlantic relationships became strained. The US sponsored European recovery reached its peak with the US perceiving the EEC in terms of economic competition, asking

Europe to contribute more to NATO expenses (Bindi, 2010: p.21). The end of the Cold War in 1989 further reduced the American position and interest in acting as a buffer against communism and the US felt that it was time for Europe to take responsibility for its relations and responsibilities to the rest of the world, but mainly for its own security, whilst consulting the US on its actions and common positions.

The EU sought to reform its relationship and strategic partnership with NATO through the series of adoptions and negotiations spanning from the 1992 Maastricht Treaty, through many Transatlantic (NATO-EU) informal ministerial dinners, to the December 2010 Lisbon Summit. For instance, the 1999 Helsinki Headline Goal 2003 was agreed whereby the EU would develop a capacity to deploy 60,000 troops at 60 days' notice to move and be sustainable for up to one year and carry out non-combat peacekeeping operations, humanitarian and rescue mission, combat crisis management, the so called 'Petersberg tasks'. Berlin Plus arrangements 2002 now govern the EU-NATO relations in crisis management. NATO's new Strategic Concept states that 'the EU is a unique and essential partner of NATO' and at the Lisbon Summit in November 2010 the Allies 'encouraged the Secretary General to continue to work with the EU High Representative and to report to the Council on the ongoing efforts in time for the meeting of NATO foreign ministers in Berlin, in April 2011' in relation to the Libyan crisis (European Council, Undated).

The EU's relationship with the Western European Union (WEU) was strengthened by the Treaty of Amsterdam 1997, whereby the EU gained access to the WEU's operational capability for Petersberg tasks (Bindi, p.35), which by the virtue of Article IV of the Modified Brussels Treaty 1954, passed the reins for military

matters to 'the appropriate military authorities of NATO'. The effectiveness of the WEU was, in any case, limited, having been described by Joseph Joffe as the "sleeping princess who had been kissed over and over but refused to wake up." (Crawford, 1993: p.9)

The Lisbon Treaty highlights the EU's member states' obligations to the United Nations Charter and to the Security Council to maintain international peace and security and 'shall promote multilateral solutions to common problems, in particular in the framework of the United Nations' (European Union, 2008).

Despite the EU being the single largest financial contributor to the UN system it has no vote but an observer status (European Union, 2011). The EU's position has improved since May 03 2011, when the United nations General Assembly adopted a new resolution which will allow senior EU representatives to present the common position of the EU to the Assembly.

The EU's foreign policy, imbedded within NATO and the UN together with the Members states autonomy to determine their own positions on foreign policy matters represents a spaghetti bowl of multifaceted agreements.

The old Kissinger quote 'who do I call if I want to speak to Europe?' has been upgraded. It now goes like this, as told by Baroness Ashton herself, speaking at the London School of Economics, last year:

"Mr President, finally an answer to the question that Henry Kissinger raised. Which is: 'We want to talk to Europe - whose number do we ring?' We have one phone number; let's ring the number and see what happens."

They ring the number and my [Catherine Ashton's] voice mail is answering: "Welcome to Europe! For the French Position press 1, for the German position press 2..." (Ashton, 2010a)

Using the capability-expectations gap to measure the efficiency of the EU in international affairs is inadequate due to the complexities and multifaceted relationships within the internal structures of the European Union and its institutions. Hill himself acknowledges problems with the 'gap' concept due to it being static (Hill, 1993: p.332), and in his 1997 article he states that it was meant 'to provide a yardstick by which the process of change in European foreign policy might be measured' (Hill, 1997: p.2). Hill (1993: p.307) also states, that 'the experiences of 'European foreign policy' over the last 20 years or so has been so unique that the search for one theory to explain its evolution is doomed to fail and that we must fall back on history'.

The 'capability-expectation gap' seems inadequate to explain the EU's reaction to the North African crisis and its approach to Libya in particular given that today the EU possesses greater capabilities, resources and institutions than it did in the 1990s. Discussion of the gap between the EU's capability as a Foreign Policy actor and expectations has tended to concentrate on capabilities. Expectations of the actors (internal and external to the EU) are not homogenous and their interests and preferences vary considerably. Moreover, it is difficult to speak of expectations when the EU member states cannot agree on the purpose and the scope of the EU foreign policy. British Foreign Secretary, William Hague (2011) set out the British Government's view of the limitations of the EU in foreign affairs: "I have never believed that the EU could or should act as if it were a nation state with a national foreign policy. Any attempt by EU institutions to do so would end in

embarrassing failure. But I do believe that it is very much in the nations of Europe's interests to use their collective weight in the world to advance common goals and values and changes in the Arab World are exactly such an instance." EU High Representative, Catherine Ashton (2010b) set out the limits of her ambition: "I believe that Europe's influence depends on our not having great military power or imperial ambitions any longer. We are able to play an objective role in which we are trusted because we seek genuinely to end conflict, assist development, and resolve differences, not distrusted for being thought to have a hidden agenda." One of Catherine Ashton's predecessors as Commissioner for External Relations, Christopher Patten, had a more expansive view of the EU's role: "Mere intergovernmentalism is a recipe of meekness and mediocrity for a European Foreign Policy as a lowest common denominator." (Patten, 2003)

Instead of focusing on the issues of expectations and capabilities, this essay seeks to explain the Union's Foreign Policy in terms of integration, or the absence of it, based on the interests of the individual varied actors including the EU institutions. Our approach is therefore explicitly not purely intergovernmental since we will seek to identify EU *qua* EU Foreign Policy interests and therefore to recognise the EU as an actor on the international stage alongside its Member States. Europe, however, needs to decide what kind of an international actor it aspires to be: responsive or irrelevant, a civilian or military power, and thus far it has done so on case by case basis, being more successful in some areas/missions than others.

For example in international trade, the EU has spoken with one unified voice due to the predictable long term gains, whereas with regards to crisis management the EU is ruled by the 'lowest common denominator' (Crowe 2003: p.546) as the long

term benefits or gains of these are unclear and often unpredictable. As Toje (2008a: p.206) puts it 'Europeans are not unwilling to intervene militarily as long as the humanitarian rewards are high, the costs in blood and treasure are low - and twenty seven states are able to agree that this is the case'. Toje (2008b: pp.2-10) extends Hill's capabilities-expectations gap to a consensus-expectations gap which represents the real issues in the developments of the EU foreign policy since it is dependent on the capability of the member states to overcome dissent but more to the point find the common interest and thus adopt a non-zero-sum mindset.

The European Union itself has its own vital interests in North Africa, distinct from those of Member States. The EU is a major trading partner for North Africa. Libya and Algeria are the largest African exporters to the EU. In 2006 they exported 26 billion Euros and 24 billion Euros respectively to EU countries. EU imports from Morocco, mainly textiles and agricultural products, amounted to 17.5 billion Euros and Egypt exported 16.3 billion Euros. (Europafrica, 2008) Although EU runs a trade deficit with these countries, they also represent a major market for EU goods and services, particularly machinery and chemicals and the EU therefore has an interest in their development.

North Africa is also important for Europe's energy supply, offering diversity from dependence on Russian and Middle Eastern oil and gas. Of North Africa's exports, energy is the most significant. Libya is Europe's third largest supplier of oil and gas after Norway and Russia, accounting for 6.9% of total EU imports of energy. (European Commission, 2011a) and 98% of imports from Algeria are oil and gas. (European Commission, 2011b) Proposals also exist for a power station at el-

Haouaria in Tunisia which will supply electricity to Italy via a cable linking the electricity networks of the two countries.

The economic development of North Africa is important for EU migration policies. Of the 4.6 million Africans living in Europe about two-thirds are from North Africa (Algeria, Morocco and Tunisia). (BBC, 2011) The EU is also a magnet for irregular migration from North Africa with Moroccans heading for Ceuta and Melilla or mainland Spain and Tunisians and Libyans heading for Lampedusa, Sicily and Malta. As the current crisis has demonstrated, in a Europe of open borders, immigration in one member state is an issue for all. Flows of migrants from North Africa to Southern Europe depend on the relative strengths of their respective economies and security considerations.

The EU also has an interest as a normative power in North Africa. Engagement is designed to export 'European values' of human rights, democracy, liberal markets and the rule of law. For example, Poland's foreign minister Radoslaw Sikorski representing the Presidency of the European Council said that High Representative, Catherine Ashton, welcomed the opportunity of sharing Polish experiences in the democratization process in North Africa. (Polskie Radio, 2011)

Quiet Superpower?

Moravcsik (2009) has described Europe as a "quiet superpower", "the world's 'second' military superpower" and "the world's pre-eminent civilian superpower". While, as he points out, "European countries have had 50 000 - 100 000 troops stationed in combat roles outside their home countries for most of the past two decades" (Moravcsik, 2009: p.7), the bulk of these have been in NATO missions to

Iraq and Afghanistan, the first of which was opposed by two of the three leading European states (France and Germany) and in Afghanistan “the ISAF mission has exposed significant shortcomings in NATO - in military capabilities, and in political will.” (Gates, 2011). As Menon (2009: p.230) points out, the scope of ESDP actions has been limited. “The first ESDP military deployment - Operation Concordia in FYROM - involved only 400 personnel; other Balkan deployments were notable for the relatively benign theatres into which they were deployed.” Moravcsik’s error is to treat ‘Europe’ as an homogenous foreign policy actor. Europe may account for 21% of the world’s military spending (Moravcsik, 2009: p.6) but 45% of that is accounted for by the UK and France. (Giegerich and Wallace, 2010: p.438) As Robert Gates (2011) pointed out in his speech to the Security and Defence Agenda (SDA), “less than half [of NATO members] have participated at all [in the Libya action], and fewer than a third have been willing to participate in the strike mission.” There is a difference too between military spending and foreign policy projection. As Gates (2011) says, “The non-U.S. NATO members collectively spend more than \$300 billion U.S. dollars on defence annually which, if allocated wisely and strategically, could buy a significant amount of usable military capability. Instead, the results are significantly less than the sum of the parts.”

Moravcsik’s implicit premise of ‘Europe’ as a unitary actor in foreign affairs is belied by the history. In 1986, when the US Air Force conducted a bombing raid on Tripoli from British bases, the British government did not consult or even inform its European allies. In the first Gulf War (1990-91), the British French and Italians took part under US leadership; Germany did not participate. In the Albanian crisis of 1997, a proposal for EU action under conditions of ‘reinforced cooperation’ was

abandoned when the Nordic states refused and Operation Alba was subsequently conducted under UN and OSCE auspices as multinational force (Bindi, 2010: p.32). The European Security and Defence Policy (ESDP) is, from its origin, a Franco-British policy conceived at the Saint-Malo meeting between Jacques Chirac and Tony Blair in 1998. While Germany has provided one of the battle groups in accordance with the 2010 Headline Goal, it has repeatedly declined to deploy it (for example, in the Democratic Republic of Congo in 2006 and 2008). (Menon, 2009: p.236)

Europe has signally failed to speak with one voice in the current North African crisis. At the UN Security Council, Germany abstained on the vote to approve Security Council resolution 1973 authorising military action to protect the civilian population of Libya. Indeed, up until the last moment Germany tried to prevent the resolution being passed at all. (Speck, 2011: p.1) The EU High Representative, Catherine Ashton, too, appeared to be against military action. This is a long way from the aspiration set out in Title V of TEU: “The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations”. (European Union, 2010a: Article 21.2)

Moravcsik (2009: p.8) goes on to assert that “Europe’s true geopolitical comparative advantage lies in projecting civilian influence: economic influence, international law, ‘smart’ and ‘soft power’”. He cites the EU’s neighbourhood policy: “Even where membership is only a distant possibility ... or essentially non-existent one, as with Morocco and Libya, there is evidence that EU initiatives have had an immediate impact”. (Moravcsik, 2009: p.8) Again, he cites Europe’s Foreign Aid as a significant policy tool. Europe collectively (and since the European

Consensus on Development in 2005 it is collectively) provides 56% of foreign aid (Carbone, 2007: p.30) but again we must question its effectiveness as a foreign policy instrument.

Beginning in 1970s the EEC signed trade and cooperation agreements with the countries of the South and East Mediterranean, the Maghreb (Algeria, Morocco Tunisia, the) Mashreq countries (Egypt, Jordan, Lebanon and Syria) and Israel PLO. 1991 saw a re-launch, the Renewed Mediterranean Policy. The Barcelona Process, 1995, and the subsequent European Neighbourhood Policy have all stressed the importance of the region. The Council's European Security Strategy Paper, Secure Europe in a Better World of December 2003 identified the Mediterranean as a priority area of EU Foreign and Security Policy: "The Mediterranean area generally continues to undergo serious problems of economic stagnation, social unrest and unresolved conflicts. The European Union's interests require a continued engagement with Mediterranean partners, through more effective economic, security and cultural cooperation in the framework of the Barcelona Process." (European Council, 2003, p.8.) In pursuit of this continued engagement, the EU allocated 14.9 billion Euros for ENPI development funding for its Mediterranean partners for the 2007-2013 financial perspective and the European Investment Bank is lending 2 billion Euros a year for infrastructure projects in the region. (Tovias, 2010: p.176)

From 1991 Human Rights were made an explicit condition of EU development policy and since 1995 all EU agreements carry human rights clause (Bindi, 2010: p.34). Nonetheless, one of those strategic partners, Ben Ali's Tunisia, "would come to have zero press freedoms, a censored internet, monitored phone and e-mail

communications, and only token opposition in a toothless parliament.” (Angrist, 2011) This was a far cry from Article 2 of the Association Agreement between the EU and Tunisia signed in 1995: “Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles which guide their domestic and international policies and constitute an essential element of the Agreement.” (EU, 1995).

As long ago as 2003, the European Commission declared that “The EU should ... give consideration to how it could incorporate Libya into the neighbourhood policy. In order to send a coherent message, further engagement needs to be pursued within a conditional framework and a clear understanding of the benefits of making progress towards cooperation based on respect for shared values.” (European Commission, 2003) In 2004, the EU lifted sanctions against Libya in response to Colonel Gaddafi’s renouncing nuclear weapons. The EU’s delegation to Libya declared on its website that “the long-term objective of the EU policy towards Libya is and remains Libya’s full accession to the Barcelona Process and participation in the European Neighbourhood Policy. This would enhance the promising potential for joint co-operation in important international issues such as migrations and development in Africa. (European Union, Undated) To this effect, the EU’s Ambassador to Tripoli, Marc Pierini, held substantive talks with Libyan government in July 2006. In 2007, the General Affairs Council agreed “that the EU and Libya should as soon as possible open discussions on an EU-Libya framework agreement which will include areas of mutual interest, such as human rights, migration among others, and invites the Commission to present draft negotiating

directives to this effect according to the fundamental principles inspiring the foreign policy of the European Union." (European Council GAERC, 2007: p.22)

In December 2010, just four months before the UK and France began bombing Libya, the Heads of Government of EU member states and African countries met in a summit meeting in Tripoli. The Joint Africa EU Strategy Action Plan 2011-2013 that resulted from that meeting proclaimed that "the promotion of democratic governance and human rights constitutes a central objective of the Africa-EU partnership. (European Union, 2010b) The failure of EU Foreign Policy could not be more stark. While the EU's response to demands for military action in Libya has been incoherent, the need for military action itself is a symptom of the failure of EU Foreign Policy in the region. Furthermore, these failures of both military and diplomatic Foreign Policy appear to be systemic since they repeat the mistakes so apparent at the outbreak of the Yugoslav crisis twenty years ago.

The run up to German recognition of Slovenian and Croatian independence in December 1991 illustrated too well that where EU Member States lacked common interests there could be no common Foreign Policy. The fault lines are familiar: between Germany with historical and regional interests in the Balkans, with half a million Croatian workers living in Germany (Crawford, 1993) and France and Britain; between Germany which (constitutionally) had no military capability beyond its own defence and France which had left NATO military command under General De Gaulle who both preferred EU military intervention, and the United Kingdom which (at the time) opposed any EU military capability.

In June 1991 fighting in Borovo Selo in northwest Croatia left twelve Croat policemen and 3 Serbs dead. The Yugoslav JNA was put on alert and called up

reserves. On 25 June Croatia and Slovenia declared independence. The EU in the absence of a military capability used its soft power tools to try to prevent civil war: it threatened to withhold \$1 billion in aid to Yugoslavia unless a peaceful resolution of the crisis was negotiated. (Crawford, 1993: p.7)

While the foreign ministers of Italy, Luxembourg and the Netherlands negotiated the Brioni Accord by which Yugoslav troops withdrew from Slovenia, the EU gave a lukewarm response to Tudjman's plea for a similar withdrawal from Croatia. By December 1991 a stream of refugees had begun to arrive in Germany, Austria and Hungary.

One can identify two decisive problems faced by the EU in responding to early conflicts in Slovenia and Croatia: "an international institution was attempting to deal with the problem of the use of force without any forces of its own" (Crawford, 1993: p.9) and Germany had fundamentally different foreign policy constraints to other EU members, especially France and the UK. British Prime Minister, John Major argued that "the territorial integrity of a single Yugoslavia must take precedence ... over the aims of Croatian and Slovenian nationalists", while Germany argued the primacy of the principle of self-determination and that to deny this principle might encourage the Soviet Union to intervene in the Baltic states. This last consideration was given some force when, after the 19 August coup, a number of Soviet republics began to declare their independence.

One problem with the EU's response to the Bosnian war that has salience in the current Libyan context is that the breakup of Yugoslavia did not threaten anyone's fundamental interests. "The problem with collective security is that it presupposes that all states perceive any threat to stability as vital." (Andreatta, 1997)

The current military action in Libya is not an EU action. The opposition particularly of Germany to EU military action ensured that United Nations Security Resolution (SCR) 1973 would be enforced mainly by Britain, France and the United States, eventually under the planning umbrella of NATO and with token Arab participation. Again, as in Yugoslavia, German's Foreign Policy interests and preferences do not accord with those of UK and France. The rapid reaction battlegroups set up after the failure of the EU to act in Yugoslavia have not been deployed. Under the 2010 Headline Goal these forces should be available to begin deployment within 10 days and the Member States "commit themselves to be able ... to respond with rapid and decisive action applying a fully coherent approach to the whole spectrum of crisis management operations covered by the Treaty on the European Union. This includes humanitarian and rescue tasks, peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking." (European Council: 2004)

The two battlegroups on standby during the first half of 2011 were Battlegroup 107 (comprising Dutch and German forces) and the Nordic Battlegroup (comprising largely Swedish and Finish troops). In spite of the development of these 'EU resources', the Union still suffers from a lack of hard, military power. While Germany initially opposed military action (and abstained on SCR 1973), Angela Merkel has agreed to German participation in EUFOR Libya, a humanitarian mission under Italian Rear Admiral Claudio Gaudiosi to relieve the port of Misrata. EUFOR's mobilisation is legally dependent on an appeal from the UN's Office for the Coordination of Humanitarian Affairs (OCHA). So far there has been no such request. According to European Voice (2011), "The UN stance was denounced as "an ideological opposition which clashes with reality" by one unnamed EU

diplomat speaking to the German Press Agency.” Just as in Yugoslavia in 1992, the EU is hamstrung by the need to receive UN approval for action.

Lessons from Integration Theory

One can reasonably ask, “what does integration theory have to teach us about the current failure of integration at the level of foreign and security policy?” or conversely, of course, “what does the repeated failure of the EU as an international actor tell us about integration theory?”

The early theorist of European Integration distinguished between issues of low and high politics. Broadly, we can identify two approaches: Haas and Schmitter argue that they represent a continuum and that economic integration can (and will) lead to political integration; Hoffmann maintains that there is a discontinuity and that integration at the level of the economic does not presuppose political integration: “Functional integration’s gamble could be won only if the method had sufficient potency to promise a permanent excess of gains over losses, and of hopes over frustrations. Theoretically this may be true of economic integration. It is not true of political integration (in the sense of ‘high politics’).” (Hoffman, 2006: p144) and that “in areas of key importance to the national interest, nations prefer the certainty, or the self-controlled uncertainty, of national self-reliance”. (Hoffman, 2006:p.144) According to Hoffmann (2006, p.147), de Gaulle warned that “the application of the supranational method to the area of high politics would lead not to a strong European entity, but to a dilution of national responsibility whose only beneficiary would be the US; incapable of defining a coherent policy, the ‘technocrats’ would leave the decisions in vital areas to the US, at least by default.”

The distinction between high and low politics was always difficult to sustain: decisions about tariffs may have seemed technocratic but like all political decisions they represented a judgement on the distribution of resources in the economies of Member States. Fishing quotas and agricultural subsidies do not represent Pareto-neutral policies and while they are not existential to the nation state, neither are many foreign policy actions. Policies in the areas of Economic and Monetary Union or Justice and Home Affairs cannot reasonably be categorised as low politics: what could be more existential to a polity than control of its currency or borders.

Similarly, Leon Lindberg (2006) in an early formulation of the neo-functional theory of integration distinguished between tasks (policy areas) that were inherently expansive and those that were not: “the task assigned to the institutions must be inherently expansive and thus capable of overcoming what Haas calls ‘the built-in autonomy of functional contexts’.” Inherently expansive tasks were, he claimed, the subject of ‘spillover’, “a situation in which a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action”. (Lindberg, 2006: p. 123)

‘Spillover’ must be one of the most elastic terms in political theory, taking on different meaning for different theorists. Using Lindberg’s definition, however, it is easy to make the case that, for example, the single currency is an example of spillover from the completion of the single market and the single market was a fundamentally expansionist task. While the Schengen agreement to allow the free movement of people across Europe’s internal borders may be seen the fulfilment

of one of the three freedoms set out in the Treaty of Rome, the timing of its realisation is better understood as a spillover from the 1992 single market programme. Insufficient attention, however, has been given to the mechanism by which integration in one area spills over to another, unrelated area. In the case of the single market, an increase in cross-border transactions exacerbated the costs associated currency volatility and transmission costs. Monetary Union was a policy response to negative externalities of the single market. Similarly, the queues of lorries on the Brenner Pass between Austria and Italy were a visible negative externality of the increase in intra-EU trade. In Lindberg's terms completion of the single market was an inherently expansive task.

A third theoretical explanation for the failure to develop a coherent common Foreign Policy is institutional. Indeed, it has been perceived institutional failings that have preoccupied EU policy makers since the early 1990s. While Justice and Home Affairs was progressively communitised by the treaties of Amsterdam and Nice, and "the renewed drive for market unification can be explained only if theory takes into account the policy leadership of the Commission" (Sandholtz and Zysman, 2006 p.205), the Common Foreign and Security Policy remained stubbornly intergovernmental within its own pillar and institutionally the prerogative of the Council. The High Representative gave a face to the Council's policy but the Commission remained largely excluded and was denied rights of initiative. The Treaty of Lisbon 'communitised' EU foreign policy and established a new bureaucracy (the Foreign Action Service) to implement it.

It is instructive to consider the tactics of the Commission with respect to JHA after the Maastricht Treaty came into effect. Maastricht denied the Commission any

rights of initiative in JHA, just as in CFSP. The Commission, however, acted in just the way Haas or Lindberg might have predicted, as an entrepreneur of integration. It created a new secretariat within DG JHA to support the third pillar, developed an expertise and undertook a variety of initiatives, making functional proposals, for example, the Freedom Justice and Security Scoreboard to monitor Member States' progress in implementing the agreements of the Tampere and Vienna Councils. It was rewarded at Amsterdam with rights of initiative in these fields. By comparison, expertise and initiative in the Foreign Policy area was developed within the secretariat and working groups of the General Affairs Council.

While military planning, Headline Goals and Common Positions were developed within the European Council, all of the soft power instruments of Foreign Policy (trade, aid, European Neighbourhood Policy, enlargement) were sited within the Commission. If soft policy tools were not used to advance EU geopolitical and economic interests, it might be because they were developed in separate silos with separate institutional priorities. This remains the case after Lisbon. In spite of the predictable turf wars, trade, development and the ENP remain divorced from the European External Action Service.

Foreign Policy and Judicial Politics

Although the EU institutions have not followed the usual path (thus far), of commencing integration and communitisation of the EU foreign policy, the Court of Justice of the European Union has been a slightly more successful, albeit a quiet, driver and a supranational entrepreneur of integration than the Commission.

Even though the Lisbon Treaty continues to exclude the Court of Justice of the European Union from having jurisdiction with respect to the CFSP it does have authority in monitoring compliance with Art 40 of the Treaty and ‘to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union’ (European Union, 2008).

Thus the implementation of the CFSP shall respect the Union’s competences covered in Articles 3 and 6 of the Treaty, namely promotion of peace and the well being of the Union’s peoples, offering security and justice and respect for the principles of the United Nations Charter. Further, the Union recognizes the principles covered in the Charter of Fundamental Rights of the EU, however, the Charter shall not extend the competences of the Union as defined in the Treaties (European Union, 2008). It is hard to believe that the Court would completely abstain from assessing when called upon whether the laws, regulations or administrative provisions, practices or action are inconsistent with the fundamental rights or principles that it reaffirms with regards to the ‘opt out’ countries. Chalmers (2009), points out that the law that underpins the Charter binds them whether they opt out or not as it has done for the past 18 years.

Judging from the Court’s activism and its ability to create a supranational court for Europe without any explicit power given to the Court to do so, we can expect that the Court will use the above Treaty provisions to exert its influence over some of the aspects of the CFSP. The fact that there is a considerable overlap between the JHA and the CFSP with regards to the fundamental principles guaranteed by the Treaties, Article 40 should provide a more fruitful and legitimate ground for the Court to re-start integration in the CFSP area.

Further, by de-pillarization, the Court extends its jurisdiction to give preliminary rulings in the area of JHA which by default gives an opportunity to the Court to enter the arena of CFSP in the 'overlap' cases. The Treaty of Lisbon extends judicial review regarding non-privileged applications (NPA), as previously the test for 'an individual concern' made it extremely difficult for NPA to make a claim even where they have been significantly affected by the contested measure.

Any national court or tribunal can now request preliminary rulings, and the Court will have jurisdiction to rule on measures taken on grounds of public policy in connection with issues under its competence. This is likely to create tension between the national supreme courts and the lower courts and the overall effect might be greater Europeanization of both as there will be more incentive for cooperation with the Court. Traditionally, the supreme courts could reverse decisions by lower-court judges, but a reference by lower-court judges to the Court for a preliminary ruling bypasses national review process (Conant, 2007: p.54). This rebuts the earlier neofunctionalist assumption that the EU legal system empowers all national judges. However, Burley and Mattli (1993:43) argue that the self-interests of private litigants, national judges, and the Court lead to the expansion and penetration of European law into the domestic realm. The participation of governments can also re-start integration in CFSP. Granger argues that governments increasingly use participation in judicial proceedings as means for influencing in a subtle and efficient manner the Court's decision making and are now considered influential 'Repeat Players' alongside the Commission and powerful corporate and interest groups (Granger 2004:4).

With regards to CFSP the Court has jurisdiction in reviewing the legality of restrictive measures against natural or legal persons adopted under the CFSP provisions. Even prior to the Treaty of Lisbon coming to force, the Court in a 2008 Kadi decision refused to apply UN resolutions to freeze funds of those suspected of supporting Al-Qaeda because of conflict with fundamental principles of Community law. The Court held that although it does not have the power to review the lawfulness of a resolution of an international body it cannot avoid review of conformity of the EC acts with the EC Treaty. Because there is an overlap between the CFSP and the EU policy it creates a problem for the powers of institutions and for the doctrines such as direct effect. The Court took it upon itself to police this difficult boundary line and we can predict more activism and stretching of the legal concepts if necessary.

The Court can also review whether a proposed agreement is compatible with the Treaties and if the Court's decision is adverse, the agreement cannot enter into force unless it is amended or the Treaty is revised. In Pupino [2005] the Court held that the principle of loyal cooperation in Art 10 EC applied to the Member States when they acted within the scope of Union powers, which some scholars argue could apply to the CFSP, thereby reinforcing the obligation of cooperation with regard to this area.

Extending (directly and indirectly) the jurisdiction of the Court means that there is a great potential to accelerate integration process in the CFSP area. It is very plausible that the Court will enhance legal integration in these areas and will create a neo-functionalist spillover as it has done in the past, by establishing a new legal order and the supremacy of the EU law and by the creation of the

principle of direct effect. The Treaty of Lisbon presents the Court with a great opportunity to repeat its previous successes.

Conclusion

This essay sought to reassess EU foreign policy in the light of the EU's response to the North African crisis and highlight the shortfalls therein despite the successful attempts in institutionalizing a common foreign policy. The failures of the EU's response to the crisis in Yugoslavia in 1991 have been repeated in North Africa in 2011. The interests of Germany on the one hand, and France and the UK on the other are divergent and although the EU no longer lacks its own resources to intervene militarily, it still lacks the common will to deploy them.

Hill's capabilities-expectations gap thesis offers a diagnosis that depends overmuch on a lack of capability. It seems inadequate to account for why, in spite of institutional military upgrading of Europe's capabilities, the EU finds itself still powerless to respond to a crisis on its borders.

Extending from Toje's consensus-expectation gap, we shifted focus towards the interests of the players involved, namely the EU itself. It became clear that Europe's ability to stand as an individual and distinct actor is hampered by it being nested in other international foreign policy regimes, but mainly due to the divergent interest and preferences of the member states. Moreover, the failure of both the EU as a military power and as a soft power with regards to the Libyan crisis, suggests that it cannot be both. Catherine Ashton's ambition for the EU to act in pursuit of its collective interest, seeking to use its soft power tools to achieve limited objectives seems more realistic.

Foreign policy is not immune to integration because it represents 'high policy' but because, as yet, it does not address fall-out from integration in other areas. Member States will continue to pursue their separate interests in this field unless and until there is an overwhelming common interest in pursuing joint action. In the case of North Africa there are such possible interests but there is no agreement that they are best served by military action.

The European External Action Service, although absorbing the Foreign Policy apparatus of the Council and Commission, does not have direct access to the soft-power tools that would allow the soft policy actions that Catherine Ashton referred to. The EEAS may itself turn out to be an entrepreneur of integration in Foreign and Security Policy.

Just like the European Monetary Union, the EU foreign policy is still a fairly new area of policy making and is still evolving by ad hoc responses to the challenges it faces. Crises tend to revive integration process as we are currently experiencing with the EMU. What type of crisis it would take for the Foreign Policy to communitize is an open question. For now "the nation-state is still here, and the new Jerusalem has been postponed." (Hoffmann, 2006: p.134)

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