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The European Union in the World — A Community of Values

John Richardson*

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Abstract

These are momentous times in Europe. The Euro has been successfully introduced, the enlargement negotiations are approaching their climax, and the European Convention ("Convention") is moving towards the drafting of a constitution for a new, continent-wide political entity. At the same time, unrest is manifest, particularly in two areas. On the one hand, many of our citizens, and not just the political elites, are dissatisfied with Europe's performance on the world stage and are concerned about the maintenance of peace and security within the Union. In these areas they would like to see a strengthened, more effective entity— "more Europe." On the other hand, their disenchantment with the long reach of European Union ("EU" or "Union") regulation in the first pillar area of economic policy is growing. The feeling of loss of local control over their destiny and a vague feeling of potential loss of identity within an ever more centralized polity is palpable. Here, they want "less Europe." In the outside world, change is also the order of the day. The ice-sheet of bipolarity, which overlaid and hid the complexity of international relations during the Cold War, is breaking up at an ever-increasing speed and revealing a world in which two paradigms are competing to become the underlying ordering principles for the new century. The traditional paradigm of interacting Nation States, each pursuing its own separate interests, with alliances allowing the small to compete with the large, is alive and well, and its proponents like Machiavelli or Churchill continue to be in vogue in the literature of international relations and the rhetoric of world leaders. At the same time, there is a school of thought which points to the growing economic and ecological interdependence of our societies and the necessity for new forms of global governance to complement national action. It is also becoming abundantly clear that the concept of a "Nation State" is often a fiction, positing as it does an identity between the citizens of a State and the members of a culturally homogenous society. For both reasons, the concept of the Nation State as the principal actor on the world stage, is called into question. The experience of the Union with the sharing of State sovereignty is clearly related to the second paradigm and also to the EU's firm support for the development of the United Nations ("U.N.") as well as other elements of multilateral governance. It would hardly be wise to suggest that any foreign policy, and certainly not that of the EU, should be based only on this paradigm. Given the recurrent threats to security, which seem to be part of the human condition expressed by some as the "inevitability of war"—the defense of territorial integrity; action against threats of aggression; and resistance to crimes against humanity such as genocide—the ability to conduct a security policy based much more on the old paradigm of interacting interests will continue to be required. That the EU needs to develop such a capability will be taken here as a given. Such a crisis-management capability will be essential to the Union, but will be distinguished here from the more long-term elements of foreign policy, which can be thought of as being designed to reduce the need for crisis management

in the context of a security policy to a minimum. The crisis-management area of policy will not be treated further here. The thesis of this Essay is that the same set of political concepts can serve as a guide to the future internal development of the EU and as the basis of such a long-term foreign policy. Furthermore, it suggests that neither should be seen in terms of the balancing of interests but rather, as the expression of a small list of fundamental values. The list is as follows: (1) the rule of law as the basis for relations between members of society; (2) the interaction between the democratic process and entrenched human rights in political decision-making; (3) the operation of competition within a market economy as the source of increasing prosperity; (4) the anchoring of the principle of solidarity among all members of society alongside that of the liberty of the individual; (5) the adoption of the principle of sustainability of all economic development; and (6) the preservation of separate identities and the maintenance of cultural diversity within society. These values can be seen as the answer to the question posed both, by citizens of the Union and by our fellow citizens of the world: "What does the EU stand for?" In exploring these values we should, however, remember that in the real world there will be occasions on which Realpolitik will intrude and the interest-based paradigm will prevail.

THE EUROPEAN UNION IN THE WORLD— A COMMUNITY OF VALUES

*John Richardson**

INTRODUCTION

These are momentous times in Europe. The Euro has been successfully introduced,¹ the enlargement negotiations are approaching their climax,² and the European Convention (“Convention”) is moving towards the drafting of a constitution for a new, continent-wide political entity.³

At the same time, unrest is manifest, particularly in two areas. On the one hand, many of our citizens, and not just the political elites, are dissatisfied with Europe’s performance on the world stage and are concerned about the maintenance of peace and security within the Union (in what the Treaty of the European Union (“TEU”) calls “the area of Justice and Home Affairs”).⁴ In these areas they would like to see a strengthened, more effective entity — “more Europe.” On the other hand, their disenchantment with the long reach of European Union (“EU” or “Union”) regulation in the first pillar area of economic policy⁵ is growing. The feeling of loss of local control over their

* Ambassador, Head of the Delegation of the European Commission to the United Nations; Member, Board of the European Institute; Member, Board of the Salzburg Seminar; former Minister and Deputy Head of the European Commission’s Delegation in Washington; former Head of Division for relations with the United States and with Japan.

1. See GEORGE A. BERMAN, ROGER J. GOEBEL, WILLIAM J. DAVEY & ELEANOR M. FOX, *CASES AND MATERIALS ON EUROPEAN UNION LAW* ch.33 (2d ed. 2002) (discussing European Economic and Monetary Union) [hereinafter GOEBEL, ET.AL.].

2. See Eneko Landaburu, *The Fifth Enlargement of the European Union: the Power of Example*, 26 *FORDHAM INT’L L.J.* 1 (2002).

3. See Laeken European Council, Presidency conclusions, E.U. BULL., no. 12, at 7 (2001), available at <http://europa.eu.int/council/off/conclu/>.

4. Consolidated version of the Treaty on European Union, arts. 29-42, O.J. C 340/2, at 162-68 (1997), 37 *I.L.M.* 67 at 22-28 (ex arts. K.1-K.14) [hereinafter Consolidated TEU], incorporating changes made by Treaty of Amsterdam, amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Oct. 2, 1997, O.J. C 340/1 (1997) [hereinafter Treaty of Amsterdam] (amending Treaty on European Union (“TEU”), Treaty establishing the European Community (“EC Treaty”), Treaty establishing the European Coal and Steel Community (“ECSC Treaty”), and Treaty establishing the European Atomic Energy Community (“Euratom Treaty”) and renumbering articles of TEU and EC Treaty).

5. See Consolidated version of the Treaty establishing the European Community,

destiny and a vague feeling of potential loss of identity within an ever more centralized polity is palpable. Here, they want “less Europe.”

In the outside world, change is also the order of the day. The ice-sheet of bipolarity, which overlaid and hid the complexity of international relations during the Cold War, is breaking up at an ever-increasing speed and revealing a world in which two paradigms are competing to become the underlying ordering principles for the new century. The traditional paradigm of interacting Nation States, each pursuing its own separate interests, with alliances allowing the small to compete with the large, is alive and well, and its proponents like Machiavelli or Churchill continue to be in vogue in the literature of international relations and the rhetoric of world leaders.

At the same time, there is a school of thought which points to the growing economic and ecological interdependence of our societies and the necessity for new forms of global governance to complement national action. It is also becoming abundantly clear that the concept of a “Nation State” is often a fiction, positing as it does an identity between the citizens of a State and the members of a culturally homogenous society. For both reasons, the concept of the Nation State as the principal actor on the world stage, is called into question.

The experience of the Union with the sharing of State sovereignty is clearly related to the second paradigm and also to the EU's firm support for the development of the United Nations (“U.N.”) as well as other elements of multilateral governance. It would hardly be wise to suggest that any foreign policy, and certainly not that of the EU, should be based only on this paradigm. Given the recurrent threats to security, which seem to be part of the human condition expressed by some as the “inevitability of war” — the defense of territorial integrity; action against threats of aggression; and resistance to crimes against humanity such as genocide — the ability to conduct a security policy based much more on the old paradigm of interacting interests will continue to be required. That the EU needs to develop such a capability will be taken here as a given. Such a crisis-management capabil-

art. 159, O.J. C 340/3 (1997), at 250-51, 37 I.L.M. 79 at 112-13 (ex art. 130b) [hereinafter Consolidated EC Treaty], *incorporating changes made by Treaty of Amsterdam, supra* n.4.

ity will be essential to the Union, but will be distinguished here from the more long-term elements of foreign policy, which can be thought of as being designed to reduce the need for crisis management in the context of a security policy to a minimum. The crisis-management area of policy will not be treated further here.

The thesis of this Essay is that the same set of political concepts can serve as a guide to the future internal development of the EU and as the basis of such a long-term foreign policy. Furthermore, it suggests that neither should be seen in terms of the balancing of interests but rather, as the expression of a small list of fundamental values. The list is as follows:

- the rule of law as the basis for relations between members of society;
- the interaction between the democratic process and entrenched human rights in political decision-making;
- the operation of competition within a market economy as the source of increasing prosperity;
- the anchoring of the principle of solidarity among all members of society alongside that of the liberty of the individual;
- the adoption of the principle of sustainability of all economic development; and
- the preservation of separate identities and the maintenance of cultural diversity within society.

These values can be seen as the answer to the question posed both, by citizens of the Union and by our fellow citizens of the world: "What does the EU stand for?"⁶ In exploring these values we should, however, remember that in the real world there will be occasions on which *Realpolitik* will intrude and the interest-based paradigm will prevail.

I. VALUES AND INTERESTS IN EXTERNAL RELATIONS IN THE EU TREATIES

Article 11 of the TEU defines only the objectives of the common foreign and security policy ("CFSP"), and not those of the

6. There is, of course, no reason why other countries in other regions of the world should not share these values and to the extent that they do, they are the EU's natural partners in its endeavors.

other economic elements of the Union's external policy.⁷ Trade, development, international environmental, and monetary policies are covered elsewhere in the treaties.⁸

Article 11 does not choose between the two paradigms suggested above. It simply mentions both by committing to "safeguard the common values, fundamental interests, independence and integrity of the Union."⁹ It does, however, add that this goal should be pursued "in conformity with the principles of the United Nations Charter."¹⁰ This can certainly be interpreted as a clear choice in favor of a foreign policy based on principles and not just on *Realpolitik*.

Article 11 also defines the objective "to develop and consolidate democracy and the rule of law, and respect for human

7. See Consolidated TEU, *supra* n.4, art. 11, O.J. C 340/2, at 155 (1997), 37 I.L.M. at 15 (ex art. J.1). Article 11 provides:

1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be
 - to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;
 - to strengthen the security of the Union in all ways;
 - to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;
 - to promote international cooperation;
 - to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.
2. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council shall ensure that these principles are complied with.

Id.

8. See Consolidated EC Treaty, *supra* n.5, Title IX, arts. 131-34, O.J. C 340/3, at 237-38 (1997), 37 I.L.M. at 99-100 (ex Title VII, arts. 110-15) (setting out international trade provisions of common commercial policy); *see also* Title XX, arts. 177-81, O.J. C 340/3, at 256-57 (1997), 37 I.L.M. at 118-19 (ex Title XVII, arts. 130u to 130y) (setting out development cooperation provisions); art. 174(4), O.J. C 340/3, at 255 (1997), 37 I.L.M. at 117 (ex art. 130r(4)) (setting out international environmental provision); art. 111, O.J. C 340/3, at 223-24 (1997), 37 I.L.M. at 85-86 (ex art. 109) (setting out international monetary provision).

9. Consolidated TEU, *supra* n.4, art. 11(1), O.J. C 340/3, at 184 (1997), 37 I.L.M. at 46 (ex art. J.1).

10. *Id.*

rights and fundamental freedoms.”¹¹ This is also a value-based objective.

Additionally, Article 11 adopts the objectives of both, the “security” of the Union and “peace” and “international security,” again in conformity, *inter alia*, with the U.N. Charter, thereby seemingly ruling out acting in defiance of the Charter. Once again, this is a clear choice in favor of adding value-based constraints to foreign policy actions carried out for reasons of the defense of interests. A further objective commits the Union “to promote international cooperation,” presumably thereby eschewing conflict.

Only the remaining objective of Article 11, “to strengthen the security of the Union in all ways,”¹² seems to leave the door open to the Union using any means at its disposal in time of necessity. Only a hopeless idealist could be surprised at this concession to the harsh realities of the contemporary world and the cruel lessons of history. But it is also clear that it represents a *garde-fou* for what is otherwise a values-based foreign policy. To give a concrete example, if the Union wishes to avoid Iraq, Iran, or North Korea developing and threatening to use weapons of mass destruction, it should be pursuing a dual-track policy of trying to export its values to them through engagement while preparing for the eventuality of the failure of this policy leading to a security crisis. This is indeed what is currently being attempted.¹³

The concentration of Article 11 on value-based policies for the CFSP elements of the EU’s external action is further strengthened if we extend the discussion to include other elements of the EU’s external relations, as included in the European Economic Community Treaty (“EEC Treaty”).¹⁴ External

11. *Id.*

12. *Id.*

13. For a discussion on European Council foreign policy statements concerning Iraq, Iran, and North Korea, see e.g. EUROPEAN COMMISSION, GENERAL REPORT ON THE ACTIVITIES OF THE EUROPEAN UNION 2001, no. 12, at 28-30, 39 (sec. 1, par. 836-38, 847); at 5, 16 (sec. 8, par. 996, 1007); at 23 (sec. 11, par. 1078) (2001), available at <http://europa.eu.int/abc/doc/off/rg/en/2001>. See also EUROPEAN COMMISSION, GENERAL REPORT ON THE ACTIVITIES OF THE EUROPEAN UNION 2000, at 23-25, 34 (sec. 1, par. 765-67, 776); at 14 (sec. 8, par. 925, 999) (2000), available at <http://europa.eu.int/abc/doc/off/rg/en/2000>.

14. See Treaty establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11.

economic policy objectives are to be found dispersed throughout the separate policy chapters of the EEC Treaty.

Article 131, laying down the common commercial policy, defines its aims as "the progressive abolition of restrictions on international trade."¹⁵ It is worth noting that this is an espousal of the principle of free trade rather than the idea of defending the industrial or other interests of the Union.¹⁶

Community development policy in Article 177.1 "[. . .] shall foster

- the sustainable economic and social development of the developing countries[. . .];
- the smooth and gradual integration of the developing countries into the world economy;
- the campaign against poverty in the developing countries."¹⁷

These aims represent commitments to the values of sustainability, market economy, and solidarity in the dealings of the Union with the developing world.¹⁸

Article 177.2 adopts the objective "of developing and consolidating democracy and the rule of law, and . . . respecting human rights and fundamental freedoms."¹⁸

Article 177.3 subjects the development policies of the EU (and, incidentally, of its Member States) to U.N. obligations, a clear commitment to the international rule of law.¹⁹

The objectives so defined, when brought together in this way, represent a coherent set of value-based policy goals for the external relations of the Union.

One area of external activity remains — that of monetary policy²⁰ — for which no objectives are established by the TEU. Perhaps this represents the consensus under liberal economists

15. See Consolidated EC Treaty, *supra* n.5, arts. 131-34, O.J. C 340/3, at 237-38 (1997), 37 I.L.M. at 99, 100 (ex arts. 110-15). See also GOEBEL, ET.AL., *supra* n.1, at ch.28.

16. See *id.*

17. *Id.* art. 177.1, O.J. C 340/3, at 256 (1997), 37 I.L.M. at 118 (ex art. 130u).

18. *Id.* art. 177.2, O.J. C 340/3, at 257 (1997), 37 I.L.M. at 118 (ex art. 130u).

19. See *id.* art. 177.3, O.J. C 340/3, at 257(1997), 37 I.L.M. at 119 (ex art. 130u).

20. See Consolidated EC Treaty, *supra* n.5, art. 111, O.J. C 340/3, at 223-24 (1997), 37 I.L.M. at 185-86 (ex. art. 109) (setting out international monetary provision). See also Vienna European Council, Presidency conclusions, E.U. BULL., no. 12, at 7 (1998), available at <http://europa.eu.int/council/off/conclu/> (discussing how international monetary relations should be conducted).

that in today's world of global markets, external monetary policy is largely powerless. It is nevertheless a curious lacuna.

It is this author's conviction that the concentration of attention on the crisis management aspects of EU external relations, driven both, by the need to respond to crises and by media and public interest in conflict, has distracted attention from the way in which the Union has over the years built up a remarkably coherent approach to its long-term goals in the external relations field, an approach based largely on the external pursuit of the same basic principles which guide its own development. What, then, are these principles?

II. *THE VALUES UNDERLYING EUROPEAN INTEGRATION*

The first three of these principles have been fundamental to the process of European integration from the beginning. The others have begun to come into focus more clearly only in the recent past. Some comments on their nature and on their past development within the Union will be relevant before discussing their role in international relations.

A. *The Rule of Law*

The ordering of society through the application of a framework of laws and regulations based on the will of the people, as expressed through the democratic process and implemented by an independent judiciary, has deep roots in Europe, going back to at least Roman times, so it is no surprise that it should have been adopted by the EU. What has been surprising, however, is that the enforcement of EU law, which overrides national law in areas of EU legal competence,²¹ has been successfully entrusted to national courts, under the overall umbrella of the European Court of Justice ("ECJ"). No parallel system of European Courts has been established along the lines of the U.S. Federal Courts. Nor over many years were the decisions of the ECJ the object of attack on the grounds of their political activist nature, as has often been the case for the U.S. Supreme Court. This is surely one of the great success stories of European integration. What is as yet unclear is whether this situation has now changed in the

21. For a discussion on Court of Justice Doctrine of Supremacy of EC law, see GOEBEL, ET.AL., *supra* n.1, at ch.7.

light of suggestions to create a new Court to adjudicate on issues of legal competence.

More recently, the development of an EU consensus on certain aspects of the legal system such as evidentiary standards; the rights of the accused; and the definition of cruel and unusual forms of punishment, such as the death penalty, has emerged from the work of the Council of Europe and, through the Charter of Fundamental Rights,²² become a part of the EU itself. This is of importance not only for the work of the Convention, but also for the content of foreign policy.

B. *The Market Economy*

In principle, a reliance on the market has characterized the EU since the inception of the European Economic Community ("EEC"). It is on this basis that the Common Market was created, the competition policy implemented, and the Single Market created. In practice, however, it coexisted with the practice of State intervention in many areas, with the Marxist idea that the people should have control over "the commanding heights" of the economy, and with the idea of there being "natural monopolies" in areas such as telecommunications, transport, or energy provision.

Within the last decade, economic policies in Europe have swung decisively away from an interventionist model and towards a reliance on competition within open markets to generate economic growth and prosperity. The remnants of an interventionist industrial policy have been dismantled at the EU level; telecommunications and air transport have been completely deregulated; State-owned enterprises have been largely privatized by Member States, or at least made subject to competition from private companies on the basis of a level playing field achieved by regulatory means. This change is not the result of changes in the political complexion of governments but rather a sea-change in the cross-party consensus. It has gone hand-in-hand with the development of an international consensus along similar lines.

22. See E.U. BULL., no. 12, at 171-77 (2000), at <http://europa.eu.int/abc/doc/off/bull/en/200012/sommai00.htm> (discussing Charter of Fundamental Rights of the European Union ("Fundamental Rights Charter")). See also Fundamental Rights Charter, art. 2(2), 4, 47-50, O.J. C 364/1 (2000), available at http://www.europarl.eu.int/charter/default_en.htm.

C. Democracy and Human Rights

It has always been understood that the Union could only have democratic States as members. For this reason it was the reintroduction of democracy in first, Greece and then, Spain and Portugal, that paved the way for their accession. After the fall of Communism, this principle was codified in the text adopted by the European Council in Copenhagen in June 1993, setting out the criteria to judge whether a candidate for membership of the EU could be admitted or not.²³ The principle of democracy has since been spelled out as Article 6.1 of the TEU.²⁴

Article 6.2 of the TEU also incorporates the principle of the respect of human rights, defined as those guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR").²⁵ In addition, the European Council in Nice (December 7-9, 2000) welcomed the joint proclamation by the Council, the Parliament, and the Commission of the Charter of Fundamental Rights, combining in a single text civil, political, economic, social, and societal rights from various sources.²⁶ Since Nice, the TEU also sets out (in Article 7) the steps to be taken if a Member State is in serious breach of these principles.²⁷

In this way, the original implied assumption of democracy has gradually been spelled out in detail and partially codified.

23. See Copenhagen European Council, Presidency conclusions, E.C. BULL., no. 6, at 7 (1993), available at http://www.europarl.eu.int/enlargement/ec/cop_en.htm. Membership in the EU requires that a candidate country possess the following three criteria: (1) stability of institutions that guarantee democracy, the rule of law, human rights and protection of minorities; (2) a functioning market economy and an ability to co-exist with competition and market forces within the Union; and (3) the ability to comply with membership obligations, including political, economic and monetary union aims (the Community *acquis*) [hereinafter Copenhagen criteria]. The candidate country should also adjust its administrative structures to permit effective implementation of EC legislation. *Id.*

24. See Consolidated TEU, *supra* n.4, art. 6.1, O.J. C 340/2, at 153 (1997), 37 I.L.M. at 13 (ex art. F).

25. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

26. See Nice European Council, Presidency conclusions, E.U. BULL., no. 12, at 8 (2000), available at <http://europa.eu.int/council/off/conclu/>.

27. See Consolidated TEU, *supra* n.4, art. 7, O.J. C 340/2, at 154 (1997), 37 I.L.M. at 14 (ex art. F.1). The Treaty of Nice of December 2000, still unratified, will further amend the Consolidated TEU in important ways. See draft Treaty of Nice, Feb. 26, 2001, O.J. C80/1 (Mar. 10, 2001).

D. Solidarity

The political development of Europe has been dominated since the Second World War by the ideas of Social and Christian Democratic parties. Their enduring legacy is surely the principle of the social safety net: the idea that society will look after all its citizens by ensuring that they can live lives of reasonable comfort and dignity, even if they are unable to earn the income necessary to this end. In this sense, Europe has espoused the model of a Social Market Economy, regarded by many as fundamentally different in concept from the U.S. model.

The same principle of solidarity is codified in Title XVII of the EEC Treaty, where Article 158 commits the Union to "aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favored regions or islands, including rural areas."²⁸ In practice, this has meant a systematic transfer of financial resources from richer to poorer Member States.²⁹ It is also an important justification for treating agriculture differently from other sectors, within the context of a market economy. The system can be seen not only as an expression of political solidarity, but also as a necessary complement to the free play of market forces, which could otherwise lead to increasing disparities.

The emphasis on minority rights within the human rights policies of the EU can also be seen as an expression of solidarity with minority groups, who might otherwise feel disadvantaged by the operation of democratic decision-making at national level. It is currently playing an important role in ensuring that problems of minorities do not lead to unrest within some candidate countries.³⁰

28. Consolidated EC Treaty, *supra* n.5, art. 158, O.J. C 340/3, at 250 (1997), 37 I.L.M. at 112 (ex art. 130a).

29. See description of the work of the Cohesion Fund, *available at* http://europa.eu.int/comm/regional_policy/funds/procf/cf_en.htm.

30. See Copenhagen criteria, *supra* n.23 (citing protection of minorities as one Copenhagen criteria). See also discussions of minority rights (e.g. of Russians) in Estonia in COMMISSION OF THE EUROPEAN COMMUNITIES, 2001 REGULAR REPORT ON ESTONIA'S PROGRESS TOWARD ACCESSION, SEC (2001) 1747, at 19-24 (Nov. 13, 2001), *available at* http://europa.eu.int/comm/enlargement/report2001/ee_en.pdf; 2000 REGULAR REPORT FROM THE COMMISSION ON ESTONIA'S PROGRESS TOWARDS ACCESSION, at 17-21 (Nov. 8, 2000), *available at* http://europa.eu.int/comm/enlargement/report_11_00/pdf/en/es_en.pdf; Agenda 2000 — Commission Opinion on Estonia's Application for Membership of the European Union, Doc. 97/12, at 16-20 (July 15, 1997), *available at* http://europa.eu.int/comm/enlargement/doc9712/doc9712_en.pdf.

E. Sustainability

The Single European Act ("SEA") added, for the first time, the area of environmental policy to the areas of first pillar activity,³¹ thereby formalizing a long-standing *de facto* practice, and Maastricht developed this further. It was, however, the Rio conference on sustainable development of 1992 that really began to focus attention on the global dimension of this issue, followed by the Kyoto Protocol on Global Climate Change.³² The concept was first incorporated into the EC Treaty by the Treaty of Amsterdam, and Article 2EEC now defines the aim of the Union's economic policies as promoting "a harmonious, balanced and sustainable development."³³ The adoption by the European Council at Gothenburg in June 2001 of a Strategy for Sustaina-

eu.int/comm/enlargement/dwn/opinions/estonia/es-op-en.pdf. For a discussion of minority rights (e.g. of Russians) in Latvia see COMMISSION OF THE EUROPEAN COMMUNITIES, 2001 REGULAR REPORT ON LATVIA'S PROGRESS TOWARDS ACCESSION, SEC(2001) 1749, at 20-28 (Nov. 14, 2001), *available at* http://europa.eu.int/comm/enlargement/report_10_99/pdf/en/estonia_en.pdf; 2000 REGULAR REPORT FROM THE COMMISSION ON LATVIA'S PROGRESS TOWARDS ACCESSION, 19-24 (Nov. 8, 2000), *available at* http://europa.eu.int/comm/enlargement/report_11_00/pdf/en/lv_en.pdf; *Agenda 2000 - Commission Opinion on Latvia's Application for Membership of the European Union*, Doc. 97/14, at 16-21 (July 15, 1997), *available at* http://europa.eu.int/comm/enlargement/report_10_99/pdf/en/estonia_en.pdf. For a discussion of minority rights (e.g. of Hungarians) in Romania see COMMISSION OF THE EUROPEAN COMMUNITIES, 2001 REGULAR REPORT ON ROMANIA'S PROGRESS TOWARDS ACCESSION, SEC(2001) 1753, at 22-30 (Nov. 14, 2001), *available at* http://europa.eu.int/comm/enlargement/report_10_99/pdf/en/estonia_en.pdf; 2000 REGULAR REPORT FROM THE COMMISSION ON ROMANIA'S PROGRESS TOWARDS ACCESSION, 19-25 (Nov. 8, 2000), *available at* http://europa.eu.int/comm/enlargement/report_10_99/pdf/en/estonia_en.pdf; *Agenda 2000 - Commission Opinion on Romania's Application for Membership of the European Union*, Doc. 97/18, at 15-19 (July 15, 1997), *available at* <http://europa.eu.int/comm/enlargement/dwn/opinions/romania/ro-op-en.pdf>. For a discussion of minority rights (e.g. of Hungarians) in Slovakia see COMMISSION OF THE EUROPEAN COMMUNITIES, 2001 REGULAR REPORT ON SLOVAKIA'S PROGRESS TOWARDS ACCESSION, SEC (2001) 1754, at 20-25 (Nov. 13, 2001), *available at* http://europa.eu.int/comm/enlargement/report2001/sk_en.pdf; 2000 REGULAR REPORT FROM THE COMMISSION ON SLOVAKIA'S PROGRESS TOWARDS ACCESSION, 18-22 (Nov. 8, 2000), *available at* http://europa.eu.int/comm/enlargement/report_11_00/pdf/en/sk_en.pdf; *Agenda 2000 - Commission Opinion on Slovakia's Application for Membership of the European Union*, Doc. 97/20, at 19-23 (July 15, 1997), *available at* <http://europa.eu.int/comm/enlargement/dwn/opinions/slovakia/sk-op-en.pdf>.

31. See Single European Act ("SEA"), effective July 1, 1987. See also Consolidated EC Treaty, *supra* n.5, arts. 174-76, O.J. C 340/3, at 254-56 (1997), 37 I.L.M. at 116-18 (ex arts. 130r-130t).

32. See Kyoto Protocol to the United Nations Framework Convention on Global Climate Change, U.N. Doc. No. FCCC/CP/1997/7/ Add.1 (Dec. 11, 1997).

33. Consolidated EC Treaty, *supra* n.5, art. 2, O.J. C 340/3, at 181 (1997), 37 I.L.M. at 43 (ex art. 3).

ble Development has begun to turn this into practical policy.³⁴

This is one of very few examples of an international discussion then being reflected in internal changes within the Union. The driving force behind it was the consciousness of global environmental interdependence — we are all citizens of “Spaceship Earth” — and the need for international solidarity in dealing with it. Nevertheless, the discussion has triggered the realization that EU policies have an obligation to ensure that our children and children’s children are afforded the same opportunities for a good life as are we, and thus, the need to ensure that economic development preserves and does not diminish the resources, natural and otherwise, on which it is based. In this sense it can also be interpreted as a principle of intergenerational solidarity.

*F. Preservation of Personal and National Identity
and Cultural Diversity*

It has been apparent since the beginning of the European integration process that any attempt to apply a melting-pot approach to Europe with the aim of creating a European national identity replacing national identities was doomed to failure. There is, however, no doubt that it remained the secret dream of many of those involved in the construction of Europe. Over time it has, however, given ground to quite a different conception of integration, which accepts that the aim is to give the EU the capacity for effective action in pursuit of its goals by sharing sovereignty, but also while preserving those elements of national, regional, or ethnic identity which are so essential to the well-being of its citizens.

It has often been assumed by those opposing the sharing of sovereignty, that the defense of identity is the same as the defense of national sovereignty, and the introduction of the principle of subsidiarity in Maastricht was argued largely along these lines.³⁵ It has proved difficult to devise clear criteria by which to judge which tasks should be assigned to the EU level and which should remain at national or sub-national level and the Convention is likely to struggle mightily with this task. What may help is

34. See Göteborg European Council, Presidency conclusions (June 2001), available at <http://ue.eu.int/presid/conclusions.htm>.

35. See Consolidated EC Treaty, *supra* n.5, art. 5, O.J.C. 340/3, at 182-83 (1997), 37 I.L.M. at 44-45 (ex art. 3b) (added by the Treaty of Maastricht).

to realize that citizens are more attached to certain functions being performed at the local level than others, because the tasks are associated in their minds with the political entity, which most closely corresponds to their sense of identity. It was once believed, e.g., that this included the issuing of a currency, although initial experience with the introduction of the Euro suggests that this was exaggerated.

What seems clear is that citizens are attached to local control over decisions impacting directly on their daily lives and are less concerned with those affairs of the State, such as foreign policy, whose impact is indirect. If this suggests that the EU should indeed move in the ultimate direction of creating a European army, a caveat is nevertheless in order. Once one's sons and daughters go into action, the impact on individual lives is direct and immediate. Perhaps such an army should have units with an identifiable regional identity (and indeed uniform) as the British Army once had with its county regiments.

The corollary is that increased attention should be given to areas currently of Community competence, for which central decision-making or implementation seems to most often generate a visceral, identity-related opposition, with a view to returning them to national or sub-national competence. This may be true, e.g., for some regulations affecting the food we eat or when local customs, which reflect a particular cultural tradition, are called into question. In such cases the protection of local cultural identities should be weighed in the balance with arguments based on the perfectioning of the Single Market. Some market imperfection may be a small price to pay for the respect of the identity of our citizens.

A lesson can also be learned from the implementation of EU law by national courts. To the extent that the implementation of EU policies can be decentralized to the Member State level, as is currently being suggested for merger control decisions,³⁶ this can bolster the sense of national self-worth, without which pride in national identity becomes more difficult to maintain. It may also be useful to reflect whether the idea of devolving the implementation of policies to Member States could not be pursued in the area of external relations. The execution of

36. See *White Paper on Reform of Regulation* 17, Feb. 29, 2000. Summary of the *White Paper* is available at http://www.legal500.com/devs/uk/ec/ukee_130.htm.

Union external policies is currently hampered by the fragmentation of its diplomacy. In operations within the U.N, to take but one example, it is common for the Presidency or the Commission to express one view on behalf of the Union, while individual Member States express other, sometimes conflicting views.³⁷ At the same time, neither the Commission nor most Presidencies have the diplomatic and negotiating capacity to represent the Union with the weight its positions deserve. A pooling of negotiating capacity by having the Union represented by Delegations adequately staffed by diplomats from both EU institutions and Member States, but speaking exclusively on behalf of the Union, would both, allow the Union to function more effectively, and remove the temptation for individual Member States to think they could do it better. It would also make clear that a more effective foreign policy need not imply the abolition, even in the longer term, of Member State diplomatic services, which represent an important element of national identity.

Finally, these considerations suggest that the EU could well develop positive policies designed to maintain and even promote national and regional identities and cultures. These should not be seen as something to be simply accepted as a constraint while pursuing integration, but rather, as an essential ingredient in the European model and a prerequisite for its whole-hearted acceptance by its citizens.

III. A VALUES-BASED FOREIGN POLICY FOR THE EU

All six principles outlined above have, or should have, their equivalents in the external relations of the Union. It is well worth spelling this out in some detail because the EU is clearly committed to reaching its external policy goals where possible by the force of argument and through dialogue, with economic sanctions and military operations in a subsidiary role. If this is the case, its confidence in its arguments and their credibility in the world can only benefit from the realization that the Union practices what it preaches.

37. See Consolidated TEU, *supra* n.4, art. 19, O.J. C 340/2, at 159 (1997), 37 I.L.M. at 19 (ex art. J.9) (stating that States should coordinate their action in international organizations).

A. The Rule of Law

The international rule of law has developed as a result of two different traditions. The network of international bilateral agreements and of decisions based on them has led to the growth over many years of an established body of what is normally called "international law." Alongside this, a system of multilateral agreements has been negotiated at an accelerating rhythm, originally to regulate diplomatic and military relations between States (the Vienna Conventions); more recently to regulate international economic relations (World Trade Organization ("WTO")), International Telecommunications Union ("ITU"), International Civil Aviation Organization ("ICAO"), and World Meteorological Organization ("WMO"), etc.; or to provide more broadly an embryonic system of governance for dealing with global problems (the U.N. system).³⁸

The public spotlight usually falls on the U.N.'s role in crisis management through the Security Council. What this fails to highlight is the web of multilateral conventions, which has been built up over the years through painstaking negotiation in the General Assembly. What this has done is to provide the world in many areas with a set of rights (largely of individuals) and of obligations (largely of States), similar to the laws in an individual State. Their implementation, of course, is largely left to peer pressure, except in cases in which the Security Council determines that there is a risk to world security as defined under Article VII of the U.N. Charter.³⁹ This situation will now begin to change as the International Criminal Court ("ICC")⁴⁰ begins its work. It is, however, worth noting that international rules can indeed be invoked against an individual State, and its views overruled, in the case of the WTO dispute settlement procedure, since the effective power of veto of an individual State was removed at the end of the Uruguay Round.

The International Court in the Hague is also, of course,

38. Vienna Conventions, concluded at Vienna, May 23, 1969; World Trade Organization, established January 1, 1995; International Telecommunications Union, established May 17, 1865; International Civil Aviation Organization, founded Dec. 7, 1944; World Meteorological Organization, established March 23, 1950; United Nations ("U.N."), established October 24, 1945.

39. See United Nations Charter, art. VII, U.N.C.I.O. XV, 335 (June 26, 1945).

40. See Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9 (1998), available at <http://www.un.org/law/icc/>.

often thought of as a world instrument for the settlement of disputes arising in bilateral relations between States and indeed, it is. But since it can only arbitrate on disputes in cases in which all concerned parties agree to abide by its findings, it is more in the nature of an arbitrator than a court in the normal sense of the word.

It is undoubtedly the EU, which is the foremost proponent of this system of multilateral rules and of the rights-based approach to dealing with the problems of the world community. It can continue to be so in the future, secure in the knowledge that the EU experience has shown that sovereignty can be successfully shared, without infringing on the essential prerogatives of the states, which share it. In passing, it should be noted that if enlargement negotiations are to be regarded as part of external relations, the EU is indeed engaged in exporting its codex of law (the "*acquis*")⁴¹ to all those who are candidates to join it. This is the logical extension of the Copenhagen criteria, which define the conditions for a candidate country to be accepted as a legitimate aspirant for membership of the Union.⁴²

Lastly, it is worth emphasizing that many would argue that EU support of the multilateral system can be seen as adopting the sharing of sovereignty as a basic principle of governance in an increasingly interdependent world, and for the same basic reasons as it has chosen to develop methods for sovereignty sharing in its own integration.

What exactly has happened in Europe? It is indeed a momentous change, which has taken place in the last half century. In the aftermath of the Second World War, European politicians were sobered by the experience of war and conscious that the unbridled pursuit of individual national interests had contributed largely to it. They were also conscious of how little each of them individually was master of his destiny, how little individual sovereignty was worth if it could not deliver practical results. A new world required a new solution. And the idea of sharing sovereignty within what is now the EU was born.

This perhaps explains why the EU is such a firm proponent

41. See generally Roger J. Goebel, *The European Union Grows: the Constitutional Impact of the Accession of Austria, Finland and Sweden*, 18 FORDHAM INT'L L.J. 1092 (1995); see also Roger J. Goebel, *The Euro: a New Single Currency for Europe? Legal Framework*, 4 COLUM. J. EUR. L. 249 (1998).

42. See Copenhagen criteria, *supra* n.23.

of the multilateral system in world affairs. Our view is that the same analysis, which has led us to embrace shared sovereignty in Europe, applies *mutatis mutandis* to the wider world, albeit across a narrower range of policy fields. The argument is that the enormous expansion of cross-border trade in goods and services, in foreign direct investment and international telecommunications, and the services they facilitate, has created a global economy in which all national economies are inextricably embedded.

This increasing economic interdependence means that in most countries governments are largely powerless to impose their will on their economies if this implies acting contrary to international markets. The history of the last decade is littered with the failed attempts of governments who have tried.

Growing interdependence has another consequence. It means that the actions of those governments, whose economies have the strongest links to other economies, will impact on the well-being of the citizens of others. This is also true outside of the area of strict economic interdependence in the field of the global environment. Here, the evidence is now incontrovertible: greenhouse gas emissions in Europe or in North America can contribute to the magnitude of floods in Bangladesh or to the incidence of hurricanes in the Caribbean. In the twenty-first century, economic acts have become in practice instruments of foreign policy. In the face of the increasing inability of Nations to act effectively in pursuit of their interests on an independent basis, there are three possible alternative reactions:

- accept growing impotence, the inability of a government to pursue its policy goals;
- act through partnership, collective action, by multilateral means to effectively pursue common goals; or
- allow the strong to try to impose their will on the weak.

In the last fifty years, the global community has chosen to pursue the multilateral route and reject the others. More and more areas are now subject to multilateral rules, from trade and finance through telecommunications and global environmental issues to non-proliferation and human rights. All are areas in which the ability of a single State to achieve its aims on its own are severely limited.

It is probably correct that Europeans are now the foremost proponents of multilateral governance. After all, we have seen

that sharing sovereignty is both, effective, and politically acceptable. As a principle for determining the content of our foreign policy it could well stand on its own, although I have chosen here to treat it simply as a logical extension of the Rule of Law into an interdependent world.

B. *The Market Economy*

The most obvious external expression of the EU's commitment to the market economy is, of course, its championing of trade liberalization under the WTO. More generally, it is, however, the championing of a form of market economy, which has worked well in Europe. It is thus no surprise that the EU fought so hard in the run up to Doha for several issues, without which we believe that the benefits of a market economy do not become available to citizens. These include policies to ensure that competition reigns in open markets; that policies are put into place to ensure that benefits are passed on equitably through the adoption of core labor standards (an application of the principle of solidarity as well as the respect of one aspect of human rights); and that the process of liberalization of trade in particular, and of globalization in general, are managed in such a way that they benefit all countries.⁴³ Hence, the emphasis on the need for Doha to lead to a result to the benefit of developing countries. Apart from this having been a negotiating necessity to get the new round launched, it is a clear expression of solidarity on the part of Europe with the rest of the world community.

Finally, it should be clear that the EU will continue, as it did in the Uruguay Round, to emphasize that liberalization which threatens cultural identity is not acceptable and that trade rules need to reflect a balance between the benefits that accrue from openness and the need to maintain cultural diversity in the world, as we do in Europe.

In this area of international economic policy the Union's projection of a clear picture of a broadly accepted, widely implemented, and coherent economic policy consensus is still, of course, marred by the continued existence of an agricultural policy, which remains interventionist and non-market in nature,

43. See World Trade Organization, *Negotiations, Implementation, and Development: the Doha Agenda*, available at http://www.wto.org/english/tratop_e/tratop_e.htm (providing information on agenda set by Doha Ministerial Conference).

even if its parameters have gradually been adjusted to bring its results more into line with those, which the market could be supposed to deliver. This remains unfinished business, to be dealt with as the twin pressures of enlargement and the Doha trade negotiations push the Union towards applying its own principles to this anomaly. In doing so, however, the Union should not forget its principle of solidarity with the citizens of its rural areas.

C. Democracy and Human Rights

The European Nations have espoused democracy because they believe it to be the form of national governance offering the greatest chance of a good life for the members of a society. But the operation of this form of decision-making is subject, in most democratic systems, to the constraints of entrenched legislation, most often in the form of a constitution, often setting out a list of protected human rights, and watched over by an independent judiciary.

What would be the international expression of this type of governance? For the moment, the idea that democracy is the best way to make decisions has been gaining ground simply through the spread of democratic forms of government from one country to another in the latter part of the last century, and the legitimacy of world institutions such as the U.N. can be regarded as increasing as more and more of its member States become democratic. This assumes that the indirect legitimacy coming from the expression of the will of governments in international affairs is a reflection of their own direct national legitimacy.

It should, however, be noted that most democracies are in fact moving away from the model of purely representative democracy towards much more participatory forms, in which transparency about their operation, coupled with the growth of media activity, has *de facto* increased the weight of the views of civil society expressed not just through the ballot box, but also on a continuing basis. The international corollary is the increasing transparency of the U.N. system and the growing participatory role granted to non-governmental organizations ("NGOs") within it. It seems likely that further national experiments with democratic governance will continue to be reflected internation-

ally and the EU would do well to play a leading role in such discussions.

The international equivalent of national entrenched legislation is of several types. First, is the multilateral system itself, to which changes can normally only be made by consensus, a rather extreme form of entrenchment. Second, is the system of international conventions, which are then implemented in national law, thus leading to a convergence of national legal systems. Third, is the codex of human rights, which has been built up over the last decades. While being "soft" law in the sense that there is usually no legally binding enforcement mechanism, this codex, representing as it does the evolving consensus of the world community, undoubtedly affects the way that Nations behave and is "enforced", in practice, by a series of mechanisms designed to exert peer pressure. The world is even moving beyond that now in the case of the ICC, by establishing an enforcement mechanism for the trial of those who commit crimes against humanity (which are defined extremely carefully in enumerative fashion in order to guard against frivolous misuse). For the first time, an instrument is available on a permanent basis, which can ensure the rule of law by methods other than simple exhortation or brute force.

The EU itself contributes to the spread of the respect for human rights by incorporating this respect as an element of its trade and cooperation agreements, of which the Cotonou agreement with ACP countries⁴⁴ is certainly the best example. The Stabilization and Association Agreements with the countries of the western Balkans⁴⁵ are another.

Let it here, however, be admitted that the values-based approach in this area does not always prevail over *Realpolitik*. Many would argue, even in Europe, that this is the case *vis-à-vis* China, many Americans would mention countries like Iran, North Korea, and Libya. But even in such cases it is clear that the *Realpolitiker* are having to argue their case against the presumption of a values-based approach, which thus serves as an important point of reference.

44. See WORLD TRADE ORGANIZATION, ANNUAL REPORT 2001, at 126, par. 6 (2001), available at http://www.wto.org/english/news_e/pres01_e/pr226_e.htm (citing Cotonou Convention held in June 2000 between the European Community and 72 developing countries).

45. See *id.* at 32 (citing to Croatia Stabilization and Association Agreements).

To sum up, the EU's policy in this area of promoting national democratic governance, supporting the multilateral system, and pushing for the extension of the international rights-based system, is nothing other than the transposition to the international arena of principles, which we apply at home, with the full support of a consensus within our societies. It is this, which gives the policy its credibility.

D. *Solidarity*

It is easy to demonstrate solidarity with a good neighbor in theory. In practice, solidarity is a slippery concept, and in Europe, institutional solidarity certainly goes beyond providing assistance to close neighbors. But, as pointed out above, it is firmly anchored in the European model of society.

Two relatively new phenomena have made it easier to contemplate the extension of the concept internationally. The first, is the growing realization of the extent of ecological interdependence on our planet.⁴⁶ The other is the ability of the international media to beam pictures of suffering from the furthest corners of the globe into our living rooms. The realization of the misery of other human beings like us evokes the simple human reaction of sympathy, and out of sympathy genuine solidarity in action can grow.

On this basis the political constituency to support the strengthening of international instruments of solidarity — of which the most obvious is Official Development Assistance (“ODA”) — can be cultivated, thus allowing ODA to be increased, in line with international commitments, and as reinforced in Monterrey. Emphasizing the importance of international solidarity, thus, provides an argument based on European core values to place alongside the argument based simply on the crude idea of buying friends, which has less pulling power at home, and less credibility abroad.

The Union's commitment to this principle is enshrined in the Preamble to the EC Treaty, which states: “intending to confirm the solidarity which binds Europe and the overseas countries.”⁴⁷

46. See Part II E. Sustainability, *infra*.

47. See Consolidated EC Treaty, *supra* n.5, Preamble, O.J. C 340/3, at 179 (1997), 37 I.L.M. 79, at 41.

E. *Sustainability*

Sitting writing this Essay in New York City, experiencing yet another day of record, unseasonable temperatures, it is difficult not to be aware of the reality of global climate change and the international discussion on what to do about it. On this, as on all other issues related to international ecological interdependence, there is simply no viable alternative but to pursue accelerated multilateral action and the EU will certainly continue to take the lead in this. It is the thesis of this Essay that the EU's ability to rally a world consensus behind its ideas will depend crucially on its own actions domestically. If the EU is seen to be implementing policies designed to make its own development sustainable, its credibility on the international stage will grow correspondingly.

F. *Preservation of Personal Identity and Cultural Diversity*

Europe is a microcosm of the world community in that it is a mosaic of overlapping, distinct ethnic groups with clearly defined cultural differences and political borders inherited from the past, which only partially reflect these ethnic groups. The European experience of sharing sovereignty in order to more effectively pursue its interests, while respecting these cultural and ethnic differences, can surely provide lessons as to how the world community can deal with similar problems.

If the problems associated with revolutionary struggles for self-determination by ethnic groups within historically defined States are to be dealt with without creating the crises with which the Security Council so often struggles, it will surely be by implementing on a global scale the type of policies pursued by the EU both, within its borders, and by the extension of the *acquis* to the candidate countries and to the other Balkan States.

This provides a justification in the area of foreign and security policy to go alongside that of rendering economic globalization more acceptable⁴⁸ for placing the propagation of the principle of the respect of cultural identity alongside the other core values of EU external relations.

Finally, the international relations of the Union would be greatly improved if the cultural differences exhibited by our

48. See Part II B. The Market Economy, *infra*.

partners could be seen not so much as problems creating difficulties for the realization of our objectives, but rather, as a positive value to be preserved. There is no doubt, e.g., that this type of change of mindset on the part of the Union was a decisive factor in the improvement of our relations with Japan in the first half of the nineties. It would also fit well with the declared intention of the U.N. to promote a dialogue among civilizations and to avoid Huntington's nightmare of a clash of civilizations.

CONCLUSION

In an imperfect world there will always be instances in which the Union is called upon to defend its interests against attack, whether this takes the form of military aggression, economic coercion, or terrorist activity, and it will need the capacity to defend itself and to defend others in the world community. This is the domain of *Realpolitik* and of Security and Defense Policy. But such reactive policy is insufficient to provide its foreign policy with a clear vision and a clear European identity. For this, the EU needs to define what it wants the world to look like, it needs to set out a clear statement of its values.

The implication is clear. In pushing for political change in the world, the only alternative to the use of coercion, so alien to most Europeans after the two World Wars of the last century, is the power of ideas. And the credibility of the EU's ideas is in direct proportion to the extent to which it applies, and is seen to apply, these ideas within its own borders. It is for this reason that the development of the Union's external policies will be intimately related to the process and results of the Convention. If the Convention can build more explicitly on the body of core principles, which have been developed over the years, it can make clear that these same, few, easily-understood principles, can provide the basis not only for the Union's internal construction, but also for its external identity. This can also provide a key to avoiding public alienation from the process of European integration and ensuring public support for the Union's policies, because if our citizens believe that these widely accepted principles are the answer to the question "What does Europe stand for?", they will have a reason not just to grudgingly accept European integration, but to be proud of it.

Finally, the above analysis suggests that the Convention

could clarify the legal basis for the EU's external relations by revising Article 11 of the TEU and distinguishing between its value-based elements, as set out above, with the addition of those currently in the EEC Treaty, and its interests-based elements, viz. crisis management and other elements of security and defense policy. Since the former are nothing other than the external expression of agreed internal values, it is difficult to see why decision-making on these areas of foreign policy should not be based on the Community method, with co-decision by the European Parliament.⁴⁹ The latter could then be clearly seen for what they are: an expression of the old but still valid paradigm based on individual States defending their interests, and should remain the domain of interacting governments, rather than an expression of the collective values of the Union.

49. The European Parliament power of co-decision applies to most EC internal market and other legislation. See Consolidated EC Treaty, *supra* n.5, art. 95, O.J. C 340/3, at 213-15 (1997), 37 I.L.M. at 75-77 (ex art. 100a).