

European Political Cooperation (EPC) as a Component of the European Foreign Affairs System

*Eric Stein**

At this juncture, a European foreign affairs system exists only in the eye of the beholder¹. In the European Community, of the Ten, there is a complex division of foreign affairs powers between the Member States and the Community institutions. Although they remain sovereign States, the Member States share their authority over economic and monetary policies with the Community. However, they retain full control of their armies, defense and diplomatic policies, subject to an extra-Community consultative mechanism, the European Political Cooperation (EPC). The purpose of this essay is to explore the working of this mechanism and its interaction with Community institutions, with some consideration of its impact on European foreign policies.

* Hessel E. Yntema Professor of Law, University of Michigan Law School. I am indebted to Mr. Hermann da Fonseca-Wollheim, Deputy Head of Delegation of the Commission of the European Communities in Washington, D.C., and Mr. Per Lachmann, Chief Legal Advisor on Common Market Law, Ministry of Foreign Affairs, Copenhagen, Denmark, for their advice and assistance.

¹ See my study entitled "Towards a European Foreign Policy? – European Foreign Affairs System from the Perspective of the United States Constitution", prepared for the European University Institute in Florence, Italy, as a part of a project on "Methods, Tools and Potential for European Legal Integration in the Light of American Federal Experience" under the direction of Professor Mauro Cappelletti. The result of the project will be published by the Institute.

On the EPC generally and its antecedents, see J. Monnet, *Memoirs* (New York 1978); W.F. Hanrieder, *The United States and Western Europe – Political, Economic & Strategic Perspectives* (Cambridge, Mass. 1974) particularly Hoffmann, *Toward a Common European Foreign Policy?*, at 79; McGeehan/Warnecke, *Europe's Foreign Policies: Economics, Politics or Both?*, 17 *Orbis* 1251 (N.4, 1974) (cited as McGeehan/Warnecke); Wood, *Foreign Policy and Defense in the European Community*, 18 *Virginia*

1. *The Antecedents*

EPC began to evolve as a new mechanism in the foreign policy field in 1969. It is as elusive in its mode of operation as in its actual impact and it must be understood in the light of its antecedents.

After his return to the Presidency in 1958, General de Gaulle, no longer hopeful of a membership in the "nuclear power club", concluded that France could recapture its world power status within more intimate forms of cooperation among European sovereign States but he remained emphatically opposed to the pattern of integration: "supranationality" was an illusion which would only solidify the division of Europe and strengthen its dependence on the United States. It was in this context that the French government launched its proposals for a new consultative framework outside the Community institutions².

The "Fouchet Plan" of 1961 for a "Union of States" (in contrast with the "union among the peoples" in the EEC Treaty Preamble) would cover common foreign and defense policies, and beyond that, extend coop-

International Law Journal 389 (1978) (cited as Wood); Wallace/Allen, Political Cooperation: Procedure as a Substitute for Policy, in: H. Wallace/W. Wallace/C. Webb, Policy-Making in the European Communities, at 227 (London 1977) (cited as Wallace/Allen); H. da Fonseca-Wollheim, Dix ans de coopération politique européenne (1981) (cited as da Fonseca-Wollheim), also Zehn Jahre Europäische Politische Zusammenarbeit (EPZ), 1981 Integration 47 (N.2), Institut für Europäische Politik, Bonn (cited as da Fonseca-Wollheim, EPZ); W. Wessels, The European Political Cooperation – Model or Nuisance for a New Institutional Equilibrium (Bruges 1980); P. de Schoutheete, La coopération politique européenne (Paris, Bruxelles 1980) (with bibliography at 227–231) (cited as de Schoutheete), R. Rummel/W. Wessels (eds.), Die Europäische Politische Zusammenarbeit – Leistungsvermögen und Struktur der EPZ (Bonn 1978) (cited as Rummel/Wessels); European Political Cooperation (EPC), Federal Republic of Germany, Press and Information Office of the Federal Government (3rd ed. Bonn 1978) (cited as EPC Docs.); H. Schneider/W. Wessels (eds.), Auf dem Weg zur Europäischen Union – Diskussionsbeiträge zum Tindemans-Bericht (Bonn 1977); Etienne, Community Integration: The External Environment, 18 Journal of Common Market Studies (J'l of Comm. Mkt. Stud.) 289 (1980); Dolan/Caporaso, The External Relations of the European Community, 440 Annals of the American Academy of Political & Social Science 135 (1978); Bonvicini, The Problem of Coordination between Political Cooperation and Community Activities, 12 Lo spettatore internazionale 55 (1977) (cited as Bonvicini); Wallace, British External Relations and the European Community: The Changing Context of Foreign Policy-Making, 12 J'l of Comm. Mkt. Stud. 28 (1973); von der Gablentz, Luxembourg Revisited or the Importance of European Political Cooperation, 16 Common Market Law Review (C.M.L.Rev.) 685 (1979); H. Kramer/R. Rummel, Gemeinschaftsbildung Westeuropas in der Außenpolitik, - Zur Tragfähigkeit der Europäischen Politischen Zusammenarbeit (EPZ) (Baden-Baden 1978) (cited as Kramer/Rummel).

² Wood (note 1), at 399ff.

eration to science, culture, and human rights. The Heads of Government and Foreign Ministers would meet regularly in a "Council", and a "European Political Commission" of senior national diplomats, with its seat in Paris (rather than Brussels) would prepare the Council's work. The Dutch and the Belgians perceived the proposal as a time bomb aimed at NATO and at the foundations of the Community; and they interpreted de Gaulle's opposition to British membership in the Community as further evidence of a design to establish a Franco-German "directorate" without the institutional protection for the smaller members that is offered in the Community. The European Parliament prepared a counterproposal designed to mitigate what were considered the pernicious aspects of the Fouchet Plan³. The acrimonious negotiations ended in a deadlock. During the ensuing period of dissension, France embarked on a boycott of the still fragile Community institutions and withdrew from the NATO military structures⁴.

2. *The Foundation*

1969 marks a turning point and the "birth year" of the EPC. That year the recently installed Pompidou Government had lifted the bar on British membership in the Community. In an atmosphere of a revived "European euphoria" a summit meeting at The Hague directed the Foreign Ministers to study the best way of achieving "political unification, within the context of enlargement", in order to make Europe capable of assuming its worldwide responsibilities. At the same time, the Heads of Government called for a series of concrete measures to advance the Community toward an economic and monetary union⁵.

The Ministers responded a year later by approving in Luxembourg the "Davignon Report" which serves as a foundation for the EPC. The report reverts to the method of governmental cooperation in foreign policy and may be read as implicitly rejecting the idea that a "political Community" could emerge through the integration process⁶. In the post-Gaullist climate the concept of "cooperation", rejected less than a decade earlier, received

³ For the Fouchet Plan and the Recommendations of the European Parliament, see Council of Europe, Consultative Assembly, Political Committee, Docs. No. AS/Pol (13)69 and AS/Pol(13)77.

⁴ de Schoutheete (note 1), at 18-26. Wood (note 1), at 405.

⁵ EPC Docs. (note 1), at 23-24.

⁶ da Fonseca-Wollheim (note 1), at 1, also in EPZ at 47.

unanimous acceptance – not as a substitute for the integration process⁷ but as a complementary, parallel, but separate process in the foreign affairs area. The two processes were to be transformed “before the end of the present decade ... into a European Union” that would encompass “the whole complex of relations [between the Member States]”⁸. In contrast with this undefined ultimate goal, the immediate modest objectives of the cooperation were stated to be, better mutual understanding by the governments of the “great international problems” through exchanges of information and consultation, harmonization of views, coordination of positions, and, “where it appears possible and desirable, common actions”⁹.

There is no normative instrument – only communiqués and “reports” reflecting political undertakings by the Heads of Government – no legal obligation of any sort. However, the engagement to consult was extended somewhat in 1973 to include seeking “common policies on practical problems”, and on these questions “each State undertakes as a general rule not to take up final positions without prior consultation with its partners”¹⁰.

3. *The Organizational Structure*

Unlike an international organization, the EPC does not have any institutions of its own since it is entirely in the hands of national officials acting for their respective governments. This – it is said – is appropriate and necessary in a field that demands the highest degree of mutual trust and respect for the confidentiality of “State secrets”¹¹. At French insistence, the EPC structures were to be hermetically separated from Community institutions in order to avoid contamination with the insidious Brussels atmosphere of “supranationalism” and “atlanticism”¹². The Community staff also inclined initially toward a separation because it eyed the EPC

⁷ Some feel that EPC offers in fact a competing alternative method preferable to the “mistaken” Community pattern. However, the Hague Communiqué reaffirmed the support for the Community as a nucleus of European unity. EPC Docs. (note 1), at 22.

⁸ EPC Docs., Paris Summit, 1972, at 38.

⁹ EPC Docs., Luxembourg Report, 1970, at 29.

¹⁰ EPC Docs., Copenhagen Report, 1973, at 58–59. The commitment to consult was reaffirmed in somewhat greater detail in Part I of the Report on European Political Cooperation approved by the Foreign Ministers in London on October 13, 1981. The Report provides more specific procedural guidelines for the cooperation process and “codifies” current practice. “Europe”, Documents, No. 1174, October 17, 1981.

¹¹ Kramer/Rummel (note 1), at 20.

¹² Wallace/Allen (note 1), at 230.

with a jaundiced eye as still another French device directed against Community power.

a) Above the actual EPC mechanism is the "European Council", an institutionalized summit of the Heads of Government accompanied by Foreign Ministers that was to convene initially at least three times a year¹³. As a "common roof", this Council is expected to coordinate the work of the EPC and the Communities. The principal forum is the formal Conference of the Foreign Affairs Ministers meeting on EPC matters. Originally scheduled to take place twice each six months in the capital of the President-in-Office of the Community Council, the ministerial meetings have in fact been much more frequent and now often take place back to back with the Community Council in Brussels or Luxembourg¹⁴. In 1974, the pretended separation was diluted somewhat further at the high level by still another common forum, the "informal meetings of Foreign Affairs Ministers" to discuss both EPC and EC affairs ("meetings à la Gymnich").

b) The heads of the political departments in the Ministries of Foreign Affairs meet once a month as a Political Committee to prepare ministerial meetings and steer the groups of experts, and more often during the sessions of the UN General Assembly and of the Councils. The Committee's function is comparable to the role of the Brussels Committee of Permanent Representatives which prepares the work for the Community Council.

c) Within each Ministry of Foreign Affairs, a "European correspondent" coordinates the EPC work under the supervision of the Political Director. These diplomats constitute a "group of European correspondents"¹⁵ which takes care of the procedural and organizational matters and prepares papers for the higher-level meetings.

d) Also under the direction of the Political Committee are the varied "groups of experts", drawn from Foreign Affairs Ministries and organized according to regions (Africa, Asia, Mediterranean, Middle East,

¹³ EPC Docs. (note 1), Paris Summit, 1974, at 90. See generally on the machinery, Luxembourg Report, 1970, and Copenhagen Report, 1973, *ibid.* at 26 ff. and 51 ff.

¹⁴ In 1973, the French Foreign Minister M. Jobert pressed the separateness from the Community to a point of forcing the Ministers to meet on EPC in Copenhagen in the morning, and to assemble the same afternoon in Brussels as a Community Council to deal with Community business. With the change in personnel and atmosphere the practice has changed.

¹⁵ The name recalls the American "committees of correspondence" that organized the American revolution.

Latin America)¹⁶, international fora (UN, Conference on Security and Cooperation in Europe [CSCE]), subject matter (UN-disarmament) or function (chiefs of protocol, chiefs of communications)¹⁷. Practical considerations forced the creation of the "Group for Coordination of the Arab-European Dialogue", common to the Community and EPC.

e) Another quasi-institutional element consists of the organized cooperation of the Ambassadors of the Member States posted in third States and at the seats of international organizations. They consult, if necessary, daily as in time of a crisis (e.g. in Tehran or at the UN). Occasionally, the Political Committee asks the Ambassadors for a common report on a specific subject but such reports are said to reflect the lowest common denominator¹⁸. The Ambassador of the Member State holding the Presidency of the Council acts as a spokesman in any *démarche* or outside contacts. When a Minister receives an important third country visitor or himself returns from a visit to a third country, he provides a briefing, which has now become institutionalized, for the resident Ambassadors of the other members¹⁹.

A special coded telex system («COREU, correspondance européenne») facilitates continuing contacts, with some 5000 messages exchanged annually.

f) Since there is no permanent secretariat, the Presidency, that is the Foreign Minister of the country holding the office of the President in the Community Council, with whatever special staff of his own he may have available, is responsible for preparing all the meetings, drafting most of the declarations, reports and conclusions, even responses to questions to be answered in the European Parliament during his term of office. With the increasing business, the burden of the Presidency has become extremely heavy particularly for the smaller members. During the busy periods the Presidency must organize a multitude of consultation meetings and act as spokesman in a variety of fora²⁰. Building upon evolving custom, the Foreign Ministers agreed in 1981 that "the Presidency will be assisted by a small team of officials seconded from preceding and succeeding Presidencies" and assigned to the staff of their embassies in the Presidency capital;

¹⁶ Only North America and the EFTA States are not covered.

¹⁷ Presently there are some twelve such groups. The "Group of High Officials of Ministries of Justice" deals with judicial cooperation under EPC.

¹⁸ da Fonseca-Wollheim (note 1), at 5.

¹⁹ This adds a new function for Ambassadors sheared of their traditional importance because of the innumerable direct contacts among the Ministers.

²⁰ E.g., in the seven UN General Assembly Committees.

as a further means to alleviate his burden the President may delegate certain tasks to his successor or predecessor²¹.

4. *The Scope of EPC*

In principle, EPC embraces foreign policies of Member States with respect to third States. By this definition foreign policy problems between the Members, such as the Northern Ireland question are excluded²². Also excluded are the economic and monetary aspects of foreign affairs that are within the jurisdiction of the Community and this jurisdiction cannot be impaired by EPC. Finally, entire geographic regions and certain important aspects of foreign affairs have eluded the EPC process in practice:

a) In deference to a member's special interests in certain areas, East Berlin, the Maghreb and (until the Chad affair) "francophone" Africa have been viewed politically as "private domaines". Similarly, France and the United Kingdom generally are not prepared to consult on their vote in the UN Security Council. Political East-West relations were exclusively bilateral until the establishment of the common position at the CSCE. This was the first successful EPC inroad which was broadened after the Afghanistan affair.

b) No need has been felt for special political consultations among the Ten on political relations with the EFTA countries. Although the procedural aspects of relations with the United States (the incidence and form of advance consultations) have been considered by the EPC²³, substantive issues have only rarely been the subject of multilateral deliberations before the Iranian hostage and Afghanistan affairs.

c) Defense policy is the farthest reaching exclusion, considering its vital role in foreign policy. Ireland and France, a non-member and a "half-

²¹ Report on European Political Cooperation (note 10), at para.10. See also da Fonseca-Wollheim (note 1), at 6.

²² Etienne (note 1), at 290. It has been suggested that one reason for such exclusion was to avoid adverse repercussions on inter-Member relations. More recently, voices have been heard in and outside the European Parliament in support of bringing the Irish question within the EPC, particularly in the context of the violations of basic rights. "Europe" No.3147 (n.s.) at 4, May 27, 1981; Written Question No.1042/80 by Mr. Ansart to the EPC Foreign Ministers meeting, [1980] Official Journal (O.J.) C60/1, 19.3.1981.

²³ Document on the European Identity, Copenhagen, 14 December 1973, in EPC Docs. (note 1), at 72ff.; Press Statement after the 14th EPC Ministerial Meeting, Bonn, June 11, 1974, *ibid.* at 86 (the Gymnich formula for consultation). Detailed consultations with the United States and other allies have taken place in CSCE.

member" of NATO, have been insistent on keeping the NATO and EPC fora separate²⁴.

5. Coordination and Interaction with the Community ²⁵

Although the necessity for coordination between the economic decision-making in the Community and the EPC procedures has been recognized from the outset, progress toward establishing a working relationship between the two systems has been slow.

a) At the highest level

As indicated above, at the highest level the same individuals, the Heads of Government in the European Council and the Foreign Ministers, play two roles: one in Community matters and one in EPC, thus assuring a degree of awareness if not coordination. However, different and separate staffs do the preparatory work through different procedures. In the Community, formalized decision-making, initiated by the Commission's proposals, culminates in proposals by the Committee of Permanent Representatives to the Council; in the EPC the small national staff in the capital of the Council President-in-Office, backed up by the committees of national diplomats, prepares the political files through the consensual consultation process.

From an institutional point of view, responsibilities in the two fields remain strictly divided. Although the Ministers are no longer obliged to hold meetings on the two fields at separate times, the distinction is scrupulously maintained by the Council. As Bonvicini reports, the degree of

²⁴ United Kingdom and Denmark, and in part the Federal Republic as well, take the same position to protect NATO. Commissioner Tugendhat argued recently that since it is difficult to draw a dividing line between industrial policy and defense issues such as equipment procurement, cooperation should not be left exclusively to NATO. "If the commitment to EPC is strengthened, it would inevitably spill over into the security field". "Europe", No.3140 (n.s.), at 3, May 16, 1981. In their 1981 Report the Foreign Ministers agreed "to maintain the flexible and pragmatic approach which has made it possible to discuss in Political Cooperation certain important foreign policy questions bearing on the political aspects of security". Report on European Political Cooperation (note 10), at Part I. Other issues not dealt with by EPC are the law of the sea negotiations (coordinated within the Community framework), UNESCO items (dealt with in Ministries of Culture), and antiterrorism measures ("TREVIL") (coordinated by Ministries of the Interior and police experts). On "judicial cooperation" see da Fonseca-Wollheim (note 1), at 8-9.

²⁵ See particularly Bonvicini (note 1).

the rigidity in the allocation of questions on the agenda depends on the incumbent President's inclination and his ability to persuade his colleagues²⁶.

b) The Commission's participation

In the Community, the Commission plays a crucial role in communicating with third countries and international organizations and in negotiating agreements on behalf of the Community in the economic field. The Commission has its own expert "foreign establishment" in Brussels, centered in the General Directorate for External Relations, and comprising other specialized units dealing with economic development, financing, agricultural exports, etc. Outside its headquarters, the Commission maintains over 60 "delegations", missions and information offices in foreign capitals and at the seat of major international organizations, where they enjoy diplomatic or functional immunities. The delegations at the major world centers perform tasks of information and liaison similar to traditional diplomatic functions. The other missions have predominantly technical duties and assignments under cooperative agreements between the Community and the host States²⁷. In Brussels, more than one hundred foreign missions are accredited to the Community²⁸ and provide the Commission with information and opportunity for day-to-day contacts.

The most important step toward coordination of these activities with EPC has been the admission of the Commission to regular participation in EPC work²⁹. The President of the Commission and the commissioner

²⁶ Bonvicini, at 58-59.

²⁷ J. Mégret et al., *Le Droit de la Communauté économique européenne, Commentaire du Traité et de textes pris pour son application* (Bruxelles 1970ff.) (cited as Brussels Commentary), vol.12, at 6-8; G. Sjöstedt, *The External Role of the European Community*, at 107 (Westmead, England 1977).

²⁸ Bull. E.C. 1-1981, point 2.2.35. Art.17 of the Protocol on the Privileges and Immunities of the European Communities of April 8, 1965 provides that the "Member State in whose territory the Communities have their seat shall accord the customary diplomatic immunities and privileges to missions of third States accredited to the Communities". The Protocol, along with the "Merger" Treaty, became part of Belgian domestic law. J.J.A. Salmon, *Les représentations et missions permanentes auprès de la CEE et de l'Euratom*, in: *Les Missions permanentes auprès des organisations internationales*, 561 at 718ff. (Bruxelles 1971).

²⁹ The Luxembourg Report of 1970 provided that should the work of the Ministers affect activities of the Communities, "the Commission will be invited to make known its views". EPC Docs. (note 1), at 31. The Copenhagen Report of 1973 noted with satisfaction the expanded practice. *Ibid.* at 53.

responsible for external affairs now participate regularly in the European Council and in the EPC Conference of Foreign Ministers. They speak but do not vote, and their particular role is undefined. This development represented a radical change in the attitudes of both sides. It was due to the greater flexibility of the French President as much as to the positive experience with the Commission's role in preparation for the CSCE and the realization that Community instrumentalities are useful, if concrete results are to be achieved in foreign policy. For the Commission itself this new activity posed a problem of internal organization and coordination³⁰.

At the working level, since 1975 the Commission staff has participated without any restrictions in the meetings of the Political Committee³¹. Although Community officials take part in most of the EPC groups of experts touching upon Community affairs, until recently they were not allowed to take part in the European Correspondents' Group and thus could not participate in the preparation of the Political Committee's meetings and, perhaps more importantly, in the follow-up of any decisions taken. The Commission is still denied a direct connection with the COREU telex network, but it receives daily copies of some, if not all of the messages from the Belgian Foreign Affairs Ministry³².

In foreign capitals, the Commission's missions parallel the national embassies of the Member States. As mentioned earlier, under the European Political Cooperation scheme heads of these embassies meet in groups chaired by the ambassador whose government holds the rotating Presidency of the Council and they discuss political issues of common interest³³. The line dividing the respective competences of the Commission's delegations and the national embassies is to follow the division between Community and national jurisdictions, with the ambassadors' groups con-

³⁰ General responsibility was given to the Commission President and the General Secretariat who are given support by the Commissioner responsible for external relations and his staff. Bonvicini (note 1), at 60.

³¹ da Fonseca-Wollheim (note 1), at 15, also in EPZ at 52; Bonvicini (note 1), at 60. According to Bonvicini, at a low level there is practically no coordination; correspondents, ambassadors, and experts employed by the *ad hoc* groups work independently with practically no support from Community officials. *Ibid.* at 64. The accuracy of the reference to *ad hoc* groups is questioned by da Fonseca-Wollheim, letter of December 4, 1981.

³² The Commission receives political information from the EPC groups which the economic officials on the COREPER staff may not have because of the separation between the political and economic sections within some of the national ministries. da Fonseca-Wollheim, *ibid.* at 15-16, also in EPZ at 52. Bonvicini, *ibid.* at 61-62.

³³ See above sec. 3e.

fined to "political" affairs. It takes little imagination to fathom the problems of coordination and friction.

The participation of the Commission personnel in EPC, „still sporadic and superficial, even if growing" is based on custom and express or tacit invitation. In 1981; the Foreign Ministers agreed that "[w]ithin the framework of the established rules and procedures the Ten attach importance to the Commission of the European Communities being fully associated with Political Cooperation at all levels"³⁴. Unlike its important role in the Community, the Commission does not have the authority to initiate action.

It is interesting that the Political Committee has emerged as a competing actor not so much for the Commission, as may have been expected, but for the Committee of Permanent Representatives who until the arrival of EPC had the exclusive role of backing up the work of the Ministers and filtering the activities of the Commission. There is no satisfactory working relationship between these two important bodies; the fact that both are staffed predominantly from the same national Foreign Affairs Ministries does not seem to prevent a degree of jealousy and friction.

c) The Parliament

Under the Community Treaties, the European Parliament has "political" control over the Commission, including the theoretical authority to dismiss the Commission by a vote of no-confidence. It has no such power with respect to EPC, and its functions, broadly defined in the EPC documents, are entirely advisory. This condition appears unpalatable to the deputies who have criticized both the separation of the two systems and the scarcity of information made available to them³⁵.

³⁴ Report on European Political Cooperation (note 10), at para.12.

³⁵ See e. g., Report on EPC by E. Blumenfeld, E.P. Working Documents 1977/78, Doc. 427/77, and Resolution of the European Parliament of January 19, 1978 on EPC. The separation is "artificial ... comic division ... more a pretence than a reality", Patijn, Parliamentary Debates, Sitting on Tuesday, July 9, 1974, O.J. C179/89; "utterly false", "fiction", Lord Chelwood, *ibid.* at 92; but see *contra* the Danish Socialist People's Party's Maigaard, insisting on keeping the fiction alive to avoid freezing the Iron Curtain and to preserve the limits of Denmark's commitment as defined in the national referendum. *Ibid.* at 93. See generally, Report drawn up on behalf of the Political Affairs Committee on European Political Cooperation and the role of the European Parliament, Rapporteur: Lady Elles, European Parliament Working Documents 1981-1982, Doc.1-335/81, 30 June 1981. See also Report on European Political Cooperation (note 10), at para.11.

Although the Parliament has routinely adopted resolutions on current international political problems, the impact has been indifferent and its link with the EPC perfunctory. The Ministers meet periodically with the Parliament's Political Committee in more or less desultory "colloquia", the President-in-Office makes annual reports and answers parliamentary questions the number of which has risen substantially since the direct parliamentary elections. The answers require a consensus of the ten governments. Since no information is published on EPC consultations unless and until a consensus is reached, the answers have been a source of frustration for the parliamentarians, because any information supplied had invariably already entered the public domain and decisions had already been taken by the governments.

6. Form of Activities, Accomplishments and Limitations

a) Internal process: exchange of information, consultation, harmonization of positions

A basic function of the network of national diplomats has been the exchange and pooling of information. The "club atmosphere", it is said, encourages openness and reduces surprises; and the absence of transnational institutions eliminates jurisdictional friction and doctrinal disputes. The working of the Communities has drawn into the European arena large sectors of national bureaucracies in the economic, environmental, scientific and social bureaus. Because of the EPC, this process of "Europeanization" has now reached deeply into the national foreign service establishments, and is producing, the argument continues, a "European reflex" among them that is bringing about a basic change in their outlook³⁶. By the same token, the exclusive character of the "club" has added fuel to the charges of elitism and lack of genuine democratic control over European institutions. There is also the danger that a consensus reached on a confidential basis among the diplomats may not survive when exposed to the winds of national politics.

Unlike the Community Treaties, the documents establishing the EPC set no concrete objectives, programs of action or deadlines. The hope,

³⁶ de Schoutheete (note 1), at 50-53, 118. de Schoutheete suggests at 118 that in the Communities after 1965/66 the movement has been in the direction of "renationalization" of common policies. In his view, the EPC has contributed to a movement in the opposite direction.

however, if not the expectation is that the consultation process will mature into a customary rule, the breach of which will appear increasingly costly and that it will lead to a definition of common basic conceptions and common planning³⁷. Thus far, the EPC has selected the consultation topics – within the arbitrary limits discussed above – episodically in reaction to international developments rather than on the basis of overall planning.

The consultation and consensus process has its own costs in efficiency and timeliness as shown in the Afghan affair and in the Iranian hostage situation³⁸. There are physical limitations on the diplomats' capacity to travel to the innumerable meetings and on the number of tasks that can be handled by the "Presidency"³⁹. Moreover, the much vaunted informality and flexibility of the process begins to show signs of bureaucratization. In 1981, the Foreign Ministers agreed that the Political Committee, or, if necessary, the Ministers will convene within 48 hours at the request of three Member States⁴⁰.

b) External process: "Declaratory" diplomacy and common positions in international fora

Once a consensus is reached it may take the shape of a declaration following a meeting of the Ministers or the Heads of Government, a *démarche* with a third State, a mandate to the President-in-Office to undertake a diplomatic mission, or an agreement on a common position to be taken at an international conference or in an international organization, or even a common guidance for nationals (the code of conduct for national business enterprises working in South Africa).

³⁷ Simonet, in: de Schoutheete, *ibid.* at 49. The progressive enlargement bringing in new members has not made this harmonization any easier.

³⁸ After the Soviet entry into Afghanistan on December 27, 1979, it took the Ministers until January 15, 1980, to formulate a common declaration, long after the national governments had stated their positions and the UN General Assembly had taken up the matter. de Schoutheete, *ibid.* at 128.

³⁹ See above text at note 20; de Schoutheete (note 1), at 127.

⁴⁰ Report on European Political Cooperation (note 10), at para. 13. The Political Committee is said to constitute a bottle neck. However, unlike in the Community, where about one third of the personnel works on interpreting and translating in the seven languages, EPC documents are prepared and discussions held in French or English without translation. de Schoutheete, at 49.

(i) Recognition

Efforts to coordinate and synchronize national acts of recognition of new States or governments – and thus to initiate something akin to a “common recognition” – have proved thus far unsuccessful even with respect to Bangladesh, not to speak of Angola or Mozambique⁴¹. The Council has made it clear that “in the present state of European integration, international rules on the recognition remain applicable in their entirety and such recognition still lies within the exclusive competence of each State”. Thus, although the establishment by Spain of diplomatic relations with Israel is not a prerequisite for Spain’s accession to membership in the Community, it “could only facilitate the harmonization of the foreign policies of the Nine [all of whom maintain such relations], which would be in keeping with the objectives of European political cooperation”⁴².

(ii) International conferences and missions

The common position which the Nine were able to maintain over a period of four years at the 35 States’ Conference on Security and Cooperation in Europe in Helsinki, catapulted the Nine into a position of leadership in the Atlantic Alliance group. With the United States occupied elsewhere, the Nine became the principal spokesman for that group in relation to the Warsaw Pact and the non-aligned groups. The Commission officials formed a part of the negotiating team which was led by the “Presidency of the day”⁴³. The solidarity of the Nine persevered through the Belgrade and Madrid sessions as well. This appears to be one demonstrable accomplishment of the EPC.

On the Arab-Israeli conflict the Member States have reached a significant measure of agreement since 1973, despite initial dramatic differences. Having agreed on a common platform, the Ministers sent the President-in-Office on two exploratory missions that, however, have not produced any noticeable impact thus far. The “Euro-Arab dialogue”, initiated by the European Summit in 1973 on a French proposal, led to the establishment of an EPC coordination group which reports both to the EPC Political

⁴¹ McGeehan/Warnecke (note 1), at 1268; Wallace (note 1), at 45; de Schoutheete (note 1), at 90.

⁴² Written Question 489/80, [1980] O.J. C251/12, 29.9.1980.

⁴³ Aldo Moro signed the Final Act in his position as Prime Minister of Italy and expressly also as President of the Council of the Communities.

Committee and to the Committee of the Permanent Representatives of the Community Council. In the General Commission of the dialogue, composed of European and Arab delegations at the Ambassadorial level, the Chairman of the EPC coordinating group speaks on political aspects, while a Commission official deals with economic and technical matters⁴⁴. Thus far, however, this laboriously constructed structure has failed to show tangible results.

(iii) *The UN General Assembly*

Several months prior to a UN General Assembly session the EPC working group on the United Nations begins to study the agenda items for the benefit of the Political Committee. That Committee meets in New York at the opening of the session. During the three months' session, the permanent representatives, delegates and staff of the Ten meet at the call of the "Presidency" as many as 200 times. The President-in-Office states the common views of the Ten in the general debate⁴⁵.

While the number of subjects covered by the consultations had grown, the percentage of identical voting had remained more or less stable since 1974 at the 80 to 84 % level. The statistics, however, do not tell the whole story because the voting diverged on important resolutions⁴⁶. It has been suggested that despite the divergences, the Ten have acquired in the United Nations a "reputation of a coherent and effective group"⁴⁷ but the progression towards common voting seems to have reached a plateau.

Suggestions have come from Belgian socialist parliamentarians that members of the European Parliament be appointed to national delegations

⁴⁴ de Schoutheete (note 1), at 82; Allen, "The Euro-Arab Dialogue", 16 J'l of Comm. Mkt.Stud.323 at 330 (1978).

⁴⁵ In 1979 a representative of the "Presidency" spoke 82 times to explain the votes of the Nine. de Schoutheete, at 73.

⁴⁶ In the 1980 Assembly, there were "three-way split" votes (yes/no/abstention) on decolonization, apartheid, UNCTAD, legal aspects of the New International Economic Order. Certain progress has been noted in the disappearance of yes-votes by a Member State on resolutions openly critical of another Member. da Fonseca-Wollheim (note 1), at 28, also in EPZ at 58. de Schoutheete (note 1), at 73, offers a more encouraging view of the statistics: In 1978 the Nine voted the same way on two-thirds of resolutions whereas in 1973 the number did not exceed 50%. For more detailed analysis and statistics, see B. Lindemann, EG-Staaten und Vereinte Nationen (München, Wien 1978) particularly at 143 and 145; Hurwitz, The EEC in the United Nations: the Voting Behavior of Eight Countries, 1948-1973, 12 J'l of Comm. Mkt. Stud.224 (1975); Hansen, Die Europäische Politische Zusammenarbeit bei den Vereinten Nationen, 30 Europa-Archiv 493 (1975).

⁴⁷ de Schoutheete, at 73.

to the United Nations. This would conform to a consistent United States practice of including members of the Senate or House of Representatives foreign affairs committees in United States delegations to the United Nations General Assembly⁴⁸.

c) "Common action": positive and negative (sanctions)

Since the EPC system has no instrumentalities for implementing a common position, it must rely on Member States who hold a wide arsenal of such means, and on the Community with its budget and commercial and economic development policies powers.

When in 1975 the existence of the freshly established democratic institutions in Portugal was in danger following the "revolution of carnations", the European Council declared its political support of "a pluralist democracy" in that country, but it was the Community's European Investment Bank that provided special credit from the Community budget, and the Commission opened economic negotiations with the Portuguese government⁴⁹. Similar interaction between the EPC and the Community led to substantial economic assistance, from both the Community and national budgets, to Indochina refugees in 1979 and, a year later, to the supply to Poland of critical agricultural commodities at favorable prices.

Occasionally, when the Commission contemplates specific action, it requests an opinion on political aspects directly from the Political Committee or from one of the EPC groups, and at times an EPC group takes up the political implications of a Community activity at its own initiative⁵⁰. Paradoxically, however, neither the important agreement between the Community and the People's Republic of China nor the (now deadlocked) negotiations between the Community and COMECON have appeared on the EPC agenda⁵¹.

⁴⁸ Elles Report (note 35), at 23.

⁴⁹ da Fonseca-Wollheim (note 1), at 22-23, also in EPZ at 55. It is said that this common action was in fact an *ex post facto* "Europeanization" of an undertaking by the German Government about which there had been no agreement at the outset and that this was also the case with the French "initiative" in Zaire in 1977 and 1978. T. de Montbrial, Gedanken über das politische Europa, 36 Europa-Archiv 217 at 221 (1981).

⁵⁰ Examples are the Community negotiations with the Andean Group after the military coup in Bolivia, the association agreement with Cyprus, the compatibility with foreign policy objectives of Member States of proposed Community assistance to certain third States. da Fonseca-Wollheim, at 26, also in EPZ at 56-57.

⁵¹ *Ibid.* at 26-27, in EPZ at 57.

Imposition of economic sanctions against a third State has posed particular problems of interaction between the EPC, the Community and the Member States. Clearly, the EPC is concerned in view of the exclusively political objective; however, the means invariably fall within the commercial policy which is the exclusive domain of the Community. Yet EEC Treaty Art.224 contemplates that the Member States may act individually in the event of "serious international tension constituting threat of war" or in order to carry out obligations they have accepted for the purpose of maintaining peace and international security, and it calls for consultations if the sanctions may affect the functioning of the Common Market⁵².

When the United Nations Security Council imposed an economic embargo against Rhodesia there were consultations within the EPC but the response was exclusively by the individual Member States. Several years later, when the question of compliance with the embargo was raised in the European Parliament, the Council took the view that such measures, because of their political objective, were outside the common commercial policy sphere and within the national competence under Art.224; although the Community "as a separate entity is not responsible for applying these decisions", its regulations must be applied with due consideration to international commitments⁵³.

In the *Iranian hostage* case, the resolution on sanctions against Iran was vetoed in the Security Council by the Soviet Union but the Foreign Ministers agreed, again in the context of the EPC, to seek necessary legislation in the national parliaments that would enable the Member States to impose sanctions in accordance with the defeated United Nations resolution⁵⁴. "We ha[d] to resort", reported a Dutch diplomat, "to Articles 224 and 225

⁵² Art.225 adds that if the individual Member-State measures distort competition the Commission with the Member State concerned shall examine how these measures can be adjusted to Treaty rules.

⁵³ Question 526/75 to the Council, [1976] O.J.C89/6, 16.4.1976. The Commission agreed that Member States could act under Art.224 but it pointed to UN Charter Art.48(2) which obligates the UN members to carry out Security Council decisions "directly and through their action in the appropriate international agencies of which they are members"; because "the Community as such has never been approached by the Security Council [regarding compliance with the embargo] the Commission sees no need to consider the feasibility of applying in its common commercial policy the sanctions ..." nor did it see any need for consultation. See Commission's answer to Question 527/75, [1976] O.J.C89/8, 16.4.1976. See generally, P.J. Kuyper, *The Implementation of International Sanctions: The Netherlands and Rhodesia* (Alphen aan den Rijn 1978), also *Sanctions against Rhodesia. The EEC and the Implementation of General International Legal Rules*, 12 C.M.L. Rev.231 (1975).

⁵⁴ Bull. E.C. 4-1980, point 1.2.7.

because the opportunity to base the operations of the Community on Art. 113 has been lost"⁵⁵.

Following the Soviet invasion of Afghanistan, the EPC Conference of Ministers issued an anodyne declaration reflecting the previously publicized national policy statements, but in this case the Community became directly involved in support of President Carter's wheat embargo. The Commission, with the Council's approval, acted to prevent Community wheat exports replacing American deliveries⁵⁶.

Scholars and practitioners have disagreed on a variety of issues – some real, other imaginary. Subject to one dissenting voice, it is widely agreed that, in contrast with its position in GATT, the Community has not "replaced" the Member States in the United Nations and thus is not bound as such by a Security Council resolution⁵⁷. Beyond that, the ambiguity of Arts. 224 and 225 allows for a wide range of interpretations regarding the impact of these articles on Community commercial policy power and generally its role in this context. On the one hand, the bureaucrats see in Art. 113 a convenient way for bypassing national parliaments and obtaining quick action, but on the other hand, they conjure up a myriad of contin-

⁵⁵ Gosses, in: C.W. Timmermans/E.L.M. Völker (eds.), *Division of Powers between the European Communities and their Member States in the Field of External Relations*, at 127, 140–142 (Deventer 1981). The Commissioner concerned claimed that "the Commission shares responsibility for the implementation of whatever measures are agreed at the political level". Bull. E.C. 4–1980, point 1.2.5. For a detailed discussion of the sanctions against Iran, see Petersmann, *Internationale Wirtschaftssanktionen als Problem des Völkerrechts und des Europarechts*, 1981 *Zeitschrift für vergleichende Rechtswissenschaft* 22–26. See also Schröder (note 60). See generally, Nicolaysen, *Autonome Handelspolitik der EWG*, in: *Schlochauer Festschrift* 855, 869ff. (Berlin, New York 1981).

⁵⁶ Bull. E.C. 1–1980 point 1.1.3, 4, 8 and point 2.1.36. There is some question about the effectiveness of the Commission's action. The Council also called for examination of other trade measures, including export credit restrictions. In 1977, the UN Security Council adopted an arms embargo against the Republic of South Africa. The chairman of the EPC Conference of Foreign Ministers declared the Nine "are resolved to apply the arms embargo". Bull. E.C. 11–1977 point 3.2.6. Under Art. 223(1)b any Member State may act to protect its security interests with respect to arms trade and the arms embargo was apparently handled by the Member States under this provision.

⁵⁷ The lone voice is O. Jacot-Guillarmod, *Droit communautaire et droit international public*, at 191 (Genève 1979). See generally Kuyper, *The Implementation* (note 53), at 192; Meier, *Zur Kompetenz der EG-Mitgliedstaaten zur Durchführung von Sanktionsbeschlüssen des Sicherheitsrats der Vereinten Nationen*, 1979 *Recht der Internationalen Wirtschaft* 247 at 250. But Petersmann makes an effective argument in support of the proposition that the Community organs rather than the Member States have "predominant" competence to implement UN sanctions in the economic area. Petersmann (note 55), at 26.

gencies which in their conception call for preserving exclusive national powers⁵⁸.

A breakthrough for Community power occurred in connection with the sanctions against the Soviet Union after the declaration of martial law in Poland. In a regulation based specifically on Art.113, the Council noted that the "interests of the Community" required reduction in the imports from the Soviet Union and imposed a series of minor restrictions on such imports. In a companion regulation the Council exempted Greece from this measure, allegedly because the current state of incomplete integration of that country into the customs union called for special protection of its commerce⁵⁹. Finally, in response to Argentina's "invasion" of the Falkland Islands, "discussions" and "a decision" in EPC culminated in the adoption

⁵⁸ Per Lachmann of the Danish Foreign Ministry worries about the following questions: If Art.113 is held to apply, would it be possible for Member States individually to discontinue the sanctions? What would happen if new sanctions or amendments were proposed in the UN Security Council? Would then the Community be exclusively competent to determine the vote and what about the U.K. and French veto rights? See Timmermans/Völker (eds.) (note 55), at 141. Interestingly, even the members of the legal staff of the Commission disagree among themselves. *Ibid.* at 140-142.

⁵⁹ Council Regulations 596/82 and 597/82 of 15 March 1982, [1982] O.J. L72/15-19, 16 March 1982. Denmark initially opposed Community action, ostensibly on the legal ground that sanctions were beyond Community power. Eventually it abandoned its opposition but the Council greatly reduced the Commission's list of items to be affected by the sanctions. The regulation was expected to have minimal practical impact and it was viewed as little more than an indication of displeasure with the Soviet role in Poland. See "EEC Proposes Cuts in Soviet Imports", International Herald Tribune, February 26, 1982, p.2. The exemption of Greece by a special regulation was obviously motivated by the political stance of the Greek government rather than by serious economic considerations. The lesson from the Afghanistan affair may have contributed to the willingness of the governments to employ Community action rather than to rely on individual national measures. In that case some governments, to the irritation of others, proved unable (or unwilling) to obtain parliamentary approval for the necessary measures.

On June 23, 1982, in an answer to a question by Mr. Ephremidis criticizing by implication Council action against the Soviet Union, the Council stated: "In establishing the common commercial policy the Council can legitimately take account of a range of factors attributable to the state of relations with one or other country or group of countries. In the present case, the Council considered that the interests of the Community required that imports from the USSR should be reduced. It therefore adopted, on the basis of Article 113 of the Treaty, the commercial policy measures which are the subject of Council Regulations (EEC) N.596/82 and (EEC) No.597/82. Article 113 of the Treaty permits the Council to adopt decisions by a qualified majority ...". O.J. C188/10, 22 July 1982. In fact the first mentioned regulation was adopted despite the negative vote of Greece which, however, did not interpose a "vital interest" claim. The Council position in this response can hardly be reconciled with its answer on the embargo against Rhodesia, summarized in the text accompanying note 53.

by the Council of a regulation, also based on Art.113, imposing a general embargo on Argentinian imports into the Community. Problems had arisen, however, when it came to extending the embargo beyond its initial period⁶⁰.

In the light of the Council action in the Polish and Falkland Islands situations, the Community power to impose economic sanctions appears now established in practice, without necessarily precluding the power of a Member State to protect its essential interests as contemplated in Art.224⁶¹.

⁶⁰ Council Regulation 877/82 of 16 April 1982, [1982] O.J. L102/1, 16 April 1982, and corresponding Decision of the representatives of the Governments of the Member States of the European Coal and Steel Community meeting within the Council of the same day, *ibid.* at L102/3, were adopted by unanimity. In addition to the discussions and decision in the EPC, the preamble of the regulation refers also to a UN Security Council resolution on the "invasion" and to consultations under Art.224. Products in transit or to be imported in execution of existing contracts were exempted. The embargo was limited in time but it was extended twice, first by Council Regulation 1254/82 of 18 May 1982, [1982] O.J. L136/1, 18 May 1982, and Decision of the representatives of the Member States of the European Coal and Steel Community meeting within the Council of the same day, *ibid.* at L136/2, and then, without any time limit, by Council Regulation 1254/82 of May 24, 1982, [1982] O.J. L146/1, 25 May 1982, and Decision of the representatives of the Member States of the European Coal and Steel Community meeting within the Council of the same date; *ibid.* at L146/2. There was, however, no unanimity in support of the extension. Italy and Ireland declared that for political reasons they will not observe the embargo and limit themselves to taking measures against trade diversion caused by their non-observance, and Denmark was prepared to cooperate subject to approval (subsequently obtained) by its Parliament. Yet the above measures extending the embargo do not provide any exceptions for the three dissenting Member States. This anomaly obviously raises serious legal questions which have not been officially answered. After Argentinian surrender, the regulations and decisions imposing the embargo were repealed by Council Regulation 1577/82 of 21 June 1982, [1982] O.J. L177/1, 22 June, 1982, and Decision of the representatives of the Member States of the European Coal and Steel Community meeting within the Council of 21 June 1982, *ibid.* at 177/2. Bruha, Handelsembargo gegen Argentinien durch EWG-Verordnung?, 1982 Deutsches Verwaltungsblatt 674.

⁶¹ See the thoughtful analysis in Meng, Die Kompetenz der EWG zur Verhängung von Wirtschaftssanktionen gegen Drittländer, 42 ZaöRV 780 (1982).

Bruha (note 60) concludes that the embargo regulations based on Art.113 were illegal. Because they were motivated exclusively by foreign-policy and security reasons they could not be viewed as legitimate commercial policy measures. He believes that, despite the initial unanimous support, the new embargo practice based on Art.113 cannot be viewed as representing "either political or legal consensus". *Ibid.* at 682. There is, however, substantial earlier authority in support of Community jurisdiction to impose sanction on the basis of Art.113: Petersmann (note 55), at 25-26; Schröder, Wirtschaftssanktionen der Europäischen Gemeinschaften gegenüber Drittstaaten, dargestellt am Beispiel des Iran-Embargos, 23 German Yearbook of International Law 111 (1980) (Schröder appears to believe that Art.113 may be employed if all Member States agree), also by implication

7. Concluding Observations on the Impact of EPC

There is no objective way measuring the impact of the EPC. In the first place, the mechanism has been operational for a relatively brief period – a little more than a decade. More importantly, foreign policies are determined by a multiplicity of factors working at the national and Community levels. EPC is only one of the great many factors and it does not lend itself to ready disassociation from the others, if for no other reason because it has no institutions of its own and functions in secrecy so dear to diplomats⁶².

There is authoritative support that over the years EPC consultations contributed at least incrementally to a movement toward common positions on such problems as Rhodesia-Zimbabwe, Namibia, post-revolution Portugal, human rights violations, relations with the Association of South-East Asian Nations (ASEAN), the issues before the Conference on Security and Cooperation in Europe, the (thus far abortive) Euro-Arab dialogue and – surprisingly – also on the Arab-Israeli conflict⁶³. In the more recent crises involving the Soviet Union and Argentina, discussions within EPC led to common action in the European Economic Community⁶⁴.

More generally, national diplomatic establishments show certain signs of “Europeanization”. The political commitment of the Member States to consultation prior to taking national positions, although still fragile and subject to frequent rupture, appears to have been strengthened. The fears that the EPC will disturb the allocation of power between the national governments and the institutions of the European Community in the direction of “renationalization” have not been borne out thus far. It remains to be seen, however, how EPC can be brought into an organic relationship with the Community (presumably within the much heralded “European Union”)⁶⁵, if the essential character and dynamics of the integration process are to be preserved.

probably Everling, *Das europäische Gemeinschaftsrecht im Spannungsfeld von Politik und Wirtschaft*, in: *Europäische Gerichtsbarkeit und nationale Verfassungsgerichtsbarkeit*, Festschrift für Hans Kutscher, 155 at 171 (Baden-Baden 1981).

⁶² “But what secrecy means is that it is not possible to show for certain what (probably many) minor matters are successfully harmonized or coordinated, nor what major questions have been deadlocked into banalities, and by whom, and on what issues”. Meynell, *External Relations of the European Community*, in: F.G. Jacobs (ed.), *1 Yearbook of European Law* 347 at 371 (1982).

⁶³ de Schoothete (note 1), at 48 and *passim*; da Fonseca-Wollheim (note 1), at 12, 21–23, and *passim*, and in EPZ at 51, 54–59. Meynell, *ibid.* at 370–72, 377–79.

⁶⁴ See text at notes 49 ff. above.

⁶⁵ See text at note 8 above.