

The European Union's CFSP: a lowest-common-denominator approach to foreign policy?

By

David Teslicko

Honors Senior Capstone in International Relations

American University

Spring 2009

April 28, 2009

Advisor: Prof. Michelle Egan

Abstract

With the upcoming celebration of the 10th anniversary of the EU's European Security and Defense Policy (ESDP), it is important to reflect on both the role and the impact of the EU's Common Foreign and Security Policy (CFSP). The group of 27 Member States, which operates on a consensus basis, has increasingly taken on larger, more difficult missions and initiatives over the past few years. This paper examines three case studies to demonstrate the role that national interests play in collective decision-making as well as the influence that EU-level actions have on Member State policy positions. The examples of the EUFOR Tchad/RCA security mission, EULEX Kosovo rule of law mission, and Guantanamo detainee transfers are explored to provide greater insight into this evolving institution as well as to propose areas for organizational improvement.

Introduction

Since the Treaty of Rome in 1957, the European Union has continued to evolve into a novel project of supranational and intergovernmental cooperation by an ever-growing number of Member States (Wallace, Wallace and Pollack 2005, 4). While these advancements have been by far the most prominent and successful in the area of economic policy, the high-politics of foreign policy have continued to develop in parallel, albeit at a much slower pace. Due to this much slower progress, the Common Foreign and Security Policy (CFSP) has received much less attention in the academic literature, often being dismissed as ineffective with few prospects for future advancement given nationalist protections of basic sovereignty (Wagner 2003). However, recent polling demonstrates growing popular support for an expanded role of the CFSP, even surpassing NATO in most Western European countries by margins of greater than 60% in some cases (Office of Opinion Research Studies 2009). This popular support as well as the evolution of the institution makes it a key point of academic interest as it continues to evolve in years to come to meet growing expectations and evolving challenges.

Realists, neo-realists, institutional structuralists, post- modernists and constructivists have all weighed in on their analysis of the history and functioning of the CFSP, each providing a unique insight into the factors that determine foreign policy “outputs.” Under the treaties establishing the European Union and, in turn creating the CFSP, these outputs can include common positions, common strategies, and joint actions (Wallace, Wallace and Pollack 2005, 443). In addition to these official outputs, theorists have examined the ideas and norms that CFSP spreads as well as the actual results of the agreed upon policies. Debate remains strong within the literature over which of these “outputs” should be the basis for an analysis of the function and effectiveness of the CFSP, especially given the ambiguity, subjectivity and general

difficulty of measuring many of these dimensions. This paper seeks to evaluate these theories in the context of three case studies in order to examine in a more comprehensive way the interaction between CFSP and national foreign policies. In particular, this paper attempts to explain the decision-making processes and the factors that influenced their outcomes in these particular cases as a method of testing which of the theoretical approaches mentioned best explains policy outcomes. Specifically, the case studies presented will be used to test the realist assertion that given the intergovernmental structure of this pillar of the EU, policy outcomes will reflect an extension of national interests and therefore lead to the policy position least objectionable to each individual member.¹

Methodology

This paper will examine the decision-making processes and policy outcomes of the EU's CFSP through the analysis of three case studies, each attempting to highlight a different perspective from which to examine effectiveness and impact of the policy. The case studies have been chosen based on availability of information given their relative prominence as well as their uniqueness from each other in order to present a broader image of the institution as a whole. However, because of their arbitrary selection, the studies themselves and their results are not immediately generalizable to all CFSP cases and therefore should act merely as indicators of potential directions that may be explored academically as well as potential explanations of how decisions are made and to what extent they influence further national-level actions and interests.

¹ It is important to note that this paper represents an examination and analysis of European foreign policy coordination from an American perspective. Where possible, sources have been used that portray a broad interpretation of the evolution, application, and results of CFSP, including those written by Americans and Europeans. However, given the novelty of the European Union's political system as well as its contrasting principles for existence defined in its European Security Strategy, there is likely an inherent gap in perspective when this subject is researched by individuals living in a political system with substantially different measures for the effectiveness of foreign policy, i.e. the value of aspirational rather than concrete objectives.

The three case studies examine the EU's role as a military security provider, a humanitarian/civilian resource supplier, and a moral compass. The first study recalls the EUFOR Tchad/RCA mission, which provided humanitarian support and protection to refugees from Sudan in both Chad and the Central African Republic. The second case study is the EU's rule of law mission in Kosovo, EULEX KOSOVO. This operation is focusing on providing basic police security in the still unstable, Serb-dominated northern areas of Kosovo as well as providing judicial, prosecutorial, and customs mentoring to allow the still fledgling government based in Pristina to flourish. Finally, the study turns to a case that is more of a policy than an operational question for the EU, the acceptance of former detainees held at the United States' Guantanamo Bay detention facility. This issue, which remains ongoing, has been brought by several Member States to the EU level for security reasons despite its ultimate resolution which will be based on bilateral extradition/transfer agreements.

These case studies should present the versatility and variability of CFSP policy while examining national positions both before and after a common position is agreed to. Additionally, it highlights the role that consensus has within this institution while providing examples of where unanimity does not lead to a lowest-common-denominator approach to Community foreign policy. Finally, these cases attempt to portray motives for bringing items to the Community level to further illustrate how the EU's CFSP serves national political interests in less obvious or direct ways than simply reaffirming or pooling countries around already widely supported policies.

Overview of the CFSP and Its Theoretical Interpretations

In order to evaluate these cases, it is useful to once again review the foundations and stated expectations of the CFSP as other scholars have done. However, while most accounts have viewed the development through a single perspective, here, the history will be portrayed where possible through a combination of multiple theoretical perspectives. Expectations will mostly be drawn from collective statements by the Member States in the form of the treaties themselves, common positions or the Council-approved European Security Strategy. In navigating this long history, this paper assumes that decisions build upon themselves, forming an *acquis politique*, which is largely passed on to new member states during the enlargement process (Glarbo 1999).

Following the review of the history of the CFSP and the various theories through which the outputs may be examined, the three case studies will each in turn be discussed to provide insight into the interaction between national foreign policy positions and the CFSP. Additionally, these studies will be used to evaluate the merit of the various perspectives of examination and point out areas in which they fail to provide holistic explanations for Council or Member State actions. These case studies will draw their data from Member State statements prior to and following formal EU action, EU policy outputs and the resulting actions, and diplomatic statements and positions obtained from United States Department of State's interactions with various Member States. Finally, recommendations for future development and evaluation of the CFSP will be laid out as well as areas where future research is recommended.

Theoretical Approaches

Before examining the CFSP's history, a quick synopsis of the various approaches to its analysis is helpful. Rationalism is likely the most prominent approach taken by researchers of the field with a strong focus on traditional concepts of nation-states as the primary actors in foreign affairs. This theory also views state interests as relatively permanent permitting little influence by international organizations in the process of interest identification and development (Wagner 2003). Rationalists therefore view international organizations as potentially useful and attractive if they are capable of reducing transaction costs in foreign affairs for individual member states. In particular this theory takes into consideration collective benefits that can be obtained through mutual cooperation, including the possibility of reducing future transaction costs through repeated cooperation. This contrasts with constructivist theorists who argue that old conceptions of states as the sole actors in international affairs fail to recognize the important role of international organizations such as the European Union as mediators of foreign policy interests and conveyors of social constructs and values. Constructivists focus on the social structures created by the process of CFSP as important areas of research in addition to the typical focuses of policy outputs and decision-making focused on by rationalists (Glarbo 1999). Finally, a third perspective, realism, holds that states will take all measures necessary to protect their national interests and maintain an absolute level of sovereignty, only relinquishing such control when such a loss will ultimately strengthen such national autonomy long-term. While realists like rationalists believe that states are rational actors in international affairs, they do not focus on the benefits of mutual gains outside of those gained by the individual state actor and also do not give weight to the "soft power" that can result through repeated cooperation. For this reason, realists would not give great value to the creation of a strong moral standing by a collection of

states or inherently value spreading values abroad. Realists typically see little value in declaratory diplomacy or consensus building that dilutes real action on pressing foreign policy issues (Toje 2008). It is for this reason that many researchers support Christopher Hill's declaration of a consensus-expectations gap in the CFSP. While this original statement in 1993 focused on consensus building as just one of three reasons for the failure to create implementable foreign policy actions (the other two being resources and available instruments, which have been partially addressed), it remains true to this day with almost all decisions being made on a consensus basis with arguably very vague outcomes (Toje 2008). It is this type of declaration-chasing that has led many realists and critics in general to dismiss the CFSP as a paper tiger at best which seeks to make decisions that each Member State government may read their own national interests into despite the contradictions and divergences that may result from such a collective practice.

History of the CFSP

The prototype of the CFSP was born in the creation of European Political Cooperation (EPC) in the early 1970s. As laid out in the Luxembourg Report and the Copenhagen report in 1970 and 1973 respectively, the EPC was tasked with “ensuring a better mutual understanding of the major problem of international politics through regular information and consultation, promoting a harmonization of views and the coordination of positions and achieving a common approach to specific cases” (Bickerton 2007). While these initial reports set lofty goals with potentially global impact, the EPC remained a mostly intra-European focused group that acted to harmonize relations within the block without exploring too far into external relations by pressing international issues at hand.

Realists cite this inability to act abroad as a failure due to the protection of the high-politics of foreign policy. However, constructivists counter that the EPC was in fact a success by establishing regular dialogue amongst diplomatic colleagues and encouraging a reevaluation of decision-making processes in the sphere which highly valued the perceptions of the other Member States while tending to encourage conformity within the group (Wagner 2003) and (Glarbo 1999). Additionally, the procedures adopted within the framework encouraged Member States to at least give some credence to other states' concerns and work with them towards some sort of consensus where one was easily reachable. Rationalists viewed the advancement of the EPC as an effective forum through which Member States could exchange policy-making information and coordinate where practical on the policy decisions, which had already been made in national capitols. However, they viewed its development potential as limited due to its scope of issues which tend to mirror cooperation rather than dilemma games under functional regime theory (Wagner 2003). This discourages investment in international organizations and procedures because incentives for defection are minimal but the ability to free-ride is substantial.

Despite these contradicting viewpoints of the purpose and utility of the EPC, it did attempt to take on a number of issues during its lifespan including Middle East peace and the creation of the Conference on Security and Cooperation in Europe (Glarbo 1999). However, these aspirations were buffered by the inability of the EU to take joint action or approaches to the dissolution of Yugoslavia in the early 1990's despite the formalizations of procedure which took place in the Single European Act in 1986 (SEA). The EPC was unable to demonstrate its power in adopting politics of scale in many of these areas due to long-standing national relationships or hardened policies that pre-dated the agreement. One strong example of this barrier was Germany's strong support for the recognition of the breakaway states of Yugoslavia, specifically

Croatia and Slovenia (Kaufman 2002). Despite efforts to create a multi-lateral position to address the issue of territorial integrity, Germany lobbied strongly for the breakaway states' recognition and eventually declared its own recognition on December 23, 1991. This forced the European Community to quickly follow suit on January 15, 1992, effectively undermining the EPC's ability to coordinate actions at an EU level and to discourage unilateral approaches to European problems.

Additionally, the EPC was never able to develop the military cooperative infrastructure that would enable it to easily deploy forces abroad to meet its stated objectives. One of the many attempts of the prior to even the creation of the EPC to create such a system was proposed by Prime Minister Pleven of France in 1950. His plan would have created a single European Army complete with its own Minister of Defense and Community budget. However, the plan was defeated by France's own National Assembly, setting the stage for a much longer, more progressive development of the capabilities needed to enforce the declarations and aspirations of the EPC (Pleven 1950).

The CFSP was eventually born in the Treaty of Maastricht in 1992 which formalized and expanded the role of the EPC and brought it into the full treaty framework (Wallace, Wallace and Pollack 2005). The treaty allowed for less ambiguity in terms of the role of the EPC and importantly its relationship with the other institutions of the EU, which had initially driven members to hold meetings in separate cities to draw a clear division. According to some scholars this progress was in part the result of a compromise between France and Germany in which France agreed to German reunification in exchange for German consent to a CFSP and monetary union (Toje 2008). The new CFSP was eventually bolstered by the launch of the European Security and Defense Policy at the informal St. Malo summit, which began to provide

the requisite capabilities for EU foreign policy actions to be put into place outside of declarations of opinion (Bickerton 2007). This formalized what had already begun in the Amsterdam Treaty in 1997 which provided access to Western European Union (WEU) operational resources when the EU was involved in carrying out “Petersburg Tasks,” mostly humanitarian in nature (Keukeleire 2003). Additional strengthening that began to reduce the consensus-expectations gap previously referenced was the agreement upon a rapid reaction force as a Headline Goal of the 2003 Helisinki Summit. The force would allow the EU to deploy 1,500 forces within 15 days for at least a month with an additional extendable period if needed (Keukeleire 2003). While these forces are far from perfect, especially in terms of meeting some of NATO’s basic levels of interoperability and training readiness, they have proven effective in two key demonstration operations, Operation Artemis and Atalanta (Shea 2008). A final development has been the creation of the Berlin Plus arrangement which permits the EU to use NATO command and control and planning structures for their missions provided the Atlantic Council concurs (Bickerton 2007). This allows the EU to rely on non-national military commands in executing its foreign policy without incurring the cost of parallel institutions or drawing additional concerns over competition between ESDP and NATO. The first successful Berlin Plus plan was launched as Operation Concordia in 2003 which provided security for international observers in Macedonia. While the mission could arguable have been successful without full implementation of the Berlin Plus agreement, it provided an effective example of the applicability and executability of the plan (Bickerton 2007). Following the mission, however, Berlin Plus has had limited success in its implication due to political impasses between NATO-member Turkey and EU-member Cyprus. These are addressed later as part of the case study on EULEX KOSOVO.

These extensive developments within the CFSP have prevented easy evaluation because of their novel nature and ambiguous aims. Realists theorists have attempted to provide traditional statist perspectives to these actions and evaluate the outputs accordingly based on clear action items and influential common resolutions (Toje 2008). However, others, including Roy Ginsburg and Michael Smith have sought to apply some new concept of “actorness” to the EU (M. Smith 2003). Smith, specifically, has employed a post-modern construct to examine the multiple layers of CFSP: ideas, institutions and policies and the drivers that affect outcomes: legitimization, member state preferences, and environmental stabilization. Ginsberg, on the other hand, focuses less on the flaws or gaps in EU foreign policy but instead focuses on redefining its mission, as a predominantly civilian power. Additionally, he attempts to explain the unique aspects of the EU’s foreign policy, including the spillover from economic cooperation, the ability to amplify national actions, and the creation of a European identity (Ginsberg 2007). These he argues are the objectives by which EU foreign policy should be measured, not solely from the perspective of their final political or military impacts on the world community. These differ from typical approaches which rely more heavily on decision making processes, the actors involved in them and the actionable outputs they produce.

Turning from what theorists have posited about the role or objectives of the CFSP, it is as important to look at what European leaders have been able to agree to as their stated objectives within the institution. The European Security Strategy, initially agreed in 2003 and revised at the end of last year, provides the Member States’ own aims for the CFSP, which may be used for evaluative purposes, including what types of issues they will seek to tackle and what resolution approaches they will consider (Council of the European Union 2003) (Council of the European Union 2008). This policy takes a broad view of security, specifically focusing on a human

dimension, and seeks to address these issues through multilateralism and political/economic solutions where possible rather than military force. Through this strategy, the EU has continued to paint itself as the premiere organization for combining civilian and military expertise in their missions, a substantial deficit in most other nations' and organizations' security apparatus.

Taking this strategy into account along with the a number of perspectives, Michael E. Smith has established a rubric for examining and interpreting EU actions in the realm of foreign relations that is helpful for both classifying and elaborating upon individual studies (M. E. Smith 2004). His framework takes into account historical national relationships, past precedence in action on a national or multinational level, democratic legitimacy, defection/coherence capabilities, and decision-making processes. Through this framework, case studies are able to be more easily compared across topical areas and time in order to identify the most important factors in driving EU-level policy outcomes. In particular, they allow this paper to take on a more standardized approach to the three case studies presented in order to determine the success of the above theories in explaining or predicting the outcomes in the examples.

Smith's categories of analysis are defined as follows:

Agenda setting: Is the issue at hand historically handled at the EU or national level and what have past decisions/actions on this or related problems been in the past?

Decision-making: What procedure is used for to decide on an outcome (i.e. simple majority , qualified majority, consensus voting)? Which of the main EU institutions, Council, European Parliament, and/or European Commission, have a role in the process?

Implementation: Is the decision taken by the Council a self-fulfilling action or are there additional steps that must occur in order to produce the desired outcome?

Funding: How will the project be financed, collectively or through national contributions? Will the funding be substantial or expenditures occur over a shortened period of time? Are there political obstacles in providing the necessary financial or material resources to the particular objective?

Coherence/Compliance: How does this action relate to other EU endeavors and together do they form a cohesive policy approach to the problem or disparate, unrelated activities? What is the possibility and benefits of Member States defecting from the common position or joint action, and if they do so what are the potential ramifications at the EU or national level?

Domestic Legitimacy: To what extent is the decision taken approved by the people or their direct representatives, notably the European or national parliaments?

Case Studies

Case Study 1 - EUFOR Chad

The first case study in this paper is the EU's security mission to Chad and the Central African Republic, which recently completed its mandate, with relative success. EUFOR TChad/RCA was tasked as a bridge mission in preparation for a longer-term UN mission to the region and was charged with protecting civilians in displaced persons camps, facilitating the flow of humanitarian aid, and establishing the needed facilities for the eventual UN mission. Despite a very delayed launch and a number of logistical and environmental difficulties, a successful handoff occurred on March 15, 2009, setting the stage for a continued comprehensive security strategy for the region surrounding Sudan.

Background

Chad and the Central African Republic have been recipients of over 500,000 refugees and internally displaced persons as a result of violence in the Darfur region of Sudan (BBC Worldwide Monitoring 2007). These individuals have fled both attacks from Janjawed rebels as well as aerial bombings from the Sudanese air force. However, many of the refugee camps have been the site of continued violence from rebel attacks or home to recruitment operations by guerillas, often targeting young boys for their forces (Inter Press Service 2008). Some forces have also begun targeting the Chadian military patrolling the area, allegedly supported by the Sudanese government according to Chad's 19-year President Idriss Déby (Inter Press Service 2007). Attacks have also included humanitarian workers in broad daylight, including the murder of the program director of Save the Children in Chad (UN Integrated Regional Information Networks 2008). In response to the violence and continued destabilization in the country, the UN Security Council passed resolution 1778 on September 25, 2007 following a general consensus by the Council of the EU to deploy a 12 month stabilization force during their July 23-24 meeting and letters from SG/HR Javier Solana and the leaders of both Chad and the Central African Republic supporting such a mission the week prior to the UNSC meeting (United Nations Security Council 2007). The resolution called upon the EU to deploy a mission to bring stability to the region as well as establish a basis for the eventual launch of the multinational MINURCAT UN mission.

EU Response

Though the Council of Ministers had considered action at its July 2007 meeting, agreement was not reached on the actual mission until Joint Action 2007/677/CFSP was agreed

to during the October 15 Council (Council of the European Union 2007). The action authorized the launch of EUFOR Tchad/RCA, tasked as a 12-month bridging mission to prepare for the deployment of the UN's MINURCAT operation and minimize the substantial human rights abuses and rebel insurrections that had been occurring. However, the mission was not to choose sides in the conflict but instead to focus solely on protection civilian lives.

The relatively fast passage of the joint action came mostly at the request of France, the former colonial power in Chad that had maintained over 1,000 troops in the country under a contract to protect the government and train the Chadian army (BBC Worldwide Monitoring 2007). However, despite its initial victory in gaining agreement to the action, which in theory compels the EU to commit to deployment, the agreement was only one step in the long process of actually putting a working mission on the ground. Though initially intended to launch in December or January to avoid the rainy season, the first iterations of force generation conferences proved disappointing (Political and Security Committee of the European Union 2008). The EU Operations and Force Commanders held successive conferences on November 9, 14, and 21 as well as December 19 and January 11. The first few conferences demonstrated the general hesitance of many Member States to follow through on their agreement in Council for a number of reasons. Some countries expressed concern that the mission, which would be dominated by French forces would appear to be resurgent colonialism or draw rebel attacks because of perceived connections with the Chadian government (BBC Worldwide Monitoring 2007). Others such as the United Kingdom and Germany had already devoted limited military resources to understaffed NATO operations in Afghanistan (The Economist 2008). With force numbers substantially below the 4,500 envisioned by military leaders and even below the minimum of 3,200 needed to execute the operation, the mission was put on hold as additional

force generation conferences continued. "The process [of launching the force] has been blocked for the moment," EUFOR spokesman Lieutenant Colonel Patrick Poulain told Irish News on December 4, 2007 (UN Integrated Regional Information Networks 2007). "EU countries have not agreed on who should provide the equipment we need to get started and they are no longer even having what we call 'force-generating' conferences to discuss the matter," he said. The particular outstanding equipment needs that Poulain referenced were helicopters to be used to patrol vast regions, provide evacuation support, and transport supplies between camps. After the first three force generation conferences, Member States had not been able to contribute a single helicopter for the mission, which was slated to require at least ten (BBC Worldwide Monitoring, 2007).

After two more conferences, France and Poland were eventually able to contribute a few helicopters in addition to a Spanish aircraft donation. This allowed for the Council to officially approve the operation and rules of engagement of the mission on January 28, 2008 through 2008/101/CFSP, launching the mission substantially behind schedule (Council of the European Union 2008). Based on the decision, 150 troops were deployed by February 15, 2008, with the force reaching initial operational levels by March 15 with 1,759 troops representing 11 countries (Marlowe 2008). The force was initially scheduled to be launched several days earlier but was postponed by the Political and Security Committee after rebel groups made substantial advances into the capital of Chad, including taking the airport that the EU had planned to use as an entry point. The fact that the rebel forces had only eventually been repelled by French national troops stationed in Chad, further instigated previous concerns over the public perception of the EUFOR mission, especially in Austria and Sweden (Political and Security Committee of the European Union 2008). However, while Germany retained its doubts, the previous joint action by Council

led them to feel compelled to actually carry out the much-lauded mission, if anything to save face.

After the initial deployment, expectations from operational commanders still anticipated a 4,000 troop force to be in the field before the summer, as well as additional helicopters needed to meet the ten initially planned for. However, full deployment at 3,700 troops was only reached in October with a little over a third of those actively on patrol at any point in time (Inter Press Service 2008). These included troops from potential EU members Croatia and Albania. However, the final four helicopters needed for the mission were only garnered through a special agreement with Russia through which the Irish government agreed to lease the aircraft (Lally 2008). These helicopters arrived in December but were quickly grounded for personnel use after it was determined that they lacked appropriate certification for passenger transport, making their use by patrols impossible.

Despite deployment problems, many countries viewed the mission as an ultimate success, protecting refugees on a number of occasions from potential recruitment efforts. Additionally, the mission remains the largest military deployment under ESDP and led to a sustained multinational presence in Chad and the Central African Republic under a UN banner. The mission officially transferred authority to the new MINURCAT UN commander on March 15, 2009 without incident, especially as a result of over 2,000 of the EUFOR forces remaining in Chad as part of the new 4,900-person UN mission (Europolitics 2009).

Theoretical Analysis

As will be done in all of the case studies presented, the analytical framework of Michael E. Smith's will be applied to EUFOR Tchad/RCA to categorize and expand upon this case of the CFSP in order to shed light into the decision-making process and outcomes:

Agenda setting: The issue of the conflict in Sudan has been a focus of the EU Council since the late 1990s with special focus on the humanitarian concerns both within the country and for refugees fleeing the battles. With over 500,000 refugees and displaced persons from the conflict living in Chad and the RCA, the protection mission of EUFOR Tchad/RCA seems to be a natural extension of these policy priorities agreed to over eight years before the first conclusions relating to this mission. Additionally, common consensus had been building to launch a substantial military force independent of NATO, as previously detailed in the historical overview of ESDP, to demonstrate Europe's long-range capabilities. As the Council began passing initial general outlines of a possible ESDP role in the area, it became increasingly committed to seeing the mission become a reality, which was in part what persuaded Germany to provide at least political support for the deployment despite security and public relations concerns.

Decision-making: As with all ESDP missions, the ultimate decisions to launch the mission were based on unanimity at Council and within the Political and Security Committee. However, this case provides additional insight into another layer of decision-making that operates almost independently of the political decisions taken in Council. The military representatives at the Force Generation conferences were the key players that delayed and almost struck down the EUFOR mission on an operational level. Despite political commitments based covering the general scope of the mission and financing of common expenses, force contributions were nearly impossible to obtain at the levels previously agreed to.

Implementation: Related to the additional level of decision-making, the EUFOR Tchad/RCA mission was particularly difficult to drive forward due to its high susceptibility to free-riding and defections. While no country would truly "benefit" from free-riding on other Member States actions, they would avoid the large financial burden and political/publicity ramifications of

participation in a failed or costly long-range deployment. This option was made particularly easy for other countries because of the strong will for France to see the mission through and in turn their openness towards funding/staffing a large part of the mission independently. However, this in turn also provided a substantial excuse for defector countries to not participate by citing the lack of neutrality with which a French-dominated mission would be viewed.

Funding: While a substantial portion of the mission, €119.6 million, were funded under the ATHENA procedure for distributing common costs, most of the resources were contributed by Member States in the form of force contributions whose financial burden they alone would have to shoulder (Council of the European Union 2008). These expenses can be very large within strictly limited or decreasing budgets, especially for helicopters where operational use will directly limit their expected lifespan, shifting forward in time very large capital expenditures.

Coherence/Compliance: The French proposed the mission to Chad, where they have had a long-time military presence as part of the overall approach towards alleviating the humanitarian crisis emanating from Darfur. In this way, they were able to in part draw attention away from their colonial history while focusing on a comprehensive approach to the region. As the Council noted in its final evaluation of the mission in its conclusions on March 18, 2009, the EU remains involved as it had been in the region outside of the EUFOR mission in the form of UN mission support, development aid and humanitarian assistance (Council of the European Union 2009). Specifically, the EU has/will contribute €10 million to the MINURCAT mission, €30 million in humanitarian aid in 2008, along with general contributions to UN support missions in the region.

Domestic Legitimacy: While the European Parliament did not have direct decision powers in the context of the EUFOR Tchad/RCA deployment, it did overwhelmingly pass a resolution on the matter on September 27, 2007 by a 453-104-15 vote (European Parliament 2007). The

resolution called for a one-year deployment of an impartial force that worked closely with the UN as a bridging mission. It also urged that the mission should not be deployed without the requisite materials necessary for a safe and successful operation.

Conclusion

As the first case study in this research project, EUFOR Tchad/RCA provides a broad overview of the difficulties in national decision making regarding ESDP missions. The study introduces the multi-level processes that are involved in the planning, adoption and execution of a substantial mission abroad. In the example of EUFOR Tchad/RCA researchers are able to see the impact that a particular national interest, historical connections between France and Chad, can have a spillover effect on collective action within the context of the EU. Additionally, Member State objections are modulated based on the views of other countries and within the context of other community-wide initiatives, such as promoting human rights and creating stability in the Darfur region. Finally, the case exposes the dichotomy between the ability of states to commit at a political level to a mission versus at an operational/resource level, especially when these commitments would result in substantial financial burdens or capital expenditures, as was the case with helicopter deployments.

Case Study 2- EU Rule of Law Mission in Kosovo (EULEX)

The largest ESDP mission to date has been the EU's involvement in Kosovo through the existing NATO-led KFOR mission, the UN's monitoring mission UNMIK, and the recently launched ESDP rule of law mission, EULEX. The new mission reflects a substantial commitment on the part of the EU to invest in the future of Kosovo through a 1750 international

staff and 850 person local civilian force focused on mentoring and monitoring the justice and customs systems (Council of the European Union 2009). Given that this is the largest independent ESDP undertaking of the EU outside of its borders and the international divide over the recognition of Kosovo's self-declared independence, it represents a particularly pointed case study into the impacts of ESDP on Member State actions and commitments and its resulting effectiveness.

Kosovo and EULEX Background

In order to fully analyze the mission, it is important to first establish a basic understanding of the context and background that led to its propagation. The region of Kosovo was a part of the Socialist Federal Republic of Yugoslavia under the governance of the Republic of Serbia, gaining some autonomy beginning in the 1960s (Shiratori 2009). In 1976, the region was effectively made a republic with the creation of a presidency which was given a voice within the federal presidency of Yugoslavia. The federal state began its dissolution in 1991 with declarations of independence in Croatia, Slovenia, and Macedonia, followed by a declaration by Bosnian declaration the following year. After the regions succeeded in maintaining their independence, with the help of international brokers in 1995 at the Dayton Peace Accords, some Kosovars created the Kosovo Liberation Army (KLA) which began agitating against Serbian control in 1996. Fighting continued on and off between Serbian military forces and the KLA until in 1999, NATO forces were authorized by the UN to end the conflict by separating by force the two sides (Shea 2008). The UN Security Council decided in Resolution 1244 to administer Kosovo as an independent administrative unit under Serbia but run by their Mission in Kosovo, UNMIK under the protection of NATO forces remaining in the area under operation KFOR

(United Nations Security Council 1999). UNMIK took the lead initially in running most governmental affairs but progressively moved to more of an oversight role where conflict was not likely to be an issue, such as in southern Kosovo. This included the creation of Provisional Institutions of Government in 2001, which allowed for local control of a number of key governmental duties and the creation of a Presidency, Prime Minister, and elected Assembly (Shiratori 2009). While UNMIK retained ultimate oversight, these institutions were allowed to effectively exercise self-government. On February 17, 2008, after great international anticipation, the Kosovo Assembly declared independence from Kosovo, which caused a firestorm of debate over international recognition in part due to its conflict with prior precedent of independence only through consent of the sovereign. In response to the declaration, an emergency United Nations Security Council meeting was called which included entreaties by the Serbian President and the Russian Federation to nullify the declaration of independence and furthermore block the deployment of EULEX as ungrounded in UNSCR 1244 (de Wet 2009). Positions of other countries on the Council, however, were split with Vietnam, China, and South Africa generally supporting Serbia and the European states and the United States recognizing the uniqueness of the situation and the legitimacy of the declaration. This deadlock was followed by a meeting of the European Council the following day in Brussels which also produced mixed results due to the refusal of recognition of several EU members, thereby blocking a consensus (Council of the European Union 2008). The Council issued a statement declaring that individual Member States “will decide in accordance with national practice and international law, on their relations with Kosovo.” This statement allowed for Member States to pragmatically come to their own determinations as to the status of Kosovo, potentially only delaying an eventual collective decision which would need to be reached should the state of Serbia apply for

membership in the Union. Despite this ambiguous non-decision, the EU did provide a theoretical cover to any Member States' decision on recognition by adding in their conclusions that "the Council reiterates the EU's adherence to the principles of the UN Charter and the Helsinki Final Act, inter alia the principles of sovereignty and territorial integrity and all UN Security Council Resolutions. It underlines its conviction that in view of the conflict of the 1990s and the extended period of international administration under SCR 1244, Kosovo constitutes a *sui generis* case which does not call into question these principles and resolutions" (Council of the European Union 2008). The statement denies any precedence that might be construed from state actions, giving greater flexibility to all Member States and the Union as a whole in deciding future cases of unilateral declarations of independence. In this way, it also softened the blow of a divided EU on the issue by pointing out the difficulty in interpreting the correct principles given the complexity of the particular circumstances. Since the declaration, 58 states have recognized Kosovo's sovereignty, mostly from Europe and the Americas (Kosovo Thanks You 2009). However, four members of the European Union (Spain, Greece, Cyprus and Romania) have yet to recognize the sovereignty of the government in Pristina and will likely not do so in the near future predominantly for internal domestic reasons (Shiratori 2009).

The declaration of independence came at the time that the EU was finalizing its plans to launch its rule of law mission, EULEX, originally conceived in 2006 (Council of the European Union 2006). The mission, which aimed to send 2,000 civilian personnel to Kosovo to act as police officers and administrative mentors, aimed to improve government operations in terms of security, customs, and the administration of justice. This was to be done in cooperation with UNMIK to whom they would be the ultimate successors, at least for the two years that the joint action had been agreed to. However, international debate remained over the authority of EULEX

in relation to UNMIK which had been given exclusive authority under UNSCR 1244 as well as the applicability of that resolution given the new status of Kosovo, which remained in limbo due to an impasse on the Security Council over recognition (de Wet 2009). Furthermore, this question of status extended to the EU Council as well due to the refusal of Spain, Cyprus, Romania and Greece to recognize Kosovo's independence, including the possibility of providing it with credibility through the assistance of EULEX. These concerns were in large part due to domestic separatist concerns, the Basques in Spain, the Turkish Cypriots with respect to Cyprus and Greece, and other minority ethnic groups in Romania (Shiratori 2009). However, these concerns did not result in any of the four Member States blocking the approval of an amended joint action on March 11 authorizing the mission to go forward, with a projected cost of €79,505,000, not including expenses of seconded staff which will be covered by the respective Member State (Council of the European Union 2008). Despite the revised Joint Action, the EU was unable to launch EULEX over the summer of 2008 due to UN disputes during April over control issues mentioned above. This included the UN at one point instructing UNMIK to stop any cooperation with the EULEX mission (Shiratori 2009). Finally, on November 26, the UNSCR provided political cover for the launch of EULEX which was able to enter Kosovo on December 9, 2008. The launch has included four national police units, a number of justice administration personnel and customs officials. Notably, among this group is a Greek police contingent which has been operating in the northern, Serb-dominated part of the country.

Operational Difficulties

Despite the successful entry into the region, EULEX has encountered a number of problems in meeting their mission objectives both due to external factors and internal contention.

The most notable problems has been regarding relationships with the Serbian government in Belgrade which has generally refused to recognize EULEX's mandate, instead insisting on using UNMIK as an interlocutor (Shiratori 2009). This has combined with the refusal of the Serb-dominated northern parts of Kosovo to recognize the government in Pristina and comply whenever possible with border and customs obligations. This is especially noticeable in the town of Mitrovica, which is divided ethnically by the Ibar River. A number of cases have been documented of ships passing down the river without being stopped by Serb Kosovar customs officials because of their eventual destination of Serbia.

A similar situation has been seen in several of the courts in the area which have been unable to operate except on the most pressing of cases because of continued choice of law disputes between Serbs and Kosovars but also between UNMIK with their UN law and the preference of EULEX to begin applying the law created by the government in Pristina, despite the relative similarity of the two sets of code. These situations have evaded solution in part because of the EU's inability to effectively negotiate on the issues with the two governments as well as their inability to sway UNSC approval fully behind their mission. In the first case, EU Special Representative Pieter Feith, who represents EU High Representative for the CFSP Javier Solana, and in turn the Council in Kosovo has been hesitant to get too far ahead of the political consensus of Member States meeting in the Political and Security Committee (PSC) (Shiratori 2009). Due to the refusal of some states to recognize the government in Pristina on a consensus basis along with the eagerness of several countries to maintain strong relationships with Serbia, a potential candidate country in the future, Feith has been forced to take a relatively weak middle ground during dispute resolution. This has prevented him from filling the effective gap of negotiator between the two sides.

An additional source of frustration to the mission is the difficulty in coordinating with other forces on the ground, specifically NATO's KFOR contingent. This problem emanates from the long-standing obstacle in NATO-EU relations, the Turkey-Cyprus dispute (Shea 2008). The disagreement between Cyprus, Greece and Turkey over the separatist region of the Turkish Republic of Northern Cyprus has blocked effective cooperation between the two organizations despite the existence of the Berlin-Plus cooperation agreement of 2002 which offers NATO infrastructure support to the EU for ESDP missions such as the current one. This cooperation must be approved by NATO's North Atlantic Council, the member state voting body, by unanimous consent. However, Turkey, especially recently, has refused to recognize the authority and legitimacy of Cyprus, an EU Member State, to sit at the same table during discussions and negotiations on Berlin Plus. This has led Turkey to block all but one Berlin Plus action, which was the EU's mission to Bosnia, effectively rendering the agreement useless.

Additionally, Turkey has gone even beyond blocking infrastructure sharing to now block even formal coordination agreements between the EU and NATO forces that share security sectors (Shiratori 2009). This can lead to a number of problems in the field, especially when KFOR at least perceives a sequence of response to incidents of EULEX, UNMIK, and only then KFOR. Four technical coordination agreements were drawn up for forces in Kosovo prior to the introduction of EULEX but those agreements were never signed due to opposition to formal coordination by the groups' respective members. Instead, forces have been operating under the unsigned agreements through an informal "cooperation" process, whereby almost everything happens as laid out just via informal channels. What has been particularly intriguing about Turkey's opposition to formal cooperation on EULEX is the fact that it is a participant as a third-country partner and current candidate state for EU accession. Recently, the Government of

Turkey has even offered to increase its contingent up to 150 personnel in exchange for greater appropriations of staff leadership positions (Shiratori 2009). However, because of divides between Member States on their international relations with Turkey, collective agreement by the EU in addressing the impasse has been hard to come by and ineffective in its application with the notable exception of the Althea mission in Bosnia.

The financial crisis has also presented a major obstacle towards mission success recently, with a number of states announcing cutbacks in their deployments abroad. Most notably, the United Kingdom has announced that it will cut its forces in Kosovo by up to 55% as part of military drawbacks globally (Shiratori 2009). This could have a substantial impact on EULEX or its partner KFOR, which is essential to providing an umbrella for EULEX's work. Notably, these cutbacks come at a time when the UK has committed to not drawing back troops in Afghanistan as part of its contributions to NATO's ISAF mission there. Despite substantially more troops, 8300 in ISAF compared to under 100 in Kosovo as of February 2009, the UK has chosen to focus its budget cuts on ESDP missions where they have less control over operations but which are paradoxically less costly missions given its civilian advisory nature (US Department of State 2009). Other EU states have announced similar cuts due to budgetary concerns, including France which is undergoing substantial changes in its military structures in part as a result of its reintegration with NATO in 2009.

Theoretical analysis

Applying Michael E. Smith's model to the EULEX mission, we are able to identify a number of variables that can identify the case study as unique.

Agenda setting: The EULEX mission can be seen as an extension of a long line of EU interest in the development of the Balkans. Beginning with the EU's desire but inability to address the breakup of the former Yugoslavia at a Union-wide level, the Council has attempted to create a CFSP response. These initially failed attempts did lead to the launch of the Althea ESDP mission in Bosnia-Herzegovina and a strong commitment by EU Member States to participate in the KFOR mission, which although not EU-led is mostly Member State driven. Given the existing EU commitment to the area, the EU's ability to control the issue at a Union level was easily achievable.

Decision-making: The EULEX mission involved both a civilian force commitment and a substantial financial burden on both contributing states and the Community budget. Decisions were taken on a consensus basis which could have been easily blocked by Member States with opposing views on the legitimacy of the Kosovar state, especially by Greece who chose to be an active participant rather than a blocking vote.

Implementation: EULEX, as an ESDP mission is run under the control of the EUSR for Kosovo through contributions by Member States and third-country partners. While the logistical execution of the mission is multi-national in nature, its success is contingent on national determinations of personnel contributions.

Funding: As mentioned above, Member States are primarily responsible for the funding of their own seconded staff, with the exception of minimal contract hiring by the EU. However, some costs for staffing and mission material are funded through the Community budget and therefore represent a shared cost.

Coherence/Compliance: The EULEX mission is part of a general external relations effort to incorporate the Balkans into the European community over time. The personnel aspects of the

mission have been combined with substantial economic aid in order to spur the economy, a major factor in Kosovo's eventual success as a state, according to Javier Solana (Solana 2009). Compliance is not built into the joint actions as has been demonstrated by recent announcements that the UK may begin drawing down their contributions to the mission during 2009.

Domestic Legitimacy: While ESDP missions are generally only decided at the Council level and therefore have little "democratic" checks, the European Parliament did pass a non-legislative resolution on February 5, 2009 reaffirming the importance of the EULEX mission and calling on remaining Member States to recognize Kosovo's independence (European Parliament 2009). This provides further popular approval of the mission's mandate.

Conclusion

The EULEX case study demonstrates a tentative "success" of ESDP that may be used as the launching ground for additional personnel-intensive missions in the future, either in the Balkans or possibly other areas of interest abroad. The case shows that despite internal divisions at the national level, even to the extent of state recognition of Kosovo, Member States were able to agree at a Union level to their most demanding mission to date including the substantial financial obligations that come with it. The case further shows that despite the demands of consensus decision-making, agreements on joint actions that run contrary to some of the group's immediate interests can be overcome, allowing a mission to both go forward and thrive, despite some obstacles which it may create at the operational level.

Case Study 3 - Guantanamo Detainee Resettlement

An emerging area of interest in the EU's CFSP is the reaction of both Member States and the Union to President Obama's request for assistance in closing the military detention facility in Guantanamo Bay, Cuba. As one of the President's first executive orders in January 2009, Obama issued a mandate creating an interagency task force assigned with the responsibility of bringing closure to the base within a one year time frame (Office of the President of the United States 2009). As part of this task, the respective government agencies were tasked with reviewing the files of the 260 detainees still held at the facility and either deciding to return them, resettle them abroad, release them into the United States or prosecute them within a US judicial system. As part of the resettlement component, EU Member States have been asked to accept up to 60 potentially releasable detainees in order to facilitate the closing of the base. Many of the states have in turn sought guidance at the EU level, including in the form of a common position to facilitate accepting detainees and sharing responsibility for any possible consequences that could have a Community-wide impact.

Background

The Guantanamo Bay Naval Base has been operated by the United States since 1898 and used as a detention facility since 2002 when it began accepting what the Bush Administration termed "enemy combatants" from Afghanistan (Franklin 2005). Since then, the US has detained over 800 individuals at the facility though it has released over 500 of those. The remaining 260 have been at the camp for varying amounts of time, some since its inception. The detainees range in nationality and suspected activities with some having already been cleared for release. The interagency review panels, established by President Obama's executive order of January 21,

2009 are currently reviewing and compiling files for each detainee that may be used as a basis for determining their status as well as facilitating their release where appropriate (Office of the President of the United States 2009). While some of these individuals have already been determined to be continuing threats to the United States and will therefore face some type of prosecution, others have had any charges against them dismissed or will likely be found to no longer be a threat.

While an ideal outcome would be to return releasable detainees to their native countries, in some situations, this could pose a threat to either the detainee or to the long-term security of the region or United States. Such instances include a number of Uighurs, an ethnic Muslim minority in China, who had been detained in relation to preparations for an independence movement against China. If these individuals were returned to their home country, there would be a high risk of mistreatment and even death sentences from the government in Beijing (Council of the European Union 2007). Additionally, there are a number of Yemeni detainees whose return to an already delicate political system in their home country could exacerbate problems of militaristic Islamists in that country. These individuals could then potentially seek retribution against the US or one of its allies for their detention at Guantanamo. For this reason, the Obama administration has been seeking homes for these detainees that would protect them from potential persecution while providing a constructive environment that allows them to rebuild their lives, free from Islamist influence.

The State Department has taken the lead on resettlements abroad through its Office of War Crimes Issues, under the leadership of Ambassador Clint Williamson. The government has particularly focused on other democratic countries, mostly in Europe, where these individuals could both blend in and more easily latch on to positive social systems. This outreach has

notably targeted EU Member States as they are recognized for their stable political systems and have been some of the loudest critics of the Guantanamo detention facility. Initially requests for detainee transfers have been on a bilateral basis because of the absence of clear asylum *acquis* at the EU level. Despite some success at this level, a number of states have raised concerns about the need for an EU-level common position that would facilitate national-level transfer decisions both domestic political and regional security reasons (Council of the European Union 2009).

EU Common Position

In US interactions with EU Member States, progress has been mixed in part depending on the particular agency within the European government that is receiving the transfer request. Though these requests were initially made informally, allowing for intra government al dissension to be more readily visible, these divides have continued even after President Obama made another formal request to the EU during the April EU-US informal summit in Prague (Barrett 2009). These divisions have mostly taken shape between Ministries of Foreign Affairs on the one side and Ministries of the Interior and Ministries of Justice on the other. Fundamentally the divide is over the balance between improving relations with the US and appearing to support human rights whenever possible versus protecting national security from the unknown threat a Guantanamo detainee. The most notable examples of this type of division have come from the German and Irish governments where the Foreign Ministers and in the case of Ireland the Prime Minister have been very forward leaning on accepting detainees in part because of a moral commitment to human rights (Georgetown Law Center on National Security and the Law 2009). However, their Justice Ministers have been extremely cautious about

transfers, needing clear information on particular individuals before they can even consider supporting moving forward.

Additionally, ministers from a number of countries have pointed out the security problems posed by the border-free Schengen zone. Because individuals living in one country have a right of free movement into and through the others, limiting a released detainee's movement would be difficult both politically and technically. This means that if any Schengen country accepts a detainee, the security risks are not contained within only that country but extend to all others within the system. For this reasons, the Justice and Home Affairs Council on April 6 agreed to task the Council of Permanent Representatives to the EU (COREPER) with devising an information-sharing regime that would allow for appropriate consultations between Member States prior to any detainees being accepted (Council of the European Union 2009). Such a system would allow for Community decision-making in these asylum cases and potentially allow Community interests to trump national political will to accept a particular detainee. In addition, it will provide a framework for the Memoranda of Understanding (MOU) that will be concluded on a bilateral basis with the US for each detainee. The MOUs will outline travel restrictions and other security measures that must be taken in order for the transfer to occur. By providing a template, these MOUs can be standardized in a way that will facilitate their acceptance by other Schengen states.

Additionally, Member States have sought an EU Common Position to avoid potentially public backlash against accepting potentially dangerous detainees, especially ones of minority ethnic groups in areas where tolerance is not particularly high. An EU level action encouraging individual states to take detainees as part of their commitment to closing Guantanamo and their overall advocacy for human rights can provide political cover which national governments can

call upon to rebuff critics. Several states have quietly indicated that they are ready and willing to accept detainees once officially asked but have sought to keep such information quiet in order to prevent political backlash from foreclosing that option. To this extent, a number of Member States have latched on to the position presented above while some Nordic states have also called upon involvement from the United Nations High Commissioner for Refugees and the International Committee of the Red Cross to also become active in the process by coordinating and encouraging detainee transfers. Such a transfer to multinational bodies for decision-making, even if it is only a small component of the overall decision to actually take a detainee has helped to minimize the political limitations that a national government may have in accepting transfers.

Theoretical Analysis

Applying Michael E. Smith's analytical framework to this case, we are able to categorize this ongoing case study of the CFSP in the Third Pillar of EU affairs:

Agenda setting: While the European Council had not announced a position on the resettlement of detainees prior to President Obama's January executive order, the EU had been a consistent opponent to the detention facility for years. These objections came at the EU level through the EU's annual human rights report, through European Parliament debates and in responses to questions posed by the European Parliament to the Council. These continuous objections have explicitly been used as the basis for the obligation that some European leaders feel they have for assisting with detainees. Additionally, prior to the detainee resettlement issue, the Justice and Home Affairs Council had already begun attempts at standardizing asylum application processes, especially for countries within the Schengen region, despite the matter remaining a mostly

national competency. This particular case represents a particular type of situation that sparked the earlier debates.

Decision-making: The decision-making procedure mandated by the Treaties in this case is rather ambiguous, in part because decisions in asylum cases are typically considered to have remained at the national level. However, with the inclusion of the Schengen area as part of the Treaty of Amsterdam in 1997, the impact of asylum decisions on Member States will be readily felt in all but the few states that still have opt-outs from the borderless zone (European Union 2002).

Under the treaties, the procedure for approving common asylum measures/procedures is outlined in Article 67 of the Treaty of Nice and requires unanimity in Council, with the non-Schengen opt-out states typically not participating in voting. This will make it more difficult for states interested in taking detainees, especially those only willing to do so under a common framework, from moving forward should the few states adamantly opposed to detainees attempt to block a framework. The decision-making mechanism is further burdened by the fact that this case study overlaps two of the three pillars of the EU: Pillar II (CFSP) and Pillar III (Justice and Home Affairs). This overlap helps to emphasize the divide within governments because both the Council on General Affairs and External Relations (GAERC) and the Council on Justice and Home Affairs will have to give their blessing to any common framework that develops. While the government representative that serves on each is in theory representing that of the whole government, divisions within Member State cabinets could permit differences between Council formations, potentially stalemating the process. However, most practitioners have noted that the GAERC is typically seen as the superior Council formation, as a matter of practice rather than legal precedent, and could ultimately make the final decision under both pillars.

Implementation: The ultimate common framework that could develop in this case study would be an information-sharing arrangement as well as a Union-wide blessing for members to move forward on bilateral negotiations to accept detainees. The other potential outcome would be a lack of consensus on the matter that would revert decisions solely back to the national level. In either case, there is a potential that Member States could defect from the agreement, potentially imposing freedom of movement restrictions in violation of Schengen which would then have to be challenged at the Court of Justice. Additionally, Member States could withhold their consent to a particular transfer after appropriate information is shared, causing the transfer to be placed in a limbo where a choice would have to be later made about the appropriate governmental level at which a final decision would be necessary, essentially whether neighboring states' need to be sought out for consent or merely consultation.

Funding: There would be no substantial direct expenses incurred by the Union or any Member State through the creation of this information sharing mechanism. Burdens would exist for individual states that choose to accept detainees due to the cost of resettlement, education, and reentry into society for the individual. This facilitates decision making at least on the framework issue at the Union level.

Coherence/Compliance: The entire purpose of this framework is to develop a coherent strategy EU-wide towards accepting Guantanamo detainees, which could lead to further policy coherence towards asylum seekers more generally. However, depending on how detailed of a framework emerges, national choices in bilateral transfer agreements could create substantially different travel restrictions and surveillance procedures between particular detainees. Additionally, non-Schengen countries may take different approaches towards detainees given their decisions' considerably smaller impact on the security of other Member States.

Domestic Legitimacy: While the European Parliament has made a number of statements supporting the closure of Guantanamo, its role in the decision-making process under the third pillar, like the second pillar, is minimal and non-binding. Additionally, there are some concerns in more ethnically homogenous countries that Member State elites are using the EU framework to overcome popular opposition to resettlement of ethnically different detainees.

Conclusion

The response to transfer requests from the US to accept current detainees at Guantanamo Bay has demonstrated the role that cross-pillar issues play within the current EU pillar system. Additionally, it has illustrated another reason for why leaders might seek to pursue an EU framework to address common foreign policy questions. Specifically, some leaders are using the opportunity to ensure a common security is maintained while others are using it to quiet national concern by strengthening both the moral obligation to act while downplaying the negative domestic security implications. Regardless of the ultimate outcome, the detainee issue will likely create a continuing justice and home affairs agenda that attempts to address varying asylum issues within the border-free area. Finally, should the Treaty of Lisbon enter into force at the end of the year, pending a new Irish and a Czech vote, some of the cross-pillar issues will be alleviated as almost all decisions will move to a qualified majority voting system and the pillars themselves be merged.

Discussion

The three case analyses have demonstrated foreign policy coordination within the EU as it is practiced in military operations, civilian operations, and foreign relations/asylum issues.

However, on a broader level, these case studies have provided an insight into the method of cooperation and the influence that Member States have on each other in coming to common positions and joint actions. Finally, it touches upon the role that EU CFSP has within national foreign affairs policy-making in general and the impact that past decisions/actions can have on national positions.

A number of the theories mentioned in the literature review lend themselves to explaining various aspects of the policy outcomes and decision-making difficulties encountered in the case studies. However, based on the facts of these examples, some provide better explanations for the actions that the EU chose to pursue, as well as the problems that arose. Realism would have observers believe that Member State actions at the EU level are merely exertions of national interests within a multilateral, intergovernmental framework. While it appears true that Member States approached many of the problems from a nationalist perspective, in terms of readily presenting opposition or explaining their positions within a nationalist perspective, these positions did not always match with their voting behavior. This was most prominently displayed in the second case study, in which a non-recognizing country, Greece, permitted and even supported the deployment of a rule of law mission to Kosovo that was specifically tasked with supporting and strengthening the government in Pristina. Though realists may counter that support for the mission was a means of preserving security and stability in the area, thereby guaranteeing Greece's own national security, this argument appears flawed in that unlike KFOR, EULEX KOSOVO was specifically tasked with preserving Kosovo's autonomy long-term. A similar situation exists in the case of the Guantanamo detainee transfers, whereby states who explicitly view the detainees as a direct threat to their national security are willing to allow others to accept transfers even within the borderless Schengen area. While the ultimate decisions will

remain bilateral with a “consultation” between neighboring states, this concession to continue to extend the privileges of free movement extended by Schengen represent the power of an interest outside of national interest, which in this case trumps what would be the statist response.

Rationalism and constructivism both provide substantially better explanations for action on the EU level. Rationalism is especially useful for explaining the readiness of Member States to enact the joint action in the EUFOR Tchad/RCA while remaining extremely hesitant regarding troop commitments vital to its success. The ability of easy defections allowed some states to claim that they supported the holistic resolution of the long-standing Darfur issue, while avoiding the resource costs incurred by the Union. Additionally, it explains why Member States have chosen to address the bilateral asylum issues involved in the Guantanamo case at the EU level. By doing so, the transaction costs of negotiating every individual transfer with other Schengen members is reduced through the creation of a common mechanism with standardized information sharing and evaluation procedures. This allows those members with an interest in accepting detainees to garner the support of those less eager to allow such transfers while ensuring that the collective benefits of Schengen are not threatened.

Finally, constructivism accounts for the desire of Member States to modulate their own national interests in favor of maintaining coherence and reputability in the multinational institution that is the EU. The most prominent example of such modulation is the eventual support of Germany for the EUFOR Tchad/RCA mission. Despite explicit initial objections to the plan over concern of perceived French partiality, Germany pushed for the operations timely launch in order to preserve the reputation of the Union as a legitimate military power. Such an action, taken at a basic national-interest level, would seem contradictory to German hesitation, especially if the mission could be allowed to die not through explicit veto but by implicit refusal

to allow it to move forward. Additionally, the EULEX KOSOVO case can act as an example of states' interests in creating a cohesive foreign policy for the EU overall. Though a common position could not be reached on the recognition of Kosovo, all states were able to call upon, at a minimum, the historical statement of support for the autonomous region and use such a precedent to support the mission, despite some preexisting national precedents in support of Serbia. Finally, the Guantanamo detainee case explains how the actorness of the EU can be disassociated from the Member State decisions that actually inform its policy. In this case, a number of countries are seeking to use the EU as a means of compelling or at least encouraging them to accept detainees, in light of public objections. By national governments creating a common position in support of at least some detainee transfers, they can claim political or moral obligations to follow through on its recommendations by contributing their fair share to assisting in the asylum cases. This end-run around their national political system allows leaders to make policy choices that individually are difficult at the popular level but widely supported at the elite political level, within the community of EU leaders meeting in Council.

Policy Recommendations

Based on these case studies it is possible to propose a number of changes that could make CFSP more effective and coherent at the Community level.

First, resource questions should be decided at the same time as joint actions or common positions to ensure that later defections cannot be quietly created through failures to gain support at the force-generation stage. As happened in EUFOR Tchad/RCA, Member States are far more likely to consent to a mission that does not automatically impose substantial costs on them, either political or real. If force generation was combined with initial action decisions, either states

would be forced to commit upfront to decisions or proclamations to launch unlaunchable missions would never be decided in the first place. Additionally, this makes it very clear from the beginning who will be actually shouldering the burden for the mission and who will be only a minimal participant. This prevents Member States from using common positions as public diplomacy tools within their own countries while avoiding the costs associated with their actual implementation.

An additional lesson from the EUFOR mission is the importance of clarifying the interactions between national military forces and EU forces from that same Member State operating in the same area. Confusion and doubt existed during the deliberations for approving and launching the EUFOR mission in part because of the presence of French national troops in Chad who were explicitly tasked with defending and supporting the Chadian military. This was in sharp contrast to the very clearly impartial force that the EU deployed which would have stepped aside to allow rebel attacks of government forces, provided that civilian lives were not at stake. Upfront, standing MOUs would alleviate this concern as well as provide a clear separation between existing national commitments and those of EU forces, even though those forces are drawn from national militaries.

The EULEX mission has demonstrated to much of the world the value of the EU's civilian capabilities. Despite a setback over a common approach to recognition of Kosovo, the EU was able to successfully launch a large-scale mentoring and monitoring civilian mission in the Balkans, in contrast to their response during earlier wars in the region. The case demonstrates that civilian capabilities should be a hallmark of the future development of ESDP especially given the lack of other traditional security providers, the UN, NATO, and the US's inability to rapidly deploy a qualified force with a similar background. These civilians in

Kosovo are helping to run a country which has not yet been recognized by the majority of the countries in the world. If the EU is able to demonstrate success in this mission, it may be able to gain support both within the Union and abroad for its involvement in rescuing or rebuilding failed states, which have become a prominent risk to the security of several Western countries.

A second policy recommendation that can be derived from the EULEX mission is the real need for the Turkey-Cyprus issue to be resolved as soon as possible or at least downgraded to the point that all NATO-EU cooperation is not blocked. In spite of the official Berlin-Plus arrangement for formal cooperation between the organizations, the Cyprus question has blocked virtually every attempt for the two organizations to coordinate. While the two groups have in part worked around this obstacle through informal “cooperation,” coordination on some key objectives is essential for full success in such an already complex and volatile region. Resolution of the Berlin-Plus arrangement would allow forces such as EULEX and KFOR to operate and communicate in much more beneficial ways and work together to ensure that their missions are complementary in gaining stability and development in Kosovo.

Finally, the Guantanamo detainee study teaches that while some actions remain national competencies, Community-level action can prove beneficial at addressing national interests. In particular, the concern of some state governments over popular backlash for accepting detainees can be redirected to the EU if such a policy is seen as required by a common position. Though this is a bit counterintuitive given the fact that decisions such as the detainee one must be on a consensus basis with the national officials themselves casting the votes, this degree of separation from direct public scrutiny and accountability allows governments to RCAnyout either an unpopular personal political objective or meet the calls of other Member States without creating tension within their home countries, threatening their electoral potential. Once a general

approach has been adopted in Council, states can use this as the basis for further action on the issue at the EU level with less opposition at home because of its “ongoing” resolution.

The case study also demonstrates the spillover effects of common action in one field into another, even when EU jurisdiction is not mandated by the treaties. Though asylum policy remains for the most part a national competency, the security concerns created by the Schengen zone have encouraged national governments to seek EU solutions to common national problems. These solutions can lead to more cohesive policies at both the national and international levels by ensuring that different policy fields and levels are working complementarily towards common objectives. For example, the EU’s mission to spread the values and the enforcement of human rights throughout the world is best accomplished through common action to that end beyond declaratory statements. By working through the EU’s CFSP on development, asylum, trade, education, and immigration issues in a particular country, all of these policy frames may be used to promote the same common goal of an improvement in human rights conditions. The incentive to work at the EU level will also further bond the social connections and responsibilities created by the Union, encouraging leaders to seek collective action over unilateral action whenever possible and to modulate their responses where appropriate by taking due consideration of the interests of their fellow Member States.

Conclusion

Through the case studies of EUFOR Tchad/RCA, EULEX Kosovo, and the acceptance of Guantanamo detainees, a more cohesive picture of the decision making structure and national influence of the EU’s CFSP can be depicted. The studies show that the Community-level outcomes, even those decided on the basis of unanimous consent need not always reflect a least-

common denominator approach to foreign policy, whereby a single Member States national objections trump those of a majority of other members. Instead, the studies have shown that through agenda-setting, calls for policy coherence, and procedural anonymity, Member States may be goaded to take positions that run seemingly contrary to their national interest or at least public opinion, to the service of the overall will of EU leaders. These studies have provided a number insights that can be converted into policy proposals that can allow the CFSP to continue to evolve into a more effective institution within the EU, able to provide the prestige and policy effectiveness originally sought by its originators and re-invigorators at St. Malo.

Bibliography

Africa Confidential. "Delays in Deployment:." February 15, 2008: 8.

Bardos, Gordon N. "The Regional and International Implications of Kosovo Independence."

Mediterranean Quarterly 19, no. 4 (Fall 2008): 54-67.

Bardos, Gordon N. "The Regional and International Implications of Kosovo Independence."

Mediterranean Quarterly 19, no. 4 (Fall 2008): 54-67.

Barrett, Devlin. "Holder seeks Europe's help to close Guantanamo." *Associated Press*, April 26, 2009.

BBC News Corporation. "EU splits on Kosovo recognition." *BBC News*. February 18, 2008.

<http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/europe/7249909.stm> (accessed March 29, 2009).

BBC Worldwide Monitoring. "Bleak times ahead as delays hit EU Chad force." *BBC Monitoring Africa*, December 20, 2007.

Bickerton, Christopher J. "The Perils of Performance: EU Foreign Policy and the Problem of Legitimization." *Perspectives* 28 (2007): 24-42.

Champion, Marc. "Politics & Economics: How Kosovo May Foster EU Unity; Bloc Poised to Avert Foreign-Policy Split; No Veto for Russia." *Wall Street Journal*, November 20, 2007: A10.

Clarisse, Yves. "EU-Chad mission at risk for lack of transport-diplomat." *Reuters*, November 21, 2007: 1.

Council of the European Union. "A Secure Europe in a Better World - The European Security Strategy." Brussels, 2003.

—. "Council conclusions on operation EUFOR Tchad/RCA." 7770/09. Brussels, March 18,

2009.

- . "Council Decision on the launching of the European Union military operation in the Republic of Chad and in the Central African Republic (Operation EUFOR on the launching of the European Union Tchad/RCA)." *2008/101/CFSP*. Brussels, January 28, 2008.
 - . "Council Joint Action amending and extending Joint Action 2006/304/CFSP on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo." Brussels, March 11, 2008.
 - . "Council Joint Action appointing a European Union Special Representative in Kosovo." Brussels, February 12, 2008.
 - . "Council Joint Action on the establishment of a EU-team to contribute to the preparations of the establishment of a possible International Civilian Mission in Kosovo, including a European Union Special Representative component (ICM/EUSR Preparation Team)." Brussels, September 5, 2006.
 - . "Council Joint Action on the European Union military operation in the Republic of Chad and in the Central African." *2007/677/CFSP*. October 15, 2007.
 - . "Council Joint Action on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO." Brussels, February 4, 2008.
- Council of the European Union. *EULEX Kosovo: EU Rule of Law Mission in Kosovo*. EULEX/06, Brussels: Press - EU Council Secretariat, 2009.
- . "External Relations." *Press Release General Affairs and External Relations*. Brussels, January 2009, 26.
- Council of the European Union. "Force Strenght by Nations in AOO:885."

- . "General Affairs and External Relations Council, 18-19 February 2008 - Council Conclusions on Kosovo." Brussels, February 18, 2008.
- . "Kosovo: Council establishes an EU Rule of Law Mission, appoints an EU Special Representative." Brussels, February 16, 2008.
- . "Press Release Justice and Home Affairs." Luxembourg, April 6, 2009.
- . "Press Release Justice and Home Affairs." Luxembourg, February 27, 2009.
- Council of the European Union. "Report on the Implementation of the European Security Strategy - Providing Security in a Changing World." Brussels, 2008.
- Council of the European Union. "The European Union's Actions in the Context of EUFOR Tchad/RCA." December 8, 2008.
- . "Uighurs in Guantanamo Bay." *Preliminary Draft Reply to Written Question E-2277/07 put by Sajjad Karim (ALDE)*. Brussels, May 7, 2007.
- de Wet, Erika. "The Governance of Kosovo: Security Council Resolution 1244 and the Establishment and Function of EULEX." *The American Journal of International Law* 103, no. 83 (January 2009): 83-96.
- Edwards, Geoffrey. "The New Member States and the Making of EU Foreign Policy." *European Foreign Affairs Review* 11 (2006): 143-162.
- Ellner, Andrea. "The European Security Strategy: Multilateral Security with Teeth?" *Defense and Security Analysis* 21, no. 3 (September 2005): 223-242.
- EU Business Ltd. "Spain rejects EU parliament call for Kosovo recognition." *EU Business*. February 5, 2009. <http://www.eubusiness.com/news-eu/1233870421.9/> (accessed March 29, 2009).
- European Commission. "Kosovo Political Profile." *International Debates* 6, no. 3 (March 2008):

10-12.

European Parliament. "European Parliament resolution of 5 February 2009 on Kosovo and the role of the EU." Strassbourg, February 5, 2009.

—. "Resolution on the ESDP operation in Chad and the Central African Republic ." *RSP/2007/2627*. Strasbourg, September 27, 2007.

European Union. "Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community." Official Journal of the European Communities, 2002.

European Union Council Secretariat. "EU Military Operation in Eastern Chad and North Eastern Central African Republic (EUFOR Tchad/RCA)." Tchad-RCA/9, March 2009.

Europolitics. " EUFOR Chad-CAR Sets Example." *Europolitics*, March 17, 2009.

Ferreira-Pereira, Laura C. "Between Scylla and Charybdis: Assessing Portugal's Approach to the Common Foreign and Security Policy." *European Integration* 29, no. 2 (May 2007): 209-228.

Ferreira-Pereira, Laura C. "The Militarily Non-Allied States in the Foreign and Security Policy of the European Union: Solidarity 'ma non troppo'." *Journal of Contemporary European Studies* 13, no. 1 (April 2005): 21-37.

Franklin, Jane. *How Did Guantanamo Become a Prison?* April 11, 2005.
<http://hnn.us/articles/11000.html> (accessed April 1, 2009).

Georgetown Law Center on National Security and the Law. "Austria will not resettle Guantanamo detainees." *Georgetown Security Law Brief*, April 6, 2009.

Ginsberg, Roy H. *Demystifying the European Union*. Landham, MD: Rowman & Littlefield, 2007.

- Glarbo, Kenneth. "Wide-awake diplomacy: reconstructing the common foreign and security policy of the European Union." *Journal of European Public Policy* 6, no. 4 (Special Issue 1999): 634-651.
- Gross, Eva. "Germany and European Security and Defence Cooperation: The Europeanization of National Crisis Management Policies?" *Security Dialogue* 38, no. 4 (December 2007): 501-520.
- Gros-Verheyde, Nicolas. "ESDP: Chad Mission Accomplished, EUFOR hands over to MINURCAT." *Europolitics*, March 16, 2009.
- Human Rights Watch. "EU Should Deploy Troops Now to Protect Civilians." *Africa News*, February 12, 2008.
- Inter Press Service. "Europeans Caught in War of Words." *Africa News*, June 19, 2008.
- . "French Position Delays Troops." *Africa News*, December 17, 2007.
- Johnson, Ian. "World News: Security Mission to Kosovo Faces Local Reluctance." *Wall Street Journal*, December 9, 2008: A7.
- Karlas, Jan. "The ESDP-building process and conflict prevention: intergovernmental policy-making and institutional expertise." *Journal of International Relations and Development* 8, no. 2 (2005): 164-191.
- Kaufman, Joyce P. *NATO and the former Yugoslavia*. Lanham, MD: Rowman & Littlefield, 2002.
- Keukeleire, Stephan. "The European Union as a Diplomatic Actor: Internal, Traditional and Structural Diplomacy." *Diplomacy and Statecraft* 14, no. 3 (September 2003): 31-56.
- Kosovo Thanks You. *Recognized or announced the recognition of Republic of Kosova*. April 20, 2009.

Lally, Conor. "Army paid EUR 2.5m for grounded helicopters." *The Irish Times*, October 28, 2008: 4.

Marlowe, Lara. "Irish EUfor Chief Admits Déby Weaker after Attacks." *The Irish Times*, March 20, 2008: 11.

Missiroli, Antonio. "Italy's security and defence policy: between EU and US, or just Prodi and Berlusconi." *Journal of Southern Europe and the Balkans* 9, no. 2 (August 2007): 149-168.

Montanaro-Jankovski, Lucia. "The Interconnection between the European Security and Defence Policy and the Balkans." *Southeast European and Black Sea Studies* 7, no. 1 (March 2007): 139-157.

Office of Opinion Research Studies. *West European Publics Favor EU Decision-making over NATO*. survey, Washington: US Department of State, 2009.

Office of the President of the United States. "Executive Order - Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities." Washington, January 22, 2009.

Palacio, Ana. "The European Common Foreign and Security Policy: Projecting Our Shared Values." *The Brown Journal of World Affairs* 9, no. 2 (Winter/Spring 2003): 73-81.

Pleven, Rene. *Pleven Plan*. National Assembly, Paris. 1950.

Political and Security Committee of the European Union. "Decision Chad/1/2008 on the acceptance of third States' contributions to the European Union military operation in the Republic of Chad and Central African Republic." *2008/172/CFSP*. Brussels, February 13, 2008.

Pond, Elizabeth. "The EU's Test in Kosovo." *The Washington Quarterly* 31, no. 4 (Autumn

2008): 97-112.

Rieker, Pernille. "From Common Defence to Comprehensive Security: Towards the Europeanization of French Foreign and Security Policy." *Security Dialogue* 37, no. 4 (December 2006): 509-530.

Shea, Jamie. *European Security Policy*. American University Brussels Program, Brussels. March 13, 2008.

Shiratori, Seiji, interview by David Teslicko. *EULEX Kosovo* (March 19, 2009).

Smith, Michael E. "Toward a theory of EU foreign policy-making: multi-level governance, domestic politics, and national adaptation to Europe's common foreign and security policy." *Journal of European Public Policy* 11, no. 4 (August 2004): 740-758.

Smith, Michael. "The framing of European foreign and security policy: towards a post-modern policy framework?" *Journal of European Public Policy* 10, no. 4 (August 2003): 556-575.

Solana, Javier. *EU High Representative for the CFSP welcomes EULEX full operational capability*. 5095/09, Brussels: Council of the European Union, 2009.

Stranksy, Martin Jan. "The Czech Republic Recognizes Kosovo." *New Presence: The Prague Journal of Central European Affairs*, Summer 2008: 37.

The Economist. "Colonial Baggage; Charlemagne." February 9, 2008: 3.

The Economist. "Deployment Days." January 3, 2009: 38.

The Economist Intelligence Unit. "Serbia politics: Kosovo scars." *EIU ViewsWire*, February 19, 2009: 1.

Thym, Daniel. "Beyond Parliament's Reach? The Role of the European Parliament in CFSP." *European Foreign Affairs Review* 11 (2006): 109-127.

Thym, Daniel. "Reforming Europe's Common Foreign and Security Policy." *European Law Journal*, 10, no. 1 (January 2004): 5-22.

Toje, Asle. "The Consensus Expectations Gap: Explaining Europe's Ineffective Foreign Policy." *Security Dialogue* 39, no. 1 (February 2008): 121-141.

"Treaty of Amsterdam." Amsterdam: European Union, October 2, 1997.

UN Integrated Regional Information Networks. "Aid Groups Face Dilemma Over EU Protection." *Africa News*, May 16, 2008.

—. "European Force "Blocked" for Now." *Africa News*, December 5, 2007.

United Nations Security Council. "Resolution 1244." June 10, 1999.

—. "Resolution 1778." September 25, 2007.

—. "Resolution 1834." September 24, 2008.

US Department of State. "EU Member State Military Mission Commitments as of February 2009." Report, Washington, 2009.

Wagner, Wolfgang. "Why the EU's common foreign and security policy will remain intergovernmental: a rationalist institutional choice analysis of European crisis management policy." *Journal of European Public Policy* 10, no. 4 (August 2003): 576-595.

Wallace, Helen, William Wallace, and Mark A. Pollack. *Policy-Making in the European Union*. Vol. Fifth Edition. New York: Oxford University Press, 2005.

Weller, Marc. "Kosovo's Final Status." *International Affairs* 84, no. 6 (2008): 1223-1243.

Youngs, Richard. "Fusing Security and Development: Just Another Euro-platitude?" *Journal of European Integration* 30, no. 3 (July 2008): 419-437.