

Appendix 8C. European Union approaches to arms control, non-proliferation and disarmament

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I. Introduction

This appendix surveys how the European Union (EU) carries out its commitments to develop a common foreign and security policy (CFSP) in the area of arms control, non-proliferation and disarmament. During the Intergovernmental Conference that preceded the adoption of the Treaty on European Union in 1993 (Maastricht Treaty) the content of a common foreign and security policy was discussed. Arms control, non-proliferation, the control of arms exports and confidence and security building were all elements that were considered appropriate subjects for the CFSP.¹

On creating the EU the member states also decided to develop a common foreign and security policy.² However, the Treaty on European Union did not create a separate legal entity in this sphere of activity.³ Foreign and security policy is characterized by intergovernmental cooperation. Governments have pledged to 'work together to enhance and develop their mutual political solidarity' and to 'refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations'.⁴ However, each member state has reserved the right to act in a sovereign manner in conducting its foreign relations.

The objectives established for the CFSP in the Treaty on European Union are:

- (a) to safeguard the common values, fundamental interests, independence and integrity of the EU in conformity with the principles of the United Nations Charter;
- (b) to strengthen the security of the EU in all ways;
- (c) to preserve peace and strengthen international security, in accordance with the principles of the UN Charter and the 1975 Helsinki Final Act and the objectives of the 1990 Charter of Paris for a New Europe, including those on external borders;

¹ Collective security and defence cooperation were not considered appropriate issues for the common policy at that time, a fact that was corrected to a large degree in the 1997 Treaty of Amsterdam, that amended the Treaty on European Union. The broader impact of the Maastricht Treaty and the Treaty of Amsterdam is evaluated in, respectively, Rotfeld, A. D., 'Europe: towards a new regional security regime', *SIPRI Yearbook 1994* (Oxford University Press: Oxford, 1994), pp. 217–19, 251–56; and Rotfeld, A. D., 'Europe: the transition to inclusive security', *SIPRI Yearbook 1998, Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 1998), pp. 157–60. All EU documentation can be found at the EU Internet site, URL <<http://europa.eu.int/>>.

² Prior to the creation of the EU the European Community had undertaken some foreign policy initiatives in the framework of the process known as European Political Cooperation, which was established in 1970. Between 1970 and 1993 the scope of cooperation in foreign policy and in the political and economic aspects of security expanded slowly and in a step-by-step manner. However, this remained a rather limited form of cooperation.

³ The legal position of the EU towards international agreements is evolving. The 1997 Treaty of Amsterdam created the possibility for the Council of the European Union to authorize the Presidency to negotiate with a state or international organization on behalf of the EU. An agreement can then be concluded by the Council, acting unanimously, on a recommendation from the Presidency.

⁴ Treaty on European Union, Title V: Provisions on a Common Foreign & Security Policy, Article 11, URL <<http://europa.eu.int/en/record/mt/title5.html>>.

(d) to promote international cooperation; [and]

(e) to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.⁵

In sections II and III of this appendix the different initiatives are briefly described, along with the framework in which activities are carried out and the relationship between the EU and other institutions and organizations.⁶ Section IV draws conclusions about the direction of cooperation in this particular issue area eight years after the creation of the European Union.

II. The legal and institutional framework for the policies

In developing the CFSP policy the Treaty on European Union determines the roles and responsibilities of different actors in this field as well as describing certain instruments and procedures through which cooperation can be organized.

The responsibility for CFSP decision making rests with the Council of the European Union (hereafter referred to as the Council), which can meet either as heads of state and government or at the level of ministers within specific issue areas. The CSFP is dealt with by foreign ministers meeting in the framework of the General Affairs Council. The Council defines the principles and objectives of particular policy initiatives and decides which instrument should be used to achieve those objectives.

The Treaty of Amsterdam created the position of the High Representative for foreign and security policy, who is also the Secretary General of the Council. Javier Solana became the first High Representative for the CFSP with effect from 18 October 1999. The High Representative assists the Council 'in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties'.⁷ The Council is presided over for a period of six months by each member state in turn. The Presidency organizes and chairs all meetings and takes the leading role in working out compromises capable of resolving difficulties. The objective in creating the position of High Representative and linking his activities with those of the Presidency was to increase the overall coherence of the CFSP in conditions where member states were interested to retain their sovereignty in this area of decision making.

The Commission of the European Communities (hereafter referred to as the Commission) is considered to be 'fully associated' with the CFSP but is not a part of it. The Commission may submit proposals to the Council but may not initiate policies or actions independently. In this respect, the role of the Commission within the CFSP differs from its role in matters where the supranational European Communities (hereafter EC) have an overriding legal competence.⁸

The importance of cooperation in the political field between the United States and the EC (subsequently the EU) has been recognized since the early 1990s. The cooperation is organized in a framework known as the Trans-Atlantic Agenda that is

⁵ Treaty on European Union, Title V (note 4).

⁶ Several of the initiatives are described in greater detail elsewhere in this volume. References are provided at the appropriate points in the text.

⁷ Treaty on European Union, Title V (note 4), Article 26.

⁸ The European Communities is the collective term for the European Community, the European Coal and Steel Community and the European Atomic Energy Community. The European Commission serves all 3 of these supranational legal entities.

intended to ensure that cooperation is intensive. The Agenda has five basic principles: transparency (each side keeps the other fully informed of its actions through information exchanges); access (officials at different levels meet their counterparts regularly and at least once every six months); equivalence (a commitment that ideas and proposals put forward by one party will be looked at seriously and responded to by the other side); interaction (meaning that communication should continue between meetings using a variety of different forms); and government support (meaning that the necessary resources should be made available to support the overall Agenda).

Four new CFSP instruments were numerated in the Treaty on European Union: common strategies, common positions, joint actions and systematic cooperation.

Common strategies (which are not clearly defined in the Treaty on European Union) have been used to develop a common approach to countries or regions. There are three common strategies: towards Russia, towards Ukraine and towards the Mediterranean region.

Common positions 'define the approach of the Union to a particular matter of a geographical or thematic nature' and have been used to address clusters of related issues that do not have geography as a unifying element or in advance of an event such as an international conference.⁹

Joint actions 'address specific situations where operational action by the Union is deemed to be required'.¹⁰ These actions are likely to include the allocation and spending of money through the EC budget as well as from national budgets. While decisions in the framework of the CFSP are usually taken by the Council acting unanimously, there are exceptions to this rule. One exception is when adopting joint actions, common positions or any other decision on the basis of a common strategy. In these cases the Council may take decisions by qualified majority.

Strengthened systematic cooperation appears to have been conceived as a more informal arrangement by which the 15 member states (or sub-groups of eight or more states) can try to achieve greater policy coherence in particular areas, thereby increasing their effectiveness. However, using this instrument requires unanimous Council approval before systematic cooperation can be initiated within the EU framework. In addition, the Council can take decisions of other kinds in the framework of the CFSP that can have an impact on levels of armament. In particular, the Council has used arms embargoes and other restrictive trade measures as an instrument of collective policy. Taken together, this makes the formulation and implementation of the CFSP a complicated process.

First, discussions take place among 15 governments, each of which is pursuing a national foreign and security policy that is itself evolving in line with domestic developments and with the specific character of the foreign relations of that state.

Second, since common strategies are oriented towards important countries or regions, while common positions are often thematic in nature, the requirements of the two approaches may point towards different actions in some particular respects.

Third, joint actions must be executed and financed through common institutions in conditions where human and financial resources are provided by states, each of which has its own economic and financial policies and manages its own budget cycle.

Fourth, the intergovernmental CFSP must be meshed with EC activities. For example, nuclear non-proliferation policy must take into account the fact that the European Atomic Energy Community (EAEC, Euratom) is responsible for the phys-

⁹ Treaty on European Union, Title V (note 4), Article 15.

¹⁰ Treaty on European Union, Title V (note 4), Article 15.

ical safety, accountancy, import and export of special fissile materials except where recognized nuclear weapon states (France and the United Kingdom) have designated facilities and/or materials specifically for military use. In another example, non-proliferation policy must take into account the fact that non-military trade matters are legally part of the common commercial policy, which is regulated by the 1957 Treaty Establishing the European Community (Treaty of Rome).

Fifth, it is difficult to pursue a large number of complex and substantive policies at a time when the EU itself is devoting considerable attention to the questions of institutional reform and the accession of new members.

III. Recent EU initiatives in arms control, non-proliferation and disarmament

After 1993 the scale and importance of initiatives in arms control, non-proliferation and disarmament have grown. Initiatives have been taken across the spectrum of nuclear, biological, chemical and conventional weapons. Moreover, initiatives that the EU has taken in other areas—such as the Trans-Atlantic Agenda, common strategy towards Russia and towards Ukraine and the EU contribution to the stability pact in South-Eastern Europe—also contain arms control, non-proliferation and disarmament elements. Table 8C summarizes identified EU initiatives in arms control, non-proliferation and disarmament.

Nuclear arms control, disarmament and non-proliferation

All of the EU member states have signed and ratified the main nuclear non-proliferation treaties and arrangements, including the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT) and the 1996 Comprehensive Nuclear Test-Ban Treaty (CTBT) and are members of the Nuclear Suppliers Group (NSG) and the Zangger Committee.¹¹ The obligations created by these treaties and arrangements have shaped the activities of the EU in this area. At the same time, the different legal status and political approach of the EU member states with regard to nuclear weapons has also shaped the approach to nuclear arms control and disarmament.

Two of the member states—France and the UK—are recognized as nuclear weapon states in the context of the NPT. Eleven of the member states are also members of an alliance (NATO) whose strategic concept rests on collective security and nuclear deterrence. Four of the member states (Austria, Finland, Ireland and Sweden) have foreign and security policies based on non-membership of alliance systems. On the 30th anniversary of the entry into force of the NPT the Presidency issued a declaration on behalf of the 15 EU member states that included a statement that ‘global non-proliferation and disarmament’ were ‘at the core’ of the EU policy.¹² However, while all 15 EU states agree on the objective of complete nuclear disarmament, there are disagreements about how and when that objective should be achieved.

¹¹ See also chapter 9 in this volume.

¹² Declaration by the Presidency on behalf of the European Union on the occasion of the 30th anniversary of the entry into force of the Treaty on Non-proliferation of Nuclear Weapons, 5 Mar. 2000, URL <<http://www.portugal.uc-2000.pt/uk/news/execute/news.asp?id=1101>>.

The EU agreed a Common Position in advance of the 2000 Review Conference of the parties to the NPT.¹³ The document contained 21 substantive issues that EU member states thought merited further consideration at the conference. The issues raised did not include references to either British or French nuclear weapons because, in regard to the disarmament objective, EU states have different perspectives.

Ireland and Sweden participated in the New Agenda Coalition of seven states that produced, in June 1998, a declaration calling on the governments of each of the nuclear-weapon states 'to commit themselves unequivocally to the elimination of their respective nuclear weapons and nuclear weapons capability and to agree to start work immediately on the practical steps and negotiations required for its achievement'.¹⁴ In the declaration the New Agenda Coalition also stated that nuclear weapon states 'with lesser arsenals' should 'immediately begin to consider steps' to join the process of reducing nuclear arsenals to zero.

France and the UK both reiterated their 'unequivocal commitment to the ultimate goal of a complete elimination of nuclear weapons' but did not elaborate on any immediate or practical steps other than the need to make progress in processes already under way.¹⁵

The EU states implemented the Common Position both through national actions taken at the conference and through collective actions. In terms of national actions, it is generally agreed that EU states played a very important role in the success of the 2000 Review Conference, not least because the EU was represented in two of the key groupings that were active at the meeting—the group of nuclear weapon states and the New Agenda Coalition. In terms of collective action, the EU Presidency (Portugal) delivered statements on behalf of the 15 member states both in the general debate and in the main committees. The EU states met both in advance and during the conference to consider their positions on a range of issues. Two other common positions in the sphere of nuclear arms control and disarmament were less focused in their approach and take more the form of political declarations.

The Common Position relating to the promotion of the early entry into force of the CTBT did not contain specific collective actions to be taken.¹⁶ The document contained a list of ideas that were supported by the EU states and intended to contribute to the success of a conference taking place in Vienna in October 1999 to facilitate the entry into force of the CTBT.

At the Vienna conference the Finnish Presidency made a statement on behalf of the EU that emphasized the need for states to put in place national legislation and national authorities to implement the provisions of the CTBT and to contribute to the development of the international monitoring system that forms an integral part of the verification mechanism established in the CTBT. The EU statement was supported by 14 other European states, most of which were candidates for EU membership.

¹³ Council Common Position of 13 April 2000 relating to the 2000 Review Conference of the Parties to the Treaty on the Non-proliferation of Nuclear Weapons, 2000/297/CFSP, *Official Journal of the European Communities*, L 97, 19 Apr. 2000, pp. 1–3.

¹⁴ Towards a Nuclear-Weapon-Free World: The Need for a New Agenda, Declaration released simultaneously by 8 governments on 9 June 1998. It is reproduced at URL <<http://www.basicint.org/8nation.htm>>.

¹⁵ Statement by the delegations of China, France, Russia, the UK and the USA at the 2000 NPT Review Conference, New York, 14 Apr.–19 May 2000.

¹⁶ Common Position of 29 July 1999 relating to the European Union's contribution to the promotion of the early entry into force of the Comprehensive Nuclear Test-Ban Treaty (CTBT), 1999/533/CFSP, *Official Journal of the European Communities*, L 204, 4 Aug. 1999, pp. 1–2.

Table 8C. European Union initiatives in arms control, non-proliferation and disarmament taken in the framework of the Common Foreign and Security Policy

Type of initiative	Name of initiative	Date	Document
<i>Biological weapons</i>			
Common position	Relating to progress towards a legally binding protocol to strengthen compliance with the Biological and Toxin Weapons Convention (BTWC), and with a view to the successful completion of substantive work in the Ad Hoc Group by the end of 1999	17 May 1999	1999/346/CFSP
Common position	Relating to progress towards a legally binding protocol to strengthen compliance with the BTWC, and with a view to the successful completion of substantive work in the Ad Hoc Group to that end	4 Mar. 1998	1998/197/CFSP
Common position	Preparation for the Fourth Review Conference of the BTWC	25 June 1996	1996/408/CFSP
<i>Conventional weapons</i>			
Council decision	Concerning a specific action of the Union in the field of assistance for mine clearance in Croatia	20 Mar. 2000	2000/231/CFSP
Joint action	Contributing to the collection and destruction of weapons in Albania	17 Dec. 1999	1999/846/CFSP
Joint action	Combating the destabilizing accumulation and spread of small arms and light weapons in Mozambique	17 Dec. 1999	1999/845/CFSP
Joint action	Combating the destabilizing accumulation and spread of small arms and light weapons in Cambodia	15 Nov. 1999	1999/730/CFSP
Joint action	Contributing to the collection and destruction of weapons in Albania	10 May 1999	1999/320/CFSP
Council decision	On anti-personnel landmines and and destruction of weapons in Albania	9 Nov. 1998	1998/628/CFSP
Council decision	Concerning a specific action of the Union in the field of assistance for mine clearance in Albania	9 Nov. 1998	1998/627/CFSP
Joint action	Combating the destabilizing accumulation and spread of small arms and light weapons	17 Dec. 1997	1997/34/CFSP
Joint action	On anti-personnel landmines	28 Nov. 1997	1997/819/CFSP
Joint action	On anti-personnel landmines	28 Nov. 1997	1997/818/CFSP
Joint action	On anti-personnel landmines	28 Nov. 1997	1997/817/CFSP
Common position	Concerning blinding lasers	18 Sep. 1995	1995/379/CFSP
Joint action	On anti-personnel landmines	12 May 1995	1995/170/CFSP

Type of initiative	Name of initiative	Date	Document
<i>Nuclear arms control, disarmament and non-proliferation</i>			
Common position	Relating to the 2000 Review Conference of the parties to the Treaty on the Non-proliferation of Nuclear Weapons	13 Apr. 2000	2000/297/CFSP
Common position	Promotion of the early entry into force of the Comprehensive Nuclear Test Ban Treaty (CTBT)	29 July 1999	1999/533/CFSP
Joint action	Promotion of transparency in nuclear-related export controls	3 Nov. 1998	1998/623/CFSP
Common position	Promotion of non-proliferation and confidence-building in the South Asian region	26 Oct. 1998	1998/606/CFSP
Joint action	Promotion of transparency in nuclear-related export controls	29 Apr. 1997	1997/288/CFSP
Joint action	On participation in the Korean Peninsula Energy Development Organization (KEDO)	5 Mar. 1996	1996/195/CFSP
<i>Russian Federation</i>			
Joint action	Cooperation Programme for Non-Proliferation and Disarmament in the Russian Federation	17 Dec. 1999	1999/878/CFSP
<i>Export control</i>			
Joint action	Control of technical assistance to certain military end-uses	22 June 2000	2000/401/CFSP
Common position	Arms embargo on Indonesia	16 Sep. 1999	1999/624/CFSP
Council decision	Lifting embargo on transfers of small arms to Bosnian police forces	19 July 1999	1999/481/CFSP
Council decision	Lifting arms embargo on Nigeria	17 May 1999	1999/347/CFSP
Common position	Arms embargo on Ethiopia and Eritrea	15 Mar. 1999	1999/206/CFSP
Common position	Arms embargo on Sierra Leone	29 June 1998	1998/409/CFSP
Council declaration	Code of Conduct on Arms Exports	8 June 1998 ^a	
Common position	Arms embargo on Afghanistan	17 Dec. 1996	1996/746/CFSP
Common position	Arms embargo on Burma	28 Oct. 1996	1996/635/CFSP
Common position	Lifting arms embargo on Slovenia and Former Yugoslav Republic of Macedonia and modifying arms embargo on Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia	26 Feb. 1996	1996/184/CFSP
Common position	Arms embargo on Nigeria	20 Nov. 1995	1995/515/CFSP
Council decision	Joint action concerning the control of exports of dual-use goods	20 Nov. 1995	1995/515/CFSP
Common position	Arms embargo on Sudan	15 Mar. 1994	1994/165/CFSP

Note: The list does not reflect initiatives taken prior to the creation of the EU in 1993, such as arms embargoes established in the framework of European Political Cooperation. It does not reflect initiatives (e.g., sanctions or restrictive trade measures) taken outside the CFSP.

^a The Code of Conduct has the status of a set of political guidelines rather than a legal regulation.

Common positions of this type in effect mobilize a large group of European states behind an agreed political position without prescribing any particular action or programme that all are committed to follow. Common positions have also been adopted that are related to specific regional nuclear security concerns.

The Korean Peninsula Energy Development Organization (KEDO) was created in 1994 with two main functions. KEDO will finance the provision of two 1000-megawatt light water reactors (LWRs) to be built in North Korea, mainly by South Korean industrial corporations. In addition, KEDO meets the cost of providing North Korea with oil that can be used to generate electricity to compensate for energy lost to North Korea through its commitment to cancel two large nuclear reactors as part of the 1994 US–North Korea Agreed Framework.¹⁷ The EU acceded to the agreements establishing KEDO in 1996.¹⁸

The EU has contributed to KEDO both financially and through the supply of equipment. Initial financial support worth 5 million euros (c. \$4.4 million) was subsequently increased to 15 million euros (c. \$13.3 million) per year to help KEDO meet its commitments. This support is expected to increase to 20 million euros (c. \$17.7 million) in 2001. The EU ‘troika’ (formed by representatives of the current EU Presidency and the immediate past and future presidencies) meets twice a year with representatives of North Korea. A new common position is anticipated that will describe the non-proliferation policy of the EU towards the Korean peninsula.

The Common Position of 26 October 1998 on the EU’s contribution to the promotion of non-proliferation and confidence building in the South Asian region listed four general objectives in Article 3. However, specific steps in pursuit of these objectives were to be decided on a case-by-case basis.¹⁹ One step that has been taken in the framework of this common position has been the initiation of separate bilateral discussions of nuclear export controls with India and Pakistan.

As noted above, joint actions are instruments that can be applied in cases where more specific action is considered necessary. An example is the Joint Action establishing a cooperation programme for non-proliferation and disarmament in the Russian Federation.²⁰ Under the Joint Action a number of specific projects were agreed as elements of a first phase of the programme. Follow-on phases were envisaged based on recommendations from member states or the Commission.

The main elements of the initial phase were aimed at assisting Russia with the destruction of existing chemical weapon stockpiles and with the safe and secure management of plutonium stockpiles no longer required for military use.²¹ The preparation and implementation of the projects was a task given to the Commission but using funds provided by the EU. Approximately 9 million euros (c. \$8 million) were allocated for 1999–2000 for the purpose of implementing the programme with additional

¹⁷ Described in Kile, S., ‘Nuclear arms control’, *SIPRI Yearbook 1997: Armaments, Disarmament and International Security*, (Oxford University Press: Oxford, 1997), pp. 388–89.

¹⁸ Joint action of 5 March 1996 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on participation of the European Union in the Korean Peninsula Energy Development Organization (KEDO), 96/195/CFSP, *Official Journal of the European Communities*, L 63, 13 Mar. 1996, p. 1.

¹⁹ Common Position of 26 October 1998 defined by the Council on the basis of Article J.2 of the Treaty on European Union on the European Union’s contribution to the promotion of non-proliferation and confidence-building in the South Asian region, 98/606/CFSP, *Official Journal of the European Communities*, L 290, 29 Oct. 1998, pp. 1–2.

²⁰ Joint Action of 17 Dec. 1999 establishing a European Union cooperation programme for non-proliferation and disarmament in the Russian Federation, 1999/878/CFSP, *Official Journal of the European Communities*, L 331, 23 Dec. 1999, pp. 11–16.

²¹ For a more detailed discussion, see chapters 6 and 7 in this volume.

expenditure dependent on a review of implementation and an assessment of the way in which assistance was being absorbed and utilized in Russia.

This joint action underlined the impact of changes in EU decision-making procedures introduced by the Treaty of Amsterdam. While some EU states objected to the specific plans envisaged for the disposal of Russian plutonium stockpiles, the objections of these states could not block the adoption of the joint action because of the possibility of using qualified-majority voting in the Council.

Biological weapons

The EU states have all signed and ratified the main legal and political agreements pertaining to the elimination of biological weapons (BW). Moreover, developments in the 1990s—in particular the discovery that West European exporters had played a role in the development of a covert BW programme in Iraq—gave political impetus to efforts to develop more effective instruments to enforce these agreements.

In 1996 the Council agreed a common position in advance of the Fourth Review Conference of the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BTWC).²² The common position was intended to provide overall coordination for activities taken by member states and to allow for specific actions on behalf of the 15 EU states by the Presidency. These actions by the Presidency would consist of démarches to BTWC parties on issues related to the review conference as well as démarches to states that had signed but not ratified the BTWC encouraging them to complete their accession.

Subsequently, the EU has agreed two common positions intended to facilitate progress towards a legally binding protocol to strengthen compliance with the BTWC.²³ In 1998 the EU states agreed on four basic elements that would be needed to strengthen compliance. In 1999 two additional elements were added. The six elements were: (a) declarations of facilities and activities relevant to the BTWC; (b) visits to declared facilities to enhance transparency and promote accuracy in declarations; (c) clarification procedures to address anomalies, ambiguities and omissions from declarations; (d) provision for rapid and effective investigations into concerns over non-compliance; (e) establishment of an organization to facilitate implementation of the protocol; and (f) provision for measures to further international cooperation in the field of biotechnology.

In order to achieve these objectives the EU agreed to pursue joint positions in negotiations in the Ad Hoc Group negotiating a protocol to the BTWC. In addition, the

²² Common position of 25 June 1996 defined by the Council on the basis of Article J.2 of the Treaty of European Union, relating to preparation for the Fourth Review Conference of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (BTWC), 1996/408/CFSP, *Official Journal of the European Communities*, L 168, 6 July 1996, p. 3. For further discussion of the BTWC, see chapter 7 in this volume.

²³ Common position of 4 March 1998 defined by the Council on the basis of Article J.2 of the Treaty on European Union, relating to progress towards a legally binding protocol to strengthen compliance with the Biological and Toxin Weapons Convention (BTWC), and with a view to the successful completion of substantive work in the Ad Hoc Group to that end, 98/197/CFSP, *Official Journal of the European Communities*, L 75, 12 Mar. 1998, pp. 2–3; and Common position of 17 May 1999 adopted by the Council on the basis of Article 15 of the Treaty of European Union, relating to progress towards a legally binding protocol to strengthen compliance with the Biological and Toxin Weapons Convention (BTWC), and with a view to the successful completion of substantive work in the Ad Hoc Group by the end of 1999, 1999/346/CFSP, *Official Journal of the European Communities*, L 133, 28 May 1999, pp. 3–4.

governments of the member states agreed to facilitate contacts between national experts, the Commission and industry with the aim of furthering understanding between the Ad Hoc Group and industry.

Dual-use export controls

In 1995 the European Union established a common system to control exports of dual-use items outside the common customs boundary.²⁴ This system was intended to help establish the single market as dual-use items are by definition not military—rather, they are items that may have military applications. Trade in them is therefore subject to the common commercial policy of the European Community.

Dual-use items may have military applications including in the development, production or use of weapons that are subject to arms control and disarmament treaties to which the EU member states are parties. Consequently, the implementation of the common commercial policy should not undermine or supersede the obligations of states under these treaties.²⁵

Initially the task of making sure that legal obligations did not conflict was accomplished by dividing responsibility for the implementation of the dual-use export control system between the EU and the EC. In June 2000 the dual-use export control system was revised by adoption of a new regulation.²⁶ Although the new regulation established that the dual-use export control system was part of the Community competence, it also made clear that key elements of the system would continue to be implemented at the national level. EU states will retain the right to carry out controls on transfers of certain dual-use items in order to safeguard public policy or public security. Moreover, single market notwithstanding, this right also applies to intra-Community trade under specified conditions. The new regulation did not create a role for the Council in the normal operation of the system but, where controls ‘are linked to the effectiveness of controls on exports from the Community, they will be periodically reviewed by the Council’. Moreover, the Council will consider the implementation of the export control system after three years with a view to introducing modifications and amendments if required.

Conventional weapons

In the sphere of conventional armaments, the EU had not been created when the main arms control instrument within Europe, the 1990 Treaty on Conventional Armed Forces in Europe (CFE Treaty), was developed. However, during the adaptation of the CFE Treaty a common position was excluded because four EU states (Austria, Finland, Ireland and Sweden) are not parties to the treaty.

From the early stages of the Helsinki process conducted through the Conference on Security and Cooperation in Europe (CSCE), European Political Cooperation played

²⁴ Described in Anthony, I., Eckstein, S. and Zanders, J. P., ‘Multilateral military-related export control measures’, *SIPRI Yearbook 1997* (note 17), pp. 345–63.

²⁵ The reconciliation of obligations of EU member states under different types of international law (EC law on the one hand and international treaties to which EU member states are parties on the other) is discussed in Feakes, D., ‘The European Union’s role in CBW disarmament and non-proliferation’, *CBW Conventions Bulletin*, no. 44 (June 1999), pp. 4–9.

²⁶ Council Regulation (EC) no. 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology, *Official Journal of the European Communities*, L 159, 30 June 2000, pp. 1–215. For a more detailed discussion see chapter 9 in this volume.

a role in coordinating the actions of the participating states in the field of confidence- and security-building measures in Europe. The main focus and most sustained activity within the EU in this sphere has been on cooperation in defining approaches to the accumulation of conventional arms outside the boundaries of the EU. Two areas in particular have been the subject of attention: the effort to develop and enforce responsible arms export policies and the effort to reduce and (eventually) eliminate anti-personnel landmines.

The EU states include several that have significant defence industries and that have played an important role as suppliers in the international conventional arms market. Prior to 1992 the members of the European Community did have some cooperation in the area of arms exports. In June 1991 the Council agreed seven criteria that would be taken into account in national decision making on arms exports. An eighth criterion was added in June 1992. In addition, the EC states agreed some specific actions on arms export matters in the framework of European Political Cooperation—for example, the decision to establish an arms embargo against China through a declaration of the Council in June 1989.²⁷ After 1992 the EU has, step-by-step, raised the level of its cooperation in this area. Cooperation has taken several forms.

In June 1997 the Council agreed a programme for preventing and combating illicit trafficking in conventional arms.²⁸ The programme was a declaration of intent that made clear the desire of the EU to support global processes—several UN initiatives are mentioned specifically—through practical measures. The programme provides a framework within which other decisions have been taken.

In June 1998 the Council agreed a common position that created an arms trade Code of Conduct that elaborated already agreed principles as well as establishing operational mechanisms to facilitate greater transparency in the implementation of national export control systems and information exchange among EU states.²⁹ The Code of Conduct built on the eight principles agreed in 1991 and 1992 and is part of the process of building consensus around certain norms within the EU. The code has also formed the basis for discussions with, for example, countries seeking to join the EU and so can also be seen as an element of a collective external policy.

Although it is a politically binding document rather than a legally binding one, the Code of Conduct contains operative provisions that require each member state to: circulate the details of licences refused in accordance with the code for military equipment together with an explanation of why the licence has been refused, provide an annual report on its defence exports and implementation of the code, work for the early adoption of a common list of military equipment covered by the code, and encourage other arms exporting states to subscribe to the principles of the code.

In June 2000 the EU states succeeded in agreeing a common list of military equipment covered by the Code of Conduct.³⁰ The list is a reference list, meaning that it will not replace national munitions lists or other control lists used by EU states. Rather, member states have agreed that all items on the common list will be covered

²⁷ Declaration on China, European Council, Madrid, 26–27 June 1989. It is available at URL <<http://projects.sipri.se/expcon/euframe/euchidec.htm>>.

²⁸ European Union Programme for Preventing and Combating Illicit Trafficking in Conventional Arms, 9057/97 DG E-CFSP IV, 26 June 1997.

²⁹ 'The European Union Code of Conduct for Arms Exports', *SIPRI Yearbook 1999: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 1999), pp. 503–505.

³⁰ Council Declaration of 13 June 2000, issued on the occasion of the adoption of the common list of military equipment covered by the European Union code of conduct on arms export, *Official Journal of the European Communities*, C 191, 8 July 2000, p. 1.

on national lists. However, the common list is a step towards a harmonized approach among the EU states. The Council Declaration refers explicitly to a process of convergence in the sphere of arms export control and to the evolutionary character of the common list.

There has also been a continuous evolution in the EU approach to the use of arms embargoes as an instrument in the CFSP. As noted above, the use of arms embargoes as a collective political instrument by the members of the European Community predates the creation of the EU. However, after 1992 the increasing regularity with which arms embargoes have been established has led the EU to examine how they can be implemented and enforced in a more uniform manner.

Successive decisions have clarified the scope of arms embargoes, in particular with regard to the coverage of items subject to embargo. When an arms embargo is applied to a particular country, EU states decide whether to interpret it as a 'full-scope' embargo, or as a more limited measure. If the embargo is full scope, then it is defined as being on 'arms, munitions and military equipment' and will apply to all the goods on an agreed common embargo list. If the embargo is less than full scope, it is defined as 'an embargo on arms and munitions' and the member states then agree on specific categories within the common list that the embargo will cover. The decisions to impose, modify or lift EU arms embargoes have often been agreed in the Council through a common position.³¹

In December 1998 the Council agreed a Joint Action as part of its contribution to combating the destabilizing accumulation and spread of small arms and light weapons.³² This Joint Action was explicitly presented as part of the overall progress towards a more harmonized and coherent EU approach to arms exports. It has two elements.

First, there is a commitment to build consensus around certain principles and measures described in the text. The impact of this commitment on the national practices of EU member states is not explicitly stated. While several of the measures listed could be adopted by the 15 EU states without reference to other forums or organizations—such as the commitments to supply small arms only to governments and to establish national inventories of legally held weapons owned by the country's authorities—the Joint Action does not state that these principles and measures will be implemented by the EU in the period before a wider consensus has formed.

In November 2000 the Organization for Security and Co-operation in Europe (OSCE) adopted a Document on Small Arms and Light Weapons.³³ In an agreed statement the EU member states committed themselves to implement the OSCE document through their national legislation.³⁴ In their statement the member states underlined that their commitment was being taken in the framework of the Joint Action.

³¹ As of Sep. 2000, 13 countries were subject to arms embargoes established through EU decisions. In addition, EU states implement UN arms embargoes through their national authorities and have agreed that they will interpret a request from the Committee of Senior Officials of the OSCE 'that all participating States and all states in the region impose an immediate embargo on all deliveries of weapons and munitions to forces engaged in combat in the Nagorno-Karabakh area' to mean that Armenia and Azerbaijan are subject to arms embargo.

³² Joint Action of 17 December 1998 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons, 1999/34/CFSP, *Official Journal of the European Communities*, L 9, 15 Jan. 1999, pp. 1–5.

³³ It is reproduced as appendix 8B in this volume.

³⁴ 'Statement by the European Union to the Forum for Security Cooperation', *OSCE FSC Journal*, no. 314 (24 Nov. 2000), annex 1.

Moreover, the 12 associated countries all endorsed the EU statement, and so committed themselves to implement the document through national legislation.

The second element of the Joint Action is a statement of intent to provide support to certain specific actions. Under the Joint Action the EU may 'provide financial and technical assistance to programmes and projects which make a direct and identifiable contribution' to the principles and measures which the Joint Action seeks to promote. In 1999 the EU took three decisions in the framework of the second element of the Joint Action, namely to support the process of locating, collecting and destroying weapons in Albania, Cambodia and Mozambique. The implementation of each of the decisions is being accomplished in a slightly different manner.

In Albania the EU provided financial assistance to programmes implemented by other international organizations—the UN Department of Disarmament Affairs (DDA) and the UN Development Programme (UNDP).³⁵ In 2000 the EU withdrew its financial support for the programme as a result of a disagreement with the Government of Albania. The EU is legally required to insist on the destruction of collected weapons under the terms of its Joint Action. The Albanian armed forces insist that the weapons which have been collected are its property, having been looted from government arsenals in 1997, and should not be destroyed. Destroying the weapons while simultaneously replacing them with new purchases is considered by the Albanian armed forces to be a wasteful use of resources. The Albanian programme, which is supported by multiple sponsors, has continued without EU financial support.

In Cambodia the EU has established its own project, implemented by the Presidency (in this case Finland) on behalf of the EU and managed by a project manager in Phnom Penh.³⁶ The programme will be continued for an additional year with financing worth 1.3 million euros (c. \$1.2 million). The programme is to be linked to a 'weapons for development' programme that will involve cooperation between the EU (responsible for weapon collection and destruction) and a co-sponsor (responsible for the development programme).

In Mozambique the EU has provided financial and technical support to a programme implemented through bilateral cooperation between the police forces of Mozambique and South Africa. EU financial support, now entering its third year, will be continued at a level of 200 000 euros (c. \$180 000).³⁷

At the beginning of 2001 the Council agreed on a Common Position in advance of the meetings of the preparatory committee, which are being held prior to the convening of the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects in mid-2001.

³⁵ The initial EU support was to 1 project in the Gramsh district of Albania. Subsequently, this was amended to support projects in 2 additional districts, Elbasan and Peshkopja. Council Decision of 10 May 1999 adopted by the Council on the basis of Article 14 of the Treaty on European Union, on a European Union contribution to the collection and destruction of weapons in Albania, 1999/320/CFSP, *Official Journal of the European Communities*, L 123, 13 May 1999, pp. 12–13; and Council Decision of 17 December 1999 amending Decision 1999/320/CFSP on a European Union contribution to the collection and destruction of weapons in Albania, 1999/846/CFSP, *Official Journal of the European Communities*, L 326, 18 Dec. 1999, p. 74.

³⁶ Council Decision of 15 November 1999 implementing Joint Action 1999/34/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia, 1999/730/CFSP, *Official Journal of the European Communities*, L 294, 16 Nov. 1999, pp. 5–6. The EU programme manager in Phnom Penh is General Henny van der Graaf.

³⁷ Council Decision of 17 December 1999 implementing Joint Action 1999/34/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in Mozambique, 1999/845/CFSP, *Official Journal of the European Communities*, L 326, 18 Dec. 1999, p. 73.

In the early 1990s the UN Conference on Disarmament (CD) discussed amendments to the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (CCW Convention or 'Inhumane Weapons' Convention). Two issues, the development and use of lasers intended to blind the targeted person by destroying the eyes and the indiscriminate use of anti-personnel landmines, led to modification to and extension of the convention. In October 1995 an additional protocol was added to the Convention on Blinding Laser Weapons. In September 1995 the Council had adopted a Common Position, in effect supporting the draft text of the additional protocol.³⁸

In the area of action related to anti-personnel land mines the activities of the EU have had two different objectives: (a) the development of international norms about the possession and use of such mines, and (b) practical measures aimed at removing and destroying mines that have been put in place in different parts of the world. In May 1995 the Council adopted a joint action with two essential elements: first, to work to end the indiscriminate use and spread of anti-personnel landmines; and second, to mitigate the effects of anti-personnel landmines that had already been placed and to prevent humanitarian consequences considered excessive and inhumane.³⁹

The normative framework for European Union policy has changed over time, and this is reflected in the different objectives identified in EU decisions and documents. In the discussion within the CD the EU member states supported the development of an amended protocol to the CCW Convention that established new prohibitions or restrictions on the use of mines, booby traps and certain other specified devices.⁴⁰

In 1996 the Council adopted a new Joint Action extending the scope of EU policy towards landmines. The new document included a commitment to the eventual total elimination of anti-personnel landmines (as opposed to restrictions on their possession and use) as well as a moratorium on the export of anti-personnel landmines to all destinations (as opposed to a presumption of denial for exports of anti-personnel landmines to non-parties to the CCW Convention).⁴¹

During 1996 and 1997 a large group of states negotiated the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Ottawa Convention) outside the framework of the CD. The convention was opened for signature on 3 December 1997. The EU agreed a new Joint Action that took account of the new convention. In addition to a pledge that the EU would play an active role to bring about the early entry into force of the convention, the Joint Action also committed the EU states to take the steps required for national implementation and, in the interim, to implement those aspects that could be implemented with immediate effect.⁴² A more collective engagement in the imple-

³⁸ Common Position of 18 September 1995 defined by the European Council on the basis of Article J.2 of the Treaty on European Union, concerning blinding lasers, 95/379/CFSP, *Official Journal of the European Communities*, L 227, 22 Sep. 1995, p. 3.

³⁹ Council Decision of 12 May 1995 concerning the joint action adopted by the Council on the basis of Article J.3 of the Treaty on European Union on anti-personnel mines, 95/170/CFSP, *Official Journal of the European Communities*, L 115, 22 May 1995, pp. 1–3.

⁴⁰ The Amended Protocol was adopted by the Conference on Disarmament on 3 May 1996.

⁴¹ Joint Action of 1 October 1996 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on anti-personnel landmines, 96/588/CFSP, *Official Journal of the European Communities*, L 260, 12 Oct. 1996, pp. 1–3.

⁴² E.g., the moratorium on exports of landmines was to be extended to cover technology that could enable landmines to be manufactured in third countries. Joint Action of 28 November 1997 adopted by

mentation of the Ottawa Convention has been prevented in part by the fact that one EU member state (Finland) has not ratified the convention.

In order to further its objective of helping to mitigate the effects of anti-personnel landmines that had already been placed the EU has supported a range of different activities. In the framework of the Joint Actions on anti-personnel landmines, the EU has financed the training of mine clearance specialists and instructors in Bosnia and Herzegovina and in Croatia. The West European Union (WEU) has been tasked with implementing this programme using financial resources provided by the EU.⁴³ In March 2000 the decision was taken to extend this programme.⁴⁴ The level of financial support was kept broadly the same. The initial support was worth 435 thousand euros (c. \$388 thousand) while financial support in the year 2000 was increased to 308 million euros (c. \$275 million).

Through separate decisions under the framework of the Joint Action on anti-personnel landmines the Council has also provided financial support to the International Committee of the Red Cross (ICRC)⁴⁵—for mine awareness and mine clearance projects in Iraq and the former Yugoslavia—and to the South Africa Development Conference for its regional programmes.

IV. Conclusions

After 1993 the European Union has taken a number of actions in the area of arms control, disarmament, non-proliferation and export control. Actions in this sphere have included political declarations that are implemented through national policies as well as joint actions implemented through the institutions of the EU and the European Community. Joint actions taken have also involved the EU in cooperation with international organizations, such as the UN specialized agencies and the WEU, and with non-governmental bodies such as the ICRC.

To a certain extent the number of initiatives reflects the fact that arms control, disarmament, non-proliferation and export controls are issues that lend themselves to the kind of structure that the CFSP has evolved. The issues tend to be managed through international meetings and processes that proceed according to a reasonably predictable timetable. Discussion and dialogue within the EU can be fitted into this timetable in a way that is not possible in cases of crisis response. Working groups under the Council (notably the working group on non-proliferation, CONOP, and the working group on global disarmament, CODUN) have been able to prepare common positions

the Council on the basis of Article J.3 of the Treaty on European Union, on anti-personnel landmines, *Official Journal of the European Communities*, L 338, 9 Dec. 1997, pp. 1–4.

⁴³ Council Decision of 9 November 1998 adopted on the basis of Article J.4(2) of the Treaty on European Union on the implementation of a Council Decision concerning specific action of the Union in the field of assistance for mine clearance, 98/628/CFSP, *Official Journal of the European Communities*, L 300, 11 Nov. 1998, pp. 2–3. The financing of the programme is described in Council Decision of 9 November 1998 adopted on the basis of Article J.3 of the Treaty on European Union concerning a specific action of the Union in the field of assistance for mine clearance, 98/627/CFSP, *Official Journal of the European Communities*, L 300, 11 Nov. 1998, p. 1.

⁴⁴ Council Decision of 20 March 2000 supplementing Decision 98/627/CFSP concerning a specific action of the Union in the field of assistance for mine clearance, 2000/231/CFSP, *Official Journal of the European Communities*, L 73, 22 Mar. 2000, p. 2.

⁴⁵ Council Decision of 28 November 1997 on the implementation of Joint Action 96/588/CFSP on anti-personnel landmines with a view to co-financing the special appeals of the ICRC, 97/818/CFSP, *Official Journal of the European Communities*, L 388, 9 Dec. 1997, p. 5.

as well as speeches and statements delivered by the Presidency that have enhanced the influence of the EU at important international conferences.

Arms embargoes represent something of a special case in that they have often been used reactively in crisis situations. Cases where decisions must be taken immediately present a different challenge to the consultation processes of the EU.

The arms control, disarmament and non-proliferation efforts of the EU have two functions—one internal, one external. Internally, the measures are part of a process of building shared norms and agreed principles as the basis for the foreign and security policy implemented by each of the member states. Externally, in areas where strong shared norms already exist, the measures allow the EU member states to present a common political front to the world. It is questionable whether the EU initiatives in the area of arms control, disarmament, non-proliferation and export control have had the impact that could be expected in either the internal or external dimension.

Instruments introduced through the Treaty of Amsterdam are still in an early stage of their operational life. The implementation of common strategies appears particularly challenging. While there are common strategy meetings at the working level, implementation of measures agreed in the framework of the common strategies is very fragmented. There is no ‘lead agency’ for interaction with Russia or Ukraine which could coordinate and monitor the implementation of the common strategies.

In the implementation of joint actions, there are sensitivities about moving resources from one account to another in the fulfilment of overall objectives. For example, technical assistance projects and science and technology cooperation with Russia and Ukraine are financed and managed through processes outside the framework of the non-proliferation programme within the common strategy. The money made available through joint actions cannot always be spent because the EU lacks the capacity to identify and evaluate specific projects that can meet stated objectives. The coming together of useful projects and the financial resources to implement them appears somewhat haphazard.

The progress towards developing shared norms and principles has been uneven. For example, far more progress has been made in the area of conventional arms exports than in other areas. Significant gaps could be pointed to in the lack of any well-developed EU positions on issues related to nuclear arms control and disarmament, missile proliferation and missile defence as well as conventional arms control in Europe.

In the external dimension, given the collective diplomatic and economic weight of the EU states, the results of the policies have been limited. To give specific examples, the impact of EU efforts to advance disarmament and non-proliferation objectives in the Middle East and South Asia is difficult to detect in spite of the long history of political and economic interaction with states in the regions.