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An Analysis of European Political Cooperation During the Persian Gulf Crisis

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I. Introduction

This article will analyze the role of the European Communities (EC) in the area of conflict resolution by examining the Persian Gulf War and the EC's response to that crisis. Specifically, this article will attempt to answer several questions posed by the European Communities' involvement in conflict resolution. First, what are the EC's mechanisms for the resolution of external political disputes, and how effective were they during the Iraq-Kuwait conflict? Second, what factors constrain the process of making a common foreign policy in the EC? Finally, what institutional arrangements would enhance the EC's ability to implement a common foreign policy?

A brief history of the EC and a description of the EC's policy-making procedures will provide background for the analysis. In particular, the efficacy of the system of European Political Cooperation (EPC) in Title III of the Single European Act[1] will be explored in light of the Persian Gulf War and its aftermath. To facilitate clarity, the conflict will be analyzed in terms of the following four phases: the invasion of Kuwait, the entrenchment of Saddam Hussein, the actual fighting period, and the aftermath.

A widely-held perception is that the EC failed the "first test" of its ability to formulate and implement a common foreign policy during the Gulf War.[2] However, this article argues that the response of the EC was swift and decisive in the first phase of the crisis, but as the national interests of the twelve Member States diverged, European unity gradually disintegrated, and the execution of a common

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1. *Single European Act*, 30 O.J. EUR. COMM. (No. L 169) 1 (1987), [hereinafter SEA].

2. *See* Kirkpatrick, *Is the European Community Finished?*, Wash. Post, May 13, 1991, at 11, col. 5; Pfaff, *A Bad War for Europe*, Balt. Sun, March 11, 1991, at 7, col. 1; Lewis, *Gulf War: European Unity Fails Its First Test*, Jane's Defense Weekly, Feb. 9, 1991, at 177; Drozdiak, *Europe Disunited in Gulf Response*, Wash. Post, Feb. 19, 1991, at A6, col. 4.

foreign policy became very difficult.

Three inherent weaknesses in the EPC system strained the institutional capacity of the EC to construct a common foreign policy during the Gulf War. The absence of a common security policy in the EC, the unanimity voting requirement in the EPC, and the intergovernmental, as opposed to supranational, structure of the EPC constrained the Community's ability to resolve conflicts. In spite of these constraints, the Community was able to counter the Iraqi invasion by imposing an embargo, coordinating humanitarian relief, and initiating proposals to protect the Kurds and try Saddam Hussein in the aftermath of the war. These policies support the notion that the EC is capable of formulating and implementing a common foreign policy and that its ability to resolve international conflicts will grow.

II. Policy-making in the EC

The European Communities are composed of three separate communities in Europe: the European Coal and Steel Community (ECSC),[3] the European Economic Community (EEC),[4] and the European Atomic Energy Community (Euratom).[5] The ECSC was established by treaty on April 18, 1951, and included the Federal Republic of Germany, Belgium, France, Italy, Luxembourg, and the Netherlands.[6] Six years later, on March 25, 1957, two treaties establishing the EEC and Euratom (known as the treaties of Rome) were signed by the "original six" founding nations of the ECSC.[7] Gradually, the EC expanded to encompass twelve Member States: Denmark, Ireland, and the United Kingdom joined in 1972;[8] Greece joined in 1979;[9] and Spain and Portugal joined in 1985.[10]

While the ECSC created a single market in coal and steel and Euratom regulated atomic energy, the EEC was designed to create an economic community of much wider scope. The institutions of the EEC and Euratom were modelled after the ECSC. After the Merger Treaty in 1965, the High Authority of the ECSC merged with the EEC and Euratom Commission to form the new Commission.[11] Likewise, the Council of Ministers of the ECSC combined with that

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3. Treaty Instituting the European Coal and Steel Community, Apr. 18, 1951, 261 U.N.T.S. 143 [hereinafter ECSC Treaty].

4. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty].

5. Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, 298 U.N.T.S. 169 [hereinafter Euratom Treaty].

6. ECSC Treaty, *supra* note 3.

7. EEC Treaty, *supra* note 4, Euratom Treaty, *supra* note 5.

8. 16 O.J. EUR. COMM. (No. L 2) 1 (1973).

9. 22 O.J. EUR. COMM. (No. L 291) 1 (1979).

10. 28 O.J. EUR. COMM. (No. L 169) 1 (1985).

11. D. WYATT AND A. DASHWOOD, THE SUBSTANTIVE LAW OF THE EEC 9 (2d ed. 1987) [hereinafter WYATT].

of the EEC and Euratom to become a single Council.[12] Thus, the three communities continue to function as separate entities with shared institutions.

The goals behind the establishment of the EC were to achieve economic recovery after the devastation of World War II and to counter Soviet influence in Europe.[13] In 1950 M. Robert Schuman, the French Foreign Minister, proposed that the coal and steel industries of France and Germany be fused as the first step towards a European federation.[14] The Schuman proposal resulted in the formation of the ECSC. However, not all attempts at European unity were as successful. For example, the Treaty Establishing the European Defense Community, signed in May 1952, was never ratified by the French Parliament.[15]

The original six founding nations of the EC contemplated primarily an economic union that would provide the economic benefits of an economy of scale without diminishing each nations' sovereignty.[16] The United Kingdom declined to join the EC in the beginning because the British feared a loss of sovereignty and were skeptical of the predicted economic gains of membership. None of the three treaties establishing the ECSC, EEC, or Euratom specifically provides for a system of coordinating foreign policies in a manner like the existing EPC. Harmonizing foreign policies was not one of the original objectives of the EC. Therefore, the extent to which the Member States have been able to coordinate their policies is related to the increased integration within the Community.

Policy-making in the EC differs depending on whether the subject matter of the policy concerns the Community's economic relations or other relations.[17] This is a result of the original goals of the Treaties of Rome (i.e. the primary intent of the EC founders was to establish an economic union which would gradually foster greater social and political union in Western Europe). To promote economic union, several institutions were created which handle internal decisions on the formation of a common market. Article 4 of the Treaty establishing the EEC provides that a European Parliament, a Council, a Commission, and a Court of Justice shall formulate and implement the policies of the EEC.[18]

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12. Id.
13. H. VON DER GROEBEN, THE EUROPEAN COMMUNITY: THE FORMATIVE YEARS 23 (1985).
14. WYATT, supra note 11, at 3.
15. Id.
16. Id. at 13-14.
17. Note, A Community Within the Community: Prospects for Foreign Policy Integration in the European Community, 103 HARV. L. REV. 1066, 1067-70 (1990) [hereinafter Prospects].
18. J. STEINER, TEXTBOOK ON EEC LAW 8 (2d ed. 1990).

The European Court of Justice held early in the Community's existence that where the Member States have ceded sovereignty to the Community, EC law takes precedence over conflicting national statutes.[19] As a result, in theory, the Community has the exclusive power to negotiate agreements with third countries in the field of economic relations.[20] For instance, individual Member States are prohibited from entering into trade agreements on their own due to the EC's competence in this area. However, in practice, the Member States may negotiate and sign an agreement concurrently with the Community that results in a "mixed agreement."[21] Article 116 of the EEC Treaty obligates Member States to "proceed within the framework of international organizations of an economic character only by common action."[22] Thus, the Treaty sets forth the Community's preference for a united EC policy regarding foreign economic relations.

In contrast to economic policy-making, policy-making in non-economic subject areas remains largely in the individual control of the Member States.[23] For example, Member States exercise exclusive control over areas of international relations such as security issues and diplomatic relations.[24] In 1969 the Member States embarked on an experiment to coordinate their foreign policies known as "European Political Cooperation" or EPC.[25]

The history of EPC procedures reveals its unique growth and intergovernmental character. After the December 1969 Hague Conference of the heads of state and government of the Member States of the European Communities, the Member States asked their foreign ministers "to study the best way of achieving progress in the matter of political unification."[26] In October 1970 the foreign ministers issued the Luxembourg Report which concluded that political unification would be facilitated best by harmonizing the views of the Member States in the field of international politics.[27] The objectives of increased political cooperation included "greater mutual understanding with respect to the major issues of international politics"

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19. Costa v. ENEL, 1964 E. Comm. Ct. J. Rep. 585, 593-94 (Case 6/64).

20. *Prospects, supra* note 17, at 1069.

21. *Id.*

22. *See* EEC Treaty, *supra* note 4, art. 116.

23. *Prospects, supra* note 17, at 1070-71.

24. *Id.*

25. Stein and Henkin, *Towards a European Foreign Policy? The European Foreign Affairs System from the Perspective of the United States Constitution*, in 1:3 INTEGRATION THROUGH LAW 61 (M. Cappelletti, M. Seccombe, and J. Weiler eds. 1986) [hereinafter Cappelletti].

26. Murphy, *The System of European Political Cooperation: A Brief Explanation*, 10 N.C. J. INT'L L. & COM. REG. 383, 384 (1985).

27. *Report by the Foreign Ministers of the Member States on the Problems of Political Unification*, 1970 Bull. Eur. Comm. (No. 11) 9 [hereinafter Luxembourg or Davignon Report].

and "harmonization of views, concertation of attitudes and joint action when it appears feasible and desirable."[28] A Political Committee, composed of the heads of the political departments of the foreign ministries, was formed and periodic meetings were scheduled.[29]

Three years later, the Copenhagen Report embodied the agreement by the Member States to consult one another on all important foreign policy issues, and "not to take final positions without prior consultation."[30] The number of ministerial meetings was increased to four a year and the functions of the political committee were outlined. Moreover, the need for Europe to "establish its position in the world as a distinct entity" was recognized.[31]

The Paris Communique, issued after the Paris Summit of heads of state and government in December 1974, further defined the role of the President.[32] The office of the President of the Council of the communities rotates every six months to another Member State. During the President's six-month term, he or she is responsible for the management and supervision of EPC activities and holds the position of spokesperson for the European Council on EPC matters.[33] The Member States agreed at the Paris Summit to create a European Council and to meet three times a year with their foreign ministers "in the Council of the Communities in the context of political cooperation."[34]

In 1981 the EC foreign ministers adopted the London Report which was yet another attempt to define and reform the institutional organization of EPC. In this report, the foreign ministers renewed their commitment to "consult partners before adopting final positions or launching national initiatives on all important questions of foreign policy."[35] Moreover, they agreed that the Political Committee or a ministerial meeting would convene within forty-eight hours if three Member States requested it because of a crisis.[36]

The Single European Act of 1986 (SEA) changed European Political Cooperation by transforming the EPC's procedures into an institutional structure based on a treaty. In Title III of the SEA, Article 30(1), the provisions of EPC are articulated and include the obligation of Member States to "endeavor jointly to formulate and

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28. *Id.* at 11.
29. *Id.* at 11-12.
30. *Second Report on European Political Cooperation on Foreign Policy*, 1973 Bull. Eur. Comm. (No. 9) 12 [hereinafter Copenhagen Report].
31. *Id.* at 15.
32. *Communique*, 1974 Bull. Eur. Comm. (No. 12) 6 [hereinafter Paris Communique].
33. *Id.* at 7.
34. *Id.*
35. *Report on European Political Cooperation*, 1981 Bull. Eur. Comm. (No. 3) 14 [hereinafter London Report].
36. *Id.* at 17.

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implement a European foreign policy."[37] Ultimately, the Member
States remain free to decide on their own foreign policies provided
that they first "inform and consult each other on any foreign policy
matters of general interest."[38] Moreover, they must take "full ac-
count of the positions of the other parties" and give "due considera-
tion to the desirability" of "common European positions."[39]

Until Title III of the SEA, EPC did not have any permanent
administrative institution of its own. The SEA establishes a Secreta-
riat based in Brussels that "shall assist the Presidency in preparing
and implementing the activities of EPC and in administrative mat-
ters."[40] The EPC framework adopted earlier in the Luxembourg and
Copenhagen Reports continues with the President presiding over the
EPC meetings held four times a year.

Although hailed as a step towards political union in Europe, the
Single European Act is not without critics. Some commentators view
the EPC procedure codified in Title III as "an alibi for inaction, a
means for deflecting external pressure and a cover for shifts in na-
tional policy."[41] Other scholars note that Title III does not define the
concept of "foreign policy matters of general interest on which con-
sultation is required," thus leaving the individual Member States
free to define particularly contentious issues as matters not of gen-
eral interest.[42] Finally, some observers believe the success of Euro-
pean Political Cooperation prior to the SEA was due to its flexibility.
They fear that formalizing European Political Cooperation in Title
III will lead to bureaucratization and stagnation.[43]

The formulation and implementation of a European foreign pol-
icy are complex activities given the consensual nature of the EC and
the diversity of opinion among the Member States. For example, Ire-
land remains outside of the North Atlantic Treaty Organization
(NATO) and guards its status as a neutral country while other EC
members such as Great Britain and Germany are firm members of
the NATO alliance.[44] In the same manner, Great Britain and the
Netherlands approach apartheid in South Africa from radically dif-
ferent perspectives; Great Britain is constrained by its many eco-

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37. SEA, *supra* note 1, art. 30.
38. *Id.* art. 30(2)(a); Stein, *European Foreign Affairs System and the Single European Act of 1986*, 23 INT'L LAW. 977, 982 (1989).
39. SEA, *supra* note 1, art. 30(2)(c).
40. *Id.*, art. 30(10)(g).
41. Holland, *Three Approaches for Understanding European Political Co-operation: A Case-Study of EC—South African Policy*, 25 J. COMM. MARK. STUD. 295, 304 (1987).
42. Stein, *European Foreign Affairs System and the Single European Act of 1986*, 23 INT'L LAW. 977, 982 (1989).
43. *Id.* at 985.
44. Tsakaloyannis, *Political Constraints for an Effective Community Foreign Policy*, in TOWARDS A EUROPEAN FOREIGN POLICY 145-151 (J.K. de Vree, P. Coffey, & R.H. Lauwaars eds. 1987).

nomic ties to South Africa while the Netherlands advocates a 'moralist' approach.[45] Therefore, formulating and implementing a European foreign policy on the NATO alliance or South Africa is complicated by the lack of consensus on these issues.

Another obstacle to the formulation and implementation of a European foreign policy is the resistance Member States have to surrendering sovereignty. As the history of the EEC illustrates, the Member States only gradually surrendered sovereignty over their international economic relations. This resistance increased in areas that touch upon national identity, such as foreign policy. For example, Greece has been trying to strengthen its ties to the Arab countries in the Middle East and resents the EC's approach to the Arab-Israel conflict.[46] In addition to the general problems of lack of consensus and resistance to surrendering sovereignty, there are several specific weaknesses in the EPC process which limit its effectiveness.

An analysis of the EPC procedures as they were applied during the Iraq-Kuwait conflict reveals several things about the ability of the EC to respond to international disputes. For purposes of analysis, the conflict has been broken into four stages: the invasion of Kuwait, the entrenchment of Saddam Hussein, the actual fighting period, and the aftermath. The EC's ability to formulate and implement a common foreign policy in these four stages was quite uneven due to the nature of conflict resolution and inherent weaknesses in the EPC system.

III.   The Invasion of Kuwait

The Iraq-Kuwait conflict began on August 2, 1990, when Iraq invaded Kuwait ostensibly to reclaim Kuwait as its nineteenth province.[47] In this first phase of the crisis, the response from the EC was swift and decisive. In a statement dated August 2, 1990, the EC and its Member States "strongly condemn[ed] the use of force by a member state of the United Nations against the territorial integrity of another state."[48] Moreover, the EC asked for the immediate withdrawal of Iraqi forces from Kuwait territory.[49]

On August 4, 1990, the EC stated that it was taking steps to "protect all assets belonging directly or indirectly to the State of Kuwait." Specifically, the EC adopted six measures to protect Kuwaiti assets: an embargo on oil imports from Iraq and Kuwait; "appropri-

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45.   Holland, *supra* note 41, at 301.
46.   Hill, *National Interests—The Insuperable Obstacles?*, in NATIONAL FOREIGN POLICIES AND EUROPEAN POLITICAL COOPERATION 188 (C. Hill ed. 1983).
47.   Wash. Post, Aug. 3, 1990, at A1, col. 1.
48.   *Statements by the Community and its Member States at Political Cooperation Meetings*, 1990 Bull. Eur. Comm. 97 (No. 7/8) [hereinafter *Statements*].
49.   *Id.*

ate measures aimed at freezing Iraqi assets in the territory of member states;" an embargo on sales of arms and other military equipment to Iraq; the suspension of any cooperation in the military sphere with Iraq; the suspension of technical and scientific cooperation with Iraq; and the suspension of the application to Iraq of the system of generalized preferences.[50] These measures went into effect four days later.

The European Communities rejected Iraq's announced annexation of Kuwait as "contrary to international law and therefore null and void, as stated in United Nations Security Council Resolution No. 662" on August 10, 1990.[51] The role played by the United Nations (UN) was welcomed and the EC pledged to "further enhance such international solidarity."[52] Furthermore, the EC announced that the President of the European Council would discuss "the possibility of cooperation" with the Arab Heads of State in order to defuse the tensions in the Middle East.[53] The Commission agreed to spend ECU, the European currency unit, in the amount of 1 million on humanitarian assistance to refugees fleeing Kuwait and Iraq.[54]

When Saddam Hussein refused to allow foreigners to leave Iraq and Kuwait, the emphasis in the European Communities turned to the protection of Member States' nationals trapped in the two countries. On August 21, 1990, the EC issued a declaration which condemned the Iraqi decision to detain foreigners against their will as "contrary to international law."[55] Iraq's "publicized intention to group such foreigners in the vicinity of military bases and objectives" was labelled as "heinous" and "taken in contempt of law and basic humanitarian principles."[56] In addition, the Iraqi government was warned that "any attempt to harm or jeopardize the safety of any EC citizen will be considered as a most grave offense directed against the Community and all its member states and will provoke a united response from the entire Community."[57]

In the initial phase of the crisis, the Member States shared three common interests regarding Iraq's aggression: liberating Kuwait, preventing EC nationals from being held as "human shields," and safeguarding oil supplies to the Community. As long ago as ancient Greece, diplomats have noted that "identity of interests is the

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50. *Council Regulation*, 28 O.J. EUR. COMM. (No. L 213) I (1990).
51. *Statements, supra* note 48.
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.*

surest of bonds whether between states or individuals."[58] More recently, a scholar identified a "high level of homogeneity of interests among the Member States" as a "basic prerequisite for an effective Community foreign policy." [59] When this homogeneity of interests is present, as in the beginning phase of the Gulf conflict, the EC is able to formulate and implement a common foreign policy.

IV.   The Entrenchment of Saddam Hussein

As the crisis continued into the second phase, Saddam Hussein remained intractable under diplomatic pressure and the interests of the EC Member States began to diverge. The realization that force would be necessary to oust Iraq from Kuwait resulted in a return to national foreign policies based on the Member States' perceived self-interests. For example, France and Great Britain, cognizant of their status outside the EC as permanent members of the UN Security Council, both sent military forces to the Gulf in an attempt to reassert influence in the region, and to meet their obligations under the UN Charter.[60] Originally, France restricted its 10,000 troops to removing Iraqi forces from Kuwait.[61]

Moreover, in an unsuccessful bid to score a major diplomatic victory while protecting its ties to the Arab world, France sent a last-minute delegation to Baghdad right before the UN-imposed January 15 deadline.[62] The delegation was dispatched without prior consultation with the eleven other EC Member States and despite agreement among the EC foreign ministers on January 14 to "discourage initiatives by individual members."[63] The French initiative violated the spirit of consultation embodied in Title III and the terms of Article 30(2)(d) which provide: "[T]he High Contracting Parties shall endeavor to avoid any action or position which impairs their effectiveness as a cohesive force in international relations."[64]

In contrast to the active policies of France and Britain, Germany was preoccupied with reunification and popular pacifism.[65]

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58.   Thucydides, *cited in* H. MORGENTHAU, POLITICS AMONG NATIONS 8-9 (5th ed. 1978).

59.   Baehr, *Comments on Panos Tsakaloyannis, 'Political Constraints for an Effective Community Foreign Policy'*, in TOWARDS A EUROPEAN FOREIGN POLICY 157 (J.K. de Vree, P. Coffey & R.H. Lauwarrs eds. 1987).

60.   Whitney, *Gulf Fighting Shatters Europeans' Fragile Unity*, N.Y. Times, Jan. 25, 1991, at 11.

61.   *Id.*

62.   Schemo, *EC's 'Common Defense' Put On Hold By Gulf War*, Balt. Sun, Mar. 18, 1991, at 4.

63.   Wolberg-Stok, *Gulf War Could Derail EC Foreign Policy Plans*, The Reuters Library Report (Jan. 22, 1991) (LEXIS, Nexis library, Omni file).

64.   SEA, *supra* note 1, art. 30(2)(d).

65.   Fisher, *Germans Torn Between Pacifism, Solidarity With Allied Coalition*, Wash. Post, Jan. 21, 1991, at A23; Hoagland, *Germany: Timidity in a Time of Crisis*, Wash. Post, Jan. 29, 1991, at 19.

Citing a constitutional prohibition against participating in military actions outside NATO territory, Chancellor Helmut Kohl decided against deploying German troops in the region before or during the war. After hesitation that sparked criticism, Germany sent eighteen planes to Turkey, a fellow member of NATO, to protect against Iraqi attacks that never materialized. Germany's pledge of $5.5 billion for the allied cause did not dilute criticism that it could have done more to defeat Iraq.[66]

Another sign of the disintegration of European unity in the second phase of the crisis was the debate on the Western European Union (WEU). The WEU, based on the 1948 Brussels Treaty, was reactivated in 1984 amid speculation that it would evolve into the centerpiece of West European security.[67] All EC members are WEU members except for Ireland, Denmark, and Greece. Italy, which presided over the EPC process in the six-month term in the latter part of 1990, proposed merging the WEU with EPC to coordinate security policy with foreign policy in the European Communities. [68] Early in February 1991, France and Germany suggested gradually folding the WEU into the EC while maintaining a "channel of cooperation" with NATO.[69] The Netherlands and Britain opposed the French-German plan because they emphasized the importance of the U.S. military commitment in Europe and sought to avoid antagonizing Washington about the future of NATO.[70] Thus, instead of increasing the likelihood of a WEU-EC merger, the Gulf conflict illustrated the Member States' disparate views on security issues and thereby appeared to postpone EC movement toward a common European defense system.

Exacerbating the perception that Europe was in disarray during the last few weeks before the January 15 deadline were the European Parliament's military action vote and the EC Inter-Governmental Conference (ICG) in December. On December 12, 1990, the European Parliament voted in favor of a resolution calling for "no military action to be taken while there is a prospect of a peaceful solution to the crisis."[71] Moreover, fifty European Parliament members sent a letter to the U.S. Congress warning that European opposition to a gulf war was "broader and deeper" than acknowledged by

66. Fisher, *Germany, Passive in Gulf War, Takes Initiative on Refugees*, Wash. Post, Apr. 17, 1991, at A23.

67. Buchan, *De Michelis Wants EC To Take Over Defense Policy Role*, Fin. Times, Sept. 19, 1990, at 14.

68. *Id.*

69. Drozdiak, *Europe Disunited in Gulf Response*, Wash. Post, Feb. 19, 1991, at A6.

70. *Id.*

71. *Gulf Crisis: Euro-MPs Say No Military Action While There is a Prospect of a Peaceful Solution*, Eur. Rep. (Dec. 19, 1990) (LEXIS, Nexis library, Omni file).

European governments.[72] In addition, at an Inter-Governmental Conference on political union in Rome in December, the lack of a unified European military response in the Gulf required the foreign ministers to revamp earlier optimistic assessments on the future integration of Europe. Thus, as the January 15 deadline neared, the EC was unable to coordinate or even agree on a military response to the Gulf crisis. The perception grew that the Member States were ignoring the EPC process to pursue their national interests in the Gulf. In addition, the United States clearly led the military forces opposing Saddam Hussein by keeping the coalition nations united. The European response to the crisis disintegrated in the wake of America's military leadership.

V. The Gulf War

The third phase of the crisis began with the allied bombing of Baghdad on January 16, 1991. The use of force against Iraq was authorized by UN Security Council Resolution 678 which reaffirmed prior resolutions calling for Iraq's withdrawal from Kuwait.[73] When Iraq refused to leave Kuwait by the January 15 deadline, the allied coalition began destroying Iraqi military and communications installations in Iraq and Kuwait.[74] American, British, and French warplanes were used to bomb targets while the WEU coordinated the Europeans' naval operations in the gulf. The ground war began on February 23, 1991, but lasted only a short while before large numbers of Iraqi troops surrendered.[75] U.S. President George Bush ordered a cease-fire on February 27, 1991.[76]

Events which were beyond the EC's control and largely shaped by military considerations characterized the third phase of the Gulf crisis. Not surprisingly, given the absence of a European security policy, the EPC process was least effective during the actual fighting. The President of the EC Commission, Jacques Delors, told the European Parliament on January 23, 1991: "[P]ublic opinion sensed that Europe was rather ineffectual."[77] The first meeting of EC foreign ministers since the war began was held on February 4, 1991.[78] The rotating presidency of EPC had shifted to Luxembourg and its foreign minister, Jacques Poos, noted that the lessons from the conflict

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72. *Id.*

73. Wash. Post, Jan. 17, 1991, at 1, col. 1.

74. *Id.*

75. Wash. Post, Feb. 24, 1991, at A1, col. 1.

76. Wash. Post, Feb. 28, 1991, at A1, col. 1.

77. *Political Union: Gulf War Darkens Prospects for EEC Institutional Reforms*, Eur. Rep. (Jan. 26, 1991) (LEXIS, Nexis library, Omni file).

78. *Political Union: Guidance Awaited from Council on February 4*, Eur. Rep. (Feb. 2, 1991) (LEXIS, Nexis library, Omni file).

"should act as a stimulus toward greater political union."[79] All twelve EC Member States stressed the need for "gradualism" in formulating common European foreign and security policies.[80] The realization that the Community had failed to prevent the armed conflict or even control the timing of the war forced the EC ministers to acknowledge that national interests were guiding Member States and that an effective European foreign policy would only be possible with a common security policy.

Furthermore, an EC Executive Commission proposed changes in the voting procedures currently used in the EPC process.[81] Instead of unanimous voting, foreign ministers would only implement a policy after a "qualified majority" agreed to the proposed plan. This would enhance the effectiveness of the EPC, while a bloc of three Member States, depending on their size, might still be able to reject a plan acceptable to the other Member States under a qualified majority voting system.[82]

VI. The Aftermath of the War

The final phase of the Gulf conflict began with the cease-fire on February 27 and was dominated by the unanticipated consequences of the war. Hoping that the war had fatally loosened Saddam Hussein's hold on power, the Shiites in the south and Kurds in the north began uprisings in March after the cease-fire. Despite fierce fighting, Saddam Hussein's government crushed both rebellions and declared itself in control of Iraq again on April 4, 1991.[83] Fearing retribution by the government, the Kurds began a massive exodus to the mountains of Turkey and Iran. Their highly publicized plight forced the United States and other allied governments to respond with emergency relief.

On April 3, 1991, a European Political Cooperation press release noted the Member States' concern "at the situation of the civilian population in Iraq, notably the Kurds and Shiites."[84] Moreover, the Member States "condemn[ed] the brutal repression being imposed upon these population groups" and "call[ed] upon the Iraqi authorities to put an end without delay to this repression."[85] A prompt, common declaration by the Member States against the re-

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79. Goldsmith, *EC Says Common Foreign Policy Should Proceed, But Slowly*, UPI (Feb. 4, 1991) (LEXIS, Nexis library, Omni file).
80. *Id.*
81. Johnson, *EC Proposes 'Takeover' Of Foreign Policy Issues*, Daily Telegraph, Apr. 16, 1991, at 10.
82. Goldsmith, *supra* note 79.
83. Wash. Post, Apr. 5, 1991, at 1, col. 6.
84. European Political Cooperation Press Release, April 3, 1991.
85. *Id.*

pression of civilian rebellions in Iraq reflected the fact that agreement on this point was relatively easy. Unlike the debates on military and security policies, the Member States agreed that humanitarian concerns required a united condemnation of Saddam Hussein's treatment of the Kurds and Shiites.

The most important diplomatic moves in the European Communities came from British Prime Minister John Major. His first significant foreign policy initiative in the EC was to propose an "enclave" or safe haven for the Kurds in northern Iraq.[86] This proposal was announced April 8, 1991, at the EC Luxembourg summit called by France to discuss the consequences of the war.[87] Major's second initiative was to suggest on April 28 that a UN police force replace the American, British, French, and Dutch troops guarding the approximately 2 million Kurdish refugees.[88] The EC enthusiastically endorsed both proposals, causing an American commentator to characterize their move as a "way to restore the push for unity" by seizing the "diplomatic lead from Washington."[89] Another analyst noted the European Communities' "intensified diplomatic activity following the Gulf war" and opined that this reflected "widespread dissatisfaction" with Europe's impact during the war.[90]

Germany tried to address criticism of its inaction during the war by flying relief missions to Iran with Kurdish aid and by sending 2,000 troops into Iran to build a refugee camp.[91] German Foreign Minister Hans-Dietrich Genscher also proposed trying Saddam Hussein by an international war crimes tribunal for his treatment of the Kurds and the EC adopted this initiative on April 15, 1991.[92] By May 19, 1991, the Iraqi government had consented to a UN force guarding the Kurds.[93] In the spring of 1991, the EC Member States appeared eager to initiate policies and influence events in the Gulf with a united European response.

The crisis in the Gulf continued to smolder into 1992 because Saddam Hussein remained in control of Iraq, potentially exposing the Kurds and Shiites to further repression. By July 16, 1991, 3,500

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86.   Brock, *EC Basks In Glow Of Haven Scheme*, The Times (London), (Apr. 10, 1991) (LEXIS, Nexis library, Omni file).

87.   *Id.*

88.   Johnson, *Europe Backs British Plan For UN Role*, Daily Telegraph (Apr. 29, 1991) (LEXIS, Nexis library, Omni file).

89.   Longworth, *Wrong Turn*, Chi. Trib. (Apr. 14, 1991) (LEXIS, Nexis library, Omni file).

90.   Drozdiak, *Europeans To Press Bush to Back Enclave Plan*, Wash. Post, Apr. 11, 1991, at A34, col. 1 [hereinafter *Europeans Press*].

91.   Fisher, *Germany to Send Troops to Iran to Aid Refugees*, Wash. Post, Apr. 24, 1991, at 23; Fisher, *supra* note 66; Drozdiak, *Europeans Press, supra* note 90.

92.   Hayley, *Europeans Softer on South Africa, Tougher Against Saddam*, The Reuters Library Report (Apr. 16, 1991) (LEXIS, Nexis library, Omni file).

93.   Randal, *Baghdad, Kurds Near Agreement*, Wash. Post, May 19, 1991, at A1, col. 5.

British, French, and U.S. troops had withdrawn from a security zone created to protect the Kurds in northern Iraq.[94] The proposal to try Saddam Hussein as a war criminal receded into the diplomatic background as it became clear that, although unpopular, he retained power in Iraq.[95] Moreover, Saddam Hussein continued to resist UN efforts to monitor his nuclear weapons program. The EC Member States focused less on the Gulf and more on Yugoslavia in the summer of 1991 after the secession of Solvenia and Croatia sparked the first major fighting in Europe since the end of the Second World War. Thus, although the consequences of the Gulf War remain unresolved, one year after the cease-fire the explosive situation in Yugoslavia dominates the European Political Cooperation process.

VII. Conclusion

The EPC procedure is the basic mechanism at the Community level for the resolution of external political disputes. An examination of the EPC process during the four phases of the Gulf crisis reveals that the EC is still a long way from formulating and implementing a common foreign policy. Yet, in assessing the efficacy of the EPC system during the Gulf crisis, the constitutional development, original goals, and level of integration achieved thus far in the Community must be borne in mind. Because the EC is not yet fully integrated economically, political integration and the subsequent coordination of external political relations naturally lag behind. Moreover, the stated goals of the EC founders did not include foreign policy coordination and some Member States resist transferring diplomatic authority to the Community. The process of formulating and implementing a common foreign policy has been evolving since the Hague Conference of 1969. The implementation of a real common foreign policy by the EC is still incomplete. Nevertheless, this article argues that the EC's foreign policy coordination during the Gulf conflict indicates that progress has been made.

The EPC system works most effectively in resolving international problems where a high level of homogeneity of interests exists among the Member States. For instance, in humanitarian aid situations all the Member States want to gain international respect with altruism. Thus, the Member States were swift in dispatching aid to the Kurds and Shiites after the fighting ended. In contrast, the EPC system is least effective after the deployment of military force because the Member States currently disagree on the future forms of European defense. Until the debate on European security is resolved

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94. Brown, *Allies Finish N. Iraq Withdrawal*, Wash. Post, July 16, 1991, at A14, col. 1.
95. Horwitz, *Saddam's Popularity Reaches Rock Bottom as Iraq's Woes Grow*, WALL ST. J., July 25, 1991, at A1, col. 1.

in the WEU and NATO and European defense is controlled by the EC, the EPC process will be of marginal utility in the actual conduct of warfare.

Three institutional weaknesses in the EPC process combined with the fundamental character of foreign relations constrained the ability of the EC to react to events during the Gulf War. The Member States, historically independent entities, grudgingly relinquished some sovereignty to the Community in external relations when they perceived it to be in their national interests. It follows that perceived common interests in the resolution of an international dispute are prerequisites for the effective functioning of the EPC system. Common interests in the Gulf crisis included liberating Kuwait, preventing the use of Europeans as "human shields," and safeguarding oil supplies. In the first phase of the crisis, these common interests motivated the Member States to adopt a common policy towards Iraq.

This common policy included condemning the Iraqi invasion on August 2, 1990, and announcing an embargo on oil imports from Iraq and Kuwait two days later. The speed at which the Member States acted during the first phase of the crisis clearly contrasted with the European Communities' three week delay in reacting to the Soviet invasion of Afghanistan in 1979.[96] Thus, an effective EC response to the invasion of Kuwait motivated by common interests characterized the initial phase of the crisis.

However, as the crisis continued, the national interests of the Member States diverged and foreign policy coordination through the EPC system became very difficult. In addition, three institutional weaknesses in the system exacerbated this difficulty. The first weakness was the lack of consensus on the appropriate organization for European security; this was a major constraint which limited the effectiveness of the EPC system. To accommodate neutral Member States such as Ireland, a distinction is made in the EC between the. political and economic aspects and the military aspects of security. This permits EC countries presently unwilling to join NATO or the WEU to segregate the military aspects of security from the EC's purview. Some scholars believe that by adopting a common defense policy the EC would create a sense of common identity and enhance its ability to safeguard vital European interests.[97] However, before a common defense policy can be coordinated by the Community, the interests of the Member States must converge in order to support a common foreign policy.

The second weakness in the European Political Cooperation sys-

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96. *See generally* W. CROMWELL, THE UNITED STATES AND THE EUROPEAN PILLAR (The Macmillan Press, forthcoming 1991).

97. Tsakaloyannis, *supra* note 44, at 146.

tem which hinders foreign policy formulation is the unanimity re-
quirement in the voting arrangement. As a prerequisite for the re-
lease of a measure of control over foreign policy implementation, this
requirement makes the EPC system possible and palatable to the
Member States. However, it also decelerates the process and contrib-
utes to the perception that "there is no common European
diplomacy."[98]

While some Member States such as Luxembourg endorse the
proposed change to qualified majority voting, Britain opposes this
proposal.[99] According to British Foreign Secretary Douglas Hurd,
Britain could not accept majority voting within the Community as
the basis for forming a common foreign policy because "that would
have led to paralysis over the Gulf."[100] The paradox is that unani-
mous voting slows the process of policy formation, tempting some
countries to abandon the EPC process in a crisis because of time
constraints. However, it is the only method currently acceptable to
all the Member States. The challenge, then, is for the EC to devise a
voting method in the EPC that is not only acceptable to all the
Member States, but also facilitates consensus on foreign policy at
the Community level.

Finally, the inter-governmental nature of the EPC is an institu-
tional weakness that constrains its ability to resolve conflicts. Unlike
the Communities' decision-making system in the economic area, in
the foreign relations realm the EPC structure is decentralized and
limited in scope.[101] Its intergovernmental nature is characterized by
a pragmatic, flexible approach to foreign relations; the Member
States' foreign ministries are accustomed to consulting one another,
the so-called "concertation reflex" that results from the habit of
working together.[102] However, this embryonic foreign policy coordi-
nation by an intergovernmental process is far from the implementa-
tion of a common foreign policy by a supranational institution. In
theory, a supranational body can initiate foreign policies more effi-
ciently by taking action rather than simply reacting to events with
declarations. It thereby becomes less vulnerable to the national inter-
ests of the Member States.

As suggested by the preceding, there are institutional arrange-
ments that would enhance the EC's ability to implement a common
foreign policy. To exert greater influence on world affairs, the EC is

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98. Kirkpatrick, *supra* note 2.
99. Pienaar, *Parliament and Politics: Hurd Demands Freeing of Hostages*, The Inde-
pendent (May 11, 1991) (LEXIS, Nexis library, Omni file).
100. *Id.*
101. P. IFESTOS, EUROPEAN POLITICAL COOPERATION: TOWARDS A FRAMEWORK OF SU-
PRANATIONAL DIPLOMACY? 208 (1987).
102. *Id.* at 238.

attempting to move from the nation state to a regional organization as the point of reference in contemporary diplomacy. The individual nation state has several advantages in foreign policy formation relative to the EC: it has a military, or at least a defense policy; it is not required to submit proposals to the strictures of unanimous voting by eleven equal partners to implement a policy; and its diplomatic policies are assembled by some type of foreign service bureaucracy rather than at an intergovernmental conference. Therefore, the ideal model for the EC envisages the Community adopting a common European military and security policy choosing foreign policy alternatives conceived by a European supranational foreign service by a qualified majority voting system, and converting the intergovernmental EPC system into a supranational institution. Reality, however, counsels that the achievement of this model requires a level of integration within the EC that is not currently possible.

Despite the three major constraints on European Political Cooperation, the process was not without some success in the Gulf conflict. For example, the speed at which the Iraqi invasion was condemned, the decision to erect an embargo, the dispatch of humanitarian aid to refugees both before the fighting and after, and the British initiatives in the wake of the failed Kurdish rebellion suggest that EPC may gradually evolve into an effective forum where a common European foreign policy is forged. Ultimately, judging the EC's performance in the Gulf War is determined by what yardstick one uses. Compared to the United States' decisive policy of opposing Saddam Hussein with military action, the European system of political cooperation looks ineffectual because it depends on common interests, intergovernmental cooperation and economic sanctions instead of military force. Yet this comparison misses the point because the EC is not a "United States of Europe."

A better assessment focuses on the collective diplomacy of the Community where the question is not whether individual Member States could have done more to defeat Saddam Hussein. The inquiry should be whether the Member States attempted to coordinate a united European response to the crisis and if this response affected the outcome. This article argues that, particularly in the first and final phases of the crisis, the EC coordinated a European response opposing the invasion of Kuwait and this united response had some impact on the crisis' outcome. In addition, while the European Political Cooperation system is the "world's most advanced model of collective diplomacy," it is still evolving and must continue to improve in order to convert the internal strength of the EC into "external

influence" in the world.[103] Measured by how far the twelve Member States have traveled since 1969 to coordinate their foreign policies, the EC's participation in the Gulf conflict is cause for cautious optimism.

103.   von der Gablentz, *Luxembourg Revisited or the Importance of European Political Cooperation*, 16 COMMON MKT. L. REV. 685, 688 (1979).