Towards a common foreign and security policy
Achievements and challenges

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In the sphere of global politics, the European Union (EU) is perhaps best known for its failures. It is described as an inefficient foreign policy actor, incapable of pulling its weight without the support of third parties. In situations of international crisis, it is argued, EU member states never manage to agree on what should be done. And when they occasionally do agree on something, they are dependent on the military capabilities of the United States to accomplish it.

None of the above is surprising. The general assumption is that international politics is governed by power rather than law. In an anarchical world, only actors with strong capabilities and the ability and willingness to use them will succeed in advancing their interests and values. A group of nation-states tied together only through a voluntary scheme of cooperation, such as the Common Foreign and Security Policy (CFSP), will by necessity fail.

However, an increasing number of studies claim that the EU is no longer a mere irrelevance in global affairs; in fact, it can point to a number of achievements. According to these studies, the EU does produce a foreign policy of some kind, and national sovereignty is giving way to integration. Is this really the case? And, if so, what are the challenges entailed in this gradual but large-scale transformation? These are the questions addressed in this chapter. More specifically, I assess the extent to which these claims of a move beyond intergovernmental cooperation in the CFSP can be substantiated. Furthermore, I discuss the kind of foreign policy an entity that is neither a state nor an international organization can actually deliver, and the potential sources for its legitimacy.

The investigation of the fundamental changes implied in the claim of an emerging autonomous EU foreign and security policy is of relevance not only to CFSP specialists but also to the wider community of EU scholars. This is particularly the case if the member states’ monopoly on violence is being partially transferred to the EU level, as a move beyond intergovernmentalism might imply. This would affect the nature of the polity as well as the status of its constituent parts – the member states. It would further raise questions regarding democratic legitimacy. But this issue is also of relevance to scholars of international relations. The very possibility of an actor without the traditional instruments of power impacting global affairs – as the EU did in negotiations with Iran in 2013, for example – challenges established
conceptions of who and what matters in international politics. Observations of member states voluntarily surrendering sovereignty to common European institutions challenge deep-seated ideas and conceptions of foreign and security policy as the exclusive domain of the state. This prompts us to question our understanding of the nature of foreign policy, its underlying mechanisms and its purpose.

The chapter opens with a brief overview of the background and early developments in foreign and security cooperation within the EU. Subsequently, I approach the question of the nature of the CFSP from two perspectives. The first focuses on internal aspects, that is, the degree and form of integration. The second takes what the EU does as its starting point, and addresses the substance of foreign policy. Thus, in the second part of the chapter the institutional structures and decision-making processes that regulate the domain of foreign and security policy as they function in the context of the Treaty of Lisbon are analysed. I argue that power and authority have become more dispersed than one would expect in an intergovernmental system. A peculiar form of integration is taking place in this domain. Subsequently, in the third part of the chapter, I turn to the substantive issues and suggest that the concept of humanitarian power may be a useful analytical device for examining the foreign policy output of the CFSP. This concept also points to a critical standard against which the EU’s foreign policy may be assessed. In the fourth part of the chapter I discuss the implications of the above observations regarding the ongoing transformation of European foreign policy for democracy. The shift of executive power to the EU level might enhance the efficiency and coherence of EU foreign policy, but it also makes it more difficult to trace decisions back to a democratic mandate from national political systems. The democratic credentials of the EU’s foreign policy are thus still unresolved.

Context and background
Integration in the domain of foreign and security policy has taken a different path from that of other policy domains within the EU. As a key element of political union, the idea of establishing a single European foreign policy has been undesirable for many member states. In particular, those member states that view the EU as primarily an economic entity have been reluctant to relinquish national sovereignty in foreign and security policy. After the failure of the European Defence Community and the thwarted ambitions of the European Political Community in the 1950s, the issue of integration in foreign and security policy was left untouched by the European Community (EC) for nearly 15 years, only returning to the agenda (with much less grandiose ambitions) in the late 1960s. At this point, the member states agreed to establish a voluntary system of foreign policy cooperation, European Political Cooperation (EPC), outside the Treaty framework. This system aimed only to ensure consultation amongst the member states of the then-EC on issues of common concern. There was no mention of integrating national foreign policies into a single policy. It was only with the Single European Act (1986) that foreign policy was introduced into the Treaty framework and consultation on matters of foreign policy became a legal obligation.

With the end of the Cold War, the so-called ‘widened’ concept of security came to the fore. Many strategists considered this new security agenda to be particularly well suited to the EU. Replacing the EPC, the CFSP was launched with the Treaty of Maastricht (1991). Under the CFSP, the restrictions on the issues member states were allowed to discuss were removed. Now, not only was the EU able to discuss foreign policy matters, but it also aspired to develop a common defence policy and perhaps also a common defence.

However, the new Common Foreign and Security Policy was based on a fundamental contradiction. It was supposed to ensure that the external sovereignty of the member states
remained intact, while at the same producing a common policy. Developments within the EU were slow, and for a long time the ambitions laid out in the Treaty seemed to be nothing more than vain hopes. But things changed in the autumn of 1998, when British prime minister Tony Blair unexpectedly abandoned his country’s usual reservations and declared his support for an autonomous EU security policy. This puzzling change in the British position is usually linked to Blair’s efforts to present himself as a ‘true’ European. As a result of this British move, one of the major hindrances to the realization of the objectives of the Maastricht Treaty were eliminated. In the Treaty of Amsterdam, the member states introduced a new actor: the High Representative of the Union for Foreign Affairs and Security Policy (HR). In addition, a planning unit (the Policy Unit) was created to assist the HR; this was the first permanent institution in the domain of foreign and security policy to be established in Brussels. Subsequently, the Political and Security Committee (PSC), the Military Committee (EUMC) and the EU Military Staff were set up, commencing operations in 2000.

In parallel, the EU began reviewing the basic principles and aims of its security policy. This took place against the backdrop of the terrorist attacks of 11 September 2001 and the wars in Iraq and Afghanistan. The EU’s security strategy ‘A Secure Europe in a Better World’ was established in December 2003. This strategy identified a number of key threats and committed the EU to develop a security policy based on international law and multilateral cooperation. Gradually, the EU’s visibility and impact in global affairs increased. Between 2003 and 2012, it conducted 23 military and civilian crisis management operations.

The built-in contradictions of the CFSP persisted, however, becoming even more pronounced with the Treaty of Lisbon. Under the Treaty, foreign and security policy remains subject to specific rules and procedures for decision-making, which limits the influence of the supranational institutions. However, the distinction between the aims and objectives of the EU and those of its foreign policy was removed, together with the pillar structure. The intergovernmental institutions of the CFSP now serve the same aims and objectives as the supranational bodies.

The contradictions of the CFSP thus remain unresolved. Key European policy-makers, such as France’s former prime minister François Fillon and his Spanish counterpart, former foreign minister Miguel Moratinos, maintain that it is the member states that decide European foreign and security policy (European Parliament 2010). At the same time, the establishment of permanent institutions has changed the dynamics of foreign policy making. Since the late 1990s, a number of authors have referred to a shift in the locus of national decision-making to Brussels-based institutional structures. These institutions are viewed as having a distinct advantage over national foreign ministries, due in part to their easy and daily access to information and dialogue with partner states. Furthermore, despite certain well-known solo initiatives on the part of the larger member states, it is increasingly difficult for states to sidestep expectations of consistency between national foreign policy and the foreign policy positions of the EU. Does this mean that we should no longer describe the CFSP as intergovernmental?

In order to assess the significance of these observations for the claims of Moratinos and Fillon, that national sovereignty remains unaffected, we need to define and operationalize intergovernmentalism. How do we know it when we see it? What might be considered a departure from its key principles?

Still intergovernmental?

Drawing on established conceptions (Frankenberg 2000; Majone 2001; Pollack 2003), four key features of intergovernmentalism may be identified. These concern: (1) the nature of the actors
involved in making decisions; (2) the procedures through which decisions are made; (3) the scope and type of powers that member states delegate; and (4) the raison d’être of the cooperative endeavour.3

Intergovernmentalism is a system akin to a contract (Frankenberg 2000) or an international treaty between sovereign parties. Each party retains jurisdiction within its own territory and remains free to organize its institutions and policy processes in accordance with its own preferences. This means that only sovereign states can be actors with decision-making powers. The establishment of supranational institutions with a self-standing constitutional basis would thus clearly represent a departure from intergovernmentalism. However, one might also imagine that other actors representing interests and perspectives beyond the member states could achieve decision-shaping powers. If non-governmental organizations, private corporations, agencies or institutions of some kind wield influence, this would also challenge the first feature of the intergovernmental system. Furthermore, even if these various actors are unable to lay down the law to member states, they might influence decisions and thus (at the least) chip away at important elements of member state autonomy.

The right of each member state to veto any decision with which it disagrees is critical. Abandoning this right and introducing decision-making by some form of majority vote would be a clear indication of a departure from intergovernmental principles. However, the veto power of the contracting parties might also be constrained in less formal ways. One might imagine, for example, the hands of the contracting parties being tied due to time constraints. (Normative) expectations of non-use of the veto might also develop for other reasons. It could also be the case that, due to differences in power and authority, the ability to block a decision might be more real for some countries than for others. This would suggest that intergovernmentalism, to the extent that it supposedly gives one vote to each party and thus provides equal protection of each country’s sovereign right to determine its own policies, has come under pressure.

The powers of any central public authority in an intergovernmental system are strictly limited. The central authority is obligated to respect the rights and competences of each member government, and it only has the power to decide on clearly delimited tasks. These powers are delegated to a central authority, and it is assumed that they may be revoked or renegotiated. Moreover, most national constitutions assume that the executive will be party to the decisions concerning how the delegated authority should be exercised. If the delegated tasks are not clearly delimited, it would be difficult to ensure national control over the exercise of power, or indeed to bring a task back into the ‘national fold’. This would thus constitute a departure from intergovernmentalism. In addition, if delegated powers are associated with a degree of discretion, this would likely alter the fundamental premise of delegation. There might also be a de facto difference between the freedoms of action of different member states in this regard: more powerful states might be able to revoke delegated powers more easily than others.

The fourth feature pertains to the purpose or raison d’être of intergovernmental cooperation. An intergovernmental system is established to serve the member states and to assist them in advancing or protecting their interests, preferences and values. An intergovernmental unit infused with interests or values of its own would represent a departure from the fourth feature of intergovernmentalism. Such a purpose might also in turn constrain the ability of member states to freely define their policies in accordance with their own preferences.

What does existing knowledge regarding the institutions and decision-making procedures within the CFSP/CSDP (Common Security and Defence Policy) tell us about the status of these four key features of intergovernmentalism?
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Fragmentation of executive power

In formal terms, the answer to the question of ‘Who decides?’ is simple and in line with the first feature of intergovernmentalism: the member states decide. That is, decisions are taken by the foreign ministers of all the member states in the Foreign Affairs Council (FAC), or by the heads of state and government in the European Council. However, the range of actors involved in the CFSP/CSDP is much wider than this, including both supranational and intergovernmental actors.

Permanent intergovernmental institutions

Most important in this regard are the permanent intergovernmental institutions located in Brussels. Although they were established in order to facilitate decision-making in the FAC and the European Council, they have gained considerable autonomy. It is to a large extent due to their influence that the first premise of intergovernmentalism is being undermined.

At the centre of the intergovernmental institutional nexus is the Political and Security Committee (PSC). Composed of national ambassadors permanently based in Brussels, it has been described as the ‘linchpin’ of the system of foreign and security policy (Duke 2004) and as the ‘executive board’ of the CFSP (Thym 2011). Its mandate is to ‘monitor the international situation and contribute to the definition of policies’ (Art. 38.1 TEU). The PSC also delivers opinions to the Council and exercises political control over and strategic direction of crisis management operations. Also of importance are the various working groups (Juncos and Pomorska 2011), as well as the EUMC and the Committee for Civilian Aspects of Crisis Management (CIVCOM) (Cross 2011).

Research suggests that, over time, these institutions have gained considerable autonomy from the governments that they are meant to serve (Tonra 2000, 2003; Howorth 2003; Meyer 2006; Vanhoonacker et al. 2010). They do not merely fulfil support functions for the FAC or act as coordinating mechanisms for the member states. Already in 2006, Duke and Vanhoonacker (2006: 380) found that the ‘question of whether the administrative level matters in the foreign policy field should definitely be answered affirmatively’. As noted, the PSC is particularly important in this regard. It is here that common positions are identified and the methods to realize them are developed. Juncos and Reynolds (2007) have described the PSC as ‘governing in the shadow’, while Howorth (2010) refers to the PSC as the ‘script writer’ for the CFSP, in the sense that its members ‘come up with policies, missions and operations for the EU which will allow it to demonstrate both its usefulness and its importance’ (Howorth 2010: 18).

These observations of a shift in decision-making power from national capitals to the institutional machinery in Brussels suggest a fragmentation of the executive power of national governments. The agents of national governments in Brussels have a hand on the steering wheel. They have a degree of autonomy that is not consistent with an intergovernmental conception.

Supranational institutions and the boundary problem

The ‘fuzziness’ with regard to where responsibility actually lies is reinforced by the difficulty of establishing clear distinctions between foreign and security policy on the one hand and all other aspects of EU global activities on the other (Smith 2001; 2004: 7–8). While (in principle) the former are supposed to be under the control of national governments (through the CFSP), the latter are subject to supranational procedures.

Thus, in the domain of foreign and security policy, the Commission is ‘fully associated’ with the work carried out. It is represented in all the intergovernmental CFSP institutions, and it also has the right of initiative, although this is not an exclusive right. In the Maastricht Treaty,
the European Parliament (EP) was granted the right to be consulted on the primary aspects and basic choices of the CFSP. It also has the right to ask questions and to make recommendations to the Council in this domain. Under the Lisbon Treaty, the interactions between the Council and the EP have intensified; however, the nature of the relationship remains unchanged. The European Court of Justice has no jurisdiction over the CFSP. The problem here is that the boundaries between external economic relations and external political relations are not always self-evident. Furthermore, it is not always possible to separate, for example, ‘foreign policy’ or ‘security’ issues from ‘development’, which is controlled by the Commission. A number of issues fall under so-called ‘mixed competence’. This has led to double-headed missions and ad-hoc solutions in which the Commission and representatives of the Council have both been involved. In addition, the implementation of CFSP decisions often requires the use of EC instruments or financing through the EU budget. In such situations, the Commission and the EP are able to flex their muscles. Due to this fuzziness, the supranational institutions have successfully encroached on what might originally have been considered the realm of national governments. We see this, for example, in the inter-institutional agreements between the EP and the Council in foreign and security policy. Similarly, in the area of defence procurement, the Commission has successfully introduced common legislation in a domain formally controlled by the intergovernmental European Defence Agency (EDA) (Blauberger and Weiss 2013).

The High Representative

In order to ensure greater coherence in all aspects of the EU’s external activities, the Lisbon Treaty introduced the double-hatted post of the High Representative for Foreign Affairs and Security Policy and Vice-President of the Commission. Catherine Ashton, as the new HR, took over from the presidency the responsibility of chairing the meetings of the CFSP, including those of the FAC. She also has the right to put forward policy proposals and serves as head of the EDA. This reinforced HR is thus a key institutional position within the CFSP (Vanhoonacker and Pomorska 2013). However, this new actor perpetuates the unresolved tension between the protection of national sovereignty and the aim of a single policy, as the authority of the High Representative is derived from the member states, while she is also part of the Commission.

The establishment of a ministry of foreign affairs – the European External Action Service (EEAS) – constituted the second major institutional innovation in the Lisbon Treaty. This institution, a merger of various branches of the Commission and the General Secretariat with an additional influx of new staff, was set up to assist the HR. Consequently, in the EEAS supranationalism and intergovernmentalism live together under the same roof. Its logic of recruitment contrasts with intergovernmental principles: 60 per cent of the EEAS’s staff are permanent, and all staff are appointed ‘on merit’ rather than with reference to their geographical/national origin. As an institution, it is intended to address issues that must be decided according to the procedures of the CFSP, as well as some of the issues that are still subject to the Community method (previously dealt with by Commission officials).

The main challenge to the first premise of intergovernmentalism, that is, states as the only actors with decision-making power, comes from within the intergovernmental structures. The permanent intergovernmental institutions have considerably more autonomy from the member states than what one would expect within an intergovernmental system. However, there is also increased evidence of a mixture of supranational and intergovernmental actors influencing policy through the new HR and the EEAS, although we will only be able to assess the real impact of these institutions after some time has passed. But what about the second feature of intergovernmentalism? How real is the right of member states to veto decisions with which they disagree?
Sidestepping the veto

Many studies have pointed to significant changes in the way in which policy is made within the institutions dealing with foreign and security policy (Tonra 2003; Meyer 2006; Vanhoonacker et al. 2010). Juncos and Pomorska (2006) and Juncos and Reynolds (2007) find strong evidence of compliance with specific codes of conduct referred to as ‘consensus building’, as well as with the oft-cited ‘reflex of coordination’, thus echoing much of what Simon Nuttall argued in 2000 (Nuttall 2000). Howorth similarly finds that ‘a significant measure of socialisation ensures that the dominant mode of interaction is consensus-seeking rather than bargaining around fixed national positions’ (Howorth 2010: 16).

However, this literature is often shrouded in a certain conceptual and theoretical vagueness, which makes it difficult to identify precisely what has changed with the establishment of the CFSP, and what that might tell us about member states’ veto rights. One important observation supporting the claim of socialization is that the positions of the member states are becoming more similar over time. However, the fact that the perspectives or policy positions of member states are converging does not necessarily signify that the CFSP is no longer intergovernmental. These transformations may decrease the likelihood of the use of the veto and hence facilitate policy-making, but this does not mean that the right to veto has disappeared. Likewise, observations characterizing actors as ‘consensus-seeking’ may still be compatible with the right to veto. Because consensus-seeking implies that all parties must agree to a decision (or at least agree not to overtly disagree), such consensus-seeking may well take place ‘in the shadow of the veto’.

On the other hand, insofar as this literature represents a critique of rational-choice, intergovernmentalist assumptions of actors’ preferences as exogenous and of the outcome of decisions as the lowest common denominator of such predefined preferences, it does indirectly question the centrality of the veto. The argument is that, rather than being exogenous to the process of decision-making, preferences are shaped through a collective, cross-border decision-making process. If, as the reflex of coordination suggests, member states routinely postpone defining their preferences on foreign policy issues until they have spoken with their European partners, or if they define their position in a process of exchange with their partners, this would mean that the veto is de facto no longer relevant, even though its existence as a formal right is not called into question.

This decreasing centrality of the veto also emerges from the fact that member states often do not have clearly defined preferences. In such cases, they often simply go along with the collective position (Juncos and Reynolds 2007; Howorth 2010: 17–18). However, as these are not examples of member states changing positions but rather developing positions, neither these observations nor evidence of a collective, cross-border decision-making process are irreconcilable with the right to veto. We can only truly claim that this right is challenged if we find that states refrain from using it. This question is addressed more directly in a study of the EU’s preparation of its positions and policies during the negotiations over the International Labour Organization’s (ILO) Maritime Convention. In this case, member states were willing to forgo their right to veto in order to develop a common policy (Riddervold and Sjursen 2012). This was also true for states with strong economic interests that would be negatively impacted by the proposed common positions. While this is not a classic CFSP issue, it is an example of EU member states deliberately choosing to act together rather than separately in an international setting. As such, it is certainly an issue of foreign policy (Jørgensen 2009), and it constitutes a challenge to the assumption that a change in the norms that guide decision-making – a shift away from a practice in which the threat of a veto is a constant presence – is unrealistic.
Several observations of interactions within the PSC point in this same direction. Participants describe processes in which they routinely succeed in convincing state representatives to alter their initial position:

If we have a wave of consensus and you are the only obstacle, then you have to have exceptionally good arguments to turn the tide. Sometimes, colleagues have to say: ‘Yes I understand everybody else, and I would love to agree but I simply have to call home.’ Then everybody will agree to let him/her call home. Very, very often, I would say, it is also the case that the colleague will come back and say: ‘Yes, OK, we agree!’

(quoted in Howorth 2010: 16)

Likewise, Christoph Meyer finds that agreement has been achieved ‘even in areas where national strategic norms would initially indicate incompatibility’ (Meyer 2006: 136).

The formal right to veto remains, but it is often sidestepped. It has become less and less relevant as member states tend to form their position on foreign policy issues in cooperation with their European partners rather than in isolation from them. Further, contrary to conventional wisdom, there are several examples of situations in which, for the sake of the ‘common good’, member states have changed their initial position rather than veto a decision. Although we lack sufficient systematic empirical studies to verify that this represents a trend, these examples are significant enough to suggest that the ground beneath the feet of the veto is far from solid.

A permanent delegation of powers

The third feature of intergovernmentalism concerns the delegation of power and the right of member states to revoke it – or to renegotiate its terms. There is little to draw on in terms of actual practice with regard to this premise. We do not know what would happen if a state sought to withdraw powers that had been delegated, as no state has ever sought to do so. Thus, a different kind of analysis is required. Here, I focus on what may be considered the best interpretation of the principle of the delegation of power and examine the extent to which this fits the formal arrangements that are in place. On this basis, certain questions arise.

First, rather than delegating a limited set of tasks, the Treaties indicate a general delegation of competence in all matters related to foreign policy and the Union’s security, as well as identifying the aim of a common defence. Certainly, this general delegation is limited by the fact that within this overall frame each decision to act is made by the member states ‘acting unanimously’ (Art. 11.1–2). Nevertheless, this generalized delegation introduces some doubts with regard to the reality of the right to revoke powers that have been delegated. Presumably, it would be easier to ‘take back’ into the national fold specific tasks that are limited in time. There is a sense of permanence to the delegation of general competence, which is reinforced by the establishment of instruments and capabilities at the EU level. The EU has established its own apparatus of external representation (via the EEAS). It may also deploy troops (using the concept of the battle group, for example) and it may sign treaties, as it has obtained legal personality in the Lisbon Treaty. This permanent ability to act within what may be seen as core dimensions of foreign and security policy seems to be at odds with the temporariness associated with delegation.

While doubts are often expressed with regard to the prospects for further expansion of tasks at the EU level (for example in the military domain), there are no expectations of a reduction, even in the context of the financial crisis. The assumption seems to be that a decision to delegate
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is fairly definitive. In fact, observers even point to a ‘ratchet effect’ in the way the CFSP has been designed in the Treaties: ‘Right from the beginning, each constitutive report contained within it the seeds of its successor’ (Hill 1993a: 275). Daily decision-making processes are often considered to have a cumulative effect as well. As Nuttall argues, the accumulation of previous stances on foreign policy issues provides a common framework for action and decision (Nuttall 2000; also Smith 2004: 141). These observations not only underline the definitive nature of the act of delegation but also suggest that each such act of delegation carries with it the potential expectations of further commitments. This practice substantially diverges from the idea of powers that are delegated and that may subsequently be withdrawn. Incidentally, on this issue the right to veto might actually have adverse effects: if a state wanted to dismantle the system, it would in all likelihood require the support of all the member states, or else the state in question would have to leave the EU altogether.

Finally, and perhaps most importantly, this generalized delegation opens zones (or pockets) of discretion for the institutions at the EU level. Amongst other effects, a generalized delegation widens the scope of initiatives that may be taken by the now semi-autonomous institutions and bodies in Brussels, such as the HR and the PSC. In their search for possible common policies, they are authorized to consider the entire spectrum from foreign policy to defence. Furthermore, within the scope of a particular task there may be considerable room for discretion. This is particularly the case with regard to the CSDP and military missions, where the powers delegated to the PSC are considerable, although in foreign policy more generally there is also room for autonomous action (Art. 38(2) TEU).

The fragmentation of authority in foreign and security policy is also notable when this third feature of intergovernmentalism is analysed. Although member states maintain their legal competences in all matters of foreign and security policy, these competences are not exclusive to them. Thus, two parallel but interwoven systems of foreign policy are emerging – that of the nation-states and that of the EU.

**European interests and values**

The fourth and final feature of intergovernmentalism identified in the analytical framework concerns the purpose, or *raison d’être*, of the intergovernmental endeavour.

An intergovernmental entity exists to serve the member states, to assist them in solving concrete problems, to ensure the protection of their interests and values, and allow them to enforce their preferences. However, in the case of the EU there has been a conscious effort to go beyond this – to define *European* interests as well as *European* values. The most coherent definition of these interests and values may be found in the European Security Strategy, adopted by the European Council in December 2003. The Security Strategy ‘established principles and set clear objectives for advancing the EU’s security interests based on our core values’ (Council of the European Union 2008). It set out three strategic objectives for European security: ‘tackling key threats, building security in our neighbourhood and promoting an international order based on effective multilateralism’ (Council of the European Union 2003). The conception of the EU as an actor with a purpose of its own beyond that of serving the interests and preferences of the member states can also be identified in the Treaty texts. In the Lisbon Treaty, we find: ‘the Union shall . . . assert its identity on the international scene’ (Title I, Art. 2). This seems to constitute a definite departure from the fourth feature of intergovernmentalism.

Through these definitions of the interests and values of the EU, constraints are also placed on the actions of individual member states. These limitations are partly of a legal nature: the
member states are, according to Article 11(2) of the Treaty of Lisbon, legally bound to support the Union’s external and security policy ‘actively and unreservedly in a spirit of loyalty and mutual solidarity’. In fact, according to Cremona ‘the most important element of the Treaty of Lisbon from the perspective of foreign policy coherence is the clear external mandate given to the Union as a whole in both substantive and instrumental terms’ (Cremona 2008: 35). However, equally important is the binding force of norms and institutions established prior to the Lisbon Treaty. In fact, despite the well-known solo initiatives of some of the EU’s member states in situations of crisis, it is increasingly difficult for member states to escape expectations of consistency between national foreign policy and the foreign policy positions of the EU (Sjursen 2003).

The development of an overarching normative frame, in turn, constrains the member states’ ability to freely define national foreign and security policy as the idea of intergovernmentalism assumes they should. Participation in the CFSP has led to a reorientation of the foreign policies of member states. Already in 1996, Alfred Pijpers (1996: 252) noted this trend, as did Torreblanca a few years later with regard to Spain (Torreblanca 2001:11–12). In addition, there is evidence that the largest member states (France, Germany and the UK) have undergone such a transformation as a result of their membership in the CFSP (Aggestam 2004). The requirement to consult, under which national positions must be justified in a manner that makes them acceptable to all, might contribute to a situation in which member states seek a certain consistency between their claims and the underlying constitutive principles of the EU (Sjursen 2003).

The definition of a common purpose beyond the individual preferences and values of the member states is reinforced through the unity of the legal order, which was established with the Treaty of Lisbon. Generally, discussion of the abolition of the pillar structure has focused on the limitations of this change, stemming from the fact that the CFSP is still subject to specific rules and procedures (House of Commons 2008). However, with regard to the overall purpose of the CFSP and the principles to which it is bound, the unity of the legal order does make a significant difference. With the abolition of the pillar structure, the CFSP became subject to the same constitutional control standards as the rest of the EU. The Charter of Rights is binding for the EU as a whole, hence also for foreign, security and defence policy. This raises the stakes to some extent with regard to expectations of consistency, as it introduces an element of legal accountability. However, it is still the case that the EU lacks formal mechanisms to sanction those who do not comply with collectively agreed-upon policy, or indeed with any of the constraints introduced in the Treaties.

A specific conception of European interests and values has been developed. Thus, the member states have already taken a step towards the establishment of institutions devoted to the Union itself, rather than to its member states. This suggests that when the EU acts, it does so for purposes that extend beyond the delegated authority of the member states. What the EU does must be consistent with the Treaties and the overarching normative framework of the EU, not only with the interests of the member states. Furthermore, the identification of the EU’s values impacts the formulation of the member states’ own foreign policies.

In sum, power and authority within the domain of foreign and security policy are distributed in a manner that is not consistent with intergovernmentalism as it has been operationalized here. The CFSP has continued to move in the direction of transgovernmentalism, and perhaps even beyond (Smith 2004). In the next part of the chapter I examine the significance of the ongoing processes of reconfiguration of national and European foreign policy for the content of the EU’s foreign policy. What kind of foreign policy actor is the EU?
Conceptualizing the EU’s global role

Rather than taking the nature of the polity and the key characteristics of its institutions and decision-making processes as their point of departure, a number of authors have suggested that what is most important when one seeks to conceptualize the EU’s global role is to understand what it does. The EU is the world’s largest trading power. It is also a major donor of humanitarian assistance and development aid. In fact, it has the largest total development budget in the world. But the EU is not only a global economic power. It is also an influential diplomatic agent, and it has developed a capacity for united action in the domain of security. It has so far engaged in 24 crisis management operations around the world.

Against this backdrop it has become fashionable to claim that the EU is a distinctive foreign policy actor: that the EU ‘acts in a normative way’. Scholars consider the institution to be capable of shaping understandings of what is ‘normal’ in global politics and have suggested that the EU should be viewed as a normative, civilizing or ethical power within the international system (Rosencrance 1998; Whitman 1998; Smith 2000; Manners 2002; Aggestam 2004; Diez 2005). This argument builds on François Duchêne’s (1972) conception of the European Union as a ‘civilian’ power. According to Duchêne, the EU’s novelty as an international actor is due to its focus on ensuring stability and security through economic and political rather than military means.

The claim of ‘normative power’ also carries the potential for connecting to a broader theoretical discussion of what matters in foreign policy and international relations (Risse 2000; Linklater 2005). Contrary to the dominant realist understanding, the normative power literature assumes that it is possible for a non-state actor that does not dispose of the traditional means of power to make a mark in global politics. In this sense, the conception of the EU as a normative power runs counter to Christopher Hill’s famous dictum regarding the EU’s capabilities–expectations gap (Hill 1993b). Hill’s argument is that because the EU does not have the capabilities of a state in foreign policy, it is unable to live up to the expectations it has created with respect to its role and influence in global politics. A potentially dangerous capabilities–expectations gap has thus developed between the EU’s hype and what it is capable of delivering. The normative power literature should thus allow for a link to the broader debate about the role and place of norms in IR and the assumption of international ‘anarchy’ (Bohman 1999; Wendt 1999; Zürn 2005), but this link is underexplored (Sjursen 2006a).

The literature on normative power also purports to say something about the EU as a polity. The characteristics of the polity are assumed to ‘predispose it [the EU] to act in a normative way’ (Manners 2002: 242; also Duchêne 1972; Whitman 1998). Three features are generally identified as important in this regard: the EU’s historical context, its nature as a hybrid polity and its political–legal constitution (Manners 2002: 240). More specifically, reference is often made to the fact that in the post-war context Europeans were committed to pooling sovereignty in order to curb nationalism; that the EU is a new type of entity that combines supranationalism and international forms of governance; and, finally, that its constitutional norms, which embody the principles of democracy, rule of law, social justice and respect for human rights, condition its international identity.

It may be true that there is something distinctive about the EU’s foreign policy. Observers often highlight the EU’s policy of democracy promotion, its introduction of human rights clauses in all trade agreements, its emphasis on encouraging regional cooperation and its focus on building international institutions as representative examples of such distinctiveness in foreign affairs (Risse and Börzel 2007). Nevertheless, the conception of the EU as a ‘normative power’ is intuitive
rather than analytical; it fails to disentangle empirical and normative claims and lacks theoretical underpinnings. As such, it provides a problematic answer to the question of how to conceptualize the EU as a global actor. It can neither account for its empirical claims nor justify its normative assessment.5

The normative claim

With regard to the normative claim, the argument presented in the literature implies that if the EU pursues norms, that means it is ‘doing good’ in the international system. Likewise, the message implied in the perspective of the EU as a ‘civilian power’ is that such power is by definition positive (Smith 2000).

The problem with making such assumptions is that as long as there is no explicit critical standard against which these claims of ‘goodness’ may be assessed there is no way of knowing whether they are correct. There are a variety of norms, and not all of them necessarily lead to something good. The use of economic instruments may be coercive or have fatal consequences for those at the receiving end. Further, it could very well be that the EU’s pursuit of norms or efforts to define what is considered ‘normal’ (Manners 2002) are expressions of Eurocentric cultural imperialism. The literature implies that this is not the case, but if no distinction is made between different types of norms with regard to their validity and legitimacy, we cannot really tell. We are required to trust the analyst’s personal assessment of what is ‘good’ without access to clear reasons and critical standards.

An important first step towards rectifying this weakness would be to establish what standard for ‘goodness’ is being applied and to clarify its legitimacy basis. Surprisingly, there have been few efforts to do so in the existing literature. As a result, the ‘normative power’ literature verges on the apologetic and uncritical. The conception of the EU as a ‘normative’, ‘ethical’ or ‘civilizing’ power is very similar to the perspective employed by EU officials when describing the EU’s international role. This leaves scholars vulnerable to the charge that they are unable to distinguish between their own sympathy for the European project and their academic role as critical analysts. As noted, such conceptualizations also readily evoke images of the European imperialists and missionaries who set out to shape the world in their image, convinced that their values and way of life were superior (Diez 2005, 2012). Alternatively, such claims could be mere hypocrisy, a simple cover for the promotion of particular interests. In sum, it is only when there is clarity regarding the basis on which such claims are made, where there is an explicit critical standard, that they may be assessed and vindicated – or rejected.

The empirical claim and the lack of theory

In order to assess whether the conceptualization of the EU as a ‘normative power’ is simply a co-optation of the agenda of those in power, it would be critical to investigate its empirical relevance. However, the concept of normative power is not sufficiently nuanced to be useful in empirical analysis. After all, most actors pursue norms, most preferences also reflect a normative position and many foreign policy actors have some kind of normative influence or agenda. Both the United States and the former Soviet Union have (in different respects) pursued norms in the international system and sought to define the conception of normal. Thus, they might also fit the definition of a ‘normative’ power. The concept does not enable us to distinguish the EU’s normative foreign policy from that of other normative foreign policies. Neither is there anything that can tell us why the pursuit of norms is presumed to be a particular trait of the EU’s foreign policy.
Thus, the problem is not really that the claims of the EU’s particularity are contested. Scholars such as Richard Youngs (2010) and Adrian Hyde Pryce (2006) do argue that, on the whole, EU foreign policy does not differ much from the foreign policy of other states. However, these realist scholars do not fare any better than the normative power literature. They are equally unspecific when it comes to defining and specifying the alternative to normative power. Most importantly, they do not develop any theory that would allow them to account for normative behaviour as a ‘rational’ choice (for this see Eriksen and Weigård 1997). They have no theoretical tools that would allow them to take any claims of ‘normative power’ seriously. Their analyses are predetermined to conclude that such claims are simply, as Lundestad (1990) argues, a cover for particular interests or an expression of particularistic values – from a realist perspective, a power claiming the ‘normative’ mantle cannot be anything other than a hypocrite.

In order to assess the putative particularity of the EU’s foreign policy, at the least we need to know what kind of normative power it is. We must be able to discriminate between different types of norms and their legitimacy and validity (as we cannot de facto assume that ‘acting in a normative way’ is necessarily a good thing). Further, we need a theory that allows us to account for the possibility that normative behaviour is a ‘rational’ choice.

But if the ‘normative power’ concept is problematic, what are the alternatives?

**Humanitarian power as a critical standard**

As noted, a key problem with regard to the claims of Europe as a normative power is the lack of an explicit critical standard, as well as a means of assessing whether the pursuit of norms is legitimate. A critical standard may be derived from a cosmopolitan perspective, which presupposes the possibility of a community based on certain universal principles and an international order constrained by a higher-ranking law rather than a balance of power. An emphasis on law is important, as a foreign policy that claims to be ‘doing good’ – acting in the name of ‘humanity’ – must be held accountable. Unchecked power exercised in the name of ‘humanity’ or human rights alone could easily lead to totalitarianism (Eriksen 2009). Furthermore, the law would alleviate suspicions of hypocrisy and ensure consistency in the application and pursuit of norms. There is always the risk that actors will follow their own interests even when they know that this may harm others. The likelihood that they will suspect that others do so, even if they claim otherwise, is also strong. In order to eliminate such risks, common rules are necessary. The law functions as a system of action that makes it possible to implement moral duties as common commitments. A distinction is made, though, between traditional international law and multilateralism on the one hand and a cosmopolitan law of the people on the other. Whereas the state’s right to external sovereignty is a core principle in international law and multilateralism, cosmopolitanism prioritizes the rights of individuals above the rights of states.

This critical standard would be consistent with the idea of a foreign policy actor that breaks with what we understand as the ‘traditional’ foreign policy practices of great powers. The core feature of such a humanitarian power would be that it acts externally in order to transform the parameters of power politics through a focus on the international legal system, rather than attempting to write itself into the existing international system through an emphasis on multilateralism or with the aim of establishing a (new) balance of power. Such a power would seek to overcome power politics through the strengthening of cosmopolitan law, emphasizing the rights of individuals (not only the rights of states) to sovereign equality, the purpose being to establish a global law of citizens. Furthermore, a humanitarian power would be willing to bind itself, not only others, to such common rules. It should be noted that what is suggested
here is a thin version of cosmopolitanism, in which relatively few functions are considered ‘uploadable’ to the global level. It is based on a narrow conception of justice, whereby the cosmopolitan level would focus on human rights and security.

As the international system’s legal procedures for protecting human rights are still weak, a question for empirical research could be to what extent the EU’s arguments for human rights have been presented only with regard to particular actors or cases, or whether they are also part of a broader effort to transform the legal status of these rights in international law. An example of such an effort would be support of the establishment of the International Criminal Court (ICC). Furthermore, one might expect that a humanitarian power would develop standards, mechanisms and policy instruments that would ensure that its own policies are consistent with such principles. The confirmation of the Charter of Rights as legally binding for the EU and its member states would be one such indicator, as it would ensure greater consistency between internally and externally projected standards.

**What kind of norms?**

A second challenge to the conception of the EU as a normative power involves the ability to discriminate between different types of norms. As noted, a cosmopolitan perspective presupposes the possibility of agreement on certain universal principles; hence, it rests on the analytical distinction between moral and ethical norms. Moral norms refer to questions that concern deontological principles (such as human rights, democracy and the rule of law) and may be settled with reference to justice. Ethical norms, or values, refer to questions involving what is conceived of as the common good; they thus revolve around what can be justified in a context-bound ethical-political discourse (Habermas 1996: 255). Whereas ethical norms and the concept of values (understood as collective representations of the good that vary according to cultural and social context) are connected to the characteristics of a specific community and to the identity of the members of that community, moral norms or rights – referring to justice – are universal, in the sense that they pertain to humanity as such, independently of particular identities and belongings (Habermas 1996: 259).

This distinction becomes crucial, for example, if what we have in mind is a conception of the EU as an actor that promotes norms, but does so without embarking on the path towards European imperialism. Although it would not be reasonable to expect transcultural agreement over values, the same is not necessarily the case with regard to higher-order norms such as ‘equality, freedom, solidarity, self-realisation and human dignity’ (Eriksen and Weigård 2003: 138). Values or conceptions of what is good may vary according to cultural or social contexts; they may be particular to a specific community or a specific collective identity. If the EU defines itself and thinks of itself as a ‘force for the good’, then, as noted, this could be a subjective definition linked to a particular European understanding and defined in relation to a particular European cultural context. It might not match what is defined as ‘good’ or ‘valuable’ in other parts of the world, conditioned by other cultural or social norms. Thus, a ‘normative power’ Europe could be true to its own norms, yet its actions could be perceived as equivalent to those of ‘historical empires’ (Sjursen 2006b). This basic analytical distinction is important but missing from the literature on the EU as a ‘normative power’. The suggestion here is that a critical standard for a humanitarian power should be linked to an emphasis on moral norms, seeking to establish what is right, fair or just, as separate and distinct from ethical norms.

The concept of humanitarian power may allow us to capture the putative distinctiveness of the EU as a foreign policy actor. As an analytical tool, it does not carry any empirical claims.
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It does not, then, provide an (empirical) answer to the question raised in the introduction of what kind of foreign policy an entity that is neither a state nor an international organization can actually deliver. Rather, it is a working hypothesis that should allow analysts to further investigate the argument of the distinctiveness (or lack thereof) of the EU’s foreign policy. At the same time, it provides a critical standard against which any implicit claims of a ‘better’ foreign policy may be assessed and criticized (or vindicated). However, a weakness of this concept may be that it places too much emphasis on law and does not take sufficient note of the democratic requirement of the right of citizens to create the laws they must abide by.

In this last part of the chapter I address the implications of the achievements in CFSP for democracy.

The challenge of democracy

As suggested in the first part of the chapter, most of the literature on the CFSP indicates that power and authority within the domain of foreign and security policy are distributed in a manner that is not entirely consistent with intergovernmentalism. A particularly striking feature is the fragmentation of the (executive) foreign policy apparatus. National foreign and security policies are integrated in a semi-autonomous institutional structure that has developed a ‘higher-order’ conception of European interests and values. For some, developments in EU foreign policy may amount to a democratic surplus. To others it may represent a weakening of democracy.

A key challenge is to identify ‘who decides’ within this foreign policy system. It is often difficult to know or predict where responsibility for decisions actually lies. Foreign and security policy is made through interactions and exchanges, primarily between the executive branches of the member states. They make their decisions collectively, coming to a common understanding of what is feasible and desirable for the EU as a whole. Often, states refrain from vetoking decisions or they change their position in order to facilitate common policies. This makes it difficult to disaggregate decisions and trace them back to individual ministers or governments. While the key actors are the representatives of the member states, their autonomy and room for discretion are considerable. The supranational institutions also wield influence. More importantly, however, policy is shaped with reference to values and principles that are defined as particular to the Union, without exclusive reference to the interests and values of the member states.

On the one hand, there is a democratizing and ‘civilizing’ element to this system. The requirement for national executives to justify their positions and actions is much more intense than in traditional international settings (Keohane et al. 2009). The expectation that national governments will justify their policies was fortified by the legal obligations resulting from the unified legal framework established by the Lisbon Treaty. This framework entails some formal legal obligations (such as the Charter of Rights) to which governments must refer when justifying their policies, as well as the informal normative ethos of the CFSP. The expectation that member states’ justifications for their foreign policy stance will be consistent with the overall objectives of the EU thus has a legal dimension under the Lisbon Treaty.

What member states say and do must be considered acceptable and reasonable from the perspective of their European partners. This in itself may lead to a certain taming of national foreign policies. The CFSP may constitute a sphere in which deliberation about foreign policy takes place in a manner that requires member states to justify their positions and viewpoints to one another. Furthermore, the EU may also create expectations on the part of third parties that it will live up to the standards it has identified as binding.
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On the other hand, these justifications of foreign policies take place between and among executives. To the extent that accountability plays a part, it is a matter of legal accountability (through national courts), not accountability to elected representatives. In addition, as mechanisms for ensuring compliance are not in place, those in power may simply ‘talk the talk’ and act in a contradictory fashion. This form of collective, cross-national decision-making seems difficult to reconcile with the democratic requirement that it should be possible to trace decisions back to a form of authorization by the citizens. Such authorization would probably require institutions and procedures extending beyond the individual nation-states that would allow citizens access to information about what goes on amongst the executives, enabling informed opinions.

However, given that developments beyond intergovernmentalism have thus far primarily been the result of informal practice, it would be difficult to establish procedures that could compensate for the effects on citizens’ status as authors of the policies. There is also a sense of contingency or haphazardness with regard to the issues that are pushed outside of the intergovernmental mode of decision-making, which makes it difficult to ensure proper channels and mechanisms of authorization. To the extent that there is a general pattern, it is that of segmented policy-making and the coexistence and overlapping of parallel systems of foreign policy. The institutions established in Brussels represent the national executives, but their semi-autonomy contributes to the fragmentation of these same executives. The fragmentation of European foreign and security policy is also notable in that although member states maintain their legal competences in all matters of foreign and security policy, these competences are not exclusive to them. Incidentally, this fragmentation stands in contrast to the aspiration to coherence contained within the Lisbon Treaty.

There are, of course, exceptions. With the most dramatic international events or crises, it is much easier to trace the lines of authority back to national executives. What is most striking in such situations is the difficulty of reaching agreement. The distinctiveness of national foreign policies became evident, for example, in the intervention in Libya in 2012, as well as during the war in Iraq (Lehne 2012). Moreover, when it comes to implementation the EU must chiefly rely on the national systems. However, these incidents of going it alone do not resolve the challenges involved in tracing those responsible for decisions and holding them to account. Because it is more difficult to determine where decisions are actually taken, it is also unclear who should be accountable in many cases and to whom. Through active pressure, the EP has gradually extended its influence (Barbé 2004; Maurer et al. 2005; Crum 2009). The general rule, however, is that it is only consulted on the main aspects and basic choices made in the field of foreign and security policy and is kept informed about how these policies evolve. As noted, with the establishment of the EEAS the EP has succeeded in strengthening its position a little further, as the High Representative is subject to Parliamentary questioning on the same basis as the Commissioners. Furthermore, its role in deciding the budget of the EEAS is important, and its active involvement in the discussion concerning the establishment and design of the EEAS suggests that in the future the EP may be a more influential actor. However, it is widely acknowledged that it neither authorizes decisions nor is able to hold those making decisions accountable (Bono 2006; Crum 2009). Moreover, the powers of national parliaments are limited due to these very departures from the core premises of intergovernmentalism.

In any case, simply strengthening the powers of the EP may be insufficient as a solution to the democratic challenges of the CFSP. It is the fuzziness with regard to where authority and power actually lie that represents the greatest challenge. Thus, what might be required is a thorough (re-)constitutionalization of foreign and security policy in order to clarify lines of authority and power.
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Conclusion

In this chapter, I have suggested that, contrary to expectations, much of the literature on the EU’s foreign and security policy implies that the EU has achieved a certain degree of integration and has developed an autonomous governing capacity in the domain of foreign and security policy. This achievement entails new challenges, and raises important questions for further research.

One particular question has to do with the democratic anchoring of the EU’s foreign and security policy. Further research might assess to what extent this system of foreign policy represents a democratic surplus, due to the constraints established on national foreign policies, or rather a democratic deficit, as the location of power and authority has become more diffuse.

The emergence of a semi-autonomous EU foreign policy also challenges deep-seated ideas and conceptions of foreign and security policy as the exclusive domain of the state. The de facto commitment of member states to a common foreign and security policy raises a theoretical puzzle: why and how does such a voluntary relinquishing of power take place? Finally, it would be important to further pursue questions of how the establishment of a common foreign policy affects patterns of policy formation, cooperation and conflict amongst the member states, as well as how it influences established working methods, strategies and alliances within and outside the Union.

Notes

1 Many thanks to Mai’a Davis Cross for comments on this chapter.
2 Javier Solana, who was previously Secretary General of NATO, became the first HR in 1999. He was replaced by Catherine Ashton in 2009.
3 This draws on Sjursen (2011).
4 However, see Christophe Hillion (2014).
5 For a more detailed analysis of the ‘normative’ power literature, see Sjursen (2006a, 2006b).
6 There are a number of different ‘cosmopolitanisms’ (Brown 1992). What is presented here is only a rough outline pointing to some core components. It draws in particular on the relevant chapters in Bohman and Lutz-Bachmann (1997), Habermas (2001) and Eriksen and Weigård (2003).
7 This argument is based on the assumption that modern law is premised on human rights. For further discussions of the relationship between law and morality, see Apel (1997) and Habermas (1997).
8 For analyses of the legitimacy of cosmopolitan law, see Beitz (1979), Habermas (1996), Rawls (1999) and Forst (2001).
9 This distinction is related to the one often drawn in debates over cosmopolitan and communitarian perspectives in international relations theory (Brown 1992).

Bibliography


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