

The Normative Underpinnings of the Use of Force. Doctrinal Foundations and Ambiguities in the CFSP/ESDP Discourse

*Barbara Delcourt**

Contents

Abstract

1. Introduction
2. The Critical European Standpoint Concerning the Use of Force in International Relations
 - 2.1. The Necessity to Respect the UN Charter and the Prohibition of the Use of Force between States
 - 2.2. From the Attempt to Extend the Scope of the Rule Concerning the Prohibition on the Use of Force, to the Temptation to Use Military Means
3. The Normative Underpinnings of Debates Surrounding the CFSP
 - 3.1. Coercion as a Condition to Achieve the Rule of Law: The ‘Kantian’ Paradigm
 - 3.2. The Convergence between Values and Interests as a Prerequisite for the Use of Force: The ‘Realist’ Paradigm
4. Conclusion

Abstract

As has often been pointed out, the “EU’s legitimacy relies on its ability to contribute to the strengthening of universal norms of human rights and democracy at the international level”. But are all EU Members ready to become involved in armed conflicts (and eventually accept human losses) to uphold or defend these values? Setting my work in the context of current debates in academic and political circles about the use of force in

* Professor at the Faculty of Social, Political and Economic Sciences and at the Institute of European Studies and Associate Member of the Centre of International Law (Free University of Brussels). This contribution is mainly drawn from a text published in French by the review *Etudes internationales* (vol. XXXIV, n° 1, Mars 2003, pp. 5–24.).

international relations, I will seek to trace the emergent normative foundations of the EU's common security and defence policy.

The first part of the paper is mostly dedicated to an empirical investigation. It shows the evolution of the European position on the use of force, from the early days of the European Political Cooperation (EPC) through the post-Cold War developments. It consists of an overall review of EC declarations related to the use of force. This discourse analysis is justified, from a methodological point of view, by the need to avoid common bias. Indeed, by mixing factual and normative statements, some analyses lead to a re-interpretation of the past that does not reflect all cases. Moreover, those analyses are mostly focused on the political debates surrounding the contemporary development of European Security and Defence Policy (ESDP). On the whole, a close reading of the documents highlights the EC insistence on the necessity to severely limit the use of force, in accordance with the UN Charter. Nevertheless the end of the Cold War, and especially the Yugoslav crisis, raised fresh questions about humanitarian intervention and the necessity, for the EU, to back diplomacy by force. This brought about a new type of discourse, more 'robust' in its character, even if references to the principles of international law and the specific authority of the UN Security Council concerning the use of force are still present. As a result of these changes, the image of a 'civilian power' that used to characterise the EC's external policy seems to a certain extent, old-fashioned.

In the second part of the paper, I attempt to identify the doctrinal foundations of such declarations in order to understand how changes in conceptions pertaining to the use of force by European States could be justified from a normative point of view. In order to produce a more stringent analysis, I have focused on two different kinds of justification for the use of force. The first is provided by the liberal paradigm inspired by the Kantian doctrine and the second is grounded in the realist paradigm influenced by Hobbes. This choice is motivated by the degree of congruence of each of these paradigms with the European discourse and not by a personal or scientific conviction as to their intrinsic value or relevance. Indeed, all of the EC/EU's and individual Member States' declarations surrounding the question of European Defence and the Petersberg tasks relate, in one way or another, to these two schools of thought in international relations. The European discourse on the use of force appears to be suffering from chronic inconsistency. The texts produced in the European institutional framework are ambiguous. At a first glance, they appear to endorse a traditional liberal view by legitimising the use of force on humanitarian

The Normative Underpinnings of the Use of Force

grounds. On the other hand, modes of action and reasons for action are still justified in realistic terms, mainly through references to the specific interests of the Union and its Member States. This testifies to the enduring difficulty in defining a common political project based on common foundations, in particular when values and interests are at stake.

1. Introduction

Trying to identify the core values of the external action of the Union is either a very simple or a very complicated task. A brief look at the Common Foreign and Security Policy (CFSP) objectives in the Treaty reveals what it is about: promoting democracy, rule of law, human rights and so on. Values and norms seem to be intrinsically linked to the interests of Europe and the world altogether.¹ This assessment is rarely questioned, as demonstrated by Mr Dehaene's presentation of the work on 'external action' undertaken in the framework of the convention, even in the academic field (with a few notable exceptions!).² Most of the time, discussions are dedicated to institutions and competences that could be more suitable for Europe to perform its historical task: to contribute to world peace and security and achieve lasting development.³ The lack of debates or questioning of these 'European' values and interests renders the identification of the normative underpinnings of CFSP an elusive task. As Martti Koskenniemi noticed: "In addition to repeating norms to which Members are already bound through the UN Charter, the objectives remain abstract . . . Peace and security are by themselves meaningless postulates".⁴

My main hypothesis is that the identification of the normative underpinnings of the EU's external action could be achieved by questioning the way the use of force in international relations is justified (by international norms and values) in the European discourse. The mere fact that Europe as a whole has not yet developed a genuine Common European Defence Policy should not prevent us from analysing its conception of the

¹ TEU, Title V, Article 11 §1.

² R. Youngs indicates that an analysis of ESDP must begin to pay greater attention to the question: what is it for? 'The European Security and Defence Policy: What Impact on the EU's Approach to Security Challenges?', 11:2 *European Security* (Summer 2002) p. 103.

³ *European Convention*, Doc. 6 December 2002 < www.europakonvent >

⁴ M. Koskenniemi, 'International Law Aspects of the Common Foreign and Security Policy', in M. Koskenniemi (ed.), *International Law Aspects of the European Union* (Martinus Nijhoff, The Hague, 1998) p. 28.

use of force in international relations. From the early days of the European Political Cooperation (EPC) in the 1970s until the present Gulf crisis, the Foreign Affairs ministers have regularly taken positions on this matter. But most analyses have not based their findings on an overall empirical study of what was actually *said* and which kind of norms emerged from these declarations. The first part of this paper will therefore explain the main features of the European position regarding the use of force and its evolution.

Trying to conduct an overall assessment of the empirical evidence without a theoretical framework can lead to nowhere but up a blind alley.⁵ I will therefore explain changes in the discourse by reference to some of the political and juridical doctrines that underpin the external political aspects of European integration.

2. The Critical European Standpoint Concerning the Use of Force in International Relations

Until now Europe has often been presented as a ‘civilian power’. Its desire to distinguish itself from traditional State behaviour in the field of international relations, particularly its reluctance to resort to coercive means in order to impose its own priorities and interests is deemed to contribute to its genuine identity.⁶ If we examine the positions taken in this regard, we ascertain that, most of the time, declarations sought to enhance United Nations resolutions while at the same time recalling obligations under the Charter, in particular the principle of peaceful resolution of conflicts. With the fall of the Berlin Wall, military actions under the auspices of the UN were made possible to respond to different international crises. The fratricidal wars in the Balkans (and elsewhere) were in this respect a challenge for the Europeans who wanted to develop a more political project for Europe. By that time, Europe had begun to change its position on external intervention including by means of force although one cannot speak of a total reversal of its previously restrictive interpretations.

⁵ See H. Patomaki, ‘Cultivating the Mood of “Grieving Delight” The Moral Lessons of the Study of Narratives and Metaphors in the 1990–1991 Gulf War’, *Paper prepared by the second EuPRA-Conference in Budapest, Hungary, 12–14 November 1993*, p. 14.

⁶ C. Hill, *The Actors in Europe’s Foreign Policy* (Routledge, London, 1996); F. De La Serre, ‘La communauté, acteur international?’, 69 *Pouvoirs* (April 1994) pp. 107–116.; K. Nicolaidis and R. Howse, “‘This is my Eutopia...’: Narrative as Power’, 40:4 *Journal of Common Market Studies* pp. 767–792.

The Normative Underpinnings of the Use of Force

2.1. The Necessity to Respect the UN Charter and the Prohibition of the Use of Force between States

The 1973 *Document on European Identity* expresses the initial ambitions of Europe as a ‘whole’:

“L’Europe des Neuf est consciente des devoirs internationaux que lui impose son unification. Celle-ci n’est dirigée contre personne *ni inspirée par une quelconque volonté de puissance*. Au contraire, les Neuf sont convaincus que leur union sera bénéfique pour la communauté internationale tout entière, en constituant un élément d’équilibre et un pôle de *coopération avec toutes les nations, quels que soient leur dimension, leur culture et leur système social*. Ils entendent jouer un rôle actif dans les affaires mondiales et contribuer ainsi, dans le *respect des buts et des principes de la Charte des Nations Unies*, à ce que les relations internationales soient fondées sur plus de justice, à ce que l’indépendance et l’égalité des États soient mieux préservées, la prospérité mieux partagée et la sécurité de chacun mieux assurée . . .”.⁷

In fact, the basic principles of the United Nations concerning peaceful coexistence between its Member States have frequently been used in order to condemn or criticize military interventions all over the world, with a few exceptions, mainly involving US military interventions. Many reasons could explain such an attitude. European States were no longer colonial powers in pursuit of territorial expansion, and they were aware of the dangerous consequences of unilateral interventions conducted on ‘moral’ or political grounds.⁸ This attitude explains Europe’s firm condemnations of South Africa’s interventionism⁹, Israel’s military campaigns¹⁰, invasion of Afghanistan by soviet troops¹¹ and Vietnamese intervention in Cambodia

⁷ Copenhagen, 14 December 1973, pt. 9 (emphasis added).

⁸ O. Corten, ‘Droit, force et légitimité dans une société internationale en mutation’, 37 *Revue interdisciplinaire d’études juridiques* (1996) pp. 86–87; U. Schwarz, *Confrontation and Intervention in the Modern World* (New York, Oceana Publications Inc., 1970) p. 89.

⁹ *Bulletin de la Communauté européenne* 7 August 1985, p. 112; *ibid.*, 9 (1985), pp. 84–85; *ibid.*, 2 (1986) pp. 91–92; *ibid.*, 5 (1986) p. 81; *ibid.*, 4 (1987) p. 65; *ibid.*, 6 (1987) p. 109.

¹⁰ *Bull. CE*, 2 (1977) p. 69; *ibid.*, 6 (1979) p. 100; *ibid.*, 12 (1981), p. 76; *ibid.*, 4 (1982) pp. 50–51; *ibid.*, 6 (1982) pp. 84–85.

¹¹ *Bull. CE*, 1 (1980), p. 7; *ibid.*, 2 (1980) p. 85; *ibid.*, 3 (1981) p. 10. ; *ibid.*, 6 (1981) p. 9; *ibid.*, 12 (1985) p. 118.

against the Khmer Rouge regime.¹² A thorough examination of the texts produced in the framework of EPC reveals that no humanitarian concerns were ever used to justify the unilateral use of force.¹³ By the same token, it should be noted that intervening States themselves rarely justify their actions on the basis of humanitarian concerns and prefer to motivate intervention with an extensive interpretation of the principle of self-defence. But this was not sufficient to convince European States of the well-founded nature of military operations led by Vietnam in Cambodia or India in Pakistan, or even Tanzania in Uganda.¹⁴

In the case of traditional interstate wars, such as those opposing Iraq and Iran or India and Pakistan, the EC and its Member States have repeatedly recalled the prohibition of the use of force and the necessity to solve conflicts by peaceful means.¹⁵ On the other hand they never condemned the use of force by the United States against Libya, the capture of Noriega during the military operation in Panama or the bombing of Nicaragua's harbours in the 1980's (and the military training of the contras). This absence of official reactions left groundless any kind of justification for exceptions to the prohibition on the use of force (such as in the case of intervention against terrorism and narco-trafficking, to promote the restoration of democracy or making respect for human rights more effective).¹⁶

We can therefore state that, until the 1990s, the EC and its Member States refused to accept military interventions for the "sake of Humanity" or in order to "project a Hexagon of civilisation" (rule of law, democratic participation, peaceful resolution of conflicts, social justice, interdependence and State monopoly of violence).¹⁷ If Europe has had a tendency to portray

¹² *Bull. CE*, 7/8 (1980) p. 91; interventions in Thailand have also been condemned, *Bull. CE*, 4 (1983) p. 68; 1 (1984) p. 55.

¹³ This is the case of most Members of the UN, N. J. Wheeler, 'Pluralist and Solidarist Conceptions of International Societies: Bull and Vincent on Humanitarian Intervention', 21:3 *Millennium: Journal of International Studies* (1992) p. 472.

¹⁴ *Ibid.*

¹⁵ *Bull. CE*, 4 (1986) p. 115; *ibid.*, 7/8 (1986) p. 109, *ibid.*, 1 (1987) p. 694; *ibid.*, 4 (1990) pp. 77–78. See also the positions defended in the name of Europe in front of the General Assembly of the UN, *ibid.*, 9 (1987) p. 117.

¹⁶ As S. Hoffmann states, during the cold war, interventionist doctrines like those of Brejnev or Reagan, did not actually rely on humanitarian concerns, 'The Politics and Ethics of Military Intervention', 37:4 *Survival* (Winter 1995/6).

¹⁷ L. Goetshel, 'L'Union européenne et la sécurité collective', 86 *Relations internationales* (Eté 1996) pp. 143–161; H.-G. Ehrart, 'Quel modèle pour la PESC?', 55 *Cahiers de Chaillot* (October 2002), pp. 10–11 and pp. 12–13.

The Normative Underpinnings of the Use of Force

itself as an original security actor, it is largely due to its identification with alternative dimensions of security (e.g., social, political, environmental, etc.) alongside with the development of a so-called “genuine pacific culture”.¹⁸

2.2. From the Attempt to Extend the Scope of the Rule Concerning the Prohibition on the Use of Force, to the Temptation to Use Military Means

In the aftermath of 1989, some changes began to appear in the European discourse, while foreign ministers continued to condemn aggressive actions¹⁹ such as the occupation of Kuwait by the Iraqi regime.²⁰ During this period, the most remarkable thing to point out is the tendency to consider as ‘illegal’ the use of military force *within* a country.²¹ For instance in the case of Yugoslavia, Europeans recalled the principle prohibiting the use of force even before recognising the independence of the Republics.²² This was

¹⁸ H. Sjursen, ‘New Forms of Security Policy in Europe’, 01:4 *Arena Working Papers WP*; A. Deighton, ‘The European Security and Defence Policy’, 40:4 *Journal of Common Market Studies* p. 722; Goetschel, *supra* note 17, p. 159; M. Bacot-Decriaud, ‘L’UE confrontée aux interventions d’humanité: une délicate conceptualisation’, in J-F. Rioux, *La sécurité humaine. Une nouvelle conception des relations internationales* (L’Harmattan, Paris, 2001) pp. 205–244; Ehrart, *supra* note 17, pp. 23–25.

¹⁹ Like the ones in Nagorno-Karabach, *Bull. CE*, 5 (1992) p. 115; *Bull. UE*, 9 (1993) p. 84; *ibid.*, 1 (1994) pt. 1.3.7.; the military intervention of Yugoslavian army in Bosnia-Herzegovina, *Bull. CE*, 4 (1992) p. 87; *ibid.* 5 (1992) pp. 112–113. The EU seemed to develop a more understanding attitude towards the Turkish military actions in northern Iraq in 1995, *Bull. UE*, 4 (1995) pt. 1.4.17 and 5, (1995) pt. 1.4.15. But the EU has a more critical position against military interventions in Congo, *Bull. UE*, ½ (1997) pt. 1.3.19. In the conflict between Ethiopia and Eritrea, the UE Presidency has constantly been recalling the principle of pacific resolution of conflicts, *see for instance*, *Bull. UE*, 5 (1998) pt. 1.3.7.

²⁰ *Bull. CE*, 7/8 (1990), pp. 127–130; *ibid.*, 9 (1990), pp. 84–86; *ibid.*, 1/2 (1991) pp. 107 *et seq.*

²¹ In the Baltic States for example, *Bull. CE*, 3 (1990) pp. 81–82; *ibid.*, 1/2 (1991) pp. 109–110; in Sri-Lanka, *ibid.*, 10 (1990) p. 105; *see also* the condemnation of military actions against the Karen population in Myanmar, *ibid.*, 4 (1992) p. 88. On the 1991 events in Lithuania, *see* article by Zalimas in this volume – ed.

²² Déclaration commune du 26 mars 1991, *Bull. CE*, 3 (1991) p. 77 ; Déclaration commune du 8 mai 1991, *Bull. CE*, 5 (1991) p. 90. In the common statement delivered on 5 July, the EC and its Member states declared: “[q]u’il appartient aux seuls peuples de la Yougoslavie de décider de l’avenir de leur pays. Ils soulignent, par conséquent, leur ferme opposition à tout usage de la force”, *Bull. CE*, 7/8 (1991) p. 117.

clearly a change in relation to their traditional stand on civil warfare, partly motivated by the need to protect individual and minority rights. This is still the case when they want to strengthen a cease-fire or a process of internal pacification.²³ In such cases the declarations amount to criticism of the *excessive* use of force by a State against its own population rather than an actual wish to extend the scope of the traditional rule.²⁴ The reason for this prudence lies certainly in the necessity to avoid an upheaval of the principle that characterises modern States, that is the ‘state monopoly of legitimate violence’. The events in Côte d’Ivoire seem to confirm this interpretation.²⁵

This ‘liberal’ attitude has not led to a radical departure from the non-interference rule enshrined in the UN Charter. Even if the ‘right to interfere’ ranked high on the agenda by the early 1990s, no European foreign minister has ever pledged support for the unilateral use of force in international *fora* and has never endorsed it or understood it as being an emergent norm in international law.²⁶ In fact they have shown a remarkable consistency in

²³ Declaration by the Presidency on behalf of the EU on recent developments in Côte d’Ivoire, Brussels, 22 September 2003, 12745/03 (*Presse* 277) P 115/03; Declaration by the Presidency on behalf of the EU on the Peace Process in Sudan, Brussels, 8 August 2003, 11973/03 (*Presse* 238) p 96/03 ; Declaration by the Presidency on behalf of the EU on the Peace Process in Liberia, Brussels, 28 July 2003, 11832/1/03 REV (*Presse* 223), p 92/03 ; Declaration by the Presidency on behalf of the EU on Peace Agreement in Liberia, 22 August 2003, 12062/03 (*Presse* 246) P 101/03; Declaration by the Presidency on behalf of the EU on the latest military attacks in Bujumbura (Burundi), Brussels, 10 July 2003, 11367/03 (*Presse* 206) P85/03.

²⁴ See the EU Declaration on Chechnya, *Bull. UE*, 1/2 (1995) p. 94 and the Press release delivered in Brussels on the 17th of January 1995, *Documents d’actualité internationale (D.A.I.)*, no.5 (1^{er} mars 1995) pt. 61.

²⁵ See also the tremendous efforts of the international community to restore a monopoly of force in Afghanistan and the way Europeans tried to cope with the Albanian rebels (UCK) in Macedonia, C. Piana, ‘La PESC après Saint-Malo: de la diplomatie à la défense’, Colloque du CERI “l’Union européenne, acteur international”, 20–21 June 2002, <www.ceri-sciences-po.org/themes/europe/home.htm>: see also the request made by the Council to the illegal armed group in Columbia “to cease all hostilities”, 25 59th Council meeting “External Relations”, Brussels, 26 January 2004.

²⁶ Even during the Kosovo War, see O. Corten, ‘La référence au droit international comme justification du recours à la force : vers une nouvelle doctrine de la guerre juste?’, in A-M. Dillens, *L’Europe et la guerre* (Facultés Universitaires Saint-Louis, Bruxelles, 2001) pp. 69–94.

The Normative Underpinnings of the Use of Force

condemning unilateral military intervention.²⁷ In their repeated demands for the neighbours of Congo and Burundi to stop their military aid to the belligerents, they clearly stick to the traditional rules prohibiting indirect interventionism.²⁸

As a matter of fact, they did not really need such a ‘new legal basis’. Since the end of the cold war the Security Council has been able to manage some international crises without being paralysed by a veto. Insofar as massive human rights violations in internal conflicts may be qualified as “threat to international peace and security”, the Security Council can authorize States to “use all necessary means” to enforce peace agreements, the delivery of humanitarian assistance, no-fly zones, etc.²⁹ In these circumstances, European States have participated with their armed forces to multilateral peacekeeping or peace enforcement missions.³⁰

Nevertheless the Yugoslav conflicts have raised some questions about the legitimacy of the very restrictive rules concerning the use of force in international relations. On one hand, Europe was incapable of ending the slaughter that was taking place in its own backyard. While its economic power is undeniable, it was insufficient to ensure that respect for fundamental principles of human and minority rights were upheld. The UN itself was losing its credibility as a result of its involvement in the area whilst NATO made a ‘bold’ display of its capacity to ‘project power’ vis-à-vis the Serbs in Bosnia. At that time, more and more Europeans were

²⁷ Declaration by the Presidency on behalf of the EU on the recent massacres in and around Drodro, North-Eastern part of DRC, Brussels, 14 April 2003, 8433/03 (*Presse 115*) P47/03; Declaration by the Presidency on behalf of the EU on the withdrawal of Ugandan people’s Defence Forces from the Ituri region of DRC, Brussels, 30 April 2003, 8827/03 (*Presse 121*) P52/03.

²⁸ Declaration by the Presidency on behalf of the EU on the situation in the East of the DRC, Brussels, 27 June 2003, 11016/1/03/REV 1 (*Presse 192*) P77/03; Declaration by the Presidency on behalf of the EU on the massacres in the province of Ituri in the DRC, Brussels, 13 October 2003, 13526/03 (*Presse 301*) P 127/03; Declaration by the Presidency on behalf of the EU on the latest military attacks in Bujumbura (Burundi), Brussels, 10 July 2003, 11367/03 (*Presse 206*) P85/03.

²⁹ O. Corten and P. Klein, *Droit d’ingérence ou obligation de réaction?* (Bruylant, 2^{ème} éd., Bruxelles, 1996) and Rapport de la Commission internationale de l’intervention et de la souveraineté des Etats, *La responsabilité de protéger*, December 2001, <www.crdi.ca>.

³⁰ M. Ortega, ‘L’intervention militaire et l’Union européenne’, 45 *Cahiers de Chaillot* (2001), <www.iss-eu.org/chaillot/chai45.html>; J. Howorth, ‘L’intégration européenne et la défense: l’ultime défi?’, 43 *Cahiers de Chaillot*, (Novembre 2002) pp. 1–101.

becoming convinced of the need to develop new military capabilities within the EU, so it was not very surprising that during the Kosovo crisis, European Heads of State and government chose to endorse military action against Yugoslavia without the due authorization of the Security Council.³¹

However at the end of the Kosovo war, some European ministers like Joschka Fischer, Louis Michel and Hubert Védrine expressed their refusal to endorse such a permissive regime, pointing out the potential dangers of such a 'precedent' for the global security system.³² France, Germany and Belgium used the same kind of argument to convince their partners (the so-called 'New Europe') not to engage in or sustain a military operation against Iraq without the formal approval of the Security Council. They succeeded in some way when, in February 2003, all the participants of the extraordinary European Council stated: "We [as members of the European Union] are committed to the United Nations remaining the centre of the international order. We recognise that the primary responsibility for dealing with Iraqi disarmament lies with the Security Council".³³ Even in light of subsequent events this remains a very important official statement that deserves attention, especially when *opinio juris* is to be taken into consideration for assessing the emergence of a new norm governing the use of force.

It is noteworthy that when it comes to the right to self-defence the EU is more prone to an extensive and permissive interpretation of it. For instance it has accepted the American argument for exercising their right of self-defence against Afghanistan after the 11 September attacks even if the American argument provided a very extensive interpretation of it. Europeans did not even mention the obligation enshrined in Article 51 of the Charter to work closely with the Security Council when exercising this right.³⁴ Whether this move is symptomatic of a shift to a less formalistic view regarding the use of force in international relations is worth questioning.

³¹ At that moment, there were also divergences among Europeans on the question of the legal basis, see O. Corten and B. Delcourt, *Droit, légitimation et politique extérieure: l'Europe et la guerre du Kosovo* (Bruylant, Bruxelles, 2000/1) p. 310.

³² B. Delcourt and F. Dubuisson, 'Contribution au débat juridique sur les missions 'non-article 5' de l'OTAN', 1–2 *Revue belge de droit international* (2002) pp. 439–467.

³³ *Extraordinary European Council*, Brussels, 17 February 2003; *Presidency Conclusions*, Brussels, 20–21 March 2003, §§ 67 and 69.

³⁴ See O. Corten and F. Dubuisson, "L'opération 'liberté immuable': une extension abusive du concept de légitime défense", 1 *Revue générale de droit international public* (2002) pp. 51–77.

The Normative Underpinnings of the Use of Force

The evolution of the European discourse – that is the discourse shaped in the framework of the European institutions – on the use of force is therefore not free of ambiguity. At first glance, it seems quite obvious that it reveals an orthodox view; and some will qualify it as being ‘legalistic’. But the more European governments have developed political ambitions at the international level (encompassing the development of a security and defence policy), the more they seem to have introduced elements of distortion. This growing discursive instability can be traced back to the traditional doctrinal debates about the use of force in international relations.

3. The Normative Underpinnings of Debates Surrounding the ESDP

The development of a common European defence and security policy has been justified by the need to provide adequate institutions in order to implement the norms and the values Europe is fighting for. Europe’s essentially declaratory external policy has been considered as the main reason explaining its failures in the Balkans. The link between *norms* and force has always been a concern for philosophers, especially those who embrace a cosmopolitan view. But some arguments used in order to sustain the European endeavour have to be understood in light of a different kind of doctrine. As a matter of fact, a lot of arguments are more or less related to the *interests* of the State (or Europe). This kind of justification can also be found in modern doctrines that are, unlike the former, more anchored in a ‘statist’ tradition.

3.1. Coercion as a Condition to Achieve the Rule of Law: The ‘Kantian’ Paradigm³⁵

If law needs institutions to be implemented, coercion appears to be a condition for the operability of a legal system – be it internal or

³⁵ From a theoretical perspective, it seems relevant to establish a link between Kant, Kelsen and Habermas. They share a common conviction on the necessity to assure that law is prevailing over politics in international relations. In their views, persons and social groups must be the first beneficiaries of a kind of cosmopolitan order in which supranational institutions are capable of implementing individual and collective rights and to maintain order. This school of thought has been presented as the doctrine *par excellence* that underlines European integration. See I. Manners ‘Normative Power Europe: A Contradiction in Terms?’, 40:2 *Journal of Common Market Studies* (2002) pp. 240 *et seq*; A. Colonomos, ‘L’éthique de la politique étrangère’, in F. Charillon, *Politique étrangère. Nouveaux regards* (Presses de Sciences Po, Paris, 2002) p. 130.

international.³⁶ In the 18th century, Emmanuel Kant expressed this conceptual link between law and coercion, surmising that only coercion could bring the inherent rights of a person into existence.³⁷ In this regard, it is the public constraint – the State – that is in charge of implementing the law. With the prospect of an emerging cosmopolitan State – that is to say a community of free States bound by law – the legitimate constraint must rely on a cosmopolitan constitution and a coercive apparatus. In any event, this constraint is only applicable inside the ‘society of nations’. Unlike some ‘neo-Kantian’ authors who support a broader interventionist concept, the German philosopher seems to criticize intervention by principle³⁸, even if he considers that war could sometimes be a “*ruse de la raison*” enabling people to converge around republican values.³⁹ Above all, he takes a radical stand against the ‘just war’ doctrine as he considers that law cannot be used to justify war. Only self-defence could imply the resort to force.⁴⁰

Hans Kelsen is clearly inspired by the Kantian doctrine. As a positivist, but also a fervent militant for an international democracy based on a global security system, he has criticized the concept of State sovereignty insofar as it prevents regulation by international law. The principle of the primacy of international law he has fought for is grounded on the ‘unity of mankind’; this is the reason why he considers that international norms have to prevail upon internal norms written by States.⁴¹ Moreover, to be effective the international legal system must develop international jurisdictions that must rely on an international police force for enforcing their judgments.⁴²

³⁶ B. Conforti, ‘Humanité et renouveau de la production normative’ (*Mélanges René-Jean Dupuy*, Paris, Pedone, 1991) p. 119.

³⁷ E. Kant, *Idée de l’histoire universelle d’un point de vue cosmopolitique* (*Œuvres philosophiques*, t.2, Paris, Gaillard, 1996).

³⁸ E. Kant, *Projet de paix perpétuelle* (Hatier, Paris, 1988) principe V des articles préliminaires, p. 28; C. Duflo, *Kant. La Raison du droit* (Michalon, Paris, 1999) p. 51; W. B. Gallie, *Philosophers of Peace and War* (Cambridge University Press, Cambridge) 1978, pp. 23 *et seq.* According to I. Manners, norms and values can be diffused without resorting to military tools, *supra* note 35, pp. 244–245.

³⁹ S. Goyard-Fabre, *Kant et le problème du droit* (Librairie philosophique Vrin, Paris, 1975) pp. 239 *et seq.*

⁴⁰ G. L. Negretto, ‘Kant and the Illusion of Collective Security’, 46:2 *Journal of International Affairs* (1993) pp. 506 *et seq.*

⁴¹ D. Zolo, ‘International Peace through International Law’, 9:2 *European Journal of International Law* (1998) pp. 306 *et seq.*

⁴² C. Leben, ‘Hans Kelsen and the Advancement of International Law’, 9:2 *European Journal of International Law*, (1998) pp. 287–305; C. Tournaye, *Kelsen et la sécurité collective*, (L.G.D.J., Paris, 1994) pp. 9–14.

The Normative Underpinnings of the Use of Force

Sanctions are viewed as a condition for the normativity of the international legal order, which will otherwise long remain 'primitive law'. For Kelsen the 'just war' principle is intended to support the idea that ethical norms (like human rights) must be enforced by military means to be considered as positive laws.⁴³

Some of the writings of Jurgen Habermas could also be understood in reference to this cosmopolitan tradition. In the book he has written for the bicentenary of the Perpetual Peace Treaty (Kant 1795), he states that human rights will never be fully respected unless the international community establishes an executive force. By the same token, the rule of non-interference must be revised to enable humanitarian actions.⁴⁴ In this respect, Habermas defended the NATO operation against Yugoslavia in 1999. He considered that the Kosovo war enhanced the cosmopolitan values and norms pitted against traditional international law.⁴⁵ He justified the non-observance of procedures on humanitarian grounds – in this case the Security Council's authority – on account of the uneven progress of international institutions.⁴⁶

Could ESDP be seen as an instrument for fulfilling the requirements of this kind of cosmopolitan doctrine? As a matter of fact, some declarations seem to be pointing in this direction. For example, EU External Relations Commissioner Chris Patten has declared: "An independent foreign policy is an empty slogan if it is not used to some purpose and to some effect . . . The EU in short has every reason to strut its stuff: boasting its achievements, shaping events and spreading its values".⁴⁷ Unlike European governments, the European Parliament has explicitly supported the implementation of a 'right to interfere' to protect people around the world from the curse of

⁴³ H. Kelsen, *Théorie pure du droit* (L.G.D.J./Bruylant, Paris/Bruxelles, 1999) pp. 311–313; F. Rigaux, 'Hans Kelsen on International Law', 9:2 *European Journal of International Law* (1998) p. 335.

⁴⁴ J. Habermas, *La paix perpétuelle. Le bicentenaire d'une idée kantienne* (Ed. du Cerf, Paris, 1996) pp. 61–62. See also J. Rawls, for whom the non-intervention principle does not apply in the case of massive human rights violations, *Le droit des gens* (Ed. Esprit, Paris, 1996) pp. 59, 78, and 82.

⁴⁵ J. Habermas, 'Bestialité et humanité: une guerre à la frontière du droit et de la morale', *Revue PESCE, Forum franco-allemand*, <www.leforum.de/fr/fr-revue-pesc08.htm>. All web pages have been visited on in April 2004.

⁴⁶ *Ibid.*

⁴⁷ 'A Voice for Europe? The Future of CFSP', <www.europa.eu.int/comm/external_relations/news/patten/speech01_111.htm>.

human suffering.⁴⁸ Javier Solana (the High representative for the EU) has argued that “CFSP is the means to an end, namely to promote the values and principles for which the European Union is respected worldwide. We should increasingly be able to ensure that the rule of law and human rights are respected and that the people throughout the world can, like ourselves, enjoy the benefit of freedom, democracy and prosperity”.⁴⁹ The lessons of Europe’s failures in the Balkans and the relative success of the US-led NATO military intervention in Bosnia seem to have determined the course of the European defence project, to be understood as a ‘projection of European values’. Tony Blair declared in 1998 that “the only thing that was ever going to work in Kosovo was diplomacy backed up with a credible threat of force”,⁵⁰ expressing what most of the European governments thought at that time.

Very enthusiastic comments were made around the initiative launched by the French and the British governments pointing out the fact that military interventions that will be undertaken within the framework of the ESDP would only be justified by reference to the universal values and international norms enshrined in the UN Charter. As a consequence strictly ideological or imperialist concerns are no longer supposed to motivate Europe’s external action.⁵¹ As stated during the European Council in Thessalonica, the EU “will contribute relentlessly to strengthening and reshaping the institutions of global governance, regional cooperation and *expanding the reach of*

⁴⁸ *Bull. UE*, 4 (1994) p. 96. In the last report pertaining to the relations between the EU and the UN, the ‘right to interfere’ is not used anymore. But it is suggested that in case of mass murder, crimes against humanity or genocide, it should be possible to by-pass a veto issued in the Security Council if an ‘impartial institution’ acknowledges that there is a danger regarding the above mentioned crimes, *A5-0480/2003*, p. 13 § 18.

⁴⁹ Address by J. Solana, *Forschungsinstitut der Deutschen Gesellschaft für Auswärtige Politik*, Berlin, *47 Cahier de Chaillot* (14 November 2000) p. 113.

⁵⁰ T. Blair, Press conference in Pörtschach, *47 Cahier de Chaillot*, (24 and 25 October 1998) p. 8; *see also* J. Solana: “There is no inherent opposition between power, supposedly to the US method, and law, the ‘European method’. Law and Power are two sides of the same coin. Power is needed to establish law and law is the legitimate face of power. Sometimes European countries have tended to forget that law and international norms have to be backed by force”, in ‘The Future of transatlantic Relations: Reinvention or Reform?’, Published by *Progressive Governance Conference* (11–13 July 2003) <www.ue.eu.int>.

⁵¹ Ortega, *supra* note 30, p. 28; Ehrart, *supra* note 17, p. 26; J. Solana, ‘Europe. Security in the Twenty-first Century’, *The Olof Palme Memorial Lecture*, Stockholm, 20 June 2001, p. 7

The Normative Underpinnings of the Use of Force

international law".⁵² This position followed a decisive stand in favour of the establishment of the International Criminal Court,⁵³ whose Statute, by the way, clearly rejects the unilateral use of force for implementing the objectives laid down by the signatories.⁵⁴

Besides what can appear to be a concrete step to the establishment of a cosmopolitan order, there are other arguments used in the debates surrounding the ESDP that could not be understood by reference to this specific school of thought.

3.2. The Convergence between Values and Interests as a Prerequisite for the Use of Force: The 'Realist' Paradigm

Those who consider that every community has its own system of values question the existence of universal ethics.⁵⁵ Pluralist conceptions of international society are anchored in a realist tradition rather than on the idea of natural law that actually sustains the claims towards universal justice.⁵⁶ In the hobbesian doctrine, for example, the notion of 'justice' is intrinsically linked to the existence of a Sovereign who is the sole interpreter of the norms derived from natural law. At the international level, the absence of a unique decision-making centre prevents any possibility of defining universal norms for the community of nations. Since international law (that is natural law) is not deemed to regulate international relations, only few cautionary rules should exert a civilizing effect on relations between States.⁵⁷ Max Weber would later argue that attempts to limit State sovereignty through reference to universal values would nevertheless fail to overcome the

⁵² *Presidency Conclusions*, Thessaloniki, 19–20 June 2003, §54 (emphasis added).

⁵³ *Bull. EU*, 4 (2002) 1.6.18.

⁵⁴ Preamble of the Statute of the International Criminal Court, §§8–9.

⁵⁵ D. Boucher, *Political Theories of International Relations* (Oxford University Press, Oxford/New York, 1998) pp. 340, 344 and D. Morrice, 'The Liberal-Communitarian Debate in Contemporary Political Philosophy and its Significance for International Relations', 26:2 *Review of International Studies* (2000) pp. 236–237.

⁵⁶ Wheeler, *supra* note 13, p. 464 ; A. J. Bellamy, 'Humanitarian Intervention and the Three Traditions', 17:1 *Global Society* (2003) pp. 9–11. For didactic purpose, we only focus on the two main traditions, considering that authors inspired by the 'rationalist' tradition could either be 'pluralist' or 'solidarist' in certain circumstances.

⁵⁷ S. Goyard-Fabre, 'Les silences de Hobbes et de Rousseau devant le droit international', tome 32 *Archives de philosophie du droit* (1987) pp. 59–69

irrational nature of domination. On the contrary, it would instead lead to a “war of the gods”⁵⁸ or, to put it in other terms, a ‘clash of civilizations’.

Modern realists consider that international politics is by nature determined by power relations. That is the reason why they tend to focus on the question of interests to explain the international system.⁵⁹ In this respect, only national interests can explain military interventionism, while humanitarian concerns are seen as secondary motivations. Stephen Krasner has thus demonstrated that powerful States have only defended ‘universal values’ when their specific interests were at stake.⁶⁰ No general or abstract concern has ever been decisive in such a matter.⁶¹

We should keep in mind that in the EU Treaty the primary objective of the CFSP is:

“ - to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;

- to strengthen the security of the Union in all ways;

- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;

- to promote international cooperation;

⁵⁸ P. Raynaud, ‘La guerre et le droit: les limites de la rationalisation. Max Weber et sa postérité’, tome 32 *Archives de philosophie du droit* (1987) pp. 104–105.

⁵⁹ D. Battistella, ‘L’intérêt national. Une notion, trois discours’, in Charillon, *supra* note 35, pp. 143–147.

⁶⁰ For Youngs: “Ministerial statements have frequently suggested that more forceful military intervention is necessary to reaffirm the EU’s identity and bestow it with enhanced credibility in the eyes of the European citizens disillusioned with their government’s dismal failure in the Balkans”, *supra* note 2, p. 106.

⁶¹ S. Krasner, ‘Sovereignty, Regimes, and Human Rights’, in V. Rittberger (ed.), *Regime Theory and International Relations* (Clarendon Paperbacks, Oxford University Press, Oxford, 1995) pp. 141, 143. Inside the pluralist paradigm, some authors do not agree with tough realist analyses considering that only egoistic interests can motivate military intervention by powerful States. But they consider that the international society is not mature enough as to provide consensual and universal definition of the ‘good life’, Wheeler, *supra* note 13, p. 467. It is then unlikely to have a ‘right to interfere’ for the sake of ‘Humanity’, Morrice, *supra* note 55, pp. 233–251.

The Normative Underpinnings of the Use of Force

- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.”⁶²

During the Kosovo war, some statements made by the British and French foreign ministers assumed that, in democratic regimes, interests can also have a “moral” dimension.⁶³ Javier Solana recalled a very popular idea concerning Europe’s international role when he said: “CFSP is about making a difference in international politics. It is about the European Union being able to project its values and interests – the core of its political identity – effectively beyond its own borders.”⁶⁴ In a comment published by the *Financial Times*, he stated that the new capabilities of Europe

“will help the EU to advance its core objectives: the alleviation of poverty, the promotion of democracy and the rule of law; and the protection of human rights. *It will allow us to make a greater contribution to the development of international stability and the preservation of peace and security. This will serve our own interests: a more stable, safer world helps create buoyant markets, together with the scope for greater trade and fewer displaced persons.*”⁶⁵

⁶² TEU, Title V, Article 11.

⁶³ This kind of ‘narrative’ clearly appears in Bush’s Declarations concerning the US global policy, see E. Rhodes, ‘Onward Liberal Soldiers? The Crusading Logic of Bush’s Grand Strategy and what is Wrong with it’, <www.ciaonet.org/special_section/iraq/analysis> p. 15. The ‘natural’ congruence between universal values and US interests is also resumed in a presidential statement delivered by Clinton in 1994 and in most arguments underlying American interventionism in the 1990s, Ortega *supra* note 30, pp. 31–33. In a conference given in Chicago on the 22 April 1999, T. Blair has proposed five criteria or questions for sustaining military intervention that revealed a more utilitarian than moral or legal approach: 1) Are we sure of what we are going to do? 2) Have we exhausted all available means? 3) Are there military operations that could be implemented in a rationalistic and cautious way? 4) Are we ready to undertake a long lasting operation? 5) Are our national interests at stake? Howorth, *supra* note 30, p. 93, note 170 (author’s translation).

⁶⁴ Address by J. Solana, *supra* note 49, p. 111; N. Gnesotto, ‘Guerre et paix: la prévention des conflits en Europe’, 11 *Cahiers de Chaillot*, (1993) p. 2 ; A. de Vasconcelos, ‘La politique extérieure d’une Europe ouverte’, in M.-F. Durand and A. De Vasconcelos (eds.), *La PESC. Ouvrir l’Europe au monde* (Presses de Sciences Po, Paris, 1998) pp. 25 *et seq.*

⁶⁵ J. Solana, ‘Why Europe needs the military option’, *Financial Times* (29 September 2000) (emphasis added); see also A. JK Bailes, ‘The Security Challenges for the European Union’, *A Talk at Copenhagen*, 25 September 2003.

Texts and declarations from inside the EU undoubtedly reflect the idea of developing an autonomous capacity to manage international crises, or to restore peace and security in troubled areas. At the same time, they also suggest there are some political limits to the actions that the EU could undertake, which suggest that realist theory rings true. The following facts can support this assertion:

- Firstly, European Defence is mainly dedicated to protecting Western European populations.⁶⁶ Broader security issues – including societal, environmental or economical aspects – often concern events and threats (like terrorism) that could undermine the well being of Europeans themselves.⁶⁷ Here, interests are likely to be collective and not defined in a strictly national framework.⁶⁸ But are they intrinsically different? The use of force is still envisaged when Europeans are in danger. Many hypotheses of military planning are related to the European theatre or its immediate neighbourhood (the “near abroad”), even if some faraway operations are also envisaged.⁶⁹

⁶⁶ D. Mahncke, ‘Les paramètres de la sécurité européenne’, 10 *Cahier de Chaillot* (1993) p. 5.

⁶⁷ “La PESD, grâce aux capacités militaires et civiles qu’elle développe pour la gestion de crise, doit contribuer à la prévention et à la maîtrise de la menace terroriste, et ce faisant à la protection de *nos populations*”, Franco-German Defence and Security Council, Nantes, 47 *Chaillot Paper* (23 November 2001) p. 119. Declarations concerning ESDP and the fight against terrorism actually put more weight on the preservation of *our* security, even if the development of European capabilities in this field is supposed to benefit the populations concerned, see Annex V, Presidency Conclusions, Seville, 21 and 22 June 2002; J. Solana, ‘A European route to security’, *Eurohorizon*, 5/03/04, <www.euro-horizon.com/isolana.html>.

⁶⁸ See anyway the speech of J. Chirac, “France, of course, intends to retain her capacity to act alone if her *own interest and bilateral commitments so demand*”, 47 *Chaillot Paper*, p. 35.

⁶⁹ 47 *Cahier de Chaillot*, p. 79; Howorth, *supra* note 30, pp. 80–81. The former colonial States are more prone to extend the geographic limits of military interventions in order to cover their traditional zones of influence, Déclaration de J. Chirac, T. Blair and L. Jospin in London, 29 November 2001, 2 *D.A.I.*, 15 January (2002) p. 76; Youngs, *supra* note 2, pp. 110–111. W. Wallace recalled that in 1998, when the British and French governments launched their initiative for ESDP, they were silent on where beyond south-eastern Europe joint forces might be used, *Financial Times* (27 June 2003).

The Normative Underpinnings of the Use of Force

- The Petersberg Tasks include humanitarian missions and rescuing of EU nationals abroad. The White papers published by the European national defence administrations clearly emphasize the rescue of EU nationals. They do not seem to share the ‘sacred’ mission mentioned above, namely the spread of values and democracy all over the world.⁷⁰ Moreover, the tasks enshrined in Article 17 are not interpreted in the same way across the EU.⁷¹
- From the beginning, ESDP has been conceived as a means for Europe to become a major actor on the international scene and to face new threats with up-to-date armed forces.⁷² Since the European Council in Helsinki, Heads of State and government have consistently underlined the necessity for Europe to “play its full role on the international stage”⁷³ and to be able to influence events outside its borders.⁷⁴ This concern increasingly appears as an inherent objective of ESDP, whereas the reference to universal norms and values seems to be more a mean to attain this specific goal.⁷⁵
- In including the Petersberg Tasks in the Amsterdam Treaty, European States have expressed their wish to participate in peacekeeping, peace enforcement missions, etc., in accordance with the goals and principles of the UN Charter.⁷⁶ To some extent, the EU

⁷⁰ A. Dumoulin, R. Mahieu and V. Metten, ‘Présentation comparative et thématique des politiques de défense des États membres de l’Union européenne’, 68 *Sécurité et Stratégie* (Décembre 2001).

⁷¹ A. Missiroli, ‘Ploughshares into Swords? Euros for European Defence’, 8 *European Foreign Affairs Review* (2003) pp. 8–9.

⁷² Déclaration sur la défense européenne, Sommet franco-britannique, Saint-Malo, 3 and 4 December 1998, 47 *Cahier de Chaillot*, pt. 1 and pt. 4, see also the strategic debate surrounding the definition of the ‘headline goal’ in Helsinki, *ibid.*, p. 77.

⁷³ Göteborg European Council, Presidency Report on the European Security and Defence Policy, Brussels, 11 June 2001 (Nr: 9526/1/01); ‘Summary of the remarks by Javier SOLANA’, *Informal Meeting of Defence ministers*, Brussels, 5–6 April 2004, S0097/04.

⁷⁴ European Council, Vienne, 11 and 12 December 1998, pt. 76, 47 *Cahier de Chaillot*, p. 14 and European Council, Cologne, 3 and 4 June 1999, pt. 1, *ibid.*, p. 34.

⁷⁵ Annexe IV, rapport de la présidence, 47 *Cahier de Chaillot*, p. 63; Déclaration de Mayence, Conseil franco-allemand de défense et de sécurité, 9 June 2000, *ibid.*, p. 87.

⁷⁶ Sommet italo-britannique, Londres les 19 et 20 juillet 1999, 47 *Cahier de Chaillot*, p. 38; Conseil Européen de Nice, 47 *Cahier de Chaillot* (7, 8 et 9 décembre 2000) p. 121.

considers itself to be a regional security organization and this does not fit the archetype of a 'global policeman' driven by a messianic vision.

- From a more general point of view, the texts produced by the Europeans put more weight on practical and institutional aspects of the security policy than 'interventionist doctrine' that mainly focuses on the social and political conditions for legitimating the use of force.⁷⁷

Finally, it appears that references to European actions to protect human rights and to implement the rule of law lie mainly in documents dealing with *civil* aspects of crisis management and preventive diplomacy.⁷⁸ And by definition, preventive *diplomacy* does not rely on military tools but rather on non-military forms of coercion, including economic sanctions.⁷⁹ Nonetheless, various presidency conclusions of the European council reveal a tendency to integrate civil and military aspects of crisis management under the head of the ESDP,⁸⁰ and this is perhaps the sign of a progressive move towards a more coercive policy on behalf of the EU. But until now, ESDP operations (EUPM in Bosnia, CONCORDIA in FYROM and ARTEMIS in RDC) are clearly undertaken under the authority of the UN.⁸¹

To some extent, the realist school of thought could shed some light on the real motivations of European governments in developing a common security and defence policy, but it fails to explain the significance of legalistic arguments that limit the pursuit of European interests.

⁷⁷ Ortega, *supra* note 30; *see also* arguments sustaining the 'just war' doctrine as they appeared in 'Lettre d'Amérique, les raisons d'un combat', *Le Monde*, 14 February 2002 or in R. Cooper's pledge for 'The New Liberal Imperialism', *Observer Worldview* (7 April 2002).

⁷⁸ Rapport présenté par Secrétaire général/Haut représentant et la Commission, Nice, 8 December 2000, *Cahier de Chaillot* 47, p. 156; Message from J. Solana to the EU Conference of National Police Commissioners, Brussels, 10 May 2001, *Chaillot Paper* 47, pp. 17–19; Howorth, *supra* note 30, p. 92.

⁷⁹ "Commission officials openly concerned at the shift in power towards the PSC, comforted themselves with the prediction that, in the words of one, '95 per cent if future action will be civilian'", Youngs, *supra* note 2, p. 109.

⁸⁰ *Presidency Conclusions*, Thessaloniki, 19–20 June 2003, § 57.

⁸¹ Internet source: <www.ue.eu.int/pesc>.

4. Conclusion

There are certainly no clear-cut answers to the question of what exactly constitute the normative underpinnings of Europe's position on the use of force. The European discourse seems to be torn between two traditions. One is more messianic in its tonality and expresses an enduring trend to project values Europeans consider to be universal and to resort to the use of military coercion if necessary. The other tradition is more anchored in a realist or pragmatic vision and is linked to the interests of the Europeans themselves and the tasks Europe has to handle in order to become a credible international actor. From this perspective, the use of force is more motivated by political opportunities than moral concerns.⁸²

Almost every text about European defence stresses the main responsibility of the UN Security Council for the maintenance of international peace and security and insists on the fact that any likely European contribution must uphold the goals and principles of the United Nations.⁸³ It therefore appears that, at the European level at least, the Member States are unprepared to accept what a certain doctrine has been suggesting for a long time: to give Europe the necessary means to defend democracy, market economy, fundamental rights and liberties all over the world regardless of legalistic concerns.

But at the same time, the Commission and the European Parliament do not seem ready to abandon what has long been considered as a specific feature of the EC: the civil nature of its power.⁸⁴ Moreover, the debates

⁸² Ex.: Conclusions de la présidence (5/57), *Bull. UE*, 6 (2000) pt. 1.6.8 ; *ibid.*, 12-2001, pt. I.28.

⁸³ Ex.: Speech by J. Chirac, President of the French Republic, to the Institute for Higher Defence Studies, 47 *Chaillot Paper* (Paris, 8 June 2001) pp. 29–34; On EU-UN cooperation, *Bull. EU*, 6 (2001), I.31.53; Franco-British Summit, London, 47 *Chaillot Paper* (29 November 2001); Presidency Conclusions, Brussels, 24 and 25 October 2002, point III/20, SN 14702/02; Youngs, *supra* note 2, p. 110; Communication de la Commission au Conseil et au Parlement européen. Union européenne et Nations Unies: le choix du multilatéralisme, *COM (2003) 526 final*, pp. 7, 8 (s'agissant de la lutte contre les armes de destruction massive, il est rappelé que le Conseil de sécurité doit rester *l'arbitre suprême en cas d'infraction*) pp. 9–16.

⁸⁴ *Bull. UE*, 6 (2000), pt.1.6.9.; *Bull. UE*, 4 (2000), pt.1.6.1.; Résolution du PE sur l'établissement d'une politique européenne commune en matière de sécurité et de défense après Cologne et Helsinki, *A5-0339/2000*; Résolution du PE sur l'établissement d'une politique européenne commune en matière de sécurité et de défense, *A5-0340/2000*; Rapport sur les progrès réalisés dans la mise en œuvre de la

around the Kosovo and Iraqi wars reveal important divergences among Member States. In some way, these tensions affect the coherence of the European discourse, as the Laeken Declaration testifies:

“What is Europe’s role in this changed world? Does Europe not, now that is finally unified, have *a leading role to play in a new world order, that of a power able both to play a stabilising role worldwide and to point the way ahead for many countries and peoples?* Europe as the continent of human values, the Magna Carta, the Bill of Rights, the French Revolution and the fall of the Berlin Wall; the continent of liberty, solidarity and above all *diversity*, meaning respect for other’s languages, cultures and traditions. The European Union’s one boundary is democracy and human rights. The Union is open to countries which uphold basic values such as free elections, respect for minorities and respect for the rule of law. Now that the Cold War is over and we are living in a globalised, yet also highly fragmented world, Europe needs to shoulder its responsibilities in the governance of globalisation. The role it has to play is that of a *power resolutely doing battle against all violence, all terror and fanaticism*, but which also does not turn a blind eye to the world’s heartrending injustices”⁸⁵.

In this text, we can identify some influences from the political pluralism that inspired the Copenhagen Declaration on European Identity in 1973,⁸⁶ but also a form of seduction for a more messianic project based on the promotion of a specific form of liberal democracy.⁸⁷ In this regard, the

politique étrangère et de sécurité commune, Commission des affaires étrangères, des droits de l’homme, de la sécurité commune et de la politique de défense, A5-0296/2002, 11 septembre 2002; Communication de la Commission au Conseil et au Parlement européen. Union européenne et Nations Unies: le choix du multilatéralisme, COM (2003) 526 final (the European Council has welcomed this document, see *Presidency Conclusions*, Brussels, 12/13 December 2003, p. 23 §91); see also the *European Union/African Joint Declaration on Effective Multilateralism*, Annex I of the *EU-Africa Ministerial meeting*, Dublin, 1 April 2004, 8230/04 (Presse 104); for A. Moravcsik, militarisation would betray European ideals and interests, ‘One Year on: Lessons from Iraq’, 68 *Chaillot Paper* (March 2004) p. 190.

⁸⁵ Laeken Declaration, 15 December 2001 (SN 273/1), (emphasis added).

⁸⁶ See also the comments of Nicolaidis and Howse, *supra* note 6, p. 783; De Vasconcelos, *supra* note 64, p. 24; Manners, *supra* note 35, p. 240 point 8; Meeting of the Heads of State or Government of the EU and the President of the Commission, Ghent, 19, 47 *Chaillot Paper* (October 1991); Conclusions and plan of action of the extraordinary European Council meeting on 21 September 2001, SN 140/1.

⁸⁷ Rhodes, *supra* note 63, Nicolaidis and Howse, *supra* note 6, p. 769; P. Allott, ‘European Foreign Policy : After-Life of an Illusion’, in Koskenniemi (ed.), *supra*

The Normative Underpinnings of the Use of Force

replacement of the 'civil' adjective traditionally used in conjunction with the term 'power' is certainly significant.⁸⁸

The coexistence of different forms of rhetoric in the European discourse is not a new phenomenon.⁸⁹ In this case, the inconsistency of the European discourse is the result of the difficulty of defining a common and coherent political project based on common normative underpinnings.⁹⁰ Fighting terrorism or preventing the spread of weapons of mass destruction will perhaps become the core project around which Europeans will converge;⁹¹ but it would be presumptuous to assume that, besides a firm condemnation of terrorist acts, European governments do agree on the concrete means to

note 4, pp. 215–229; A. Bartholomew and J. Breakspear, 'Human Rights as Swords of Empire', in L. Panitch and C. Leys (eds.), *The New Imperial Challenge* (Socialist Register 2004).

⁸⁸ According to N. Gnesotto: "L'Europe comme pure puissance civile est morte", 9 *Bulletin*, Institut d'études de sécurité de l'UE (January 2004).

⁸⁹ This is sometimes a sign of an internal tension between the Council and the Commission for "control of the policy 'spaces' within the security framework", Deighton, *supra* note 18, p. 730; Youngs, *supra* note 2, p. 105.

⁹⁰ B. Delcourt, *Droit et souverainetés. Analyse critique du discours européen sur la Yougoslavie* (Peter Lang, Bruxelles, 2003); J. Zielonka, 'Paradoxes of European Foreign Policy. Policies without Strategy: the EU's Record in Eastern Europe', 2 *Yearbook of Polish European Studies* (1998) pp. 25–42. See also Ehrart, *supra* note 17, p. 71; S. Duke, 'ESDP and the EU Response to the 11 September: Identifying the Weakest Link', 7:2 *European Foreign Affairs Review* (Summer 2002) pp. 16 *et seq.*; J. Howorth, 'The CESDP and the Forging of a European Security Culture', in B. Irondelle and P. Venesson, 'L'Europe de la défense: institutionnalisation, européanisation', 8 *Revue Politique européenne* (Automne 2002) pp. 88 *et seq.*

⁹¹ See Presidency Conclusions, Seville, 21 and 22 June 2002, SN 200/1/02 REV 1, in particular Annex V: 'Declaration by the European Council on the contribution of the CFSP, including the ESDP, to the fight against terrorism'; European Council Declaration on Iraq, Presidency Conclusions, Copenhagen, 12 and 13 December 2002, Annex IV, SN 400/02; Speech to the EP, Chris Patten, 29 January 2003, speech: 03/34; Extraordinary European Council, Brussels, 17 February 2003, 6466/03; Presidency Conclusions, Thessaloniki, 19–20 June 2003, Annex II; *Declaration on combating terrorism*, Brussels, 25 March 2004. I agree with A. Deighton saying that "it is too soon to say whether the campaign against terrorism will become a 'new paradigm' for international relations", see her article, *supra* note 18, p. 727. As a matter of fact, debates inside the convention show that there is no agreement on the fact that the fight against terrorism has to be a priority for the ESDP. Inside the convention, there were some divergences on the opportunity to concentrate on the issue of terrorism as the main threat for the European security; see also Bailes, *supra* note 65.

put an end to these particular threats. Divergences between the ‘old’ and the ‘new’ Europe on Iraq testify of the enduring challenge for Europe to be an ‘actor’ on the international stage.

On the other hand, we can understand this absence of a single ‘utopian vision’ in a positive way:

“[t]he actual institutions of European integration always fall short of the underlying utopian vision, which leads some to dismiss the vision as largely irrelevant dreaming. This gap *is* in some sense the legitimacy crisis of the European Union. But the attempt to close the gap has enormous risks. What exactly does constitute the European level of governance as a political community, what common projects, ends or value? Many would argue that the very fact of asking the questions denies the open-ended, experimental essence of the European project. Equally problematic, an explicit answer to this question would risk defining much more explicitly than today insiders and outsiders within Europe and raise the possibility of what must be avoided – drawing new exclusionary boundaries, this time around ‘Europe’ itself. This would in turn deny, for better or for worse, the EU's biggest project of all, its *mission civilisatrice*, to export its miracle to the rest of the world.”⁹²

What could be a sensible position on a philosophical ground might be untenable on a political one. As Michael Smith notices, the ‘European foreign policy space’ lacks the key central institutions and instruments characteristic of foreign policies based on statist (‘modernist’) assumptions. Therefore, in a situation of crisis and ‘hard security’, the collective action is hard to pursue given the dispersal of preferences among Member States.⁹³ Most of the time the problem of ‘procedure’ serves as a substitute for policy, the ‘layer’ of policy itself (which consists of a sustainable balance between interests, commitments and capabilities) being indeed very feeble or unclear.

This is certainly a problem Javier Solana wanted to cope with when he proposed a kind of strategic vision for Europe.⁹⁴ But did he really add some flesh to the bones? At this stage, his core message is twofold. We, as Europeans, are facing the same new threats as the ones identified by the American administration (mainly international terrorism, WMD

⁹² Nicolaidis and Howse, *supra* note 6, pp. 781–782.

⁹³ M. Smith, ‘The framing of European Foreign and Security Policy: Towards a Post-Modern Policy Framework?’ 10:4 *Journal of European Public Policy* (August 2003) pp. 558–559.

⁹⁴ ‘A Secure Europe in a Better World’, European Council, Thessaloniki, 20 June 2003.

The Normative Underpinnings of the Use of Force

proliferation, failed States and organised crime). In order to offer a brighter prospect to mankind, the EU has to develop three strategic objectives: extending the zone of security around Europe, strengthening the international order and countering old and new threats.⁹⁵

Jean-Yves Haine rightly points to the fact that the discourse on the new threats looks like Bush's, even if the means to counter them are kept distinct from those prescribed in the US strategy.⁹⁶ On the other hand, the (legal) conditions under which Europe would eventually resort to a 'preventive' or 'pre-emptive' action remain unclear. Does it mean that Europe might definitely adopt the American normative standards? Or, in order to be more authentically 'European', the double standard attitudes that Robert Cooper advocates?

"The challenge to the post-modern world is to get used to the idea of double standards. Among ourselves, we operate on the basis of laws and open cooperative security. But when dealing with more old-fashioned kind of states outside post-modern continent of Europe, we need to revert to the rougher methods of an earlier era-force, pre-emptive attack, deception, whatever is necessary to deal with those who still live in the nineteenth century world of every state for itself".⁹⁷

It is for sure a kind of post-modern thinking that more closely resembles anti-modern thinking (as updated by the neo-conservative lecture of Leo Strauss).⁹⁸ To that extent, it seems difficult to merge a modernist and pluralist vision of the international society (as enshrined in the UN Charter) and this so-called 'liberal imperialism'.

It is anyway noteworthy that the issue of pre-emptive action caused much trouble to some governments, in particular the German and the French ones, which have tried to amend the draft in order to remove the ambiguity regarding the power of the Security Council.⁹⁹ In the last version presented by the High Representative in December 2003, the reference to 'pre-emptive

⁹⁵ J. Solana, 'Europe; Security in the Twenty-first Century', *The Olof Palme Memorial Lecture*, Stockholm, 20 June 2001.

⁹⁶ J-Y. Haine, 'Les premiers pas d'une Europe stratégique', 7 *UE-IES Bulletin* (July 2003).

⁹⁷ Cooper, *supra* note 77.

⁹⁸ This 'idea' is not that new, see C. Schmitt, *Le Nomos de la terre (dans le droit de gens du Jus Publicum Europeanum)*, (P.U.F., Paris, 2001) p. 15 (P. Haggemacher's Presentation).

⁹⁹ J. Dempsey, 'Words of war: Europe's first security doctrine backs away from a commitment to US-style pre-emption', *Financial Times* (5 December 2003).

action' has been removed,¹⁰⁰ whereas the necessity to act in partnership with the USA in order to "be a formidable force for *good* in the world" remains.¹⁰¹

The existence of a perpetual conversation between different paradigms or traditions helps to explain the paradoxes lying in state discourses when governments argue differently on the same subject (i.e. humanitarian intervention).¹⁰² As Jan Zielonka reminds us, the Union is not the only international actor with a foreign policy agenda dominated by internal, parochial concerns:

"However there are at least three crucial factors that make this problem greater for the Union than for 'traditional' international actors such [sic.] nation states . . . the Union prefers to maintain an ambiguous profile in terms of its basic purposes and interests. But in the absence of a clear hierarchy of collective interests, parochialism has a greater chance of asserting itself. Moreover, the Union is a collection of still largely sovereign states with largely diverging agendas, and the Union's decision-making process is still based on intergovernmental bargaining. No wonder that parochialism has good chances to prevail over strategic arguments . . .".¹⁰³

As far as the resort to force is concerned, ambiguity will probably remain the main feature of the European discourse. Commenting on the last version of the 'European Security Strategy' document, Steven Everts wondered how long Europe could evade the "contentious issue of the conditions for the use of force, which cannot be eliminated by semantic fudge".¹⁰⁴ In other words, if preventive diplomacy or multilateralism failed, would Europe be ready to

¹⁰⁰ The focus is now on conflict prevention, which has a different meaning and does not imply *per se* the use of military tools, 'A Secure Europe in a Better World', *European Security Strategy*, Brussels, (12 December 2003) sp. p. 7; Dempsey *supra* note 99.

¹⁰¹ *Ibid.*, p. 13; for M. Leonard, this second version "remains almost Rumsfeldian in its warning about terrorism and rogue states", he also stated that "the significance of the document is that it moves on from traditional idea of multilateralism for its own sake to a determination to achieve results", see 'The Dream of a Mighty Europe', *The Wall Street Journal Europe*, (5 February 2004); see also S. Everts, 'Two cheers for the EU's new security strategy. Soft power and hard power', *International Herald Tribune* (9 December 2003).

¹⁰² This the reason why Bellamy uses the expression "pragmatic solidarism"², Bellamy, *supra* note 56, pp. 17–20.

¹⁰³ Zielonka, *supra* note 90, p. 37.

¹⁰⁴ Everts, *supra* note 101.

The Normative Underpinnings of the Use of Force

resort to force? That's the "acid test of the security doctrine"¹⁰⁵ and for sure, it is quite difficult to deliver clear answers.

¹⁰⁵ Mr Shöpflin's interview in Dempsey, *supra* note 99.