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The Contribution of the Security Policy to the Coherence of the European Union's External Action*

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1. When talking about the coherence of the European Union's external action, attention must be paid to the Security Policy, i.e. the part of the Common Foreign and Security Policy in which interventions, aimed at dealing with international crises, are undertaken outside the borders of the Union.

The Security Policy is relatively young, its institutional developments started with the Cologne European Council of 1999, but it boasts important results. Indeed, the High Representative for the Common Foreign and Security Policy stated that “after the single currency, it is in this dimension that the Union has

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made the most rapid and spectacular progress over the last 5 years”¹. Such progress can also be noted in the extensive practice intervened so far, where a tendency to reach coherence on different levels can be noticed. First of all, within single interventions, between military and civilian aspects. Secondly, in crisis-management, through the co-ordination of several interventions focused on the same country or area. Thirdly, with regard to the co-ordination of crisis-management interventions, via actions carried out by the EU within the first and the third pillar. Finally, in the co-ordination of the Security Policy with peace-keeping activities carried out by other international organizations.

That being said, the present contribution will be structured in three parts. The first will focus on aspects of discipline related to the coherence of the EU’s external action and the Security Policy, including the Treaty on European Union (TEU) and the Constitutional Treaty (CTEU). The second part will present the practice related to Security Policy, highlighting its essential points, successful elements, and the issues that have emerged from the management of the interventions. Finally, the third part will be dedicated to the aspects of co-ordination that “stand out” in the implementation of the Security Policy, in order to stress the contribution of crisis-management to the coherence of the EU’s external actions.

A final explanation of terminology is due. “Peace-missions” include all Security Policy interventions. It is a concise expression that is considered adequate to cover all the possibilities of intervention offered by the Security Policy and stress crisis management ethos. At the end of the day each intervention, with or without arms, based on action or observation, has the final aim of peace-making or keeping. Nonetheless, the differences among the various types of missions will be considered where needed.

2. Both the Treaty on European Union and the Constitutional Treaty express the need to reach coherence of the EU’s external action.

Indeed, Article 3 TEU imposes that the Union reach global coherence in the context of its external relations, security, economic and development policies. In order to do so, it states that the Council and the Commission, in fulfilling their competences, must co-operate between each other. Moreover, Article 13 gives the Council the duty of ensuring the unity, coherence and effectiveness of EU action within the Common Foreign and Security Policy. It is clear that the activities carried out within the Security Policy have to be included in the co-ordination aimed at guaranteeing the coherence of the EU’s external action.

Articles III-115 and III-292 CTEU have the same effect. According to Article III-115 CTEU the Union assures coherence between the various policies

by the European Commission (Action Jean Monnet) and realized by the University of Bologna, the IEE-Université Libre de Bruxelles and the University of Nice Sophia Antipolis. A special thanks to Mr. Stephen Curzon, PhD student at the University of Bologna, for his precious linguistic advice.

¹ See J. SOLANA, *Preface*, in N. GNESOTTO (ed.), *EU Security and Defence Policy*, Paris, 2004, p. 5 (also available on line: www.iss-eu.org).

and the actions carried out and, more specifically, Article III-292, last paragraph, states that coherence is ensured between its external actions and other policies. The Council and the Commission, assisted by the Minister for Foreign Affairs, co-operate in ensuring such coherence. Therefore it will also be necessary to co-ordinate the peace-missions carried out within the Common Security and Defence Policy with other policies.

So, Articles III-115 and III-292 CTEU reiterate the duties laid down by Article 3 TEU, the main difference being the added role of the Minister for Foreign Affairs², whose “co-belonging” to the Council and the Commission makes him/her *le symbole central* of the coherence of external action³. It must also be noticed that – and this is editorial news – a further element of guarantee of external coherence of the Union's action is constituted by the fact that all external policies are united in Title V CTEU.

3. The Security Policy is based on Articles 2 and 11 and, more specifically, on Article 17 TEU. Article 2 TEU includes, among the general objectives of the Union, the assertion of its identity on the international scene, in particular through the implementation of a Common Foreign and Security Policy. Article 11 TEU, dedicated to the objectives of this policy, includes “the strengthening of the security of the Union in all ways and the preservation of peace and strengthening of international security”. Finally, Article 17 TEU allows for the implementation of humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peace-making. Although this competence can be exercised by the Union via the single institutional framework of Article 3 TEU, nothing else is said about the implementation of the Security Policy.

In order to realize this policy an organizational structure was developed, by the Cologne European Council of 1999⁴, and the necessary capabilities to deal with international crises have been acquired. This occurred via the development

² Article I-28 CTEU.

³ See P. DE SCHOUTHEETE, *La cohérence par la défense – Un autre lecture de la PESD*, Paris, 2004, p. 35 (also available on line: www.iss-eu.org).

⁴ Regarding the evolution of the Security Policy, amongst others see A. MISSIROLI, *Difesa atlantica, sicurezza europea: l'«iniziativa» britannica e il futuro della PESD*, in *Europa Europe*, 1999, p. 85 et seq.; Id., *La politica estera e di sicurezza comune fra NATO e Unione europea*, in S. GUERRIERI, A. MANZELLA, F. SDOGATI (a cura di), *Dall'Europa a quindici alla grande Europa. La sfida istituzionale*, Bologna, 2001, p. 393 et seq.; L. MARINI, *La politica estera e di sicurezza dell'Unione europea*, in *DUE*, 2002, p. 383 et seq.; A. BAJEC, *Sulla scia di St. Malo: il cammino verso la PECSA dal 1998 al 2000*, in *CI*, 2003, p. 451 et seq.; C. NOVI, *La politica di sicurezza esterna dell'Unione europea*, Padova, 2005, p. 309 et seq. For a complete analysis, regarding both discipline and practice, see N. RONZITTI (a cura di), *Le forze di pace dell'Unione europea*, Soveria Mannelli, 2005, which contains several contributions. On the practice, in particular, see L. N. GONZÁLES ALONSO, *De las declaraciones a los hechos: las primeras operaciones de gestión de crisis de la Unión Europea*, in *RDCE*, 2003, p. 653 et seq.; G. LINDSTROM, *On the Ground: ESDP Operations*, in N. GNESOTTO (ed.), *op. cit.*, p. 111 et seq. and U. VILLANI, *La politica europea in materia di sicurezza e di difesa e i suoi rapporti con le Nazioni Unite*, in *CI*, 2004, p. 63 et seq. (also in *Studi in onore di Gianni Ferrara*, III, Torino, 2005, p. 663 et seq.).

of an autonomous capacity of civilian and military intervention and by guaranteeing access to the logistic and military Atlantic assets, necessary for the realization of “hard” military intervention, through a partnership with NATO⁵. Although the developmental phase of the Security Policy was carried out between 1999 and 2002, at the end of 2001 the Laeken European Council declared, with some advance, that the Union was able to conduct crisis-management operations⁶.

Subsequently, other acts intervened to complete the Security Policy framework. With the action-plan against terrorism dated September 21 2001, approved by the Brussels Extraordinary European Council on September 20 2001, and with the “Declaration by the European Council on the contribution of the CFSP, including the ESDP, to the fight against terrorism” of the Seville European Council on June 21 and 22 2002, intervention for crisis management was also given the task of contributing to the fight against terrorism⁷. Moreover, the financial framework described by Article 28 TEU, clearly applicable to the Security Policy, has been integrated by a Council decision which instituted a financing mechanism for military operations⁸, in order to make the Union

⁵ The general framework of this co-operation is based on: a group of arrangements between EU and NATO on certain strategic fields; the EU-NATO Declaration on ESDP of 16 December 2002 (www.nato.int), that expresses the political will to implement those arrangements; EU-NATO consultation procedures for EU-led military operations (see conclusions of Nice European Council of December 2000); finally, the agreement concluded between EU and NATO under Article 24 TEU on the Security of Information (in *OJEU* L 80, March 27 2003). See A. GIOIA, *NATO (North Atlantic Treaty Organization)*, in S. CASSESE (a cura di), *Dizionario di diritto pubblico*, Milano, 2006, pp. 3375 et seq. and G. JANNUZZI, *La Gran Alleanza. Origines, transformaciones y futuro de la OTAN*, Buenos Aires, 2005. Regarding the transatlantic co-operation, amongst others see M. COMELLI, *La NATO e l'Unione europea*, in *AE*, 2003, p. 388 et seq.; ID., *Gli interventi dell'Unione europea e la cooperazione con la Nato*, in N. RONZITTI (a cura di), *op. cit.*, p. 137 et seq.; C. MONTELEONE, *Le relazioni transatlantiche e la sicurezza internazionale*, Milano, 2003; A. CAGIATI, *L'Europa e i rapporti transatlantici*, in *AE*, 2004, p. 148 et seq.; M. CICONI, *I rapporti tra PESD e NATO*, in P. MARIANI (a cura di), *Le relazioni internazionali dell'Unione europea*, Milano, 2005, p. 215 et seq.

⁶ See conclusions of Laeken European Council of 14 and 15 December 2001 (point 6) and the Declaration on the operational capability of the Common European Security and Defence Policy. It is important to underline that the general framework of the EU-NATO co-operation was not complete at that date.

⁷ In the opinion of J. HOWORTH, *The European Union, Peace Operations and Terrorism*, in T. TARDY (ed.), *Peace Operation after 11 September 2001*, London, New York, 2005, p. 80 et seq., despite the terrorist attacks of September 11, 2001, forced the EU to develop a Security Policy, it is not totally ready to face threats of terrorism. The opposite opinion is held by S. BISCOPE, *Able and Willing? Assessing the EU's Capacity for Military Action*, in *EFA Rev.*, 2004, p. 509, who believes the first peace-missions demonstrate the EU can give an important contribution to a “Secure Europe”.

⁸ Council Decision 2004/197/CFSP of 23 February 2004 establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications, *OJEU* L 63, February 28 2004, p. 68. See also D. SCANNELL, *Financing ESPD Military Operations*, in *EFA Rev.*, 2004, p. 534.

acquire “the flexible capacity for managing the financing of common costs of military operations of any scale, complexity and urgency”⁹.

The different positions adopted by certain Member States completes the legal framework of the Security Policy. The involvement of Denmark, based on protocol Annex 5 of TEU, excludes its participation “in the elaboration and in the implementation of decisions and actions of the Union which have defence implications”, with the consequence that it “shall not participate in their adoption” and that it “shall not be obliged to contribute to the financing of operational expenditure arising from such measures”. Regarding the neutral *status* of other EU Members, the second pillar offers some guarantees for their positions. The first is in Article 17, where “The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States”. This does not only include their participation in international organizations with defensive aims – for example, NATO – but also the adoption of a neutral position. The second is given by the positive abstention foreseen by Article 23 TEU, that allows neutral countries to free themselves from the execution and the financing of a decision related to an operation they are not intended to participate in.

4. Some Constitutional Treaty norms indicate that one of the objectives of the European Union is to contribute to peace-keeping and international security. Article I-3 TCEU inserts this amongst the general aims of the Union, whilst Article III-292 places it amongst the specific aims of its external action.

In order to reach this goal, Article I-41 foresees that the Union can carry out missions, Article III-309 summarises these in a detailed list – very illustrative –, and that these include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilization.

These missions can contribute to combating terrorism¹⁰ and are realized through capabilities offered to the Member States¹¹, although their realization can be entrusted to groups of Member States according to the procedures foreseen¹². Denmark, according to current regulations, is again free not to participate in decisions and actions of the Union where defence implications are involved¹³ and its participation must therefore be excluded in the case of military operations. Moreover, in order to provide guarantees to other neutral Member countries, the possibility of positive abstention is confirmed¹⁴.

⁹ See decision 2004/197/CFSP, cit., preamble, point 3.

¹⁰ See Article III-309 CTEU.

¹¹ See Article I-41 CTEU.

¹² See Articles I-41, I-44, III-310 and III-312 CTEU.

¹³ See Article 5 of the Protocol n. 20 attached to the CTEU.

¹⁴ See Article III-300 CTEU.

Regarding the financial aspect, Article III-313 proposes a subdivision of financial costs that resembles the current one. The expenses of the Security Policy are supported by the EU budget, apart from operating costs that belong to the military sector and rest with Member States (but the Council can adopt a different decision on this point). Moreover, the Council can also adopt procedures aimed at speedy financing of missions, apart from those cases in which the financing of interventions is delivered by Member States according to Article III-309.

5. It looks like the Constitutional Treaty proposes a legal framework of Security Policy which has existed since the codification of Article 17 TEU and have been developed by the decisions of the Cologne European Council of 1999 (and subsequent evolutions).

The extension of the list of missions, realised particularly by Article III-309 CTEU, must be understood as the codification of the intervened practice. This is the case, for example, of the missions focused on security reform which are not expressly foreseen by Article 17 TEU but belong to the practice of implementation of Security Policy and have been inserted in Article III-309 CTEU. Similarly, the provision stating that the missions can contribute to combating terrorism is not a novelty (as mentioned above) while the one referring to the structured co-operation of intervention deployment seems to codify current practice¹⁵. Currently, only Member States that contribute resources participate in the Union's peace-missions. Likewise, the financial framework designed by Article III-313 looks like a synthesis of provision *ex* Article 28 TEU, integrated by the development in the areas of financing military operations. Overall, the real difference between the two disciplines is the higher level of codification that the Security Policy received with the Constitutional Treaty.

That being said, in light of similar financial-organizational disciplines, it is plausible that the Security Policy intervened so far can be representative of the practice that will be produced by Article III-309 CTEU.

6. In order to introduce the practice it is necessary to offer an overview of all the peace-missions which have so far been undertaken on the basis of Article 17 TEU. An evaluation of Security Policy implementation shows that more than fifteen peace-missions have been activated in the first four years of its activity, and that seven of them have been concluded, as all of their goals were reached.

The Security Policy's operative debut took place in 2003¹⁶. In the first year, peace-missions were a good test for the reliability of the Security Policy's legal framework, particularly regarding its acquired capacities. In fact, the effectiveness

¹⁵ See, C. TÖRÖ, *The Latest Example of Enhanced Cooperation in the Constitutional Treaty: The Benefits of Flexibility and Differentiation in European Security and Defence Policy Decisions and Their Implementation*, in *ELJ*, 2005, p. 648.

¹⁶ Despite the *European Union Monitoring Mission* started in the early 90's, it is an exception within the Security Policy.

of civil capabilities – police capabilities in particular – was thoroughly verified during the police mission in Bosnia and, when military operations were set up in Macedonia and Congo, the capacity for action in the military field was also tested¹⁷. If one considers the latter military operations, in Macedonia it was the partnership between EU and NATO which was tested, whilst in Congo it was the autonomy of the EU to carry out low intensity military actions (i.e. actions of short duration and with a limited number of soldiers).

With these first peace-missions the EU replaced other international organizations already active in different crisis areas, thus proving that it could take the responsibility from other organizations or work alongside them in order to improve the mission. Both in Bosnia and in Congo the Union worked in cooperation with the UN, either alternating with this organization (as in Bosnia) or working side by side with it (Congo). As for the military operations carried out in Macedonia, it substituted the NATO military operation that was already in the area.

The first year of the Security Policy was a test of reliability for this blooming competence. During the following years the management of international crisis confirmed the degree of effectiveness attained, and has even shown signs of development. In fact, the EU has been proactive regarding civilian and monitoring missions which represent a good part of all the peace-missions that have been deployed to-date. Since the end of 2003 the EU has undertaken several monitoring and civilian missions, representing different kinds of intervention and taking place in typically “hot” areas such as the Palestinian territories. Military operations, instead, have confirmed the situation which was apparent after the first operating year of the Security Policy: the EU has shown some autonomy regarding low intensity interventions whilst it has taken advantage of NATO's assets for “hard” operations.

7. The list in Article 17 TEU is merely illustrative and does not indicate all actions the EU can take in the event of an international crisis. In fact, the formulation of the Article refers to humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peacemaking. This list partially mirrors the traditional classification of peace-keeping operations of the United Nations¹⁸, but it does not indicate the different kinds of interventions forming the practice of the Security Policy. For example, rule-of-law missions or monitoring missions are not part of Article 17 TEU but are nevertheless an important part of current practice.

¹⁷ In the opinion of A. TREACHER, *From Civilian Power to Military Actor: The EU's Reistable Transformation*, in *EFA Rev.*, 2004, p. 49, these operations made the EU both a civilian and a military actor.

¹⁸ See, e.g., P. GARGIULO, *Peace-keeping: nuovi sviluppi o possibile declino?*, in *Giano*, 1996, p. 99 et seq.; P. PICONE, *Il peace-keeping nel mondo attuale: tra militarizzazione e amministrazione fiduciaria*, in *RDI*, 1996, p. 5, also in critical reading; S. MARCHISIO, *L'ONU. Il diritto delle Nazioni Unite*, Bologna, 2000, p. 259 et seq.

That being so, the analysis and explanation of the peace-missions will follow the classifications that have arisen in practice. This differentiates between military operations and civilian missions.

8. Military operations are the most demanding interventions foreseen by Article 17 TEU and require the use of armed forces. These operations can be started in two different ways: either they are low-intensity interventions for which the EU has a full autonomy, or they are “harder”, and thus the EU must obtain the support of NATO’s logistic and military assets. Up till now, four military operations have been started, two in the Balkans and two in Congo; the missions taking place in the Balkans have been conducted with the use of NATO assets, whilst those in Africa, being low intensity interventions, have been conducted autonomously.

8.1. It has been possible to conduct military operations in the Balkans thanks to the support provided by NATO. Such operations, therefore, represent two instances of the partnership based on the Berlin plus agreement being put into practice.

The *Concordia*¹⁹ military operation started in March 2003 and substituted NATO’s *Allied Harmony* operation. Like NATO’s operations’ mandate, its purpose has been to contribute in the creation of stability and security, so that the Ohrid agreements could be put into practice, thus giving Macedonia a steadier and more democratic geopolitical framework. Practically, the EU’s force has patrolled areas of Macedonia with an Albanian ethnicity, in the border-regions with Albania and the Federal Republic of Yugoslavia. Even though it was an armed operation, it has not been necessary to obtain Security Council authorization considering its peace-keeping function and its mutual-consent nature. Nevertheless, resolution 1371 (2001) of September 26 has received it favourably. *Concordia* concluded its tasks in December 2003 and was replaced by a civilian police mission as a way of continuing EU commitment to Macedonia.

This operation’s strength is not just the fact that it was the first military intervention of the EU, but also that it has been a test for the good functioning of the partnership with NATO. In fact, as has been observed, Berlin plus agreements had to be formally initiated before *Concordia* could start²⁰. Moreover, it is important to highlight the success of this operation: by bringing Macedonia towards increased stability and security, the EU has been able to adapt its intervention. In fact this operation has not been extended nor has it been followed by another military action; instead it has been succeeded by a civilian mission. This shows that the EU can modify the nature of its intervention according to the

¹⁹ Council Joint Action 2003/92/CFSP of 27 January 2003 on the European Union military operation in the Former Yugoslav Republic of Macedonia, *OJEU* L 34, February 11 2003, p. 26.

²⁰ See A. MISSIROLI, *The European Union: Just a Regional Peacekeeper?*, in *EFA Rev.*, 2003, p. 498-9.

increased stability of the host State. In fact, police missions have low territorial effectiveness and mainly involve the provision of counselling to local authorities. We could say that *Concordia's* ending brought Macedonia the stability necessary to maintain public order within its boundaries.

On the other hand, since 2004 the military operation *Althea*²¹ has been ongoing in Bosnia. Its purpose is to continue the tasks of the *Stabilization Force*, the NATO force that preceded it. *Althea's* duty is to guarantee the implementation of the Dayton agreements, especially as regards the patrolling of the two entities in which the country is divided. This is the most important military operation that the EU has ever handled, both in financial and military terms, as it involves approximately 7000 soldiers. Having inherited the tasks of the *Stabilization Force*, which could use force over self-defence, the UN Security Council gave its authorization to launch *Althea* with resolution 1575 (2004) of November 22.

Like *Concordia*, but for different reasons, *Althea* represents an important affirmation of the Security Policy. *Althea* is not only the first long-term mission in the Balkans, but it has also been working along the already operating EU Police Mission in Bosnia (*EUPM*). This has allowed the EU to unify the civilian and military aspects of the implementation of the Dayton agreements, thus taking a further step towards the comprehensive policy used towards this country²². Moreover, this operation has seen the operative start of *Athena*, the mechanism of financing the common costs of military operations, demonstrating its good functioning²³.

8.2. The military operations in Congo represent two successful examples of military crisis management. Firstly because they have been started and managed autonomously or without the logistic help of NATO. Secondly because they are forms of interventions that were conceived in order to support the *United Nations Organization Mission in the Democratic Republic of Congo (MONUC)*, a UN mission which was already operating in Congo accordingly to Security Council resolution 1484 (2003) of May 30. Therefore, these are two missions that the EU has handled alone and for the benefit of the international organization which retains primary competence in the field of peace-keeping and international security.

*Artemis*²⁴ was launched in support of *MONUC* between June 12 and September 1 2003 (it therefore had short duration). The operation was the result of an escalation of violence in the Ituri region²⁵ and was meant to intervene in

²¹ Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina, *OJEU* L 252, July 28 2004, p. 10.

²² See the conclusions of the Brussels European Council of June 17-18, 2004 and A. MISSIROLI, *Più euro per la sicurezza europea*, in *Il Mulino*, 2003, p. 531 et seq.

²³ See Joint Action 2004/570/CFSP, cit., Article 12.

²⁴ Council Joint Action 2003/423/CFSP of 5 June 2003 on the European Union military operation in the Democratic Republic of Congo, *OJEU* L 143, June 11 2003, p. 50.

²⁵ See A. MISSIROLI, *The European Union*, cit., p. 499 et seq.

order to guarantee peace and improve humanitarian conditions in the region. On the ground, the operation consisted in sending a small EU military contingent – of about 1500 soldiers led by France²⁶ – which was to be functionally inserted into *MONUC*²⁷. Resolution 1484 (2003) regarding *MONUC* represented the authorization of the Security Council for an operation that would take all necessary measures in order to fulfil its mandate²⁸, resorting to force and not just self-defence.

This operation has been concluded with a certain degree of success²⁹ and it can boast a few pre-eminences. First of all, it's the first military operation in Africa and it frees the path for future EU interventions on the continent. As shall be seen, this was the first in a series of interventions on the difficult transition of Congo towards democracy. Secondly, it is the first military operation that was started autonomously and with success by the EU, proving that the partnership with NATO is not necessary in all the situations in which military intervention is required. Moreover, *Artemis* represented a case of joint operation with the United Nations; this is one of the new forms of intervention in international crisis-management, as referred to by the Agenda for peace of 1995. As a supporting action, *Artemis* reached its goals and allowed the United Nations to reorganize *MONUC*³⁰. This clearly changed the way the EU was perceived internationally. Often (and rightly so) the EU was considered a political actor with little cohesion, but with this military operation it appeared to be a reliable subject in international crisis-management. As proof of the intervention's success, *Artemis* was employed as a model for building the Headline Goal of Security Policy for 2010, that is the creation of “battlegroups”: i.e. armed contingents of 1500 soldiers, strongly operative and ready for action within 10 days from the moment the operation is organized, at the disposal of the United Nations for short interventions³¹.

The second military operation in Congo – *EUFOR RD Congo*³² – instead, was active from June 12 to November 30 2006 (the Joint Action on this operation foresaw a duration of 4 months after the completion of the first round of political

²⁶ France was the Framework Nation of the operation and took main responsibility for the intervention, both in terms of command and armed forces supply. See F. FARIA, *La gestion des crises en Afrique subsaharienne. Le rôle de l'Union européenne*, Paris, 2004, p. 50 et seq. (also available on line: www.iss-eu.org).

²⁷ See paragraphs 9 and 10 of resolution 1484 (2003).

²⁸ See para. 4 of resolution 1484 (2003).

²⁹ See T. TARDY, *EU-UN Cooperation in Peacekeeping: A Promising Relationship in a Constrained Environment*, in M. ORTEGA (ed.), *The European Union and the United Nations. Partner in Effective Multilateralism*, Paris, 2005, p. 49 et seq. (also available on line: www.iss-eu.org).

³⁰ See C. GEGOUT, *Causes and Consequences of the EU's Military Intervention in the Democratic Republic of Congo: A Realist Explanation*, in *EFA Rev.*, 2005, p. 427.

³¹ See *ESPD Newsletter*, issue 2, Brussels, June 2006, p. 24.

³² Council Joint Action 2006/319/CFSP of 27 April 2006 on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process, *OJEU* L 116, April 29 2006, p. 98.

and presidential elections). This intervention resembles *Artemis* in terms of its constitution and structure, but it had a different mandate. In fact it aimed to support *MONUC* during the electoral process which should bring Congo to free elections and stability. This operation was based upon Security Council resolution 1671 (2006) of April 25, which authorized the temporary use of an EU force to support *MONUC* and identified its mandate as being the support of the UN mission and the protection of civilians and Kinshasa Airport.

Regarding *EUFOR RD Congo* we can repeat the same observation made for *Artemis*. It was a military operation started autonomously by the EU within the context of a crisis that has seen the EU involved for a long time. It is also a further example of the close cooperation with the United Nations. Like *Artemis*, *EUFOR RD Congo* has been successful, reaffirming the EU's identity on the international scene.

8.3. Finally, a *pro quota* reference should be made to an atypical intervention that was launched in the framework of the Security Policy. The supporting action to *AMIS II*³³ is an intervention with the aim of supporting an already active monitoring mission. The mission to be supported is *AMIS II*, an African Union's intervention in Darfur (Sudan) launched with the aim further pursuing the monitoring of the cease-fire agreement signed in N'Djamena on April 8 2004³⁴.

The intervention is composed of a military and a civilian component. As for the component herein concerned, this intervention supports the planning of the operations, provisions of military observers, training troops, strategic transportation and, if required by the African Union, aerial observation.

Judging from the mandate given to the military component, it is a different kind of intervention when compared with the other military operations. Part of the military component's duties concern counselling, and aim at teaching the African Union how to plan and develop crisis management methods. Thus, unlike previous interventions, this one is not entirely directed to the territory but, rather, to the organization necessary to manage the crisis. Secondly, this is the first – and up until now, the only – case of a mission directed to support another international organization. To-date peace-missions have generally been launched to benefit countries with an ongoing crisis. Moreover, even when there has been a counselling function – as in a civilian mission – the receiving entities were third States and not international organizations.

³³ Council Joint Action 2005/557/CFSP of 18 July 2005 on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan, *OJEU* L 188, July 20 2005, p. 46.

³⁴ In fact, *AMIS II* represents the upgraded version, in terms of mandate and resources, of *AMIS I*, an operation of the African Union monitoring the respect of the mentioned agreement of 2004 about the cease-fire. On African Union's peace-keeping activities, see A. MARCHESI, *Il ruolo dell'OUA nella prevenzione e gestione dei conflitti e brevi cenni alla cooperazione con le Nazioni Unite*, in F. LATTANZI, M. SPINEDI (a cura di), *Le organizzazioni regionali e il mantenimento della pace nella prassi di fine XX secolo*, Napoli, 2004, p. 33 et seq.

With the supporting action to *AMIS II* the EU has employed a new kind of intervention aimed at contributing to the resolution of the crisis in Darfur. The EU has acted respecting the local responsibilities of the African Union towards the conflicts on the African continent³⁵. Thus the EU has given its support in order to allow the African Union to operate on its own territory. This is in line with the new tendencies of management of international crisis: regional organizations can have a direct role in solving a local crisis, respecting the UN's primary responsibility. The supporting action, in fact, follows the invitation, made by the Security Council to the UN Member States with resolution 1547 (2004) of June 11 of sustaining the efforts of the African Union in Darfur, giving it financial and material resources. This intervention is also coherent with the position that the EU had expressly taken regarding African conflicts³⁶ and is one of the forms of co-operation described by resolution 1631 (2005) of October 17 regarding the development of the co-operation between UN and regional organizations in peace-keeping³⁷.

8.4. The fact that military operations are armed interventions causes compatibility problems between the nature of the lead activities and the neutrality that belongs to certain EU Members.

As we said, Article 17 TEU states that the Security Policy of the European Union is in accordance with the specific character of the security and defence policy of certain Member States, both in being part of international organizations with a defensive purpose and in their being neutral. Moreover, the legal framework of such policy has to be considered with regard to the position of Denmark and the fact that other Member States are neutral. It must be recalled that while Denmark's position puts it out of any participation in military operations, the neutral Member States can evaluate, on a case-by-case basis, whether to be part of an operation or not. For this purpose they can take advantage of the positive abstention procedure³⁸, which enables them to exempt themselves from executing and financing a military operation which they consider incompatible with their neutrality.

Practice confirms what stated above. Denmark has never taken part in military operations, even though in one case – *Concordia* – the use of force was not offensive, but only defensive. As regards other neutral Member States, practice exemplifies different positions. Malta has never been part of a military operation. Austria, Finland, Sweden and Ireland have been part of one or more

³⁵ See R. MILAS, *La politique étrangère et de sécurité commune de l'Union européenne: la volonté et l'engagement extérieur de l'UE*, in *RDUE*, 2005, pp. 292-293.

³⁶ Council Common Position 2005/304/CFSP of 12 April 2005 concerning conflict prevention, management and resolution in Africa and repealing Common Position 2004/85/CFSP, *OJEU* L 97, April 15 2005, p. 57.

³⁷ The resolution, in fact, recalls the African Union and the support provided by EU (see point 2).

³⁸ See Article 23 TEU.

operations, even when the use of force was offensive. For example, Sweden participated in the *Artemis* military operation. Other countries have taken part in operations by differentiating their contributions, for example by sending camp hospitals or civilian staff, as Austria and Ireland did in *Artemis*³⁹.

8.5. Practice tends to confirm the problems arising from the consideration of the institutional aspects of peace-missions' financing⁴⁰. The mixed nature of the financing system *ex* Article 28 TEU distinguishes civilian missions from military ones, and in the latter case the start of an intervention is influenced by temporal and procedural variables which risk compromising its outcome. Above all, problems linked to uncertainties and delays in the allocation of funds are potentially lethal for operations that must be started quickly.

As for civilian missions, practice confirms that financing comes entirely from EU finances, except in the *EUPM*, where part of the operative costs have been sustained by the participating States, according to the exception in Article 28, paragraph 3, TEU⁴¹.

As regards military operations, on the other hand, the institutive Joint Actions of *Concordia* and *Artemis* created some *ad hoc* mechanisms in order to manage part of the operative costs⁴², which rest with the participating States. Such temporary mechanisms only managed the common costs and not the individual ones; the former being sustained by the participating States *in solido*, whilst the latter being sustained by each State without the possibility of sharing them with others. Such a solution posed several problems, related to the uncertainty of the created mechanisms and to the evident and problematic question of the identification of common and individual costs, even though the Joint Actions did provide some guidance.

The situation changed when the permanent financing mechanism *Athena* was created; it quickly manages common costs and, with specific authorization, it can manage individual costs as well. Since the launching of the military operation *Althea*⁴³, the permanent mechanism has been called upon to administer common costs and this has represented an improvement. In fact, unified management of common costs represents a factor that increases the speed of intervention launching procedures. Even though it is an improvement, we must nevertheless consider that it is not enough to increase the efficiency of the financing system of military operations. The decisions taken in the context of

³⁹ See G. LINDSTROM, *op. cit.*, p. 128.

⁴⁰ See L. N. GONZÁLES ALONSO, *op. cit.*, p. 674.

⁴¹ The general rule, under which the EU's budget finances the interventions which do not have military or defensive implications, can be derogated by the Council acting unanimously.

⁴² See Article 9 of Joint Action 2003/92/CFSP, *cit.*, and Article 11 of Joint Action 2003/423/CFSP, *cit.*

⁴³ See Article 12 of Joint Action 2004/570/CFSP, *cit.* Also see Article 11 of Joint Action 2005/557/CFSP, *cit.*, on the military component of *AMIS II* and Article 13 of Joint Action 2006/319/CFSP, *cit.*, relating to *Eufor RD Congo*.

this mechanism require unanimity and this adds elements of uncertainty in financing the common costs.

9. To-date civilian missions have encompassed three kinds of interventions: police missions, rule-of-law missions and monitoring missions.

The most common group is police missions that aim at giving advice in police-related matters such as education, training of human resources (at all levels), and preparation of efficient police authorities in line with european police standards⁴⁴. These missions are not active on the territory, and, for example, are not supposed to perform street patrolling⁴⁵; they are merely meant to help the local police develop the skills necessary to maintain public order. Smaller, but not less important, are the groups belonging to rule-of-law missions whose aim – as we shall see – is to provide legal support to host States in order to aid their reform processes. Finally we have the group of monitoring missions which perform several functions.

Via civilian missions, which supply counselling and support to a country or an international organization, the EU acts as a sort of “personal trainer”.

9.1. To date six police missions have been activated, and two of them have completed their duties.

The missions that have been completed operated (successively) in Macedonia and represented the aftermath of *Concordia*. Being civilian missions, they guaranteed the continuation of *Concordia*'s activities on a different level of intervention.

The mission that began following the end of *Concordia*, was the police mission *Proxima*⁴⁶. This mission had the task of controlling, guiding and educating Macedonian police, in order to fight local crime and align it with european police standards. Even though the mission was meant to give high level counselling to the government, it was also active in several sensitive areas, allowing it to work side by side with the local police in other ways. *Proxima* lasted about 24 months, that is until December 2005, and it was followed by the mission *Police Advisory Team (EUPAT)*⁴⁷. This mission was very similar, but smaller, and lasted a shorter period of time. *EUPAT*, in fact, lasted 6 months and

⁴⁴ See M. MERLINGER, R. OSTRAUSKAITE, *ESPD Police Missions: Meaning, Context and Operational Challenges*, in *EFA Rev.*, 2005, p. 215.

⁴⁵ An exception is found in some forms of cooperation with local police, as with mission *Proxima* in Macedonia.

⁴⁶ See Council Joint Action 2003/681/CFSP of 29 September 2003 on the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL “Proxima”), *OJEU* L 249, October 1 2003, p. 66 and following Council Joint Action 2004/789/CFSP of 22 November 2004 on the extension of the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL PROXIMA), *OJEU* L 348, November 24 2004, p. 40.

⁴⁷ Council Joint Action 2005/826/CFSP of 24 November 2005 on the establishment of an EU Police Advisory Team (EUPAT) in the Former Yugoslav Republic of Macedonia (fYROM), *OJEU* L 307, November 25 2005, p. 61.

ended in mid-June 2006 when the “Cards programme” started a financial project to give technical assistance *in loco*. This short police mission followed the activities of *Proxima* but focused more on high level police management.

It is worth noticing the sequence of interventions in Macedonia, which started with the *Concordia* military operation and was followed by two police missions. The latter achieved their final goal of instructing local authorities on law enforcement, fighting crime, and maintenance of public order. This is confirmed by the fact that *EUPAT* has not been extended, and that no other mission has followed it. Further proof is the fact that the only follow up intervention has been of a financial nature. Thus, as the High Representative for the Common Foreign and Security Policy stated, with the end of the interventions within the area the relationship between the EU and Macedonia went from a post-crisis stabilization to a pre-accession integration⁴⁸. The EU has also shown that it can modify the type of intervention depending on the crisis and events faced and this is proven by the variety of interventions that have been organized. In fact, following NATO's disengagement military intervention was needed. That being so, once reconciliation was achieved the EU showed wisdom and maturity by shifting its attention to the training of local authorities and state management.

As for today's ongoing police missions the EU is active in Bosnia, Congo, in the Palestinian territories and in Sudan.

The *European Union Police Mission (EUPM)*⁴⁹, which started in Bosnia on January 1 2003, is the first mission acting under the legal framework of the EU's security police. It followed-up the UN *International Police Task Force (IPTF)* created after the Dayton agreements which expired at the end of 2002⁵⁰. Under Bosnian authority, *EUPM* has to conceive devices to enhance the standards of local police. This implies that the EU's police mission helps increase the responsibility of Bosnian police, giving support in fighting crime and corruption, and helping local police authorities achieve efficiency and financial sustainability⁵¹. As with *IPTF*, *EUPM*'s activities are carried out within the framework set by the Dayton Agreements and are managed in close coordination with the EU Special Representative and with the UN High Representative for Bosnia. As stated above, having been the first mission started after the operability statement of the Security Policy, *EUPM* can be seen as a reliability test for the EU's civilian capabilities. Judging from the fact that the mission is still in progress, the test has been successfully passed. Furthermore, the mission is also important because it

⁴⁸ See his message of December 9, 2005 (doc. S406/05).

⁴⁹ See Council Joint Action of 11 March 2002 on the European Union Police Mission (2002/210/CFSP), *OJEC* L 70, March 13 2002, p. 1 and Council Joint Action 2005/824/CFSP of 24 November 2005 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH), *OJEU* L 307, November 25 2005, p. 55.

⁵⁰ See Security Council resolution 1035 (1995) of 21 December.

⁵¹ See A. NOWAK, *L'Union en action: la mission de police en Bosnie*, Paris, 2003 (also available on line: www.iss-eu.org).

is a test of the EU's reliability as a regional peace-keeper in so far as it involves a relay of competences from an international organization such as the UN.

The police mission *EUPOL Kinshasa*⁵² started in Congo on April 30 2005 in close coordination with the UN, which is conducting *MONUC in loco*. The EU's police mission must give counselling to local police regarding police standards in order to bring the Congolese police in line with international police standards and, consequently, help the consolidation process of Congo's internal security and, more generally, its transition towards democracy⁵³. It is a mission whose organization must draw from the experience acquired in previous police missions undertaken in the Balkans. It represents, in a sense, an intervention that has already been tested. Nevertheless, *EUPOL Kinshasa* is the first civilian mission of the EU in Africa and as such represents a milestone.

Recently a mission has been started in the Palestinian territories: mission *EUPOL Co-ordinating Office for Palestinian Police Support (EUPOL COPPS)*. The aim is to give local police counselling and assist the Palestinian Authority in the development of a modern and effective police service, which could grant a high degree of internal security for the population and, consequently, a progressive amelioration of the territories economy. The mission is composed of a team of police experts coming from different EU countries, and was established with an exchange of letters dated April 20 2005, between the Palestinian Authority and the EU Special Representative for the peace process in the Middle East. *EUPOL COPPS* is the first mission started in a part of Asia traditionally considered as very "delicate". As mentioned above, having the EU operate in such critical areas can represent a sign of the enhanced credibility of the EU as a subject able to intervene in the maintenance of peace and international security⁵⁴.

Finally, let us consider the police component of the already mentioned *supporting action to AMIS II*. This component acts by sending European police operators and its tasks include counselling, training and aiding the development of a police unit within the African Union. This component is an intervention with the same aim as the police missions already analysed since it involves a type of counselling meant to create the structures necessary to guarantee the African Union's handling of the Darfur crisis (from a civilian point of view).

9.2. Another type of civilian intervention based on Article 17 TEU are rule-of-law missions. Only three have been started until now and one of them has already been concluded. These interventions have various functions although

⁵² Council Joint Action 2004/847/CFSP of 9 December 2004 on the European Union Police Mission in Kinshasa (DRC) regarding the Integrated Police Unit (EUPOL Kinshasa), *OJEU* L 367, December 14 2004, p. 30.

⁵³ See M. MARTINELLI, *Helping Transition: The EU Police Mission in the Democratic Republic of Congo (EUPOL Kinshasa) in the Framework of EU Policies in the Great Lakes*, in *EFA Rev.*, 2006, p. 379.

⁵⁴ See *ESPD Newsletter*, issue 1, Brussels, December 2005, p. 5.

they all aim at achieving the “health” of the rule-of-law as element of stability and growth⁵⁵.

The intervention that has come to an end – which is also the first one that was started – is the rule-of-law mission *EUJUST Themis*⁵⁶, which occurred in Georgia between 2004 and 2005. It had the purpose of supplying assistance to local authorities in the re-establishment of Georgia's criminal system. In practical terms such assistance involved sending ten experts from the EU to some Georgian government offices⁵⁷. The mission ended successfully with the starting of the re-establishment of Georgia's criminal system and penitentiary order⁵⁸.

As regards ongoing interventions these are currently being carried out in Congo and Iraq. With reference to the former, mission *EUSEC RD Congo*⁵⁹ started in June 2005 and involves counselling and assisting Congo in its security reforms. The mission aims at integrating the Congolese Army into the State, by promoting policies that are compatible with international humanitarian law, democratic standards, principles of good public management, transparency and observance of the rule-of-law. This is done via the EU's engagement with the transitional government in order to guarantee the security of the population, national reconciliation, and the stability of the region⁶⁰. Compared to the mission in Georgia, this one represents a different aspect of rule-of-law assistance and has an innovative quality (that of being the first mission of the EU for third states in terms of defence). Furthermore, the mission is small and comprises just eight military counsellors, all employed in the Congolese Ministry of Defence and in the Military Staff.

On the other hand, in Iraq the EU has launched an integrated rule-of-law mission, *EUJUST Lex*⁶¹. Its aim is to help improve the criminal investigation skills of the different components of the *post-war* Iraq criminal justice system⁶². The mission operates within the Iraqi criminal justice system and helps train high and mid-level officials in senior management and criminal investigations and promote closer cooperation between the different actors of the system⁶³. As

⁵⁵ See conclusions of Santa Maria de Feira European Council of 19-20 June 2000, Appendix 3, “*Study on concrete targets on civilian aspects of crisis management*”.

⁵⁶ Council Joint Action 2004/523/CFSP of 28 June 2004 on the European Union Rule of Law Mission in Georgia, *EUJUST Themis*, *OJEU* L 228, June 29 2004, p. 21.

⁵⁷ First Minister Cabinet, Justice Ministry, National Security Council, Office of General Attorney and Office of Ombudsman (see message of CFSP High Representative, doc. S0181/04).

⁵⁸ See D. LYNCH, *Why Georgia Matters*, Paris, 2006, p. 59 (also available on line: www.iss-eu.org).

⁵⁹ Council Joint Action 2005/355/CFSP of 2 May 2005 on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of Congo (DRC), *OJEU* L 112, May 3 2005, p. 20.

⁶⁰ See message of the CFSP High Representative of May 23, 2005 (doc. S190/05).

⁶¹ Council Joint Action 2005/190/CFSP of 7 March 2005 on the European Union Integrated Rule of Law Mission for Iraq, *EUJUST Lex*, *OJEU* L 62, March 9 2005, p. 37.

⁶² See *ESPD Newsletter*, issue 1, cit., p. 27.

⁶³ See statement of CFSP High Representative of March 8 2005 (doc. S0102/05) and doc. “EU Rule-of-law mission for Iraq” (available on line: www.consilium.europa.eu).

with the police mission in the Palestinian territories, the mission operates in a country which has not yet achieved stability and this is an index of the EU's reliability in managing international crises.

In conclusion it is interesting to mention a mission that is being prepared. The EU has established a planning group – *EUPT Kosovo*⁶⁴ – with the task of verifying the feasibility of an EU rule-of-law mission in Kosovo. This mission should inherit certain tasks from the *United Nations Interim Administration Mission in Kosovo (UNMIK)*⁶⁵ – created by the resolution 1244 (1999) of June 10 – when its functions cease following the determination of Kosovo's *status*⁶⁶.

9.3. Monitoring missions are usually aimed at monitoring and supervising an international peace agreement. Monitoring can actually be directed to other kinds of international agreements and, in this sense, the EU has launched monitoring missions that are also directed at controlling border “check points”.

9.3.1. The missions in the Balkans and Indonesia started at different times but with the same purpose of monitoring an international peace agreement.

The *European Union Monitoring Mission (EUMM)* was launched in the Balkans in 1991, but it is still active throughout different countries in the region⁶⁷. Thus, it is an *ante litteram* mission, and a particularly long-lived one. The mission was designed within the context of the European Political Cooperation – thus before the establishment of the EU – even though it was officially considered an intervention within the CSCE's framework⁶⁸. It survived the war in former Yugoslavia, the birth of the EU and its Common Foreign and Security Policy, and the events related to the development of Security Policy.

The secret of this mission's longevity lies in two elements. The first is that the mission can be considered an instrument of the EU's Common Foreign and Security Policy. With Joint Action 2000/811/CFSP⁶⁹ the EU changed the mission's name and inserted it into the second pillar framework, giving it the flexibility necessary to pursue its different tasks. The mission's mandate was also changed. Originally it was meant to oversee the Brioni's agreement which had planned the sending of a monitoring mission of the European Community to

⁶⁴ Council Joint Action 2006/304/CFSP of 10 April 2006 on the establishment of an EU Planning Team (EUPT Kosovo) regarding a possible EU crisis management operation in the field of rule of law and possible other areas in Kosovo, *OJEU* L 112, April 26 2006, p. 19.

⁶⁵ See M. J. MATHESON, *United Nations Governance of Postconflict Societies*, in *AJIL*, 2001, p. 76.

⁶⁶ See M. GLENNY, *The Kosovo Question and Regional Stability*, in J. BATT (ed.), *The Western Balkans: Moving on*, Paris, 2004, p. 87 (also available on line: www.iss-eu.org).

⁶⁷ In Albania, in Bosnia, in the Federal Republic of Yugoslavia and in Macedonia.

⁶⁸ But we tend to consider it as an intervention of EEC within the European Political Cooperation's framework. See M. BOTHE, *Peace-keeping*, in B. SIMMA (ed.), *The Charter of the United Nations. A Commentary*, Oxford, 2002, II ed., p. 697.

⁶⁹ Council Joint Action of 22 December 2000 on the European Union Monitoring (2000/811/CFSP), *OJEC* L 328, December 23 2000, p. 53.

Slovenia. The purpose of such a mission was to verify and uphold the cease-fire, supervise the withdrawal of the federal army from their barracks, and demobilize the Slovenian army. With Joint Action 2000/811/CFSP the mandate was changed so as to give the mission the task of contributing, in a flexible way, to the completion of the EU policy regarding the Balkans. Moreover, according to a further and more recent modification of the mandate, particular focus has been placed on political and security developments in Kosovo, Serbia, and Montenegro⁷⁰. The *EUMM* shows how flexibility can be the key to success in such interventions. The modified mandate has allowed the mission to endure and it now acts as an observatory *in loco* of the Balkan region, thus contributing to the EU's neighbourhood policy.

On the other hand, the monitoring mission in Indonesia – *Aceh Monitoring Mission (AMM)*⁷¹ – was launched in mid-September 2005 and, after several extensions, ended in mid-December 2006. The mission was created following the conclusion of the definitive peace agreement signed in Helsinki on August 15 2005 between the Indonesian government and Free Aceh Movement (GAM) representatives, after almost 30 years of local unrest⁷². In fact the agreement, amongst other decisions, calls for the launch of a joint mission between the EU and contributing States of the Association of Southeast Asian Nations (ASEAN)⁷³, with the task of monitoring, from September 15 2005, the observance of the peace agreement⁷⁴.

This mission has had several interesting effects. It is the first mission in South Eastern Asia and this shows that the activity of the EU in Congo is not an isolated instance of “out of area” commitment. Moreover, the mission occurred in an area whose strong crisis is not only due to political factors but can be linked to environmental considerations as well (having recently been hit by a tsunami). It was a demanding mission, and, even though it was considered a monitoring mission it acted in various fields, including military ones. As a result, the mission was a test for the good functioning of crisis management, particularly of the Civil-Military Cell. It also represents the first instance of a mission that took place in conjunction with the full integration of other international organizations, following a new pattern for the EU's practice. In fact the mission involved full integration between the EU and ASEAN teams, with the exception of the head

⁷⁰ Council Joint Action 2005/807/CFSP of 21 November 2005 extending and amending the mandate of the European Union Monitoring Mission (EUMM), *OJEU* L 303, November 22 2005, p. 61.

⁷¹ Council Joint Action 2005/643/CFSP of 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia) (Aceh Monitoring Mission–AMM), *OJEU* L 234, September 10 2005, p. 13.

⁷² Text can be found on line: www.consilium.europa.eu.

⁷³ On ASEAN's peace-keeping activities, see, for example, A. MINUTI, *ASEAN e mantenimento della pace nel quadro del sistema Nazioni Unite*, in F. LATTANZI, M. SPINEDI (a cura di), *op. cit.*, p. 161 et seq.

⁷⁴ Cfr. point 5.2 of the peace agreement. For a broader analysis, see P. A. BRAUD, G. GREVI, *The EU Mission in Aceh: Implementing Peace*, Paris, 2005 (also available on line: www.iss-eu.org).

of the mission who was appointed by the EU. The positive results achieved by the mission could lead us to conclude that it is an example of a joint mission to be repeated in other crisis areas. Finally, we must recall that the mission began operating on very short notice – *de facto* the observers were on the ground the day of the signing of the peace agreement – and this could be an operative standard for future peace-missions⁷⁵.

9.3.2. The two other monitoring missions launched until now do not have the function of monitoring a peace agreement. Their task, on the other hand, is helping to control the regular functioning of border activities.

The same can be said of the *EU Border Assistance Mission at Rafah crossing point (EU BAM Rafah)*⁷⁶. It was conceived within the more general framework of aiding the Palestinian Authority to take responsibility for the maintenance of public order following Israel's unilateral disengagement. This mission, established at the end of 2005, is meant to assist and train Palestinian authorities to supervise movements at Rafah's crossing point and along the Egyptian border (applying the Agreement on Movement and Access from and to Gaza, signed between Israel and the Palestinian Authority on November 15 2005)⁷⁷. The EU is not replacing local authorities as control remains with the Palestinian Authority, yet, the EU contributes to the development of local powers in managing Rafah's pass⁷⁸.

Similarly, the *EU Border Assistance Mission to Moldova and Ukraine* started on December 1 2005 – with a duration of 24 months following the request of both countries and is meant to assist the Moldovan and Ukrainian border authorities in monitoring the Transnistrian area. The mission aims to develop the local authorities' abilities to control people's movements and fight the illegal trafficking that generally occurs in proximity of the Transnistrian area. As a long-term result, the mission intends to establish cooperation and communication between border authorities and contribute to the creation of a solution to the Transnistrian conflict⁷⁹.

Although the mission's mandate is similar to *EU BAM Rafah*, there are a few institutional differences with the monitoring mission in the Palestinian territories and with Security Policy peace-missions in general.

The mission is based on a *memorandum of understanding (MoU)*⁸⁰, signed by the European Commission and by the governments of Moldova and Ukraine.

⁷⁵ See P. FEITH, *AMM* Head of Mission, interview in *ESPD Newsletter*, issue 2, cit., p. 18.

⁷⁶ Council Joint Action 2005/889/CFSP of 12 December 2005 on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah), *OJEU* L 327, December 14 2005, p. 28.

⁷⁷ See www.consilium.europa.eu.

⁷⁸ See *ESPD Newsletter*, issue 1, cit., p. 5.

⁷⁹ On the secessionist events involving Transnistria, see D. LYNCH, *Crisis in Moldova*, Paris, 2002 and N. POPESCU, *The EU in Moldova. Settling Conflicts in the Neighbourhood*, Paris, 2005, p. 15 (both available on line: www.iss-eu.org).

⁸⁰ Text on www.eubam.org.

The *memorandum* regulates the legal *status* of the *European Commission Border Assistance Mission* in the territories of the hosting parties. The MoU specifies that the mission operates under the auspices of the European Commission and that it will report to the EU Special Representative for Moldova⁸¹, the Governments of the host States, and the Commission itself. In order to define privileges and immunities, the MoU gives the mission the same *status* as the Commission's delegations in Ukraine and Moldova which enjoy the privileges and immunities accorded to diplomatic missions by the 1961 Vienna Convention on diplomatic relations.

The legal framework described by the memorandum appears peculiar to say the least. The MoU states that the mission "belongs" to the European Commission, and not to the European Community or, more precisely, to the European Union. The mission has not been established by a Joint Action, as usually happens, and its *status* is defined by the MoU rather than by international agreement according to Article 24 TEU. The only act adopted under the second pillar framework is a Joint Action that modifies the mandate of the Special Representative⁸². This refers to the Political and Security Committee's decision to start the mission and modifies the Representative's mandate in order to include the mission's functions. That being so, such a framework differentiates this mission from the others as it seems to include it into the first pillar⁸³, even though monitoring missions – just like peace-missions – are part of the second pillar. Nevertheless, as a link to the second pillar, the head of the mission is part of the staff of the EU Special Representative for Moldova, an institutional figure of the CFSP, and official documents indicate the mission as *EU Border Assistance Mission to Moldova and Ukraine*⁸⁴.

These anomalies suggest that this monitoring mission was born in a difficult context and this may have made it necessary to apply an atypical formula. Probably some of the political or financial difficulties that arose when deciding to start the mission made it impossible to establish it on the correct legal basis and with the procedures used for other missions. Yet, it must be said that the anomalous solution allowed the mission to be activated and this, from an operational Security Policy's point of view, is worthy of praise.

9.4. Unlike military operations, whose establishment can require the use of NATO's assets, the organization of a civilian mission is much less problematic. In fact, as has been observed since the first civilian mission, "the launch and implementation of *EUPM* show how much easier it is for the Union to put in

⁸¹ Council Joint Action 2005/265/CFSP of 23 March 2005 appointing a Special Representative of the European Union for Moldova, *OJEU* L 81, March 30 2005, p. 50.

⁸² Council Joint Action 2005/776/CFSP of 7 November 2005 amending the mandate of the European Union Special Representative for Moldova, *OJEU* L 292, November 8 2005, p. 13.

⁸³ This seems to be confirmed by N. POPESCU, *op. cit.*, p. 35 et seq.

⁸⁴ For example, see doc. of CFSP High Representative of December 2, 2005 (doc. S398/05).

place civilian crisis management rather than ‘mixed’ or purely military ones”⁸⁵. In fact, these are rather small interventions with a certain flexibility, efficiency and effectiveness. The EU is totally autonomous in starting and managing these missions and practice shows how they can be set up rapidly (two examples that prove this are the start of the monitoring mission in Indonesia and the rule-of-law mission in Georgia)⁸⁶.

As for the conferred tasks, this kind of intervention does not need prior authorization from the Security Council. In fact, these are not operations requiring a coercive use of force, but are based upon the consent of the host State. The use of force is almost totally excluded, as it is the local authorities’ duty to protect the mission. Consequently, these missions only require the communication *ex* Article 54 of the Charter of the United Nations. This also implies there will be no incompatibility with the neutrality of some EU Member States.

10. The exposed practice has a certain thematic range within the various EU peace-missions. They vary from military operations, of small and large sizes, to different types of civilian missions. This array does not find correspondence in Article 17 TEU, which only mentions certain kinds of interventions and does not cover all the possibilities of implementation. This is due to the explanatory character of the list *ex* Article 17 TEU which does not bind the EU to pre-arranged actions, but gives it the flexibility necessary for managing an international crisis.

Interventions must be able to adapt to tangible events and, therefore must foresee the necessary actions concerning the management of a crisis. Thus Article 17 TEU must be read as a rule that enables the activation of actions ranging from interventions with no military content – humanitarian and rescue tasks – to others which, on the contrary, consider the use of force important for their functions on the ground.

11. The practice of peace-missions shows a certain geographical variety too. Until now the EU’s interventions have involved three continents – Europe, Africa and Asia – and twelve third States. Such an approach is in harmony with the treaty because Article 17 TEU does not define a geographical limitation to peace-missions.

The width of the EU’s range of action has increased progressively⁸⁷. Early Security Policy saw the Balkan region and Congo as preferential areas. The first

⁸⁵ See A. MISSIROLI, *Euros for ESDP: Financing EU Operations*, Paris, 2003, p. 13 (also available on line: www.iss-eu.org).

⁸⁶ See announcement of CFSP High Representative of July 23, 2004 (doc S0199/04).

⁸⁷ This phenomenon has also been called *mondialisation* of the Common Foreign and Security Policy. See J. AUVRET-FINCK, *Politique étrangère et de sécurité commune*, in *Europe Traitée, Collections des Juris-Classeurs*, n. 2600, Paris, 2006, p. 13.

interventions were carried out in countries affected by the Balkan conflict⁸⁸. As for intervention in Congo, where the EU acted in collaboration with the United Nations, it is the first of many interventions that were established for the reconciliation of a country and to help solve the Darfur crisis. Today some peace-missions are still active in these areas, and this proves the ongoing commitment of the EU towards international crises.

Starting from 2004 the scope of action was widened and Asia was reached. Several missions have been started in different parts of the continent, particularly in the Southern Caucasus, in the Middle East and in South-West Asia. Such an extension is extremely important and must be fully considered. In fact, the EU has intervened in old conflicts, traditionally considered difficult to manage, such as the Palestinian territories. We must suppose that undertaking peace-missions in such demanding areas demonstrates an increased belief in the EU as a regional peace-keeper. This is probably the result of the successful crisis-management operations which have been undertaken under Article 17 TEU.

12. There is an high number of cases concerning peace-missions practice referring to the participation of third States⁸⁹. Apart from a few small interventions, like the rule-of law mission *EUJUST Themis* in Georgia or *EUPAT* in Macedonia, the EU's peace-missions usually take place with the participation of third States.

The reason for third States involvement lies in the open character of the Security Policy, as decided by the Nice European Council on December 7-9 2000 and, as far as military operations are concerned, in the Berlin plus agreements. According to these agreements, when the EU establishes a military operation using NATO assets, it must accept the request of a "non-EU NATO" State to take part in the peace-missions. When the EU is not using NATO assets, it has the right to accept or reject such a participation offer. This means that NATO is not only the EU military partner, but it has also been the vehicle for the involvement of third States in its Security Policy.

Moreover, there is further outcome to the Security Policy's open character. It is to be remarked that up to 2004 the practice of missions shows an external participation of the EU candidate countries and "non-EU NATO" countries. Yet, starting from the *Althea* military operation, the participation of third States was "widened". This operation involved countries like Morocco, Chile and Argentina, which previously had never taken part in EU missions. There are two main reasons for such an enlargement. First of all, some of these countries – for

⁸⁸ Since the beginning of the war that upset the region, the area has been on the receiving end of commitment, first from the European Community and then from the EU, directed at reinstating peace, stability, social and cultural development. During the war this long-term commitment resulted in the start of actions of various nature. See D. SCHWEIGMAN, *The Authority of the Security Council under Chapter VII of the UN Charter*, London, Boston, 2001, p. 93-7 and R. HIGGINS, *The New United Nations and former Yugoslavia*, in *Rev. IA*, 1993, p. 465.

⁸⁹ See L. N. GONZÁLES ALONSO, *op. cit.*, p. 661.

example, Morocco – were part of NATO interventions that were about to be concluded. Secondly, the political dialogue between the EU and several countries of the world may have given the former the possibility of accepting contributions from the latter.

Thus, the open character of the Security Policy clearly allows for an open-ended list of participants which can be recruited if willing and able to offer useful contributions to the missions⁹⁰.

Finally it must be remembered that the frequent participation of third States in peace-missions forced the Council⁹¹ to authorize the Presidency to negotiate agreements establishing participation rules (so-called “framework for participation”) with Canada, Iceland, Norway, Turkey, Bulgaria, Romania, Russia and Ukraine⁹². This avoids the conclusion of *ad hoc* international agreements under the Article 24 TEU. The first example of the use of a framework for participation occurred with the start of the *Althea* military operation in Bosnia. At the launch of this mission, countries such as Bulgaria, Canada, Norway, Romania and Turkey were negotiating or had signed agreements regarding the framework. It must be noted that these agreements represent an element of stability for relations between the EU and certain third States and are a way of speeding up the procedures that are necessary to start a peace mission.

13. In evaluating the first four years of Article 17 TEU implementation, the strengths and weaknesses of crisis management become apparent.

The positive aspects include the fact that security policy is blessed by a certain vitality and variety of actions. The Union has an established competence in the management of international crises, and disposes of a variety of means that enable it to handle extremely different crisis contexts, ranging from armed presence to the counselling of high government officials. Such variety is confirmed by the Security Policy’s wide geographical range, which is not merely directed towards crisis areas close to the EU but also includes more distant ones.

The missions testify the EU is able to co-ordinate peace-keeping activities with the United Nations and NATO. As demonstrated by the Balkans and Congo the EU can start its own missions and take up the responsibilities that previously rested with other operations active on the territory and, furthermore, it can provide support whenever this is necessary to reinforce such operations. The EU is also capable of cooperating with other international organizations, as in the case of the monitoring mission in Indonesia, and can support peace-keeping activities launched by other organizations, as in the African Union’s case. As for

⁹⁰ See, C. TÖRÖ, *op. cit.*, p. 655.

⁹¹ See press release 6291/04 (Presse 48) of the 2562th session of the Council “General Affairs” of 23 February 2004.

⁹² See, for example, the Agreement between the European Union and Canada establishing a framework for the participation of Canada in the European Union crisis management operations, *OJEU* L 315, December 1 2005, p. 21.

the organization and commencing of interventions, practice shows that the EU has various ways it can intervene, if necessary via partnerships with NATO – something that has worked well – or with third States which can provide additional resources.

Overall, the practice of peace-missions shows how the Security Policy has reached remarkable results in a short time. Such results, both institutionally and according to the practice of application of Article 17 TEU, could not have been foreseen following the signing of the Amsterdam Treaty.

The positive aspects of EU crisis management cannot, however, hide certain institutional and organizational weaknesses that have become apparent through the running of peace-missions. Experience has shown that it is necessary to speed up the procedures for the starting of missions. Among the elements that would speed the process up is the conclusion of international agreements with participating third States⁹³. In this sense a step forward has been made: the conclusion of framework agreements for the participation of several third States will avoid the negotiation of *ad hoc* participating agreements. That being said, whenever it is necessary to obtain resources from third States which have not signed framework agreements, it will be up to the Presidency to conduct collective negotiations in order to conclude the necessary *ad hoc* agreements.

It is also necessary to improve the coordination of the instruments of civilian and military management, both when interventions come one after another, as in Macedonia, and when both components are part of the same intervention, as happened with the supporting action to *AMIS II* and, partially, with *AMM*. From this point of view, the establishment of the Civilian-Military Cell. is an important step forward⁹⁴. As for the operative management of the missions, the tendency is towards speedy organization and long-term sustainability. To this end there have been improvements with the military operations in Congo and with the *AMM*; these could represent a standard for future operations. From a financial standpoint, instead, we have already remarked how *ad hoc* financing mechanisms have made the conduction of military operations more complex. The steadier solution provided by *Athena* is effective but not enough. In fact, its Special Committee decides unanimously and this could result in decisions being blocked.

Although the strengths are matched by the weaknesses, it is nevertheless remarkable that the self-learning experience that the EU is conducting within its Security Policy sets promising standards for future development. For example, the headline goal of the Security Policy for 2010 – the creation of battlegroups – has been built on the results of the *Artemis* operation. This suggests that the EU is using the experience gained *in loco* in order to face growing challenges. This is important in light of the peace-keeping, peace-making and post-conflict stabilizing roles that the EU intends to take on via its Security Policy⁹⁵.

⁹³ See G. LINDSTROM, *op. cit.*, p. 128.

⁹⁴ See note 97.

⁹⁵ See M. CREMONA, *The Union as a Global Actor: Roles, Model and Identity*, in *CML Rev.*, 2004, p. 562-563.

14. As stated above, the analysis of peace-missions shows how Security Policy tends to reach coherence in different ways. One such way involves the co-ordination of military and civilian aspects in the same mission and the management of military operations and civilian missions that interchange in the same country or area.

As regards the first aspect, practice shows that it is not always possible to distinguish between military operations and civilian missions. It is possible that a mission may have a mixed character. The monitoring mission in Indonesia, for example, was a complex mission, that included both civilian and military competences. Similarly, the rule-of-law mission *EUSEC RD Congo* is a civilian intervention on a military topic and the supporting action to *AMIS II* contains both a civilian and a military component. Hence, it might be better to think of peace-missions as interventions with a preponderant civilian or military nature, keeping in mind that there may be other components *a latere* or that the exercise of different competences may be foreseen. Obviously, the presence of different components in the same mission will call for co-ordination of military and civilian aspects in order to obtain the coherence of the different activities on the territory.

As regards “alternating” peace-keeping missions, the need to co-ordinate the end of one mission and the start of another is extremely important. This is especially so when a crisis improves and a military operation is followed by a civilian mission. An example of such a situation can be found in Macedonia where engagement necessary to ensure the implementation of Ohrid Agreements began with the *Concordia* military operation. When *Concordia* finished its mandate, it was followed by a civilian police mission (*Proxima*) and, subsequently, by another similar mission (*EUPAT*). In this case the co-ordination between military and civilian aspects involved activities carried out by two different missions that worked at different times on the same territory. In Macedonia-like situations coherent crisis management is necessary and this may involve variegated interventions being launched.

These forms of co-ordination have been required since the European Security Strategy drafted on December 12 2003 – as confirmed in following documents⁹⁶ – and are reflected in Security Policy implementation. This is proved by the practice of peace-missions and by the creation, in 2005, of the Civilian-Military Cell. – within the European Union Military Staff – which institutionalized the co-ordination of civilian and military aspects in crisis management⁹⁷.

⁹⁶ See *Action Plan for Civilian Aspects of ESPD*, adopted by the Brussels European Council of 17-18 June 2004. On this document, see A. NOWAK, *Civilian Crisis Management within ESPD*, in A. NOWAK (ed.), *Civilian Crisis Management: The EU Way*, Paris, 2006, p. 29 (also available on line: www.iss-eu.org).

⁹⁷ On the Civilian-Military Cell., see R. KHOL, *Civil-Military Co-ordination in EU Crisis Management*, in A. NOWAK (ed.), *op. cit.*, p. 123.

15. Another aspect of coherence that emerges from the practice of missions is internal to the Security Policy. It regards the possibility that one or more crisis management interventions operate at the same time and on the same territory. It is clear that there is a need to co-ordinate the different missions, especially from an efficiency point of view. This is in line with the principle *ex* Article 13 TEU, which foresees that the Council must ensure the unity, consistency and effectiveness of action carried out by the Union in the Common Foreign and Security Policy.

Once again there are practical examples of such coherence. The case of Bosnia, for example, involved a civilian police mission (*EUPM*) and a military operation (*Althea*) with the task of guaranteeing the implementation of the 1995 Dayton Agreement. These missions represented two different EU interventions in Bosnia but the need to co-ordinate between them in order to obtain efficient EU action was apparent. Further examples are provided by Congo, where three EU missions are operating (one military and two civilian), and the Palestinian territories, where the EU has launched two civilian missions (one in support of the local police and the other to monitor the Rafah border).

In order to guarantee co-ordination, the Joint Actions establishing missions contain a “link rule”. Thus, when the EU initiates a mission in an area where another mission is already operating, the Joint Action will foresee some form of co-ordination between the two. For example, Article 7 of Joint Action 2004/570/CFSP⁹⁸ foresees the co-ordination between the *Althea* military operation and the *EUPM* civilian mission in Bosnia. The same goes for the missions in the Palestinian territories⁹⁹ and Congo¹⁰⁰.

An important aspect of the aforementioned co-ordination is also covered by the EU Special Representative. This figure belongs to the second pillar¹⁰¹ and, when appointed, could have the task of coordinating the missions operating in same area¹⁰².

16. A classic aspect of coherence that emerges from the practice of missions is the co-ordination between activities carried out in the context of different pillars¹⁰³. In other words, the need to co-ordinate EU missions with actions

⁹⁸ In *OJEU* L 252, July 28 2004, p. 10.

⁹⁹ See Joint Action 2005/889/CFSP, cit., that foresees co-ordination between monitoring mission *EU BAM Rafah* and police mission *COPPS*.

¹⁰⁰ See Article 10 Joint Action 2005/355/CFSP, cit., that foresees a connection between the rule-of-law mission *EUSEC RD Congo* and police mission *EUPOL Kinshasa*. See, moreover, Articles 8 and 9 of Joint Action 2006/319/CFSP, cit., that foresee the co-ordination between the two civilian missions above and the *Eufor RD Congo* military operation.

¹⁰¹ See Article 18, para. 5, TEU and similarly Article III-302 CTEU.

¹⁰² See, for example, Article 7 Joint Action 2005/355/CFSP, cit., on the chain of command of the rule-of-law mission *EUSEC RD Congo*.

¹⁰³ This aspect of coherence has also been called *coherencia horizontal*. See D. J. LIÑÁN NOGUE-RAS, *La política exterior y de seguridad común de la Unión Europea: la subordinación permanente*, in this *Review*, 2006, p. 211 et seq.

undertaken on the basis of the first and third pillars in the same country or area. The aim of such co-ordination is to reach the coherence of EU external action, in conformity with Article 3 TEU and, in future, with Articles III-115 and III-292 CTEU.

Missions are often launched in countries in which the EC has already had some involvement, such as the stipulation of Development cooperation agreements and Neighbourhood policy. Similarly, missions can operate in countries which have been the object of interventions in the context of the third pillar. In this case, the actions from different pillars converge towards the same objective and must be co-ordinated in order to achieve a global approach¹⁰⁴. In this context, peace-missions represent a “milestone” in the EU’s global approach toward a country or an area. This happens in the Balkans where the missions, with instruments of the Stabilization and Association Process, contribute to create the EU global approach¹⁰⁵. The same can be said for the mission in Georgia, that belongs to the EU’s policy towards Southern Caucasus¹⁰⁶, or for the interventions in Africa¹⁰⁷ and the Middle East¹⁰⁸.

To achieve the relevant co-ordination, the Council and the Commission must first of all co-ordinate their activities and, if the Constitutional Treaty were to be adopted, the EU Minister for Foreign Affairs would act as a further guarantee. Secondly, in the context of Security Policy, the Joint Actions that create missions contain this general rule: “The Council and the Commission shall ensure each in accordance with its respective powers, consistency between the implementation of this Joint Action and other external activities of the Community in accordance with Article 3(2) of the Treaty. The Council and the Commission shall cooperate

¹⁰⁴ This is a consequence of the EU’s pillar structure. On this topic, see D. CURTIN, *The Constitutional Structure of the Union: A Europe of Bits and Pieces*, in *CML Rev.*, 1993, p. 17 et seq.; DE WITTE B., *The Pillar Structure and the Nature of the European Union: Greek Temple or French Gothic Cathedral?*, in T. HEUKELS, N. BLOKKER, M. BRUS (eds.), *The European Union after Amsterdam. A Legal Analysis*, The Hague, 1998, p. 51 et seq.; A. VON BOGDANDY, *The Legal Case for Unity: The European Union as a Single Organization with a Single Legal System*, in *CML Rev.*, 1999, p. 894; R. BARATTA, *Overlaps between European Community Competence and European Union Foreign Policy Activity*, in E. CANNIZZARO (ed.), *The European Union as an Actor in International Relations*, The Hague, London, New York, 2002, p. 51 et seq.

¹⁰⁵ See S. LEHNE, *Has the ‘Hour of Europe’ Come at Last? The EU’s Strategy for the Balkans*, in J. BATT (ed.), *op. cit.*, p. 111.

¹⁰⁶ See doc. 10189/04 (Presse 195), 2590 Session General Affairs and External Relation Council of June 14 2004, and D. LYNCH, *Why Georgia Matters*, cit.

¹⁰⁷ See doc. “Darfur–Consolidated EU package in support of AMIS II” and “EU response to the Darfur crisis” (www.consilium.europa.eu). Also see M. MARTINELLI, *op. cit.*, p. 381.

¹⁰⁸ See Assistance Programme to the Palestinian Authority, born from the willingness expressed in the Brussels European Council of 17-18 June 2004 (Annex “Middle East Peace Process”). The missions belong to the EU’s general engagement in sustaining the Palestinian Authority respect of the Road Map, with primary focus on the aspects of security and institution building. Regarding the mission in Iraq, it is part of the framework of EU activities toward *post-war* Iraq. Moreover, it represents an aspect of implementation of the programmes for Iraq 2004 and 2005, that give effect to the UN Security Council resolution 1546 (2004) of 8 June.

to this end”¹⁰⁹. This is a “style clause” often found in CFSP documents with the aim of guaranteeing the unity and the coherence of the EU’s approach in accordance with the competences assigned to the pillars¹¹⁰.

Finally, as happens with the co-ordination of different peace-missions, the EU Special Representative often has the role of co-ordinating the EU’s different activities in a particular area. In this context, he/she has the dual role of “voice” and “face” of the EU in a specific area¹¹¹. For example, the Bosnia and Herzegovina EU Special Representative’s mandate includes the co-ordination of re-building activities (financed by the EC), peace-missions, and actions launched in the context of the third pillar¹¹².

17. The final aspect of coherence that emerges from the practice of peace-missions regards the co-ordination of missions with peace-keeping activities conducted by other international organizations, *in primis* the United Nations and NATO¹¹³.

As regards the UN, two aspects of co-ordination are immediately apparent. The first is classic and involves the need to operate missions within the framework set by the UN Charter. In fact, all peace-keeping activities of regional organizations should operate under Chapter VIII of the Charter¹¹⁴ which foresees

¹⁰⁹ Until Joint Action 2005/355/CFSP, cit., on the *EUSEC RD Congo* mission the rule had been: “The Council notes the Commission’s intention to direct its action towards achieving the objectives of this Joint Action, where appropriate, by relevant Community measures”. Despite the different words used, the subject is the same.

¹¹⁰ See C. NOVI, *op. cit.*, p. 198 et seq.

¹¹¹ See doc. “EU Special Representatives (EUSRs)”, EU Council Secretariat, June 2005 (www.consilium.europa.eu).

¹¹² Council Joint Action 2006/49/CFSP of 30 January 2006 appointing the European Union Special Representative in Bosnia and Herzegovina, *OJEU* L 26, January 31 2006, p. 21.

¹¹³ But also other international organizations; e.g. with ASEAN in the framework of the *AMM* monitoring mission and with the African Union in the *supporting action to AMIS II*.

¹¹⁴ On chapter VIII of the UN Charter, see E. CANNIZZARO, *Sull’attuazione di risoluzioni del Consiglio di Sicurezza da parte di organizzazioni regionali*, in *RDI*, 1993, p. 408 et seq.; A. DEL VECCHIO, *Consiglio di sicurezza ed organizzazioni internazionali regionali nel mantenimento della pace*, in *CI*, 1995, p. 228 et seq.; A. GIOIA, *The United Nations and Regional Organizations in the Maintenance of Peace and Security*, in M. BOTHE, N. RONZITTI, A. ROSAS (eds.), *The OSCE in the Maintenance of Peace and Security. Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes*, The Hague, London, Boston, 1997, p. 191 et seq.; M. IOVANE, *La NATO, le organizzazioni regionali e le competenze del Consiglio di sicurezza delle Nazioni Unite in tema di mantenimento della pace*, in *CI*, 1998, p. 43 et seq.; U. VILLANI, *Il ruolo delle organizzazioni regionali per il mantenimento della pace nel sistema dell’ONU*, in *CI*, 1998, p. 428 et seq.; ID., *The Security Council’s Authorization of Enforcement Actions by Regional Organizations*, in *Max Planck UNYB*, 2002, p. 535 et seq.; ID., *La politica europea in materia di sicurezza e di difesa e i suoi rapporti con le Nazioni Unite*, in *CI*, 2004, p. 63 et seq.; F. LEITA, *Il ruolo attuale delle organizzazioni regionali per il mantenimento della pace e della sicurezza internazionale*, in S. RIONDATO (a cura di), *Diritto e Forze armate. Nuovi impegni*, Padova, 2001, p. 151 et seq.; A. TANZI, *Il ruolo delle organizzazioni regionali nel dibattito alle Nazioni Unite*, in F. LATTANZI, M. SPINEDI (a cura di), *op. cit.*, p. 1 et seq.

that regional autonomous peace-keeping activities must be previously authorized if coercive¹¹⁵ and communicated if non-coercive¹¹⁶.

The harmony of the Security Policy with the Charter is guaranteed by the Treaty on European Union. Article 11 TEU foresees the maintenance of international peace and security activities must be in accordance with the principles of the UN Charter. Moreover, since the Cologne European Council of 1999 the conclusions adopted by European Councils have confirmed that the development of the Security Policy is aimed at contributing to the maintenance of international peace and security whilst respecting the competences of UN.

On this point, the practice of the missions is clear. Three of the four EU military operations have been authorized to use force in advance by the Security Council: *Artemis*¹¹⁷, *Althea*¹¹⁸ and *EUFOR RD Congo*¹¹⁹. Authorization was not necessary for the *Concordia* military operation in Macedonia because, even though it involved the use of weapons, its mandate did not foresee the use of force over self-defence¹²⁰. Authorisation was also unnecessary for civilian missions¹²¹. However, these unauthorized mission were probably the object of a communication to the Security Council *ex* Article 54 of the UN Charter.

The second aspect of co-ordination regards the real forms of co-operation that emerge from the practice of the missions. At present, the range of forms of co-operation between the UN and regional organizations overtakes Chapter VIII and results in new modalities being followed. In light of the “Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security” of 9 December 1994¹²², “Regional arrangements or agencies can, in their fields of competence and in accordance with the Charter, make important contributions to the maintenance of international peace and security, including, where appropriate, through the peaceful settlement of disputes, preventive diplomacy, peacemaking, peace-keeping and post-conflict peace-building”¹²³. This resolution grants regional organizations a variety of collaboration methods not apparent in Chapter VIII and encourages them to operate in co-ordination with the UN, in order to realize the objectives of the Charter. Similarly, the Agenda for Peace of 1995 indicates new modalities of co-operation which allow

¹¹⁵ See Article 53 of UN Charter.

¹¹⁶ See Article 54 of UN Charter.

¹¹⁷ See resolution 1484 (2003) of 30 May.

¹¹⁸ See resolution 1575 (2004) of 22 November.

¹¹⁹ See resolution 1671 (2006) of 25 April.

¹²⁰ Thus, Security Council resolution 1371 (2001) of 26 September, that welcomed the launch of *Concordia*, should be read as a form of political support to an EU decision. See U. VILLANI, *La politica europea in materia di sicurezza e di difesa*, cit., p. 84.

¹²¹ A similar reading – see note above – should be given to the Security Council resolutions on the launch of certain civilian missions, as in the case of *EUPM* (resolution 1936 (2002) of 5 March.

¹²² Resolution n. 49/57 of General Assembly (www.un.org).

¹²³ See point 2.

regional organizations to give military support to UN. Such modalities include operational support¹²⁴, co-deployment¹²⁵ and joint operations¹²⁶.

More specifically, as regards the EU, the Joint Declaration on UN-EU Co-operation in Crisis Management of September 24, 2003¹²⁷ confirmed the “existing co-operation between the United Nations and the European Union in the area of civilian and military crisis management, in particular in the Balkans and in Africa” and re-affirmed the EU’s determination to co-operate with the UN in the framework of the Charter¹²⁸.

On this point practice is clear. The military operations in Congo, deployed with the task of upholding *MONUC*, are two examples of operational support. Moreover the EU has been – and will be – engaged to *prendre le relais* of the UN on the ground. In fact, with *EUPM* the EU has guaranteed to follow up the activities of a UN mission (*IPTF*) and with the next rule-of-law mission in Kosovo the EU will receive some of the tasks of *UNMIK*. Finally, the supporting action to *AMIS II* operates in harmony with recent resolution 1631 (2005) of October 7, strengthening the capacity of regional organizations in conflict prevention and crisis management, with particular regard to the African Union.

As for co-ordination with NATO, we know that the partnership between the two organizations guarantees that the EU can make use of Atlantic assets to launch “hard” military operations (as in the Balkans)¹²⁹. But it is important to highlight another aspect: the interchangeability with NATO-led ground missions. In fact, the launch of the Union’s hard military operations has allowed NATO to disengage its soldiers and move them to more challenging regions, as happened with Afghanistan. Therefore, it is important to emphasize two points. First of all, this represents a sort of co-ordination between these two international organizations. Secondly, it seems that their partnership is not only unilateral support by the Atlantic Alliance to the Union, but rather it is a mutually advantageous cooperation.

¹²⁴ Operational support foresees a military presence *a latere* of the regional organizations helping the United Nations force.

¹²⁵ Co-deployment foresees an operative role for the regional organizations’ forces whilst the United Nations’ force co-ordinates operations.

¹²⁶ In joint operations the United Nations and regional organizations participate equally to an operation.

¹²⁷ See www.europa-eu-un.org.

¹²⁸ On the co-operation between the UN and the EU, amongst others see G. PUGLIESE, *Da Bruxelles a New York: prospettive della cooperazione tra Unione europea e Nazioni Unite nel settore della prevenzione e gestione dei conflitti*, in *Europa e politica internazionale: nuovi orizzonti della diplomazia italiana, Quaderni di studi europei*, Milano, 2001, p. 50 et seq.; L. PICCHIO FORLATI, *La politica estera e di sicurezza comune dell’Unione europea tra Carta delle Nazioni Unite e impegni NATO*, in S. RIONDATO (a cura di), *op. cit.*, p. 146 et seq.; F. MARTINES, *Il ruolo dell’Unione europea e suo coordinamento con le Nazioni Unite e l’UEO*, in F. LATTANZI, M. SPINEDI (a cura di), *op. cit.*, p. 377 et seq.; U. VILLANI, *La politica europea in materia di sicurezza*, *cit.*, p. 63 et seq.; T. TARDY, *op. cit.*, p. 49 et seq.; CICCONE M., *Aspetti istituzionali delle relazioni tra Unione europea e Nazioni Unite*, in P. MARIANI (a cura di), *op. cit.*, p. 160 et seq.

¹²⁹ See paragraphs 3 and 8.1.

18. With this contribution I have, in three steps, shown the ways in which peace-missions allow for the realisation of the coherence of the EU's external action.

The first involves the institutional aspects of coherence and is exemplified by two elements. *In primis*, both the Treaty on European Union and the Constitutional Treaty foresee the need to reach coherence in external action and, *in secundis*, the Security Policy is involved in the relevant co-ordination activities. In this sense it is possible to state that the practice *ex* Article 17 TEU could represent a possible future scenario of implementation of Article III-309 CTEU. This would involve the implementation of the Security Policy, not only with regard to its essential features, but also to its strengths and weaknesses. Finally, the aspects of coherence that emerge from practice have been analysed with regard to the single missions, the whole Security Policy, the EU's global action and the co-ordination between the EU and other international organizations.

Practice confirms that missions belong to the activities that need co-ordination in order to achieve the coherence of EU action. In this sense, it is important to highlight a few points. First of all, it is necessary to further strengthen the successful areas of Security Policy by creating a sort of crisis-management *acquis*. Secondly, a solution to the institutional weaknesses, exemplified by missions themselves, should be found. Finally, the "future development challenges" of Security Policy should be faced on the basis of the experience gathered. This could lead to more efficient missions, would be useful to the Security Policy and could give an important contribution to the EU's approach in external action.

The future entry into force of the Constitutional Treaty – if it will ever be ratified¹³⁰ – should give added guarantees. Firstly, it reaffirms that external policies, unified in Title V of the Constitutional Treaty, must be co-ordinated by the Council and the Commission, with the aid of the EU Minister for Foreign Affairs. The latter will have connections to both institutions and this should render his/her action more incisive. Secondly, the Security Policy has been greatly institutionalised and some of the positive aspects of practice have been codified. This can be seen for example, not only in the specific framework of the Security Policy, but also in the rules on co-operation with international organizations, *in primis* the UN¹³¹. Hence the premises and the instruments in order for EU peace-missions to participate in the building of a global and coherent approach of a future "constitutional" EU.

¹³⁰ See L. S. Rossti, *En cas de non-ratification ... le destin périlleux du "Traité-Constitution"*, in *RTDE*, 2004, p. 621 et seq.

¹³¹ See Articles III-292 and III-327 CTEU.