

GUEST EDITORIAL

Foreign policy at Maastricht: “Non in commotione Dominus”

The arch-conservative Joseph de Maistre, speaking “in language reminiscent of Burke, Herder and Chateaubriand”, held that all legitimate operations, of whatever kind, always proceed by insensible steps . . . Non in commotione Dominus.”¹ The Twelve at Maastricht may be said to have taken “an insensible step” toward a common foreign policy, but they failed to accept full Community discipline in the area of foreign affairs.

There have been several such steps since the inception of the integration process more than forty years ago: for the first twenty years there was no foreign policy forum for the Member States. The European Political Cooperation, originally a purely political improvisation of the nineteen seventies, was given a treaty basis in the Single European Act of 1987 in the form of a broad obligation of the Member States to consult. The Maastricht Treaty has finally brought the “common foreign and security policy” within the orbit of the Community Council, albeit under a special regime. On the basis of guidelines from the heads of state or government assembled in the European Council, the Ministers take all decisions by a unanimous vote except in matters which by unanimous agreement they designate as subject to a special, qualified majority vote. A “political committee” of national diplomats parallels the Commission, the role of the European Parliament is little more than marginal and judicial control is excluded.

1. Cited in I. Berlin, *The Crooked Timber of Humanity* (1991), pp. 131–132.

The general assumption has been that foreign policy merits special treatment in both the national and transnational contexts. My question is: to what extent is this a valid assumption today?

It may be argued that the traditional view of foreign policy as a "reserved domain" of executive power and expert diplomats is an arcane relic of the era of foreign relations dominated by dynastic concerns and "crown privilege" in its various manifestations. This is how Philip Allott describes diplomacy as practiced in a "statally organized" international society:

"Diplomacy is a dismal charade, with its panoply and protocol, its rituals and formalities, its treaties and communiqués and *bouts de papier*, its sound-bites and photo-calls of conniving politicians, its diplomatic emotions which are said to be warming or cooling, its tiffs and reconciliations, its infantile world of enemies and friends. . . . From time to time the drama bursts the bounds of the gilded conference-chambers and the electronic chattering, and the people of the world are swept into some new collective fantasy or some new unnatural disaster contrived by the monarchs and the presidents, the ministers and the ambassadors and the under-secretaries, as they choose the future of the human race."²

On the substance of the foreign policy making process, Allott comments:

"Policy-making thus comes to be a system acting in two modes – *advantage seeking; equilibrium-seeking*. Foreign and defence policies come to be either a calculation of the circumstances in which an advantage in well-being of one society may be gained at the expense of another, or else a calculation of the willing and acting needed to avoid or neutralize the possible effect of one society on another through matching perceived power with perceived power. And international relations become the fortuitous aggregation of such unilateral calculations. So it is that unwilled wars may occur."³

2. P. Allott, *Eunomia: New Order for a New World* (1990), p. 270.

3. Ibid. at p. 271.

One may not share fully this jaundiced perception of diplomacy. Yet – paradoxically – in Europe, diplomats and politicians of the Member States play their games not only against the so-called third States but also, at least on some occasions, against each other, as demonstrated most recently in the early phases of the Yugoslav imbroglio.

Although foreign policy involves additional variables that are not present in the domestic arena, there is a legitimate question as to the extent to which the traditional treatment of foreign affairs is still justified in the light of contemporary realities:

1. With the decreasing long-term importance of military power, economic power has become the true power determinant; and economic foreign policy is today the most important branch of foreign policy. In the European Community foreign commercial policy has been under Community discipline from the very inception and, with the prospect of the Economic and Monetary Union, the Community writ will presumably extend to most if not all foreign economic policy. Will the unnatural and inherently unstable separation of foreign economic and political policy be continued?

2. Both the scope and instrumentalities of foreign policy have undergone important mutations.

- Foreign policy today embraces not only diplomacy but economic, social, cultural and environmental concerns and – last but not least – protection of basic human rights. As a result, foreign policy impacts domestic affairs substantially and directly, and it is no longer within the exclusive domain of national foreign affairs establishments. At the executive branch level, ministries of finance, economics, agriculture, labour, culture, environment and others demand participation. The executive is no longer the sole receptacle of vital information. Parliaments and special interests insist on being heard.
- In the international arena marked by a globalized economy and a widening consensus on a free market and democracy, bilateral discourse is largely replaced by “parliamentary diplomacy”, with the participation no longer limited to diplomats.

Allott again:

“Statal interacting has increased so much in volume and complexity that it is difficult any longer to disentangle the strands of calculating self-interest, and as economic interaction has overwhelmed in volume and almost in significance the interacting foreign and defence policies of governments. Governments are being swept up into self-socializing by the flood of their own activity. It seems possible now to say that through diplomacy and international relations, slowly and laboriously and ironically, it is being learned, first, that interest can be reciprocal and, then, that there can be a universal interest which transcends particular interests, and that there can be a particular interest which may be served by the universal interest – in short, the lessons of a society socializing itself.”⁴

If this is the true picture of the late twentieth-century world, what is it that keeps the Member States from bringing foreign policy fully within the Community system, with such adjustments, to be sure, required by the factors germane to foreign affairs. Even if one disagrees with Allott and perceives the “outside world” as still indifferent, if not hostile, and aggressively competitive, why not face it jointly with the benefit of the full instrumentation of the Community?

I suggest the following restraining factors as influencing the reluctant posture of the Member States:

- The residue of the traditional perception of foreign policy mentioned earlier;
- Considerations of national pride and prestige of a “sovereign state” in the international arena;
- Vested interests of the national bureaucracy;
- The discrete treatment of foreign affairs powers in national constitutional practices motivated in part by the historic concept mentioned earlier. The conduct of foreign affairs is still left essentially to executive branches with relatively limited parliamentary input and little, if any, judicial control – a situation hardly compatible with both the

4. *Ibid.* at p. 273.

importance of foreign affairs and the idea of a modern democratic state.

I have eschewed thus far – the reader may have noticed with some surprise – any reference to defence policy. Jean Monnet, looking back to the abortive proposals for the European Defence Community of the 1950s, wrote in his memoirs:

“I had never believed that we should tackle the problem of Europe via defence. Although this would no doubt be one task for the future federation, it seemed to me by no means the most powerful or compelling motive for unity. But if circumstances were to accelerate or reverse the course of events – well, then, that would be another matter . . . We were forced to take short cuts.”⁵

A federation is not in place as yet, there are no true European political parties or European public opinion. Defence, it is said, is “the bedrock of national existence and it is the last element of sovereignty that a nation is prepared to abandon”. The two European nuclear powers continue to insist on unrestricted control over their nuclear forces. The roles of NATO, of the United States forces and of the German forces outside the NATO area are far from clear. The Western European Union is still little more than a shell.

The Maastricht Treaty contemplates “the eventual framing of a common defence policy, which might in time lead to a common defence”. It makes the Western European Union “an integral part of the development of the Union” and calls on it and the Council to adopt “the necessary practical arrangements”. Bilateral and NATO cooperation is safeguarded and further progress is envisaged “having in view the date of 1998”.

Some, if not all the considerations I listed in support of full Community discipline for foreign policy apply to defence as well. German Foreign Minister Hans-Dietrich Genscher declared in Berlin “that he did not see why a Europe that is to have a single currency should not have a common defence policy”.⁶ There can hardly be a credible “Euro-

5. J. Monnet, *Memoirs* (1978), pp. 338, 343.

6. *Europe*, April 2, 1992, No. 5702 (n.s.) p. 5.

pean union'' without a defence policy. Yet until the many new elements in the European scene are clarified, it is difficult to argue that the Maas-tricht treatment of defence policy is inadequate.

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