RECENT DEVELOPMENTS


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CONTENTS

I. INTRODUCTION ...................................................... 603

II. SUMMARY OF RECENT SECURITY THREATS TO THE
    EUROPEAN COMMUNITY ........................................... 607
    A. The Former Soviet Union ...................................... 607
    B. The Former Yugoslavia ........................................ 609
    C. Germany ...................................................... 611

III. LAYING THE LEGAL FOUNDATION FOR A MORE SECURE UNION 613
    A. Title V of the Maastricht Treaty ............................ 614
    B. The Western European Union .................................. 615

IV. ACQUIS COMMUNAUTAIRE, THE 1995 ACCESSION, AND THE
    POTENTIAL REALIZATION OF A “COMMON FOREIGN AND
    SECURITY POLICY” .................................................. 618

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A. An Overview of the Acquis Communautaire from 1969 to the Present ......................................... 618

B. The Potential Value of Austria, Finland and Sweden to EU Security .............................................. 622
   1. Austria ......................................................................................................................... 622
   2. Finland ....................................................................................................................... 623
   3. Sweden ....................................................................................................................... 625

V. The Limitations of the Acquis Communautaire: Why the Presence of Austria, Finland and Sweden Is More Likely to Hinder the EU’s Search for a Common Foreign and Security Policy Than to Help It ............................. 626

VI. Conclusion .................................................................................................................. 630

APPENDIX
   Title V of the Treaty on European Union (Maastricht Treaty) ............................................. 632
I. INTRODUCTION

1 January 1995:

Hours before the apple fell in rain-chilled Manhattan and longer still before the average Hollywood reveler took her first sip of bubbly, champagne corks were already popping like musket shots across Europe.

When the clock struck midnight, London time, the European Union (EU) grew up. Clearly, the Union grew larger geographically, monetarily and in terms of population with the New Year's Day additions of Austria, Finland and Sweden. Some may also argue that in joining the EU, the three new Member States brought with them something more, namely the requisite resources for awakening the Union's suspectedly stillborn security component. However, while the new members possessed potential monetary and geostrategic resources to assist the development of a common European security policy, they also brought with them an enigmatic third trait: neutrality. Austria, Finland and Sweden now join Ireland in creating a Union that is more than one-fourth neutral. The implications of such neutrality on the prospects of establishing a common foreign and security policy in Europe are subject to widespread conjecture.

1 London falls within the Greenwich Time Zone, five hours ahead of New York and eight hours ahead of California.


Adding the Austrians, Finns and Swedes, the population of the EU escalated by 6.2%, from 349 million to 370 million, 40% greater than the population of the United States. With the addition of the schilling, markka and krona, the Gross Domestic Product of the EU increased by 7%, making it 10% greater than that of the United States. Id. See also The European Union: Now Fifteen, EC OFF. PRESS & PUB. AFF. PRESS RELEASE (Jan. 10, 1995).

Some argue that the neutral status of the new Member States was compromised, if not altogether eliminated, when each joined the European Union, and in so doing, accepted the common security policy provisions of Title V of the Maastricht Treaty. This argument is based on the notion that states acceding to the EU accede to the *entire* Union, including all laws and provisions of the Union, and are not free to pick and choose which aspects they wish to adhere to and which they wish to ignore, a concept referred to as the *acquis communautaire*. An overestimation of the influence of this principle might lead to a conclusion that the accession of Austria, Finland and Sweden would contribute greatly to the Union’s effort to ensure cooperation in securing peace for Europe. After all, as will be explained shortly, each of these new Member States represents to some extent a missing piece of the security puzzle in Europe.

However, it is probably unrealistic to assume that three nations with long histories of neutrality will suddenly become valuable allies in the Union’s efforts to form a common foreign and security policy, regardless of the other Member States’ expectations that they do so. In fact, as this article will proceed to explain, it is reasonable to expect that the recent additions will instead further hinder an already languorous bureaucracy that is thus far incapable or unwilling to take the first steps toward realizing a common foreign and security plan.

The much-heralded yet largely unmanifested significance of the 1992 Maastricht Treaty is its creation of a tri-pillared alliance of Member States which purports to transcend economic boundaries. The drafters of the

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5 The Maastricht Treaty created the framework for what is literally a three-dimensional Union. The three dimensions, commonly referred to as “pillars”, include 1) the European Communities (consisting of the European Coal and Steel Community, Euratom and the European Community), 2) the Common Foreign and Security Policy, and 3) Cooperation in Justice and Home Affairs.
Maastricht Treaty attempted to do this largely through Title V of the Treaty, establishing provisions for a “common foreign and security policy”, as well as through various declarations assigning the eventual role of military defense of the Community to the Western European Union (WEU), which despite its ineffectiveness, remains the closest Europe has come to a common army. Yet, despite a recent deluge of overt threats to Western European security, the Union’s defense vehicle has resembled a broken wheelbarrow more than it has a freight train, dealing ineffectively (almost incompetently) with aggression just beyond its borders, and skeptics have been quick to question the effectiveness of the Union’s so-called security component.

It should be recognized initially that even the full realization of Title V would merely implicate an intergovernmental agreement on how the Member States should contend with security issues facing them. Title V essentially endorses a framework for cooperation more than an actual “common policy”. For example, Italy would be expected to act according to agreed-upon Community standards, but there would be no common treatment of most security issues, let alone a common army to which Italy would be

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6 In addition to Title V, the Treaty for the first time introduced provisions on cooperation in the fields of justice and home affairs (Title VI of the Treaty).

7 Specifically, Declaration (No. 30) part I.2 is relevant. See infra text accompanying note 81.

8 See WERNER J. FELD, THE FUTURE OF EUROPEAN SECURITY AND DEFENSE POLICY 73-74 (1993). Founded in 1954, the WEU has never reached the status of a European army and is unlikely to do so, even after its new role under Title V. See infra Section III(B). See also infra text accompanying note 82. It should be noted that a weak structure is in place for “Eurocorps,” the “embryo joint army” consisting of troops from France, Germany, Belgium, Luxembourg and Spain. Headquartered in Strasbourg, Eurocorps is not considered a realistic long-term security option for Europe. See European Defence: British Sceptical of Defence Policy Outside of NATO, EUROPEAN REPORT, March 10, 1995, available in LEXIS, News Library, Curnws File.

9 Former Soviet Foreign Minister Eduard Shevardnadze said, “The very idea of a common European house is nearly dead and is being consumed by the fires of numerous conflicts and wars.” Justin Burke & Wendy Sloane, THE CHRISTIAN SCIENCE MONITOR, Dec. 8, 1994, at 7.

10 Article J.1(4) of Title V reads:

The Member States shall support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with.

APPENDIX, infra p. 633.
obliged to contribute soldiers or materiel. Still, even mere cooperation among Member States has thus far not occurred.11

The purpose of this article is to analyze the likely effects of the European Union's inclusion of Austria, Finland and Sweden12 on its "common foreign and security policy" under Title V of the Maastricht Treaty. In Part II, the author will review the main security threats that justify attempting to bring to life Title V's proposed agreement to cooperate on common security issues. Specifically, the security threats discussed in this paper are those posed by the former Soviet Union and the former Yugoslavia (both non-Member States) and by Germany (an EU member). The reader who is already familiar with these security threats may wish to proceed directly to part III. Part III will serve as an introduction to the legal components of the Maastricht Treaty designed to combat these and all threats to security, namely Title V of the Treaty and subsequent resolutions pertaining to the role of the Western European Union. Part IV will explain the significance of the acquis communautaire as the concept relates to the 1995 accession and particularly to the facilitating effect adding Austria, Finland and Sweden theoretically could have on formulating a common foreign and security plan in Europe. Finally, in Part V, the author will explore the flip side of the coin, arguing that despite the new Member States' obligation to advance the acquis communautaire, the addition of Austria, Finland and Sweden to the European Union is in fact more likely to stall efforts to formulate a common

11 See infra note 103.
12 The 1995 accession was originally to include Norway. However, in a national referendum that inspired an 88.5% voter turnout, Norwegians declined European Union membership. See John Darton, A Blank Piece in EU's North Corner, INT'L HERALD TRIB., Nov. 30, 1994, available in LEXIS, News Library, Curnws File. The principle reasons for rejecting membership were thought to be that 1) Norway enjoys some of the world's richest fishing waters and was reluctant to share them with its neighbors, and 2) Norwegian women feared that EU membership would compromise their current societal status, which they view as superior to the status quo for women in the rest of Europe. See Norway's EU rejection, MAINCHINI DAILY NEWS, Dec. 1, 1994, at 2.

While a disappointed Helmut Kohl made assurances that "the door to the European Union remains open to Norway despite this outcome," others such as British Member of the European Parliament Pauline Greene were not so understanding. Greene warned that "Norway has voted for ice-bound isolation from mainstream Europe." See Darton, supra. Despite its rejection, Norwegian Prime Minister Bjoem Tor Godal says that Norway may still provide peacekeepers to the WEU. See Rolf Soderlind, Non-member Norway weighs force contribution to WEU, REUTERS, Jan. 19, 1995, available in LEXIS, News Library, Curnws File.
security policy than to facilitate these efforts. The reason for this conclusion centers on the blocking power the neutral Member States will have in the Council and the overall ability of four dissenters to paralyze the Union's search for a common security policy, given the current emphasis on unanimity and qualified majority voting.

II. SUMMARY OF RECENT SECURITY THREATS TO THE EUROPEAN COMMUNITY

A. The Former Soviet Union

During the Cold War, the Soviet Union's European neighbors huddled nervously, like a family waiting in the closet for a burglar to leave. As late as the early 1980s, war between the Soviet Union and the United States appeared to be a real possibility and would certainly have involved Western Europe. As it turned out, the Soviet Union was overcome in 1992 not by external war, but by internal revolution. However, while Russians struggled for independence, Europeans watched helplessly as their idealistic visions of peace in a post-Soviet Europe were swallowed by the reality of turmoil.

Upon dissolution of the Soviet Union, Russia inherited the command and organizational structures of the Soviet army and maintained a fighting force of 2.72 million troops. It is not entirely clear who will have control of these troops, however, as Russians continue to question the transition to

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13 Some suggest that a direct military conflict between the United States and the Soviet Union, which may have lead to nuclear war, was averted only by recollections of the devastation suffered by Hiroshima as a result of the atom bomb. Margret Johannsen, Beyond Deterrence through Common Security, in RETHINKING EUROPEAN SECURITY 45 (Furio Cerutti & Rodolfo Ragionieri eds., 1990).

14 It has been suggested by many that the demise of the Soviet Union was a necessary precondition to the 1995 accession. As stated by Professor Goebel, "Prior to the fatal weakening of the Soviet Union and the total collapse of Marxism in central Europe, Austria, Finland and Sweden could never have seriously entertained the idea of joining such a fundamentally western bloc as the European Community—nor, doubtlessly, could the Community have seriously considered taking the risk of Soviet displeasure by allowing either Austria or Finland to join." Goebel, supra note 3, at 1099-1100.


16 Julia Malone, Clinton in Europe for Talks, PALM BEACH POST, Jan. 10, 1994, at 1A. Although in the process of downsizing, the Russian army's goal was still to have 2.1 million troops in 1995. TAYLOR, supra note 15, at 34.
democracy and are increasingly supporting Communist leaders such as Gennadi Zyuganov, who appears set to challenge Boris Yeltsin for the Russian presidency. The metaphoric burglar may again be on the prowl.

While Western Europe originally supported independence movements in the former Soviet Union, such movements are now causing considerable malaise. The same anti-independence displays of military force that prompted Soviet Foreign Minister Eduard Shevardnadze to resign in 1990 have recurred in places such as Abkhazia, Chechnya and Nagorno-Karabakh, the troubled enclave of Azerbaijan. Even setting aside the emergence of


18 See Marcel Garces, Soviet Union: Shevardnadze continues in eye of Hurricane, INTER PRESS SERVICE, Dec. 21, 1990, available in LEXIS, News Library, Arcnews File. As Foreign Minister and rumored vice presidential candidate, Shevardnadze had been a close ally of President Mikhail Gorbachev since 1985. Id. His reversal of the "Brezhnev doctrine" of stopping any rollback of Communism and his assistance to Eastern European allies in their attempts to overthrow Communist systems had alternately earned him global respect and local criticism. See Alison Mitchell, Shevardnadze Quits: Protests, 'reactionaries'; Gorbachev asks him to stay, NEWSDAY, Dec. 21, 1990, at 5. However, Shevardnadze felt compelled to resign in 1990, citing what he perceived as a threat of dictatorship ending the process of perestroika. Id. In his widely publicized resignation speech, Shevardnadze expressed his clear concern for the treatment of independence-seekers by his government:

Dictatorship is gaining ground. The reformers have left the stage. No one knows what kind of dictatorship there will be, and who will be the dictator. I would like to make the following announcement: I am resigning . . . Let this be my contribution, if you wish, my protest against the impending dictatorship. I consider it my duty as a man, as a citizen and as a Communist. I cannot reconcile myself to all the events that are occurring in our country and all the trials that are awaiting our people. Id.

Shevardnadze added, "I'll always support until my dying day the ideas of perestroika and renovation and democratization." Id. See also Michael Pugh, Conclusion: from cold war to cold peace? in EUROPEAN SECURITY—TOWARDS 2000 163 (Michael Pugh ed., 1992).

19 See Trevor Royle, Old Alliance at risk in the shifting sands of an enlarged EU, THE SCOTSMAN, Dec. 4, 1994, at 16. See TAYLOR, supra note 15, at 52. The pattern of violence is tragically predictable. One ethnic group, in an attempt to assert its sovereignty, clashes with another. This aggression is then aggravated by Russian military attempts to combat violence with violence. Fighting between national guardsmen and local armed groups, which leads to bloodshed and lost lives, is all too common an occurrence. See Richard Balmforth, More Killed in Fresh Violence in Karabakh, Georgia, REUER LIBR. REP., Nov. 24, 1992, available in LEXIS, News Library, Non-US File. One writer predicts, "Russia's slide into the use of force, following the example of Georgia (in Abkhazia) and Azerbaijan (in Nagorny-Karabakh), could push Russia back into the 19th century, towards a prolonged Caucasian
Russia and the potential that a small, formerly Soviet country might itself instigate a nuclear war with weapons it inherited. Europe must now face the difficult intelligence burden of monitoring the military of not one government, but fifteen.

Meanwhile, the European Community continues to provide financial support to the former Soviet Union to aid in its rebuilding process. Germany alone provided $10 billion worth of assistance to the former Soviet Union over the past four years, including payment for housing and relocating former Soviet troops. The European Community, as an entity, contributed $1.6 billion to the cause. Additionally, trade with Europe is of great help, and Russia's biggest trading partner continues to be the European Community. Financially assisting such troubled nations may be admirable on a humanitarian level, but the security consequences of doing so may prove akin to those of rescuing a pit bull from a tree.

Still, as the Community helps the former Soviet Union to its feet, it is cautious of being pulled down in the process. As one expert warns, "A stable Europe depends on a relatively smooth reconstruction process in the Soviet Union. This may not be possible in the 1990s."

B. The Former Yugoslavia

While the threats to European security posed by the former Soviet Union are daunting, the civil war raging in Yugoslavia is more than just a potential war. Vladimir Yemelyanenko, Don't divide and rule, MOSCOW NEWS, Oct. 7, 1992, available in LEXIS, News Library, Non-US File.

See TAYLOR, supra note 15, at 14. See also John Lewis Gaddis, International Relations Theory and the End of the Cold War, INT'L SECURITY, Vol. 17, No. 3, winter 1992-93, at 5 ("Surprise remains one of the few things one can count on").

See Pugh, supra note 18, at 169.

Id. at 164.

Id.

Trade with Europe currently accounts for about 37% of total Russian foreign trade. Russia conducts an additional 24% of its trade with the Commonwealth of Independent States, and small amounts of trade with China (6%), the United States (4%) and Japan (3%). Gary Yerkey, EU official urges Russia to ratify pact on improving ties with Europe, INT'L TRADE REP., Nov. 23, 1994, at 1817.

See Michael Sturmer, Beware of soft options for security, FIN. TIMES, Jan. 12, 1995, at 15 ("[T]he end of the Soviet Union is still, and will continue to be, Europe's overriding security problem," referring to recent conflicts such as that in Chechnya).

Pugh, supra note 18, at 170.
security threat. War broke out in June 1991 when the Yugoslav army, under Serbian control, attacked the Slovenian militia. The conflict has since spread like a deadly plague, particularly infecting the diverse population of Bosnia-Hercegovina, as Muslims, Serbs and Croats struggle for their respective ethnic sovereignty. To this date the Bosnian Serbs have conquered most of Bosnia, leaving a bloody trail of inhumanity and atrocities along the way.

The European Community has been involved in attempts to mediate the conflict from its outset. In a declaration establishing the International Conference on the Former Yugoslavia which urged arbitration, the EC said it could not “stand idly by as the bloodshed in Croatia increase[d] day by day.” Unfortunately, although Europe’s efforts have not fanned the fire in Yugoslavia, neither have they doused the flames.

Probably the most successful European faction in mitigating the hostilities was the Western European Union. However, even its intervention was halted by lack of Community support and Russian threats against Western European involvement. Lacking a truly effective common foreign and security

27 Venice, Italy lies just a stone’s throw away from the fighting. Although separated by the Adriatic Sea, Bosnia and Venice are still only about 200 miles apart. What few may realize is that the distance between Bosnia and Venice is even less than that between Munich and Berlin, which are approximately 280 miles apart. Id.


29 Id.


31 Interestingly, the bulk of the European forces have been from two of the Member States furthest from Yugoslavia: the United Kingdom and France. See Lionel Barber & Christopher Parkes, Bosnia clouds EU summit hopes on eastern Europe, FIN. TIMES, Dec. 9, 1994, at 1. For an approach to the EU security dilemma using Yugoslavia as a model, see Max Jakobson, Collective Security in Europe Today, WASHINGTON QUARTERLY, Vol. 18, No. 2, at 59 (1995).


33 See Weller, supra note 30, at 576.

34 Id.

35 The Secretary General of the WEU, William van Ecklen, suggested that force be used “to isolate the sources of conflict as far as possible. We would be there to ensure an orderly process of change . . . .” Id. at 574. However, these plans were thwarted as bullyish Russia flexed its military muscle, warning that “to enter . . . on one side . . . would mean to come into conflict automatically with others, inside and outside Yugoslavia. And the conflict would
policy, even after the signing of the Maastricht Treaty, clearly has hindered the Community's efforts to deal with security threats such as Yugoslavia.

C. Germany

Jean Monnet, a well-known French political economist, and British Prime Minister Winston Churchill were two of the first proponents of a European Union, viewing a "United States of Europe" as the best way to restrain the development of Germany.\textsuperscript{36} Their contemporaries, former French President Francois Mitterrand and former British Prime Minister Margaret Thatcher, fearing the ramifications of a rebuilt German power, are thought to have attempted to delay the unification of Germany in 1989 and 1990.\textsuperscript{37} Both France and Britain continue to oppose German membership in the U.N. Security Council.\textsuperscript{38}

Why the huge concern over a country which just fifty years ago was left devastated by war? The answer is two-fold: 1) Europe will not soon forget the Germany of World War II, and 2) Germany has rebuilt itself into one of the world's foremost economic and military powers, making it an increasing threat to the Community despite its status as a Member State.\textsuperscript{39}

In January of 1933, Adolf Hitler's Nationalist Socialist party came into power in Germany.\textsuperscript{40} What followed was one of the greatest horrors in human history. In 1945, the Allies finally overcame the German Reich, ending a war that had virtually swallowed Europe whole.\textsuperscript{41} Europe barely survived; 50 million people did not.\textsuperscript{42}

Germany remained silent for years. Its greatest buildings, museums and churches had been reduced to rubble in the war, and the Berlin Wall grow into an all-European one." \textit{Id.}


\textsuperscript{37} \textit{Id.} Officially, the unification occurred on October 3, 1990.

\textsuperscript{38} \textit{Id.}

\textsuperscript{39} The 15 current Member States of the European Union are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

\textsuperscript{40} Johannsen, \textit{supra} note 13, at 44.

\textsuperscript{41} "In Nazi ideology war was considered less a calamity than an instrument for survival of the fittest." \textit{Id.}

\textsuperscript{42} \textit{Id.}
continued to imprison many of its own people. The remainder of Europe, concerned with its own rebuilding, slept with one eye open. Meanwhile, with an efficiency surpassed only by that involved in the erection of the Wall, Germany rebounded to become a global economic power once again.

During the Cold War, Germany was cautiously allowed back into its former enemies' good graces, as Western Europe scrambled for allies to prepare for a possible confrontation with the Soviet Union. In the process, Germany fortified its economy and its military, each to staggering levels. Today, Germany easily tops the rest of Europe in wealth and challenges its strongest neighbors in military capacity.

Germany is by far the wealthiest member of the European Community. In 1993, its Gross National Product was $1.71 trillion, while France was next at a distant $1.25 trillion. Germany enjoys a $21 billion trade surplus while the United Kingdom, for example, wallows in a $32.1 billion deficit. In fact, Germany's economy is so advanced, Britain may not reach the present German level until 2051.

Germany's arms industry is one reason for its economic resurgence. Unlike France, whose industry is predominantly government owned and under the policy control of the French Chief Executive, the German arms industry is privatized and not subject to the agenda of any government actor or agency. The largest manufacturer of arms in Germany, Siemens AG, is also its largest private employer, and one of the largest employers in

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43 The Wall did not come down until November 9, 1989.
44 See Hans-Joachim Spanger, Germany after unity: bridge or frontier between East and West?, in EUROPEAN SECURITY—TOWARDS 2000, supra note 18, at 69.
46 Id.
49 Id.
50 One consequence of a privatized system, however, is that it subjects military arms manufacturing to market influences. In theory, should the demand wane because Germany or other countries no longer wish to purchase arms from German manufacturers, the supply would necessarily decrease as well. If this happened, Germany would be forced to convert much of its efforts from making guns to making butter. However, as the current sales to other countries is steady, such a transition currently appears unlikely. Id.
all of Europe.\textsuperscript{51}

In short, Germany has the capacity to do great harm in Europe and an historic propensity to do so. These threatening truths are compounded by incidents such as the recent re-emergence of racial violence in Germany\textsuperscript{52} and Germany's demands for complete ejection of all non-German forces from German soil.\textsuperscript{53}

Once again, Europe is quietly holding its breath, unsure of what to expect from its reborn yet eerily familiar neighbor. Much as Monnet, Churchill, Mitterrand, and Thatcher worked to straightjacket German development,\textsuperscript{54} the speed and efficiency with which Germany has rebuilt itself this time may have been one of the incentives for drafting the provisions of Title V of the Maastricht Treaty.\textsuperscript{55}

III. LAYING THE LEGAL FOUNDATION FOR A MORE SECURE UNION

\textit{Europe will not exist if it cannot ensure its defense by itself.}

\textit{French President Francois Mitterrand}\textsuperscript{56}

While some stand firm in their objections,\textsuperscript{57} the above perception is

\textsuperscript{51} Siemens employs 240,000 people in Germany and 108,000 elsewhere in the world. Kelly Campbell, \textit{Current State of Defence Cooperation and the United States Role, in A SINGLE EUROPEAN ARMS INDUSTRY?}, supra note 48, at 52.

Messerschmidt-Boelkow-Blohm (MBB), having recently merged with competitor VFW-Fokker, is now just slightly smaller than Siemens. \textit{Id.} at 53-55. This clearly (and for Europe, alarmingly) demonstrates the extent to which the arms industry dominates Germany, and how Germany's military production and economy are inextricably linked.

\textsuperscript{52} See \textbf{JOHN APPLEBY & EDWARD FOSTER}, \textit{UP IN THE AIR: EUROPEAN UNION AND TRANSATLANTIC DEFENCE INDUSTRIAL COOPERATION} 8 (1993).

\textsuperscript{53} FELD, supra note 8, at 10.

\textsuperscript{54} See Zhimian, \textit{supra} note 36.

\textsuperscript{55} \textquote{As one analysis reckoned, \textquote{[W]ith the crumbling of the Cold War order came the reappearance of a Germany whole and free, a development which so upset Western Europe's internal balance that the more distant agenda for European Union was brought forward.} \textit{APPLEBY & FOSTER}, supra note 52, at 6.}


\textsuperscript{57} Predictably, historically neutral countries are the most ardent objectors. For example, Irish military leaders are concerned that a common security policy would inevitably lead to a common army which could well be run by the Germans. Comdt. Dermot Donnelly of the Irish Air Corps cited the Gulf War as an example of \textquote{what can happen when more powerful countries such as America hijack an organization such as the UN. The same can very easily}
increasingly shared by citizens of the European Community. The search to provide Europe with a legal framework for handling security issues, however, has been lengthy and arduous. After all, since its creation by the Treaty of Rome in 1958, the European Community had purposefully remained a strictly economic association. Its transition to one which now invokes the cooperation of each Member State in handling security issues required a legal foundation. The Community gave birth to such a foundation in Title V of the Maastricht Treaty and the subsequent declarations regarding the Western European Union.

A. Title V of the Maastricht Treaty

In 1986 one writer ended his forecast of European defense in the 1990s by noting that "the outcome of a European security policy, no matter how
necessary, remains at this point more a matter of hope than certainty.\textsuperscript{62} Six years later, Title V of the Maastricht Treaty, providing that a "common foreign and security policy is hereby established,"\textsuperscript{63} suggested that Europe was ready to adapt to reach this necessary security policy.

Following this initial precept establishing a "common foreign and security policy", Article J.1(2) sets out the Member States' objectives:

- to safeguard the common values, fundamental interests and independence of the Union;
- to strengthen the security of the Union and its Member States in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;
- to promote international cooperation; [and]
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.\textsuperscript{64}

However important, these objectives if left unsupplemented would have rendered Title V a toothless provision, lacking the means for implementation. The EU therefore appointed the Western European Union as its defense arm.

\textbf{B. The Western European Union}

There was considerable competition for the job of Europe's defender. One possibility was the Conference on Security and Cooperation in Europe (CSCE),\textsuperscript{65} which resulted from the Helsinki Act and played an active, albeit ineffective, role in trying to resolve the Yugoslavian conflict.\textsuperscript{66} The reasons behind CSCE's poor performance in Yugoslavia were inherent in its

\textsuperscript{62} JOSEPH RALLO, DEFENDING EUROPE IN THE 1990S, at 130 (1986).
\textsuperscript{63} APPENDIX, Art. J., infra p. 632.
\textsuperscript{64} APPENDIX, infra p. 632.
\textsuperscript{65} On January 1, 1995, CSCE was renamed OSCE: Organisation for Security and Cooperation in Europe.
\textsuperscript{66} See Feld, supra note 8, at 131. CSCE's role was mainly one of facilitating cease-fires and attempting to bring the parties to the negotiation table. \textit{Id.}
structure. First, all fifty-four members of CSCE\textsuperscript{67} have an equal vote in deciding how to respond to security threats.\textsuperscript{68} For example, San Marino and Malta can together outvote France. Further, CSCE regularly requires a consensus before action can be taken.\textsuperscript{69} In the end, the European Union simply could not count on a defense branch which was so innately stagnant\textsuperscript{70} and largely non-European.\textsuperscript{71}

The North Atlantic Treaty Organization (NATO) was another obvious contender. With the United States as its most powerful member,\textsuperscript{72} NATO was Western Europe's savior during the Cold War and continues today to be one of the world's most powerful multinational forces.\textsuperscript{73} Europe's emergence from the shadow of the Soviet Union, however, is perceived to have largely eliminated its need for NATO.\textsuperscript{74} NATO is extremely expensive to operate,\textsuperscript{75} and many Europeans\textsuperscript{76} found it hard to justify such a large price

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68 Feld, supra note 8, at 66.

69 Id.

70 As Werner Feld notes, "There seems to be little doubt that the peacekeeping and economic facilities of CSCE will develop further in the future, but it is unlikely that a military structure can be erected for rapid defensive action because its deployment would require consensus by over fifty member states." Id.

71 But cf. THE CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, CONFERENCE ON SECURITY AND COOPERATION IN EUROPE: THE NEXT PHASE (Kate Holder, Robert E. Hunter & Paavo Lipponen eds., 1991) (a collection of essays, most arguing that CSCE has a place in defending the EC).

72 The 16 current NATO members are Belgium, Canada, Denmark, Iceland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom and the United States. The Czech Republic, Hungary, Poland and Slovakia have each applied to join NATO.


74 As Strobe Talbott writes, "The trouble is, NATO is broken, at least conceptually. Its reason for being was to deter the Soviet Union from launching an invasion through West Germany to the English Channel. With that danger diminished to the vanishing point, NATO is already undergoing its own deconstruction . . . ." Strobe Talbott, Defusing the German Bomb, TIME, July 2, 1990, at 34.

75 NATO cost $144 billion in the 1992 fiscal year alone. Moodie, supra note 56, at 8.
\end{flushleft}
tag on an organization that doesn't even allow Europe exclusively to make its own decisions.\textsuperscript{77}

At a meeting in Rome in 1991,\textsuperscript{78} U.S. President George Bush issued a request to the European members of NATO: "[I]f your ultimate aim is to provide individually for your own defense, the time to tell us is today."\textsuperscript{79}

Article J.4(2) of Title V reflects Europe's response:

The Union requests the Western European Union (WEU), which is an integral part of the development of the Union, to elaborate and implement decisions and actions of the Union which have defence implications. The Council shall, in agreement with the institutions of the WEU, adopt the necessary practical arrangements.\textsuperscript{80}

Additionally, Declaration No. 30(I)(2) specifically gives the WEU the authority to "formulate common European defense policy and carry forward its concrete implementation through further development of its own operational role."\textsuperscript{81}

Noticeably absent from the text of both Title V and the Declarations is any mention of the WEU serving as a common army or military force. Clearly the drafters of Maastricht did not intend to expand the WEU's authority this far.\textsuperscript{82} The WEU's authority is expressly limited to formulating policy, and even these WEU-created policies are subject to approval by the Council.\textsuperscript{83} Nevertheless, the integration of the WEU into the European Union was a welcome sight to some of the best known "Euroadvocates."\textsuperscript{84}

\textsuperscript{76} In December 1989, 36\% of those polled favored an EC defense, while 30\% favored continuation of NATO. FELD, supra note 8, at 29.

\textsuperscript{77} Both the United States and Canada are members of an otherwise European NATO. See supra note 72.

\textsuperscript{78} The meeting took place on November 7-8, 1991. FELD, supra note 8, at 15.

\textsuperscript{79} Id.

\textsuperscript{80} APPENDIX, infra p. 635.

\textsuperscript{81} EUROPEAN UNION, supra note 4, at 38.

\textsuperscript{82} In fact, Title V expressly shelves the issue of having an actual common defense: "The common foreign and security policy shall include all questions related to the security of the Union, including the eventual framing of a common defense policy, which might in time lead to a common defence." APPENDIX, Art. J.4(1), infra p. 635 (emphasis added).

\textsuperscript{83} See APPENDIX, Art. J.4(2), infra p. 635.

\textsuperscript{84} Particularly former European Commission President Jacques Delors, who in large part spearheaded this movement. In a March 7, 1991 speech in London at the International Institute for Strategic Studies, Delors said, "If we are to create a European Union, a lengthy
IV. ACQUIS COMMUNAUTAIRE, THE 1995 ACCESSION, AND THE POTENTIAL REALIZATION OF A "COMMON FOREIGN AND SECURITY POLICY"

A. An Overview of the Acquis Communautaire from 1969 to the Present

In 1969, the European Economic Community consisted of only six members, but was considering admitting four new ones. Such radical expansion would have the inevitable effect of diluting the four original Member States' control in the Council, Commission and, of somewhat lesser importance, the European Parliament. The likelihood of subsequent accessions threatened to make the original four nations a minority in the decision making processes, and would potentially allow newer members to reshape the focus of the Community. In order to insure against drastic changes in the Community's stated philosophy, the Heads of State and Government convened at the Hague Summit and determined that all applicant States, as a prerequisite to entering negotiations for accession to the Community, would have to agree to accept all the applicable treaties and the overall political objective of the Community.

This concept, referred to as the acquis communautaire, continues to govern accession agreements today, although as will be explained presently, it now applies to accession to the European Union, which consists in part of Title V's provisions on a common foreign and security policy. The term acquis communautaire, increasingly becoming part of the Eurovernacular, defies easy translation to English. Although numerous authors have endeavored to adequately define it, perhaps Carlo Curti Gialdino does so...
most succinctly: "It means, in substance, that the applicant States must accept 'without reservation' the whole of the following: the founding Treaties and their political objectives, all measures enacted after the establishment of the Community, as well as the options chosen for the development of the European construct." Gialdino also writes that, in terms of accession, the acquis "refers to the whole body of rules, political principles and judicial decisions which new Member States must adhere to, in their entirety and from the beginning, when they become members of the Communities (after Maastricht, of the European Union)."

Before 1992, there was no European Union, only a European Community, so definitions of acquis communautaire that antedate the Maastricht Treaty obviously do not recognize an obligation on the part of the applicant State to adhere to provisions set forth in the 1992 Treaty. After 1992, States no longer apply to the EC; they apply to the EU, which includes, inter alia, Title V's provisions on a common foreign and security policy. This means that the notion of the acquis communautaire now extends not only to the economic aspects of the Community but also to the security aspects of the Union. In its 1992 Report, "Europe and the Challenge of Enlargement," the European Commission expressly expanded the term acquis communautaire to include "the contents, principles and political objectives of the Treaties, including the Maastricht Treaty." In the same year, the Lisbon European Council required that subsequent accession take place only on the basis of acceptance by the applicants of the Maastricht Treaty. In 1993, former union (EU) are to be treated as 'given' ('acquis'), not to be called into question or substantially modified by new States at the time they enter." Goebel, supra note 3, at 1095; "the progress made to date and the status quo recognized in integration achievements which must be accepted by every nation joining the EC." Kurt Riechenberg, The Merger of Trading Blocks and the Creation of the European Economic Area: Legal and Judicial Issues, 4 Tul. J. INT'L & COMP. L. 63, 68 (1995); and "acquired rights . . . [including] all those rights held by citizens of the Community by virtue of EC legislation and regulation." Michael John Volkovitsch, Righting Wrongs: Towards a New Theory of State Succession to Responsibility for International Delicts, 92 Colum. L. Rev. 2162, 2205 (1992).

90 Carlo Curti Gialdino, Some Reflections on the Acquis Communautaire, 32 Common Mkt. L. REV. 1089, 1091 (1995). Mr. Gialdino is Legal Secretary of the Court of Justice of the European Communities and the Executive Editor of Rivista di diritto europeo.

91 Id. at 1090.


European Commission President Jacques Delors\textsuperscript{94} said, "new members will have to accept the *acquis communautaire* . . . the whole Union Treaty and nothing but the Union Treaty."\textsuperscript{95}

Indeed, the Maastricht Treaty itself makes several references to the *acquis communautaire*. The fifth indentation of Article B lists as one of the Union's objectives, "to maintain in full the *acquis communautaire* and build on it with a view to considering . . . to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community."\textsuperscript{96} The first paragraph of Article C reads: "The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*."\textsuperscript{97} Perhaps most important for our purposes, Article 0 of the Maastricht Treaty has been interpreted as extending the notion of the *acquis communautaire* to the European Union as a whole.\textsuperscript{98}

\textsuperscript{94} Delors has been replaced by Jacques Santer, the former prime minister of Luxembourg. Santer was elected by a 416 to 103 vote with 59 abstentions. Tyler Marshall, *Luxembourg's Ex-Premier confirmed as EU leader*, L.A. TIMES, Jan. 19, 1955, at A14. For more details on the significance of Santer's election, see also Wilbur G. Landrey, *What a difference a Jacques makes*, ST. PETERSBURG TIMES, July 16, 1994, at 2A.

Delors was considered a top candidate to replace fellow socialist Francois Mitterrand as president of France. See Tony Allen-Mills, *Shrewd Delors plays at being modest messiah*, SUNDAY TIMES, Oct. 30, 1994, available in LEXIS, News Library, Curnws File. However, Delors surprisingly chose not to run, and Jacques Chirac, formerly mayor of Paris, won the May 7, 1995 run-off election with just over half of the vote. See *Jobs top the agenda for victor Chirac*, THE INDEPENDENT, May 8, 1995, at 1.


\textsuperscript{96} EUROPEAN UNION, *supra* note 4, at 24.

\textsuperscript{97} Id.

\textsuperscript{98} Article 0 reads as follows:

Any European State may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

The conditions of admission and the adjustments to the Treaties on which the Union is founded which such admission entails shall be the subject of an agreement between the Member States and the applicant State. This
It would therefore appear that by joining the European Union, Austria, Finland and Sweden are obligated to cooperate fully in all aspects of the Union’s common foreign and security dimension. Recall that Article J.1(4) of Title V of the Maastricht Treaty states:

4. The Member States shall support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with.⁹⁹

It could be argued that by acceding to the Union (and perhaps also by assuming observer status in the WEU), the three newest Member States have taken a vow of non-neutrality.

As the author will attempt to explain in Part V,¹⁰⁰ this is probably an unrealistic conclusion. For now, however, let us consider the potential implications of Austria, Finland and Sweden cooperating fully in the handling of the Union’s security issues.

Theoretically, with the additions of Austria, Finland and Sweden and the integration of the Western European Union with the EU, Europe might finally be able to provide an effective common security policy for itself. Before the 1995 accession, the EU had grossly mishandled or failed to address security threats, particularly in the former Soviet Union and the former Yugoslavia, leading critics to wonder whether there was any substance whatsoever to Title V.¹⁰¹ Moreover, some Member States

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¹⁰¹ Former Commission official Jean Durieux, author of a recent report entitled “European security policy in the run up to 2000—Ways and means of achieving real credibility,” has called Title V “fragmented” and “rudderless.” See Lionel Barber, EU must end “rudderless” foreign policy, FIN. TIMES, Jan. 28, 1995, at 2. In an earlier article, Barber wrote, “[T]he Union is not living up to its name: its common security and foreign policy is a sham . . . .” Lionel Barber, Hopes of wider union turn to fear of no union, FIN. TIMES, Dec. 9, 1994, at 2. But c.f. Faull Lecture, supra note 58. “There may be widespread disillusionment and cynicism at the moment about the EU’s will and capacity to cope with international problems
occasionally seemed unaware that a framework for handling security issues even existed under Title V, completely ignoring established protocol by attempting to handle the issues independently and without communicating their plans to any Community institution or representative. Perhaps it could be argued that, having acceded to the EU and being legally obligated to promote the *acquis communautaire*, Austria, Finland and Sweden now fill the gaps of a previously porous security makeup. To some extent, this is probably true. As is explained below, each new Member State, in addition to having observer status in the WEU, offers something to assist the EU's efforts to handle security issues occurring in neighboring countries.

B. The Potential Value of Austria, Finland and Sweden to EU Security

1. Austria

Austria's wealth and strategic location in what will soon be the heart of the European Union would make it a particularly valuable asset in even its own 'back yard' (former Yugoslavia), but the mechanisms and perception of common interest are clearly set out in [the Maastricht Treaty] and it is hard to see how the EU can avoid assuming and facing up to its responsibilities for peace and security, in Europe and elsewhere, for years to come." *Id.*

102 "Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that their combined influence is exerted as effectively as possible by means of concerted and convergent action." **APPENDIX, Art. J.2(1), infra p. 633.**

103 Examples of individual Member State deviations from the Union's common foreign and security framework include France's go-it-alone approach to Rwanda, the Greek trade embargo against Macedonia, and the Bosnia "contact group" composed of France, the United Kingdom, the United States and Russia. *See Barber, EU must end "rudderless" foreign policy, supra note 101, at 2.*

104 This means that initially the new members will be fully informed on WEU developments but will have a limited influence on decision-making. *See Finland to become WEU observer, REUTERS, Feb. 3, 1995, available in LEXIS, News Library, Curnws File. See also A partner for peace, IRISH TIMES, Feb. 20, 1995, at 13 (on Ireland's similar status as WEU observer).*

105 In a national referendum on June 12, 1994, Austria voted two-to-one (66%) to accede to the European Union. *Voters Shun Top Party but Austria Wants to Join, PRESS ASSOC. NEWSFILE, June 13, 1994, available in LEXIS, News Library, Arcnws File.*

106 Germany has made no secret that it wishes to be the center of Europe and has advocated EU expansion to Eastern and Central Europe for this reason. It has even decided to change its capital from Bonn to the more eastern Berlin. *See Zhimian, supra note 36.*
shaping the EU’s common foreign and security policy under Title V. Austria provides an additional border with Germany, supplementing those of Member States Denmark, the Netherlands, Belgium and France, and leaving only neutral Switzerland and potential EU members Poland, the Czech Republic and Slovakia as non-EU German borders.

Through Austria the European Union would bring a sizable military threat of its own to the German border. Interestingly, as there are no published official reports regarding either Austrian military production or sales, the world is uncertain just how strong Austria is and can be. However, as the only formally neutral country to have exported the majority of its military materiel, Austria is widely understood to have a formidable defense industry.

Austria shares part of its border with Yugoslavia, potentially providing easier access for EU-sponsored peacekeeping missions and perhaps a better perch from which to monitor the conflict. While some initially feared that Austria’s accession would provide for Germany an ally with which to share its native tongue, statements by Austrian officials suggest this not to be true.

2. Finland

Finland lacks the wealth of Austria and Sweden and is the only nation of

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107 Most of Austria’s military production after 1955 was made possible by utilizing German industrial plants vacated after the war. See BJORN HAGELIN, NEUTRALITY AND FOREIGN MILITARY SALES: MILITARY PRODUCTION AND SALES RESTRICTIONS IN AUSTRIA, FINLAND, SWEDEN AND SWITZERLAND 35 (1990).

108 Id. at 42. The only known statistics are derived from available company reports and are considered unreliable. Id. However, one report had Austria spending $792 million in 1984. Id. at 39.

109 Id. at 81. In 1981, Finland exported 33% of its military materiel, Sweden exported 25%, and Austria exported 92%. Id. Considering that the early 1980s were the height of the Cold War, the fact that Austria kept only 8% of what it manufactured suggests that it may have manufactured a considerable amount.

110 Austrian Chancellor Franz Vranitzky has promised that Austria would fight hard for its own interests and should not be expected to side with Germany: “I told [French President Mitterrand] straight away that we are not the third German state. I told him that we are the first and only Austrian state.” See Erik Kirschbaum, Austria says no need to fear “Teutonic Bloc” in EU, REUTr EUR. COMMUNITY REP., Dec. 30, 1994.

111 On October 16, 1994, approximately 57% of voting Finns approved a proposal to become part of the EU. Finns Vote for Europe, N.Y. TIMES, Oct. 17, 1994, at A5.
the three whose gross national product is below the EC median. Moreover, while Austria and Sweden have maintained continuous rearmament policies since 1945, Finland's massive war debt and its focus on converting wartime military industries for civilian use delayed its rearmament until the 1960s. So with a lagging economy and sub-par military, Finland's location would be its prime security asset to the Union.

Finland's strategic position arguably provides both an offensive and defensive incentive for its inclusion in the EU's security structure. On one hand, Finland gives the EU its first border with the former Soviet Union, an 800-mile stretch adjacent to one of the most volatile areas of Russia. This massive shared frontier could facilitate any offensive actions the Member States may eventually decide are necessary as part of their policy in dealing with Russian security problems.

Of even greater importance to maintaining security, however, is that Finland's EU membership protects the Union from the possibility of a future military alliance between Finland and Russia, the threat of which had been clear. Finland had long received the majority of its military equipment from the Soviet Union, making it the sole neutral recipient of Soviet military materiel. Additionally, despite having twice engaged in war with one

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112 In 1991, prior to the accessions of Austria, Finland and Sweden, the median GNP of EC Member States was $123.695 billion (Denmark). ENCYCLOPEDIA BRITANNICA BOOK OF THE YEAR, Appendix (1994) [hereinafter ENCYCLOPEDIA BRITANNICA]. The GNP of Finland in 1991 was $121.982 billion, compared to Sweden's $233.190 billion and Austria's $157.528 billion. Id. Because of very wealthy countries such as Germany ($2.1 trillion GNP in 1991) and Italy ($1.07 trillion), the three new members all fall short of the EC mean, as do seven other Member States. Id.

113 See HAGELIN, supra note 107, at 40. For an overview of security policies in Finland and Sweden prior to the Maastricht Treaty, see generally NORDIC SECURITY IN THE 1990S: OPTIONS IN THE CHANGING EUROPE (Jan Oberg ed., 1992).

114 Specifically, as of 1994, Finland spent only 6% of its total budget on defense, approximately 1.7% of its GNP. Paul Gillespie, Finnish leader outlines new security model, IRISH TIMES, Jan. 15, 1994, at 9.


116 See Sturmer, supra note 25, at 15.

117 Not until 1985 had the percentage of Soviet supplied materiel dropped below 50%. See HAGELIN, supra note 107, at 89.

118 Id.
another, Finland and the Soviet Union have had a long history of cooperation in the area of security. Finally, generating even greater alarm were rumors surfacing prior to Finland's accession that Russia had been planning to reunite with Finland once again. Indeed, it was in part the fear of being left behind all alone with Russia that prompted Finland to join the European Union and the Union to open its door to its Finnish neighbors.

3. Sweden

With Finland joining the EU and Norway opting to reject membership, the accession of Sweden—Finland's only geographic connection to the Union—was of paramount importance in terms of Community security. Had Sweden not joined, Finland would have been left isolated with the former Soviet Union, potentially compromising its strategic value to the Member States.

In addition to Sweden's key geographic location, its strong military could aid in developing a common foreign and security policy. In the late 1930s, in response to German buildup, Sweden frantically requested military supplies from foreign sellers, including Great Britain, France and the United States, but was denied as potential arms traders stockpiled to protect themselves against pending German aggression. Sweden has since been careful to prevent this situation from recurring. In

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119 The two nations fought twice between 1939 and 1944. See Finnish President Ahtisaari speaks as country joins EU, supra note 115.

120 For example, Finland is technically still a party to a bilateral agreement with the Soviet Union: the 1948 Treaty of Friendship, Cooperation and Mutual Assistance (FCMA), which, inter alia, governs the handling of situations in which Finland's acts threaten the security of the Soviet Union. See HAGELIN, supra note 107, at 33.

121 Russian Liberal Democratic Party leader Vladimir Zhirinovsky had allegedly urged the reincorporation of Finland into Russia, from which it broke away in 1917. Id.

122 See Hugh Carnegy, High political price of partnership: Scandinavian divisions over EU entry, FIN. TIMES, Nov. 15, 1994, at 19.

123 In a tight vote, Sweden decided to join the EU on November 13, 1994. Just over 52% voted for accession, with almost 47% voting against. Hugh Carnegy & Christopher Brown-Humes, Sweden gives clear Yes to EU: Vote in favour of membership keeps enlargement timetable on course, FIN. TIMES, Nov. 14, 1994, at 1.

124 See HAGELIN, supra note 107, at 37.
addition to actively importing equipment and materiel, Sweden is the only formerly neutral country with indigenous research and development in all important categories of military supplies. In fact, Sweden spends two to three times more on its military than Austria and Finland, making it potentially one of the European Union's most valuable security acquisitions despite the fact that it does not border any areas of military concern.

V. THE LIMITATIONS OF THE ACQUIS COMMUNAUTAIRE: WHY THE PRESENCE OF AUSTRIA, FINLAND AND SWEDEN IS MORE LIKELY TO HINDER THE EU'S SEARCH FOR A COMMON FOREIGN AND SECURITY POLICY THAN TO HELP IT

Although Austria, Finland and Sweden are expected by fellow Member States to cooperate fully in the handling of the Union's common security issues (and as was demonstrated above, each has something to offer), it is nevertheless unlikely that any of these new members will realize its potential worth to the Union in the area of security. In fact, it is probably fair to conclude that any chance Europe may once have had at developing a system of mutual cooperation in handling security issues all but vanished on January 1, 1995 when it opened its doors to Austria, Finland and Sweden. Theoretically, the principle of acquis communautaire applies to the 1995 accession, binding Austria, Finland and Sweden to the provisions of Title V, despite these countries' long histories of neutrality. The reality, however, is something quite different.

The Council, chiefly responsible for taking actions under Title V and other provisions of the Treaty, now includes representation from four neutral (or at least formerly neutral) countries: Ireland, Austria, Finland and Sweden. The importance of the Council as a decision-making institution should not be overlooked. Article J.2(2) of Title V states, "Whenever it deems it

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125 Sweden imports helicopters, army support aircraft and light surface ships, air-to-air missiles and heavy air defense missiles. Id. at 37.
126 These include guided missiles, fighter aircraft, surface ships, submarines and light and heavy tanks. Id. at 37.
127 In 1989 Sweden spent 2.6% of its GNP on its military, while Austria and Finland spent 1.1% and 1.6% of their respective GNPs for military purposes. See ENCYCLOPEDIA BRITANNICA, supra note 112.
128 Besides Finland, Sweden borders only Norway. Across the Baltic Sea from Sweden are Estonia, Latvia and Lithuania.
necessary, the Council shall define a common position."129 Further, Article J.3 sets out the procedure for adopting joint action in matters covered by the foreign and security policy as follows:

1. The Council shall decide, on the basis of general guidelines from the European Council, that a matter should be the subject of joint action.

Whenever the Council decides on the principle of joint action, it shall lay down the specific scope, the Union’s general and specific objectives in carrying out such action, if necessary its duration, and the means, procedures and conditions for its implementation.

2. The Council shall, when adopting the joint action and at any stage during its development, define those matters on which decisions are to be taken by a qualified majority.

Where the Council is required to act by a qualified majority pursuant to its preceding subparagraph, the votes of its members shall be weighted in accordance with Article 148(2) of the Treaty establishing the European Community, and for their adoption, acts of the Council shall require at least 54 votes in favour, cast by at least eight members.130

3. If there is a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.

4. Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity.

5. Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply

129 APPENDIX, infra p. 633.
130 After the accession of Austria, Finland and Sweden, 62 votes in favor (of a possible 87) are now required. See infra note 136.
to measures which are merely a national transposition of Council decisions.

6. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the joint action. The Member State concerned shall inform the Council immediately of any such measures.

7. Should there be any major difficulties in implementing a joint action, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the joint action or impair its effectiveness.\(^{131}\)

While the *acquis communautaire* generally requires compliance with Title V provisions and "support [of] the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity,"\(^{132}\) there is no specific requirement that any Member State vote favorably on any security-oriented resolution being voted on by the Council. Although the new Member States are expected to cooperate fully with the Union’s desire to establish a common security framework, they will not be prevented from objecting to proposals attempting to define a common security policy, nor will they be restrained from voting against a joint action.

Where unanimity is required on a security issue,\(^{133}\) it is unlikely that all four neutral countries will agree with the majority’s opinion, let alone the remaining eleven non-neutral Member States.\(^{134}\) The truth is, the prospects for reaching a consensus on security issues were slim with twelve Member States; with fifteen, it will be almost impossible. And this will become an even greater problem as future accessions take place.

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\(^{131}\) *Appendix*, *infra* pp. 633-35.


\(^{133}\) Indeed, unanimity is the default rule. *See Appendix*, Art. J.8(2), *infra* p. 637 ("The Council shall act unanimously, except for procedural questions and in the case referred to in Article J.3(2).").

\(^{134}\) As Professor O’Keeffe indicates, “events such as a lack of consensus between Member States during the Gulf war are identified as demonstrating the impossibility of European cooperation in the fields of foreign policy and defence.” David O’Keeffe, *Blaine Sloane Lecture: Current Issues in European Integration*, 7 *PACE INT’L L. REV.* 1, 53-54 (1995).
In cases of qualified majority voting in the Council, the 87 total votes are allocated as follows:

- France, Germany, Italy and the UK receive 10 votes each;
- Spain receives 8 votes;
- Belgium, the Netherlands, Portugal and Greece receive 5 votes each;
- Austria and Sweden receive 4 votes each;
- Denmark, Ireland and Finland receive 3 votes each; and
- Luxembourg receives 2 votes.\(^{135}\)

Of the 87 total votes, 62 are now required to constitute a qualified majority;\(^{136}\) this means that 26 votes are necessary to prevent a qualified majority. If the four neutral countries form an alliance, and this appears highly possible,\(^{137}\) they alone can provide 14 opposing votes, requiring just 12 votes of the remaining 73 to prevent action from being taken. Given the reluctance of other Member States to relinquish control over the handling of security issues to the WEU,\(^{138}\) the prospects of consistently winning approval for security-related joint actions are minimal. In fact, successful, progressive resolutions on security issues appear unlikely absent some radical amendment to Title V, such as the installment of a simple majority voting system on common security issues. Such a change has thus far not been

\(^{135}\) For the allocation of votes to all Member States other than Austria, Finland and Sweden, see Article 148(2) of the Treaty of Rome. For the allocation of votes to the most recent three States, see 26 E.C. BULL., no. 12, at 18 (1993).

\(^{136}\) Council Decision of 1 January 1995, art. 8, O.J. L 1/1, at 3 (1985) (amending the Council agreement reached at Ioannina, Greece on March 26-27, 1994, when Norway was expected to accede and thus be represented on the Council).

\(^{137}\) The leader of Ireland’s Democratic Left, Mr. Poinsias De Rosa, is among those who have predicted that Ireland will join with Austria, Finland and Sweden to form a neutral bloc “which will challenge the pro-WEU consensus and fight for a different approach.” \textit{Spring asked to clarify speech on neutrality}, IRISH TIMES, Dec. 23, 1993, at 6.

\(^{138}\) The United Kingdom has to date been hesitant to involve itself in matters of common foreign and security and has been particularly loathe to include the WEU in the handling of Community security issues. See Giles Tremlett, \textit{Europeans disagree on defense}, UPI, Nov. 14, 1995, available in LEXIS, Nexis Library, UPI File; see also European Defence: \textit{British Sceptical of Defence Policy Outside of NATO}, supra note 8. The Netherlands has also periodically restated its preference for NATO and for including the U.S. in the handling of major security issues. Sean Flynn, \textit{New issues in debate on security}, IRISH TIMES, Jan. 14, 1994, at 10.
seriously discussed, and would surely lead to results inconsistent with the concept of Member State collaboration.

Add to the mix the fact that Austria will hold the Presidency of the Council for the second six months of 1998, Finland will hold it for the second half of 1999 and Sweden will hold it for the first half of 2002.\footnote{Council Decision of 1 January 1995, Art. 1(1), O.J. L 1/220 (1995). Among the privileges of this position is agenda setting.} In addition, the Commission now has representatives from each of the new Member States,\footnote{The three newest members are Mr. Fischler from Austria, Mr. Likaneu from Finland and Mrs. Gradin from Sweden. Decision of the Representatives of the Governments of the Member States of the European Communities of 1 January 1995, O.J. L 1/222 (1995).} and the new members together have fifty-seven Members of the European Parliament.\footnote{Sweden has 21 MEPs, Austria has 20, and Finland has 16. \textit{26 E.C. BULL.}, no. 12, at 17 (1993).} Austria, Finland and Sweden each has a judge on the Court of Justice as well, but as the Court of Justice has no jurisdiction over matters pertaining to Title V, representation on the ICJ is not relevant to our current discussion.

VI. CONCLUSION

The true impact that the 1995 accession of Austria, Finland and Sweden will have on the European Union's search for a common foreign and security policy remains to be seen. It is not yet entirely clear whether these newest Member States will pave the way for a multidimensional Union featuring a cooperative intergovernmental security policy, or whether the 1995 expansion will instead be assigned mere footnote status in a Union that ultimately never fills the huge shoes designed for it. It appears at this point, however, that the addition of Austria, Finland and Sweden will make the formation of a meaningful common European security policy a very difficult task, if not an impossible one.

On January 1, 1995, the European Union added three countries which collectively represent considerable financial, military, and geographic value to assist in the formation of a common security plan. Under the principle of the \textit{acquis communautaire}—which requires, \textit{inter alia}, that all applicants for admission to the European Union, as a prerequisite to their accession, accept unconditionally the whole body of law and all provisions of the Maastricht Treaty—Austria, Finland and Sweden are required to cooperate fully in every
aspect of Title V security planning, and to “support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.” This would imply that upon their accession to the European Union, Austria, Finland and Sweden in essence checked their neutrality at the door.

As this paper explained, however, such a conclusion ignores political realities. The principle of the *acquis communautaire* in no way binds any state to vote on any particular issue in any particular way. The four neutral Member States—Austria, Finland, Sweden and Ireland—are likely to form a voting bloc which would have fourteen of the eighty-seven total votes on the Council. These fourteen votes are more than enough to defeat security-oriented resolutions requiring unanimous approval. When qualified majority voting is employed, the aforementioned neutral voting bloc still would need only an additional twelve of the remaining seventy-three votes to defeat such proposals, hardly an impossible task considering the reluctance of many Member States to relinquish the handling of important security issues to a Union inexperienced in these areas.

The truth is that the European Union of yesterday, rife with dissension on how to handle important common security threats, may also be the European Union of tomorrow and for some time to come. The recipe for a “common foreign and security policy,” set forth in Title V of the Maastricht Treaty, failed to list the essential ingredients to achieve such a policy. While the addition of Austria, Finland and Sweden to the mix may at first appear to congeal the odd concoction, its more likely effect is to render political discord insuperable. In the final analysis, the 1995 accession threatens to make meaningful intergovernmental cooperation on security issues a soon forgotten pipe dream.

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APPENDIX

TITLE V OF THE TREATY ON EUROPEAN UNION (MAASTRICHT TREATY)

Article J

A common foreign and security policy is hereby established which shall be governed by the following provisions.

Article J.1

1. The Union and its Member States shall define and implement a common foreign and security policy, governed by the provisions of this Title and covering all areas of foreign and security policy.

2. The objectives of the common foreign and security policy shall be:

   - to safeguard the common values, fundamental interests and independence of the Union;

   - to strengthen the security of the Union and its Member States in all ways;

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

   - to promote international cooperation;

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

3. The Union shall pursue these objectives:

   - by establishing systematic cooperation between Member States in the conduct of policy, in accordance with Article J.2;
by gradually implementing, in accordance with Article J.3, joint action in the areas in which Member States have important interests in common.

4. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with.

Article J.2

1. Member States shall inform and consult one another within the Council on any matter of foreign and security policy of general interest in order to ensure that their combined influence is exerted as effectively as possible by means of concerted and convergent action.

2. Whenever it deems it necessary, the Council shall define a common position.

Member States shall ensure that their national policies conform to the common positions.

3. Member States shall coordinate their action in international organizations and at international conferences. They shall uphold the common positions in such forums.

In international organizations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.

Article J.3

The procedure for adopting joint action in matters covered by the foreign and security policy shall be the following:
1. The Council shall decide, on the basis of general guidelines from the European Council, that a matter should be the subject of joint action. Whenever the Council decides on the principle of joint action, it shall lay down the specific scope, the Union’s general and specific objectives in carrying out such action, if necessary its duration, and the means, procedures and conditions for its implementation.

2. The Council shall, when adopting the joint action and at any stage during its development, define those matters on which decisions are to be taken by a qualified majority.

Where the Council is required to act by a qualified majority pursuant to its preceding subparagraph, the votes of its members shall be weighted in accordance with Article 148(2) of the Treaty establishing the European Community, and for their adoption, acts of the Council shall require at least 54 votes in favour, cast by at least eight members. 143

3. If there is a change in circumstances having a substantial effect on a question subject to joint action, the Council shall review the principles and objectives of that action and take the necessary decisions. As long as the Council has not acted, the joint action shall stand.

4. Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity.

5. Whenever there is any plan to adopt a national position or take national action pursuant to a joint action, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.

6. In cases of imperative need arising from changes in the situation and failing a Council decision, Member States may take the necessary

143 After the accession of Austria, Finland and Sweden, 62 votes in favor (of a possible 87) are now required. See supra note 136.
measures as a matter of urgency having regard to the general objectives of the joint action. The Member State concerned shall inform the Council immediately of any such measures.

7. Should there be any major difficulties in implementing a joint action, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the joint action or impair its effectiveness,

Article J.4

1. The common foreign and security policy shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence.

2. The Union requests the Western European Union (WEU), which is an integral part of the development of the Union, to elaborate and implement decisions and actions of the Union which have defence implications. The Council shall, in agreement with the institutions of the WEU, adopt the necessary practical agreements.

3. Issues having defence implications dealt with under this Article shall not be subject to the procedures set out in Article J.3.

4. 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 and shall respect the obligations of certain Member States under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

5. The provisions of this Article shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the WEU and the Atlantic Alliance, provided such cooperation does not run counter to or impede that provided for in this Title.
6. With a view to furthering the objective of this Treaty, and having in view the date of 1998 in the context of Article XII of the Brussels Treaty, the provisions of this Article may be revised as provided for in Article N(2) on the basis of a report to be presented in 1996 by the Council to the European Council, which shall include an evaluation of the progress made and the experience gained until then.

Article J.5

1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.

2. The Presidency shall be responsible for the implementation of common measures; in that capacity it shall in principle express the position of the Union in international organizations and international conferences.

3. In the tasks referred to it in paragraphs 1 and 2, the Presidency shall be assisted if need be by the previous and next Member States to hold the Presidency. The Commission shall be fully associated in these tasks.

4. Without prejudice to Article J.2(3) and Article J.3(4), Member States represented in international organizations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.
Article J.6

The diplomatic and consular missions of the Member States and the Commission Delegations in third countries and international conferences, and their representations to international organizations, shall cooperate in ensuring that the common positions and common measures adopted by the Council are complied with and implemented.

They shall step up cooperation by exchanging information, carrying out joint assessments and contributing to the implementation of the provisions referred to in Article 8c of the Treaty establishing the European Community.

Article J.7

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union’s foreign and security policy.

The European Parliament may ask questions of the Council or make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.

Article J.8

1. The European Council shall define the principles of and general guidelines for the common foreign and security policy.

2. The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines adopted by the European Council. It shall ensure the unity, consistency and effectiveness of action by the Union.

The Council shall act unanimously, except for procedural questions and in the case referred to in Article J.3(2).
3. Any Member State or the Commission may refer to the Council any question relating to the common foreign and security policy and may submit proposals to the Council.

4. In cases requiring a rapid decision, the Presidency, of its own motion, or at the request of the Commission or a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

5. Without prejudice to Article 151 of the Treaty establishing the European Community, a Political Committee consisting of Political Directors shall monitor the international situation in the areas covered by common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the Presidency and the Commission.

Article J.9

The Commission shall be fully associated with the work carried out in the common foreign and security policy field.

Article J.10

On the occasion of any review of the security provisions under Article J.4, the Conference which is convened to that effect shall also examine whether any other amendments need to be made to provisions relating to the common foreign and security policy.

Article J.11

1. The provisions referred to in Articles 137, 138, 139 to 142, 146, 147, 150 to 153, 157 to 163 and 217 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this Title.
2. Administrative expenditure which the provisions relating to the areas referred to in the Title entail for the institutions shall be charged to the budget of the European Communities.

The Council may also:

- either decide unanimously that operational expenditure to which the implementation of those provisions give rise is to be charged to the budget of the European Communities; in that event, the budgetary procedure laid down in the Treaty establishing the European Community shall be applicable;

- or determine that such expenditure shall be charged to the Member States, where appropriate in accordance with a scale to be decided.