

European Common Foreign and Security Policy^(*)

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Abstract:

The twenty first century will be remembered in the history of mankind as the century of change, constant danger, “clash of civilisations”, collective insecurity, mistrust towards “the other”, injustices caused by the Iraq war and by the terrorist attacks of September 11th 2001, in the United States, March 11th 2004, in Spain, and July 7th 2005, in London, respectively. We should not, however, neglect all the other terrorist attacks to the most elementary human rights perpetrated every day around the world. Indeed, the “insecurity” epidemic proliferates around the globe. Therefore, it is urgent for the European Union (EU) to adopt and implement a reinforced Common Foreign and Security Policy (CFSP).

Keywords: CFSP, Maastricht, Amsterdam, Nice, European Constitution

Introduction:

The twenty-first century will be remembered in the history of mankind as the century of change, constant danger, “clash of civilisations”, collective insecurity, mistrust towards “the other”, injustice, Iraq war and mainly as the century of the tragic terrorist attacks of September 11th 2001, in the United States, March 11th 2004, in Spain, and July 7th 2005, in London. However, we should also not forget the most elementary human rights’ violations perpetrated every day around the world. We should not continue to neglect these matters and to persist in the constant incrimination

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of “the other”. We have an obligation to analyse that which lies before us and formulate conjectures about what is wrong in the relationship between the western and eastern worlds and between the north and the south. Indeed, we have a duty to understand that “the other” is “us.”

The world has changed. If we grasp this fact, we ought to understand also that a Common Foreign and Security Policy (CFSP) is a necessity and that, therefore, it is imperative for the European Union to stop being a “political pigmy” and begin speaking with one voice in the world in bilateral, regional and international forums. The process of European integration was initiated in 1951 with the signing of the Treaty of Paris, which brought into place the European Coal and Steel Community (ECSC). In addition to the economic concerns that were central to its establishment, security considerations also played a decisive role: “Considering that world peace may be safeguarded only by creative efforts equal to the dangers which menace it; Convinced that the contribution which an organized and vital Europe can bring to civilization is indispensable to the maintenance of peaceful relations;(…) Desirous of assisting through the expansion of their basic production in raising the standard of living and in furthering the works of peace; Resolved to substitute for historic rivalries a fusion of their essential interests; to establish, by creating an economic community, the foundation of a broad and independent community among peoples long divided by bloody conflicts; and to lay the bases of institutions capable of giving direction to their future common destiny; (...)”¹

The purpose of this paper is to trace the historical evolution of the Common Foreign and Security Policy (CFSP) in the process of European integration (from the Hague Summit to the Treaty of Nice) as well as underlining the merits and faults of the of EU Constitutional Treaty (2004) with regard to such matters. We know from the outset that this Constitutional Treaty will probably “never” come into place, at least in its present form, given that France (29th May of 2006) and the Netherlands (1st June of 2006) have refused to ratify it.

Background of the CFSP

The “European Communities”², in their first decade of existence, prioritised economic integration and, as a consequence, relegated political integration to a secondary role. In reality, external political co-operation (EPC)³ begins timidly in the 1970’s, in great part due to the efforts of

¹ See Preamble of the Treaty of Paris, in “Tratado de la Unión Europea, Tratados constitutivos de las Comunidades Europeas y otros actos básicos de Derecho Comunitario”, Madrid, ed. Tecnos, séptima edición, 1999, p. 261.

² There were three European Communities: E.C.S.C (Treaty of Paris-1951); E.A.E.C (Treaty of Rome-1957) and E.E.C (Treaty of Rome-1957)

³ FERNANDES, Luís Lobo: *A Cooperação Política Europeia*, course text on the discipline of European Security, Defence and Political Cooperation, VI edition of the Masters programme in European Studies, University of Minho, Braga, 2000.

French President George Pompidou. Indeed, foreign policy, common security and defence were born from several European summits: A) in 1969, at the Hague European Summit⁴, President George Pompidou proposed the creation of an institutional platform for foreign policy co-operation. He outlined “a programme of European construction for the future, in which the political goals of the founding members of the Community were to be re-addressed (...) in accordance with the renowned triadic formula *completing, deepening and enlarging*. After the Hague European Summit, Europe had, once again, a political objective, in spite of continuing to pursue economic integration.(...) [Europe] can stand only if it aims at a political union (...) [whose] immediate objective is the economical but whose final objective is (and must be) a political goal (...)”⁵; B) One year later, at the Luxembourg European Summit⁶, the Belgian Étienne Davignon, inspired by the ideas of George Pompidou, outlined, in the so-called “Davignon Report”, the embryonic institutional mechanisms of a not merely informal European intergovernmental co-operation. Hence, he proposed “(a) at least once every six months, a meeting of Ministers of Foreign Affairs that could be substituted by a Conference of Heads of State or Government; (b) at least four times a year, a political Committee comprising heads of the political departments of the Ministries of Foreign Affairs to prepare the groundwork for ministerial decisions; (c) a Committee of High Representatives to study the diverse questions that would arise; (d) [and attributes to the] President of the Council of Ministers [the task of reporting] once a year to the European Parliament on the state of Political Co-operation”⁷; C) At the Paris European Summit⁸ of 1972, the term “European Union” is invoked for the first time as a political objective and the procedures for foreign policy consultation are reinforced in accordance with the schema previously proposed by Davignon. In this manner, the Paris European Summit institutionalises four annual meetings of European Ministers of Foreign Affairs, thus replacing the previous two annual gatherings; D) in the following year⁹, the Copenhagen European Summit¹⁰ aimed at a “Europe speaking with one voice in world affairs.”¹¹ As a consequence, meetings and/or consultations with the Heads of State are

⁴ This Summit took place on the 1st and 2nd of December of 1969.

⁵ For an elaboration of this point, see <http://maltez.info/cosmopolis/anode1969/eurobalanca.htm>

⁶ See Bulletin EU, 1970-11, p.9-15. This Summit took place in October of 1970.

⁷ BUSTAMANTE, Rogelio Pérez, COLSA, Juan Manuel Uruburu: *História da União Europeia*, Coimbra, Coimbra Editora, 2004, p. 106.

⁸ This summit took place on the 19th and 20th of October of 1972.

⁹ BUSTAMANTE, *op. cit.* p. 106: "(on) the 23rd of July of 1973 a second "Davignon Report" was drafted that also addressed the subject of foreign policy cooperation and the formulation of a common policy: "each state shall commit itself to not fixing definitely its own position without having consulted the remaining members on political cooperation."

¹⁰ See Bulletin EU, 1973-9, p. 13-21. This summit took place on the 14th and 15th of December of 1973.

¹¹ For a more profound elaboration on this topic, vide <http://maltez.info/cosmopolis/anode1973/eurobalanca.htm>

intensified, emergency gatherings are set in place, guidelines for the implementation of a concerted foreign policy are reiterated and the institutional mechanisms for a common European policy are established¹²; E) At the Paris European Summit¹³ of 1974, the Heads of State and Government established the European Council¹⁴ and stipulated that there should be three annual meetings to promote political cooperation, despite the fact that such an institution was not enshrined in any of the Treaties of the European Community, and created the Marjolin-Tindemans Reflection Group to address matters of political union. This Summit was, without a doubt, the precursor of the European Councils, the first of which took place in Dublin on the 10th and 11th of March of 1975; F) In the year of 1975, following the Councils of Dublin, Brussels and Rome¹⁵, the Belgian Prime Minister Leon Tindemans¹⁶ presented the so-called "Tindeman's Report on the European Union." In this report, he defended the reinforcement of the institutions of the European Community and recommended "that a common foreign policy be developed, one in which there is an obligation to adopt common decisions and, therefore, abandon the principle of voluntary decision that underlies political co-operation"¹⁷; G) In 1976, the Hague European Council¹⁸, after analysing and approving the general guidelines of the Tindemans' Report, issued a statement: "The European Union will be built progressively by consolidating and expanding the Community's achievements. The existing treaties could serve as the basis for new policies[...]Co-operation in the domain of foreign policy should necessarily lead to the adoption of a Common Foreign

¹² MACHADO, Tiago Pedro Fernandes Fonseca, "Onde está a PESC?" working-paper nº s/n-2004, Faculty of Law, Universidade Nova de Lisboa, p.5: "(...) It is in the Copenhagen Report that the true foundational charter of European Political Cooperation (EPC) is articulated in its triple dimension. In the first place, it supposed the express linkage of EPC with the objective of the European Union. In second place, the Report clarified the nature of the relations between EPC and the EU in a paradoxical manner, since it addressed the existing differences between both. Finally, the Report succeeded in deepening those aspects related to the institutional and procedural organisation of EPC through the increase of the frequency of "Ministerial Meetings" and of the Political Committee, the Institutionalisation of the EUCOR (European Correspondents) group and of the workgroups, and by addressing the specific functions of the Presidency, which had become one of the major concerns in the ambit of EPC."

¹³ This Summit took place on the 9th and 10th of December of 1974.

¹⁴ BUSTAMANTE, *op. cit.*, p.110 "(...) At the Summit of Paris of the 10th of December of 1974, the most important protagonist of the reforms, President Giscard D'Estaing, closed the meeting with the following statement: "the Summit is dead, long live the European Council."

¹⁵ *Ibid.*, p.112 "(...) fundamentally, it has been decided that the EEC shall be represented by a single delegation at the Paris Conference on International Economic Cooperation -North-South dialogue."

¹⁶ For a more profound elaboration of this point see <http://maltez.info/cosmopolis/anode1975/total.htm> "(the) European Union implies that we present ourselves as a united front in the world. Our actions should be common in all of the essential domains of our external relations, whether it be foreign policy, security, economic relations or cooperation."

¹⁷ MORENO, Fernando Díez.: *Manual de Derecho de la Unión Europea*, Madrid, 3^a Ed. Thomson, Civitas, 2005, p. 831.

¹⁸ This European Council took place on the 29th and 30th of November of 1976.

Policy”¹⁹; H) At the London European Council²⁰ of 1981, the Ministers of Foreign Affairs of Germany and Italy, Hans Dietrich Genscher and Emilio Colombo respectively, proposed the “European Act”, a series of procedures and mutual consultations in such areas as “political co-operation, culture, fundamental rights, harmonisation of the legislation not yet enshrined in the Treaties of the European Communities, the fight against terrorism, violence and criminality”²¹, as well as flexible and pragmatic endeavours towards the objective of political co-operation and security; I) At the Stuttgart European Council²² of 1983, Heads of State and Governments, inspired by the proposal of 1981 submitted by the German and Italian Foreign Affairs Ministers, adopted the Solemn Declaration of Stuttgart on the European Union.²³ This declaration²⁴ “(...) introduced the prediction that States would co-ordinate their positions on matters of political and economical aspects of security and (...) at the institutional level, it introduced the explicit configuration of the European Council as an essential institution with its own functions in the ambit of European Political Co-operation (EPC)”²⁵; J) The Single European Act of 1986²⁶, in addition to undertaking the first revision of the Treaties of the European Community (Paris/Rome)²⁷, also institutionalised the European Councils, conferring them with oversight and control powers over

¹⁹ BUSTAMANTE, *op. cit.*, p. 114.

²⁰ See Bulletin EU, Supplement 3/1981, p.14-18

²¹ For a more profound elaboration of this subject, see http://www.europarl.europa.eu/factsheets/1_1_2_pt.htm

²² This European Council took place on the 17th and 19th of June of 1983.

²³ BUSTAMANTE, *op. cit.*, p 126. "(in) the Preamble, he manifests his interest in proceeding with the European project: «to continue with this undertaking on the basis of the Treaties of Paris and Rome»; to extend the purview of European activities: «the advances that have been made in the fields of economic integration and political cooperation as well as the need for new developments (...); to promote democracy, intensify its cohesion, deepen its policies, grant priority to social progress and to employment and to speak with one voice in foreign policy, to construct a European Union."

²⁴ *Ibid.*, "(the Stuttgart Solemn Declaration on the European Union had the following objectives: a) to reinforce and proceed with the development of the Communities, the nucleus of the European Union; b) to develop European political cooperation in the domain of foreign policy and the political and economic aspects of security; c) to promote closer cooperation in cultural affairs as well as initiating concerted actions to deal with the international problems of public order, violence, criminality and delinquency; d) to modify the Institutions, emphasising the role of the Commission in favour of a delegation of competencies and reinforcing the attributes of the European Council, indicating its functions and relations with Parliament, to which an essential role is attributed (...)."

²⁵ MACHADO, *op. cit.*, p.5.

²⁶ SOARES, António Goucha: *A União Europeia*, Coimbra, ed. Almedina, 2006, p. 21-22: "(the) Single European Act constitutes the first general reform of the Treaties undertaken since the establishment of the three Communities. It is designated as a "single act" because, in the same normative act, the Member-States proceeded with the revision of the three Treaties of the different European Communities and agreed, also, to institutionalise the so-called European Political Cooperation. European Political Cooperation between the Member-States was a practice developed with the adoption of the Davignon Report, in 1970, by the Ministers for Foreign Affairs. It consisted in the establishment of a process of regular consultation and information between the Member-States on the great questions of international politics so as to promote the co-ordination of positions. The practice of Political Cooperation between the Member-States was intensified throughout the decade and, at the Summit of Copenhagen of 1973, it was decided that this would be the framework for the formulation of the principles of foreign policy that should be applied to third-party states and thus express the position of Europe on the most important themes of world politics. However, Political Cooperation remained outside of the Community-system. With the institutionalisation of European Political Cooperation by the Single European Act, the Member-States affirmed their intention not to confine the integration process to the economic sphere and to extend it to the domain of foreign policy." It was approved on the 17th of February of 1986 and was adopted in July of 1987. Published in OFL 169 of 29.06.1987.

²⁷ See article 1 of the SEA: "the European Communities and European Political Cooperation are guided by the objective to jointly contribute to the concrete progress of the European Union."

the Communities²⁸, "Moved by the will to continue²⁸ the work undertaken on the basis of the Treaties establishing the European Communities and to transform relations as a whole among their States into a European Union, in accordance with the Solemn Declaration of Stuttgart of the 19 June of 1983; Resolved to implement this European Union on the basis, firstly, of the Communities operating in accordance with their own rules and, secondly, of European Cooperation among the Signatory States in the sphere of Foreign Policy and to invest this Union with the necessary means of action."²⁹ The European Political Cooperation envisaged in the Single European Act aims at promoting the joint progression of the European Union (Article 1, SEA) and is founded on the procedures adopted and outlined in the "Reports of Luxembourg (1970), Copenhagen (1973), London (1981), the Solemn Declaration on the European Union (1983), and the practices gradually established among the Member States."³⁰ The Political Cooperation is regulated by Title III (Treaty Provisions on European Cooperation in the Sphere of Foreign Policy), article 30³¹: "although the obligations of States in matters of foreign policy preserved their voluntary nature, the Member-states - «The High Contracting Parties» - (...) agreed to inform and consult each other in foreign policy matters before making final decisions. However, such matters as security and defence became a sort of "taboo" in European integration, given the failures of previous endeavours (European Defence Community and Fouchet Plan) but

²⁸ See *Tratado de Roma y Acta Única Europea*, Madrid, ed. Tecnos, 1988, p. 171, article 2 of the SEA: "(the) European Council shall be composed by the Heads of State of the Member-States as well as by the President of the Commission of the European Communities. They will be assisted by the Ministers of Foreign Affairs and by a member of the Commission. The European Council shall meet at least twice per year."

²⁹ Ibid., see Preamble, p.169.

³⁰ Ibid., p.171, see paragraph 4 of article 1 of SEA.

³¹ Ibid., p.178-181, see, "(article) 30 - European Cooperation in the sphere of foreign policy shall be governed by the following provisions: 1- The High Contracting Parties, being members of the European Communities, shall endeavour jointly to formulate and implement a European foreign policy; 2- a) The High Contracting Parties undertake to inform and consult each other on any foreign policy matters of general interest so as to ensure that their combined influence is exercised as effectively as possible through the coordination, the convergence of their positions and the implementation of joint action. b) Consultation shall take place before the High Contracting Parties decide on their final positions; c) In adopting its positions and its national measures each High Contracting Party shall take full account of the positions of other partners and shall give due consideration to the desirability of adopting and implementing common European positions. In order to increase their capacity for joint action in the foreign policy field, the High Contracting Parties shall ensure that common principles and objectives are gradually developed and defined. The determination of common positions shall constitute a point of reference for the policies of the High Contracting Parties. D) The High Contracting Parties shall endeavour to avoid any action or position which impairs their effectiveness as a cohesive force in international relations or within international organisations. 3-(a) The Ministers for Foreign Affairs and a member of the Commission shall meet at least four times a year within the framework of European Political Co-operation. They may also discuss foreign policy matters within the framework of Political Co-operation on the occasion of meetings of the Council of the European Communities; b) The Commission shall be fully associated with the proceedings of Political Co-operation; c) In order to ensure the swift adoption of common positions and the implementation of joint action, the High Contracting Parties shall, as far as possible, refrain from impeding the formation of a consensus and the joint action which this could produce; 4) The High Contracting Parties shall ensure that the European Parliament is closely associated with European Political Co-operation. To that end, the Presidency shall regularly inform the European Parliament of the foreign policy issues which are being examined within the framework of Political Co-operation and shall ensure that the views of the European Parliament are duly taken into consideration; 5) The external policies of the European Community and the policies agreed in European Political Co-operation must be consistent (...)"

mainly because of the refusal of national governments in abdicating of, or even sharing, powers that are quintessential attributes of sovereignty."³²

The Second Pillar of the Treaty of Maastricht

On the 7th of February of 1992, the second reform of the Treaty of Rome is undertaken with the signing of the Treaty of Maastricht and/or of the European Union³³ "(...) Resolved to mark a new stage in the process of European integration undertaken with the establishment of the European Communities; (...) Resolved to establish a citizenship common to nationals of their countries; Resolved to implement a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world; Reaffirming their objective to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by including provisions on justice and home affairs in this Treaty; Resolved to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity; (...) Have decided to establish a European Union (...).³⁴ This is a revolutionary treaty³⁵, with a *sui generis* structure and a "common architrave"³⁶ - Art. A to F of the TEU; a Pillar of the Community (art.1 to 240 ECT); and two intergovernmental

³² CAMISÃO, Isabel, FERNANDES, Luís Lobo.: *Construir a Europa – O processo de integração entre a teoria e a história*, Cascais, 1^aed. Principia, 2005, p. 91.

³³ SOARES, p. 29: "(...) (The) Treaty on European Union adopted a normative structure that rests on three pillars (...) [this structure] constitutes a clear demarcation of the national governments regarding supra-national developments that arise from the process of European integration. The States demonstrated that they accepted the goal of deepening dialogue and cooperation in the domains of foreign policy, justice and internal affairs. However, the States did not want that decisions in the sphere of "high politics" could be taken in accordance with the decision-making processes of the Community and they did not accept that measures adopted in the new policy domains could emanate from the juridical system of the European Community, thus establishing two parallel normative pillars. Foreign policy, justice and internal affairs were henceforth integrated in the ambit of the Union, yet, the functioning of the new pillars was not subjected to the so-called communitarian method, given that Member-States preferred to keep decision-making in these domains within the inter-governmental sphere. " This Treaty was adopted on the 1st of November of 1993. Published in OJ C 191 of 29.07.1992.

³⁴ ENTERRÍA, Eduardo Garcia de, TIZZANO, Antonio, GARCÍA, Ricardo Alonso.: *Codigo de la Union Europea*, Madrid, editorial Civitas, 1996, p. 21.

³⁵ CAMISÃO, *op. cit.*, p. 96: "[The Treaty of Maastricht] contributed to advancing in the direction of a neo-federal model, not only because of what it enshrined, but, above all, for the possibilities that it opened: the conclusion of the process of economic integration opened the door to the process of political integration; the establishment of CFSP made possible the creation of an identity for the Union; the pillar of Justice and Internal Affairs created a real Freedom, Security and Justice Space; the new European citizenship created a Union that is closer to the citizen; the adoption of the principle of subsidiarity introduced a de-centralised governing and, lastly, the process of co-decision enshrined a more productive participation of the European Parliament."

³⁶ See article B, 2nd paragraph of TEU: "The Union shall set itself the following objectives: to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence".

pillars that reveal the lack of courage³⁷ of member-states to transfer powers to the European Union that are culturally and intrinsically linked to state sovereignty, for instance, see Title V "Treaty Provisions on European Cooperation in the Sphere of Common Foreign and Security Policy"³⁸ (art. J to J-11 of the TEU); and Title IV "Treaty Provisions on European Cooperation in the Sphere of Justice and Internal Affairs" (art. K to K.9 of the TEU).

This paper only considers Title V, which concerns Common Foreign and Security Policy (CFSP). This policy "is the continuation of (a timid progress of) the provisions of article 30 of Title III of the SEA, which addresses the "Provisions on European Co-operation in the Sphere of Foreign Policy". Not only in the SEA but also in the Treaty on European Union the CFSP, as the corresponding Title attests, is understood to be a matter to be co-operatively regulated by the member-states and is, therefore, not subject to the customary community procedures, thus remaining outside the judicial purview of the European Court of Justice - Title VII, art. L"³⁹

The number 2 of article J-1 of the TEU delineates the CFSP objectives. This measure concerns a) the preservation of common values, fundamental interests and the independence of the Union; B) the reinforcement of the security of the Union and that of its Member-States in all its forms; c) the preservation of peace and the reinforcement of international security, in accordance with the principles outlined in the Charter of the United Nations, the Helsinki Final Act and with the objectives set out in the Paris Charter; d) to foment international cooperation; e) the development and reinforcement of democracy, the Rule of Law and the safeguarding of human rights and fundamental freedoms.

In order to achieve these objectives in an intergovernmental context, the Treaty on European Union established the following juridical mechanisms: a) Systematic cooperation between Member-States in the management of their common foreign and security policy.⁴⁰ In essence, the Treaty of Maastricht adopted, as a juridical mechanism, a practice that was proposed with the Single European Act (paragraph a, n° 2, article 3 of the SEA), which consisted of the agreement, undertaken by the High Contracting Parties, that they should inform and consult with each other

³⁷ CAMISÃO, *op. cit.*, p. 92-93: "[the] agreement reached by the Member-States regarding this matter was enshrined in the second pillar of the Treaty of Maastricht. By joining in one single policy two dimensions previously separated (foreign policy and security), European leaders took a very important step toward political union. However, the inclusion of a third dimension of vital importance to the survival of the European project was postponed *sine die*: defence. Although the Treaty considers the definition of a common defence policy as a sort of corollary to the CFSP, there were no recommendations concerning a deadline for its implementation."

³⁸ *Ibid.*, p.92: "[the] negotiations for the establishment of a CFSP by the TEU had the following precise objectives: (...) - Europe was striving to provide itself with a mechanism suitable to promote the security of the continent in a period of profound uncertainty (...); - the CFSP would also contribute to the emergence of a scenario of political and economic stability throughout the European continent (...); the aims of the new common policy, the consolidation of the market democracies and economies emerging in the countries of Western and Eastern Europe so that, one day, it would be possible to realise the dream of a united Europe at the continental level."

³⁹ BUSTAMANTE, *op. cit.*, p. 178.

⁴⁰ See article J.1, n° 3, Paragraph 1 of the TEU.

on any matter of foreign policy that is of common interest⁴¹ so as to ensure that their combined influence could be exercised more effectively through concerted action, the convergence of positions and the undertaking of common actions; b) Common positions in the policy domains mentioned in the nº2 of article J-1 of the Treaty on European Union. This juridical instrument "corresponds to what was already practised in the ambit of European Political Co-operation (EPC). It is, in truth, a higher form of the already established systematic cooperation, through which states inform and consult each other at the Council on matters that are deemed of general interest. The objective is the adoption of converging positions, which may not be necessarily common, but that nonetheless enable them to reinforce their capacity to influence international politics (whenever the Council deems necessary a higher level of cohesion, it will define a common position); (...) [c) Common Action⁴² in domains in which the Member-States have important interests in common.⁴³ This juridical mechanism coordinates the Member-States when making and implementing policy decisions. In effect, when the Council adopts a common position⁴⁴, it sets out its scope, its objectives and the means of its implementation whilst control is exercised by the Presidency which, according to article J.5 - 2 "shall be responsible for the implementation of common measures"; d) Lastly, there is another element of significant importance which, although it is not a juridical mechanism, it is nonetheless the necessary lever for the implementation of CFSP]: the representation of the Union by the Presidency. Indeed, the Treaty of Maastricht, by conferring upon the Presidency of the Council of Ministers the responsibility to implement common policies, converts it into the representative of all Member-States. The Presidency represents them in the matters of CFSP at international organisations and conferences."⁴⁵

With regard to the CFSP institutions⁴⁶, it should be emphasised that the CFSP, notwithstanding its intergovernmental nature, is a Pillar of the Community and that its institutional

⁴¹ See nº4 of article J.1 and art. J. 2 of the TEU

⁴² See paragraph 2 of nº 1 of article J.3: "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."

⁴³ See article J.1, nº 3, paragraph 2 of the TEU.

⁴⁴ MICHEL, Denis y RENO, Dominique: "Código Comentado de la Unión Europea", Barcelona, editorial de VECCHI, 2001, p. 263: "Common Action - this term refers to a co-ordinated action undertaken by the Member-States with the objective of setting in motion resources of any type (human resources, experiences, financing, goods, etc.) to attain the concrete objectives of the Council. Common action results from a common posture."

⁴⁵ 45 CAMISÃO, op. cit., p. 94.

⁴⁶ Ibid., p.95 "(...) the CFSP still remains, to a large extent, in the hands of the States, as the marginal role, in this domain, attributed to the Commission and to the European Parliament proves. In spite of its obvious inter-governmental character, the CFSP was, nonetheless, a noticeable step forward insofar as it institutionalises more ambitious exigencies for the integration of the policies of Member-States in this matter. As a result, notwithstanding the aforementioned limitations, the coherence and efficacy of the Union in this sphere increased. We are convinced that the Community will be able to affirm its influence as an important actor in international relations only by "speaking with one voice", therefore opposing the unipolar logic arose with the end of the Cold War.

configuration is the same as that of the European Union. Hence, its institutions are: a) The Council, which is the driving force of the CFSP (art.J-8 of the TEU), while its Presidency represents the Union in this domain (n° 1, art. J-5 of the TEU); b) The Commission, which can partake in the CFSP decision-making process, present proposals and request extraordinary meetings of the Council when prompt decisions need to be made jointly with the Member-States (n° 3 and 4 of art. J-8 and art. J-9 of the TEU); c) The Political Committee, which is an institution specifically created to ensure the implementation of the CFSP; it consists of "Political Directors [who] 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."⁴⁷; d) lastly, the Parliament, which is consulted by the Presidency regarding the fundamental aspects and options of the CFSP, is regularly informed about the evolution of this policy and may even direct questions and/or put forth recommendations to the Council (art. J.7 of the TEU). With regard to the decision-making process⁴⁸, the voting rule applied at the Council is that of unanimity, except on procedural questions and on common policy practical measures, in which a decision can be reached through a majority vote (paragraph 2 of N° 2, art. J.8 and n° 2 of art. J.3).

Developments in the CFSP from Amsterdam to Nice

On the 2nd of October of 1997, a third revision of the Treaty of Rome is undertaken, with the signing of the Treaty of Amsterdam.⁴⁹ "(...) Determined to initiate a new phase in the European integration process, which was initiated with the establishment of the European Communities; Wishing to reinforce the democratic character and the efficacy of the Institutions so as to enable them to better perform, in a unique institutional framework, the tasks that are entrusted to them;

⁴⁷ See n° 5, article J-8 of the TEU.

⁴⁸ Unlike what happens in the remaining common policies, the CFSP rests on a double network of decision-making: in the first place, the Council of Ministers is called upon to decide unanimously on the possibility of the inclusion of a certain domain in the CFSP. If unanimity is reached, a decision can then be made if a qualified majority is reached at the Council. This second phase of the decision-making process should address only the question of how to put into practice the policies that are necessary to fulfil the objectives that were put forth and to transpose them to the CFSP framework that had been proposed in the first instance.

⁴⁹ SOARES, *op. cit.*, p. 36-38: "[unlike] the previous alterations to the Treaties of the European Communities - Single European Act and Treaty of Maastricht - that followed from the political aim of the Member-States in introducing new specific objectives in the European integration process, the internal market and the single currency, respectively, the Treaty of Amsterdam did not result from the original political aim of giving a new impetus to European construction (...) The European political situation that preceded the opening of the conference that elaborated the Treaty of Amsterdam dictated the emergence of two aspects that dominated the negotiations: an institutional reform to prepare the European Union for the challenges resulting from enlargement to the East; and the difficult and fragile relationship between European integration and the citizens of the Member-States." This Treaty was adopted on the 1st of May of 1999. Published in OJC 340 of 10.11.1997

Resolved to institute a common citizenship for the peoples of their countries; Resolved to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article J.7, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world; Resolved to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of this Treaty; Determined to continue the process of the creation of an ever close union between the peoples of Europe, one in which decisions are taken close to citizens, in accordance with the principle of subsidiarity; It has been decided to establish a European Union (...)⁵⁰. This Treaty has, in a manner of speaking, resolved some of the "leftovers" bequeathed by Maastricht related to the affirmation of the European Union in the international sphere as well as those that concern a Common Foreign and Security Policy. In this manner, the "Provisions relating to the Common Foreign and Security Policy" continue to be regulated by Title V, numerically ordered (article 11 to 28 of the TEU), unlike before (Title V, art. J to J-11 of the TEU).

In this context, some substantial alterations were introduced⁵¹, such as: a) if we compare N° 1 of art. J-1 of the TEU, which states "[the] Union and its Member-States shall formulate and implement the Common Foreign and Security Policy (...)", with the new provision n° 1 of art.11° as established by the Treaty of Amsterdam "[the] Union shall formulate and implement a Common Foreign and Security Policy", we will notice that the CFSP will henceforth be under the exclusive purview of the Union, and that the Member-States should actively support each other in a spirit of loyalty and mutual solidarity (n° 2 of art.11 of the TEU); b) the CFSP's objectives remain essentially identical to what was stipulated in n° 2 of art. J-1 of the TEU. However, some significant nuances were introduced, such as: 1) instead of "safeguarding the common values, the fundamental interests and the independence of the Union, just as established - the first paragraph of n°2 of art. 1 of the TEU - the Treaty of Amsterdam introduces some new elements, such as paragraph n° 1 of art.11 of the TEU, "safeguarding the common fundamental values and interests, the independence and integrity of the Union, in accordance with the principles of the United

⁵⁰ See, Tratado de Amesterdão, Lisboa, ed. Assembleia da República, 1998 and "Tratado de Amesterdão y versiones consolidadas de los Tratados de la Unión Europea y de la Comunidad Europea", Biblioteca de Legislación série Menor, Madrid, primera edicion, editorial Civitas, 1998.

⁵¹ VITORINO, António.: "(...) Did Amsterdam bring something new? It made the decision-making process more flexible by introducing the possibility of positive abstention, an institutional innovation, the results of which are yet to be thoroughly evaluated, the creation of a so-called Mr. CFSP, that is, of a *persona* that centralises the visibility of the Common Foreign and Security Policy and which is, simultaneously, the Secretary General of the Council of the European Union and, in third place, and this seems to be the most important aspect, it added to foreign policy a structured component of Security and Defence."

In http://ec.europa.eu/archives/commission_1999_2004/votorino/speeches/230701_pt.pdf.

Nations Charter”; 2) instead of "the reinforcement of the security of the Union and its Member-States, in all its forms, just as established in paragraph two, n°2, art. J-1 of the TEU”, the Amsterdam Treaty contemplates only "the reinforcement of the security of the Union, in all its forms – paragraph 2 of n° 1 art. 11 of the TEU”. The Union is thus regarded as an ensemble and not as an entity at the margin of Member-States that are now comprised by the Union itself; 3) the third paragraph of n° 1 of art.11 of the TEU did not bring about a substantial alteration if we bear in mind the third paragraph of n° 2, art. J-1 of the TEU, which states that "the maintenance of peace and the reinforcement of international security should be pursued in accordance with the principles of the United Nations Charter (...) including those principles that concern the delineation of frontiers." Only those policies that concern the delineation of frontiers were integrated into the CFSP policy orientations; c) these add new juridical mechanisms⁵² to the CFSP, whilst preserving preceding arrangements. We thus have: I) Joint actions – “Joint actions shall address specific situations where operational action by the Union is deemed to be required. They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.”⁵³ II) Common positions – “Common positions shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the common positions.”⁵⁴ and; III) Common strategies: this is the new juridical mechanism that was introduced by the Amsterdam Treaty and which applies when "The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common; Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States.”⁵⁵

The Amsterdam Treaty introduced, in a similar manner, new provisions to the voting rules of the Council. Despite the fact that Council decisions continue to be made in accordance with the unanimity rule, the Amsterdam Treaty introduced a new exception clause based on the principle of "constructive abstention": "(...) any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union

⁵² See article 12 of the TEU: "(the) Union shall proceed with the objectives enunciated in article 11: (a) to define the principles and general orientations of Common foreign and security policy;(b) deciding on common strategies; (c) adopting common action; (d) adopting common positions; (d) reinforcing the systematic cooperation among Member-States in the formulation of policies."

⁵³ See n° 1 of article 14° of TEU.

⁵⁴ See. art. 15 of the TEU.

⁵⁵ See . n° 2 of article 13 of the TEU.

action based on that decision and the other Member States shall respect its position."⁵⁶ On the other hand, the Amsterdam Treaty also contemplates the possibility that the Council deliberate by qualified majority voting "when adopting joint actions, common positions or taking any other decision on the basis of a common strategy; [and/or] when adopting any decision implementing a joint action or a common position."⁵⁷, except when a member of the Council manifests its opposition to the decision for important reasons that have to do with its national policy. In such cases, voting will not be undertaken and the matter under evaluation may be submitted to the European Council; d) with the adoption of the Amsterdam Treaty, the establishment of the role of "Mr. CFSP and/or High Representative for Common Foreign and Security Policy" was, unquestionably, the measure proposed by the Amsterdam Treaty that was most noticed by the European public. "(The) Presidency shall represent the Union in matters pertaining to Common Foreign and Security Policy [being, therefore] responsible for the implementation of the decisions that have been made [as well as] expressing in principle the position of the Union at international organisations and conferences [and, in such endeavours, assisted by] the Secretary-General of the Council, which shall exercise the duties of High Representative⁵⁸ for the Common and Foreign Security Policy."⁵⁹ The Secretary "shall assist the Council in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties."⁶⁰; e) the possibility of the Union undertaking, when necessary, CFSP agreements with third party states or international organisations is one of the innovations introduced by the Amsterdam Treaty. "(...) the Council, acting unanimously, may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council acting unanimously on a recommendation from the Presidency. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall apply provisionally to them."⁶¹

⁵⁶ See n° 1 of article 23 of the TEU.

⁵⁷ See n° 1 and 2° of article. 23° of the TEU.

⁵⁸ On the 18th of October of 1999, the first High Representative of the Union for Foreign Affairs and Security, Mr. Javier Solana Madariaga, takes office.

⁵⁹ See n° 1° and 3° of article 18° of the TEU.

⁶⁰ See article 26° of the TEU.

⁶¹ See article 24° of the TEU.

On the 26th of February of 2001, a fourth revision of the Treaty of Rome⁶² is undertaken with the signing of the Treaty of Nice⁶³ “(...) Desiring to complete the process started by the Treaty of Amsterdam of preparing the institutions of the European Union to function in an enlarged Union; Determined on this basis to press ahead with the accession negotiations in order to bring them to a successful conclusion, in accordance with the procedure laid down in the Treaty on European Union, Have resolved to amend the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (...)”.⁶⁴ In practice, the Treaty of Nice did not significantly alter provisos relating to the CFSP. However, it introduced three substantial alterations in what concerns: 1) International Agreements in the domain of the CFSP. Hence, instead of the rule of unanimity demanded by article 24 of the TEU, which concerns the signing of international agreements: “When it is necessary to conclude an agreement with one or more States or international organisations (...) the Council, acting unanimously, may authorise the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Such agreements shall be concluded by the Council acting unanimously on a recommendation from the Presidency (...)” The Treaty of Nice, more specifically paragraphs nº 2 and nº 3 of art.24 of the TEU, made it possible that, in certain circumstances, agreements be undertaken and adopted through qualified majority. “The Council shall act unanimously when the agreement covers an issue for which unanimity is required for the adoption of internal decisions; When the agreement is envisaged in order to implement a joint action or common position, the Council shall act by a qualified majority in accordance with Article 23(2)”; 2) The Political Committee, as stated in article 25 of the TEU. This committee will henceforth be known as Political and Security Committee and, in essence, it retains the same functions⁶⁵. However, “within the scope of this title, this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operations. The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation (...)”;

⁶² This Treaty was adopted on the 1st of February of 2003. Published on OJC 80 of 10.03.2001

⁶³ SOARES, *op. cit.*, p. 43-44: “[the] intergovernmental conference that led to the adoption of the Treaty of Nice had, in comparative terms, the most limited political agenda. In truth, the objective of this intergovernmental conference was to deal with matters that the Member-States had not been capable of resolving at the time of the conclusion of the Treaty of Amsterdam, but which they deemed pertinent to the forthcoming negotiations concerning the institutional reforms that had to be implemented prior to the enlargement of the EU, the so-called “Amsterdam leftovers” (...) [in practice, Nice prepared the European Union, at the institutional level, for future enlargements]”.

⁶⁴ See Tratado de Nice – Revisão dos Tratados Europeus – Apresentação Comparada, Lisboa, ed. Assembleia da República, 2001, and also <http://www.fd.uc.pt/CI/CEE/pm/Tratados/Nice/tratadonice-f.htm>.

⁶⁵ See article 25° of the TEU: “Without prejudice to Article 207 of the Treaty establishing the European Community, a Political and Security Committee shall monitor the international situation in the areas covered by the 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.”

3) Reinforced Cooperation shall henceforth be included in the CFSP's scope and "(...) shall be aimed at safeguarding the values and serving the interests of the Union as a whole by asserting its identity as a coherent force on the international scene. It shall respect: the principles, objectives, general guidelines and consistency of the common foreign and security policy and the decisions taken within the framework of that policy; the powers of the European Community, and the consistency between all the Union's policies and its external activities."⁶⁶

However, this capacity for reinforced cooperation can only be applied in the implementation of a common policy or position and never upon questions that have military or defence implications.⁶⁷

The CFSP in the Constitutional Treaty

On the 20th of June of 2003, at the European Council of Salonika,⁶⁸ the Treaty Project that instituted a Constitution for Europe was presented. On the 29th of October of 2004, it is signed, in Rome, the Treaty that establishes a Constitution for Europe.⁶⁹ It should be emphasised that this treaty is neither a revision of the Treaty of Rome nor a revision of any other treaty. It is an autonomous Treaty conceived *ad inicio* to be applied in Europe with an unlimited validity (art.IV-

⁶⁶ See article 27^a-A and 27^o of the TEU.

⁶⁷ MARTINS, Ana Maria Guerra. *Curso de Direito Constitucional da União Europeia*, Coimbra, ed. Almedina, 2004, p.177 "(...) [the] main innovations concerning the CFSP are not mentioned in the Treaty of Nice since they were undertaken at its margins. In truth, the European Council of Nice approved the establishment of operational structures for crisis-management – the Political and Security Committee, the Military Committee and the European Union Military Committee, which, in practice, function since the year 2000."

⁶⁸ See Preface of the Treaty Project that institutes a Constitution for Europe, published by the Publications Office of the European Communities, 2003: "[having] realised that the European Union found itself at a crucial juncture of its existence, the European Council met in Laeken (Belgium) on the 14th and 15th of December of 2001 convoked the Convention on the Future of Europe [for the second time in the History of Europe, Europeans are called upon to deliberate on their future. The first time this happened, as noted earlier, was at the Congress of Hague, in 1947]. This Convention was entrusted the responsibility of formulating proposals on three subject-matters: to approximate citizens to the European project and institutions; to structure political life and transform the European political space into an enlarged Union; to transform the Union into a stabilising factor and reference point in the new world order (...) The Declaration of Laeken raised the question of knowing whether the simplification and re-structuring of the Treaties should not open the way for the adoption of a constitutional text. The Proceedings of the Convention led to the elaboration of a project Treaty that institutes a Constitution for Europe that was consensually accepted in the plenary session of the 13th of June of 2003". (This was the text that was presented at the European Council of Salonika)

⁶⁹ See Preamble of the Treaty that establishes a Constitution for Europe, Luxembourg, Published by the Publications Office of the European Communities, 2005, p.10: "Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law, Believing that Europe, reunited after bitter experiences, intends to continue along the path of civilisation, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived; that it wishes to remain a continent open to culture, learning and social progress; and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world, Convinced that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their former divisions and, united ever more closely, to forge a common destiny; Convinced that, thus 'United in diversity', Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope; Determined to continue the work accomplished within the framework of the Treaties establishing the European Communities and the Treaty on European Union, by ensuring the continuity of the Community *acquis*; Grateful to the members of the European Convention for having prepared the draft of this Constitution on behalf of the citizens and States of Europe (...)."

446 of the CT). However, it has not yet come into place⁷⁰, due to the fact that the period of ratification, by the member states⁷¹, is ongoing, notwithstanding the fact that it may not be ratified in its current form, as the refusals of France and the Netherlands show.

The Constitutional Treaty eliminated the structure of the three pillars enshrined by the Treaty of Maastricht and which proceeded, with slight alterations, to Amsterdam and Nice. In what specifically concerns the Common Foreign Policy and Security⁷² (CFSP), the Constitutional Treaty maintained a policy of continuity, without great ruptures, lacking courage and with few substantial alterations. Hence, the Foreign Policy of the Union is regulated in Part I, Title III (Union Competences), article I-16 (Common Foreign and Security Policy), Title V (Exercise of Union Competence), Chapter II (Specific Provisions), art. I-40 and in Part III (Policies and Functioning of the Union), Title V (The Union's External Action), Chapter I (Provisions Having General Application), articles III-292 and article III-293 and Chapter II (Common Foreign and Security Policy), section 1 (Common Provisions), of articles III-294 until article III-308 and section 3 (Financial Provisions), article III-313.

It is with this legal mechanism, now unified, that the European Union reiterates the postulate that its foreign policy in the international sphere has as its fundamental pillars the principles that presided " its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law."⁷³ In addition, it reinforces/amplifies its objectives, especially if we compare them with the previously announced principles of Maastricht (n° 2 of article J-1 of the TEU) and with those enshrined at Amsterdam and Nice (n° 1 of art.11 of the TEU).

Hence, it is competence of the Union to "define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: (a) safeguard its values, fundamental interests, security, independence and integrity; (b) consolidate

⁷⁰ See n° 2 of article IV-447 of the CT: "This Treaty shall enter into force on 1 November 2006, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the second month following the deposit of the instrument of ratification by the last signatory State to take this step."

⁷¹ This Treaty, which establishes a Constitution for Europe, in order to enter into force, must be ratified by all Member-States. Until the present time, only fifteen states have ratified it (Germany, Austria, Belgium, Cyprus, Estonia, Greece, Hungary, Italy, Lithuania, Lithuania, Luxembourg, Malta, Slovakia, Slovenia, and Spain) whilst two Member-States (France on the 29th of May of 2006 and the Netherlands on the 1st of June of 2006) have voted no in their respective referendums.

⁷² MORENO, *op. cit.*, p. 829-830: "[The] CFSP had and has preserved a very peculiar nature due to the fact that foreign policy is a delicate matter for Member-States. Even though the Constitution has formally eliminated the three-pillared structure instituted at Maastricht, which made the CFSP an intergovernmental pillar, the decision-making process is still characterised by the primacy of states that have preserved their veto powers in most policy deliberations whilst the supranational institutions – the Commission, the Court of Justice and Parliament – have remained in the margins with regard to their usual competencies."

⁷³ See n° 1 of article.III-292 of the CT.

and support democracy, the rule of law, human rights and the principles of international law; (c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders; (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty [we should underline that this new aim is laudable. However, we shall see if it was not included with the sole purpose of closing the borders of the Union]; (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade; (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development; (g) assist populations, countries and regions confronting natural or man-made disasters; and (h) promote an international system based on stronger multilateral cooperation and good global governance."⁷⁴

In order to rigorously implement these aims, the Union⁷⁵ shall: a) strive for the coherence of the diverse policy domains in its external actions and between these and other policies of the Union (n° 3 and n° 4 of art.I-40 and n° 3 of the art.III-292); b) to formulate and implement a common foreign and security policy that extends to all domains of foreign policy and security (n° 1 of the art.III-294); c) to identify⁷⁶ interests and strategic objectives of the Union, consulting, for that end, regularly with the European Parliament on the principal aspects and fundamental options of a common foreign and security policy (n° 2 of art.I-40, n° 8 of art.I-40 and n° 1 of art.III-293); and d) to support actively and without reservations a common foreign and security policy, in a spirit of loyalty and mutual solidarity (n° 2 of art.III-294) (among Member-States, in the identification of matters of general interest and in achieving a growing degree of policy convergence among them⁷⁷ (n°1 of art. I-40),

As we mentioned, the treaty that establishes a Constitution for Europe did not bring about, in reality, noticeable progress in the domain of the CFSP, although it introduced some "innovative" measures and others that, in our view, are regressive. We shall endeavour here to present some

⁷⁴ See n° 2 of article III-292 of the CT.

⁷⁵ Council, Commission, European Parliament, Ministers for Foreign Affairs and Member-States.

⁷⁶ The European Council.

⁷⁷ See n° 5 and 6 of article I-40 of the CT: "Member States shall consult one another within the European Council and the Council on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity. European decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council unanimously, except in the cases referred to in Part III (...)"

of them in synthetic form: 1) number 4 of art. 1-3 of the Constitutional Treaty mentions that "in its relations with the wider world, the Union shall uphold and promote its values and interests." We agree fully that the Union should divulge throughout the world its values "of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail." ⁷⁸

However, we disagree completely that the Union should follow the same steps as its "American counterpart" in divulging and promoting its interests throughout the world. We embrace the thesis that this factor is the direct and most significant cause of insecurity in the World. Some states constantly seek to expand their interests, sometimes completely forgetting the interests of other States. In effect, we share the position that all state interests supported by the values of the Union are legitimate; 2) art. I-7 of the CT confers on the Union a juridical status equal to that of States. This European Union becomes then a subject of international law and probably "one day it [may] have a seat on the Security Council of the United Nations, side by side with the other States"⁷⁹. In addition, the European Union has the exclusive competence to undertake international agreements when a legislative act of the Union requires it and when it is necessary, in order to grant it the possibility of exercising its internal competence, that is, liable of affecting common rules or altering their scope⁸⁰; 3) the European Union shall henceforth have competence in every domain of foreign policy, in matters pertaining to security and in the gradual formulation of a common defence policy. In this ambit, Member-States, in addition to supporting actively and without reservations the common foreign and security policy, should refrain from any undertaking that is contrary to the interests of the Union or that is likely to undermine them.⁸¹ This is not an innovative measure; however it expands the purview of the European Union to other domains, such as the gradual formulation of a common defence policy, which may lead to an effective common defence. The common security and defence policy (CSDP) shall be developed within the scope of the CFSP⁸², thus being its corollary; 4) the flexibility clause, addressed in nº 1

⁷⁸ See article I-2 of the CT.

⁷⁹ ANTUNES, Manuel Lobo. "Notas sobre a política externa e de segurança comum no projecto de tratado constitucional", in *Europa Novas Fronteiras* "A Constituição Europeia: que novas perspectivas para a União Europeia?", nº 13/14, Cascais, ed. Principia – Centro de Informação Europeia Jacques Delors, 2003, p. 110.

⁸⁰ See nº2 of art.I-13 of the CT.

⁸¹ See nº 1 and 2º of article I-16 of the CT.

⁸² See nº1 of article I-41 of the CT: (Specific provisions relating to the common security and defence policy) "The common security and defence policy shall be an integral part of the common foreign and security policy. "

of art. 18 of the CT is one of the other revolutionary measures; it states that "If action by the Union should prove necessary, within the framework of the policies defined in Part III [it should be noted that the Common Foreign and Security Policy is addressed in Chapter II, Title V, Part III of the CT] to attain one of the objectives [nº2 of the art.III-292 of the CT] set out in the Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers, acting unanimously on a proposal from the European Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures." The inclusion of the "flexibility clause" is, undoubtedly, the lever that the European Union needed to autonomously foment new policies within the scope of common foreign and security policies; 5) the establishment of the Union Minister for Foreign Affairs⁸³ is, unarguably, the most significant measure introduced by the Constitutional Treaty (CT) to the CFSP. The Union Minister for Foreign Affairs is one of the Vice-Presidents of the Commission and is appointed by the European Council by qualified majority, with the agreement of the President of the Commission. This minister is responsible for the implementation of the Common Foreign and Security Policy (CFSP), as well as of the Common Security and Defence Policy (CSDP); he/she may present proposals for the formulation of these policies (CFSP and CSDP), to ensure the coherence of the external action of the Union, implementing these policies on behalf of the Council⁸⁴, utilising the national and Union policy for these purposes.⁸⁵ In addition, the Union Minister for Foreign Affairs represents the Union in matters pertaining to Common Foreign Policy and Security (CFSP) as well as engages in political dialogue with third parties on behalf of the Union and, moreover, expresses the position of the Union in international organisations and conferences.⁸⁶ The Common Security and Defence Policy provides the Union with an operational capacity based on civilian and military means, which may be employed in foreign missions with the aim of insuring peace-keeping, the prevention of conflicts and the reinforcement of international security, in accordance with the principles of the United Nations Charter⁸⁷; 6) the "typification of the juridical measures adopted in the ambit of CFSP and bestowing upon them a status equal to that of measures adopted in other policy domains"⁸⁸ is another innovative measure introduced with the adoption of the Constitutional

⁸³ See article I-28 of the CT.

⁸⁴ See article I-28 of the CT.

⁸⁵ See nº4 of article I-40 of the C.T "Specific provisions relating to common foreign and security policy."

⁸⁶ See. nº3 of article III-296 do CT.

⁸⁷ See nº1 of article I-41 of the CT.

⁸⁸ ANTUNES, *op. cit.*, p.110.

Treaty. Thus, "[in order to] exercise the competences of the Union, the institutions use juridical mechanisms in accordance with Part III (Union Policies and Internal Actions), European law⁸⁹, European framework-law⁹⁰, European regulation⁹¹, European decision⁹², recommendations⁹³ and reports"⁹⁴; 7) the inclusion, in the Constitutional Treaty, of the "solidarity clause"⁹⁵ is another measure that should be commended given that it will contribute to the real cohesion of efforts and means in the combat against insecurity and/or in the case of a natural or man-made disaster; 8) the possibility of Member-States instituting reinforced cooperation⁹⁶ among themselves in the domain of CFSP is another noteworthy measure. Notwithstanding the aforementioned, the Union could progress further in this domain, namely, in the application of this practice in military and defence affairs (art.I-44 and n° 1 and 2 of art. 419 and n° 3 of art. III-422 of the CT); 9) the inclusion of the "good neighbourhood rule" in the Constitutional Treaty (CT) is another measure that must be lauded given that threats to security often emanate from neighbouring countries⁹⁷; 10) the adoption of new juridical instruments for the CFSP given that "the Union shall conduct the common foreign and security policy by: (a) defining the general guidelines; (b) adopting European decisions defining: (i) actions to be undertaken by the Union; (ii) positions to be taken by the Union; (iii) arrangements for the implementation of the European decisions referred to in points (i) and (ii); (c) strengthening systematic cooperation between Member States in the conduct of policy."⁹⁸. In practical terms, the preceding juridical mechanisms (common positions, common actions and common strategies) are reformulated in more "European" terms thus instituting six

⁸⁹ "European Law - is a legislative act of general character. It is obligatory in all its aspects and directly applicable to all Member-States."

⁹⁰ "European framework law - is a legislative act that binds the Member-State to which it is applied with regard to the objective to be attained leaving, however, to the national governments the choice of the form and means of its implementation."

⁹¹ "European regulation - is a non-legislative act of general character intended to implement legislative acts and certain provisions of the Constitution. It can either be obligatory in all its aspects and directly applicable to all Member-States or it can bind the state to which it is applied as to a particular objective leaving, however, to the national states the choice of the form and of the means of its implementation."

⁹² "European decision - is a non-legislative act that is obligatory in all its aspects. It is only obligatory to its addressees."

⁹³ "Recommendations and reports are not binding."

⁹⁴ See n°1 of article I-33 of the CT.

⁹⁵ See paragraphs a) and b) of n°1 of article I-43 of the CT: "The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to: (a) prevent the terrorist threat in the territory of the Member States; protect democratic institutions and the civilian population from any terrorist attack; assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack; (b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster."

⁹⁶ See Paragraph 2 of n°1 of article I-44 of the CT: "Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States, in accordance with Article III-418."

⁹⁷ See 1 and 2 of article I-57 (The Union and its neighbours): "The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation. (...) the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation."

⁹⁸ See n° 3 of article III-294 of the CT.

new juridical mechanisms: I) General Orientations⁹⁹; II) European Decision¹⁰⁰ on Action¹⁰¹ to be implemented by the Union; III) European Decision on a Position¹⁰² to be adopted by the Union; IV) Rules of Implementation of a European Decision on an Action to be implemented on the position to be adopted. European decisions are adopted by the Council, deliberating in accordance with the rule of unanimity, except in the four situations established from paragraph a) to d) of n° 2 of the article III-300¹⁰³ of the Constitutional Treaty. However, any member of the Council that refrains from the voting procedure can qualify its abstention with a formal declaration. In this case, the abstaining Member-State is not obliged to apply the European decision but should nonetheless recognise that it is binding upon the Union. As a consequence, this Member-State must not act in a manner that contradicts or hinders the action of the Union. The other Member-States shall respect its position.¹⁰⁴ V) Systematic cooperation¹⁰⁵ among Member-States; and, VI) International Agreements “The Union may conclude agreements with one or more States or international

⁹⁹ See n°1 of article III-295 of the CT: “The European Council shall define the general guidelines for the common foreign and security policy, including for matters with defence implications. If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments.” This is the procedure that replaced the common strategies.

¹⁰⁰ In this regard, the European Council and the Council of Ministers have, as a rule, adopted European decisions by unanimity (n°1 of article III-300 of the CT), expressing their views when solicited by a Member-State or by a proposal of the Union Minister for Foreign Affairs or of the latter with the support of the Commission (article I-40, n°6); “European decisions of the European Council on the strategic interests and objectives of the Union shall relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.” (Paragraph 2 of n°1 of article III-293 of the C.T.); In essence, the three modalities of European decisions have replaced the previous common positions and actions.

¹⁰¹ See n° 1 and 2 of article III-297 of the CT. “Where the international situation requires operational action by the Union, the Council shall adopt the necessary European decisions. Such decisions shall lay down the objectives, the scope, the means to be made available to the Union, if necessary the duration (...). The European decisions referred to in paragraph 1 shall commit the Member States in the positions they adopt and in the conduct of their activity.”

¹⁰² See article III-298 of the CT: “The Council shall adopt European decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the positions of the Union.”

¹⁰³ “By way of derogation from paragraph 1, the Council shall act by a qualified majority: (a) when adopting European decisions defining a Union action or position on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article III-293(1); (b) when adopting a European decision defining a Union action or position, on a proposal which the Union Minister for Foreign Affairs has presented following a specific request to him or her from the European Council, made on its own initiative or that of the Minister; (c) when adopting a European decision implementing a European decision defining a Union action or position; (d) when adopting a European decision concerning the appointment of a special representative in accordance with Article III-302. [However, note that] If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a European decision to be adopted by a qualified majority, a vote shall not be taken (...).”

¹⁰⁴ See n°1 of article III-300 of the CT.

¹⁰⁵ See n° 2 of article III-294 of the CT: “The Member States shall support the common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. The Member States shall work together to enhance and develop their mutual political 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.” N° 1 and 2 of art. III-305: “Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such forums. The Union Minister for Foreign Affairs shall organise this coordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions. (...) Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter, as well as the Union Minister for Foreign Affairs, informed of any matter of common interest.”

organisations in areas covered by this Chapter”¹⁰⁶ because the Union already benefits from the status of a juridical entity¹⁰⁷; 11) the establishment of a European External Action Service (EEAS) is another innovative measure introduced by the Constitutional Treaty. The inclusion of this service will, in the short term, enable the European Union to develop a diplomatic corps service similar to those of sovereign states. The Union Ministry for Foreign Affairs is assisted by this service in the exercise of its competences. The EEAS works in collaboration with the diplomatic services of the Member-States and is composed of functionaries from the General-Secretariat, the European Council, the European Commission and by personnel from the national diplomatic services that is appointed to serve at the European level¹⁰⁸; 12) institutional cooperation between the diplomatic missions of the Member-States and the delegations of the Union in other countries and at international organisations¹⁰⁹ is an established practice that, in our view, will lead, in the short-term, to the establishment of a EU diplomatic corps; 13) the financing of CFSP¹¹⁰ by the operational and administrative expenses and by the European Union budget is another measure that should be commended. Indeed, a Common Foreign and Security Policy that lacks budgetary support and satisfactory means is not viable.¹¹¹ However, all expenses related to operations that have military or defence implications are left out of the budget, as well as those that the Council decides to exclude.

Conclusion:

Member-States must definitely become aware of the fact that their progress in the European Union is not and will never be uniform because “[each] state, like any other state, is a sovereign political entity. However, differences between states, from Costa Rica to the [ex] Soviet Union, from Gambia to the United States [from Portugal to Cyprus] are immense. States are similar but they are also different, much like corporations, apples, universities and persons. When we compare two or more objects of the same category, we presume that they are not similar in all

¹⁰⁶ See article III-303 of the CT.

¹⁰⁷ See article I-7 of the CT.

¹⁰⁸ See n°3 of article III-296 of the CT.

¹⁰⁹ See n°1 of article III-301 of the CT.

¹¹⁰ See n°1 and 2 of article III-313 of the CT.

¹¹¹ MACHADO, *op. cit.*, p.19: “(this) situation reminds me of what a German diplomat said in 1998 about the CFSP: “Much diplomacy, considerable sums of money but no soldiers”, in, Wolfgang Ischinger, “Die Gemeinsame Außen – und sicherheitspolitik nach Amsterdam – Praxis und Perspektiven”, 1998, p. 4.”

respects but only in some. It is not possible to find two identical objects in the world and, yet, this does not mean that objects cannot be compared and combined in a useful manner."¹¹²

Thus, "united in diversity", we can all move forward effectively in the midst of the European Union, combining efforts, policies and/or means or, should this be the interest of some Member-States, to move towards a "Europe à la Carte" and/or "of variable geometry", in some societal sectors, for instance, CDSP, European Constitution, and/or in other uniformed specific policies in detriment of harmonised policies. The European Union should provide the legal mechanisms that will enable such reinforced cooperation(s) to be implemented and extended in the midst of the European Union.

The virtues of these policies will become evident in the European Union due to their own merit and not by legislative decree. The Member-States and the European population must identify with these new policies. Today, it is evident that we are part of the European Union and there is not a single European State that has doubts concerning the usefulness of its adhesion. However, we cannot forget that in 1951 there were only six Member-States embracing the European project. Today we are twenty-seven Member-States and it is possible that this number increases as a consequence of the several adhesion requests. What has changed? Nothing, we suppose, except that the European project has succeeded and consolidated itself on account of its own merit and virtues. Thus, we also hope that the same will happen with regard to the domains of the Common Foreign and Security Policy and the Common Security and Defence Policy.

Presently, it is evident that the "incapacity of the EU to speak with one voice in important international matters is not only a political problem but also a security problem. The EU may have succeeded in modifying some of the foreign policy decisions of the Bush administration had it been able to speak with one voice. The Americans succeeded in their objective of dividing [into "new" and "old" Europe, as stated by the American Secretary of Defence, Donald Rumsfeld, in accordance with the old strategy "divide and rule"] the European Nations into opposing camps. Yet, in the final analysis, this strategy proved to be a defeat for both the United States and Europe."¹¹³ Therefore, in the current geopolitical context, in which new threats (natural and/or human) proliferate throughout the world, a weak Common Foreign and Security Policy (CFSP), and/or an "inexistent" Common Security and Defence Policy (CSDP), is not only a problem of the Member-States and/or of the European Union. It is a global problem with tremendous repercussions for citizens. As Samuel P. Huntington wrote "[in this] new world, local politics is

¹¹² WALTZ, Kenneth N.: "Teoria das Relações Internacionais", Lisboa, 1ª ed. Gradiva, 2002, p. 136.

¹¹³ PEHE, Jiri: "A Política Externa e a Política de Defesa da União Europeia vistas pelos Países da Europa Central", in *As Novas Fronteiras da Europa*, Fundação Calouste Gulbenkian, Lisboa, ed. Dom Quixote, 2005, p. 114-118.

characterised by ethnicity and global politics is that of civilisations. Superpower rivalry is thus replaced by the clash of civilisations. In the new world, the most generalised, important and dangerous conflicts will not take place between social classes, rich and poor and other economically defined groups, but rather between peoples that belong to different cultural entities. Tribal wars and ethnic conflicts will take place within the civilisations."¹¹⁴ To understand this reality is to safeguard the archetype of international security.

¹¹⁴ HUNTINGTON, Samuel P.: *O Choque das Civilizações e a mudança na Ordem Mundial*, Lisboa, 3ª ed. Gradiva, 2006, p.28-29.

The international expansion of Russian enterprises. Looking at Italian targets

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Introduction:

Investment activity by Russian enterprises is a relatively recent phenomenon that is meeting with mounting interest among analysts and researchers, as has occurred for the other emerging economies. Brazil, Russia, India and China - the so-called "BRIC" nations - are affirming themselves at the international level for their ability to invest considerable resources in both developing countries and industrialized economies (Sauvant, 2005; 2008; Ramamurti R., Singh, 2009; Goldstein, 2009). For these nations, foreign direct investment (FDI)¹¹⁵ represents a fundamental means of achieving economic growth as well as political affirmation at the global level. FDI allows highly accelerated, and often unbalanced, growth processes to be adjusted at the national level. At the same time, individual enterprises, particularly through acquisitions, enjoy access to energy sources and commodities, advanced technologies, brands, skills, know-how and distribution channels to be used to expand and conquer new markets, including in the West (Sauvant, 2005; Spigarelli, 2009).

Some aspects make the case of Russia wholly dissimilar to the experiences of the other BRIC nations (Panibratov, Kalotay, 2009). Investors are limited in number and belong to large groups that are either state-owned or the result of privatization after the fall of the Empire. Each transaction involves enormous financial resources. In addition, the main area of interest is the primary sector, and specifically oil, natural gas, metallurgy and electricity (Kalotay, 2008).

This paper aims to analyze the primary characteristics of the phenomenon, with a specific focus on the Italian scenario. The goal is to investigate the intensity of Russian FDI, the main players and the underlying motivations. The work is part of a larger research project aimed at comparing the investment activity of BRIC nations in the West and identifying their distinctive traits so as to

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¹¹⁵ Foreign direct investment is defined as the purchase of physical assets (plant and machinery, in particular), or business in a foreign country, run by a parent company resident in another country. These are investments with a typical medium-/long-term holding period. They aim at achieving "industrial" rather than financial profits. The control over the capital (through voting rights) of the foreign firms must be more than 10%. Cf. OECD, 1996; IMF, 1993.

arrive at a possible key to interpreting the phenomenon in the context of international investment theory (Buckley, 2002) and to understand its consequences in the fields of economics and industrial policy (Spigarelli, 2009). As mentioned above, special attention is devoted to the Italian economy¹¹⁶: the passive internationalization generated by emerging economies creates interesting research opportunities and raises questions, some of which relate to the possible impact on its avenues of development, the ongoing transformation of industrial districts and the processes of reconfiguring knowledge and allocating value at the local level.

This study represents an initial exploratory analysis of the case of Russia that aims to answer several questions that in turn ought to provide further stimulus for research activity: what are the aspects, critical issues and prospects currently associated with the investment flows and transactions undertaken by Russian enterprises at the global level? As compared to global trends, do the initiatives in Italy show any peculiarities in terms of the sectors involved, the underlying motivations and the modes of entry? Is their impact on the Italian economy relevant, particularly in prospective terms, and in which sectors is it most critical?

The methodology of analysis employed is of the descriptive type owing to the limited availability of up-to-date, reliable data series. The foreign investment phenomenon is new and statistical surveying systems have only recently been revamped by the Federation. Accordingly, sophisticated, broad analyses are not possible.

The first part of the study places Russian investment activity in the context of foreign direct investment theories. The second part initially examines the main channels of Russian FDI at the global level through a review of both flow and stock figures and the most significant greenfield and non-greenfield transactions undertaken. In addition, the strategic goals pursued by Federation operators are then analyzed. Finally, the paper discusses the Italian scenario, commenting on FDI trends at the sector and regional level, followed by an examination of specific cases of investment through the acquisition or incorporation of new business assets. The analysis ends with some general considerations.

1. Russian investment activity: a theoretical overview

The theme of Russian foreign direct investment has only recently become the subject of analysis by scholars. The available contributions involve studies of Russian enterprises' international expansion activities in general terms (Bulatov, 1998, 2001; Liuhto, 2001a,b; 2005;

¹¹⁶ The research activities have focused, thus far, on the case of China. We have analyzed the characteristics of the Go Global policy developed by the government to encourage the globalization of its companies (Bellabona and Spigarelli, 2007), as well as the peculiarities of the investment of Chinese MNEs (Bellabona and Spigarelli, 2006, Boffa et al., 2008), with a focus on the Italian case (Spigarelli, 2009).

Liuhto, Jumpponen, 2003; Vahtra, Liuhto, 2005; Filippov, 2010) or with a focus on specific sectors and segments (Elenkov, 1995a,b; Heinrich, 2001, 2003, 2005), the problems inherent in measuring flows and stocks (Gusev, 2004) and comparisons of Russian investment trends with their global counterparts (Andreff, 2002, 2003). Other interesting contributions are devoted to management and business issues (Kets de Vries et al., 2004; Shekshnia, 2001).

Another highly interesting area of analysis involves placing the Federation's trans-national activity in the context of foreign direct investment theories (Bevan, Estrin, 2004; Kalotay, 2003, 2005, 2008). The entire question is part of the ongoing intense scientific debate concerning the need to adapt and re-read such theories to reflect the typical situation of many emerging economies (Buckley et al., 2006; 2007). At the macroeconomic level, the presence of considerable capital flows towards industrialized nations, as well as, in more microeconomic terms, the internationalization strategies pursued by companies (timing, entry strategy and goals) seem to run counter to the expectations deriving from the application of the principal classical and international business theories of economics¹¹⁷. As regards the specific case of Russia in particular (Kalotay, 2008), doubt is cast on the Heckscher–Ohlin–Samuelson (HOS) paradigm (Heckscher, 1919; Ohlin, 1933; Samuelson, 1948, 1949), Dunning's Investment Development Path (IDP) (Dunning, 1981, 1986), the Upssala School's Stage Theory (Johansson, 1975; Johansson, Vahlne, 1977, 1990) and Dunning's eclectic paradigm (Dunning, 1977, 1993).

As an emerging economy, Russia should be characterized by a scarcity of foreign currency and capital and attract resources from developed nations with a wealth of competitive advantages in complex sectors with high capital requirements (Kalotay, 2008). The Federation ought to find itself in the position of receiving foreign investment (Sauvant, 2005). On the contrary, the available data show that it is establishing itself as a net investor, owing in part to extensive access to currency resources provided by high export flows¹¹⁸. As will also be observed in this paper, that position, according to the data source used¹¹⁹, has already been reached or will be reached in the

¹¹⁷ For an analytical overview of theories related to the economic determinants of FDI, see Valdani, Bertoli, 2006, pp. 45-69. For a review of the main theories on internationalization that could serve as a background for the recent literature on MNEs from emerging countries, refer to Spigarelli, 2009. As for the strategic management literature related to MNEs from emerging economies, refer to the work of Yamakawa, Peng, Deeds, 2008.

¹¹⁸ The trend for the Russian economy is similar to that of many emerging economies that often have imbalances due to an excess availability of foreign exchange produced by high export flows. The case of China, in this sense, is emblematic (Bellabona, Spigarelli, 2006, 2007). Governments are often promoters of corrective measures in response to such unbalanced growth paths. Those measures tend to support foreign investment, not only through tax incentives, financial and administrative incentives, but also through the creation of specific public investment vehicles.

¹¹⁹ According to UNCTAD data, the value of annual flows and their growth rates should quickly allow the country to become a net investor. In 2008, the inflows into Russia totaled 70,320 billion dollars, while outflows were 52,390 billion dollars. Accordingly, the investment stocks held abroad have already reached values similar to those held by foreign investors in Russia. They amounted to 202,837 billion dollars and 213,734 billion dollars in 2008 (UNCTAD, 2009 b). According to data from the Bank of Russia, the position of net investor has already been reached. See Kalotay, 2008.

very near future. In this light, the weakness of the classical approach to explaining Russian trade and international investment flows appears evident.

The IDP approach correlates the level and type of economic development in a country, usually approximated by pro-capita GDP, with its position as an international investor (Dunning, 1981, 1986), measured as the differential between foreign and domestic investment stocks. It is assumed that an economy's development follows a predefined process consisting of structural changes corresponding to modifications in the country's ability to attract/undertake investments¹²⁰. During the initial phases of economic growth, international investment activity is limited to inflows. Outflows begin to occur in a later phase of greater economic maturity when competitive advantages have developed to justify the expansion of national enterprises abroad. It is only during the subsequent steps, with economic growth and the strengthening of distinctive advantages, that international activity intensifies to the point that the country becomes a net investor.

The case of Russia, as seen for other emerging economies (UNCTAD, 2006; Bonaglia *et al.*, 2007; Goldstein, Pusterla, 2008), does not seem to match the typical phases identified by the IDP (Kalotay, 2008). This is a result, first and foremost, of the "premature" internationalization of domestic enterprises, which expand rapidly and face global competition. Another aspect that interferes with the process identified by the IDP is the more or less formal action by the government, which seeks to establish itself, and not only in economic terms, on the global stage.

The available studies indicate that adopting the schemes developed by the Uppsala School and Dunning requires adjusting, and sometimes some straining, the theories in order to interpret the Federation's situation (Kalotay, 2008).

The Swedish school views internationalization as a gradual process of extending business activity in a process of gradual, predefined steps. This interpretation provides a partial explanation for the behaviour of several of the protagonists of Russian internationalization. As will also be seen below, following the collapse of the Empire, large primary-sector public or privatized companies, faced with the consolidation of their exportation activity, embarked upon strategic processes aimed at acquiring both production bases and high-value assets in distribution and logistics abroad. The choice of target countries initially favoured culturally similar geographical areas such as the CIS nations, to then gradually shift towards more evolved Western countries.

The most significant anomalies with respect to the theories posited by the Uppsala School involve, on the one hand, the prevalent use of non-greenfield investments right from the initial phases of such processes. Acquisitions represent an instrument that is difficult to control.

¹²⁰ For further information on IDP and its applicability to the case of emerging countries, see Goldstein, Pusterla, 2008, pp. 14-15.

Accordingly, they should only be chosen in the presence of consolidated international experience. Nonetheless, they have been the preferred mode of entry of Russian operators since the outset. In addition, in the more recent past new enterprises have embarked upon internationalization processes, including in the manufacturing, service and telecommunication sectors, exposing themselves rapidly on the most mature Western markets and skipping the typical steps in the expansion process theorized by the Swedish school. One goal of this approach is to acquire competitive advantages on a global scale not possessed in their home countries, but rather established precisely through the internationalization process.¹²¹

On the other hand, according to Dunning's paradigm, the advantages of ownership, location and internalization theorized by the author explain the behaviour, in general terms, of Russian MNEs, albeit with a degree of strain. The most evident issue pertains to the advantages of the internal management of activities (I - Internalization). A significant number of initiatives are aimed precisely at the need for internal management of the broadest possible array of complementary activities linked to a core business. Control of upstream and downstream activities fits with Dunning's vision.

The advantages of ownership (O – *Ownership*) possessed by Russian enterprises, specifically those in the primary sector, justify the search for affirmation abroad through extended processes of acquisition and investment (Sauvant, 2005, p. 652). However, it is important to draw a distinction between "Oa" advantages relating to access to intangible assets (technological knowledge, patents, brands, etc.) and "Ot" transaction advantages deriving from management experience and organizational skills (Dunning, Lundan, 2007)¹²². The Federation's enterprises are considered less suited to possessing "Oa" advantages and better able to found their international competitiveness on management skill in the various activities in the value chain (Kalotay, 2008).

In terms of the advantages of location (L – *Locational*), the considerations that may be adapted to the case of Russia pertain to the need to also include the domestic context in the explanation for internationalization processes. Such processes are thought to be driven not only by the attractive qualities of the foreign host countries, but also by the domestic environment, which is sometimes "hostile" to business development (Kalotay, 2008), or by institutional factors that act as drivers of expansion. One should consider, in particular, the role of the government, which more or less openly supports initiatives, some of which may also pursue supra-economic aims. Accordingly, a reading of foreign investment trends must take into consideration the formal and informal rules of the game dictated by the institutional context of reference, as suggested by

¹²¹ This trend shown by Russian companies is similar to what MNEs from emerging countries in general are experiencing (Cfr. Bonaglia, Goldstein, Mathews, 2007; Guille'n, Garcí'a-Canal, 2009).

¹²² For a more thorough analysis of the Dunning paradigm and its connections to more recent theories on MNEs, see Li et al., 2005.

the literature emerging from the institution-based view of strategy (North, 1990; Peng, 2002; Meyer, Nguyen, 2005; Wright et al., 2005).

2. The Russian Federation and global investments

2.1 The principal trends

After having examined the principal characteristics of Russian trans-national activity as identified by scholars, the analysis will now focus on the most recent data regarding Russia's process of international openness. In recent years, the Federation has occupied a highly significant position among global investors: it is second only to Hong Kong of the other emerging economies. From 1995 to 2007, the stock of Russian investments showed the highest growth rate of the BRIC nations (Graph 1). Although in 2008 the financial crisis reduced that value significantly (Connolly, 2009), the trend remains positive (Graph 2): a peak flow of over USD 52 billion was reached this year.

Analysts and international institutions emphasize that the considerable growth of investments may be attributed as much to new data surveying systems as to the actual expansion of initiatives. The Russian government has recently taken some important steps to improve the system for gathering and disseminating information regarding direct investments, which are thought to be extensively underestimated in historical series (Bulatov, 1998; Kalotay, 2005, 2008; Kuznetsov, 2008).

Moreover, the reduced reliability of the data is exacerbated by the number of cases of round-tripping, which are especially high for Cyprus (Pelto et al., 2003), Holland and the British Virgin Islands (Kalotay, 2008; Connolly, 2009)¹²³. Investments are channelled through companies based in third countries in order to benefit from the subsidies provided to foreign investors. The anomalies generated in surveying FDI are thus considerable.

Rather than merely observing investment flow and stock figures, a better way of capturing the peculiarities of Russian trans-national activity could thus be to also examine some data concerning greenfield transactions and mergers and acquisitions undertaken in recent years.

Compared to the other BRIC nations, Russia is in second place in terms of the opening of new production and commercial facilities abroad (Table 1) with significant growth rates in the 2004-2008 period (+72%). International expansion through M&A initiatives has been especially intense: from 2001 to 2006, the Federation increased the value of FDI through this mode of entry by more than 300% (Table 2). In 2009, the crisis reduced deals, as also seen in the cases of Brazil and India.

¹²³ According to recent estimates, roundtripping totalled approximately USD 7 billion between January 1997 and June 2008, representing 10% of total Russian investments (Panibratov, Kalotay, 2009, p. 2).

Concentrating the analysis specifically on merger and acquisition transactions¹²⁴, it is useful to reflect on their distribution by sector (Table 3) and by target geographical area (Table 4).

During the period from January 2005 to June 2008, the value of M&A deals increased significantly compared to previous years. In terms of the sectors affected, most transactions involved the primary sector, which represented more than 60% of resources invested between 1997 and 2008. In manufacturing, which attracted 20% of resources, the mechanics, metals and motor vehicles segments prevailed in the interests of Russian investors. Finally, telecommunications accounted for almost all M&A deals in the service sector, which remains highly penalized in terms of investment flows.

In addition to the strong concentration of initiatives in the primary sector, a further peculiarity of Russian foreign investment activity that distinguishes it from the other BRIC nations emerges from an examination of the geographical distribution of initiatives (Table 4) via M&A deals. The most common targets are in industrialized Western nations rather than in developing areas in Africa, Asia or Latin America. Europe and the United States are the priority targets of M&A initiatives, after members of the Commonwealth of Independent States (CIS).

In the former, Russian enterprises seek vast target markets as well as strategic assets fundamental to their global affirmation. On the other hand, CIS nations represent a "natural" target for internationalization processes (Liuhto, Jumpponen, 2003). These areas have highly similar cultural and social characteristics and are near in geographical terms. Consider, first and foremost, Ukraine, Kazakhstan e Byelorussia¹²⁵. In these countries, commercial penetration strategies may be undertaken with the aim of achieving positions of leadership without excessive competition from Western enterprises or as "testing ground" for innovative products to be sold in the home country (Filippov, 2010, p. 318). In addition, there is access to natural resources: this makes the CIS the object of great interest for Russian investors, which are, as discussed above, especially active in the primary sector. Russia's extensive presence in the CIS may also be explained by economic and political reasons dating back of the period of transition to the capitalist model. The fall of the Empire was followed by a dispersion of ownership of publicly controlled enterprises in the various independent territories. In order to solve the problems of coordination between companies that had been formally separated, yet remained substantially linked by production and commercial dealings, Russian enterprises undertook numerous mergers and acquisitions aimed at re-establishing control of the fragmented "branches" in the various independent states (Kalotay, 2008, pp. 10-11).

¹²⁴ This figure should be used with caution, considering that it refers to announced transactions that could result in financial disbursement only in the medium term, or may even never be finalized due to cancellation.

¹²⁵ Analysing Russian investment outflows, Kuznetsov (2008, p. 4) states that 30% goes to the CIS. 80% of resources in the CIS goes to Ukraine, Kazakhstan, Byelorussia.

2.2 Protagonists and strategic motivations

The protagonists of Russian trans-national activities are public enterprises or larger privatized companies created through the privatization process that involved primarily domestic investors (Kalotay, 2001; Locatelli, 2006; Kets de Vries et al., 2004). They include Gazprom, Lukoil, Surgutneftegas, Rosfnet Oil, Sberbank, Rusal, Evraz, Norilsk Nickel, Russian Aluminium, Severstal, Youkos and GMZ (Kalotay, 2008)¹²⁶. They operate in four main industries: oil and natural gas, metallurgy, finance and telecommunications (Kuznetsov, 2008), all of which are still characterized by strong government interests and interference (Liuhto, 2007). In parallel, new protagonists have also been establishing themselves both in the traditional sector of energy resources and commodities (ChTPZ Group, Koks, Metalloinvest and Magnitogorsk Iron & Steel Works) and in industries that have only recently embarked upon internationalization processes (Kuznetsov, 2008). These include machinery (Rostelmash and Transmash Holding), paper (Investlesprom), food (Russian Solod, SPI Group, Russian Vine Trust, Wimm-Bill-Dann, Mezhrespublikanskij Vinzavod and Natiusha) and perfumes (Kalina).

In terms of the motivations that inspire the protagonists of Russian expansion, especially during the initial phases of the opening of the economy, FDI has been a tool for finding a safer and more favourable business environment than provided by the domestic market (Guille'n, Garcí'a-Canal, 2009), which features a high level of uncertainty and offers little protection of property (Sauvant, 2005, p. 662; Kalotay, 2002; Bulatov, 1998). Strengthening their domestic images and increasing their negotiating power in the motherland continue to represent relevant factors for many enterprises (Kuznetsov, 2008). However, more recently enterprises have begun to follow motivations symptomatic of "active" expansion aimed at obtaining the resources and strategic assets required to operate on Western markets (Liuhto, 2005; Kheifets, 2008). In particular, the investments pursue, first and foremost, goals relating to efficiency-seeking. The broadest possible control of the value chain is sought, typically in the primary sector. In the oil and natural gas industry, Russian companies engage in upstream acquisitions of refineries to process raw materials. At the same time, downstream acquisitions involve distribution chains, natural gas pipelines and crude oil distributions lines, storage networks and service stations. There thus tends to be access to a high level of the value generated in the production and distribution process, in addition to more extensive control of foreign demand (Sauvant, 2005, p. 662) by reaching the end consumer directly (Connolly, 2009, p. 7).

¹²⁶ In the Fortune Global 500 ranking, there were 47 MNEs from BRIC countries at the end of 2008. Five of them are Russian (Gazprom, Lukoil, Surgutneftegas, Rosfnet Oil, Sberbank). Gazprom is 47th in the ranking and 4th among MNEs from the BRIC nations, behind three Chinese companies.

Resource-seeking motivations also characterize the primary sector, in relation to access to natural resources such as oil, metals and minerals, through the acquisition of oil companies, aluminium refineries and gold producers.

The need for further expansion of target markets and the achievement of additional market share represents another strategic goal pursued by Russian investments, especially in the service sector. The most significant cases involve the main mobile telephone operators, especially those active in CIS nations¹²⁷, in addition to giants in the financial sector (Connolly, 2009).

Another type of goal relates to strategic-asset seeking, which is aimed at, among other targets, foreign infrastructure services or the elimination of barriers to operation in protected markets¹²⁸, as well as the search for technological innovation, know-how and marketing and management skills. Russian enterprises are showing increasing interest in this latter area due to the strong international competition that places them in constant comparison with Western standards and practices.

3. Investments in Italy

3.1 Investment flows and stocks

The study will now shift from a global analysis to the case of Italy. The goal is to understand whether the initiatives undertaken in the country show peculiarities in terms of the sectors involved, underlying motivations and modes of entry compared to global trends. An initial source of information that may be used relates to surveys conducted by the Bank of Italy according to the statistical logic of the balance of payments¹²⁹.

The available data show that the uptrend in Russian investments is considerable: it rose from approximately €3 million in 2005 to over €80 million in 2007. Even when the effects of the financial crisis are considered, the phenomenon is rapidly evolving and highly dynamic. Resources even reached a peak in 2009, with over €1 billion for an enormous investment in Sicily.

In geographical terms, with the exception of an anomalous investment in Friuli Venezia Giulia in the Household sector in 2007 and the deal in Sicily of 2009 mentioned above, the regions most affected by investment transactions are Tuscany, Emilia Romagna, Veneto and Lombardy (Table 5). During the period 2004-2009, 75% of cumulative flows were intended for Sicily. At the sector

¹²⁷ Relevant examples are the acquisitions by MTS of 74% of the main Uzbekistan operator (Uzdunorbita) and by VimpelCom of one of the largest operators in Kazakhstan (Kar-Tel).

¹²⁸ The American steel market, for example, is characterized by import quotas. Through acquiring the U.S. company Rouge Industries, Severstal has succeeded in overcoming barriers to that market.

¹²⁹ This figure, as emphasized in the literature (Mori and Rolli, 1998, Lipsey, 2001, Federico and Minerva, 2007), is not significant if considered in isolation, given the problems of timeliness and completeness inherent in this kind of survey. However, it may offer some interesting food for thought.

level, there are considerable problems inherent in surveying and interpreting flows, also associated with the anomaly dictated by "Households." This class, which represents the greatest weight (Table 6), includes artisans, sole proprietorships and consumers. The item's contents, which are highly heterogeneous, do not permit a significant examination of the true target of investments. If this item is excluded, the main targets of investment flows are financial and commercial services, transportation and mechanics (80% of the resources invested by the Federation in 2008). However, energy attracted the greatest flows during the previous year.

3.2 Russian enterprises with investments in Italy

An additional perspective to that afforded by the macro-view provided by the Bank of Italy's flow data involves an analysis of Russian-owned enterprises incorporated or acquired in Italy. This is a fundamental aspect in identifying the country's international expansion policy (Cantwell, Barnard, 2008).

The available data show that there are 53 Italian enterprises with Russian investors employing approximately 11,000 and generating total turnover of €4.9 billion¹³⁰. Of these enterprises, 45% are fully or majority-owned, whereas 30% are joint ventures and 25% minority investments. The prevalent mode of entry in Italy is acquisition, which accounts for 80% of the cases.

The geographical distribution of these enterprises (Figure 1) shows that the presence of Russian investments is highly concentrated: as many as 38 companies are located in Lombardy, Emilia Romagna and Veneto. In any event, it is interesting to note that Russian initiatives also extend to areas not typically "industrialized" yet rich in natural resources (such as Sardinia or Puglia) or infrastructure, logistics and distribution networks (such as Sicily).

More than one-half of enterprises with Russian capital are related to the machine tools and equipment industry and metallurgy.

The interest in mechanics is strong, which is certainly justified by the strong competitive position enjoyed by national enterprises: the sector offers a wealth of companies with distinctive advantages founded upon knowledge and know-how, in addition to intense ties and relations with specialized suppliers and sub-suppliers at the local level.

Metallurgy and steel in particular have attracted extensive capital in Italy as well, as also seen at the world level. This is a physiological phenomenon, given that Federation investors typically belong to the primary sector.

¹³⁰ The analysis of Russian investment in Italy is based on Invitalia data drawn from the R&P-Politecnico Milano database. Data are updated to October 2010.