

“Consistency” and the CFSP: a categorization and its consequences

Historical background

“Consistency” as a concept in European foreign-policy making has a long history. The word makes its first appearance in an official document in the Communiqué of the Paris Summit in December 1974:

Recognizing the need for an overall approach to the internal problems involved in achieving European unity and the external problems facing Europe, the Heads of Government consider it essential to ensure progress and overall consistency in the activities of the Communities and in the work of political co-operation...

...In order to ensure consistency in Community activities and continuity of work, the Ministers of Foreign Affairs, meeting in the Council of the Community, will act as initiators and co-ordinators...

However, the concept behind the word flows from the earlier recognition by the Member States that the Community’s considerable achievements in internal construction required it to play a more ambitious international role. The Heads of Government meeting at The Hague in December 1969 declared that:

Entry upon the final stage of the Common Market not only means confirming the irreversible nature of the work accomplished by the Communities, but also means paving the way for a united Europe capable of assuming its responsibilities in the world of tomorrow and of making a contribution commensurate with its traditions and mission.

Faithful to the instructions given by the Summit, the Foreign Ministers in the Luxembourg Report of October 1970 set out as one of the guiding principles of political union:

...Europe must prepare itself to exercise the responsibilities which to assume in the world is both its duty and a necessity on account of its greater cohesion and its increasingly important role.

This was recalled in the Preamble to the Single European Act (SEA) of 1987:

Aware of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence...

The concept of cohesion and responsibility was clear. Member States needed to stick together to bring their weight to bear on international events and to exercise international responsibilities. A certain congruence of approach was necessary for credibility. The need for consistency, however, in the more technical sense of the Paris Summit Communiqué, arose from difficulties in the institutional implementation of the underlying principle. European Political Co-operation (EPC), set up in 1970 as the first step towards political union, modelled its ethos and procedures on the experience of diplomatic co-ordination gained during the Fouchet negotiations. At the insistence of France, EPC and the Community were kept as far as possible in hermetically sealed compartments. As time went by, the distinction proved increasingly difficult to apply in practice. The objective links between diplomatic and economic foreign policy asserted themselves, and EPC cast longing eyes on the possibilities of action afforded by the Community. The two phenomena combined led to “interaction”; “consistency” became the art of managing the interface.

The responsibility for managing “consistency” was defined in varying terms in successive documents. The Single European Act provided that:

The external policies of the European Community and the policies agreed in European Political Co-operation must be consistent.

The Presidency and the Commission, each within its own sphere of competence, shall have special responsibility for ensuring that such consistency is sought and maintained.

For the first time, the Treaties had created an obligation of consistency, and had conferred responsibility for ensuring its observance on the Presidency and the Commission. It is interesting to note that the original draft spoke of the “Member States” obligation to ensure observance; the obligation was transferred to the Presidency in order to be more operational. The provision was taken up, amplified, and slightly altered, in the Maastricht Treaty (TEU):

The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency. They shall ensure the implementation of these policies, each in accordance with its respective powers.

The new formulation was not an improvement. The operational sharpness of the SEA (“Presidency and Commission”) was blunted by the change to “Council and Commission”, and the proviso that these Institutions should act in accordance with their respective powers was transferred from the observance of consistency to the implementation of policies, thus replacing the challenging with the banal. The amendment of this text by the Amsterdam

Treaty, which added the words “and shall cooperate to this end” after “...ensuring such consistency” reflected the Member States’ annoyance at the perceived lack of co-operation on the part of the Commission, but did little to improve the management of consistency. And as long as the Union organizes its affairs in separate pillars, consistency will need to be managed.

A first categorization

The discussion so far has taken “consistency” to mean the organization of the interface between the largely intergovernmental EPC/CFSP and the largely integrationist external relations of the Community. This reflects the reality of the historical debate. But the concept of “consistency” is more subtle than that. I have suggested elsewhere¹ that there are three levels of understanding of the concept: the banal, the benign and the malign. The “banal” sense is the literal one of policies agreed in one pillar not cutting across or contradicting those in another pillar. This rarely if ever occurs. An exception was when the Foreign Ministers in New York decided to break off co-operation with Haiti, unaware that such an action was ineligible under the terms of the Lomé Convention. The “benign” sense is otherwise known as “interaction”: the instruments of the Community are made available for the accomplishment of policy objectives defined in the second pillar. Classic early examples are EC sanctions on the Soviet Union following the imposition of martial law in Poland and the provision of additional EC aid to improve security in Central America. The “malign” signification is about the struggle for institutional power - the question as to whether the representatives of the Member States in the second pillar should be able to give directives as regards EC external policies, and at its most base, the question as to which set of bureaucrats gets to decide. It would be invidious to cite current examples of these phenomena. Two shrouded in the decent mists of time are the attempts by some Member States to prevent the Commission from giving aid to schemes of agricultural restructuring in Marxist Ethiopia, and the petulant reaction of the Ambassadors in Pretoria to their exclusion from an operational role in the distribution of aid to the victims of apartheid.

A new categorization

I now wish to superimpose on my previous tripartite division a new categorization, also divided into three: “horizontal”, “institutional”, and “vertical” consistency,

- (1) “horizontal” consistency is consistency between the different policies of the EU;
- (2) “institutional” consistency is consistency between the two different bureaucratic apparatuses, intergovernmental and Community;

¹ Nuttall, *European Foreign Policy* (Oxford, 2000), 25-6

(3) and “vertical” consistency is consistency between EU and national policies. These categories will now be examined as they apply to foreign policy, and in particular to the CFSP.

- “horizontal” consistency

“Horizontal” consistency has always existed as a problem, but its perception has been impaired by contamination with “institutional” consistency. In other words, the EPC/CFSP establishment, including the Commission, has tended to see the problem in terms of the relationship between “diplomatic” foreign policy as conducted by the Member States and its potential competitor, the external relations of the Community as conducted by the old DG I (External Relations), and from time to time by DG VIII (Development). This ignores the many other areas in which the EU’s policies have significant external effect. An attempt to remedy the problem was made in article C of the TEU [Art. 3 Consolidated] quoted above:

...consistency of its external activities as a whole in the context of its external relations, security, economic and development policies.

The Treaty recognises the need for “horizontal” consistency, but its enumeration of the sectors covered is curiously incomplete. Where, for example, is agriculture? Where is the environmental sector, the international aspects of which are currently a matter of such concern, and of the utmost importance for the Union’s relations with the United States? Where are the international aspects of the new areas of competence introduced by the TEU itself: economic and monetary union and co-operation in justice and home affairs, which are both of value, not just for their content, but also as potential components of the EU’s relationship with countries like the US and Japan?

A further difficulty lies in the absence of adequate mechanisms to ensure the observance of consistency. Admittedly, the preceding paragraph of Article 3:

The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*

was designed to provide such a mechanism, but failed to do so. In practical terms it amounted to little more than the abolition of the separate EPC Ministerial Meetings and their subsuming into the General Affairs Council (GAC). It left untouched the other formations of the Council like Agriculture, the Environment, or the new Justice and Home Affairs. In other words, it tackled the problem of “institutional” consistency, but not of “horizontal” consistency; it brought under control the activities of officials working in the foreign policy field, but did not achieve the objective congruity of competing policies going beyond that field.

This is a facet of the more general problem of the declining authority of the General Affairs Council to coordinate the activities of the Council as a whole. It is vain to expect an improvement in the situation simply by calling for a return to some past Elysium, and the situation is particularly difficult as regards external relations, where the credibility of the GAC as impartial arbitrator of competing policies is impaired by its function as the operational Council for questions of foreign affairs. A solution must be sought in structural, institutional reform. Two proposals are on the table. One is to give the European Council the means to enable it to issue effective policy guidelines. Additional means would be essential, for as it is presently constituted the European Council is not in a position to intervene effectively in the management of EU business in the field of foreign affairs. Either Heads of Government respond without adequate preparation to the headlines of the day, as happened with the decision to intervene in Yugoslavia, or they rubber-stamp positions prepared by officials - and on occasion two potentially inconsistent positions prepared by different sets of officials, as happened with regard to the New European Architecture at Strasbourg in December 1989. Various suggestions have been made as to what these additional means might be, ranging from appointing a President of the European Council to hold office for a period of years to making the High Representative directly responsible to the European Council, on the lines of the original French proposal.

Another proposal on the table is to set up a standing body in Brussels composed of senior national politicians, probably Deputy Prime Ministers, to supersede the GAC in its coordinating role. Whatever the uncertainties of this proposal, of which not the least are how to persuade Foreign Ministers to agree to be sidelined while still maintaining an interest in EU foreign-policy making, and how to persuade Deputy Prime Ministers to divert their attention from national to EU affairs, it would, if successful, provide an answer to the problem of “horizontal” consistency.

But would the product of a successful arbitration formula always be to the taste of those who seek a coherent and effective EU foreign policy? The underlying assumption of the discussion hitherto, both historically and in this chapter, has been that in the case of a clash between policies, foreign policy considerations should be given preference. But a Committee of Deputy Prime Ministers, if that were the formula chosen, might well decide that in a given case domestic policy considerations should prevail. Here I introduce the concept of “structural power”, in a rather different meaning from that generally accepted. As used here, “structural power” means the capacity to take, for domestic reasons, policy decisions which have a significant impact on foreign countries, without having to pay undue attention to any ensuing negative reaction. Examples are the EU’s decisions on hormones in beef and on genetically modified organisms, both decisions which would have been taken regardless of whether or not the external implications were realised at the time. The United States and the European Union have such power; China may have in the future, but it is doubtful whether any other country or organization does. This is not to say that this is a desirable state of

affairs, but it is sufficiently close to reality to have to be taken into account. It has the effect of transforming EU foreign policy from being an autonomous activity with on the whole worthy objectives to being a diplomatic effort directed at attenuating the effects abroad of EU domestic policy-making - in other words the defence of EU interests. The debate thus opened up goes well beyond the question of consistency, but it shows that attempts to deal with the problem of “horizontal consistency” may well have perverse effects from the foreign policy point of view.

- *“institutional” consistency*

The question of “institutional” consistency - between the intergovernmental and Community bureaucratic apparatuses - is better known for having had the longer history, but attempts to find a solution have not been the more successful. The merger of the EPC Ministerial Meetings and the GAC in a single institutional framework introduced by the Maastricht Treaty solved the problem at the political level, but the TEU explicitly postponed a decision on the arguably more important level of officials, and the radically different working methods of the two pillars were left untouched. The Working Groups were not merged, and the crucial question of the hierarchical relationship between the Political Committee and Coreper was held over for future discussion. Pragmatic working relationships have evolved, but there has been no clear arbitration which would eliminate the need for consistency. Eight years’ experience of the practical operation of the CFSP has nevertheless revealed a trend towards “Brusselisation” - the gradual substitution of a capitals-based ethos by a Brussels-based ethos. This was at least the situation until the arrival on the scene of the military dimension of the EU, which, even if it does not formally constitute a fourth pillar, nevertheless with its own personnel and procedures, its own constituency of Ministers, and its own bureaucratic networks, provides an element of confusion and may counter the prevailing trend.

Ironically, “institutional” consistency, especially in the sense of “interaction”, was easier to manage before the reforms introduced by the Maastricht and Amsterdam Treaties. In those days, the links between Member States in the first and second pillars were scanty to the point of non-existence. The Commission almost alone provided a link between the two, and was able by the exercise of its Treaty functions to translate a political consensus in EPC into action on the Community side. This was embodied in the fact that the same official represented the Commission in the Political Committee and in Coreper. Constitutional responsibilities were clear, and the allocation by the SEA of responsibility for the management of consistency to the Presidency and the Commission made operational sense. If there was to be a battle for turf, it helped that the turf boundaries were clearly defined.

The failure of subsequent Treaties to define bureaucratic boundaries has meant that problems of consistency have been tackled through evolving co-operative practice. While

adequate as a solution in normal times, this has led to making the interface a grey area in which the management of consistency becomes more difficult. The situation has been complicated by the internal reorganization of the Commission and by the appearance of the High Representative.

In order to be better equipped to play its role in the new CFSP, the Commission decided at the end of 1992 to set up a new Directorate General (DG IA), separate from DG I, to cover the political aspects only of external relations and be responsible for contacts with the new second pillar machinery. The new DG thus lost control over the deployment of Community instruments, creating new problems of consistency within the Commission. At the same time, a Political Director was appointed who no longer regularly attended Coreper, breaking the personal link which had previously been so valuable. Although the split between the political and economic aspects of the Commission's work was rectified two years later, the creation of a political counter-culture within the Commission made "institutional" consistency harder to handle. The decision at the beginning of the Prodi Commission to regroup (almost) all the external relations DGs under one Commissioner and one DG went some way to reversing this trend, although this was countered, for understandable reasons of internal efficiency, by the setting up of Europaïd as a separate body responsible for the management of the EU's aid programmes. DG Relex is already feeling the loss of immediate control of the financial levers of power. The Prodi Commission also denied itself a winning card when it failed to appoint a Vice-President in charge of external relations as had been foreseen at the time of the Amsterdam European Council, although this affects "horizontal" more than "institutional" consistency.

It may seem perverse to argue that the creation of the office of High Representative, and of the new machinery dependent on him, has made the problem of "institutional" consistency worse. Yet the fact that what had previously been a fairly obscure institutional difficulty has now been mediatised as a personal duel - Solana versus Patten - has carried the question to a higher plane of public attention. In spite of the good working relationship between the two men, and frequent protestations of co-operation on their part, the number of learned articles and press commentaries on the subject is on the increase, as is the number of occasions on which foreign countries profess to be "confused" by the EU's institutional arrangements. A more substantive element of confusion comes from the High Representative's need for his own policy back up, which is provided by the Policy Planning and Early Warning Unit, now renamed the Policy Unit. This difficulty was introduced by the Amsterdam Treaty; the Maastricht Treaty had indeed brought about the absorption of the EPC Secretariat into the Secretariat General of the Council, but the Council Secretariat did not provide, any more than its predecessor, independent policy advice. Instead it performed its traditional role of advising the Presidency on the best way of handling a problem, given the existence on the table of a policy proposal submitted by another body (Commission, Presidency or Member State). The Policy Unit, on the other hand, for the first time became a

provider of autonomous policy papers in potential competition with the Commission, and indeed with Member States. The problem has not been serious so far because of sensible co-operation, the small size of the Unit, and its overburdening with a multiplicity of tasks, but these conditions may change in the future.

The situation with regard to “institutional” consistency is therefore getting worse rather than better, as a result of changes made for no doubt excellent reasons. The most striking proposal to remedy the situation made so far is for the High Representative to be, not the Secretary General of the Council, but a Member of the Commission, no doubt its Vice-President. This would give him greater control over Community instruments in the field of external relations. A variant of this idea, which by preserving some existing intergovernmental procedures might be more palatable to Member States, would be for the external relations bureaucracies of the Council and the Commission to be hived off under the supervision of the High Representative, who would act as a Member of the Commission for matters requiring a Commission decision, and report to the appropriate body in the Council framework, presumably the European Council, for the rest. One thing is clear, that unless a way is found of merging the bureaucracies, the problem of “institutional” consistency will continue to exist.

But would that be so bad? Another approach would be to do nothing at all, and let the situation evolve. In practice, few if any problems have arisen over “benign” consistency, or interaction. The difficulties occur over “malign” consistency, or the battle for turf. Is it worth engaging in major institutional reform for such an object?

- *“vertical” consistency*

The third and final form of consistency in my categorization - “vertical” consistency, or consistency between EU and national policies - gives rise to the greatest political difficulties and, perhaps for that reason, is least frequently the object of attention. The question is, to what extent are Member States prepared to bind their national foreign policies to the outcome of the CFSP, thereby strengthening the EU’s position as an international force? In some sections of external relations provision for co-operation is made in the Treaty. For example, there are specific requirements for synergy between EC and Member States’ development co-operation policies [Art. 180 EC], although it has to be said that they are more honoured in the breach than in the observance. Nothing similar exists for the CFSP. Instead, there are a number of general obligations:

The Member States shall support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council shall ensure that these principles are complied with [Art. 11.2 Consolidated].

Member States shall ensure that their national policies conform to the common positions [Art. 15].

Joint actions shall commit the Member States in the positions they adopt and in the conduct of their activity [Art. 14.3].

Escape clauses are provided in case of difficulty in implementing joint actions, and since the Amsterdam Treaty an opt-out has been provided by the new mechanism of “qualified abstention”. Neither device has needed to be used so far. The presumption is that the procedures followed in the second pillar will *de facto* lead to decisions which can easily be accommodated in national policies. This presumption may prove over-optimistic in the light of the possibilities for enhanced co-operation opened up in the Nice Treaty and of the prospect of forthcoming enlargements. A closer study should be made of the extent to which “vertical” consistency is an operational requirement.

There can be no doubt that national commitment to policy positions worked out in common within CFSP² is such a requirement. This derives from the commitment to coordinate national foreign policies which was the original object of EPC; the credibility of common positions in this sense depends on the degree to which they are shared by all Member States, and their effectiveness on the assiduity with which they are propagated by the Member States’ diplomatic agents. The case is altered, however, when it comes to actions rather than positions (again in the fullest sense). Here, the involvement of the Member States in implementation is not indispensable. The EU may appoint an agent to act on its behalf, and a Member State which has contributed to the decision-making procedure does not necessarily have to engage itself nationally in the further process. “Vertical” consistency can in this case, and at a pinch, be dispensed with.

What, then, are the options for ensuring “vertical” consistency when it is required? The first option is to make the CFSP a common policy like the Common Commercial Policy or the Common Agricultural Policy, i.e. an exclusive competence of the Community or of the Union. This would eliminate the problem at a stroke, since there would be no more national foreign policies, but is perhaps not for tomorrow.

A second option would be to do nothing. This has considerable attractions. The problem of “vertical” consistency is perhaps more one of intellectual orderliness than of practical concern. The big political difficulty under this heading is not so much consistency as how to keep the Big Three broadly corralled inside the European political order, as the nervous excitement over the tripartite Ghent meeting and the subsequent Downing Street dinner have shown. The danger to be guarded against is that they constitute a form of

² This cumbersome circumlocution is to avoid confusion with the highly technical “common positions” in the sense of Article 15.

directoire, either inside or outside the EU. Excessive insistence on consistency could imperil this objective.

A third option would be to make the observance of existing Treaty commitments (Articles 11.2, 15 and 14.3 cited above) subject to judicial review by the European Court of Justice.

A fourth and final option would be to exploit the distinction between common positions and EU actions, in the wide sense explained above, seeking ways to enhance consistency for the former while neglecting it for the latter, so that that part of the EU's external relations increasingly became the autonomous foreign policy of the Union in its own right, with its own priorities and interests, detached from the national policies of the Member States. Such a policy might well be low-key, economics-based, structural and medium- to long term, but, some might argue, that would be no bad thing.

Envoi

This paper has attempted to demonstrate that the so-called problem of "consistency" is in fact a complex one, being in reality a nexus of different problems the solutions to which are various and not always compatible. The debate is hampered by the common failure to distinguish between the different types of "consistency". As regards the problem most frequently referred to, that of institutional "consistency" or bureaucratic rivalries, there is much to be said for the view of Philippe de Schoutheete, that this happens in the best regulated households, including national administrations, and can be lived with without unduly adverse effects. Certainly the problem could be solved at the cost of some bruised egos. The situation is more difficult when it comes to horizontal and vertical "consistency", where solutions can only be found after a thorough and uncomfortable debate about the nature of foreign policy and the quality of the EU as an international actor.

Simon Nuttall

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