

From an Intergovernmental to a Governance System? Non-Governmental Organizations and the EU's Common Foreign and Security Policy

**Paper prepared for the ECPR-SGEU
Third Pan-European Conference on European Politics
Istanbul, Turkey 20 – 23 September 2006**

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1. Introduction

The field of European integration is divided into camps: Research on the Common Foreign and Security Policy, on the one hand, and research on first pillar issues, on the other hand. While the former has been more descriptive in nature (Nuttall 2000) and been preoccupied with questions of whether or to what extent the EU is developing qualities of an international actor (e.g., Ginsberg 1999; Jupille and Carporaso 1998; Bretherton and Vogler 1999), the latter has been guided by more theoretical considerations with scholars assuming, for the most part, that Europe has arrived and that the system of Maastricht is stable (Jachtenfuchs and Kohler-Koch 1996). Furthermore, scholars belonging to these two camps generally also draw on different conceptual approaches. Members of the first—the CFSP—typically conceive of the EU as an advanced international organization and employ the toolbox of international relations theory to decipher its internal workings. By contrast, members belonging to the second camp view the EU most typically as a federated entity and use public policy theories. These differences are consequential.

In the area of CFSP studies, intergovernmental approaches dominate. Most research relegates the supranational institutions to the fringe and almost all studies neglect the existence and influence of private actors, such as interest groups, associations or NGOs as well as parliaments and local public actors. Even if the CFSP it is no longer the cosy and intimate diplomat's club it used to be during the days of European Political Cooperation, scholars, for the most part, still work from the assumption that it is the exclusive domain of heads of states and governments and view it as a zone free of influence from public opinion, party politics or organized interests. Only recently, scholars have begun to part with this notion and started to employ neo-functionalist (Øhrgaard 1997) or constructivist approaches (Smith 2004 and Smith 2003; Sjursen 2004; Tonra 2003; or Glarbo 1999) to shed light on political processes within the second pillar or to explain how it evolved. While approaching the CFSP from a different theoretical angle, these studies are nevertheless similar to ones approaching the second pillar with an intergovernmentalist lens, in that they still focus almost exclusively on states or governmental actors.

Given the dominance of state-centric approaches, the CFSP literature markedly differs from that in the second camp concerned with economic and social

issues. While intergovernmental approaches are still being used on this side of EU studies as well (e.g., Moravcsik 1999, Moravcsik 1997), their utility has increasingly been questioned by EU scholars in recent years and prompted a turn to governance and network governance models. Rather than assuming that policy fields can be neatly divided and that state executives are in control of political processes, students of European integration now assume (1) that the EU is a system comprised of multiple levels, be they territorial – (sub-)national, supranational, and international – or functional, that (2) interdependencies and overlapping competencies exist between these levels, and that (3) supranational actors, semi-autonomous legislators, regional as well as private actors take part in the decision-making (e.g., Marks, Hooghe, and Blank 1996).

Similar to research on first pillar issues, we also argue for a governance turn with respect to the CFSP in this paper. While intergovernmentalist approaches are still valuable, they are ill-suited to capture recent developments within the second pillar, including the growing impact of the European Commission (EC) and the European Parliament (EP), the process of “Brusselization” (Nuttall 2000; Allen 1998; or Hill and Wallace 1996), and the increasing influence of private actors on foreign and security policy-making (Smith 2003; Webber, Croft, Howorth, Terriff, and Krahmman 2004; or Krahmman 2003). Moreover, since EU Member States themselves have begun to dismantle the pillar structure, governance approaches seem even more appropriate. They would allow us to overcome the conceptual divide between the external and internal dimensions of EU policy and, thus, get caught up theoretically with empirical developments.

To make a case for the viability of governance approaches in second pillar studies, we will focus on the European Code of Conduct on Arms Export which has been adopted in 1998 and consists of eight different principles that Member States should honour when exporting conventional weapons to third countries. We will show that intergovernmentalist approaches are well-suited to explain the emergence of the Code, but are insufficient to help us comprehend what has followed from the EU-wide arms export control agreement, because they ignore institutional dynamics as well as interactions between state executives, non-governmental organizations and supranational actors. In particular, state-centric approaches cannot account for

the tightening and widening of the Code's provisions, for the increasing willingness of EU governments to provide more information about arms exports to each other as well as their own publics, and the high degree of national adaptation with governments embarking on institutional reforms of their export control systems.

The paper is divided into three parts. In the first, we develop a set of expectations about the Code of Conduct drawing on state-centric approaches. These approaches would lead us to assume that the EU Code of Conduct was a lowest common denominator decision, which strengthened executives and restricted the ability of publics and parliaments to scrutinize and influence decisions on arms exports. We show that these expectations are not entirely unfounded, but demonstrate in the second part, that intergovernmentalist theories cannot explain the developments regarding weapon export controls since 1998, and that instead governance approaches provide a more comprehensive picture. They capture how an alliance comprised of NGOs, members of the European Parliament (EP) as well as smaller states used the Code to move Europeanization of arms export controls forward, and, by doing so, restricting state autonomy. We conclude with a summary of our findings and reflect on their implications for CFSP studies.

2. An Intergovernmentalist Perspective of European Export Controls

2.1. Theoretical expectations

State-centric approaches assume that states or rather their representatives are the most important actors and that the constellation of interests and the bargaining power of (large) Member States determine outcomes at the European level. Supranational actors, by contrast, are treated as agents, which are more or less strictly controlled by their principals, that is, the Member States (Pollack 1997). Private and local public actors matter only insofar as they shape national interests. Most instructive in this regard is the liberal intergovernmentalist theory of Andrew Moravcsik which models EU decision-making as a two-level game: In the first game, which takes place at the domestic level, sectoral societal groups formulate the interests of states, who then enter with these into negotiations at the European level, that is the second game, where sectoral groups no longer matter (Moravcsik 1997).

Two-level games are demanding for state executives because they require both consensus at the international level and the support of winning coalitions at the

national level. Nevertheless, they also enhance the power of state executives who are the sole link between the international and the domestic level and who, as a result, can manipulate the flow of information between both levels (Moravcsik 1994; Putnam 1988, 452). At the international table, executives can distort the facts about the balance of forces at home to get a better deal (Zangl 1995, 397), and at the national table, they can misrepresent the constellation of forces in international negotiations to obtain support for otherwise unpopular policies.

Building on these assumptions, scholars of European integration have developed propositions regarding the consequences of policies agreed upon at the European level, two of which are particularly pertinent for the European Code of Conduct case. The first has been developed by Fritz Scharpf (Scharpf 1993). Hypothesizing about the impact of the Single Market initiative of the 1980s, he predicted two developments. On the one hand, Scharpf expected a “race to the bottom” in form of national de-regulation. In light of growing competition and due to the autonomy enjoyed by supranational institutions, such as the EC, national regulations which stand in the way of a common market would be dismantled. On the other hand, Scharpf predicted that re-regulation at the European level would be hampered due to unanimous decision-making rules in the Council.

At a first glance, Scharpf’s hypothesis seems to presuppose autonomous supranational actors, and thus, neither be compatible with state-centric approaches nor applicable to the second pillar where the role of the EC or EP is restricted. At a second glance, however, this proposition is instructive. First, arms exports is a cross-pillar issue; it involves matters affecting both the Common Market and the Common Foreign and Security Policy. Second, Scharpf acknowledges that in the case of the Single Market, the supranational institutions were not acting autonomously. Instead, confronted with growing competition from the U.S. and Japan in the 1980s, Member States wanted these supranational actors to advance the Single Market Programme (see also Garrett/Weingast 1993). What follows from this in terms of hypotheses?

Conditions in the armament sector in the 1990s were strikingly similar to those that had led to the establishment of the Common Market a decade earlier: National markets had become too small, meaningful economies of scale were impossible to

establish, and the defence industry was in danger of being eradicated by American competitors. We would therefore expect (1) that the process of market creation was moving faster than the process of market regulation; (2) that Member States with fairly sophisticated regulatory systems came under pressure to weaken their national export controls, and that (3) re-regulation on the European level was curbed by Member States with the least sophisticated export controls. With respect to the supranational institutions, we would expect Member States to be less likely to entrust the EC or the ECJ with similar competences as in the case of the Single Market given the sensitivity of armament markets. Instead, we would hypothesize that they choose alternative instruments to open markets.

Regarding the second state-centric proposition, we draw on Klaus-Dieter Wolf's thesis of the *Neue Staatsräson* (Wolf 2000). According to Wolf, heads of states and governments invariably strive to increase their autonomy vis-à-vis other executives (external autonomy) and vis-à-vis their own societies (internal autonomy). Given this tendency, Wolf concludes that executives will enter institutionalized cooperation and agree to supranational policies if they expect their losses in external autonomy to be compensated by gains in internal autonomy.¹

In line with Wolf's argument, we would expect that with the establishment of a European armament market, opportunities for parliamentary control and public scrutiny of arms exports to become less, especially in countries with high regulatory standards, such as Germany or Sweden. Furthermore, since publics and parliaments are usually the driving force behind uniform and strict export controls, while executives are interested in flexibility and leeway, we also assume that executives use the discretion gained by international cooperation in order to lower the arms export standards and to create loopholes.

2.1. Empirical Observations

a) Europeanization of the Armament Industry

¹ Andrew Moravcsik (Moravcsik 1994) as well as other intergovernmentalists concur with Wolf on this point and assume that European policies will strengthen the executives and reduce the ability of national parliaments and publics to hold their governments accountable.

The field of European armament cooperation is dominated by three major armament producers: France, Great Britain, and Germany. While the first two have been major arms exporters--governments in both countries have been actively promoting the sale of arms to Western as well as non-Western destinations--Germany's arms exports to "areas of tension"--basically to non-Western destinations--have been restricted since the early 1970s by comparatively strident export control regulations.

Until the 1990s acquisition and trade of armaments within Western Europe remained firmly under the control and jurisdiction of the Member States. While in the aftermath of the Single European Act, other market sectors began to be liberalized, heads of states and governments relied on Article 223 of the Treaty of Rome (Article 296 of the Amsterdam Treaty) to protect what for some EU countries constituted a strategic part of their economy. Granting Member States the right to take measures to protect their security as far as the production and sales of armaments is concerned, Article 223 was used, in fact, to such an extent that most goods acquired by the armed forces (even rather mundane ones such as combat boots) were exempted from the rules of the Common Market and that attempts by both the EC and the European Court of Justice (ECJ) to move to a more restrictive interpretation failed. Governments only started to change their positions in the early 1990s.

With the end of the East-West conflict, shrinking national defence budgets, a flat world market for armament goods, and increasing unit-costs for the development and production of new weapons systems, the national organization of armament production became untenable. Moreover, confronted with growing international and American competition decision-makers in European capitals and representatives of the industry alike concluded that the survival of the arms industrial base in Western Europe could only be guaranteed if national barriers were eroded and larger markets created (Walker and Gummett 1993; DeVestel 1995).² Agreement notwithstanding, the sensitive nature of the defence sector and differences between Member States with competitive, non-competitive and no meaningful defence industries as well as those between countries with an Atlantic and ones with a more European orientation rendered radical solutions like the abolition of Article 296 impossible (Schmitt 2003).

² A 1992 study commissioned by the EC estimated the savings effects of a single armament market to be 9,3 billion annually (Rohde 2004, 7).

Instead, EU Member States embarked on a step-by-step process of increased transnational cooperation.

Milestones, in this respect, were the creation of the Western European Armament Group in 1992, the founding of OCCAR (Organisation Conjointe de Coopération en Matière d'Armement) in 1996, the Letter of Intent (LoI) framework agreement of six major arms producers in Western Europe and the creation of the European Defence Agency in 2004. While these initiatives failed to meet all of the high-flying expectations of European decision-makers (Moravcsik 1993), they nevertheless dented national barriers to a considerable degree and accelerated the consolidation of the transnational defence market and industry.³ If the European aerospace market counted still up to 30 companies in the early 1990s, it had shrunk to ten by the end of the decade with two major players—EADS and BAE—dominating the field.

Recently, additional initiatives to establish common rules for the acquisition of armament goods have been launched with the hope to erode the last major obstacles to a functioning European market in the area of defence: While the EC is drafting new regulations which would restrict the scope of Article 296, Member States follow a different route. They have recently agreed on a voluntary code of conduct on defence procurement to be supervised by the European Defence Agency.

b) Europeanization and National De-Regulation in the Case of Germany

Although the process of transnational cooperation and consolidation of the armament industry has just started, it is already beginning to undermine the national export controls in countries with advanced regulatory standards, including Germany. Given the country's demanding regulatory system, companies feared that they would be unable to compete on an equal footing with their French and British counterparts and be excluded from European mergers, or that their executives would decide to move the production of weapons to European countries with more relaxed export control standards (Davis 2002, 93). German decision-makers were not immune to these fears and searched for creative solutions of how to maintain a competitive defence

³ Noteworthy in this regard is the system of general licences which heads and of states and governments agreed to in the LoI-Framework and which allows for the free transfer of components of armament systems.

industry while at the same time preserving high export controls. According to some observers, German governments resolved this conflict by putting the interests of the defence industry first and by creating loopholes in national export standards (Brzoska and Moltmann 2005, 5). For example, responsible governmental agencies declared parts that had been produced by domestic defence companies but incorporated into weapons system in a third country as a new product to which German regulations did not apply. The German government also took advantage of loopholes resulting from international cooperations. For example, when negotiating executive agreements it renounced in many cases provisions which would have restricted the cooperation partner from exporting the commonly produced weapon system to third countries (Schmitt 2000, 74; and Brzoska and Küchle 2002, 11).⁴ Finally, experts already speculate that the Lol framework agreement might be used in a similar fashion to circumvent Germany's demanding export controls. Because the 'white lists' that are part of the agreement and which name the countries to which commonly produced weapon systems might be exported remain confidential, they may allow executives to undermine their own declaratory policies. Given the problems with and the weakening of national export controls, attempts have been made to re-regulate arms exports at the European level. Most far-reaching in this respect is the EU Code of Conduct on Arms Exports.

c) Re-Regulation on the European Level: The EU Code-of-Conduct on Arms Exports (1998)

Established in 1998, the European Code of Conduct on Arms Exports consists of four elements: The first part contains the preamble, the second lists eight criteria which Member States should honour when delivering armaments to third countries. The third part stipulates the operative provisions according to which Member States are obliged to inform each other about rejected arms export applications. In case a Member State intends to undercut the denial of another member, that is, if it intends to substitute a denied transaction with an "essentially identical transaction," it is obliged to consult with the Member States that had denied the arms transfer in first place. Should the undercutting country decide to go ahead with the transaction, it

⁴ For example, the Schmidt-Debré agreement of 1972 allowed the French-German company Euromissile to export its product to destinations like India and Iraq.

shall inform this (and only this) country. The fourth part asks Member States to compile and exchange information regarding their arms exports on a confidential basis. Moreover, it requests of them to provide national annual reports to the Working Group on Conventional Arms (COARM), which, in turn, prepares on their basis a consolidated version for the Council of Ministers.

The EU Code of Conduct dates back to the early 1990s. Responding to the end of the East-West conflict and the embarrassing disclosures that Western States had heavily armed Saddam Hussein's Iraq prior to the second Gulf, heads of state and governments addressed the issue of arms exports at their Council meeting in Luxembourg in June of 1991 and agreed on seven criteria that responsible agencies should consider before issuing export licences (Council of the European Union 1991). They added an eighth criterion at their Council meeting in Lisbon in June of 1992 (Council of the European Union 1992). Shortly after these achievements, however, the climate for arms control became less favourable, and further progress was hampered by Member States' conflicting interests.

Germany, for example, aimed for an ambitious and binding European export control system for both dual-use goods--sensitive industrial items which can have a civilian application but also be used for military purposes--as well as conventional weapons which would preserve its domestic standards while at the same time removing the strategic disadvantage of its armaments industry. France and Great Britain, by contrast, were opposed to stringent Community-wide rules. Given this deadlock, EU members decided to separate negotiations on conventional weapons and dual-use goods. At their Council meeting in December of 1994 heads of state and government adopted a regulation and a Joint Action for the control of exports of dual-use goods but left the issue of conventional weapons untouched (Council of the European Union 1994b, 1-7; and Council of the European Union 1994a, 114).

Given their disagreements, it may come as a surprise that European foreign ministers in May of 1998 adopted the EU Code of Conduct on Arms Exports. Their decision to do so appears to be incompatible with state-centric approaches at first, but can be explained with changes in interests of major Member States. In particular, Great Britain moved from being a vocal opponent of such a Code to being a leader and using its EU presidency in the summer of 1997 to introduce a proposal for an

EU-wide armament control system. The change in position was reflective of a change in government from Tories to Labour, which had already promised an “ethical foreign policy” and to work for the introduction of a European code as part of a responsible arms trade during the party’s election campaign (Millar 1997). Moreover, the British initiative was also a result of the new national criteria for arms export licences that the Labour government had adopted in response to the release of the so-called Scott report concerning British arms sales to Iraq. Fearing a disadvantage in the international market and that other exporting countries would be able to seize the U.K.’s market share, the British government tried to Europeanize its new export control policy (Arms Control Association 1998).

In addition to Great Britain, France became a co-supporter of the Code of Conduct for reasons, however, that are less readily apparent. In official statements Paris, too, stressed ethical considerations (Carmona 1998, 17). These declarations were not without reasons, given the negative public reactions to scandals like the delivery of weapons to the Hutu-regime until May 1994 and to Iraq until shortly before the occupation of Kuwait. However, France’s acquiescence also had other sources. First, Paris expected that the Code could be turned into a useful European instrument to fend off perceived American attempts to control and dominate the arms export policies of its allies (Sandrier and Martin 2000, 77). Second, French decision-makers assumed and calculated that, given France’s veto-position in the Council of Ministers, they would be able to control the composition of the Code. This calculation proved correct. While the draft that had come out of COARM still contained in brackets most of the more demanding stipulations pushed by arms control friendly countries, the final text, approved by the foreign ministers in May 1998, looked rather different. “In the face of threats by France to jeopardize the whole arrangement, all the weaker options [had been] chosen” (Davis 2002, 101). For example, instead of being binding, the Code left it up to the exporting states to decide whether a particular arms transfer violated the agreed upon criteria. In addition, it allowed transactions which had previously been denied by other Member States and stressed confidentiality, thereby reducing the chance that states could scrutinize each others’ decisions.

To sum up: So far, we have found evidence for the above mentioned state-centric propositions. Functional constraints propelled the process of de-regulation in the armament sector. In response to increasing competition and constraints imposed by national export control systems, state executives used the European level to enhance their flexibility domestically, and--as the case of Germany illustrates--to undermine traditional policies on arm exports. Finally, we also find support for the proposition that countries with the least demanding export controls—in this case France--would be able to hamper efforts to re-regulate arms sales at the European level.

3. Governance Approaches and European Arms Export Controls

Given the constellation of state interests and the rather vague and weak regulations of the original Code, the developments since its establishment in 1998 are surprising. Member States agreed on a precision and tightening of its rules, increased internal as well as external transparency with respect to their arm exports, and are on the verge of turning the Code into a binding agreement. Furthermore, as we will demonstrate in the hard case of France, the EU Code contributed to both improvements in national control systems as well as to more transparency in hitherto low regulatory countries. In other words, what we observe since the late 1990s is not a “race to the bottom”, but rather a European-wide improvement of national export standards. In the following pages, we briefly describe these developments before turning to governance approaches to explain our puzzle.

3.1. Empirical Observations

a) Developments at the European Level Following the Adoption of the EU Code of Conduct

Following the adoption of the Code in 1998, several changes occurred that are counter-intuitive from an intergovernmentalist perspective. First, Member States began to develop more precise rules with respect to its application. For example, they agreed on a common list of military goods to which the Code should be subject, defined central terms like “essentially identical transactions” and clarified important issues, such as what constitutes a denial. These amendments to the Code were codified and published in the fourth and fifth annual reports of the Council in a

Compendium of Agreed Practices (Council of the European Union 2000; Council 2002 and 2003), which in 2004 was transformed into a User's Guide and continuously updated. The provisions of the Guide constituted not only an improvement of the denial notification and consultation system, but they also clarified the responsibilities of the Member States.

Second, Member States also changed the scope of the Code. While the original document applied to the shipment of tangible goods from Europe only, it now pertains to arms brokering, transit transactions and the transfer of intangible technology, such as the shipment of blueprints via the internet. Furthermore, following the discussions on lifting a decade old arms embargo against China, EU Member States developed a tool-box of instruments of how to handle countries for which the EU had decided to lift an existing arms embargo. This toolbox is going to become part of the Code.

Third, following an outreach campaign, de facto membership of the Code has been increased. In 1999 Canada, Turkey and the United States embraced the Code of Conduct (Council of the European Union 1999) and in 2005, nine additional countries outside of the EU aligned themselves officially with the criteria and principles of the Code some of which exchange data on their arms transfer with EU Member States. Finally, Member states are on the verge of making the Code more binding by giving it the legal status of a Common Action.

While these changes in rules and scope regarding the Code of Conduct are surprising, even more puzzling is the growing amount of information that Member States are increasingly willing to share with both each other (internal transparency) as well as with their publics (external transparency). With respect to the former, EU governments moved (1) from delivering reports to the Council that followed at first a "home made" structure to ones that adhered to common guidelines, (2) from providing rather little to more extensive information on their arms exports, and (3) from opposing to agreeing to the establishment of a central data pool in the Council Secretariat. In 2001, they also decided that in the case of an undercut, they would no longer only inform the original supplier which had denied a transfer, but "to the extent compatible with national considerations and on a confidential basis" all Member States (Bauer/Bromley 2004: 16).

Regarding external transparency, Member States agreed in 1999 to the publication of the consolidated Council report, something individual governments had vehemently objected when the Code was first negotiated. Both the quantity and the quality of data provided in those reports increased from year to year. Furthermore, governments allowed EP involvement. MEPs now obtain copies of the Council reports, which they debate and comment on. Finally, Member States also changed their national reporting systems. While in the late 1990s few of them published their national reports on arms exports, most of them do by now.

b) Changes at the National Level following the Adoption of the Code of Conduct: The Case of France⁵

Contrary to the expectation that the Code of Conduct would weaken national export regulations, it led to an improvement. To illustrate this trend, we focus on France, which in many respects can be viewed as a hard case regarding arms exports. Not only is France the most important European arms supplier, but its defence industry depends more than that of Great Britain on exports to non-Western destinations. Moreover, France's export control policy has been rather liberal. And although arms export scandals had shaken the French public as well, the country did not experience a political shift comparable to that in Great Britain with the election of Labour.

If one looks only at how arms exports have developed numerically, the impact of the Code appears to be rather limited. Although French armament exports declined according to SIPRI after 1998, they started to rise again after 2000, though have not yet reached the former level. Furthermore, a detailed analysis reveals that the designations of French arms export have not (yet?) changed considerably. Data on undercuts collected from the annual EU reports are also subject to different interpretations. Between 1999 and 2003, France intended in 55 cases to supply arms which had been denied by other European countries. Of those 55 planned transactions, 20 actually materialized. Whether the glass is half full because France has in 64% of those controversial cases abandoned plans of an arms deal, or whether the glass is half empty because in 36% of those cases, France has delivered

⁵ We would like to thank Barbara Schumacher for her research assistance with respect to the case of France. For a more detailed discussion of the reforms the French government undertook regarding its arms export controls in response to the European Code of Conduct on Arms Exports, see Dembinski and Schumacher (Dembinski and Schumacher 2005).

the weapons anyway, is debatable. What can be said with more certainty, however, is that seven years after the Code has been adopted, data on French exports do not indicate firmly whether there is a reversal of the trend in the direction of a “moral and disciplined arms export policy. A different picture emerges, however, if we look at France’s arms export regulations and how they have changed since the adoption of the Code.

In France, responsibility of arms exports rests with the Commission Interministerielle pour l’Étude des Exportations des Matériels de Guerre (CIEEMG). Until the late 1990s, decision-making within the Commission was based on a law dating back to 1939, according to which the Secretary-General of Defence, representing the Prime Minister, presided while the Ministries of Foreign Affairs, Defence and Finance delegated. Furthermore, CIEEMG offered its advice on export applications of individual weapons manufacturing companies to the Secretary-General who would then decide on whether a licence should be granted or declined. This type of arrangement was officially justified with the argument that arms exports formed an integral part of France’ foreign policy strategy and decisions taken in this area were a highly political act.

Prior to 2000, the criteria based on which CIEEMG would formulate its advice for the Secretary-General used to be classified, a practice its members explained with the fact that “the internal organization of the state ought not be revealed to outsiders” (Sandrier and Martin 2000, 24). The secrecy and the discretion granted to CIEEMG regarding arms export decisions, nevertheless, came at a price, as members of the Committee themselves admitted. In cases where humanitarian aspects or considerations regarding regional stability conflicted with strategic calculations, such as economic benefits, this system worked against the former (ibid.).

With the introduction of the Code at the European level, France embarked on reforms of its export controls. Three elements of this institutional reform are particularly worth mentioning: First, the institutional separation between promoting and controlling arms exports was strengthened. While prior to 2000, a powerful organ within the Ministry of Defence, the DGA (Délégation Générale pour l’Armement) in charge of supporting arms exports had considerable influence on

decisions taken by the CIEEMG, its role within the CIEEMG was restricted and that of DAS (Délégation aux Affaires Stratégiques) strengthened. Contrary to the DGA, the DAS not only comprised military officers, but also civil servants and academics who were generally more in favour of limiting arms sales. This realignment was given further weight with the transfer of the important “Secrétariat des Exportations d’Armement et des Biens Sensibles” from the DGA to the DAS. Moreover, the institutional influence of the DAS was further strengthened when it became responsible for the conduct of international export control negotiations (Sandrier and Martin 2000, 98).

Second, CIEEMG à Haut Niveau was established. Consisting of the Prime Minister and the Directors of Cabinet of the various ministries, CIEEMG was given the task of developing both country lists and guidelines that would make it possible to use the EU Code of Conduct in case of individual applications. Moreover, new decision-rules were introduced which limit the discretion of the Prime Minister. In cases where the representatives of the Ministries unanimously agree that a licence should be rejected or granted, they cannot be overruled by the Prime Minister. Only in cases where the Ministries disagree, does the he or his representative have the right to decide. Third, since 2000 members of CIEEMG also have to explain and justify their position whenever they object to an application. In other words, pronouncing support for weapons exports has become more costly.

Apart from these reforms, the EU Code of Conduct also has contributed to more transparency and opened up opportunities for the French parliament and public to participate. Prior to 2000, the French government neither provided information on arms exports nor discussed those issues. Since then, the government has adopted a more liberal information policy. Most important, the Defence Ministry agreed for the first time in 2000 to present detailed annual reports on France’s arms exports to Parliament and Senate. Since then, the opportunities for the legislative branch to make its voice heard have significantly improved. For example, it has become common practice for the Minister of Defence to engage in discussions with members of the Parliamentary Commission on National Defence and the Armed Forces. Generally, these discussions take place when the national report on French arms exports is published and turn into a critical examination of it.

The developments at the European level and the national level following the adoption of the Code of Conduct on Arms Exports are puzzling. Governments voluntarily and in the absence of threats or side-payments moving from a rather lenient to a more stringent and soon to be binding European arms export control regime, bringing their own regulations in line with the Code's provisions, and providing information to each other and the public, does not bode well with an intergovernmentalist perspective and its underlying assumptions. Instead, we suggest that a governance perspective can help to make sense of these, what we take to be costly moves, on the parts of governments.

3.2. Theoretical Assumptions:

Governance approaches have been developed by European integration scholars in response to intergovernmental approaches in the early 1990s (e.g., Bulmer 1994; Armstrong and Bulmer 1998; Eising and Kohler-Koch 1999; Marks, Scharpf, Schmitter, and Streeck 1996; Grande 2000; Hooghe and Marks 2001).⁶ Originating in public policy theories, they capture changing forms of political coordination and regulation on the international, national and regional level. With respect to the European Union, governance denotes both the "dispersion of authoritative decision-making across multiples [...] levels" as well as non-hierarchical interactions among public and semi-autonomous private actors (Hooghe and Marks 2001, xi; Grande 2000).

Governance approaches differ from intergovernmental approaches in a number of respects. First, they challenge the assumption that states are central to and in control of decision-making (Kassim and Menon 1996). Instead, governance approaches assume that both private and public actors located at different levels and equipped with different resources take part in the process (Grande 2000, 18). Second, governance models no longer treat the Euro polity as dependent variable and ask how EU institutions and laws come about, but rather conceive of it as independent variable (Jachtenfuchs 2001, 245). This means, on the one hand, that supranational institutions--particularly the EC and the ECJ—are presumed to have a

⁶ For excellent summaries as well as critiques of governance approaches, see, for example, Kohler-Koch and Rittberger (Kohler-Koch and Rittberger 2006), Jordan (Jordan 2001), or Jachtenfuchs (Jachtenfuchs 2001).

life of their own, are a source of Europeanization, and exert influence or pursue own interests. On the other hand, conceptualizing the EU as an independent variable implies that its directives, regulations, rules and practices affect policies, politics and even the make-up of the national level polity.

Third, contrary to the proposition that decisions are the product of intergovernmental bargains in which the economic power and the intensity of states' preferences are decisive, governance approaches emphasize that the EU is a negotiating system (*Verhandlungssystem*). Rather than through side-payments and threats, those taking part in decision-making convince each other through more open methods of coordination, the exchange of information and models of best practices or what some refer to as "new modes of governance" (Eberlein and Kerwer 2004; Trubek and Mosher 2003).

Fourth, governance approaches reject the state-centric argument that the national and international level can be clearly separated. States, according to Marks, Hooghe and Blank (Marks, Hooghe, and Blank 1996, 347), "are an integral and powerful part of the EU, but they no longer provide the sole interface between supranational and sub-national arenas, and they share, rather than monopolize, control over many activities that take place in their respective territories." Put differently, central governments are no longer the only link through which demands and information are channelled because private actors and parliaments are either directly involved in the political process at the European level or else monitor European decisions closely. The opportunities to mobilize beyond and circumvent the state increase as formerly national policy areas become Europeanized (Sandholtz and Stone Sweet 1998). NGOs, interest groups as well as other societal actors contribute to the development of new rules and norms at the European level and form an embryonic European public space which is connected via networks of NGOs, associations, epistemic communities and the media with the national level. Their comments and their criticism get transported back via transnational channels to the domestic level where they can be used by societal groups to formulate legitimate demands for their governments.

Thus far, governance approaches have exclusively been employed to shed light on political processes within the first pillar. However, the number of scholars

calling for its extension and application to the domain of foreign and security policy is growing (e.g., Webber, Croft, Howorth, Terriff, and Krahmman 2004; Smith 2003; Jordan 2001). Before we follow their advice and employ governance approaches for the analysis of policy fields in the second pillar, we need to ask whether such a move is even appropriate in light of two apparent differences. First, in contrast to the first pillar, where the EC plays a pivotal role as initiator and administrator of public-private networks, its autonomy and abilities to engage in such activities are more restricted in the CFSP. Second, in the first pillar, most private participants of European networks are stake-holders in the sense that their interests are directly affected by decisions taken at the European level. By contrast, most of the individuals on whom EU foreign policy has an impact are outside of the European polity. Hence, the status of those actors that can raise their voice--most of them NGOs--as stake holder is less unequivocal.

Despite these differences, we find that the similarities are nevertheless sufficient so as to justify the employment of governance approaches. First, the nature of foreign policy is changing and the boundaries between domestic and foreign policies are becoming increasingly blurred. Classical diplomacy, defined as the art to influence the network of relations among autonomous governments, is giving way to a modern understanding of transnational relations where state executives are increasingly concerned with growing complexities as well as interdependencies and are confronted with new security issues, such as environmental threats, small arms, or human rights violations which demand a direct access to societies of other states (Krahmann 2005). In light of these changes, it seems plausible that governments accept private actors as partners to tackle transnational problems and as a means to influence societal conditions in other states. Hence, private actors are no longer considered as just a nuisance which limit the autonomy of state executives. Instead, they are increasingly valued by governmental officials because they possess unique abilities and resources (e.g. information, legitimacy, neutrality, etc.) with which they can help them to solve transnational problems more efficiently (Krahmann 2003).

Second, and as we will illustrate below, NGOs and interest groups concerned with foreign policy issues have in astonishing numbers established a presence in

Brussels. Whether they are stake holders in the narrow sense or self-declared advocates of the common good, as some critics claim, may be a matter of degree and not be decisive in principle as long as state representatives react to their demands and accept them as partner. Third, due to the growing role of the EP and the EC, but also because of the establishment of new committees and the introduction of additional instruments or procedures in recent years, the second pillar is slowly turning into a highly institutionalised environment (Smith 2004). It is against the backdrop of these developments, that we consider the employment of governance approaches to be justified. While we acknowledge that differences exist between the first and second pillar regarding the constellation of actors or the level of institutionalization, we do not conceive of them as so big as to render the application of any theoretical framework other than intergovernmentalist impossible. In fact, our research on the Code of Conduct on Arms Exports substantiates the appeals of scholars to extend governance approaches to the second pillar.

As we illustrate in the following pages, the Europeanization of arms exports and the adoption of the Code of Conduct provided opportunities for NGOs and parliamentarians to engage at the European level, hold governments accountable, and limit their autonomy. Moreover, the Code also prompted changes in Member States' behaviour vis-à-vis each other. EU governments increasingly exchanged information regarding their weapons sales and engaged in a beauty contest with respect to best practices of national reporting and weapons export control systems. Finally, and as we will demonstrate in the case of France, the EU-wide system of arms export controls induced changes at the national level and empowered civil society organizations as well as parliamentarians to exert pressure on state executives to provide more information about armament sales to other countries.

3.3. Governance Approaches and the Code-of-Conduct since 1998

a) The Formation of Non-Governmental Networks and Growing NGO Pressure

While NGOs had accompanied the development of the Code from its early beginnings (Joachim 2005), their presence at the European level and their influence on Member States increased significantly once the Code had been adopted. In line with the co-evolution argument advanced by B. Kohler-Koch (Kohler-Koch 1996) and others (e.g., Stone Sweet and Sandholtz 1997; or Eichener and Voelzkow 1994) non-

governmental organizations started to develop transnational networks when arms export controls became Europeanized and competences in the area of security, in general, and arms export controls, in particular, were shifted to the European level. Grass-roots groups formed European networks, including the European Network for Civil Peace Services (EN.CPS), the European Platform for Conflict Prevention and Transformation or the European branch of the International Action Network on Small Arms (IANSA). NGOs and think tanks alike founded branch offices in Brussels, such as ISIS-Europe, and created a European Federation--the European Peacebuilding Liaison Office (EPLO)--with a permanent presence in the European capital. Furthermore, Brussels-based public policy institutes, such as the Center for European Policy Studies extended their portfolio to include security issues. The defence industry, too, strengthened its presence by fusing three smaller interest representations into one powerful lobby group.

The Code of Conduct empowered the newly formed NGO networks and organizations which used it as a focal point for their activities. In particular, by identifying the 'worrying gaps' between common aspirations, as expressed for example in the preamble of the Code, and the sobering reality, NGOs increased their leverage on states. In 1998, for example, Amnesty International, BASIC, Christian Aid, Oxfam, Saferworld and the World Development Movement circulated among policy-makers and via the internet a paper titled "Final Analysis: EU Code of Conduct on Arms Exports" in which they expressed their disappointment over the European-wide control regime because it "[fell] short of the essential standards for an effective code of conduct" and listed, what constituted in their eyes, its major shortcomings, including the failure of governments to agree on a list of major conventional weapons to which the Code should be subject to and multilateral consultations in cases of denials, the Code's limited transparency, especially with respect to parliamentary accountability and scrutiny, and its non-binding character (Amnesty International, BASIC, Christian Aid, Oxfam, Saferworld, and World Development Movement 1998; see also Bauer 1998).

In addition to criticizing the Code itself, these as well as other organizations continuously and consistently commented on the Council reports about arms exports, issuing recommendations on how to close loopholes in existing controls or criticizing

the lack of Community-wide controls regarding end-use and arms brokering (Taking Control 2004). Saferworld, for example, published an in-depth study about national arms exports practices in 2000. Drawing on a survey of transparency mechanisms in each Member State as well as information provided by partner NGOs, parliamentarians and EU governments, the organization commended governments on the progress they had accomplished regarding transparency due to their national reporting, but also pointed to discrepancies which continued to exist in terms of scope, quality of the reports and scrutiny mechanisms. Moreover, Saferworld identified examples of best practice which could serve as benchmarks at the European level, such as Great Britain, Italy and the Netherlands in terms of national reporting, and Sweden regarding parliamentary scrutiny (Mariani and Urquhart 2000). The proposals of the NGOs resonated with governments who used them as a basis for discussion and who, as already demonstrated earlier, amended the Code with respect to denials, weapons lists and transparency.

Coalitions comprised of public and private actors are considered a hallmark of governance and a common pattern in the first pillar. These types of coalitions can also be found in the second pillar. In the case of the Code of Conduct, they consisted of NGOs and like-minded states with the former offering information and the latter granting access or using civil society organizations to further their own interests. For example, during its EU-Presidency the British Labour government had worked closely with a coalition of London-based NGOs to publicize the Code of Conduct to publicize it and mobilize support for its adoption (UK Presidency Project 1998b; UK Presidency Project 1998a). Moreover, the decision to publish the first consolidated report followed coordinated pressure from NGOs and arms control friendly countries, such as Sweden and Germany. And when the Dutch presidency declared the harmonization of national reporting as one of its priorities, it asked the renowned think-tank SIPRI to compile a report on the deficiencies of the existing national reporting systems as well as on ways to improve it (Gemeinsame Konferenz Kirche und Entwicklung 2004, 38; Bauer and Bromley 2004). Pressure from NGOs and like-minded states, however, were not the only reasons, why EU-governments strengthened the Code of Conduct and agreed to publicize the information contained in the Council and national reports.

b) Institutional Effects: Beauty Contests, Best Practice and Peer Pressure

In line with governance approaches, we find that the Europeanization of arms exports empowered previously less influential actors, such as supranational institutions and small states. Even though the EP had never been mentioned in the original Code, Finland, acting in its function as EU presidency, decided to submit the report to the EP's Subcommittee on Security and Defence. One year later, Sweden followed suit, making it difficult for later presidencies to reverse what had become a common practice (Bauer 2004, 145). And, there are signs that this kind of exchange will even become even more regularized and be more consequential. In the section on further progress of the seventh report, Member States expressed their willingness to develop a dialogue with EP on the future evolution of the Code.

Also, mechanisms like *best practice, beauty contest and peer pressure*--well known from the Method of Open Coordination--further eroded national autonomy and contributed to greater transparency. Initially merely conceived as a loose frame of reference, the Code of Conduct soon became a guide for good behaviour and an incentive for Member States with already considerable degrees of transparency to submit "good" or "exemplary" reports. These types of reports, in turn, put pressure on other governments, which had been reluctant to reveal information about their weapon export practices. Contrary to the beginning when the Council received national reports that contained different and less comparable information, making it difficult to compile a meaningful consolidated report, governments provided much more standardized reports as time went on. Consequently, both the quantity and quality of data provided in the Council reports increased from year to year as well. While the first such report had just been nine pages long and contained (incomplete) and rather rough accumulated data on export licences, their value as well as the number of denials and consultations, the most recent report published in November 2005 was 373 pages. It contains very detailed information about suppliers, recipients, types and value of delivered arms. Moreover, it also lists the denials and the consultations that were initiated or received (Council of the European Union 2005).

Peer pressure and beauty contests not only contributed to more internal transparency, but also significantly enhanced its external dimension by prompting

Member States to make information about their arms exports available to parliamentarians and citizens. While until the late 1990s only Sweden had published its national reports, most EU Member States followed its example in subsequent years. Concurrent with the Council reports, national ones too have increased in size. For example, Germany's national reports changed from 100 pages in 1999 to 150 in 2004 and from providing some to quite detailed information.

c) Growing Interdependencies between the European and the National level

Governance engendered research regarding the first pillar shows that the Europeanization of policies leads to growing interdependencies between different territorial levels. With the establishment of transnational networks and the engagement of interest group, parliamentarians or civil society actors at the European level, the role of the state as the sole linking pin between the domestic and supranational level is withering. Information from and to the national arena becomes increasingly transported also through other channels. In the case of the European Code of Conduct we too find evidence for this. First, the autonomy and independence which States previously enjoyed regarding their arms exports is being eroded by NGOs, MEPs or other governments who use the national and Council reports as an occasion to scrutinize, applaud or criticise states and their positions.

Second, the establishment of European networks such as EPLO, EN.CPS, or IANSA, strengthens the position of private actors and parliamentarians on the national level vis-à-vis their executives because they now can obtain information about developments at the supranational level via their transnational connections. Hence, bad marks in beauty contests at the European level will have repercussions on the national level. For example, members of the *Assemblée Nationale* in France referred to standards of transparency in other European countries to demand more information from their own government (*Assemblée Nationale* 2002, 5). Also, when Sweden moved to publish its national reports, parliamentarians and NGOs at the national level identified it as a best practice to be emulated by other governments.

Furthermore, the links between the European and the national level increase the value of NGOs and legislators as transmission belts. As Member States recognize that working with NGOs might enable them to influence public opinion in other countries, even formerly closed governments embark on a dialogue with civil

society. In our case, developments in France are most instructive. Following the adoption of the Code of Conduct, French NGOs, which hitherto had campaigned on the national level only, became part of a European-wide network, and by doing so opened the French national public space up to European influence. Sensing new risks and opportunities, the French government, in turn, broke with its long-standing tradition and opened a dialogue with NGOs and think tanks. The DGA in cooperation with the French Think Tank IRIS (Institut de Relations Internationales et Stratégiques), for example, organized a seminar on French Arms Exports in 2002, something which would have been unimaginable a few years earlier.

4. Conclusion:

Our case demonstrates that the still rather state-centric research on the EU's CFSP could profit from a turn to governance approaches. Contrary to intergovernmentalist approaches which treat the Euro-polity as dependent variable, neglect private as well as supranational actors, rely on the assumptions of two-level games, and conceive of European decision-making mainly as preference aggregating, governance approaches start from opposite assumptions. They conceive of the EU and its institutions as independent variables, take into consideration the increasing institutional density of the European architecture, are cognizant of transnational networks and public-private coalitions, emphasize the multiplicity of links between different levels of decision-making, and assert that interactions and decision-making processes at the supranational level are preference transforming.

In the case of the European Code of Conduct the explanatory power of state-centric approaches was limited. They were able to shed light on state interaction prior to the Europeanization of the armament sector when the process of de-regulation moved faster than the process of re-regulation, outcomes of governmental negotiations reflected the lowest common denominator, and when international cooperation increased the autonomy of executives and reduced the level of transparency. However, these approaches were ill-suited for making sense of the developments following the adoption of the EU-wide arms export regime, such as the growing willingness of Member States to inform each other as well as their citizens about their weapons sales. For this part of the puzzle, governance approaches offered more comprehensive answers.

Concurrent with governance approaches, we found (1) that (large) states lost control over the regulation of the armament sector. The more institutionally defined roles empowered smaller actors, practices and procedures developed their own path-dependent dynamic, and mechanisms like best practice, beauty contests and peer pressure set in, the less likely were major arms producing countries to determine the course of events. (2) The involvement of NGOs at the European level changed the context in which states interacted. NGO networks and think tanks lobbied governments and influenced their agenda by providing expert knowledge and policy advice. More importantly, these transnationally organized groups changed the rules of the game for Member States by maintaining connections to and exchanging information with parliamentarians and representatives of civil society at the domestic level who, as a result, were able to hold their governments accountable for their policies at the European level. (3) Over time, states came to value the expertise and the communicative bridges NGOs could offer. Coalitions of like-minded states and NGOs emerged, with the latter providing valued information and the former granting access and support.

While the Code of Conduct on Arms Exports is a case where governance approaches do contribute to our understanding of European foreign policy, we nevertheless hesitate to generalize our findings. First, the field of export controls is a special case insofar as it is located at the border of the first and the second pillar. More research on other foreign policy issues is needed before we can determine with more certainty if what we observed with respect to the European arms export regime is common or rather unique. Second, we do not know whether the differences in the level of institutionalization and private actor participation, which evidently exists between the first and the second pillar, are due to the rather late emergence of the CFSP, and will thus narrow as time passes, or whether they are the reflection of more fundamental structural differences. In short, we deem it necessary that the existing void of knowledge on interest representation in the second pillar is filled by further research, before we advise researchers on CFSP to pull down the barriers completely and embrace governance approaches wholeheartedly.

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