

A Primer on the European Union and Its Legal System

Major Michael J. McCormick
Deputy Officer in Charge, United States Sending State Office
United States Embassy, Rome, Italy

Most Americans first heard of the European Union (EU) when twelve of its member countries introduced the Euro on 1 January 2002.¹ The EU, however, has existed for the latter half of the Twentieth Century. As the EU has evolved, so have the debates about its proper role in relation to its member nations. As one European commentator stated:

For some [the EU] is simply a set of intergovernmental institutions, useful for specific purposes, but without any wider implications. For others, it is a device in a strategy which has lost its purpose—that of cornering the USSR or containing Germany; for others it is a delusion of European unity which now has to be thrown off in order to preserve the natural and enduring primacy of the nation states; others think it is the transcending of evil in the lives of nations, a unity which reflects the greater good for individuals. Finally, there is the view that it is none of these, that it is something unique in relations between states which have retained their sovereignty and equality.²

It is still too early to tell if the EU will become a superpower, as some observers have predicted.³ The combined influence of the fifteen member nations, however, makes this possibility very real.⁴ This article is designed for Department of Defense

(DOD) attorneys still unfamiliar with the EU. It describes the history, evolution, and organization of the EU, and provides a brief explanation of how to research EU legal issues. This article is intended to give readers a better understanding of the EU, its history, its legal structures, and how to research EU law.

History of the EU

The history of the EU reflects the turbulent history of Twentieth Century Europe, and nations' efforts to stabilize the continent through economic and political interdependence.⁵ Even after Europe stabilized politically, nations continued to transfer economic political power to the EU in an attempt to keep pace with the global trend toward free trade and open markets. The EU today is a complicated supranational organization. Not surprisingly, some Europeans have opposed the perceived transfer of their national sovereignty to this new entity.⁶ The EU has responded with an ever-increasing amount of literature, attempting to promote and explain the complicated structure and activities of the EU.⁷

Origins of the EU

One of the first proponents of a united Europe was the French statesman, Jean Monnet. Monnet is commonly referred to as the founding father of European integration.⁸ He and other

1. European Union, *Europa, Euro Essentials*, at <http://europa.eu.int/euro/html/home5.html?lang=5> (last visited Nov. 26, 2002) [hereinafter *Euro Essentials*].
2. PAUL TAYLOR, *THE EUROPEAN UNION IN THE 1990s* 1 (1996).
3. Barbara Crutchfield George, et al., *The Dilemma of the European Union: Balancing the Power of the Supranational EU Entity Against the Sovereignty of Its Independent Member Nations*, 9 PACE INT'L L. REV. 111, 111-112 (1997).
4. Current members of the EU include Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxemburg, the Netherlands, Austria, Portugal, Finland, Sweden, and the United Kingdom. Thirteen other nations are in various stages of entry into the EU as "candidate" nations: Latvia, Lithuania, Estonia, Poland, the Czech Republic, Hungary, Romania, Bulgaria, Slovakia, Slovenia, Malta, Cyprus, and Turkey. European Union, *Europa, European Union at a Glance*, at <http://www.europa.eu.int/abc-en.htm> (last visited Nov. 26, 2002) [hereinafter *EU at a Glance*].
5. See *id.*; Convention for European Economic Cooperation, Apr. 16, 1948, 888 U.N.T.S. 142.
6. In Britain, for example, Former British Prime Minister Margaret Thatcher is the most prominent voice for the view that the EU is slowly destroying Britain's national sovereignty. *The Talk Show with Andrew Marr: Interview with Christopher Patten, EU External Relations Minister* (BBC television broadcast, Mar. 18, 2002), available at <http://www.bbc.co.uk/bbcfour/talkshow/features/chris-patten-transcript.shtml>. There is also a political grouping within the European Parliament whose manifesto opposes "a Federal Europe which would subject sovereign nations and take away the identity of European peoples." European Parliament, *Union for Europe of the Nations Group* (Dec. 2001), at http://www.europarl.eu.int/uen/en/stru/F_grou_en.htm. Another grouping "is open to people who are critical of further European integration and centralization." European Parliament, *Group for a Union of Democracies and Diversities*, at <http://www.europarl.eu.int/edd/gbframeset.html> (last visited Dec. 5, 2002).
7. See European Union, *Europa, Publications Portal*, at <http://www.europa.eu.int/publications/en/index.htm> (last visited Dec. 4, 2002).
8. TAYLOR, *supra* note 2, at 14.

European statesmen, such as Winston Churchill and the French politician Robert Schuman, believed that European nations needed to build effective international structures to prevent another devastating war in Europe.⁹ Monnet believed that a supranational government was the best way to accomplish this objective,¹⁰ stating that “[a] supranational entity has the power to make decisions that are binding on member states . . . even if those member states disagree.”¹¹

The first step toward European supranationalism was the European Coal and Steel Community (ECSC), signed in 1951. The founding member nations of this organization were Belgium, France, West Germany, Italy, Luxembourg, and the Netherlands.¹² The ECSC was designed to pool together the coal and steel resources of the member nations to improve economic efficiency and prevent political conflicts.¹³ The ECSC was successful on both accounts.¹⁴ This success encouraged European statesmen to believe that more interdependence would create more peace and prosperity.¹⁵

2. *The Treaty of Rome*

Europe first agreed to move toward economic union in 1957 with the Treaty of Rome.¹⁶ This treaty is still the foundation of the EU;¹⁷ it first created the European Economic Community (EEC) and articulated a vision for the level of economic cooperation that exists in Europe today.¹⁸

The Community shall have as its task, by establishing a common market and an eco-

nomical and monetary union and by implementing the common policies or activities referred to in this Treaty, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among member states.¹⁹

Europe seemed to be headed for rapid evolution in the 1950s. The parties to the Treaty of Rome signed a second treaty, creating the European Atomic Energy Community (EURATOM), the same day.²⁰ These nations hoped that the new agreements would elevate the economic and political power of Western Europe.²¹

3. *The Single European Act*

From the late 1960s to the early 1980s, the economies of Western Europe stagnated while those in the United States and Asia grew. With the reduction in its relative economic power, Europe's political status also fell.²² The member states began to discuss moving further toward economic integration to stay competitive. In 1986, they agreed to the Single European Act,²³ which marked the beginning of a true economic union. The

9. ALEX RONEY & STANLEY BUDD, *THE EUROPEAN UNION: A GUIDE THROUGH THE EC/EU MAZE* 2 (6th ed. 1998).

10. George et al., *supra* note 3, at 129.

11. *Id.* at 129 n.4.

12. Treaty Establishing the European Coal and Steel Community, Apr. 18, 1951, 261 U.N.T.S. 140.

13. *See id.*; RONEY & BUDD, *supra* note 9, at 2.

14. RONEY & BUDD, *supra* note 9, at 2.

15. GORDON L. WEIL, *A HANDBOOK ON THE EUROPEAN ECONOMIC COMMUNITY* 2-3 (1965).

16. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 267 [hereinafter Treaty of Rome].

17. George et al., *supra* note 3, at 130.

18. *Id.* at 129.

19. Treaty of Rome, *supra* note 16, art. 2.

20. Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, 298 U.N.T.S. 167.

21. *See id.*; Treaty of Rome, *supra* note 16.

22. George et al., *supra* note 3, at 133.

23. Feb. 28, 1986, 1987 O.J. (L 169) 1.

new treaty, which became on effective 1 December 1992, “resulted in over 370 million consumers being able to trade freely without different technical and regulatory standards, border controls, and excise taxes.”²⁴ By the time the Single European Act took effect, six more states had joined the EEC, now renamed the European Community (EC), raising its membership to twelve. The new members were Ireland, Denmark, Spain, Portugal, Greece, and most significantly, the United Kingdom.²⁵

4. *The Maastricht Treaty*

Although the Single European Act was a great step toward an integrated Europe, it still fell short of the vision of economic unity articulated in the Treaty of Rome. Taking advantage of the momentum toward unity, European statesmen drafted the Treaty of the European Union, commonly referred to as the Maastricht Treaty or Maastricht.²⁶ Maastricht not only moved Europe toward greater economic unity, it also made the first strides toward political unity. Maastricht marked the announcement of this new, supranational entity, and named it “The European Union.”²⁷ It also created the concept of the Three Pillars:

The image was of a temple with three pillars, the roof being the common institutional framework, and the three pillars being the economic community, the foreign and defence arrangements, now incorporated in a Common Foreign and Security Policy (CFSP), and a citizen’s Europe . . . which

involved more police cooperation, more common consular representation, and a move towards a common visa policy.²⁸

Under the three-pillar structure, Maastricht changed multiple aspects of everyday life in Europe, including social, economic, and educational issues.²⁹ The most visible effect, however, was economic—the creation of the Economic Monetary Union (EMU), which “set the structure, goals and timetable for achieving a high degree of economic convergence between Member States, and the creation of a single currency, the Euro.”³⁰ Maastricht came into effect on 1 November 1993.³¹ Within two years, the formerly neutral nations of Austria, Finland, and Sweden joined the EU, bringing the list of EU member nations to fifteen, where it stands today.³²

5. *The Amsterdam Treaty*

The 1997 Treaty of Amsterdam³³ represented Europe’s continued determination to move toward integration.³⁴ Amsterdam added detail to the vision of a united Europe that Maastricht left unspoken; it expanded on the Three Pillars of Maastricht, emphasized economic cooperation among member states,³⁵ and extended the powers of the new European Parliament.³⁶ Its most visible, practical effects were to further integrate Europe’s telecommunications, transport, energy, and employment policies.³⁷ Amsterdam also consolidated a number of previous EU treaties.³⁸

24. George et al., *supra* note 3, at 134.

25. RONEY & BUDD, *supra* note 9, at 7.

26. TAYLOR, *supra* note 2, at 53-54.

27. George et al., *supra* note 3, at 134.

28. TAYLOR, *supra* note 2, at 54.

29. See RONEY & BUDD, *supra* note 9, at 31-35.

30. *Id.* at 33.

31. Treaty on European Union, Feb. 7, 1992, 1992 O.J. (C 224) 1.

32. *EU at a Glance*, *supra* note 4.

33. Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities, and Certain Related Acts, Oct. 2, 1997, 1997 O.J. (C 340) 1 [hereinafter Amsterdam Treaty].

34. European Union, *Europa, The Amsterdam Treaty: A Comprehensive Guide*, at <http://europe.eu.int/scadplus/leg/en/s50000.htm> (last visited Dec. 2, 2002).

35. RONEY & BUDD, *supra* note 9, at 35.

36. European Union, *Europa, The Amsterdam Treaty: A Comprehensive Guide, The European Parliament*, at <http://europe.eu.int/scadplus/leg/en/s50000.htm> (last visited Dec. 4, 2002) (listing twenty-three provisions of the Amsterdam Treaty granting the European Parliament new codecision powers).

37. RONEY & BUDD, *supra* note 9, at 35.

The Treaty of Nice³⁹ represented Europe's response to the end of the Cold War and the prospect of expanding the EU eastward. It listed twelve new candidate states the EU would consider for eventual EU membership, potentially raising the total number of member states to twenty-seven.⁴⁰ The Treaty of Nice was ratified by the last member state on 26 August 2002, and entered into force on 1 October 2002.⁴¹

The EU is presently discussing its next steps toward integration. The goals of these discussions include a more open government, giving national parliaments more voice at the EU level, and possibly drafting a European constitution.⁴²

Organization and Administration of the EU

According to one former U.S. diplomat, "The EU is unique—not a regional organization like the UN. It is also not a customs union, a trade organization like General Agreement on Tariffs and Trade (GATT), nor is it a nation-state."⁴³ The heart of the EU is a large bureaucracy that dedicates itself to the lengthy deliberation of issues.⁴⁴ Branches within this bureaucracy are comparable to the executive, judicial, and legislative branches of the U.S. government.

38. Unfortunately, this consolidation was more confusing than enlightening. For example, the Amsterdam Treaty changed many of the article numbers of treaties predating Amsterdam; as a result, it is much more difficult to locate pre-Amsterdam articles and European Court of Justice (ECJ) cases. Most practitioners and scholars now cite to the consolidated versions of the European Union Treaty and European Community Treaty. The most accessible texts of the consolidated versions of the two treaties are found at *Eur-Lex*, the EU's official legal research Web site, <http://europa.eu.int/eur-lex/en/treaties/index.html> (last visited Dec. 2, 2002).

39. Treaty of Nice, Dec. 12, 2000, 2001 O.J. (C 80) 1 [hereinafter Treaty of Nice].

40. The Treaty of Nice provides for EU expansion by reapportioning representation in the European Parliament, the Council of Ministers, the Committee of Regions, and the Economic and Social Committee. Representation will be divided among the fifteen existing EU member nations and twelve candidate states: Latvia, Lithuania, Estonia, Poland, Hungary, Romania, Bulgaria, the Czech Republic, Cyprus, Malta, Slovakia, and Slovenia. The treaty makes no provision, however, for long-time candidate Turkey. *Id.* decl. 20; EUROPEAN COMMISSION, WHAT DIFFERENCE WILL THE TREATY OF NICE MAKE? 3 (2001), available at http://europa.eu.int/comm/igc2000/dialogue/info/offdoc/guidecitoyen_en.pdf.

41. EUROPEAN UNION, TREATY OF NICE, RATIFICATION SITUATION 2, available at http://www.europa.eu.int/comm/nice_treaty/ratifiable_en.pdf (last visited Dec. 3, 2002).

42. Angus Roxburgh, *Big Brains Ponder EU Architecture*, BBC News Online (Dec. 6, 2002), at <http://news.bbc.co.uk/2/hi/europe/2548843.stm>; BBC News Online, *EU "Constitution" Draft Unveiled* (Oct. 28, 2002), at <http://news.bbc.co.uk/2/hi/europe/2367237.stm>; Kirsty Hughes, *Outcomes of the Laeken Summit: A Comment Piece*, Centre for European Policy Studies Web site (Dec. 2001), at <http://www.ceps.be/Commentary/Dec01/Laeken.htm>.

43. Stuart Eizenstat, *United States Relations with the European Union and the Changing Europe*, 9 EMORY INT'L L. REV. 1, 2-3 (1995).

44. RONEY & BUDD, *supra* note 9, at 40-41.

45. WALTER CAIRNS, INTRODUCTION TO EUROPEAN UNION LAW 20 (1997); European Union, *Europa, Institutions of the European Union, European Commission*, at http://www.europa.eu.int/institutions/comm/index_en.htm (last visited Dec. 4, 2002) [hereinafter *European Commission Web Page*].

46. CAIRNS, *supra* note 45, at 23-26; *European Commission Web Page*, *supra* note 45.

47. *European Commission Web Page*, *supra* note 45.

The European Commission is the EU's executive branch. It consists of twenty members from the different member states.⁴⁵ The European Commission serves six functions within the greater EU structure: guardian of the EU Treaty; participant in the legislative process; advisor to the EU government; representative of EU interests; financial manager; and administrator of EU bureaucracy.⁴⁶ As guardian of the EU treaty, the European Commission has the power to compel member states to follow the Treaty of European Union. If necessary, the European Commission can sue an offending state in the European Court of Justice (ECJ). The European Commission participates in the legislative process by initiating and helping to draft legislation, making recommendations on policy and proposed legislation, and directly legislating in certain matters, such as employment regulations. The European Commission represents the EU in legally binding negotiations. The Commission also advises the EU on budgetary matters and is responsible for implementing the budget. Finally, the European Commission performs numerous administrative tasks to support its roles.⁴⁷

2. *The Council of Ministers*

The Council of Ministers is the main decision-maker of the EU. The Council, which shares the EU's legislative powers with the European Parliament, is composed of one ministerial-level member of each member state's government who is empowered to commit the member state to EU policy decisions.⁴⁸ The Council is the object of frequent confusion with two other completely unrelated entities with similar names—

the Council of Europe⁴⁹ and the European Council, which is composed of the heads of all of the EU member states.⁵⁰ The President of the Council is as close as the EU comes to having a head of state. The presidency rotates among the member states every six months. The president has the power to call meetings, preside at and chair them, and set the agenda for the duration of this six-month term.⁵¹

3. European Parliament

The Treaty of Amsterdam transformed the EU Parliament, which had been a mere consultative body, into an important policy-maker with the power to enact binding legislation.⁵² The EU Parliament's composition is determined through a combination of proportional representation and negotiation with member states.⁵³ The EU Parliament has 626 members, all of whom were elected by direct suffrage every five years.⁵⁴ The parliament's political composition is confusing; there are seven major political party groups, including the Group of the European People's Party, the Group of the Party of European Socialists, and the Group for a Europe of Democracies and Diversities.⁵⁵ Other members are unaffiliated with any party.⁵⁶ As these groupings illustrate, ideology appears to transcend nationality in the EU Parliament.

The EU Parliament has three fundamental powers: legislative, budgetary, and supervisory.⁵⁷ The legislative power may be further divided into five specific powers and functions: the

right to information, the right to consultation, the cooperation procedure, the power to formulate legislation, and the power to approve certain types of legislation.⁵⁸ These powers and functions reflect different levels of involvement in the EU governing process. The right to information covers specific EU actions that could affect the member states—for example, the Council must inform Parliament if it decides to allow member states to take unilateral measures against third countries with regard to capital movements.⁵⁹

The EU Parliament also has discretionary and obligatory rights to be consulted about proposed legislation. The obligatory right to consult, called the “codecision power,” applies to specific categories of legislation, including any affecting “the free movement of workers, the establishment of the internal market, research and technological development, the environment, consumer protection, education, culture and health.”⁶⁰ Legislation covered by the Parliament's codecision power becomes law only after a process of repeated consultation, negotiation, and amendment between the Council, committees of the Parliament, and the entire Parliament. The EU Parliament can also formulate legislation, which begins with a report from one of the Parliament's standing committees. The EU Parliament's final legislative power is the requirement of assent; this power applies to specific categories of legislation, including international agreements and the accession of new states to the EU.⁶¹

48. European Union, *Europa, European Union Institutions, Council of Ministers*, at http://www.europa.eu.int/institutions/council/index_en.htm (last visited Dec. 5, 2002) [hereinafter *Council Web Page*]; RONEY & BUDD, *supra* note 9, at 12.

49. The Council of Europe was formed after World War I to promote cultural and economic integration within Europe, but to a much less ambitious extent than the EU. CAIRNS, *supra* note 45, at 12.

50. RONEY & BUDD, *supra* note 9, at 13.

51. *Council Web Page*, *supra* note 48; JAMES HANLON, EUROPEAN COMMUNITY LAW 31 (2000).

52. THE TREATY OF AMSTERDAM: TEXT AND COMMENTARY xxxv (Andrew Duff ed., 1997) (introduction by Andrew Duff); European Union, *Europa, European Union Institutions, European Parliament*, at http://www.europa.eu.int/institutions/parliament/index_en.htm (last visited Dec. 5, 2002) [hereinafter *European Parliament Web Page*].

53. CAIRNS, *supra* note 45, at 30.

54. *European Parliament Web Page*, *supra* note 52.

55. European Parliament, *Europarl, Members of the European Parliament* (Dec. 5, 2002), at http://www.db.europarl.eu.int/ep5/owa/p_meps2.repartition?ilg=EN&iorig=home.

56. *Id.*

57. *European Parliament Web Page*, *supra* note 52.

58. CAIRNS, *supra* note 45, at 32-33.

59. *Id.* at 31-32.

60. *European Parliament Web Page*, *supra* note 52.

61. *Id.*

The EU Parliament also has budgetary and political powers.⁶² The “[EU] Parliament has been given the last word on non-compulsory expenditure.”⁶³ It can also debate policy and discuss issues where it contemplates the eventual adoption of resolutions.⁶⁴ Finally, the EU Parliament has “supervisory powers,” including the power to establish temporary committees to investigate irregularities in the administration of the EU.⁶⁵ Perhaps the ultimate power of the EU, however, is the power to censure the European Commission, a step that would force the Commission to resign. A vote of censure requires an absolute majority of all members of Parliament and two-thirds of the voting members. Thus far, the European Parliament has never exercised this power.⁶⁶

4. European Court of Justice

The power of the European Court of Justice (ECJ) has grown as recent treaties solidified the supremacy of EU law over member state law. As one commentator recently noted:

[The ECJ’s] activities have had a profound effect upon the development of Community law, particularly with regard to the foundation of a “constitution” of the Community. There is little doubt that the Court of Justice saw the Treaties as expressions of purpose, and further saw their role as adding substance to those “dry bones.” The Court has been concerned to ensure that Community law is effective, both in respect of a new legal system in its own right, and in terms of integra-

tion with the legal systems of the Member States. It could, and has, been argued that the Court has gone far beyond what was intended by the Treaty; never the less [sic], the Court has developed a package of fundamental rights which have become an entrenched part of the Community system.⁶⁷

The ECJ has two bodies—the ECJ itself and the Court of First Instance.⁶⁸ The ECJ is composed of fifteen judges; traditionally, each member state has provided one judge for the ECJ.⁶⁹ Eight advocates-general also assist the court by investigating the facts and presenting impartial opinions to the judges.⁷⁰ The function of the advocate general is an aspect of the civil law system. In criminal cases, the advocate general acts as a public prosecutor and brings the case against the accused on behalf of the public interest. In civil cases, the advocate general acts as an expert advisor and makes recommendations that represent the public interest.⁷¹ Because the ECJ frequently follows the recommendations of the advocate general, this position carries significant power.⁷²

Like the ECJ, the Court of First Instance has fifteen judges.⁷³ The main purpose of the Court of First Instance is to relieve the workload of the ECJ by resolving more routine cases, such as disputes between EU organizations, competition cases, ECSC disputes, and intellectual property cases.⁷⁴ Parties may appeal decisions of the Court of First Instance, but only to challenge alleged errors of law.⁷⁵

62. *Id.*

63. CAIRNS, *supra* note 45, at 32.

64. *Id.* at 33.

65. *European Parliament Web Page*, *supra* note 52.

66. *Id.*

67. HANLON, *supra* note 51, at 39.

68. CAIRNS, *supra* note 45, at 34; European Union, *Europa, Institutions of the European Union, Court of Justice of the European Communities*, at http://www.europa.eu.int/institutions/court/index_en.htm (last visited Dec. 5, 2002) [hereinafter *ECJ Web Page*].

69. Consolidated Version of the Treaty on European Union, Nov. 10, 1997, arts. 138-139, 1997 O.J. (C 340) 145 [hereinafter Consolidated EU Treaty]; *ECJ Web Page*, *supra* note 68.

70. *ECJ Web Page*, *supra* note 68.

71. CAIRNS, *supra* note 45, at 34.

72. *Id.* at 35.

73. *Id.*

74. *Id.*; *ECJ Web Page*, *supra* note 68.

75. CAIRNS, *supra* note 45, at 35.

5. Other EU Organizations

Several other EU organizations have sufficient influence within the EU as a whole to merit discussion. These organizations include the European Court of Auditors, the European Investment Bank, the European Economic and Social Committee, and the Committee of Regions. The European Court of Auditors consists of fifteen members. This “court” does not have the power to decide any controversy; it is a specialized body established by the EU in 1977 to monitor and supervise the EU’s finances.⁷⁶ The European Investment Bank is the investment arm of the EU. Created by the Single European Act, its function is to provide the EU a way to develop projects that promote economic and social cohesion.⁷⁷ The European Investment Bank also provides loans and guarantees to less-developed regions and funds business development projects.⁷⁸

The European Economic and Social Committee (ESC) represents important social and economic groups in European society, such as trade unions and management organizations.⁷⁹ The Consolidated Treaty of the European Communities sets the composition of the ESC at 222 members, with a specified number from each member nation.⁸⁰ The EU must consult the ESC

before taking actions that affect certain areas, such as agricultural policy,⁸¹ the free movement of workers,⁸² education,⁸³ employment,⁸⁴ and common transport policy.⁸⁵

The Committee of the Regions, which has a consultative function similar to that of the ESC, represents the interests of local and regional governments in the EU.⁸⁶ As with the ESC, the EU must consult the Committee of the Regions before it takes actions that affect specific social issues, such as cultural affairs,⁸⁷ education,⁸⁸ consumer protection,⁸⁹ employment,⁹⁰ and public health.⁹¹

EU Law

Understanding EU law begins with understanding how to define it. European Union law comes from multiple sources, and its terminology can be confusing.⁹² The Consolidated European Community Treaty describes the four forms of EU legislation: regulations, directives, decisions, and recommendations/opinions.⁹³ Regulations and directives are laws based on proposals from the Commission that are adopted by the Council.⁹⁴ Regulations and directives differ in that regulations

76. *Id.* at 42; European Union, *Europa, Institutions of the European Union, Court of Auditors*, at http://www.europa.eu.int/institutions/eca/index_en.htm (last visited Dec. 5, 2002).

77. HANLON, *supra* note 51, at 8.

78. CAIRNS, *supra* note 45, at 43.

79. Consolidated Version of the Treaty Establishing the European Community, Nov. 10, 1997, art. 257, 1997 O.J. (C 340) 3, 144 [hereinafter Consolidated EC Treaty]; European Union, *Europa, Institutions of the European Union, Economic and Social Committee*, at http://www.europa.eu.int/institutions/esc/index_en.htm (last visited Dec. 5, 2002).

80. Consolidated EC Treaty, *supra* note 79, art. 258; see THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, THE ESC: A BRIDGE BETWEEN EUROPE AND CIVIL SOCIETY (2000), available at http://www.esc.eu.int/pages/en/org/pla_EN.pdf.

81. Consolidated EC Treaty, *supra* note 79, art. 37.

82. *Id.* art. 40.

83. *Id.* art. 149.

84. *Id.* art. 128.

85. *Id.* art. 71.

86. *Id.* art. 263; HANLON, *supra* note 51, at 38; European Union, *Europa, Institutions of the European Union, Committee of the Regions*, at http://www.europa.eu.int/institutions/cor/index_en.htm (last visited Dec. 5, 2002).

87. Consolidated EC Treaty, *supra* note 79, art. 151.

88. *Id.* art. 149.

89. *Id.* art. 153.

90. *Id.* art. 128.

91. *Id.* art. 152.

92. Roxburgh, *supra* note 42 (discussing a proposal to simplify EU law by abolishing distinctions between regulations and directives).

93. *Id.* art. 249; see also DAVID MEDURST, A BRIEF AND PRACTICAL GUIDE TO EU LAW 31 (2001).

directly apply to all member states, while only the end results of directives are binding; member states are free to implement directives through any available means, such as regulations, decrees, or statutes. Decisions are EU laws, issued by the Council or the Commission, which bind only those governments, companies, or individuals they specifically address. Finally, recommendations and opinions are strong persuasive authority, but have no binding force.⁹⁵ European Union law does *not* include the rules governing the institutions of other European organizations such as the European Convention of Human Rights or the laws of the various EU member states.⁹⁶

The relationship between EU law and member nation governments is based on three fundamental principles: direct applicability, direct effect, and the primacy of EU law over member state law.⁹⁷ The first of the three principles, direct applicability, means that regulations approved by the Council apply within each of the member states, without the need for any further enactment by national authorities.⁹⁸ The direct applicability of EU regulations makes them “one of the most powerful law-making tools available to the Community.”⁹⁹

Direct effect allows individual citizens of EU nations to enforce rights they are granted by EU law in the national courts of the member states.¹⁰⁰ It gives citizens the right to sue or be sued by individuals or their own governments.¹⁰¹ Not all EU law automatically has direct effect; a law will only have direct effect if it meets three prerequisites. First, the EU rule or law must be clear;¹⁰² second, it must be unconditional; and finally,

it must be free of any reservation making its implementation dependent on further action by EU or national authorities.¹⁰³ Direct effect is a concept unique to EU law. No other international organization creates individual substantive rights and gives citizens of sovereign nations the means to enforce them.¹⁰⁴

The supremacy of EU law is the last key principle of the EU legal system. This principle dictates that, in the event of a conflict between EU law and the law of a member state, the EU law will prevail.¹⁰⁵ Article 10 of the Consolidated European Community Treaty directs member states to take “all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community.”¹⁰⁶ The supremacy of EU law represents the remarkable extent to which nations with long histories of nationalism have transferred their national sovereignty to the collective control of the EU.¹⁰⁷ This is referred to as the concept of primacy.¹⁰⁸

The EU law is a very recent phenomenon; it borrows from its member states’ common and civil law systems, but is ultimately unlike either of them. Whether this new set of legal structures can successfully bring order and uniformity to the EU remains an open question, but every legal practitioner in Europe today must become familiar with EU law. This task is complicated by the rapid evolution of the relationship between EU and member state law.¹⁰⁹

94. Consolidated EC Treaty, *supra* note 79, arts. 250-254.

95. *Id.* art. 249.

96. CAIRNS, *supra* note 45, at 1.

97. TAYLOR, *supra* note 2, at 32; *see* Consolidated EC Treaty, *supra* note 79, art. 249.

98. TAYLOR, *supra* note 2, at 32.

99. HANLON, *supra* note 51, at 84.

100. *Id.* at 84 (citing Case 26/62, NV Algemene Transport en Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Admin., 1963 E.C.R. 609).

101. TAYLOR, *supra* note 2, at 18.

102. CAIRNS, *supra* note 45, at 85.

103. *Id.* at 85-86.

104. *Id.* at 83-84.

105. *Id.* at 8-9.

106. Consolidated EC Treaty, *supra* note 79, art. 10.

107. HANLON, *supra* note 51, at 53; *see also* KAREN J. ALTER, ESTABLISHING THE SUPREMACY OF EUROPEAN LAW: THE MAKING OF AN INTERNATIONAL RULE OF LAW IN EUROPE 183 (2001).

108. Eizenstat, *supra* note 43, at 6-7.

109. Roxburgh, *supra* note 42 (discussing the latest round of proposals for overhauling the EU structure to give it more power over the members states).

The multiple sources of EU law and the speed with which those laws change mean that researching EU law may be more difficult than researching the law of other jurisdictions. Practitioners must expend considerable effort to stay current with the multiple directives, regulations, and cases. Fortunately, the EU has made excellent use of the Internet, and practitioners can access Commission regulations and directives, ECJ decisions, and the EU's founding treaties through the official EU legal research Web site, *Eur-Lex*.¹¹⁰

The most authoritative source of EU legislative materials is the *Official Journal (OJ)*. The *OJ* is divided into two series—the L Series, which contains all binding EU legislation, and the C Series, which contains non-binding decisions and resolutions. The *OJ* also contains texts of proposed legislation, legislative histories, and notices of EU judicial decisions. A useful subdirectory within *Eur-Lex* is the *Directory of Community Legislation in Force*.¹¹¹ Because this source is in digest form, it is an efficient way to research EU legislation covering a specific subject area. Finally, LEXIS has a database which contains EU legislative material.¹¹²

The EU Web site is also the best location for practitioners to research EU court decisions.¹¹³ The ECJ also maintains its own Web site, which contains a search engine and access to recent decisions of the ECJ and the Court of First Instance.¹¹⁴ *European Court Reports* is the official reporter for both courts, but often publishes decisions long after the courts decide them. *European Current Law*, a monthly digest, may be more current. LEXIS also has a database for EU court decisions.¹¹⁵ Practitioners unfamiliar with EU legal research should consider consulting some of the excellent research guides that are available online.¹¹⁶

Participants in Europe's other great alliance, the North Atlantic Treaty Organization (NATO), may become nervous when they contrast the flexibility of the NATO charter and SOFA against the rigid supremacy of EU law over national law.¹¹⁷ As one British commentator stated:

The problem has never arisen of Britain being asked to take action through NATO that it had no wish to take. Were this to happen, Britain could instead refuse and give notice of its intention to leave the organization. In contrast, Britain regularly has to do things under European law they disagree with or does not wish to do [sic], and there is a legal structure in place to ensure it conforms.¹¹⁸

Against this backdrop of misgivings about the ultimate power of the EU, this article next discusses how the growing body of EU regulations is creating challenges for armed forces within NATO.

1. The Overall Challenge: The EU Goal of Legal Uniformity

The EU seeks to harmonize its laws with those of its member nations; it is the member states, however, not the EU, that usually compromise more to conform to EU rules. Article 307 of the Consolidated European Community Treaty states, "To the extent that such agreements are not compatible with this Treaty, the member state or states concerned shall take all appropriate steps to eliminate the incompatibilities established. Member states shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude."¹¹⁹

110. See European Union, *Europa, Eur-Lex—The Portal to European Union Law*, at <http://europa.eu.int/eur-lex/en/index.html> (last visited Dec. 3, 2002) [hereinafter *Eur-Lex*].

111. See *id.*

112. See <http://www.lexis.com/research/sel>.

113. See *Eur-Lex*, *supra* note 110.

114. See Court of Justice and First Instance, *Curia*, at <http://curia.eu.int/en/index.htm> (last visited Dec. 3, 2002).

115. The database is "Legal (excluding US)/European Union/Case Law."

116. See, e.g., European Union, *Europa, Information Sources and Contacts*, at http://europa.eu.int/geninfo/info/guide/index_en.htm (last visited Nov. 26, 2002); see also European Union in the U.S., *Best European Union Web Sites*, at <http://www.eurunion.org/infores/BestLawSites.htm> (last visited Nov. 26, 2002); European Community in the U.S., *Research Tools*, at <http://eurunion.org/infores/resguide.htm> (last visited Nov. 26, 2002); University of California, Berkeley Library, *Government and Social Science Information, The European Union (EU)*, at <http://www.lib.berkeley.edu/GSSI/eugde.html> (last visited Nov. 26, 2002).

117. See, e.g., Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of their Forces, June 19, 1951, 4 U.S.T. 1792, 199 U.N.T.S. 67.

118. JOHN REDWOOD, STARS AND STRIFE: THE COMING CONFLICTS BETWEEN THE USA AND THE EUROPEAN UNION 98 (2001).

119. Consolidated EC Treaty, *supra* note 79, art. 307.

The EU has pronounced—in broad terms—its desire to cooperate with NATO and its policy objectives:

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.¹²⁰

When one considers the breadth and depth of EU regulations, however, their potential to affect NATO operations is unlimited. For example, on 12 March 2001, the European Commission, fearing infestation by wood parasites, enacted an emergency measure to control the importation of wood packing material, such as pallets and crates, from the United States, Canada, China, and Japan.¹²¹ This measure affected numerous U.S. military agencies and required them to write and issue new policies to conform to the rule.¹²² European Union law also indirectly affects NATO when it forces member nations to amend their own laws. Two areas with the greatest potential for such conflicts are labor policies and environmental regulations.

2. EU-NATO SOFA Challenges—Labor Policies

The United States has always relied on local nationals to support its force abroad; this has required U.S. forces to comply with host nation labor law. More recently, however, the EU has put its imprimatur on local labor laws and greatly complicated them by adding layers of regulation for almost every imaginable contingency.¹²³

It is not merely the regulations themselves that are dizzying; the EU's complicated bureaucratic structure often results in multiple agencies regulating the same subject matter. A partial list of entities which have a role in writing labor regulations includes the European Commission for Employment and Social Affairs; the European Foundation for the Improvement of Living and Working Conditions; the European Agency for Safety and Health at Work; the EU Parliamentary Committee on Employment and Social Affairs; and the Committee of the Regions Commission on Employment, Economic Policy, Single Market, Industry, and Small and Medium Sized Enterprises.¹²⁴ A military commander's legal staff must be prepared to consider all of these organizations and their regulations to analyze a labor law issue.

3. EU-NATO SOFA Challenges—Environmental Regulations

The U.S. military is accustomed to dealing with a myriad of foreign environmental regulations; its policy has been to conform to European environmental laws to the maximum extent possible.¹²⁵ Again, however, member states' environmental laws are changing rapidly to comply with EU laws. For example, the EU Parliament recently enacted a new directive to control noise pollution, but fortunately, the directive contained an exception for "noise due to military activities in military areas."¹²⁶

The EU has not always been equally considerate of its laws' impact on NATO. One 1992 Council directive had the effect of requiring the German government to nominate two U.S. Army training areas in Germany as wildlife refuges. This directive, the EU Flora, Fauna, and Habitat Directive,¹²⁷ listed specific, detailed criteria for undeveloped areas that, if met, *required* the member state to nominate the area.¹²⁸ Two U.S. Army training grounds, Hohenfels and Grafenwoehr, met the qualifications; therefore, Germany was forced to nominate them as wildlife

120. Consolidated Version of the Treaty on European Union, Oct. 2, 1997, art. 17(1), 1997 O.J. (C 340) 5, 18.

121. Commission Decision No. 2001/219/EC, 2001 O.J. (L 81) 39.

122. See, e.g., Message, 191303 Nov 2001, Logistics Service Office, Wright-Patterson Air Force Base, subject: European Union (EU) Restrictions Regarding Non-Manufactured Wood Packing Materials (NMWPM), available at <http://packweb.wpafb.af.mil/messages/solidwood2.doc>; Defense Logistics Agency, *DOD Joint Work Group on Wood Infestation Issues* (May 22, 2001), at <http://www.dscpl.dla.mil/gi/general/jwg.htm>.

123. See, e.g., Commission Directive 2002/15 of 11 March 2002 on the Organisation of the Working Time of Persons Performing Mobile Road Transport Activities, 2002 O.J. (L 80) 35. For a complete list of EU labor regulations and directives in force, see *Eur-Lex, Legislation*, at http://www.europa.eu.int/eur-lex/en/lif/ind/en_analytical_index_05.html (last visited Dec. 3, 2002).

124. European Union, *Europa, Employment and Social Affairs*, at http://europa.eu.int/pol/socio/index_en.htm (last visited Dec. 3, 2002); European Union, *Europa, European Union Parliament Committee*, at http://www.europarl.eu.int/committees/empl_home.htm (last visited Dec. 3, 2002); European Union, *Europa, Committee of Regions Commissions*, at http://www.cor.eu.int/corz_en.htm (last visited Dec. 3, 2002).

125. U.S. DEP'T OF DEFENSE, DIR. 6050.7, ENVIRONMENTAL EFFECTS ABROAD OF MAJOR DEPARTMENT OF DEFENSE ACTIONS para. 4.2 (31 Mar. 1979).

126. Commission Directive No. 2002/49/EC, art. 2(2), 2002 O.J. (L 189) 12, 13.

127. Council Directive No. 92/43/EEC, 1992 O.J. (L 206) 7.

128. *Id.* art. 4.

The Future of the EU

refuges. Although German authorities have offered to cooperate with the Army on management of these areas, Army officials are concerned that the EU directive and the slow pace of EU bureaucracy may force the closure of the training grounds.¹²⁹

The proposed EU Environmental Liability Directive could also significantly affect U.S. military operations in Europe.¹³⁰ This directive would assign strict liability to certain polluters—which may include the U.S. military—much like the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) does in the United States.¹³¹

It is difficult to predict decisions of the EU Parliament's Committee on the Environment, Public Health and Consumer Policy. This politically diverse committee has sixty members ranging across the political spectrum, from the British Conservative Party to the German Green Party.¹³² The U.S. military cannot expect all members of this committee to be equally concerned about the impact of their decisions on U.S. or NATO military operations; many members may forcefully oppose military operations that impact the environment. Ultimately, commanders should expect environmental compliance in Europe to become more difficult. They will have to deal with both local and national authorities, and be cognizant of the EU's increasing authority and will to write new environmental regulations.¹³³

Expansion is the EU's main priority—and controversy—today. Thirteen candidate countries are seeking admission as full EU members: Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia, and Turkey.¹³⁴ The optimism of expansion is tempered by the potential of almost doubling the size of the EU, and the potential expense of integrating less-developed economies.¹³⁵ The EU bureaucracy, already criticized for its expense and inefficiency,¹³⁶ will further expand to meet the new demands of regulating a larger land area and population. As one commentator stated, "The enlargement of the EU remains difficult without a credible reform of its institutions lest these institutions be unable to function after enlargement has begun."¹³⁷

The ultimate question for the EU is how far it will continue in its evolution toward nationhood. If the EU develops a unified foreign policy and defense force, it could become a superpower, a new "United States of Europe."¹³⁸ The Common Foreign Security Policy (CFSP) is one of the three pillars of the EU;¹³⁹ progress toward this goal, however, has lagged behind the EU's movement toward economic unity. The conflict in Kosovo highlighted the EU's inability to speak with a single, consistent voice, or to enforce any of its foreign policy initiatives.¹⁴⁰

Although some commentators support varying degrees of diplomatic and military union,¹⁴¹ others, particularly in the

129. Sean D. Naylor, *Environmental Plan Poses Risk to Training*, ARMY TIMES, Oct. 23, 2000, at 18.

130. Commission Proposal for a Directive of the European Parliament and of the Council on Environmental Liability with Regard to the Prevention and Remedying of Environmental Damage, COM (2002) 17 final, available at <http://europa.eu.int/comm/environment/liability/> (last visited Dec. 6, 2002).

131. *Id.* arts. 6.7-6.11.

132. European Parliament, *Committee on the Environment, Public Health, and Consumer Policy*, at http://www.europarl.eu.int/committees/envi_home.htm (last visited Dec. 6, 2002).

133. See, e.g., European Union, *Europa, Eur-Lex Directory of Community Legislation in Force: Environment, Consumers, and Health Protection*, available at http://europa.eu.int/eur-lex/en/lif/ind/en_analytical_index_15.html (last visited Mar. 19, 2002).

134. *EU at a Glance*, *supra* note 4.

135. Paul Taylor, *Brinkmanship Mounts Ahead of EU Enlargement Summit*, REUTERS, Dec. 2, 2002, available at http://abcnews.go.com/wire/World/reuters20021202_342.html.

136. RONEY & BUDD, *supra* note 9, at 40-41; Roxburgh, *supra* note 42 (discussing proposals to streamline EU bureaucracy before the accession of new member states paralyzes it); BBC News Online, *MEPs Halt Attempt to Slash Perks* (Dec. 6, 2002), at <http://news.bbc.co.uk/2/hi/europe/2549517.stm>.

137. *The U.S.-European Relationship: Opportunities and Challenges, Hearing Before the House Subcomm. on Europe, Comm. on Int'l Relations*, 107th Cong. 9 (2001) (testimony of Simon Serfaty, Director of the Europe Program for the Center for Strategic and International Studies).

138. The EU is seriously considering renaming itself "The United States of Europe." According to one unnamed British official, however, this proposal "has not a cat in hell's chance of success." BBC News Online, *EU "Constitution" Draft Unveiled* (Oct. 28, 2002), at <http://news.bbc.co.uk/2/hi/europe/2367237.stm>.

139. TAYLOR, *supra* note 2, at 54.

140. Asteris Pliakos, *The Common European Policy on Security and Defense: Some Considerations Relating to Its Constitutional Identity*, 6 COLUM. J. EUR. L. 275, 275 (2000).

Conclusion

United Kingdom, worry that further strengthening the powers of the Council and the Commission could be the point of no return for their national sovereignty.¹⁴² Commission President Romano Prodi recently proposed that future Commission presidents should be elected by a two-thirds vote of the Parliament and have greatly expanded executive power. Under this proposal, member states would be powerless to block proposed EU laws in all areas except defense, and the EU would gain more legislative, budgetary, and foreign policy-making power at the expense of member states. The EU would also have a single, more powerful foreign minister, the “Secretary of the Union.”¹⁴³

The next decade is likely to determine whether the EU will evolve into a de facto nation-state, whether it can agree on a consistent security policy and become a stabilizing force within Europe, and whether NATO will continue to be Europe’s dominant military alliance.¹⁴⁴

The EU’s impact on U.S. military operations in Europe continues to grow as the EU steadily supplants the regulatory power of its member states. The EU already exercises a strong influence on environmental matters and labor issues, among others, requiring DOD attorneys to stay current with EU law to advise their commands competently. The great and growing importance of EU law affects more than just those commands based in Europe; it also affects other entities that support those commands. Regardless of the final form the EU takes, the importance of understanding its legal system is certain to continue growing.

141. See, e.g., Maria Gavouneli, *International Law Aspects of the European Union*, 8 TUL. J. INT’L & COMP. L. 146, 155 (2000).

142. Mark Davies, *UK at Odds with Prodi’s Europe Vision*, BBC News Online (Dec. 5, 2002), at http://news.bbc.co.uk/2/hi/uk_news/politics/2545403.stm.

143. *Id.*; Roxburgh, *supra* note 42.

144. Recently, Valéry Giscard d’Estaing, the former French President and President of the European Convention, appeared on BBC television to explain the Convention’s proposals to streamline EU bureaucracy and transform the EU into a stronger federation. When asked whether the EU should become a superpower to serve as a counterpoint to the United States, Mr. Giscard said:

If you say counterpart, it’s an expression I don’t like, we want to be a superpower [sic]. No. No. We want to be imperialistic again? No. We want to exist as the largest group of people of the industrialized world because we are much more numerous than the Americans or the Russians.

Newsnight: Interview of Valéry Giscard d’Estaing (BBC television broadcast, Oct. 29 2002), available at <http://news.bbc.co.uk/2/hi/programmes/newsnight/archive/2372175.stm>.