INTRODUCTION
Over the last three hundred and fifty years since the Treaty of Westphalia, the concept of sovereignty has undergone a profound change and this is more evident in the case of Europe. With the structural transformation in international politics, the principles of states’ sovereignty have been undermined by the European Union of twenty seven members (Walker and Saul H. Mendlovitz 1990). The ever increasing demand for closer integration not only in the field of economic cooperation but in others like, environment, social policy and travel, have led to closer political cooperation between the EU and Member States. In such areas, Member States have willingly transferred their authority to Brussels to frame a common policy-common to all Member States. The increasing sectoral cooperation by Member States within the EU has resulted in the spill over of an increasing Europeanisation of national policies, except in the areas deemed as intergovernmental, as laid down in the pillars of the Maastricht Treaty. However, even in these areas where Member States have an exclusive authority, there has been an increasing demand for greater cooperation among Member States.

The Common Foreign and Security Policy is one such area where the spill over of integration between Members States’ foreign policy with that of the EU foreign policy objectives are expected but difficult to be arrived at. Though foreign policy and security still remains within the jurisdiction, but the need for political integration along with economic integration of the Union has been a long term objectives of the founding father, who in the initial years attempted at creating a federal Europe. With the SEA of 1987 and the launching of the Euro in 1992, the EU has completed the process of economic integration. However, the need to expand the economic community has been the constant
aim of the Union where new market were seen as an economic opportunity which is necessary for the Union to compete with the developed economies of US, Japan and Russia vis-à-vis the growing economies of China, India, Brazil and other developing countries. Hence with the enlargement of the Union from fifteen members to twenty seven, the EU has now expanded its market towards the economies of the former communist countries of Baltic, Central and Eastern Europe (See Map 2 in page 52). The 2004 enlargement of the Union is often seen as a step towards political integration or perhaps the most successful political integration process in the EU’s history. Though this may be true, that compared to the earlier years of the EU (see Chapter 3), political integration in the context of the CFSP has by far been more successful from the late 1990s onwards. However, it must be noted that at the core of political integration there still exist differences between and whatever development that was achieved in this area was mainly in those sectors which least affects the individual Member States in its relations within or outside the EU.

This chapter discusses the issue why a common foreign and security policy, despite being an important component of the EU is difficult to be arrived at. The main argument of this chapter is to investigate foreign policy making in the framework of the concept of sovereignty. In the study of international relations, the debate between the two schools of thought - realist and liberal institutionalism, on the subject of sovereignty is the most important debate on the impact of the concept on foreign policy making. This chapter attempts to explain the relationship between sovereignty and foreign policy in the context of British foreign policy and its perception towards European integration in the area of foreign and security policy. Taking post 9/11 as a case, this chapter argue that when it comes to foreign policy, nation states still retain their domain. In other words, state’s sovereignty on foreign policy decision-making is exclusive, unquestionable and final.

Based on the above premises, the first section of this chapter employs a realist and liberal institutionalist explanation of sovereignty towards foreign policy making in the European Union. The importance of sovereignty to a nation state can be closely related to the case of Britain and its relations with the EU. As discussed in earlier chapters, Britain’s
emphasis on the need to strengthen the CFSP through intergovernmental approach is because a part of the notion of identity and sovereignty of a nation state derives from its authority in foreign policy making. While some Member States like Germany and France sought to project the EU as a federal union, Britain and others would prefer EU as a union of nation states and any EU broad based foreign policy decision should be discussed at an intergovernmental level.

It is in this conflict between Britain and other Member States that negotiation on EU foreign policy always involves a degree of bargaining. The on-going Iraq crisis presents a classic example of conflict between Britain’s foreign policy and EU’s foreign policy framework. The dilemma of post 9/11 that both the EU and face is the orientation of each other’s foreign policy so as to tackle the threat of terrorism more effectively. The question is whether will prefer to delegate their authority of foreign policy making to the EU and challenge the threat collectively or choose to go alone and enact legislation and use pre-emptive strike as a way to protect one’s own boundary. It is here that the clash of the concept of authority over nation state’s sovereignty arises; a clash between collective sovereignty and individual sovereignty; between collective good of the EU and individual good of the Member State.

SOVEREIGNTY AND EUROPEAN INTEGRATION

Foreign policy making is one of the main attributes that identify a state’s sovereignty in international arena. The freedom to frame and conduct policy in relations to other nation states and organisations without any interference in its affairs from outside is known as ‘state sovereignty’. Sovereignty when defined in its original form is mainly understood as the absolute authority of an entity which is the state. The state in its evolutionary history from the feudal state to modern form attributed its existence to the concept of sovereignty. Thus, F.H. Hinsley rightly observed that the “origin and history of the concept of sovereignty are closely linked with the nature, the origin and the history of the state” (Hinsley 1986: 1). The idea of sovereignty as it is known today, owed its origin to Europe; it is the product of socio-political chaos and disorder that was prevailing in the late sixteenth century Europe. It was in the midst of this disorder that covenants and
contracts of one form or the other were established by the society in order to stabilise the anarchical system (this may be a liberalist interpretation). It is also to be pointed out that over the centuries, sovereignty has been interpreted and reinterpreted according to the historical realities of that period and this has been done through the lenses of various subjects ranging from law, politics, economy and culture.

In Europe, the concept of 'sovereignty' until the beginning of the twentieth century was regarded as indivisible and the indivisibility of this concept was closely linked to 'authority' by which no nation can share or part away. The concept of sovereignty as 'indivisible' was rooted in the organic theory of state evolution that can be found in the work of Jean Bodin and John Austin. Bodin, who is credited as the first to define the modern concept of sovereignty, defined it as 'the absolute and perpetual power of commanding in a state ... (the) supreme power over citizens and subjects to unrestrained by law' (Gauba 2002: 152). Likewise, John Austin who perfected Bodin's work, argued that sovereignty is 'law' and that the 'state could neither ignore nor abrogate that superior law' (Gauba 2002: 152). According to him,

If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and that society (including the superior) is a society political and independent (Gauba 2002: 152).

Thus, sovereignty is often equated with 'authority'; a form that emanates from a single, superior law maker who at the same time expresses the 'state-will' and a kind of authority which repeats Austin's position that no international law or any other types of authoritative regulation outside the state cannot be 'real' in the sense of being enforceable against any particular state-will (Wind 2001: 8). In international relations this assumption that the state is supreme in its authority is found in the later work of the Realist thinkers like E.H. Carr and H. J. Morgenthau and later perfected by the Neo-Realist theorists, of whom Kenneth Waltz is the main exponent. In his Politics Among Nations, written in 1948, Morgenthau stated:
...the last and perhaps the most important of the misunderstandings that have
obscured the problem of sovereignty in the modern world [is] the belief that
sovereignty is divisible. Elucidation of this misunderstanding may aid us in assessing
the role of sovereignty, and of international law in general, in contemporary
international politics. We have heard it said time and again that we must 'surrender
part of our sovereignty' to an international organisation...that we must 'share' our
sovereignty with such organisation, that the latter would have 'limited sovereignty'
while we would keep a substance of it, or vice versa, that there are 'quasi-sovereign'
and 'half-sovereign' states. We shall endeavor to show that the conception of a
divisible sovereignty is contrary to logic and politically unfeasible....If sovereignty
means supreme authority, it stands to reason that two or more entities – persons,
groups of persons, or agencies – cannot be sovereign within the same time and space.
He who is supreme is logical necessity superior to everybody else; he can have no
superior above him or equals beside him (Morgenthau 1948: 341).

However, such a definition of sovereignty by the middle of the twentieth century had
undergone a change. The First and Second World War which are products of an anarchic
international system are the two events that altered concepts of sovereignty soon after the
war. Sovereignty as the exclusive domain of an individual nation state was considered
 perilous and unstable. Therefore an appeal for primordial return to a new concept of
social contract was necessary to arrest the anarchical international system. In this new
social contract, states will pool part of their sovereignty to a new authority or regime in
the form of an international organisation. The result of such an attempt is the League of
Nations that came up Post- First World War and the United Nations after the Second
World War.

In Europe this new arrangement found its way in the form of the European Coal and Steel
Commission (ECSC) where six countries transferred some of their sovereign authorities
in the area of economic decision making in order to pool their resources together for a
common coal and steel market that would reconstruct and transform post-war economy of
the six members. Community (EEC) to European Community (EC) and finally to
European Union (EU) which at present consists of 27. These developments were a
complete shift from the Bodinian and Hobbesian concept of the state and sovereignty and
marked the beginning of the liberal institutionalism that 'cooperation under anarchy' is
possible through establishment of international organisations and regime system. In this
regard, the work of Stephen Krasner, Robert Koehane, and others are important in
understanding the dynamics of regimes and resulting cooperation in the international system. The work of liberal institutionalist was heavily influenced by the pluralistic theory of sovereignty. Laski, who was the most ardent supporter of the pluralistic theory of sovereignty in his *A Grammar of Politics*, attacked ‘absolute’ sovereignty of Bodin and Austin on the issue of external sovereignty by arguing:

> Externally, surely, the concept of an absolute and independent sovereign State which demands an unqualified allegiance to government from its members, and enforces that allegiance by the power at its command, is incompatible with the interest of humanity.... what is important is not the historical accident of separate States, but the scientific fact of world-interdependence (Laski 1948: 64).

To him the notion of an ‘absolute’ independent sovereignty according to the will of each nation state was a problem that is “too vital for any state to be left to determine by itself”. More precisely:

> In such an aspect the notion of an independent sovereign State is... fatal to the well-being of humanity. The way in which a State should live its life in relation to the other States is clearly not a matter in which that State is entitled to be the sole judge....International government is, therefore, axiomatic in any plan for international well-being. But international government implies the organized subordination of States to an authority in which each may have a voice, but in which also, that voice is never the self-determined source of decision (Laski 1948: 64).

The experiences of the two world wars and subsequently the Cold-War led to a resurgence of both realist/neo realist and liberal interdependence thinking on the concept of sovereignty with States foreign policy decision making and behaviour as the focal point of attention. Like the earlier school of realism, the neo-realist understanding of sovereignty is explained through the state as a central actor in the international system which has the ability to make authoritative decisions on its own, survive through its own ‘self-help’ system and without interferences from external agencies. For the liberal interdependence theorists, sovereignty is defined in terms of the state’s “ability to control actors and activities within and across its borders” (Thomson 1995: 213). Besides, they argued that through economic interdependence and technological development states can no longer maintain their border exclusively. In other words, sovereignty is being eroded...
and this is more evident by the increasing activities of the sub-state and non-state actors like transnational (TNCs) and multinational corporations (MNCs), international organisation (IO). (Keohane and Nye, 1972; Rosecrance, 1986).

According to Janice E. Thomson (1995), in international relations, such confusion in defining the concept has led to international relations theorists to "make conflicting and sometimes diametrically opposed claims about the status of sovereignty in the post Cold-War era". To the author, both schools of thought are hampered by a unitary view of the national state and that, by ignoring the integral role of external forces in constituting, defining, and shaping sovereignty, the state and state-society relation, the concept is 'doomed'. She argues that the domestic-international dichotomy and the interplay between the two were as crucial to the institutions of sovereignty (Thomson 1995: 213). Moreover, she argued that sovereignty is "best conceptualised in terms, not of state control, but of state authority" (Thomson (1995: 214). More importantly she noted that "a shift from sovereignty to some other form of global political organisation would entail one or more of the following: the loss of states’ exclusive authority to recognise sovereignty; transfer of meta-political authority to non state actor or institutions; end of the state’s monopoly on legitimate coercion; and deterritorialization of states’ authority claims" (Thomson (1995: 214).

To further explain the complexity of the concept of sovereignty is the reformulation of the framework of sovereignty by the advent of recent theories which address the fundamental weaknesses in traditional-that is- singular and unified concept of sovereignty. For example, Christopher Rudolph (1999) in “Sovereignty and Territorial Borders in a Global Age” identified Krasner’s work as one such instance. To him:

Stephen Krasner has suggested that sovereignty can be broken down into four distinct types: Westphalian, domestic, interdependence, and international legal. Whereas "domestic sovereignty" refers to the organisation of government authority within the state, "Westphalian sovereignty" is defined as those aspects that exclude external actors from a state’s domestic authority configuration. "Interdependence sovereignty" refers to the control of transborder movements, and "international legal" sovereignty is limited to those factors that involve the mutual recognition of state within the nation state-system. In addition, Krasner makes the distinction between aspects of
sovereignty dealing with "authority" and those dealing with "control," nothing that Westphalian and international legal sovereignty deal exclusively with authority, whereas interdependence sovereignty deal exclusively with authority, domestic sovereignty has an element of both (Rudolph 1999: 3).

Other theories talk about how sovereignty can be promoted through "bargaining" process whereby members can maximise their sovereignty through bargaining where everyone accept some limitation in exchange for certain benefit (Mattli 2000: 150).

In the light of the above theories, how do we situate European Union and its Foreign and Security Policy? On the first level, it is true that the EU represents a model that surpasses the Westphalian definition of sovereignty. With the increase in economic and political cooperation within the Union, authority over most sectors of the nation state was transferred, if not completely, to the supranational actor, thus superseding territorial boundaries and transgressing the autonomy of a sovereign state (Mattli 2000: 150).

However, on a second level, there exists a paradox that follows the first directly. While there has been continuous attempt to further deepen the process of integration, more pronouncedly after the Maastricht Treaty, especially in political domains which constituted the issue of foreign, security and defence policy. There has been simultaneous attempt by some Member States to avoid any such process. In this regard the common provisions laid down in Title I, Article B(2) and Article C(2) reflected the paradoxes with that of the second pillar of the Treaty which forms the basic of an intergovernmental cooperation in the area and Common foreign and Security Policy. To further illustrate this point, Article B (2) stated:

-To assert its identity on international scene, in particular through the implementation of common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence (Official Journal of the European Communities 1992: J 135 Title I, Article B (2).
Furthermore, the Treaty in Article C (2) confers upon and the Council, the whole responsibility of framing and executing such policies by stating that:

- The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency. They shall ensure the implementation of these policies, each in accordance with its respective powers (Official Journal of the European Communities 1992: J Title I, Article B (2).

While the two articles in Title I provided for general aims, objectives and directions for the Union in the area of foreign and security policy, Article J, 1-11 of the Treaty that deals with Common Foreign and Security Policy of the Union is kept under the umbrella of inter-governmentalism of the Second Pillar of the Treaty. Thus the delineation of the Union’s competence between the Common Provisions and the second Pillar is complex and are at clash between the function of the European Council with the Commission at one level, and between at the European Council at another.

CFSP AND THE IRAQ CRISIS
September 11, 2001, was undoubtedly an important turning point in the history of world politics. In international relations, the events reflect the emergence of debate on i) the issue of state’s sovereignty over its security, and ii) the type of foreign policy to deal with new threats of fundamentalism and religious extremism. In the United States, the aftermath of 9/11 brought about the emergence of neo-conservatives, a new school of thought mainly from within the Republican Party who advocated a hawkish attitude towards foreign policy-making and decision-making. One of the neo-conservatives thinking in foreign policy was the application of the concept of ‘pre-emptive self defence’ against any establishment-even if it entails an out of area operation- that poses a future threat through proliferation of nuclear, chemical and biological weapons.
Though the war against terrorism started with Afghanistan, it was however in the war against Iraq that the concept of 'pre-emptive self defence' was applied. Iraq and its leader Saddam Hussein were a constant reference point for President Bush's campaign for the war against terror. In his State of the Union address in January 2002, President Bush termed Iran, North Korea, and Iraq, as states which, "with their terrorist allies, constitute an axis of evil, arming to threaten the peace of the world" (President George W. Bush State of the Union Address, January 2002). By the early part of 2003, Iraq was occupied under the 'coalition of willing partners' under the American leadership without any prior authorisation of the United Nation. The invasion deeply divided the world community, more particularly within the European Union where two camps developed within the Union. While France, Germany, Austria, Finland, Slovenia and Cyprus were totally opposed to the war, Denmark, Italy, Poland, Spain and the United Kingdom together with the Czech Republic, Hungary, Albania, Bulgaria, Croatia, Estonia, Latvia, Lithuania, Macedonia and Slovakia joined the US in the war. It was the first open division within EU on the issues of external affairs and this inevitably led to a number of questions which was aimed at the CFSP and its future.

The implication of the Iraq war for the CFSP has brought back to the fore the debate of foreign policy and sovereignty in the European Union. Recent scholarships have identified three analytical model sequences that are likely to emerge as the result of the Iraq crisis (Wilga: 2004). The three sequences are based on the integration theories, that is, neo-realism, neo-functionalism and liberal intergovernmentalism. Wilga first presented the model and then developed some general expectations to be studied in the Iraq crisis as an empirical case representing a clear foreign policy challenge (Wilga 2004). In all the three sequences there is a general expectation, that, due to the general crisis within the EU institutional arrangement of the CFSP as result of the Iraq crisis it will produce an outcome which would result in greater cooperation in the area of CFSP in the near future. However, the question remains as to which of the three model promises a viable explanation. In Neo realism, Wilga argue:

...one could not expect the probability of closer foreign policy cooperation/integration in Western Europe to increase significantly. There simply
was no transformation of polarity as the world remained a unipolar system (with European states or the EU itself not being a unipolar power) and the uncertainty did not grow. However, one could expect at the same time that the security pressures as a variable changed because of the Iraq crisis. The increasing probability of conflict outside the EU made the EU to react to it, to think about their foreign policy and, if necessary, about the conflict resolution and its security instruments available. Thus, overall, one could expect that the existent instability during the Iraq crisis caused additional security pressure for the EU Member States and the EU gave it some attention and canalise it into the CFSP institutional design. (Wilga 2004).

The second sequences is related to neo-functionalism where the likelihood of cooperation in the area of CFSP will be the result of ‘spill-over’ of the dissatisfaction of the CFSP institutional set-up by some , especially after the Iraq crisis. It is argued that this crisis revealed the ‘inconsistencies’ and ‘weaknesses’ have made some Member States wanting to eliminate them or at least correct it. As Wilga argued:

...the Iraq crisis has revealed a number of inconsistencies and weaknesses that made some of the EU Member States want to eliminate them or at least correct by, as neofunctionalism suggests, enlarging the scope of CFSP institutions or change the level of decision making altogether. Accordingly, the probability of closer foreign policy cooperation, i.e. further development of CFSP institutions, would increase with a growing level of dissatisfaction (Wilga 2004).

With reference to the neo-functionalism, Wilga assumes that in the course of time an increasing level of cooperation will eventually lead to two out come. First, is the increasing level of politicisation which “does not automatically promise any improvements of CFSP institutions, but creates opportunities for such improvements... (and) the probability of closer cooperation... would increase with growing level of politicization” (Wilga 2004). Second, the pressure of ‘externalisation effect’ which assumes the EU to play a role in any third party conflict will entail a “growing level of externalisation and demand side would put even more pressure on the EU to respond to the third party’s demand by resorting to common foreign policy institutions” (Wilga 2004).

The third sequence in Wilga’s scheme of things is the application of the liberal intergovernmentalism on two areas. The first is the possibility of domestic debate in the EU Member States on specific CFSP institutional problems. The second is the bilateral or
multilateral negotiation between which is very often operated in the form of "asymmetric interdependence", that is "the ultimate dependence of a country on a final outcome conditioned by its individual foreign and security policy resources and capabilities" (Wilga 2004).

**BRITAIN, EU AND THE IRAQ CRISIS**

The terrorist attack on 9 September 2001 represents an important event in the history of the 21st century. The event not only represents the vulnerability of modern state from fundamental terrorism, but, as discussed earlier, also created a new wave of reorientation in nation states foreign policy thinking with the advent of neo-conservatives. The ground test for this new foreign policy thinking was conducted in Iraq which was identified as the source of a possible future conduit for international terrorism and Weapons of Mass Destructions (WMD).

However, it was not only within the American establishment that came to regard Saddam's regime as a threat to humanity but also in Britain where such perception was more evident when Blair described his apprehension to the Butler Inquiry on the issue of WMD and the Al-Qaeda by arguing:

...what changed for me with September 11th was that I thought then you have to change your mindset...you have to go after the different aspects of this threat...you have to deal with this because otherwise the threat will grow...you have to take a stand, you have to say 'Right we are not going to allow the development of WMD in breach of he will of the international community to continue' (As quoted in Bluth 2004: 874).

Even before the Iraq crisis, Blair had been the most ardent supporter of President Bush's war against terror and subsequently remained the main ally in *Operation Enduring Freedom* against the Taliban regime in Afghanistan. Britain's unconditional support to American war was evident in President George Bush's announcement on the eve of American invasion of Afghanistan on 7 October that: 'We are joined in this operation by our staunch supporter, Great Britain' (Warren 2002). And with the fall of the Taliban, a second phase of the war against terrorism started with Iraq as the main target for action.
Taking an unequivocal stance to US argument on Iraq, the Blair’s government believed that the war against Iraq was a response to Saddam’ regime failure to comply with the UN Security Council Resolution to destroy all Weapons of Mass Destruction (WMD). The fear of acquisition of these weapons by international terrorist through cooperation with the regime was a primary concern for the government and such fears were reported in the Committee of Foreign Affairs Second Report of 2002-2003 on ‘Foreign Policy Aspects of the War Against Terrorism’ which states:

We conclude that evidence of Iraq’s retention and continued development of mass weapons of mass destruction is compelling, and a cause of considerable concern. We recommend the government’s decision to draw international attention to the scale of Iraq’s illegal weapon of mass destruction programme (House of Commons, Committee of Foreign Affairs 2003b: Para 96).

Secondly, debate about humanitarian cause was also taken into account when it was considered that international sanction was no more effective and instead poses a hardship to the general Iraqi population on the one hand and that the Saddam regime was continuously violating human rights. On this the Committee reported that:

...given Sadam Hussien’s reward of human rights abuses, he would not hesitate to use torture and weapon of mass destruction against foreign troops and civilians if he believed that this would benefit his regime (House of Commons, Committee of Foreign Affairs 2003b: Para 100).

The conclusion to the Committee’s assessment warned the government that “failure to address the threat from Iraq weapon of mass destruction could pose very high risk to the security of British interests in the Middle East and the Gulf region (House of Commons-Committee of Foreign Affairs 2003: Para 108). In response to the Committee’s recommendation, the Secretary of State for Foreign and Commonwealth Affairs agree that terrorism and Iraq are both grave problems for international community and that the government acknowledged that

...one should not be pursued at the expense of the other. It is right and necessary to tackle both now with equal vigour. And they are interconnected problems. Disarming
Iraq removes the very real and catastrophic threat of international terrorists getting hold of weapons of mass destruction. (House of Commons, Committee of Foreign Affairs 2003b: Para 110)

In other words, disarming Iraq without removing Saddam Hussien will serve no purpose of eliminating the threat of WMD but the solutions lies in removing Sadam Hussien in the larger interest of fighting against international terrorism and protecting British interest in the gulf region.

In this war against terror, Europe was deeply divided and the institution of CFSP was crippled by the lack of consensus among Member States-most notably between the major powers within the Union. The crisis, while on the one hand represented the institutional imbalance of the CFSP to deal with the crisis, on the other, it marked the internal division within the EU’s Member States; the primacy of national foreign policies and conflict of national interests (Dannereuther 2004). Thus, at the centre of this divergence is Member States’ reluctance to delegate part of their sovereignty to a centralised institution (Gordon 1997: 75). According to Simon Duke (2002), ‘unfortunately the renationalisation of European security effort Post 11 September is that it occurred at the very time when institutional structures had generally been put into place in Brussels and harmonisation was the order of the day’ (Duke 2002: 169).

The Member States’ attitude towards the war on terrorism and the Iraq crisis primarily evolved from the early stages of EU’s official response to terrorist attack of 9/11. Soon after the attack, the initial response of the EU was to stand by the US in the time of crisis and in combating terrorism. Both the EU and the US in a joint ministerial statement pledged to “work in partnership in a broad coalition to combat the evil of terrorism on a global scale” (Duke 2002: 169; Also see European Commission 2001). Subsequently, in the extraordinary meeting of the European Council of 21st September 2001, the EU continued to issue statements on its support for the US and stated that, “…the American people can count on our complete solidarity and full cooperation to ensure that justice is done” (Delegation of the European Commission to the USA 2001). However, despite such assurance, the European Parliament made it clear that fight against terrorism should

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be achieved under a 'broadest possible coalition against terrorism under the aegis of the United Nations' (European Parliament 2001). With this statement, clashes between the EU and US on the one hand, and within the EU itself started to surface. With the US proposal for Operation Enduring Freedom in Afghanistan against the Taliban regime, a clear picture started to emerge from Europe over 'position on the US proposal with Britain taking an active part in the operation which was a way to reaffirm its 'special relationship' with the US and its resolve to fight against terrorism.

The Iraq war that followed the Afghanistan war was more damaging to the CFSP than ever before in the sense that it paved the way for revisiting of realist statecraft that was played at the EU theatre. The result of this statecraft was the pulling away of Europe into two directions, between those who are for action in Iraq supported by the US and the UK and those who are against, supported by Germany, France and the Commission. The impact of the Iraq crisis on relations between Britain and its European partners was both rapid and highly corrosive (Baker and Sherrington 2004: 347). In other words, as Salmon (2005) argued, "...the quarrels over ideas became more than an abstraction, as the EU battled internally....There were more realism than neo-realism or neo-liberalism. There was a tendency to drift into mutual estrangement" (Salmon 2005: 366). Salmon also indicated the fact that the rift within the EU was apparent when, a few months from the invasion of Baghdad, instead of a joint declaration or resolution by the EU, individual Member States that include Britain, Italy, Spain, Denmark, Poland, Czech Republic and Hungary under their respective leader in a letter to the Times argued:

The transatlantic relationship must not become a casualty of the current Iraqi regime's persistent attempt to threaten world security...The Security Council must maintain its credibility by ensuring full compliance with its resolutions....If they are not complied with, the Security Council will lose its credibility and world peace will suffer as a result (The Times 30 January 2003).

Such policy undertaken by Britain and other Member States was completely in contrast with the French and German policy. The use of force was neither authorised by the UN’s Security Council nor was Resolution 1441 of the Council thoroughly explored (Antonio Missiroli 2003: 346). Moreover, annoyed with unilateral policy of Britain, President
Chirac threatened to use his veto, ‘whatever the circumstances’, to block a UN Security Council resolution on Iraq. This prompted Britain to accuse France, that such statement by President Chirac ended any chance of diplomatic settlement to the crisis.

To France, an opposition to the Anglo-American scheme is a way to preserve its long held interest in the Middle East. The strategic importance of the region to France’s foreign policy objectives was witnessed during the first Gulf war when persistent diplomatic mediation by President Mitterrand was conducted right up to the eve of an air attack (Hill 2001: 153). Similarly in the run up to the second Iraq war, French opposition against the war can be analysed partly as i) it ever increasing interest in the Middle East ii) by rejecting to commit its troop under the NATO banner-and if needed to veto such plan-is a direct challenge to the Anglo-American led NATO leadership iii) Besides Britain, France is the only EU Member State that holds a permanent membership to the UN Security Council. Therefore, its opposition against the war is seen as both a challenge to Blair’s persistent campaign for UN legitimacy in Iraq and a voice of other EU Member States who opposed the Iraqi war.

As for Germany, without a permanent membership in the UN Security Council its national interest is easily identified within the European sphere. Therefore during the crisis bandwagoning with France is easily identified with that Franco-German axis of European Integration rather than to that of Anglo-German. Moreover, Germany’s deep interest in solving the crisis through the UN consensus led to its decision against any unilateral or bilateral action against Iraq.

According to Christopher Hill (2004), the campaign against Iraq was “a manufactured crisis, based on insufficient consensus and with deep uncertainty over ultimate strategy” (Hill 2004: 153). To each of the European powers, national interest played a determinant role in the formation of opinion towards the Iraq crisis. To Blair, the Anglo-American “special relationship” in the Persian Gulf is of a strategic importance in defining its preference but this at the same time put Blair in direct confrontation with France and Germany, especially when relations with these two countries are beginning to warm up.
Britain's decision to campaign for the war against Iraq has a far reaching implication on the CFSP, in which the EU has been prevented from speaking with a single voice (Hill 2004: 153). Europe's divided voice did not stop with the major Member States only, it proliferate to the applicant and candidates countries as well where most of them (Poland, The Czech Republic and Turkey) choose to align with Britain and America.

Overall, the division only confirmed that when it come to the core area of foreign policy decision making, the EU’s foreign policy still lack authority or sanction to persuade to act as a single unit. Member States acts according to their own logic and judgments which deemed appropriate to their national interest. In the case of Britain, the argument that development of Intercontinental Ballistic Missile and the risk of proliferation of nuclear weapons by Sadam’s regime to terrorist organisations is a clear threat to London for which the world community has to deal with. To other Member States and applicant/candidate countries to be in a US’s security umbrella is an assurance from such threat, which by far logistically, technically and militarily more capable and experienced to response back to such eventuality when compared to that of the EU’s CFSP.

The confusion over the exact EU’s position on the Iraq crisis asymmetrically coincided with the EU’s Convention on the Future of Europe. With the Iraq crisis as a background, the crisis not only overshadowed the Convention but burdened its course and its constitutional debate. For example, the Convention’s debate on the CFSP turns more problematic when parties to the Convention are incapacitated by clashes over Member States’ foreign policy vis a vis EU’s foreign policy objectives.

THE CFSP AND THE CONVENTION OF EUROPE: IMPACT OF THE IRAQ CRISIS
Between February 2002 and July 2003, Member States debated on future of the EU in the European Convention. The Convention, as agreed during the Laeken Summit of December 2001, was mainly to discuss the future of the EU and aimed at drafting a Treaty for the establishment of a Constitution for Europe. The Convention was held as an intergovernmental conference, where two representatives from the national government,
one representative from the government, who would be assisted by an alternate to represent in the former's absence, and finally representatives from the European Parliament and the Commission. Britain was represented by Peter Hain, Minister for Europe, as the official government's representative. Gisela Stuart and David Heatcoat-Amory both represented the British Parliament on behalf of the Labour and Conservative Parties respectively.

When the Convention took place, the event of 9/11 was still fresh and this threatened the progress made on the CFSP so far. Uncertainty and disorder that reigned in world politics during the first few months after 9/11 greatly affected Member States' attitude towards the CFSP during the Convention. During the Convention Member States found themselves in a clear division over the Iraq issue. This is because the events of 9/11 while at one level reminded Member States of the vulnerability of nation states to global terrorism and the need to tackle such threat together, on the other there existed an anxiety among few Member States to act individually and respond to such threats by aligning their foreign policy with that of the US rather than the EU's CFSP. To this, British attitude was most prominent. Its willingness to align with the US foreign policy objectives in the war against global terrorism reflected the importance of Trans-Atlantic relations and the urgency of national foreign policy interest over that of EU's CFSP. Therefore, the Convention that was held in the shadow of 9/11 witnessed a clash between the intergovernmentalist camp led by Britain-which on most occasion fighting alone-on the one side, and the federalist camp of the Franco-German axis on the other.

British attitude towards the Convention did not develop overnight but rather developed during the Laeken Summit of December 2001. British official attitude towards the forthcoming Convention during the Laeken Summit was far from enthusiastic (Menon 2003: 964). Since the early stages of the Convention, Britain made it clear that the future of Europe would be based on an intergovernmental cooperation and that nation state must be given priority. This was well documented by Menon (2003) who analysed British position on this issue, and for which section will rely on.
The core of British dependency on intergovernmentalism and its emphasis on the importance of nation state and its sovereignty was pronouncedly declared by Hain on most occasions during the course of Convention. In his speeches to the Convention he declared that "Our approach should be to set out principles deciding who is responsible for what. In particular, we should make more explicit the understanding that powers not delegated to the EU remain the preserve of the Member States." (European Convention 2002). Therefore even before the plenary discussion on the CFSP was held, British position was very much clear, it was not willing to concede CFSP to the federalist camp. Instead, when the plenary discussion was convened on 11-12 July 2003 Britain submitted a proposal to the Convention asking for a smaller and stronger Council and small Commission. By reducing the strength of the Commission, British proposals were intended to arrest any attempt by the federalist camp to further strengthen the Commission’s role within the CFSP. This would also provide for a more effective, less bureaucratic and democratic functioning of the Commission on the one hand, and increase the role of the Council on the other. And by doing so, the Council which is represented by individual Member States at an intergovernmental level would restrict any scope for a federal Europe.

To further complicate British apprehensions of the development of the CFSP was the re-emergence of the Franco-German axis towards the end of 2002. By the beginning of 2003, the Franco-German initiative proposed two drastic institutional changes in the CFSP functioning. The first was the creation of an EU’ foreign minister and the second proposal dealt with extension of qualified majority voting (QMV) in the area of foreign policy.

Britain, though favoured the idea of a single ‘face’ to represent the Union in external affairs, but at the same time such single face would be to rely entirely on consensus among national governments to pool their diplomatic, financial and military resources (Menon 2003: 964). In other words, flexibility, pragmatism and common political will

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3 The proposed EU ‘foreign minister’ would be elected by the Council but would also act as a foreign minister of Commission. This will create a single European foreign minister both for the Council and the Commission
must be its defining features (Menon 2003: 964). The High Representative’s accountability to the Member States, and their responsibility for foreign policy, must remain clear cut’ (Oliver 2003). Similarly, the White Paper to the government’s approach to the constitutional treaty stated that “We will insist that unanimity remain for treaty change; and in other areas of vital national interest...Unanimity must remain the general rule for the CFSP” (House of Commons, European Scrutiny 2005: H C 38-XIV-I).

With regard to the institutional reform within the CFSP, the white paper remarked:

The Government sees advantages in better coordination of external policy at EU level, but some outstanding points remain to be addressed: most importantly, how to ensure that the new post is properly accountable to Member States in the Council, and its relationship with the Commission. There is also an issue as to how exactly he is described (Foreign and Commonwealth Office 2003: Cm 5934)

Since the early stages of the Convention, Britain made it clear that the future of Europe would be based on an intergovernmental cooperation and that nation state must be given priority. The proposal for a post of EU Foreign Minister which would be the result of a merger of the office of High Representative and Commissioner for External Relations was received suspiciously by the British government for fear of ‘double hatting’. This would mean that the future Foreign Minister was to be a full member of the Commission and thus take on full collegial responsibility whereby the President of the Commission is also the President of the Council. Echoing this, Prime Minister, Tony Blair in November 2002 remarked, ‘My point is simply this. Double hatting cannot be a way, through the back door, of communitising the CFSP’.

While accepting the role of the new European minister, Britain could not accept the possibility of the European Commission as a supranational body taking over the traditional role of nation state in framing and deciding foreign policy matters. Such role by the supranational institution would be detrimental to its national interest and its sovereignty. Therefore any role by the Commission in matters of foreign policy should be accountable to Member States. To this the white paper stated:
The Government believes that such a merger would make the European Union more effective in areas where we have a common foreign policy, such as in the Balkans and the Middle East Peace Process. On such issues, our own influence is enhanced by having a common European approach, and a single EU spokesman will both strengthen and streamline this European role. We will of course want to ensure that this representative is properly accountable to Member States in the Council (Foreign and Commonwealth Office 2003: Cm 5934).

The proposal for a merger of posts was also dismissed by Peter Hain during the Convention who argued that in order to achieve consistency, there was no need for the merger between the posts of Commissioner for External Relations and High Representatives for Foreign Policy, instead the ultimate authority over foreign policy should rest with the President of the European Council, while the foreign minister play a more operational role (Menon 2003:972). The exact British government’s position on this issue is the setting of the two offices of a European Foreign Minister, and President of the European Council.

According to Britain, the role of the Foreign Minister’s role is to oversee the work of EU’s External Relations and thus ensure an increasing role played by the Council in the area of external relations and that the role of the EU Foreign Minster is carefully defined, seeking to ensure that the European Foreign Minister would be only be bound by Commission procedures where this did not conflict with his or her Council mandate (Oliver 2004). Likewise, the post of a President of the European Council will ensure better coordination between the work of Member States in both the European Council and the Council of Ministers. This post is seen as being one that will strengthen the position of the Member States in relation to the Commission (Oliver 2004). According to Jack Straw, with the establishment of the post of President of the European Council the EU foreign policy could be made more effective simply by the reinforcement of the High representative’s status and position, and improvement of coordination between the holder of that post and the Commissioner for External Relations (BBC:2002)

The other contentious issue was the attempt to introduce the qualified majority voting in the functioning of the CFSP which was seen as an inevitable division among Member
States (BBC: 2002). While introspecting at the beginning of the debates in the European Convention, the British government did state that it would consider extension of QMV on a case by case basis stressing that any future decision to move to QMV would have to be made by unanimous agreement in the Council (Oliver 2004). However, the government is not in favour of the idea of using QMV on issues put forward by the EU Foreign Minister but accepts the need for QMV in some areas of implementation if necessary, as set out under Maastricht (unanimity for foreign policy but some QMV for implementation) (Oliver 2004). Hence, Britain expectation from the Convention was to put the CFSP at heart of national government, thus limiting any attempt towards deepening of the institution.

The stalemate over the CFSP's institutional arrangement during the Convention was further threatened by imminent American invasion over Iraq. In response to this, an extraordinary European Council meeting under the Greek presidency was called on 17 February 2003 in Brussels to discuss issues relating to the Iraqi crisis: In this extraordinary meeting Member States while linking the problem of the crisis in the context of the whole of Middle East also reaffirmed their position on the UN Security Council resolution and its mechanism in disarming Iraq while maintaining that war should be the last option (Council of the European Union 2003). Despite such statements by the EU that war should be the last option, British position on the Iraq issue was by then clear and it was ready to align with that of US policy of invasion of Iraq.

Having been sidelined on most occasions during the Convention and fuelled with criticism over its policy on Iraq; attempts by the France and Germany to establish the post of 'foreign minister' and President of the European Council; inclusion of 'QMV' in the decision making of the CFSP; phrasing of the definition of the common defence policy and the text on foreign policy was met by resistance, Britain, backed by Sweden, during the plenary session on the CFSP on 15 May argued that the post of the Foreign Minister “comes under control of governments, and that its links to the Commission should be limited and that freedom to act is at the heart, our sovereignty” (Independent 20 May 2003). Reacting to this, on 19 May, in a meeting with the President of the
Convention, Blair threatened to wield a veto at the IGC if certain elements of the constitutions were not dropped or amended (See Menon 2003). The general perception presented by Britain was a criticism to these developments as a more or less an act of possible ‘backdoor communitarisation’ of the CFSP via the proposed foreign minister’s link to the Commission (Menon 2003).

Stressing that there should be clear distinction between a ‘common policy and a ‘single’ one, as Jack Straw, the foreign minister clear:

The UK firmly believes the process must remain intergovernmental, recognising that national governments have to be accountable for their decisions on foreign, security and defence policy. It is in our interests to arrive at a common policy with other Member States wherever possible. But to attempt to manufacture a single policy on every issue would be absurd (House of Common: 2003)

Furthermore, appearing before the Select Committee on Foreign Affairs, the foreign secretary also argued that though Britain was willing to extend the QMV to other areas, it would be in British interest to preserve key national interest especially in the area of ‘defence linked into that foreign policy’ (House of Commons (2002a) Thus besides the problem of agreeing on who to represent as the face of the EU’s CFSP (whether the President of the European Council or the EU’s Foreign Minister), Britain was again at loggerhead to the idea of linking the defence and security mechanism to that of the foreign policy. Linking to the defence and security mechanism is the Franco-German’s declaration of January 2003 on the framework to EU’s defence and security policy. The declaration stated that: (Embassy of France in the United States’s Press Release January 28, 2003).

-France and Germany propose the transformation of the ESDP into a European Security and Defence Union (ESDU), which must also contribute to strengthening the Alliance’s European pillar.

-Their common objective, with a view to efficient crisis prevention and management, is to enable the Union to use the whole range of capabilities it
has available to ensure the security of its territory and peoples, and contribute to the stability of its strategic environment.

- a comprehensive vision of the European Union's security. France and Germany propose introducing a passage on "solidarity and common security" in the new version of the Treaty (values) and appending to the Treaty a political declaration with the same title to identify every kind of risk, including in particular that of terrorism, and the means to confront them.

- greater flexibility within the Union, by extending and adapting the enhanced cooperation mechanism to the ESDP, which would be open to the rest of the and even the Union as a whole.

- the strengthening of military capabilities, which presupposes a better allocation of resources, stepping up the equipment effort of our armed forces, and developing new forms of cooperation, particularly by harmonizing the planning of needs, pooling resources and capabilities and, eventually, sharing out tasks.

It is therefore evident that by the middle of the Summit, British reservation against the Convention was running deeper. Its resistance to attempts of diluting the existing NATO-umbrella security arrangement was presented in the Government 2003 White Paper which stated that:

We will not, however, support all the proposals as currently set out in the Convention text. We believe that a flexible, inclusive approach and effective links to NATO are essential to the success of ESDP. We will not agree to anything which is contradictory to, or would replace, the security guarantee established through NATO (Foreign and Commonwealth Office 2003: Cm5934).

The Government’s White Paper thus made clear not only the British position on the future EU’s defence mechanism but also presented Britain’s scepticism and direct
challenge to the Franco-German declaration of January 2003. The details of British reservation to the Franco-German proposal can be further analysed through the following two major issues:

I) Civilian-Military Cell at European Union Military Staff (EUMS)

Though Britain was in favour of the establishment of a civilian-military cell at EUMS, the action by France, Germany, Belgium and Luxembourg in April 2003 to establish an EU military operations headquarters at Tervuren was strongly opposed by Britain. The Tervuren proposal called for an: i) enhanced cooperation in the field of defence; ii) a solidarity clause, with some accepting supplementary obligations; iii) a European Security and Defence Union, whereby participating members would commit themselves to mutual help, coordinate their defence efforts and develop capabilities. All of this was to allow for Member States ‘common participation to operations conducted within the framework of the European Union or NATO’ (Salmon 2005: 368).

The proposals of the four members was strongly opposed by the neutral countries who saw the first of these as potentially changing the primarily peacekeeping and humanitarian nature of European military action to a military and defence competence. Britain and other NATO allies within the EU feared that the proposal will undermine the political and military primacy of NATO and its defence institution (Wilga 2004). This forced the four to seek a compromise with Britain and its supporters before the end of the constitutional debate, which partly favoured the British pro-NATO approach (Salmon 2005: 368). Part of this compromise was reached in Berlin later that year where Prime Minister Blair was reported as agreeing to a separate planning capacity for the EU (Oliver 2004). The compromise would include on the part of Britain this change of position was not a complete acquiesce to the proposal for a EU planning cell but rather an opportunity for a future development of the European HQ out of the EU planning cell which should at the same time work closely with NATO. This make clear to other Member States that Britain was not in favour of creating a full headquarters but instead seeking to enhance the EU military staff (EUMS) through a non-permanent cell with civil and military components (Oliver 2004).
II) Permanent Structured Cooperation-
Next with regard to this the British position was cold especially when the original idea “was viewed as an example of a hollow gesture that would annoy the Americans and fail to achieve greater coherence among European forces” (ibid). The criticism to the proposed draft was the proposed solidarity clause and the decision-making procedures envisaged for the limited group of Member States involved in ‘structured co-operation’. The neutral Member States of the Union saw the first of these as potentially changing the primarily peacekeeping and humanitarian nature of European military action to a defence role. Prof Eileen Denza, visiting Professor of Law, University College London noted that:

The UK Government were more reserved about the possibility of what is now described as “permanent structured co-operation” (Article I-40(6), Article III-213 and the Protocol on permanent structured cooperation). They saw in the original proposal the difficulty that it might undermine the concept of a European security and defence policy in which the essentials are agreed by unanimity and also the existing and developing military arrangements (House of Commons 2005a: HC-38 xiv-ii. Ev-15).

To Tony Blair, bilateralism represented a better option for any defence cooperation between Member States as he indicated to the French president on 19 May 2003, but at the same time, he warned that the British government would not accept the European Constitution if it meant to override the key national vetoes in the European Union, the most important among them being the foreign, security and defence policy (Wilga 2004). This stance by the British Prime Minister was in accordance with the Government White Paper of September 2003 that clearly stated the importance of NATO on the issues of defence and security arrangement of Europe.

However such scepticism was nipped during the Franco-British-German trilateral talks in November 2003 which accepted the idea of a specifically European military headquarters, provided this was integrated with the NATO framework (Oliver 2004). This was confirmed at a meeting on 24 November in London between Prime Minster Blair and French President Jacque Chirac, when the British Prime Minister emphasised that, despite his desire to strengthen European defence, nevertheless ‘NATO will remain
the cornerstone of our defence’ (Oliver 2004). However such fear was subsided as soon as the changes were made in the final draft. According to Prof Elieen Denza:

The changes made to the Treaty articles, and the drafting of the new Protocol appear to be in line with the Government’s objectives. There would be provision in Article III-213(3) for the addition of late entrants providing that the latecomer States assume the qualifying commitments. There is also provision for suspension and for withdrawal of participating States. The link to defence capabilities is thus made clearer, and the scheme could encourage some Member States to increase their defence spending in order to qualify. “Enhanced co-operation” would not apply to “permanent structured co-operation” thus removing a source of confusion. There is explicit acknowledgment of the special position of the neutral Member States, of the role of NATO “which remains the foundation of the collective defence of its members, and is compatible with the common security and defence policy established within that framework”, and of the importance of the Atlantic Alliance “in accordance with the Berlin Plus arrangements” (House of Commons 2005a: HC-38 xiv-ii. Ev-I5)

Thus to Britain, NATO and US are an integral part and a primacy in any future security and defence structure of the EU. Part of this is the recognition that though the EU requires an independent military capability yet, its dependence on US and NATO experiences and infrastructures for future operation is necessary and cannot be ignored as precisely laid down the Government’s White Paper of September 2003. However, the text that appeared in the final draft of the Convention was therefore accommodative of British concern and clearly stated that:

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, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework. (Article I-40:2) (European Commission 2005a)

The impact of the Iraq crisis on the European Convention to the Constitutional Treaty can be summed up in the primacy of British national interest over that of the EU. The importance of NATO and the US to British foreign and defence policy was reflected in its insistence on the primacy of NATO over other EU’s defence and security initiative which would have been independent and away from US or NATO dependence. Though at some stages the British government was willing to agree on the formalities and
structure of an independent European defence capability, but the onset of the Iraq crisis witnessed US’s reservation on such project. Such reservation stemmed from the fact that importance of European NATO partner in terms of troop’s mobilization towards Iraq is important to the US led campaign. Britain with its deep Transatlantic alliance and the commitment by Blair toward the Bush administration on the Iraq crisis further led to compartmentalization of the CFSP/ESDP during the convention.

BRITAIN AFTER LONDON BOMBING OF 7 JULY 2005: SOVEREIGNTY REASSERTED?
The continuous terrorist threat in the European continent soon after the Iraq war was a challenge to the European states both at the national and European level. The two attacks of Madrid on 11 March 2004 and in London on 7 July 2005 by the Al-Qaeda was mainly the result of Spain and Britain’s support to the US in the Iraq war. Soon after the London Bombing an organisation called the Al Qaeda Jihad in Europe posted a message and claimed responsibility for the attack and related it as a ‘response to the massacres carried out by Britain in Iraq and Afghanistan’ (Deccan Herald 8 July 2005). As a result of the terrorist attack, the ruling Anzar’s Government who all along supported US campaign in Iraq was voted out of power in the election that was held a few weeks after the attack and the new government promised the withdrawal of troops from the war in Iraq.

In Britain, the outcome of the war was a reflection and debates on issues ranging from multiculturalism to Blair’s policy on Iraq. Tariq Ali, author and critic of the war, said that London bombing was the ‘price of occupation’ (Times of India 9 July 2005). Similarly, Max Hasting, a military historian and former Newspaper editor in the Daily Mail said that it was ‘the price for Britain has to pay(emphasis added) for being America’s foremost ally, for joining Iraq adventure was always likely to be paid in innocent blood’(Indian Express 9 July 2005). While such anger and despair over the attack, the official government response was first issued by the home secretary on behalf of the G8 and world leaders which stated ‘we are united in our resolve to confront and defeat terrorism’ (Times of India 8 July 2005). Blair on his part strongly defended British multiculturalism culture and vowed that Britain would not allow terrorists to win by turning the country into an illiberal country (Times of India 10 July 2005).
The European Council which had on 11 March 2004 adopted a Declaration on Combating Terrorism soon after the terrorist attacks of Madrid declared a similar declaration soon after the London bombing. The European Council in its Extraordinary Council Meeting of 13 July 2005 adopted a declaration stating that it: (Council of European Union: 2005)

1. Condemns the terrorist attacks on London...It stands united in solidarity as it did after the attacks on Madrid last year, and is absolutely determined that the terrorists will not succeed.

2. Considers that the attacks are an affront to universal values on which the European Union is based on the values of democracy and rule of law. And that the terrorists who reject that commitment and seek to use violence to impose their ideas will be defeated.

3. Committed to combat terrorism and upholding the fundamental principles of freedom, security and justice. Working with the assistance of the EU Counter-Terrorism Co-ordinator, and with the European Commission and the European Parliament, the Council will accelerate implementation of the EU Action Plan on Combating Terrorism and other existing commitments.

4. Declares that its immediate priority is to build on the existing strong EU framework for pursuing and investigating terrorists across borders, in order to impede terrorists' planning, disrupt supporting networks, cut off any funding and bring terrorists to justice.

At the national level, the aftermath of the attack displayed the vulnerability of the government and its intelligent services' response to the scale of penetration by terrorist network on British home ground. While such apprehension no doubt left the British public to introspect the cause of the attack, the government on its part simultaneous took
an initiative at the domestic front by introducing various policies and legislation meant at tackling terrorism.

The first in the radical initiative taken by the government to tackle the threat of terror was the linking of the London bombing to religious hatred. The attack which was carried by Islamic fundamentalists was therefore linked to softness of British law on political asylum and immigration, failure to distinguish between free speech and propagation of hate. It is these linkages that prompted the government to response to future terrorist attack by initiating a radical shift in domestic policy through the introduction or reintroducing of bills that deals with terrorist activities.

The Radical and Religious Hatred Bill which was published on 9 June 2005 was originally a provision under the Terrorism, Crime and Security Act of 2001 is an attempt by the government to put a restraint on the expression of religious hatred, it is one such bill which generates lots of opposition from civil societies and accuses the government of double standard in dealing with future terrorist attack. The bill was cleared by the House of Commons on 11 July 2005 after a third reading with a 301 votes for to 229 against it.

Encouraged by the success of the third reading, Blair, by the second half of 2005 indicated that his government would introduce a new law which was meant to crackdown on terror. These include

- New powers to deport suspected terrorists or those involved with extremist groups
- Powers to close places of worship
- Anyone with links to terrorism automatically refused asylum
- Creation of a new international database of people whose views represent a threat to Britain.
- Wider grounds for banning extremist groups
- Stripping citizenship from naturalized Britons engaged in extremism
- Ban on glorifying of terrorism in Britain or abroad (The House of Lords substituted this section with the weaker phrase of “indirect incitement to terrorism”).
- Extend use of terrorist control orders to British nationals
- Creation of a new commission to examine the future of the policy of multiculturalism (*The Sunday Times* 7 August 2005)

The proposal was followed by Blair’s Downing Street press conference on 5th August 2005 where he stressed on the need to curb hatred and terror at the boundary. To this, Blair said:

> We welcome those who visit our country from abroad in peace, welcome those who know that in this country the respect and tolerance towards others which we believe in, is the surest guarantee of freedom and progress for people of all religious faiths... But coming to Britain is not a right, and even when people have come here, staying here carries with it a duty. That duty is to share and support the values that sustain the British way of life. Those that break that duty and try to incite hatred or engage in violence against our country and it's people have no place here. Over the coming months in the courts, in Parliament, in debate and engagement with all parts of our communities, we will work to turn these sentiments into reality, and that is my duty as Prime Minister. (Downingstreetsay.com-http://www.downingstreetsays.org)

The proposal and speech by the prime minister raised a new debate in Britain and was criticised by the Muslim, the opposition and human rights groups who argued that “Al-Qaeda claims responsibility for the attacks and Blair targets Muslims” (*The Sunday Times* 7 August 2005). Though these new measures if implemented are likely to have a greater ramification in front of the Human Rights Court especially that of the European Court of Justice, Blair said that he was ready to amend the Human rights act, if necessary, to restrict the court from intervening with the deportation of extremists (*The Sunday Times* 7 August 2005). Nevertheless the opposition Conservatives while broadly supporting the proposal was however chooses to wait till the next parliamentary session of autumn 2005 for a reaction (*The Sunday Times* 7 August 2005).

Notwithstanding the enthusiasm and insistence from the Blair’s camp, the Bill apart from being criticised by the civil society and human right groups, also faced criticism from the
House of Lord. The Upper House demanded certain amendments on some key clauses of the bill in order to safeguard freedom of speech (BBC: http://news.bbc.co.uk/1/hi/uk_politics/4664398.stm). Important to the bill’s amendment is the Peers’ demanded that only “threatening words” should be banned by the bill, not those which are only abusive or insulting (BBC: http://news.bbc.co.uk/1/hi/uk_politics/4664398.stm). The Peers also called for the offence to be intentional and specified that proselytising, discussion, criticism, insult, abuse and ridicule of religion, belief or religious practice would not be an offence (BBC: http://news.bbc.co.uk/1/hi/uk_politics/4664398.stm).

When the bill was placed in the Parliament on 31st January 2006 the bill was defeated on two occasions. The first was a challenge to Blair’s authority by the Labour MP’s who openly rebelled against the party. Despite having a 65-seat majority in the House of Commons, 21 of Blair’s Labour Party rebels voted with opposition lawmakers and choose to support the House of Lord’s amendment and at least 40 more were absent or abstained from voting. In the end the call for amendment was 288 for and 278 against. The second defeat to Blair’s bill is during the voting on the bill itself. The bill was defeated by just one vote with 283 for and 282 against it with the Prime Minister himself had failed to stay for the decisive ballot. With certain amendments to the bill, the bill was passed by the Parliament and enacted as Racial and Religious Hatred Act 2006 on 16 February 2006 (HMSO: 2006a)

Along with the Religious and Hatred Act, the Anti-terrorism, Crime and Security Act (ARCSA) 2001 and Prevention of Terrorism Act are legislations adopted by the government post 9/11 onwards to deal with the growing threat to Britain’s national security. Soon after the terrorist attack of New York on 11 September 2001, the British Parliament formally adopted the Anti-terrorism, Crime and Security Act on 19 November 2001 and it became an act with a royal assent on 13 December 2001. The origin of this Act dated back to the previous ‘Prevention of Terrorism Act’, passed in 1974 which was designed to combat the activities of the IRA in Britain. Part 1-3 of the ARCSA deals with terrorist finances; Part 4 which is most controversial deals with the power of the Home
Secretary to certify the detention of non-British citizen suspecting of having a terrorist link for an indefinite period of time even denying any chance of deportation to the accused country of origin. Of details the Act can be summarised as under: (HMSO: 2001).

(i) Terrorist funding (Part 1) - police power to freeze assets of terrorist organisations/individuals when they pose a threat to the UK or its nationals; increased disclosure obligations on financial institutions and measures to increase supervision of bureaux de change.

(ii) Immigration and asylum provisions (Part 4) - See next section for detailed explanation.

(iii) Racial Hatred (Part 5)

(iv) Weapons of Mass Destruction (Part 6-8)

(v) Aviation, chemical, biological and nuclear security (Part 9) - range of provisions including power to detain an aircraft for security reasons and stop and search air passengers; new offences relating to hoaxes concerning noxious substances and tighter regulation of laboratories holding stocks of dangerous diseases; security in the civil nuclear industry.

(vi) Police powers (Part 10) - range of police powers, for example powers to photograph, search and examine to establish identity including removal of disguises; clarification of jurisdiction of forces such as British Transport Police, Ministry of Defence Police.

(vii) Access to information (Part 11) - provisions to permit disclosure of information to security and intelligence agencies and Law Enforcement Agencies by HM Revenue & Customs; improved access to information held
by carriers (passenger and freight data) and ability to share information between agencies; code of practice relating to retention of communications data.

(viii) Bribery and corruption (Part 12)

Part 4 of the Act was challenged in the court of law by the eight detained suspected terrorists and the Law Lords ruled that their detention was illegal and were incompatible with the Britain’s obligations under the European Convention on Human Rights (House of Lords: Session 2004-05,[2004] UKHL 56). The House of Lords in its observation noted the comments by the European Commissioner for Human Rights on 28 August 2002 which stated that:

The proportionality of the derogating measures is further brought into question by the definition of international terrorist organisations provided by section 21(3) of the Act. The section would appear to permit the indefinite detention of an individual suspected of having links with an international terrorist organisation irrespective of its presenting a direct threat to public security in the United Kingdom and perhaps, therefore, of no relation to the emergency originally requiring the legislation under which his Convention rights may be prejudiced...

...Another anomaly arises in so far as an individual detained on suspicion of links with international terrorist organisations must be released and deported to a safe receiving country should one become available. If the suspicion is well founded, and the terrorist organisation a genuine threat to UK security, such individuals will remain, subject to possible controls by the receiving state, at liberty to plan and pursue, albeit at some distance from the United Kingdom, activity potentially prejudicial to its public security...

...It would appear, therefore, that the derogating measures of the Anti-Terrorism, Crime and Security Act allow both for the detention of those presenting no direct threat to the United Kingdom and for the release of those of whom it is alleged that they do. Such a paradoxical conclusion is hard to reconcile with the strict exigencies of the situation (House of Lords: Session 2004-05, [2004] UKHL 56).

On this, the House of Lords while pointing out to the Newton’s Committee which expressed no opinion on the legality of Part 4 of the 2001 Act but at the same time made clear that it “echoed” the Commissioner’s Criticism. The Committee stated that:
The Part 4 detention powers present a number of problems that range from fundamental issues of principle to practical procedural difficulties. We are not persuaded that the powers are sufficient to meet the full extent of the threat from international terrorism. Nor are we persuaded that the risks of injustice are necessary or defensible.

Some of these problems arise because Part 4 is an adaptation of existing immigration and asylum legislation, rather than being designed expressly for the purpose of meeting the threat from international terrorism (House of Lords: Session 2004-05,[2004] UKHL 56).

Taking these criticisms into consideration, the Court opined that:

the shortcomings described above to be sufficiently serious to strongly recommend that the Part 4 powers which allow foreign nationals to be detained potentially indefinitely should be replaced as a matter of urgency. New legislation should:

a) deal with all terrorism, whatever its origin or the nationality of its suspected perpetrators; and


The ARCSA which expires on 14 March 2005 was abolished and went for a review. The controversial Part 4 of Act and its power were replaced by with “control orders”, brought in by the Prevention of Terrorism Act 2005. The Act was made in response to the legal shortcomings of the ARCSA of 2001 and review Part 4 of the ARCSA. The new bill relates to terrorist investigation and the delegation of power to the Home Secretary to make “Control Orders” on the basic of “reasonable suspicion” against an individual, as long as the restrictions imposed stopped short of house arrest (Travis 2006). These control orders ranges from possible conditions such as a ban on mobile phone or internet use, restrictions on movement and travel, restrictions on associations with named individuals, and the use of tagging for the purposes of monitoring curfews. It also relates with the bill on period of detention of the suspect (House of Commons 2005c). According to the Home office statement, the control orders are:

- Control orders enable the authorities to impose conditions upon individuals ranging from prohibitions on access to specific items or
services (such as the Internet), and restrictions on association with named individuals, to the imposition of restrictions on movement or curfews. A control order does not mean 'house arrest'.

- Specific conditions imposed under a control order are tailored to each case to ensure effective disruption and prevention of terrorist activity.
- The Home Secretary must normally apply to the courts to impose a control order based on an assessment of the intelligence information. If the court allows the order to be made, the case will be automatically referred to the court for a judicial review of the decision.
- In emergency cases the Home Secretary may impose a provisional order which must then be reviewed by the court within seven days.
- A court may consider the case in open or closed session – depending on the nature and sensitivity of the information under consideration. Special Advocates will be used to represent the interests of the controlled individuals in closed sessions.
- Control orders will be time limited and may be imposed for a period of up to 12 months at a time. A fresh application for renewal has to be made thereafter.
- A control order and its conditions can be challenged.
- Breach of any of the obligations of the control order without reasonable excuse is a criminal offence punishable with a prison sentence of up to five years and, or an unlimited fine.
- Individuals who are subject to control order provisions have the option of applying for an anonymity order.
- To date the Government has not sought to make a control order requiring derogation from Article 5 of the European Convention on Human Rights (Home Office 2005)

The Prevention of Terrorism Act 2005 was first introduced in the House of Commons as a bill on 22 February 2005. Despite a substantial opposition and rebellion from the Labour MPs, the Bill was passed by the House of Commons and sent to the House of
Lords. On receiving the bills, the House of Lords made several amendments; the most significant being the introduction of a sunset clause, so the Act would automatically expire in March 2006, unless it were renewed by further legislation (wikipedia.org 2006). The bill generated a constitutional crisis where it was “ping-pong” between the two Houses four times as the two sides failed to reach an agreement for over 30 hours, making it the longest sitting of the House of Lords in its history. Eventually, a compromise was agreed, with both sides claiming victory: the opposition parties conceded all their amendments for the promise of a review of the legislation a year later (wikipedia.org 2006). The Bill was subsequently passed and received a Royal Assent on 11 March 2005, thus replacing the previous Anti-terrorism, Crime and Security Act 2001 just before the expiry date of 14 March 2005.

The Prevention of Terrorism Act 2005 like Anti-terrorism, Crime and Security Act 2001 generated a lot of controversies and was criticised by the opposition and human rights groups alike. The European torture watchdog termed the detention without trial of foreign terror suspects as “inhuman and degrading treatment” (The Guardian 10 June 2005). It is in the light of these criticisms that a similar judgment was pronounced by the High Court judge, Mr Justice Sullivan, on April 2006 declaring that section 3 of the Act was incompatible with the right to a fair trial under article 6 of the European Convention on Human Rights. In interpreting the Act, Mr Justice Sullivan noted that “the procedures under the Act whereby the court merely reviews the lawfulness of the secretary of state’s decision to make the order upon the basis of the material available to him at that early stage are conspicuously unfair (and)...To say that the Act does not give the respondent in this case... ‘a fair hearing’ in the determination of his rights under Article 6 would be an understatement” (Telegraph 10 June 2005). Following this, the Home Secretary, Charles Clarke said that the government went for an appeal to the Court of Appeal insisting that the control order will not be repealed and that the Act while “strikes the right balance between safeguarding society and safeguarding the rights of the individual” is also necessary to protect national security (Murphy 2006). The Home Secretary also stated that the government do not “accept the judgment of the court that the review procedure for control orders is incompatible” with that of the European human rights laws, and that
"the government believes that control orders are the best way of addressing the continuing threat posed by suspected terrorists who cannot currently be prosecuted or, in respect of foreign nationals, removed from the U.K.,” the statement said (Murphy 2006).

As said, the government went to the Court of Appeal and appealed against the High Court’s judgment. The Court of Appeal on 1 August 2006 reversed part of the judgment by arguing that while one of the detainee’s Article 5 rights was breached, but at the same time noted that the judgment did not infringe on Article 6 rights.⁴

**Terrorism Act 2006**

A few months after the terrorist attack on London on 7 July 2005, the government in its response to the attack tried to arrive at an all party consensus to discuss the forthcoming terrorism bill. The Home Secretary, Charles Clarke, in his letter to the Conservative and Liberal Democrat home affairs spokesmen David Davis and Mark Oaten outlined his view on the new counter-terrorism bill. The letter indicated the in dealing with this new threat, the government besides amending the existing legislation also intent to introduce new offences, increase the detention period of suspect from 14 to 90 days, and ensure that “the police and intelligence agencies have all the powers which they require to enable them to deal effectively with terrorism” (House of Commons 2005b)

Though the government stated that the new Bill is “not” a direct response to the July attack on London but a continuation to the proposal that had already been planned much earlier before the attack, however statements and press releases from the Home Office and Downing Street indicates an urgency on the part of the government to speed up a new anti-terror legislation soon after attack. On the urgency of a new legislation, the Home Secretary on 20 July 2005 informed the House of Commons that the that the Government would bring forward the legislation as soon as practicable when the House returned from the summer recess and that the Government would return to the issue of control orders in the spring after it had received a report on the *Prevention of Terrorism Act 2005* from the

⁴ Article 5 of the European Convention of Human Rights deals with individual right’s to liberty; Article 6 deals with fair trial.
independent reviewer, Lord Carlile (House of Commons 2005b). Similarly, on 5 August 2005, the Prime Minister in his monthly press statement stated that:

“... there will be new anti-terrorism legislation in the Autumn. This will include an offence of condoning or glorifying terrorism. The sort of remarks made in recent days should be covered by such laws. But this will also be applied to justifying or glorifying terrorism anywhere, not just in the United Kingdom.” (Blair 2005)

The Bill when introduced in the House of Commons contained those points already made by both the Home Secretary and the Prime Minister in their letters, statements and press releases issued soon after 7 July. According to the Home Office publication the Act “contains a comprehensive package of measures designed to ensure that the police, intelligence agencies and courts have all the tools they require to tackle terrorism and bring perpetrators to justice” (Home Office 2006). The Bill was introduced in the House of Commons on 12 October 2005 and was passed by the Act of Parliament on 30 March 2006.

The content of the Act can be summed up in short as under.

-Encouragement to Terrorism (section 1): According to this section “...a statement that is likely to be understood by some or all of the members of the public to whom it is published as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism or Convention offences” (HMSO 2006). This will include the glorification of terrorism, where this may be understood as encouraging the emulation of terrorism. The maximum penalty is seven years' imprisonment (Home Office 2006/).

-Dissemination of Terrorist Publications (section 2): prohibits the sale, loan, or other dissemination of terrorist publications. This will include those publications that encourage terrorism, and those that provide assistance to terrorists. Maximum penalty is Seven years imprisonment (Home Office 2006)
- Preparation of terrorist acts (Section 5): Prohibits anyone from engaging in any conduct in preparation for an intended act of terrorism. The maximum penalty is life imprisonment (http://wikipedia.org 2006; also see HMSO 2006)

-Terrorist training and attendance offences (section 6 and 8): This makes sure that anyone who gives or receives training in terrorist techniques whether at home or abroad can be prosecuted. The Act also criminalises attendance at a place of terrorist training. The Maximum penalty is 10 years’ imprisonment (HMSO 2006)

-Making, misuse and possession of devices or materials and damage of facilities (Section 9 and 10): Prohibits the making or possession of any radioactive device (ie a dirty bomb). The maximum penalty is life imprisonment. The act also prohibits using radioactive materials or a radioactive device in a terrorist attack, and the sabotage of nuclear facilities which causes a radioactive leak. The maximum penalty is life imprisonment (http://wikipedia.org 2006; Also see HMSO 2006).

-Terrorist threats relating to devices, materials or facilities and Trespassing etc.on nuclear sites (Section 11 and 12): Prohibits anyone from making threats to demand that they be given radioactive materials. The maximum penalty is life imprisonment. (HMSO 2006)

The Act also makes amendments to existing legislation, including:

-Introducing warrants to enable the police to search any property owned or controlled by a terrorist suspect

-Extending terrorism stops and search powers to cover bays and estuaries
- Extending police powers to detain suspects after arrest for up to 28 days (though periods of more than two days must be approved by a judicial authority)

- Improved search powers at ports

- Increased flexibility of the proscription regime, including the power to proscribe groups that glorify terrorism (Home Office 2006)

The Bill when it was debated in the House of Commons attracted a lot of controversies and criticism from the opposition, media, human rights and Muslim community. The criticism to the Bill was raised right from the beginning. When the Bill went for voting, clause 1 (2) of Part 1 which prohibits any statement or publications that "glorifies, exalts or celebrates the commission, preparation or instigation (whether in the past, in the future or generally) of acts of terrorism" was criticised for "being vague, and for potentially stifling legitimate debate about government policy and the causes of terrorism" (wikipidea.org; Also see HMSO 2006). Moreover, it is argued that the clause which stipulates that only those terrorist events that only covered terrorist events which occurred more than 20 years ago and which will be prepared by the Home Office as punishable is entirely subjective, and gives the Home Office the right to decide who was a terrorist and who was a freedom fighter.

The other contentious area of debate is related to the period of detention of suspected terrorist to be extended from the existing 14 days to 90 days. The government's argument is that the 90 days detention is necessary and a result of direct recommendation from the police. On 6 October 2005, Andy Hayman, Assistant Commissioner of the Metropolitan Police in a letter to the Home Secretary argued that the nature of "modern terrorist" attack is to maximise casualties which is risky and different from the earlier terrorist act of the Irish Republican Army (IRA). Taking this into consideration, he argued that it is necessary to take preventive measure by arresting suspects at the earliest stage of intelligence gathering despite lacking of evidence.
Opponents of 90 day detention argued that detention without charge is a violation of one’s fundamental right and liberty and worse a retreat from habeas corpus, enshrined by the Magna Carta 790 years ago (http://wikipedia.org 2006; Also See HMSO 2006). The Government’s proposals have been criticised by the Opposition parties as well as by a number of senior judges and civil liberties organisations (House of Commons 2006). The Conservative Party leader, Michael Howard, accused the Government of being muddled in its thinking and said the extension to three months was probably too simplistic and not the most effective way of dealing with the problem. He also said that it was obviously not the duty of a politician simply to say yes to whatever demand came from the police. (House of Commons 2006, for details on commentary see BBC News: http://news.bbc.co.uk/1/hi/uk_politics/4333180.stm). Moreover he pointed out that no suspected terrorists who were released under the previous 14 days detention regime were later incriminated by new evidence (http://wikipedia.org 2006; Also See HMSO 2006). This indicates that the police had never practically needed longer than 14 days. Therefore it is argued that the denial of such a fundamental right can never be justified, regardless of the threat posed by terrorism (http://wikipedia.org 2006; Also See HMSO 2006).

Even Lord Carlile, the independent reviewer to the government’s proposals for to the law against terrorism indicates that the proposed 90 days detention without charges stand polarised and the level of public information about the proposal had been poor and that the problem being tackled had been explained badly (House of Commons 2006)

In the text of his report, he remarked:

This proposal, to allow a maximum detention period of three months before charge, has provoked considerable political controversy. By the time of writing this report in early October 2005 views seem to have polarised into strong support or stark opposition... Unfortunately the level of public information about this proposal has been poor, and the problem being tackled has been explained badly. (DEP 05/1221 paragraphs 62)

In his opinion the proposal of a maximum of three months is unfounded and draconian. In raising such concerns he questioned the very foundation of the Bill by remarking that:

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The question then arises as to how much extra time should be permitted, and how it should be controlled. It would be wholly unacceptable for the extra time to be unrestricted, or in any way to be a form of internment. The proposal of a maximum of three months is founded on nothing more logical than the suggestion that it seems a reasonable maximum in all the circumstances. It is true to say that it is the maximum I have heard mentioned in several meetings I have attended. It would probably be an insufficient maximum period for a very few cases, but more than three months would certainly be unacceptably draconian. (House of Commons Library 2005a: DEP 05/1221 paragraphs 62).

Moreover, issues of violation of Human rights were raised by him when he questioned whether the detention of a suspect over a long period as proposed in the Bill is in violation of Human Rights Act and would it be proof to challenge under the Human Rights Act.

A more searching system is required to reflect the seriousness of the State holding someone in high-security custody without charge for as long as three months. I question whether what is proposed in the Bill would be proof to challenge under the Human Rights Act given the length of extended detention envisaged (House of Commons Library 2005a: DEP 05/1221 paragraphs 64).

In conclusion to his Report, Lord Carlile said though he has no definite authority to suggestions that he had provided in his report, yet in his opinion he regarded the current clauses as below:

I regard the current draft clauses as providing too little protection for the suspect, though I am concerned that extended periods of detention should be available for some investigations” (House of Commons Library 2005a: DEP 05/1221 paragraphs 69).

Keeping these remarks along with criticism from the media, opposition and civil societies, the Clause when introduced for consideration in the Parliament on 10 November 2005 was defeated by 322 to 291 votes for which over 63 MPs from the ruling Labour party revolted against Blair’s proposal for a 90 days detention of suspected terrorist and voted against it (The Guardian November 10, 2005).

Britain’s new anti-terror legislation is an example where laws are formulated not only to deals with internal crimes but also to deal with those that are trans-boundary in nature. The Terrorism Act 2006 jurisdiction not only ends within the UK border but extended
well into and outside the EU. The clause on dissemination of information through any medium which is likely to incite terror is punishable and covers even a foreign company. The Electronic Commerce Directive (Terrorism Act 2006) Regulations 2007 that was presented before Parliament on 31 May and came into force on 21 June 2007 allows action against UK and companies in the European Economic Area (EEA) that disseminates any remark to a website or blog that encourages an act of terrorism (http://www.theregister.co.uk/2007/06/20/e-commerce_directive-terrorism/). The Failure to remove the offending post or to comply within the two-day period, in the absence of “reasonable excuse”, means the operator will be deemed to have endorsed the post and its directors could face up to seven years in prison possible and Home Office Guidance of October 2006 described procedures that should be followed (http://www.theregister.co.uk/2007/06/20/e-commerce_directive-terrorism/). Likewise, the punishable offence on those who gives or provides training in terrorist technique at home or abroad and; the new law 28 days detention without charges is applicable even to overseas or foreign suspect.

These new punishable offence as laid down in the new Act indicates the symmetrical coordination of the Home Office and Foreign Office in ensuring that the Britain’s sovereignty in securing its border extend well outside the British Isle. Despite the Muslim elders’ argument and the Police report that British foreign policy alienates Muslims and is responsible for the London bombing, (The Guardian 12 August 2006). British response post 7/7 London attack in the form of the anti-terror law is a reflection of its foreign policy directions where integration of domestic laws with that of foreign policy’s requirement is imperative to its national sovereignty.

**EU Response Post 07/07**

Outside Britain, the European Commission has played a leading role in guiding the Union in the fight against terrorism. The Commission’s proposals on Prevention, Preparedness and Response to Terrorist Attacks, Fight Against Financing of Terrorism, Judicial and Criminal Matters (European Commissions, Committee of Regions: CONST-027) and the Council of Europe Convention on the Prevention of Terrorism 2005 (Council of
are series of decisions, commands that aimed at fighting terrorism. However, as mentioned earlier Britain has sought to secure its border more effectively from the threat by adopting a series of domestic policies that are important to its security. It is to be noted that prior to 7/7, it is reported in The Guardian survey that since 2001 over 200 foreign students and scientists especially those who have applied in subjects like chemistry, microbiology and biotechnology were barred from studying in Britain (Times of India 20 July 2005). The two outcome of this development are the increasing role of the Commission in dealing with the issue and, second an indication that British perception of terrorism has increased considerably since 7/7.

This also indicates to a point that the issue of terrorism as it manifested in Europe requires a logic of EU perspective in tackling the future threat. However, there exist various problems when it comes to implementing or reaching a common agreement to decide, act and implement policies. In the EU, the jurisdiction to act against terrorism falls within the two spheres of intergovernmental pillars-Justice and Home Affairs and the Common Foreign and Security Policy. While the nature of terrorism is recognised as transnational problem, yet Member States framed their own policies to tackle this issue. For example when it comes to detention of suspect in France, police can detain the suspect for an initial 96 hours without charge. Following this they must be presented to a judge who can extend the detention for a week without charge (House of Commons 2005c). In Germany, it is possible for court hearings to be heard in camera and the court may exclude the public from the hearing if state security interests are at risk. The courts decide when to apply these provisions (House of Commons Library 2005c).

Moreover, the problem of integrating this issue is also constrained by the exclusion of Britain from the Schengen area of free movement whereby suspect(s) escaping into another is relatively easy to lose track of him/her as they can travel relatively easily around the Schengen area (House of Commons Library 2005c). Therefore the absence of a single mechanism to deal with a specific issue has proved to be a major hurdle for EU common terrorism prevention law or policy. Member States implement laws which are deemed necessary for their security and protection of ‘their way of life’ which is based on
'democratic values, identity and the rule of law'. The importance of such law justified by Blair who argues that he 'was prepared to amend the Human Rights Act, if necessary, so that judges would be unable to overrule the plan to deport extremists' (The Sunday Times 7 August 2005).

CONCLUSION
Foreign and security policy are an integral part of a nation state, the decision to frame and act at a certain time taking into account of the domestic and international factors are the main characteristic that differentiates one nation from the other. However, this traditional role of the state has been challenged by the increasing interdependence between states in the area of finance and capital movements, information technology, trade, environment and movement of citizens across the border. In the European Union, this process has been more challenging in the recent time as the Union increased its strength from fifteen members to twenty five.

With the increase in number of Member States in the Union, there also exist an equal number of problems that challenges the interest of the Union in one hand and that of the individual Member States on the other. On most occasions clashes between the Union objectives and the individual Member States are inevitable as it was evident in the case of the common foreign and security policy. The reason being that foreign and security policy still remains within the nation states and in the Union of an increasing interdependence where in most areas sovereignty was delegated to the supranational body, foreign and security policy remains the last symbol of a nation state’s identity. Thus, the notion of sovereignty, statehood and nation became unmistakably bound together in the area of foreign and security policy of any nation.

In recent times, though there has been an increasing scholarship that portrayed sovereignty as something that can be changed according to circumstances; something that is flexible and that does not constraint, inhibits or limits the capacity for action (Howe 1990: 676). Within the European Union, this concept has held true in most of the areas. For example in the area of trade and environment, Europeanisation of decision making in
these areas of Member States legislation, are the result of their willingness to surrender their sovereignty over these issues to the supranational body. This vertical allocation of power to a supranational body was not the result of an overnight surrender of authority; it is the process of constant negotiation and bargaining at the intergovernmental level that are influenced both by domestic and international factors. Therefore, in delegation of these authorities, the level of success on any given area depends on the final analysis of the cost and benefit that are likely to affect this transfer of authority. In other words, the reason for preferring international-level power allocation, that is, governmental action at an international level, is what economists call “coordination benefits” (Jackson 2003: 792).

While in the other areas such transfer of power was relatively easy, in the case of CFSP, the process has been long and incremental. In contrast with trade or environment, since the evolution of the EPC till date, common foreign and security policy has been elusive, though it is one of the oldest institutions of the Union. Progress made in the area of the CFSP has been slow and involved a lot of resistance and bargaining by Member States, especially Britain and Denmark with France as an exception in few occasions.

The question therefore, is why the CFSP represents such an obstacle when other sectors are well integrated and embedded within the functioning of the EU. This is more telling when increasing evidence pointed out that common foreign and security policy are necessary in order to compliment development and cooperation in other sectors of the EU.

The concept of foreign and security policy as indicated earlier, still remains a symbol of state sovereignty, identity and nationhood. There cannot be a foreign policy without a state and no state without sovereignty. It is in this linkage that a sense of belonging to the state is identity, and this is supplemented by the identity that a state is sovereign and has an authority over its foreign policy. Therefore, the state, conceived of as a political unit is characterised not only by territory and centralised government, but by a binding identity.
which is not given but is in a constant flux and subject to constant change (Guessgen 2000).

Foreign policy is the articulation of the state’s interests to project itself to the outside world as a capable, authoritative, influential and responsible state. In projecting this image to the outside world through diplomacy, culture and force the state also ‘reveals which values and principles constitute a state’s political community internally’ (Guessgen 2000). The other factor that influences foreign policy, according to Florian Guessgen, is the domestic function. According to Guessen, “In voicing its interests vis-à-vis others a political community – acting as a whole – equally becomes visible to itself. Foreign policy not only creates the “other”, but also reaffirms the “self”. It symbolizes the state and its community much more than any other policy area” (Guessgen 2000). Applying this to Britain, a sense of identity is mostly referred to its history as an insular nation; a former imperial power with centuries of foreign policy experiences; a parliamentary sovereign nation and above all a nation proud of its culture. All these represent an identity which is closely related with foreign policy. Stating Jonathan Bach, Guessen maintained that the relation between foreign policy and identity as:

Foreign policy is the key practice through which sovereignty – and with it core assumptions of identity – is articulated. Maintaining one’s own sovereignty, and the integrity of the system of sovereign nation-states, is the primary theoretical task of foreign policy. The principle of state sovereignty serves to delimit (and discipline) the realm of inside and outside, and foreign policy is the primary way in which the state expresses this delimiting function. Foreign policy exists in a dialectical relation with the concept of sovereignty: without a concept of sovereignty, foreign policy is meaningless, but since sovereignty is not an a priori given, the understanding of sovereignty is partially dependent on the practices of foreign policy (Bach: 1999; 60).

It is the linkages of foreign policy with identity that remains an issue for British foreign policy. On the external front the identity of a ‘special relationship’ that Britain shared with the United States is predominant to British foreign policy. The current Iraq crisis and the war against terrorism is an indication to this special relationship which at times is at the cost of its relations with its European partners.
The importance of the Atlantic alliance in British foreign policy thinking is the capabilities and role of NATO in European security structure. It is to be noted that the attempt by the Franco-German allies during the negotiation of the Maastricht treaty and in the recent Convention of Europe to dilute the capabilities of NATO was constantly rejected by Britain. The reason being two pronged strategies adopted by Britain where in the first, British perception that Europe not only lacked the capabilities, role and infrastructure to play a leading role in the security arrangement of Europe, but the creation of another military centre away from NATO structure will jeopardize British-Atlantic relations. The second related to the larger question of British sovereignty and the fear that such attempt will erode the intergovernmental mechanism of the institution and thereby paved the way for a federal decision making in the area of CFSP. It is often seen that being a facilitator of the Transatlantic relationship provides a rationale, if not a role, for pragmatic policies designed to optimize London’s influence both in Washington and the major European capitals. But if this facilitating role was to be severed, Britain would not only lose its identity as an important actor in the European circle but in the international level as well. Therefore, during the Iraq crisis vis a vis the Convention, the key objective was to maintain this balance of sovereignty and independence in foreign policy. In his speech on 19 May 2003, Jack Straw reaffirmed this when he said:

The Iraq crisis has shown that the foreign policies of nation states are ultimately determined by national interests. That will always be the case in a Union whether of 15 or 25 sovereign countries. For Britain, and other Member States, there will also always be issues where our own pressing national interests are not shared by a critical mass of EU partners. We therefore need to be able to act on our own initiative—as Britain did in Sierra Leone, and France has done in the Ivory Coast. We may look for support and help from other EU partners, but there isn’t a sufficient mass of shared interests for a truly common policy. We also have responsibilities as one of the Union’s two Permanent Members of the UN Security Council and the United Nations is and will remain an association of sovereign nation states (Straw’s speech 19 May 2003).

However this does not mean that British foreign policy was completely against any development of the CFSP. While acknowledging that foreign and defence policy are the nation state’s prerogative, Britain both under the Thatcher and Blair government supported the common foreign policy in the initial stages soon after the Maastricht and
the Amsterdam treaties. The St Malo declaration and subsequently the Kosovo crisis are the two instances where Britain sought to participate actively in the functioning of the CFSP (See Chapter 3). Moreover, notwithstanding its position during the Convention, the Draft Constitution was finished on June 2003 after a compromised with the ‘federalist’ and the full text of the Draft was submitted to the Italian presidency of the Council of the European Union on 18 July 2003. The question arises as to how Britain reacts differently at different time to the development of the CFSP?

Over the last fifty years, the EU’s foreign policy, compared to other policy areas has been progressing at a slow pace. These progresses were mostly made at a crucial moment or the final stages of a given deadline. It has been argued that the CFSP developed as results of intense negotiation and bargaining at the intergovernmental level between the EU and Member States on the one and between Member States themselves on the other. The game being played during such negotiation is a typical of a two-level game where the domestic and international factors are important to the outcome of the negotiation.5

In the period during the negotiation to the draft constitution, Britain was faced with a crisis at home over the war in Iraq. However this crisis did spill over to the Convention. That is, public attitude towards the Convention was comparatively low compared to that of the Iraq crisis. Domestic pressure on the government policy toward the Convention was less and even the Conservative party chooses not to oppose the government during the negotiation. The opposition party mostly agreed with the government position regarding the issue of creation of a ‘foreign minister’, merging of the post of High Representatives and Commissioner of external affairs and the creation of the post of a European Council’s president. Its only concern is that foreign policy should be the priority of the national government. This merger of position between the two political parties enabled the government to manoeuvre its skill during the negotiation for the CFSP through hard bargaining like a fixed term for the President of the European Council, the deletion of the term ‘federal’ and ‘foreign minister’ from the draft. It is therefore seen that during the negotiation, especially in the area where intergovernmentalism is a

5 For details see chapter 1 of this thesis.
priority, agreement or outcomes are generally affected by the level of bargaining and the
cost and benefit one can expect. Most importantly agreement could be reached only after
all members are satisfied accordingly to their perceived cost-benefits.