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The European Union's external representation after Lisbon: from 'hydra-headed' to 'octopus'?

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Abstract

A longstanding critique of the European Union has been its 'hydra-headed' external representation whereby multiple EU actors intervene to speak on the Union's behalf in international organizations. Expectations were therefore raised as the 2009 Lisbon Treaty created a simplified regime of external representation whereby in essence the representation is left in the hands of the President of the European Council, the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission and, finally, the President of the Commission. The question explored in this Working Paper is whether the 2009 Lisbon Treaty reform has since given rise to that cohesion and clarity of expression ("single voice") for which the EU and its member states allegedly strives. We survey this topic by ways of the EU´s external representation in the United Nations system and related conferences. Our main findings are that while it can be said that the 'new' troika has gained in formal representative 'authority', it has not been accompanied by greater independence of action or 'autonomy' from member states or by significant gains in terms of overall simplification of the Union's external representation so far.

Keywords

Introduction[*]

When Herman Van Rompuy, President of the European Council, took the stand at the opening session of the General Assembly of the United Nations (UN) in September 2011, his action was qualified as doubly "symbolic" by media.[1] On the one hand, it was the first time in UN history that a representative of a regional organization was allowed to address the plenary, as this had traditionally been a right reserved only for Heads of State or Government. Hence Van Rompuy's speech was interpreted as a recognition of sorts of the international stature that the European Union (EU) has acquired in recent decades. On the other hand, Van Rompuy's address to the General Assembly appeared as a symbolic step forward towards achieving the Union's longstanding ambition that it should speak with a 'single voice' in the United Nations system and before the international community at large. This has been a European objective since the very beginning of European Political Cooperation (EPC) in the 1970s.[2]

Symbolism aside, the appearance of the President of the European Council at the inaugural session of the General Assembly in representation of the EU is perhaps one of the most visible novelties introduced by the 2009 Lisbon Treaty. The Treaty expresses the member states' desire to simplify the Union's external representation and adopts a number of reforms in this regard. It is believed that through these new measures the EU will become more effective in the framework of foreign policy and acquire an enhanced ability "to communicate more clearly with its international partners" in different international forums.[3]

This working paper takes these objectives as its starting point. The question that we intend to explore is whether the Treaty reform of the EU's external representation has permitted simplification and given rise to that clarity of expression ('voice') which the EU and its member states allegedly strive for. Stated differently, has the Lisbon Treaty enabled the EU to definitively put paid to the persistent image of being 'polycephalous' or 'hydra-headedness' in its external representation?[4] The working paper is structured as follow: the first section gives a brief introduction to the dynamics of the pre-Lisbon EU external representation. The second section outlines the concepts used for analysis in this text. The third section will explore the most significant changes introduced by the Lisbon Treaty in terms of the EU's external representation as well as the political practice that has developed since the entry into force of the Treaty in December 2009. The fourth and final section examines the implications for the 'authority' and 'autonomy' of the EU's external representation on policy and practice.

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[*] The author is member of the Observatory of European Foreign Policy. This is a translated and updated version of Elisabeth Johansson-Nogués "La representación exterior de la UE, a la hora de Lisboa," in Esther Barbé (ed.) Cambio mundial y gobernanza global: la interacción entre la Unión Europea y las instituciones internacionales. Madrid: Tecnos, 2012.

[1] "Poker With UN Votes: Europe Divided on Palestinian Question", *Spiegel Online*, 22 September 2011.

[2] Nuttall, S. "Two Decades of EPC Performance," in E. Regelsberger et al. (eds.), *Foreign Policy of the European Union: From EPC to CFSP and beyond*, Boulder: Lynne Rienner, 1997.

[3] European Union, Treaty on European Union (TEU), on-line resource.

[4] Jørgensen, K.E. "The European Union in Multilateral Diplomacy", *The Hague Journal of Diplomacy* vol. 4, 2009, pp. 189-209; Kozak, T. "Multi-headed foreign representation", Opinion, *EUObserver*, 19 June 2003; Duke, S., "Providing for European-Level Diplomacy after Lisbon: the Case of the European External Action Service", *The Hague Journal of Diplomacy*, vol. 4, 2009, pp. 211-23; Cameron, F., *An introduction to European foreign policy*. Abingdon, Routledge, 2007.

The EU's external representation prior to Lisbon

The Six' external representation towards third countries or multilateral organizations was not contemplated by the Treaty of Rome in 1957. However, after the creation of European Political Cooperation in 1970 the representative function was informally assumed by the rotating Presidency of the Council of Ministers.[5] Given the lack of clear rules in regards to this function, each six-month Presidency in the early years of EPC would subsequently handle the external representation function according to their own capacity (infrastructure and diplomatic skills), their resources and their political ambition. This inevitably caused a great heterogeneity between different Presidencies-in-office and as a consequence the EC introduced the mechanism of the so-called 'troika' in the 1980s in order to ensure greater continuity in the external representation. Through the troika, the sitting Presidency formally exercised representation in the field of EPC in summits with third countries or international organizations, together with the preceding and succeeding Presidency.[6] The European Commission, on its hand, developed a strong presence in international forums in areas of its competence or through interagency agreements that allowed the Commission to act as an observer or in parallel with the EU member states.

The Maastricht Treaty codified the practice of the separate representation of the Union and of the European Community. Hence Article J.5.1 of the Maastricht Treaty stated that the rotating Presidency of the Council shall represent the EU's common foreign and security policy, while the European Commission play this role in the frame of its competences with an international dimension such as, for example, trade or agriculture.[7] In terms of the UN, this provision meant that the EU Presidency-in-office would present the Union's priorities during his/her speech before the plenary of the General Assembly and/or act as the coordinator of the European position through its delegation in New York, Geneva and Vienna. The rotating Presidency would also represent the common position of the EU in all UN organs and specialized agencies, in its multiple levels of work, during the six month duration of the Presidency. The European Commission, meanwhile, would provide the necessary legal personality for the EU activity and exercise its own function of external representation in those areas where having acquired such rights (for example, in the United Nations Organization for Food and Agriculture or the International Atomic Energy Agency).[8]

The codification of the figure of the Presidency in the external representation in the Maastricht Treaty did, however, not resolve the underlying problem. There was still a lingering perception that not all the Presidencies were able to perform the job effectively and satisfactorily given the complex logistics and workload related to the position, in general, and, in particular, with regard to the coordination of the EU in the headquarters of the UN and other multilateral organizations. Another problem that arose with the Maastricht Treaty was the creation of so-called 'variable geometry' or 'multi-speed Europe,' which implied that the Presidency-in-office could not always represent the European position in international forums, if it was not a participant of that particular policy. In this regard it should be noted, for example, the inability of Denmark or Ireland to decide on policies related to the field of defense during their periods at the helm of the EU.[9] These, and other problems, were the reasons why the Treaty of Amsterdam amended the troika, which, from 1999 onwards, came

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[5] Nugent, N., *The Government and Politics of the European Union,* 4ª ed. Durham: Duke University Press, 1999.

[6] Cameron, *op. cit*., p. 15; Kirchner, E., J., *Decision-making in the European Community. The Council Presidency and European integration*, Manchester, Manchester University Press, 1992; Dinan, D., *Ever Closer Union: An Introduction to European Integration*, Boulder, Lynne Rienner Publishers, 1999 (2ª ed.); Fernández, A.M., "Change and Stability of the EU Institutional System: the Communitarization of the Council Presidency", *Journal of European Integratio*n, vol. 30, 5, 2008.

[7] The Treaty of Maastricht, as the Single European Act, also encouraged greater coordination and association between the Presidency and the Commission in terms of external representation.

[8] Jørgensen, *op.cit.*

[9] The external representation in these cases was usually referred to the outgoing Presidency.

to be composed of the sitting and outgoing Presidency, along with the High Representative for the CFSP (a post which was created with the Treaty of Amsterdam), in the area of common foreign and security policy, and/or the European Commission on issues falling in the latter's areas of competence. As of the Treaty of Nice, the current President could choose to voluntarily give up the external representation to the EU High Representative.[10]

Despite the reforms of Amsterdam and Nice, the EU's byzantine external representation system continued to generate considerable frustration among third countries and inside the halls of multilateral forums. Apart from the fact that the EU Presidency changed every six month, each EU Presidency also called upon the other members of the troika differently, some Presidencies frequently requesting assistance with representation while other not. As a consequence the EU's external representation came to be seen as less than transparent for most of its international partners. Finally, the ability of some Presidencies to speak on behalf of the EU-15 in a credible way before a global audience continued to be challenged, especially when it came to the smaller member states. Thus, the EU's foreign policy, according to an analysis by the European Commission, had reached a point in the early 2000s where it had become "weakened" by the persistent "lack of focus and continuity in the external representation."[11]

The criticism of the complexities of the EU external representation motivated members of the Convention on the Future of Europe (drafters of the failed European Constitution and of, in its modified version, the Treaty of Lisbon) to propose a step forward, towards simplification and greater consistency in this area.[12] Hence in the text of the European Constitution in 2004 and the Lisbon Treaty the role of the six-month Presidencies in the Union's external representation is phased out. Instead alternative options for external representation were contemplated. The first option is the President of the European Council, exercising the Union's external representation in meetings at the level of Heads of State and Government.[13] The second option is the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, Catherine Ashton, whom the Treaty gives a representative role in matters related to foreign policy at ministerial level in bi- or multilateral contexts.[14] The third option is the European Commission, who, according to Article 17 (TEU), may represent the EU in all areas, except in foreign policy, security and defense.[15] The external representation of the EU in the Lisbon Treaty thus falls into the hands of a 'new troika' composed exclusively of European 'supra-state' or institutional actors and each furbished with a pluriannual mandate to exercise their external representation function.

A conceptual approximation to the EU external representation

It is worth noting that between the failure of the European Constitution and the agreement on a political solution in the form of the Lisbon Treaty there was an important temporal lapse. Thus, the tenuous situation of the EU external representation based on Amsterdam and Nice lasted almost a decade. Given the absence of simplified guidelines for the external representation, a major loophole was created and over the years the void was filled with informal political practice. It consolidated a particular political modus vivendi around the external representation which could be classified with

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[10] In the 2003-2009 period the High Representative represented the EU in multilateral contexts such as the Quartet for the Middle East or in peace operations (e.g. Bosnia, Macedonia or Congo). Cameron, *op. cit.*

[11] European Commission, *Communication from the Commission to the European Council on Europe in the World – Some Practical Proposals for Greater Coherence, Effectiveness and Visibility*, 10325/06, COM(2006)278 final, p. 6.

[12] European Convention, "Laeken Declaration on the Future of the European Union" (http://european-convention.eu.int/pdf/lknen.pdf)

[13] TEU, Art. 15, para. 5 y 6.

[14] *Ibid.*, Art. 18.

[15] *Ibid.*, Art. 17, para. 1.

the help of the following three models proposed by Jørgensen, namely: (1) the unconditional delegation model, (2) supervised delegation model and (3) the coordination model.[16]

"Unconditional delegation" can be described as a modality under which the representation is exclusively held by an EU institutional actor by virtue of its Treaty competences. The member states fully respect this competence, delegating the corresponding representation, political power and initiative taking. However, this model, as Jørgensen argues, practically only applies on determined intra-Union matters. It is almost never used in the international context with the exception of specific cases related to, for example, aspect of competition policy in the World Trade Organization (WTO) or the Food and Agricultural Organization (FAO).[17] The second dimension corresponds to the 'supervised delegation model.' Jørgensen highlights that this model is pertinent to mixed competence situations where member states delegate authority and representation to the Presidency, the Commission and/or the High Representative, but under the supervision by the member states. The member states' supervision can take the form of a Council's mandate, which determines the parameters of the negotiation through its ability to reject the agreement, or through a constant monitoring of negotiating activity by the EU-28 individually. Another common form of monitoring is the choice of joint representation, which implies that the external representation is shared between the Commission and different member countries constellations.[18] This model is most often used in the context of multilateral negotiations for international agreements not related to foreign or security policy, as in the case of some environmental agreements, development or commercial policy. Finally, the 'coordination model,' the most used according to Jørgensen, refers to a modality under which competences are mixed, but in this case, the external representation is in the hands of member states representing the EU through the Presidency or, if possible, through national delegations in forums to which not all member states have access.[19] In these situations, the final decision on the representation is taken ad hoc and almost always subject to context.[20] In the pre-Lisbon era the coordination model was used in forums such as the General Assembly or multilateral treaties and bodies linked to the global organization such as the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the Human Rights Council and the World Health Organization. Occasionally representatives of the European institutions were invited by the Presidency to share the representation or participate in the EU delegation headed by the Presidency.[21] In sum, despite the formal division of powers as provided in the Treaties of Maastricht, Amsterdam and Nice in terms of exclusive or shared competences, in practice, states members and European institutions have developed a political modus vivendi based on intense interaction (in the form of supervision or coordination models) in regards to most aspects of the EU representation in multilateral organizations or other entities.[22]

Before we go on to assess the EU's post-Lisbon external representation, it is necessary to emphasize two additional analytical concepts – 'authority' and 'autonomy.' Authority refers to the rights and powers granted to the central organ (agent) of an organization or institution by the members

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[16] Jørgensen, *op. cit.*

[17] *Ibid.* The author provides examples such as the European Commission WTO action on cases such as the Boeing-McDonnell Douglas, Microsoft or GE-Honeywell.

[18] In some scenarios the Commission co-represented the EU together with one of the Presidencies and/or several other interested member states.

[19] Jørgensen, *op. cit.*; Kaczyński, P.M., **"**Swimming in Murky Waters: Challenges in Developing the EU's External Representation", *FIIA Briefing Paper* 88, Finnish Institute of International Affairs, Helsinki, September 2011.

[20] One example would be FAO where the EC/EU and the member states declare at the beginning of the session who has the competency pronounce itself and on which specific points of the agenda. Emerson, M. y Kaczyński, P., "Looking afresh at the external representation of the EU in the international arena, post-Lisbon", *CEPS Policy Brief* 212, Center for European Policy Studies, Brussels, July 2010.

[21] In the UN-system the European Commission has subscribed to agreements which allows them to act alongside the member states, e.g. in the WTO or FAO.

[22] Jørgensen, *op. cit.*

(principals) in order for the former to be able to interact and/or negotiate with third entities (states or organizations) effectively.[23] The authority can be thought of as political and/or legal authority. In this text we conceive of the agent as referring to representatives of European institutions and the principals being EU member states. Autonomy, on its hand, refers to freedom of action enjoyed by the agent in relation to its principals and where the agent is granted the status of an actor in its own right alongside the principals. Jupille and Caporaso argue that autonomy entails a salient "corporate" actor more than a mere "collective," given that the corporate actor plays a role that is "more than the sum of its constituent parts."[24] Thus, autonomy exists when there is a clear operative differentiation between the EU and its member states facilitated by the legal frameworks and/or by a political practice. The autonomy of the agent may increase when there is leeway of decision-making in broad terms, when the decision-making process escapes the standard operating procedures as the instructions are ambiguous, incomplete or when the agent rely on key information to which it have privileged access.[25] The autonomy of the agent decreases when these conditions are not met.

Prior to 2009 we can consider the European institutional actors' authority over the Union's external representation in multilateral forums as moderate. The codification of the role of the Commission in the Maastricht Treaty and the reform of the troika from Amsterdam provided a strong legal basis for the Commission and the High Representative in representing the EU together with the Presidency. However, this formal authority did not translate into real autonomy for the EU institutional actors. Rather the member states have instead intensified their control over the representative role of the European institutions in the past decade by ways of the supervised delegation model. Moreover, the extensive reliance on the coordination model gave the Presidency great prominence in the external representation of the EU. However, it came at the cost of the other actors in the troika and of the overall coherence in the Union's external representation. In sum, although the various treaty reforms have given more authority to the agent in terms of external representation, the political practice that developed prior to the Lisbon Treaty meant that the authority did not translate into autonomy.

The EU's external representation after Lisbon

In light of the above, when the Treaty of Lisbon entered into force in 2009 the question was whether the simplifications introduced in the Treaty would mean the beginning to the end of hydra-headed confusion surrounding the external representation of the EU as well as more authority and autonomy to EU institutional actors.[26] The Treaty endows the EU with legal personality[27] and, as mentioned already, the six-monthly presidency is displaced by a new troika: the President of the European Council, the High Representative and the European Commission. Hence, on paper, the Lisbon Treaty gives the impression that the EU is on the verge of becoming simplified, more cohesive and transparent with regard to its external representation and thus potentially more able to communicate clearly with its international partners. However, the implementation of the Lisbon Treaty has been anything but simple. Many questions are still raised about the actors designated to exercise the external representation of the EU, as well as their duties, as we will see in continuation.

First, the European Council's decision to appoint Herman Van Rompuy and Catherine Ashton as President of the European Council and High Representative/Vice-President of the European Commission, respectively, became the first hurdle for the Union's external representation even before

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[23] Jupille, J. y Caporaso, J.A., "States, Agency and Rules: the European Union in Global Environmental Politics", in C. Rhodes (ed.), *The European Union in the World Community*, Boulder, Lynne Rienner, 1998, p. 217.

[24] *Ibid.*

[25] *Ibid.*, p. 218.

[26] "The Incredible Shrinking Europe", *Times Magazine*, 8 March 2010.

[27] TEU, Art. 47.

the entry into force of the Treaty. The appointment of Van Rompuy and Ashton was certainly a surprise to many, even to most in the Brussels-circuits. Some in the media and others in the European Parliament wondered how two hitherto relatively unknown politicians were appointed to positions of such prominence.[28] Yet other analysts were concerned that Van Rompuy and Ashton's lack of political stature would hinder the successful implementation of their obligations. Hence the dual test of Van Rompuy and Ashton in the early months was, in the words of one observer, the rise to the dual "challenge to become the face and voice of Europe in the world," as well as become known "on their own continent."[29] With hindsight it is clear that the controversy surrounding the appointment of Van Rompuy and Ashton militated to a certain degree against the rapid consolidation of these offices as true and legitimate representatives of the EU both in the eyes of member states and third countries. Another element that did not facilitate the consolidation process of the "new" troika was the absence of the High Representative during her first year in office in some situations or international forums, in which she was expected to represent the EU. The reasons for such absences could surely be justified for reasons of clashing schedule and perhaps even the fact that "the responsibilities attached to the post of the HR/VP appear too challenging for a single individual to fulfill".[30] Still, experts note that all officials mark the institutional possibilities and limits of their office in the first years and hence consistent presence is of importance for this reason.[31] The decision of the High Representative to not attend a conference in Montreal in 2010 organized to coordinate international aid to Haiti following the earthquake that hit the Caribbean country, for example, was criticized on this basis.[32] Since the entry of force of the Lisbon Treaty, the High Representative's absences on numerous occasions have thus been seen as not helpful in terms of shaping the functions of the external representation of the EU.

Second, controversy also emerged around another member of the new troika, this time the European Commission and its interpretation of the Commission's refurbished role in the post-Lisbon external representation. The European Commission, under Article 17 of the Treaty, assumes the external representation of the EU in all areas, except foreign policy, security and defense.[33] This created the expectation that the Commission would, for example, exercise the representation of the EU in the UN Conference on Climate Change in Copenhagen (COP-17) in 2010, just weeks after the entry into force of the Treaty. However, the Council considered it desirable that the external representation in Copenhagen should be performed by the rotating Presidency (Sweden), in collaboration with the European Commission and in partnership with the incoming Presidency (Spain) plus some member states with particular interest in the subject.[34] The result was, in the opinion of a member of the European Parliament, "a disaster" because the EU had "six or seven prime ministers trying to speak on behalf of Europe."[35] In a similar case, only months later the European Commission offered itself as the chief negotiator for the 2010 United Nations Environment Program (UNEP) conference in Stockholm which sought to agree on a global instrument on the use of mercury. The Commission's offer was again rejected by the Council as some member states did not appear to be prepared to give full powers

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[28] "El desafío de Van Rompuy y Ashton", *BBC Mundo*, 20 November 2009.

[29] *Ibid*.

[30] Wouters, J. and T. Ramapoulos, "Revisiting The Lisbon Treaty's Constitutional Design Of EU External Relations", *Leuven Centre for Global Governance Studies Working Paper*, 119, September, 2013.

[31] Cf. Kaczyński, P.M. y P. Ó Broin, "Two new leaders in search of a job description", CEPS Policy Brief, 200, Centre for European Policy Studies, Brussels, 25 November 2009.

[32] EU was instead represented by a French official at the Montreal conference.

[33] TEU, Art. 17, para. 1.

[34] Kaczyński, P.M. "Single Voice, single chair? How to re-organise the EU in international organisations under the Lisbon rule", *CEPS Policy Brief* No 207, Centre for European Policy Studies, Brussels, March 2010.

[35] Andrew Duff, MPE, in Rankin, J., "Row over who gets to take charge at environment talks," *European Voice,* 15 April 2010.

to a delegation led by the Commission.[36] This reluctance is due to some member states' perception, according to one source, that the Commission as a negotiator might not adequately safeguard the member states' interests in good faith and/or would fail to circulate the information on the state of the negotiations to the required level.[37] The Commission, finding itself once more rejected to exercise the external representation, retaliated this time by withdrawing its UNEP draft mercury negotiating mandate and, consequently, the member states were not able to act in a coordinated manner at the UNEP negotiation table in the Swedish capital.[38] The Commission afterwards expressed its willingness to take the case to the European Court of Justice. However, in December 2010 the problem was settled by a decision of the Council to recognize the right of the Commission to represent the EU on mercury whenever related to its competences. However, the condition imposed was that the Commission could only exercise its representation rights in international negotiations after due consultation with a special committee composed of member states.[39] In addition, there should be close cooperation between the Commission and the member states throughout the negotiation and the Council reserves its rights to revisit the initial negotiating mandate. Incidents such as Copenhagen and Stockholm indicate that the Lisbon Treaty did not manage to solve all issues related to the external representation. A number of inter-institutional battles between the Commission and the Council over how to interpret the legal texts on external representation in specific situations have instead ensued.

Third, the disappearance of the role of the six-monthly Presidency in external representation as of the Lisbon Treaty soon became another source of controversy. While some states welcome the new troika representing the EU in international forums, other states would have liked to see a continued role of the EU Presidency in the external representation.[40] Those who advocate for a continued prominent role of the Presidency in the post-Lisbon era argue that in situations of mixed competences the external representation must be exercised by the Council Presidency. This was the argument, for example, put forward by Hungary in the context of the preparation of the climate change conference in Cancun in 2010, which claimed the right to exercise the external representation during its then incoming six-month presidency.[41] The Polish Presidency (second half 2011) also called for a continued international role for the EU Presidency.[42]

The Hungarian-Polish view contrasted with the Belgian vision during its semester at the helm of the Council (second half of 2010).[43] Belgium, observers note, supported the new troika to create a precedent in the interpretation of the Treaty.[44] An example is the A/64/L67 draft Resolution on EU's participation in the work of United Nations. The draft presented by the Belgian Presidency in September 2010 makes clear that the Lisbon Treaty resolves the external representation the EU in

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[36] Duff, *op.cit..*

[37] *Ibid.*

[38] Emerson, M. et al., *Upgrading The EU's Role as Global Actor: Institutions, Law and the Restructuring of European Diplomacy*, Brussels: Centre for European Policy Studies, 2011.

[39] This representation model was subsequently used in the follow-up negotiations on mercury in Chiba (Japan) in January 2011. Council of the EU, *Decision on the participation of the Union in negotiations on a legally binding instrument on mercury further to Decision 25/5 of the Governing Council of the United Nations Environment Program (UNEP)*, 16632/10, 6 December 2010.

[40] For a more detailed discussion, cf. Missiroli, A. y Emmanouilidis, J., "Implementing Lisbon: the EU Presidency's other (rotating) half", *European Policy Centre Policy Brief*, Centre for European Policy Studies, Brussels, December 2009.

[41] Emerson, M. et al., *op.cit.* p. 31. The Council Legal Services, however, did not find grounds for such an interpretation and recommended a joint Commission-EU Presidency representation.

[42] *Ibid.*

[43] For the Spanish position, cf. Barbé, E. (ed.), *Entre la irrelevancia internacional y el aprendizaje institucional: la presidencia española de la Unión Europea (2010)*, Bellaterra: Institut Universitari d'Estudis Europeus, 2011.

[44] Emerson, M. et al., *op.cit.*; Szabó, E. (2011) "Background Vocals: What Role for the Rotating Presidency in the EU's External Relations post-Lisbon?" *EU Diplomacy Paper* 05 / 2011, Collège d'Europe, Bruges, 2011.

favor of the new troika composed of European institutional actors, and that these three actors substitutes the role previously played by the member state holding the Presidency. European players, in other words, assume the representation on behalf of the EU and member states as a whole.

The post-Lisbon external representation of the EU in international thus still generates considerable confusion and even some tension between member states and the European actors explicitly designated by the Treaty to carry out that purpose.[45] Some of the arguments seem petty, on the superficial level, because they focus on protocol details like nameplates (European Union or EU Presidency), speaking order, allotments of speaking time and even hierarchical organization of chairs at the table of the delegation.[46] However, on a deeper level, they reveal the fundamental problem of the distribution of power within the EU which remains largely intact since the Treaty of Nice. Thus the gap between the simplified external representation and distribution of powers in mid-2011 led to the demand for a new political modus vivendi.

The need for a new political deal came to its hilt as member states began to fear that the allocation of powers in the post-Lisbon external representation may cause a reinterpretation and/or extension of powers in favor of the European actors and the European institutions and to the detriment of the member states. The British Foreign and Commonwealth Office expresses this concern as a "representation creep" which might eventually become a "competence creep."[47] The member states in other words sought to avoid an adjustment in the institutional balance of power in favor of Brussels and the European institutions. Wouters and Ramapoulos dispute this vision arguing that "it is doubtful that a unified representation of the Union and its Member States in an IO can be considered legally to constitute an 'exercise' on behalf of the Union of its shared competence." Furthermore, they sustain the "mere practice in an IO cannot change the allocation of competences enshrined in the EU Treaties."[48] Still, the unsettled situation lead to that, in October 2011 and after months of arduous talks among member states, the Legal Service of the Council and the European Commission, a memorandum outlining the first additional criteria on how to interpret the external representation of the EU was adopted.[49]

The memorandum represented a first step to generate more clarity and offer guidelines to European action and can be summarized in three points.[50] First, the member states will agree on a case by case basis whether and how to coordinate and be represented externally. The member states may ask the new post-Lisbon troika or the sitting EU Presidency to represent them.[51] Second, states will seek to ensure and promote possibilities for the new troika to make statements on behalf of the EU. To this end, the member states and the new troika will coordinate their action in international organizations as much as possible, along the lines the Treaty calls for. The new troika will also ensure maximum transparency through adequate and timely consultation on statements reflecting the position of the EU in multilateral organizations. The member states may complement declarations made by the EU actors, while respecting the principle of sincere cooperation. The representation shall be exercised from behind the nameplate of the EU except in cases where the rules of the forum in question prevent such practices.[52] Third, and finally, the external representation does not affect the distribution of

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[45] Polish Presidency, "Compromise on the EU external representation", 22 October 2011, (http://pl2011.eu/en/content/compromise-eu-exterior-representation).

[46] Emerson, M. et al. *op.cit.*

[47] UK Foreign and Commonwealth Office, 2013, in Wouters and Ramapoulos, 2013 op. cit.

[48] *Ibid.*

[49] Kaczyński, 2011, *op. cit.*

[50] Council of the European Union "EU Statements in multilateral organisations - General Arrangement", 15901/1, 24 October 2011.

[51] *Ibid.*

[52] Council of the European Union, "EU Statements", *op.cit.*

competences agreed to by the Treaties nor can the issue of representation be evoked to acquire new ones. Hence, the EU institutional actors can only make statements related to cases over which it has jurisdiction and when there is an agreed common position, following the provisions of the Treaty. Moreover, the EU representation does not affect the normal procedures of decision-making common positions required by the Treaties.[53] The latter safeguards are very much in line with the claims made in particular from the British government during the 2007 Intergovernmental Conference which gave life to the reformed Lisbon Treaty. London wants above all to ensure that the representative role of the High Representative in any way not condition the full freedom of action for the United Kingdom in multilateral forums, in particular the UN Security Council.[54]

In sum, the EU's enhanced legal personality and external representation by the European supra-state actors in the wake of the Lisbon Treaty do not substantially alter the intergovernmental nature of the EU's external action, or imply a fundamental change in "the political balance between the states members and the Union."[55] In many areas of external action of the EU, member states retain their full right to define the rules of representation in international forums on a case by case basis because these are areas of exclusive or shared jurisdiction.[56] However, the November memorandum does timidly open the door to a possible increased use of the new troika in multilateral contexts, in particular in the United Nations system. The failure of Copenhagen and Stockholm were powerful signs of the weakness of the Europeans, when they do not speak with one voice. Hence in the coming years is likely that the new troika will assume a more prominent role in the international representation of the EU, but always under keen micromanagement, close monitoring and certainly under some form of co-representation, by the member states.

From "Hydra-Headed" to "Octopus"?

The image of the EU as 'polycephalous'[57] or 'hydra-headed'[58] in terms of its multi-headed external representation is persistent in the academic literature.[59] In a recent reflection on the EU in the Caucasus, Babayan and Shapovalova argue that the Lisbon reform of the external representation can be understood as a simple a metamorphosis of that which already existed into a new physical form.[60] Thus, it is argued that although the Lisbon Treaty has achieved (tacit) agreement on the new troika, the inconsistency in the external representation now manifest itself at the lower levels of the European structure. The same authors therefore hold that the EU today is better described as an "octopus" with a single head but with many limbs moving in different directions. This image serves as a starting point for our discussion, in terms of authority and autonomy, on the reforms introduced by Lisbon in external representation in relation to the UN-system.

In terms of authority, as we have seen, the new troika composed of EU institutional actors gained legal authority in terms of the external representation. Compared to the previous situation, Lisbon has indeed managed to simplify the external representation on paper and thus, the new troika has a

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[53] *Ibid*.

[54] Laursen, F. The EU as an International Political and Security Actor after the Treaty of Lisbon: An Academic Perspective", Paper prepared for *Global Jean Monnet/ECSA-World Conference 2010, "The European Union after the Treaty of Lisbon"*, Brussels 25-26 May 2010.

[55] Duke, *op. cit.*

[56] Council of the European Union, *op. cit.*

[57] Jørgensen, op. cit., p. 194; Kozak, op. cit.

[58] Duke, 2009, op. cit.

[59] Cameron, op. cit.

[60] Babayan, N. and Shapovalova, N. "From Hydra to Octopus? Post-Lisbon EU and the South Caucasus", European Consortium for Political Research, General Conference, Reykjavik, 2011.

formally recognized role. Also, the spirit of the memorandum prepared under the Polish Presidency seems to tilt the institutional balance in relation to the external representation in favor of increased use of the EU actors as far as possible. The task of representation in the General Assembly is now effectively in the hands of the new troika and coordination will be provided by the EU Delegation in New York. However, there are still many areas in the United Nations system and related conferences for which the member states still will have to work out case by case whether to be represented by the new troika or through other formulas. Thus, one could argue that, after Lisbon, the external representation of the EU at the UN has gone from relying extensively on the coordination model to be a model of governance that is equally split between the supervised delegation model and the coordination model or even greater use of supervised delegation, according to Jørgensen parameters. So the idea is gaining ground that perhaps in a growing number of areas EU we have a few "heads" less when it comes to EU's notoriously polycephalous external representation. In some contexts it is even consistently represented by a single head, like the case of the inaugural UNGA session referred to in the Introduction.

However, there are still many areas that are grey areas or red lines for some EU member states when it comes to the EU's external representation. Thus, in terms of autonomy, it could be argued that somewhat paradoxically that while the agent has gained some authority it has lost autonomy. The greater authority of EU actors in the external representation has been gained at the cost of permitting the principals the right to exercise greater supervision of the agent. Kaczynski, for example, sustains that member states are increasingly more likely to attach long list of restrictions to the international negotiating mandate in terms of the objectives and how to achieve them thereby limiting the freedom of action of the EU actors.[61] In sum, much as the Lisbon Treaty has given prominence to European institutional actors in the external representation, in practice, the representative role has not been endowed with autonomy or real political power. These constraints correspond to those outlined in relation to Jørgensen supervision model. The representatives of the EU, put in another way, only represent the EU through their physical presence, but limited in its action beyond being a mere spokesperson for the member states. Van Rompuy's speeches to the General Assembly inaugural sessions each year is a clear example of representation without ability to express an autonomous discourse, a fact that was not lost on the audience.[62] In other words, returning to our octopus allegory, much as in some contexts, as we have noted above, there is a single head, this head has no separate autonomy away from its limbs.

In the pre- and post-Lisbon external representation there is thus a clear continuity in terms of political practice. The underlying problem seems to be a lack of confidence of some member states in the EU institutions. The reluctance of many member states to let EU actors acquire a too prominent role shows their distrust of the new troika to adequately carry out the external representation on their behalf.[63] The drawback with such distrust, Jørgensen has noted, is the continued cacophony and ineffectiveness of the European Union effectively reducing the influence corresponding to its international presence.[64] Other authors echo this assessment. Thus, as Sanchez Barrueco notes, that it may seem advantageous to share representation and leadership between different stakeholders, like between the new troika and interested member states. However, if such leadership is decided ad hoc it continues to generate uncertainty both within and outside the EU for the resulting lack of transparency and predictability.[65] In other words, in spite of an attempt to institutional innovation, the Lisbon Treaty

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[61]   Kaczyński, 2010, *op. cit.*

[62]   "Poker With UN Votes", *op. cit.*

[63]   Jørgensen, *op.cit*, p. 208

[64]   *Ibid.*

[65]   Sánchez Barrueco, M.L. "La participación de la UE en la diplomacia climática internacional: de Kyoto a Copenhague, próxima cita: Cancún", presented to *Jornadas de Investigación sobre la Unión Europea. La política de cambio climático*

does not seem to have altered the dynamics in the EU's external representation significantly. The near to medium future therefore appears to point to the continuation of ineffective governance in external representation. The Lisbon Treaty's ambition of clarity and single voice seem in consequence appears to remain a mere aspiration for the time being.[66]

Conclusions

The Lisbon Treaty attempted to introduce significant reforms to clarify and simplify the EU's external representation. For this, the Treaty formally eliminates the role of the Presidency in the EU's international representation and proposes instead a new troika composed of the President of the European Council, the High Representative and the Commission. A strictly legal reading of the Treaty would give the impression of an institutional balance tilt to the side of the post-Lisbon troika when representing the EU and its member states in international forums. In the words of Jupille and Caporaso, one could say that the Lisbon Treaty has given more authority to the European institutions in the external representation.

However, as much as the Treaty granted authority to the new troika, the question of autonomy is much more slippery and here the analysis can only be made case by case and over time. What is clear, for now, is that the EU representatives do not enjoy significant autonomy with respect to the member states.

In sum, it is not clear that the post-Lisbon stage represents an improvement of the functioning of the external representation or that it provides the single voice which the Union and its member states allegedly aim for. The reluctance of member states appears to be the major obstacle to the rapid consolidation of clarity of expression by the EU on the international scene. The road ahead for the new troika is certainly to attempt to gradually gain the confidence of the member states. Duke has noted that the experience from the six-monthly Presidencies reveals that the effectiveness and success of these almost always depended on the power of persuasion that the Presidency exercised.[67] According to this logic then perhaps, the post-Lisbon troika will have to deploy medium-and long -term capacity for dialogue and to join forces so that their external representation function is more than a mere formality devoid of voice.

(Contd.)

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[66] Kaczyński, 2011, *op.cit.*

[67] Duke, *op.cit.*

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