

POLICY PAPERS



Robert Schuman Centre
for advanced studies

Jean de Ruyt

A Minister for
a European Foreign Policy

05/03

ISSN 1830-1541



European
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EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

A Minister for a European Foreign Policy

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A French language version of this paper 'Un ministre pour une politique étrangère européenne', was published previously as RSCAS Policy Paper 05/02. It is available at:
<http://www.iue.it/RSCAS/Publications/>

Policy Papers, RSCAS No. 05/03

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ISSN 1830-1541

© 2005 Jean de Ruyt

Printed in Italy in November 2005
European University Institute
Badia Fiesolana
I – 50016 San Domenico di Fiesole (FI)
Italy

<http://www.iue.it/RSCAS/Publications/>

The Policy Paper Series

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by Helen Wallace

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Foreword

We live in troubling times in Europe and in our wider world. Old certainties have given way to new uncertainties as the global system finds itself beset with new sources of insecurity and challenges for foreign and security policy-making. We also know from public opinion research that our citizens in the enlarged European Union remain strongly attached to the idea of a stronger and more common foreign and defence policy for the Union, with the latest *Eurobarometer* poll of May-June 2005 showing 77% of EU citizens in favour of this (poll published on 18 July 2005). In response to these challenges considerable progress has been made over recent years in consolidating the capacity of the Union to act more effectively in both classical foreign policy fields and on defence and security issues. Yet responsibilities remain shared among governments, the Union and Nato, and within the Union between different institutions, notably the Council and the Commission.

It was the desire to develop the Union's capacity, rather than a desire to disturb its institutional arrangements, that led the Convention on the future of Europe and the members of the 2003/4 Intergovernmental Conference to propose important changes to the operating system of the Union in the Constitutional Treaty. At the centre of these proposed changes was the plan to create the post of Foreign Minister of the Union and to create in support of this post an integrated External Action Service. Despite the fact that for the moment the Constitutional Treaty remains to be ratified, the need for a more coherent approach by the Union remains compelling. Thus much more thought needs to be given to how this might be achieved, and to how both policy leadership and the instruments of more common policies might be set in place.

In this Policy Paper Jean de Ruyt explores in careful detail the debate about the proposed Union Foreign Minister and how the post might be developed in the future. He writes with a wealth of experience in the field. He has served as the Belgian Ambassador to Nato, as Political Director to the Belgian Ministry of Foreign Affairs, and as Belgian Permanent Representative to the United Nations, and he is currently the Belgian Ambassador to Italy and Albania. The timing of these assignments has given him first hand knowledge of the steps taken to develop the post held by Javier Solana as High Representative of the Union and Secretary General of the Council, working closely in tandem with Chris Patten as the member of the European Commission responsible for external relations, as well as direct experience of the very difficult period for the UN in responding both to the 9/11 attacks on the Twin Towers and the subsequent fierce discussions about interventions in Afghanistan and Iraq. He writes here in a personal capacity, but with insights drawn from his own extensive diplomatic experience. The Policy Paper is intended as a contribution to the continuing and necessary discussion about how to enable the European Union to match up to the challenges of the 21st century world for European foreign and security policies.

Professor Helen Wallace
Director
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Introduction

Contrary to many observers at the time, Jean Monnet in 1954 remained optimistic: ‘Many believed it was a cataclysm but even though I was disappointed, I did not believe this was the end of Europe...Once again I had to explain to my friends that the only defeats are those you accept.’

These remarks in relation to the rejection by the French National Assembly of the European Defence Community have been much quoted recently. The Founding Fathers of Europe were quick to draw their conclusions from this debate. The European Community established three years later by the Treaty of Rome seemed to have adopted little of the grand project of political community elaborated in the early fifties. Yet, from this modest text emerged a framework by which the European Union was able to develop step by step and become what it is today.

Similarly, the deep crisis provoked by the results of the recent referendums in France and the Netherlands should not prevent the evolution of Europe from moving forward, step-by-step, according to the needs objectively identified.

Steps can and should be made in some areas that should not become the hostage of the grand institutional design.

The creation of the position of European Minister for Foreign Affairs, with a European External Action Service to support him, is one of these new steps. This position is indispensable for the effective functioning of the Union in this increasingly complex, global and dangerous world.

It is remarkable that this element of the Constitutional treaty was only marginally criticized in the referendum debate.¹ Consensus on the ‘Minister’ had been reached rather quickly by the Convention and the Intergovernmental Conference adopted provisions related to him with almost no discussion.

Soon after, the Union Institutions started to prepare the putting into place of those new instruments, which is testament to the fact that they are filling a considerable void in the institutional system of the EU.

Indeed, soon after agreement had been reached on the text of the treaty in June 2004, Heads of State and Governments decided that, by the entry into force of the Treaty, the current ‘High Representative’ Javier Solana would start functioning as the Minister. Even before the Treaty was formally signed, discussion started among the Institutions and with the Member States on the modalities involved in the setting up of the European External Action Service.

Delays in implementation of the Constitutional Treaty provisions related to the Common Foreign and Security Policy will certainly hamper the external representation of the Union, not to mention its capacity to act on the world stage in the area of crisis management.

The Minister is neither a futuristic innovation nor a federalist fantasy. It responds to a need identified long ago. But the difficulty to adapt the ‘Community method’ to the area of foreign and security policy explains why it could only be reached after a lengthy process and several intermediary steps.

The debates in the Convention were based on the successes but also the limitations inherent in the function of High Representative for CFSP. The discussion started from that experience, not from an ideal model for political Europe. A simple question was asked: To make CFSP more efficient was it

1 After the failures of the French and Dutch referendums, the European Foreign Minister was mentioned by many as one of the Treaty innovations that should be maintained or included in a less ambitious new Treaty. In an excellent article on the reasons for the failure of the Treaty, ‘Europe without Illusions: A Category Error’ (accessed at: www.prospectmagazine.co.uk/landing-page.php) Andrew Moravcsik notes that ‘the biggest change (brought by the Constitutional Treaty)—creation of a European Foreign Minister empowered to recommend though not impose a more coordinated foreign policy—enjoys 70 percent approval across Europe’.

not time for the High Representative, based in the Council Secretariat, to be given a 'second hat', as member or Vice President of the Commission?

He alone would represent the Union in all matters of external relations. Formal contacts with third parties would no longer require the joint presence of the President of the Council, the High Representative and the Commissioner in Charge of External Relations. The image would be clearer, continuity better ensured and the responsibility of representing the Union much less on the new small acceding countries.

This proposal was shaking the 'pillar' system built by the authors of the Maastricht Treaty in order to keep CFSP out of the Community system. However that was not the purpose of the proposal. Very few voices were heard in the Convention debates denouncing what in other times would have been considered as an institutional coup. The pillars in fact are still in place and the Minister will have to respect their specificities.

It is also ironic to note that this project took shape while the Union was suffering a serious crisis—the divisions about the war in Iraq. While at the end of 2002, in New York, Member States of the Union were starting to battle each other over the Iraqi crisis, the European Convention was quietly reaching a consensus about a European Foreign Minister whose function, by definition, made sense only if the Member States could all agree on one implementable Foreign Policy.

The so-called 'double hat' formula, elaborated in the working group on CFSP presided by Jean Luc Dehaene, started to rally a majority in the fall of 2002. A common contribution by France and Germany helped consolidate the formula in January 2003—just when these two countries were closing ranks in the UN Security Council before the American offensive.

Further discussions were needed to reassure everyone—including the representatives of the Institutions themselves—but the basic idea, to entrust to one person the external relations of the Union, was quickly approved and can be found almost untouched in the Constitutional Treaty, approved in June and signed in October 2004.

The creation of the position of a European Minister for Foreign Affairs is not enough to diffuse by miracle all divergences among Member States about foreign policy issues. But the fact that agreement was reached during the Iraq crisis gives credence to the belief that Member States then realised the need for progress in unity and for a step forward on the road to the political union of Europe.

For the project to succeed, the larger Member States will have to play the game and allow the Minister to take the lead in crisis management issues—as they had already done with the High Representative for the Balkans and the Middle East Peace Process—and also to take initiatives in looming transatlantic disputes

With such 'horizontal' responsibility and the right of initiative, the Minister should not then systematically be paralysed by divergences in thinking among European capitals, or between the capitals and Washington. He should thus in principle be able, if not to prevent, then at least better anticipate and contain crises comparable to that of the Iraq war.

If sufficiently tactful, he will quickly be judged as an indispensable tool to help face the challenges of our new world. A world with a united Europe but also a world more global and with new threats. A world in which solidarity in the face of a common enemy and the sharing of common values, fundamental to the Atlantic Alliance, will take new and more complex forms—too complex for the members of the Union to address in an arbitrary, uncoordinated way.

On the international scene, Europe increasingly represents an entity but its divisions weaken it without reinforcing even its biggest Members States. The crises that the Europeans have had to address together over the last sixty years have not slowed down their integration. On the contrary, they have increased the recognition that common interests had to be defended together.

The crisis about the ratification of the Constitutional Treaty should not prevent this instrument from coming into being. It is aimed after all at bringing disputes under better control, while preserving Europe's image and capacity to act in managing crises, notably those involving the United States.

The purpose of this paper is to explain the scope of the creation of this new 'tool' of the Union and to demonstrate how effective it could be at this stage of the development of the political Europe in helping it face the new threats of the global world.

I: One Voice for the European Union

The final agreement amongst Heads of States and Governments of the Union about the Constitutional Treaty was reached on 18 June 2004 in the meeting of the European Council, in theory the last of the Irish Presidency of the Union. However this meeting will be remembered more for the dispute about the replacement of Romano Prodi as President of the Commission.

Having been unable to agree on his succession, the European Council met again ten days later, this time appointing Jose Manuel Barroso, Prime Minister of Portugal, as President of the Commission for five years starting 1 November 2004.

The Decision of 29 June 2004

At that same meeting, the European Council decided to prolong for five years from 18 October 2004, the mandate of Javier Solana as 'Secretary General of the Council and High Representative for CFSP' as well as that of Pierre de Boissieu as Deputy Secretary General.

But the European Council at this same extraordinary—and euphoric—meeting made another important decision that went relatively unnoticed: to appoint with immediate effect, Javier Solana as Foreign Minister of the EU from the day of the entry into force of the Constitution.²

With this decision, Heads of State and Government were hoping to ensure continuity while being careful not to weaken the ratification process in creating a 'fait accompli'. In appointing Solana, the European Council wanted also to reassure Member States and third countries that their relations with the Union would remain stable during the period they themselves called transitory.

Third parties would continue during that period to deal with Solana as the High Representative; the rotating presidency would continue to preside the Foreign Affairs Council and to represent the Union abroad; but those who deal with Solana were advised that their interlocutor is supposed—and considered able to—become the Minister, giving him more credibility and authority than the Amsterdam Treaty had actually awarded him.

Uncertainties about the ratification of the Constitutional Treaty now render this need for continuity all the more important. Some might well take advantage of the situation to launch rear guard battles but it seems hopeful that the culture of CFSP, as inherited from European Political Cooperation, will encourage governments and the Institutions to find a pragmatic way to implement the relevant Treaty provisions.

The existing treaties could well confirm many of the components of the position of Minister, notably the Council/Commission 'double hat'. A new treaty is however required to deprive the rotating Presidency from representing the Union in contacts with third parties; the Maastricht Treaty explicitly gave it this competence for CFSP matters. But, as experience already shown, a voluntary

2 See the declaration of heads of State and Governments annexed to the press communiqué of the Council meeting of 29 June 2004 - # 10995/04.

self-effacement of the Presidency is still possible and could even be formally encouraged if the perspective of a new Treaty remained uncertain for too long.

This decision of June 29, 2004 allows a pragmatic and incremental implementation of the provisions of the Constitutional Treaty from the present situation, ensuring the necessary continuity.

Shared Representation

The Amsterdam treaty established the position of high representative for CFSP but gave him a limited role in the external representation of the Union. For CFSP matters the leading role is still played by the rotating president of the Council and, for matters under Community competence, both are obliged to yield to a member of the Commission, adding a third party to all official travels

Everyone agrees now that this formula is unsatisfactory and gives the Union an image of weakness to outsiders. But the Amsterdam formula should only really be seen as an interim step in a slow evolution, a provisional compromise in the old institutional discussion that started with the creation of the EEC, about giving (or not) the supranational institutions created by the Treaties of Paris and Rome a role in foreign policy matters.

The success of the Coal and Steel Community, and later of EEC, lay largely with the institutional system imagined by the founding fathers, but this system is too ‘supranational’ to be applied as such to foreign policy. On the other hand, setting up a political union among the members of the EEC with a Secretary General, as in NATO or the UN, would have weakened too much the President of the Commission.

To avoid these traps, which had caused the failure of the Fouchet Plan, European Political Cooperation (EPC) was conceived in the seventies as a pragmatic instrument, operating outside of the Community institutions but with the same actors, which thus lent credibility to their declarations and initiatives.

Natural logic ensued and the rotating presidency was entrusted with the management of EPC. This solution allowed some coherence while keeping it separate from EEC activities—the same Foreign Minister wearing a different ‘hat’ according to the type of meeting he presided—EEC or EPC.

The formula worked well for ten years but the development of EPC and the extension of its scope of action placed too much burden on the Presidency. It became increasingly difficult with no outside help to prepare all meetings, draft all declarations, master the impressive set of EPC ‘common law’ and conduct the dialogue with third parties.

Member States decided therefore, very pragmatically, based on the so-called London Report of 1981, to have the Presidency assisted for contacts with third parties by the previous and succeeding Presidencies—a ‘Troika’ formula, which would take other forms later.³

Small Secretariat

The spectacular progress of European Political Cooperation encouraged further steps in the rationalisation of its functioning. When the Single European Act introduced EPC in the Treaty in 1986, the decision was made for the first time to provide it with a small Secretariat.

3 The first ‘Troika’ formula, the one established by the London report, counted representatives of the current Presidency, the previous one and the next. After Maastricht, the Commission replaced the previous Presidency. Since the Amsterdam Treaty, even if the succeeding Presidency continues to appear in some occasions, the ‘new Troika’ is understood as including the Presidency, the Commissioner in charge of external relations and the High Representative.

Caution was needed in the setting up of this Secretariat in order not to scare too much the ‘guardians’ of the Community method:⁴ the ‘Political Secretariat’ was located out of the Council Secretariat; his head was appointed as an assistant to the Presidency and supported by only four junior diplomats representing the two previous and the two succeeding presidencies—one thus leaving after each semester.

This formula evolved very quickly: the Maastricht Treaty included the Political Secretariat in the Council Secretariat—in a separate wing of the Charlemagne building, but under the administrative authority of Niels Ersböll, the Secretary General of the Council, and it was enlarged to one diplomat for each Member State. But its ‘head’ the Belgian Pierre Champenois—succeeding the Italian Giovanni Jannuzzi—continued to be seconded and partly paid by his government and he was supposed to remain silent in Council as well as in Political Committee meetings.

The concept of a political secretariat indeed continued to provoke counter-reactions and caution was required in order to have the formula succeed. Pierre Champenois demonstrated that it was possible to be a respectful assistant of the rotating presidency and have his own ideas, which could somehow be made known when possible. But there was no question at the time of diminishing the role of the Presidency. Besides, the Maastricht Treaty in changing EPC in the Common Foreign and Security Policy (CFSP) had formally confirmed its role by stating that: ‘The Presidency shall represent the Union in matters coming within the common foreign and security policy.’

The High Representative and the New Troika

The Amsterdam Treaty brought two major changes to this scenario:

- The creation of the function of ‘High Representative for CFSP’;
- The setting up of a ‘Policy Planning and Early Warning Unit’ under his responsibility composed ‘of personnel drawn from the General Secretariat, the Member States, the Commission and the WEU’, which gives the High Representative from the outset a dedicated staff to deal with CFSP matters.

This swift development was made possible by the experience of the war in Yugoslavia. The failures during this first real challenge for the newly created ‘Union’ exposed openly CFSP’s weaknesses in the face of an international crisis of that magnitude which it had been clearly unwise to pretend to manage.

The rotating presidency system was clearly not able to manage a crisis on this scale, not least for reasons of credibility and continuity. A solution in the form of the appointment of a ‘Special Representative’ was quickly found and a mandate drawn up to allow him direct intervention on the ground, liaison with the relevant international participants and to make proposals as to possible courses of action.

The Council first chose David Owen then Carl Bildt and even though their missions were not wholly successful, due to the mistakes of the EU governments themselves, the formula was considered useful. The experience inspired the negotiators of the Amsterdam Treaty to agree finally to create the position of what was first called ‘Monsieur PESC’, in other words an individual who would give CFSP a better external visibility—and continuity.

But as if they were scared to have played the sorcerer’s apprentice, the authors of the Treaty were careful to limit the powers of the ‘High Representative’. The provision of the Maastricht Treaty

4 It should be noted that on the eve of the Milan European Council of June 1985 that started the process leading to the Single European Act, France and Germany relaunched jointly the idea of a ‘Secretary General for the European Union’ but their proposal raised so much criticism that they did not even mention it during the debates. On the origin of the Political Secretariat, see Jean de Ruyt, *l’Acte Unique Européen, Commentaire*, éditions de l’Université Libre de Bruxelles, pp. 245—248.

entrusting the Presidency with the external representation of the Union for CFSP was not changed. The Amsterdam Treaty added only a new Paragraph providing that ‘The Presidency shall be assisted by the Secretary General of the Council who shall exercise the function of High Representative for CFSP.’

His role is carefully outlined:

(he) shall assist the Council in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.

The Treaty thus created a new representative function for CFSP matters but kept the High Representative as a subordinate to the rotating President of which he remains—in principle—the silent auxiliary for the other Council proceedings. Some, including the Belgian Delegation tried during the negotiation of the Amsterdam Treaty to create a link between the High Representative and the Commission in having the latter participate in the meetings of the Commission College, but these efforts, re-launched during the Intergovernmental Conference Preparing the Nice Treaty could not, at that time, convince other partners.

The juxtaposition of the High Representative and the rotating Presidency had, as a logical consequence, to generate a new type of Troika for contacts with third parties (see footnote 3). From then on, external representation would be shared formally by the President, the High Representative and the Commissioner in charge of external relations—condemned by this new institutional architecture to meet their interlocutors together as a team.

The solution was not elegant but it was not possible to go further at the time. In hindsight, it appears that, after the previous steps—the Secretariat of the Single European Act and the Secretariat formula included in the Maastricht Treaty—the provisions of the Amsterdam Treaty were a sort of further step leading progressively to the position established in the Constitutional Treaty.

Of course in Amsterdam, nobody would have dared to make this kind of prediction. The bureaucratic in-fights that ensued between the Political Unit and the Secretariat and between the Secretariat and the Commission, which accompanied the implementation of the Amsterdam Treaty, threatened to undermine the viability of these new structures. It was thanks to the personality of Javier Solana, who had been chosen by the Cologne European Council in June 1999 as the first High Representative, that these rear guard battles were transcended.

The First Successes of Javier Solana

The former Spanish Foreign Minister already enjoyed a good reputation with the Union Governments when he was appointed as the first Secretary General/High Representative. He had indeed been the Secretary General of NATO in extremely difficult times, with the first enlargement of the Organisation after the end of the cold war, the first attempts to integrate the European Security and Defence identity in the Alliance structures and above all the war in Yugoslavia.

When he was chosen by the Heads of State and Governments of the Union, he had just presided over a North Atlantic Council transformed into a war Council, orchestrating an air campaign against Serbia in order to have it loosen its control over Kosovo.

In his new function, Solana managed from the outset to gain the trust of the Foreign Ministers, while asserting progressively an authority based on of a remarkable ability at crisis management. He thus quickly became an interlocutor much appreciated by third parties.

Fortunately for Javier Solana, the Commissioner in charge of external relations when he started his mandate was the brilliant British Commissioner Chris Patten with whom cooperation was always harmonious even when bureaucracies under the two men were conducting institutional guerrilla actions.

But the rotating Presidency was often not easy for him. Indeed, leading Europe for six months, many head of governments and Foreign Ministers from small or middle-sized countries were sometimes unable to refrain from acting as if they personally had the capacity to shine on the international scene by making improvised initiatives succeed.

How many Foreign Ministers travelled to the ‘complicated Orient with simple ideas’? How many tried to explain to their Indian counterparts how to make peace with Pakistan about Kashmir, or thought that by the end of their term they could make peace between Serbs and Kosovars?

In his ambiguous role as Secretary General/High Representative, Solana did not have the means to prevent these excursions and had often to keep quiet or to turn his back to a Minister convinced that he was saving the world.

These difficulties did not though prevent him from imposing himself and showing his added value. Naturally, he took in hand the implementation of the first structures of European Defence based on the Saint Malo agreements. Having been Secretary General of NATO was a major asset for the management of this delicate dossier and helped him also become involved in the Balkan crisis where he knew all the players well.

His first real achievement in personal visibility came at the time of the French Presidency, in Autumn 2000, when he was sent as sole representative of the Union to a meeting in Sharm El Sheik supposed to prevent the collapse of the Middle East Peace Process after the failure of the Camp David negotiation and the beginning of the *Intifada*.⁵

This happened only as all energies in France were concentrated on removing Milosevic from power and replacing him with Kostunica. The result was that this allowed Solana, quite spectacularly, to be seen as a first level player in the solution for the Arab Israel dispute, which was the most important issue that had been dealt with by EPC since the seventies.

In New York in November of the following year, two months after the 11 September 2001 terrorist attacks, Kofi Annan invited Solana to his office together with Secretary of State Colin Powell and the Russian Foreign Minister Igor Ivanov to a meeting of what had already been recently called ‘the Quartet’. The Quartet was borne of an active collaboration in the field in Palestine between the UN representative Terje Larsen, the special Representative of the EU Miguel Moratinos, and the local representatives of the US and Russia. In having their principals meet at the political level, Kofi Annan had wanted to create a structure allowing the International Community to supervise efficiently the peace process. The selection of Solana as the EU representative to that meeting thus had a major political as well as institutional significance.

The Belgian Presidency of the Union accepted to be present at that meeting as a ‘back bencher’ but at most of the successive meetings the rotating Presidency imposed itself at the table—bringing with it the Commissioner as the third member of the Troika. Still, this did not prevent the High Representative, from then on, from appearing in the eyes of third parties as the ‘principal’ European actor in the Middle East Peace Process.

This leading role as well as the role he continued to play in the Yugoslav crises—mainly in Kosovo and in Macedonia—allowed Solana to develop a personal relationship with the American Secretary of State and the main players in Washington, who, for pragmatic reasons, as well as being pleased to find a more permanent and accessible interlocutor, offered him very quickly a privileged access.

5 The meeting mandated a group of ‘wise men’ presided by the American Senator Mitchell, who presented a report in April 2001.

The Debate on the Future of the Union

Gained largely thanks to his own 'savoir-faire', these successes of the High Representative were not however a guarantee for the future. This 'one' voice and 'one' telephone number for the Union were those of Javier Solana; they may not remain after his departure.

Besides, in anticipation of the biggest enlargement in EU history, the leaders of the Union were conscious that the Treaty of Nice, supposed to deal with the 'left-overs' of the Amsterdam Treaty, would not be sufficient to deal with the significant transformation that was anticipated.

As a result, even before the conclusion of the Nice Treaty negotiation in 2000, collective reflection started on what was called 'the Future of Europe'. The debate was launched by the German Foreign Minister Joschka Fischer in a now famous speech in Humboldt University in Berlin.⁶ President Chirac of France continued with a speech in the German Bundestag and British Prime Minister Tony Blair in a speech at the Warsaw Stock exchange.⁷

In September of that same year, the Belgian Prime Minister Guy Verhofstadt launched two proposals in a speech at the Egmont Palace in Brussels⁸ within the framework of that debate on the future that were unexpectedly discussed at length at a later stage: they suggested a) the transfer of Solana's position to the European Commission and b) have the President of the Commission elected by universal suffrage. The idea of having the High Representative transferred to the Commission was also advocated by the Belgian delegation in the Intergovernmental Conference leading to the Amsterdam Treaty but was welcomed there and elsewhere merely as a distant perspective.

Javier Solana himself was extremely careful whenever this issue was mentioned in his presence. He was afraid that the fragile balance he had managed to keep between the institutions as well as his pragmatic approach would be challenged by these proposals that would deprive him from his freedom of action. He was also afraid that if his position were to be transferred to the Commission, the major European powers would no longer be ready to have him play a leading role in the development of European defence that was booming at the time.

Anyway, the atmosphere of the Nice negotiation rendered these ideas as mere long-term objectives. The meagre results reached after a long intergovernmental Conference and four long days of difficult negotiations at the top level in Nice, did not encourage anyone to believe that these kinds of institutional changes could be reached soon in a new 'IGC'.

This assessment had an influence on the choice of method to be used for the next step in the integration process that was discussed in the preparatory works leading to the Laeken Declaration, adopted at the end of the Belgian Presidency of 2001.

The merit of the Laeken Declaration was to show the way forward, imposing a level of ambition superior to that which marked the IGC leading to the Nice Treaty. It also confirmed a new procedure making it possible to keep this level of ambition sufficiently high. Instead of starting immediately with an Intergovernmental Conference, which risked bringing a result as disappointing as the one reached in Nice, an intermediary step would be introduced allowing a more open and broad participation for the preparatory work—the formula of a 'European Convention'.

6 'Vom Staatenverbund zur Föderation—gedanken über die finalität der Europäischen integration', 12 May 2000, accessed at: www.EurActiv.com.

7 These speeches can be found at www.EurActiv.com. Blair's speech also available at www.number10.govuk/output/page/3384.

8 'A Vision of Europe', speech to the European Policy Centre in www.EurActiv.com

II: The Proceedings of the European Convention

When at the Laeken European Council it was decided to launch the European Convention, it was difficult to foresee that only one year later, a consensus could be reached on the creation of a post of European Foreign Minister—with a foot in the Council and another in the Commission, presiding over the Foreign Affairs Council, allowed to take initiatives and in charge of ensuring consistency between the various services of the European Commission in charge of external relations.

A Favourable Context

Several reasons explain this remarkable evolution. The experience of the High Representative formula had been positive—with its successes but also its limits. There was also the political context: the follow up to September 11th and the preparations for the war in Iraq; the perspective of the next enlargement, which imposed changes in the functioning of CFSP, and obviously, the open procedure chosen to prepare the Constitutional Treaty—that of the European Convention.

1. September 11, 2001

The events of 11 September changed the world. They also impacted the foreign policy of the European Union.

At the Laeken European Council that took place three months after, the Union reacted quickly and pragmatically: solidarity with the United States, confirmation of the central role of the UN, support for the United States in their direct action of self-defence in Afghanistan and determination to create new tools in the fight against terrorism.

But it soon became evident that the U.S. reaction to the events would go further than the Afghanistan war and the implementation of Resolution 1373 on terrorism. This reaction would clearly be more and more unilateral.

Europeans had already been puzzled when the Bush administration rejected NATO's solidarity offer based on Article 5 of the Atlantic Charter, immediately after 11 September. They discovered later that the neo-conservatives were using the extraordinary emotion created by the attacks in New York and in Washington to implement a policy founded in the affirmation of power, power they planned to use for objectives which would probably not match those of the European Union.

Throughout 2002, the prospect of a war aiming at changing the regime in Iraq haunted CFSP actors. The incapacity of Europe to divert their Atlantic partner from a project with disquieting implications was clearly having an impact on the discussions on the European Convention. It increased the support for even the most daring of suggestions leading to a reinforcement of CFSP.

2. Enlargement

The year 2002 was also marked by the conclusion of the accession negotiations for ten new countries: Cyprus, Malta and eight countries from Central and Eastern Europe. The pressure was strong for making new progress in the integration of the Union before the final date of the signature of the accession treaties, notably in order to allow CFSP to continue to work efficiently with 25 members.

It was indeed anticipated that enlargement would have serious implications on the substance of CFSP as well as on its functioning and it was important to face these in the context of the challenged transatlantic atmosphere described above.

On substance, most Central and Eastern Europe Countries were expected to be closer to the United States and more distrustful of Russia than the current Union members. From the institutional point of view, the fear was that with 25 Countries around the table, the character of the Council debates would

change and discussions on the management of international crises would lose the informal and cosy atmosphere that had been preserved in the Europe of 15.

It appeared too that the numerous small Countries soon to enter the Union had neither the capacity—nor the desire—to take charge of the Presidency responsibilities in CFSP matters. They did not have the material means to do it and, contrary to small founding members like Luxembourg, did not really want to acquire that capacity or to appear at the forefront of the international scene. They also ran the risk of being squeezed between EU solidarity and their sympathy for the United States.

3. The Method of the Convention

The general context was thus favourable for a reform of CFSP aimed at making it more efficient. This did not necessarily mean that operational decisions would follow, because of the natural reflexes of certain governments and the ‘taboos’ described in the previous section. The debate had therefore to extend beyond national Ministries or the Justus Lipsius corridors and this is exactly what happened.

The Convention not only assembled representatives of national governments but also representatives of Parliaments and of the European Parliament. It developed links with civil society and its ‘Presidium’ was made up of independent personalities—Valéry Giscard d’Estaing, Jean Luc Dehaene and Giuliano Amato; All heavyweights in their own countries, they could, due to their prestige and political expertise, make proposals which would not only be the smallest common denominator of national positions expressed.

Governments were reassured knowing that they would anyway have the last word and that everything would have to be decided by consensus in an IGC and then ratified by all. But the Convention had early developed its own dynamic and used flexible procedures allowing open and thorough debate of the most delicate and controversial topics. The Presidium wisely decided not to put the institutional issues on the agenda from the beginning and refrained in the first months from creating working groups to discuss them.

In this way, the idea of giving a ‘double hat’ to the High Representative for CFSP and later to make him a European Foreign Minister did not originate in an institutional debate, which would have opposed from the start ‘communitarians’ and ‘intergovernmentalists’. The project developed from the assessment that the present system of the new Troika was not able to match the challenges of our times and that the Union would have a better image abroad if it were represented by one person in the contacts with third parties.

A President for the European Council

Despite all this, the ‘double hat’ of the High Representative was not the first idea discussed in the Convention to remedy the inefficiencies and the bad image of the Union abroad. In the first months of 2002, the debate focussed on the idea of having the President of the European Council elected by heads of governments for 2 or 3 years.

This idea had already been mentioned in the debate on the ‘future of the Union’ in 2000, but was introduced in the first days of the Convention by President Chirac and Prime Minister Blair. After Jose Maria Aznar of Spain joined the two ‘big’ leaders to support it, the press called it the ‘ABC Proposal’ (Aznar, Blair, Chirac). Berlusconi and Schröder then joined the trio even if their delegates in the Convention showed some circumspection about the concept. Since the idea of a President of the European Council recalled an old proposal by Giscard d’Estaing himself, nobody was surprised that the ‘founder’ of the European Council would become one of its major supporters in the Convention proceedings.

Bringing an end to the rotating Presidency in the European Council was meant to give more continuity to its work and also give third parties a more permanent interlocutor to cooperate—at the

highest level—in crisis management. The idea was also to prevent the rotation system from giving the heavy responsibility of presiding the Council to the heads of government of small acceding countries.

For many heads of government, whose knowledge of the Union's activity came essentially through the meetings of the European Council, four times a year, this was the ideal solution to the problem of representation and they did not care too much about what was going on in the meantime. It was not very clear either if the 'permanent' Presidency would be a full time job or if the President elected by his peers would continue in parallel to rule his own Country.

What was clear, however, was that this proposal meant a reinforcement of the intergovernmental dimension of the Union system. The guardians of the Community order mobilised to defend the Commission and the institutional balance resulting from the Rome Treaty and proposed instead that the European Council be presided by the President of the Commission.⁹

The Benelux Countries in their common contribution of December 2002¹⁰ also expressed their reservations about the ABC proposal and reaffirmed their preference for a rotating Presidency of the European Council. This reaction was not enough to kill the full time President idea but it did contribute to the rallying of the supporters of Community orthodoxy to the 'double hat' formula for the High Representative. As we will see, this formula reached very quickly a quasi consensus while the ABC proposal continued to be debated on institutional grounds until the end of the Convention.

The Double Hat

The original proposal to move the High Representative 'as is' into the Commission went too far in bringing EU Foreign Policy under the Community system. The governments of the 'big' countries had certainly not intended to give the Commission direct powers in this field and even less for European defence.¹¹

A compromise formula had to be found in order to keep separate the two 'pillars' established by the Maastricht Treaty. The solution came from those who remembered the debates in the preparatory work for the Amsterdam Treaty—notably the suggestion to have the High Representative participate in Commission meetings as an observer. Why not instead give one person two separate functions, one in the Council and one in the Commission? This led to the 'double hat' proposal—which started to be heard in the Convention's corridors as soon as in the spring of 2002.

The former Prime Minister and Foreign Minister of Italy, Lamberto Dini, presented the proposal formally to the Convention in a remarkable contribution on CFSP submitted on 9 July 2002.¹² After describing the geopolitical context and the need for the EU to show more clarity and authority on the international scene, Dini went on to say:

Clarity and authority can be increased by reducing the number of voices charged with expounding the Union's position. The proposal to bring together in a single person, albeit with different roles and mandates, the present High Representative and the Commissioner (or the Vice-President) responsible for external affairs could contribute to this. It would not be a question of communitizing foreign Policy, which would be too audacious a step for the moment, but of giving

9 Philippe de Schoutheete and Helen Wallace published in September 2002 for Jacques Delors's 'Groupement d'études et de recherches notre Europe' a paper on the European Council recommending that the president of the Commission become its President.

10 Conv.457/02

11 The European Commission, in a contribution to the Convention on 22 May proposed to merge step by step the function of the High Representative and that of the Commissioner in charge of External Relations parallel to the merging of CFSP into the first pillar.

12 Conv.180/02

one person two separate mandates: one from the Commission and the other from the Council, for the matters for which it is competent.

The Contribution of the Dehaene Working Group

Discussion about the ‘double hat’ proposal became more intense in the Autumn of 2002. This was the time when Europe started to be conscious of its weakness in the face of the Bush administration and its incapacity to put the brakes on its determination to launch a military operation against Iraq.

The debate concentrated in Working Group VII, presided over by one of the two Convention’s Vice-presidents, Jean Luc Dehaene, former Prime Minister of Belgium.

Group VII was supposed to deal with the external action of the Union and started its work in September 2002 with a precise mandate.¹³

In the annotated version of the mandate one can find the mention among other options of the idea of ‘*merging certain of their (The High Representative’s and the Commission’s) functions in some form or another*’, to extend to the High Representative the ‘*right of proposal in foreign policy*’ and to ‘*examine the possibility that (he) chairs the Council formation responsible for Foreign Affairs*’.

Quickly, on the basis of this text showing the way ahead, the group started to discuss openly the idea of the double hat as a formula to be brought into the Treaty. In a meeting with the PSC—the Committee of Representatives dealing with CFSP in Brussels—in the middle of November, Dehaene mentioned that support for this formula was increasing dramatically in the Group and, prophetically, he expressed his views on the implications of a unified external representation for EU Foreign policy and on the creation of a European diplomatic service with EU Embassies in third-countries.

The fact that the double hat was rallying a quasi consensus in Group VII was also the opinion of Lamberto Dini expressed in a new contribution to the Convention on 6 November devoted entirely to what he dared qualify as the ‘European Foreign Minister’.¹⁴

Nevertheless, Solana himself remained opposed to the idea. He declared this explicitly in an exposé to Group VII on October 15.¹⁵ After rejoicing about the international recognition gained by the position of High Representative and about the good collaboration with Chris Patten he declared that ‘The Commission and High Representative have distinct responsibilities: merging these functions would, in my view, create more confusion than synergy. Chris (Patten) and I have shown that close cooperation and partnership can and do produce results.’

The reticence of the High Representative was shared by Commissioner Patten and also by many supporters of Community orthodoxy. The Commission itself however evolved on the issue: in a communication to the Convention on 4 December 2002 on the ‘institutional architecture’,¹⁶ it advocates the position of ‘Secretary of the Union’ with a description fitting largely the model currently discussed in Group VII.

Jean Luc Dehaene presented the results of the workings of his group mentioning three options on 16 December 2002:

- Practical measures to further strengthen the role of the High Representative and to enhance the synergy between the function of HR and the role of the Commission in external relations...;
- The full merger of the functions of the HR into the Commission;

13 The composition and the mandate of Group VII can be found in Conv. 247/02 and 252/02

14 Conv.387/02

15 Council Document # S0186/02

16 Commission Document # Com (2002) 728 final

- The exercise of both offices (HR and Commissioner in charge of external relations) by one person who could carry the title of European External Representative.

However, in his General Conclusion, the former Belgian Prime Minister underlines that ‘notwithstanding the different positions, a large trend emerged in favour of a solution which would provide for the exercise of both offices by a European External Representative’.¹⁷

The Franco-German Contribution and the End of the Convention

Curiously, the report of the Dehaene Group does not comment on the proposal of giving the European Council a ‘long term’ President, even if that proposal was still very much on the table and was not without importance for the debate on the external representation of the Union. Indeed, if the main purpose of this proposal was to give more permanence to the work of the Council, in the mind of its sponsors it also aimed at providing the Union with a ‘high level’ representative for contacts with third parties.

When the idea of the Foreign Minister started gaining real support, some saw in the President of the European Council an intergovernmental ‘counterweight’ to the excessively ‘supranational’ Minister. It could therefore be anticipated that the two positions would find their way to the Constitutional Treaty. But they had first to be made compatible.

The compromise came from a joint Franco-German proposal presented on 15 January 2003.¹⁸ Viewed as the return of the old Franco-German ‘locomotive’, absent from the first year of the Convention debates, this document was elaborated at the time when the two countries were closing ranks to face the American offensive on Iraq in the UN Security Council.

This dramatic international context explains why the two countries were looking from then on for a compromise between the French wish to promote the European Council President and the German interest for the European Foreign Minister concept, in which commentators started to see the personal ambition of German Foreign Minister Joschka Fischer.

The contribution addresses the ‘Institutional Architecture of the Union’. It begins by stressing that in the Copenhagen European Council, the Union achieved the broadest enlargement of its history and that consolidation is more than ever required if it intends to keep its unity and its capacity to act at home as well as abroad with 25 or more Member States.

The document tries mainly to establish a sort of new institutional compromise based on what has been called the ‘dual Presidency’: a President of the European Council chosen for a long period and a President of the Commission elected by the European Parliament. It also suggests a formulation making compatible the concepts of the European Council President and that of the European Foreign Minister:

The President of the European Council represents the Union on the European scene during meetings of heads of States and Governments, without prejudice of the competences of the Commission and of its President, knowing that the daily conduct of CFSP belongs to the European Foreign Minister.

The reason for creating the position of European Foreign Minister is presented as follows:

In order for Europe to be strong and credible on the World Scene, its operational, financial and human resources should correspond to its political will. This requirement of cohesion implies that the functions of High Representative and of Commissioner in charge of external relations be exercised by one person, a European Minister for Foreign Affairs...enjoying a formal right of initiative for CFSP matters and presiding the Council of Ministers in charge of Foreign Affairs and Defence.

17 Final report of Working Group VII presented by Jean Luc Dehaene on 16 December 2002, Conv.459/02)

18 Conv.489/03

The document also addresses the elaboration of a ‘European Diplomatic Service’, which we will comment on in section V.

The Franco-German document even dared to propose that all decisions relating to CFSP except those referring to defence, should, from now on, be made by qualified majority—a proposal not included in the Treaty. It is however interesting to note—for future consideration—the specific responsibility given in this context to the Foreign Minister:

When a Member State invokes its national interest to oppose a decision, the Foreign Minister ‘is mandated to find solutions. If he does not succeed, the issue is referred to the President of the European Council and if no solution is found, the question is referred to the European Council in view of a decision by qualified majority.’

The Conclusion of the Convention

The Franco-German proposal became the main theme of the institutional debate of the Convention ‘plenary’ on 20 and 21 January 2003.¹⁹ But the debate concentrated on the ‘dual Presidency’ and hardly on the European Foreign Minister. About this, Giscard d’Estaing stated simply: ‘in line with the Franco-German proposal there appears an emerging consensus on a European Minister for Foreign Affairs’.

Only a few weeks were needed for the Convention to agree on a Treaty text. The British Government was obviously not enthusiastic: to appoint a European Foreign Minister, to let him take initiatives, even if on a mandate from the Council of Ministers, and above all, to give, through him, powers to the Commission in Foreign policy issues, clearly did not match the traditional British approach.

But, as previously cited, London was also persuaded that CFSP had to be made more efficient and that the rotating Presidency formula had become inadequate. On the other hand, British involvement in Iraq was being heavily criticised by public opinion and London needed to avoid new quarrels with France and Germany, not wanting to reinforce the Franco-German axis on the Convention front.

The combination of these elements probably explains the relative weakness of the British reaction in the subsequent proceedings of the Convention and in the IGC. The formula contained in the Franco-German proposal, as far as the Foreign Minister and the European diplomatic service are concerned, were presented almost untouched to the Convention on 23 April 2003²⁰ and only marginally modified thereafter.

The institutional debate continued after April but mainly on the issue of the European Council President, the election of the president of the Commission, the composition of the Commission, the voting rights in the Council, the role of the European Parliament etc., but not on the European Foreign Minister. The Intergovernmental Conference took over the proposal and the creation of the function of a Foreign Minister of the European Union can be found in the Treaty notably in Articles I-28, I-40 and 41, III-296 (and following) (see Treaty provisions in Annex).

III: The Competences of the Minister for Foreign Affairs

Articles I-28 and III-296 of the Treaty give the Union Minister for Foreign Affairs an impressive set of responsibilities:

- He ‘conducts’ CFSP and ‘contributes by his or her proposals to the development of that policy’. The same applies to the common security and defence policy (CSDP). He does enjoy the famous right of initiative, similar to the Commission’s for Community matters—even if not exclusive.

19 An interesting comment of this discussion can be found in ‘The Functioning of the Institutions, Notes of the Meeting of the European Convention’, 20 and 21 January 2003, by Ben Crum (CEPS) 27 January 2003

20 Conv.685/03 and 691/03

- He ‘*carries out*’ CFSP and CSDP ‘*as mandated by the Council*’.
- He chairs the Foreign Affairs Council—contrary to the other configurations of the Council, which continue to be chaired by the rotating Presidency.
- He is ‘*one of the Vice-Presidents of the Commission*’ and in this capacity ‘*shall ensure the consistency of the Union’s external action*’.
- In the Commission, ‘*he or she shall be responsible (...) for responsibilities incumbent on it in external relations*’ which means that he will get the portfolio which is currently in the hands of Mrs Benita Ferrero Waldner—previously of Chris Patten.
- He is also in the Commission in charge of ‘*coordinating other aspects of the Union’s external action*’.
- On top of this, the Treaty provides that he ‘shall represent the Union for matters relating to the common foreign and security policy’ that he will ‘conduct political dialogue with third parties on the Union’s behalf’ and that he ‘shall express the Union’s position in international organisations and at international conferences’. It is thus very clear that in representing the Union abroad he fully replaces the rotating Presidency.

Beyond his double hat and the synergies this brought, the Foreign Minister enjoys a rather new position inside the institutions and in relation with third parties:

- In the Council: the relation with the Member States is fundamentally modified: the Minister is no longer the silent auxiliary to the Presidency; he chairs himself the Council, is entitled to make proposals and in certain cases to see these proposals submitted to a vote.
- In the Commission: he has a ‘horizontal’ responsibility for external action justified by the need for consistency and the will to coordinate, which for the first time brings a hierarchy inside the College of Commissioners.
- In relation with third parties: the Minister, contrary to the high representative, can deal alone with them not only for CFSP matters but also for the external relations matters managed by the Commission, as long obviously as he respects the mandate given to him by the Council.

Double Hat or Triple Accountability?

The function of the EU Foreign Minister should obviously not be analysed in isolation. It forms part of an institutional system that provides for a certain number of counterweights. The Minister must share its powers with at least two other players: the President of the Commission—of which he is a Vice-President—and the President of the European Council who according to the Treaty shares at his level the external representation for CFSP matters.

Before assessing the effect the creation of the Foreign Minister position will have within the Council and the Commission and on the relations with third parties, it is important to examine this double—or triple if one counts the Council itself—allegiance that, according to some, might substantively limit the capacity of the Minister to act efficiently.

Brian Crowe, former Director General for external relations in the Council Secretariat expressed this concern in the first published analysis of ‘the Foreign Minister of Europe’:²¹

The Minister runs the risk of schizophrenia in triple-hatted accountability to the Council which he chairs and leads, to the Commission of which he will be the Vice-President responsible for

21 Brian Crowe wrote an excellent commentary of the Treaty provisions related to the Minister ‘Foreign Minister of Europe’, the Foreign Policy Centre, info@fpc.org.uk

external affairs and to the President of the European Council who will represent the Union abroad at his level.

Another criticism of a similar nature is that the new institutional architecture created by the Treaty leads in fact to the creation of a new troika formula since the external representation remains threefold:

- The President of the European Council who, according to Article I-22 ‘shall at his or her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the Union Minister for Foreign Affairs’
- The President of the Commission, whose legitimacy has increased since he will be elected even if indirectly, by the European Parliament, and who probably will continue to travel and meet third parties as much as presently
- The Foreign Minister, whose function, from a hierarchical point of view, appears as inferior to the first and subordinate to the second.

The situation however should not be seen only from that angle. The Minister in fact has a major advantage over the two Presidents: he is part of the Council as well as of the Commission:

- The mechanism of Article I-28 provides that, when he functions in the Council or when he acts in the framework of CFSP, he escapes the authority of the President of the Commission—and the constraints of the Community method.
- As Commissioner, he is part of the College and can take advantage of the Community method to get the support he might need, but he is bound by the Commission procedures only ‘to the extent that this is consistent with’ his responsibilities in CFSP.

The Minister indeed, like Goldoni’s ‘Servant of Two Masters’ enjoys a very wide flexibility and any friction with the two Presidents is more likely to emanate from this privileged position, which they might be tempted to challenge.

Part of the complexity comes obviously from the fact that the Minister is bound to act according to different procedure rules as President of the Council and as Commissioner. The double-hatting system keeps the two pillars separate and all actors have to take it into account. This fundamental principle is clearly stated in Article III-308, whereby ‘the implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Constitution for the exercise of the Union competences referred to in Articles I-13 and I-17’ (which contain the various Community competences other than CFSP); and ‘similarly the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Constitution for the exercise of the Union competences under this chapter’ (being the Chapter on CFSP).

The Minister’s major asset is that he functions in both the Council and the Commission and can thus use the established architecture to his best advantage. The Treaty gives neither the President of the Council nor the President of the Commission the authority or the room of manoeuvre required to prevent the Minister from acting if he acts on a Council’s mandate.

Everything would be very different if the function of President of the Commission and of President of the European Council had been merged. In that hypothesis, the only problem would have been to organise the collaboration between him and the Minister, based on the model of the sharing of roles between the Prime Minister and the Foreign Minister in a national Government.

It is clear that the personality of the three actors will play an important role in the harmony—or the tension—which will be generated by this tripartite relationship. But, from an institutional point of view, the formula of the Constitutional Treaty is much more satisfactory than that of the Amsterdam

Treaty because it gives each of the three actors a capacity to act autonomously at his level without the need to have the other two present in order to be ‘representative’.

The Relationship with the Council and the European Council

As we know, the Amsterdam Treaty maintained the position of the High Representative subordinate to the rotating Presidency of the Council. During the sessions of the Council, he sits next to the Council’s President and should in principle remain silent as long as the issue discussed is not under CFSP competence.

The Constitutional Treaty radically changes this situation. The Minister himself presides the Foreign Affairs Council and the rotating Presidency no longer has anything to do with CFSP at that level or the level of the European Council, which also has a ‘permanent’ President.

It should be noted here that the Foreign Affairs Council does not only discuss CFSP issues but all the external relations of the Union—including those that are under Community competence. Presiding the Council helps the Minister ensure the consistency of external action. (Article I-24 par 3).

What happens above and below?

1. Above

The Treaty specifies that the Minister ‘takes part in the work’ of the European Council, with no limitation apparently—and even thus when it deals with ‘internal’ affairs. The relationship between the Minister and the President of the European Council is presented in a rather ambiguous way—which is the result of the ‘compromise’ needed in order to make the two positions compatible.

Some issues indeed remain open: does the General Affairs Council prepare the European Council also for issues handled by the Foreign Affairs Council? Where does the role of the President of the European Council stop since the Treaty states that ‘*at his or her level and in that capacity ... (he or she) ensures the external representation of the Union on issues concerning CFSP*’ but that he does it ‘*without prejudice to the powers of the Union Minister for Foreign Affairs*’?

Only daily practice will give these questions a chance to be answered. The spirit of the Constitutional treaty should however be respected: the Foreign Minister enjoys an autonomous position for the management of the external relations of the Union under mandate of the Council and the European Council but with no other interference.

2. Below

The Intergovernmental Conference clarified the situation as far as the Political and Security Committee (PSC) is concerned. Established in 2000, the PSC, whose role is mentioned in Article III-307, prepares the Foreign Affairs Council for CFSP and ESDP matters. A draft ‘European decision’ contained in a declaration of the IGC and related to Article I-24 specifies that: ‘*the Chair of the Political and Security Committee shall be held by a representative of the Union Minister for Foreign Affairs*’.²²

This was said to make clear that the rotating presidency would no longer play any role even in the preparation of the Foreign Affairs Council. In this logic, all CFSP working groups should also be

22 The Political Committee, a central body of EPC and then of CFSP operated from Capitals until in 2000. To ‘frame’ the action of the High Representative it was decided that it would meet on a more ‘permanent’ base in Brussels—a step that became indispensable with the development of the European Defence Policy. The Brussels’s group is called ‘Political and Security Committee’, PSC or COPS in French.

presided by a representative of the Minister. All should belong to the EEAS, which is supposed to support the Minister in implementing his mandate (see section V).

The Treaty does not say anything in relation with Coreper, the Committee of Permanent Representatives, which, in the present situation, prepares all the Council proceedings—even those also covered by the PSC. Article I-24 that deals with the various configurations of the Council did already, as we mentioned above, leave an ambiguity about the role of the General Affairs Council in the preparation of the European Council. The same article, in its §5 seems to maintain this horizontal role for Coreper in stating that it ‘*shall be responsible for preparing the work of the Council*’—without mentioning any restriction.

It seems however unlikely that the authors of the Treaty wanted to maintain a role for Coreper in external relations only in order to keep the rotating Presidency involved in these matters. Since Coreper already functions in two configurations it would be more logical to add for the external relations a third configuration, covering (or replacing) the PSC and thus presided by a representative of the Minister.

In a joint ‘issues’ paper presented on March 3, 2005 about the setting up of the EEAS,²³ the President of the Commission and the High Representative seem to interpret in this sense the will of the legislator. They note indeed, after having mentioned the declaration about the Presidency of the PSC, that the same declaration also states that: ‘*the chair of the preparatory bodies of the various Council configurations with the exception of the Foreign Affairs Configuration, shall fall to the member of the group chairing the relevant configuration...*’ and draws, from this, the conclusion that—a *contrario*—this means that the whole preparation of the Foreign Affairs Council escapes this rule.

This new institutional logic implies that the ‘representative of the Minister’ chairing the PSC as well as the Coreper and the working groups preparing the proceedings of the Foreign Affairs Council be someone having the same double hat as its President. If he were a representative only of the Council or of the Commission, the dialectic would be different at the level of the Council from what it is at the preparatory level, which would make the decision making process more difficult.²⁴

Nevertheless, the issue is more complex than it looks at first sight. Until now, the procedure for deciding Community matters in the Council and its subordinate bodies allows the Commission to take some distance from the negotiation among Member States, this negotiation being in the hands of a Member State—the current Presidency—function created for that purpose since the beginning of the EEC.

By having the Council presided by the Minister who is also member of the Commission, the two roles are given to the same person, not only for CFSP matters, but also for the external relations, which are governed by the Community method. Solana will thus preside a Council in which Commercial or development issues are discussed on the basis of a formal proposal made by his ‘colleagues’ in the Commission competent for these issues and probably present in the room.

The authority of the Minister over the members of the Council does not only come from the fact that he chairs it and that the rotating Presidency no longer plays a role. The Treaty also provides that the Minister will ‘contribute’ to the development of the EU foreign policy and will be allowed to make proposals.

23 This internal paper served as basis for the discussion in a Coreper working Group (the Antici Group) which helped prepare the joint report of May 27 for the June European Council (see note 28)

24 This question will also be examined in Chapter V because it has implications for the autonomy of the EEAS from the Council and the Commission. The compatibility of the two roles will have to be assessed but the solution mentioned by Brian Crowe in ‘Foreign Minister of Europe’, *op.cit.* Page 8 to have the Commission represented in these meetings by ‘someone quite different outside the Area of competence of the EAS/Minister altogether’ would be in contradiction with the Treaty.

Javier Solana already makes proposals in his capacity as High Representative but as Minister his proposals will have a more formal character. Also, as the Commission's proposals under Community procedure, these proposals might be submitted to a vote when the majority vote applies—implying a 'lower' qualified majority than if the Council decided without that base.

The Relation with the Commission

The Minister is not just a double-hatted Commissioner. Article I-28 of the Treaty makes him a Vice-President of the Commission with the responsibility of coordinating external relations. This breaks with the principle that Commissioners, with the exception of the President, are all supposed to be equal.

The Commission should thus in principle put into place for the first time a hierarchy among its members. The Minister is supposed to 'coordinate other aspects of the Union's external action' which means that he and his representatives have the right to interfere with the activity of their colleagues in charge of Trade, Development, Enlargement or other issues with an international dimension. The Minister therefore needs to have experts on these matters in his immediate entourage.

The coordinating role of the Minister does not, obviously, reduce the responsibilities of the other Commissioners over their portfolio and it should always be remembered that the Commission is a College and that decisions are made collectively. In theory, the Minister could be sidelined but this will not necessarily force him to renounce the position he defends, if this position comes from his Council hat. Article I-28 specifies indeed, in *fine*, that the Minister is only bound by Commission procedures 'to the extent that this is consistent with paragraphs 2 and 3' of the same article—the paragraphs dealing with his responsibilities in CFSP and his Presidency of the Foreign Affairs Council.

An important innovation in the relationship between institutions has already been mentioned: issues under Community competence will be dealt with in a Council chaired by a member of the Commission, which brings the Commission in a new relationship with the Presidency role.

Will the community method suffer from this new situation? Will external relations be dominated by the intergovernmental method?

There is obviously a risk but it is manageable. One should not forget that the Minister is not necessarily a defender of the intergovernmental approach: he will have important responsibilities inside the Commission and it will be in his interest to avoid being marginalized in the College. On the contrary, using fully his Commission hat gives him strength when facing the Member States.

The Relationship with Third Parties

One of the main reasons for the creation of the Union Minister for Foreign Affairs was the need to have one person entitled to represent the Union in contacts with third parties: the Minister represents the Council as well as the Commission and the rotating Presidency no longer interferes with external representation of the Union.

The Treaty however does not abandon the division in pillars established by the Maastricht Treaty. For the issues belonging to the first pillar—and they are numerous—external representation is still in the hands of the Commission. This is clearly stated in Article I-26 paragraph 1: '*with the exception of the Common Foreign and Security Policy, and other cases provided for by the Constitution, (the Commission) shall ensure the Union's external representation.*'

What is new is that the same person, the Minister for Foreign Affairs and his representatives may ensure the two dimensions of the representation, with different accents. As we will see in section V, this will have a major influence on the representation of the Union abroad, which should also reflect the two capacities.

We also said above that the Minister is not the only representative of the Union for CFSP: According to Article I-22, the European Council President *'shall, at his level and in that capacity, ensure the external representation of the Union on issues concerning the common foreign and security policy, without prejudice to the powers of the Union Minister of Foreign Affairs.'*

On careful reading of this paragraph, it appears that the President of the European Council does not play that representation role for matters under Commission competence, which is logical but makes his role very different from the role of the Minister. If Community matters have to be discussed, representation 'at the level' of the President—like a contact with the President of the United States—implies that the President be accompanied by the Foreign Minister or rather by the president of the Commission.

External representation means also representation in international organisations, which until now, except for matters strictly under Community competence, is in the hands of the rotating Presidency. Everywhere where the Union speaks with one voice, in the debates of the UN General Assembly or its subsidiary bodies but also in OSCE and in many international Conferences, the Minister or one of his representatives will take over the EU microphone.

This logically means that the Minister and his representatives should also preside the meetings in which the EU position is coordinated. This implies the availability of large and experienced staff. Representation in the multilateral system will thus be one of the major challenges for the EEAS, which, if and when the Treaty enters into force, might have to deliver this capacity without much notice.

IV: A Specific Responsibility: European Defence

The European Foreign Minister manages the Union's Foreign Policy but also its defence Policy. (Art. I-28 §2) The Treaty explicitly mentions his responsibilities in the framework of the 'Common Security and Defence Policy' which, through art. I-41 becomes a specific policy of the European Union—while remaining an integral part of CFSP.

The Treaty, in the line of what had been proposed by the Convention, gives the Minister, (in parallel with the Member States) the right of proposal for the launching of a mission. (Art. I-41 §4). The same paragraph confirms that: *'he may propose the use of both national resources and union instruments, together with the Commission where appropriate.'*

These provisions correspond to what is already current practice. If one looks at the origin of recent ESDP operations, it is clear that the High Representative, whose function was created at the time when the European Defence project was taking off, played from the outset a crucial role in its development and in its first operations. But to have that role formalised and included in a Treaty gives the Minister a prestige and an autonomous capacity of action that would never have been thought possible to the Saint Malo negotiators.

Saint Malo and the European Security and Defence Policy

The Maastricht Treaty in 1991 had drawn lessons from the end of the cold war and tried to put in place a new European Security architecture by giving CFSP a perspective in the field of defence. A declaration was annexed to the Treaty taking note of the 'revitalisation' of the Western European Union (WEU) and moving it from London to Brussels, equidistant between the EU and NATO.

As it turned out, WEU failed in its first challenge. It did not manage to gain control of the Yugoslav crisis. Peacekeeping was left to the United Nations but not even they were able to address the issue efficiently. After years of failures and frustrations the United States decided to take the leading role. They helped the Croats deal with the Serbian enclaves in their country, concluded the Dayton agreements, which gave the international community the management of Bosnia, while

peacekeeping was handed over to NATO. In 1988, the U.S also took the lead in dealing with the Kosovo crisis—when it appeared it would become as violent.

Facing this hardly impressive state of affairs, the major leaders of the Union understood that not only was its international credibility in jeopardy, something needed to be done. If Europe wanted to defend its own interests, a shortcut had to be taken on the long road towards a European defence as established by the Maastricht Treaty.

The initiative came from the British Prime Minister Tony Blair. Even if his country had been, until then, the most reticent to establish a European Defence outside of NATO, he proposed in a speech in August 1998 the development of an autonomous crisis management capacity at the European level.

The about-face of the British position is usually presented in relation to Prime Minister Blair's wish to give the UK a field of action in European affairs in which his country could naturally play a leading role. Also to facilitate the success of a referendum on accession of Britain to the European Monetary Union. In reality, Tony Blair was merely drawing the lessons of the failure in trying to revitalize WEU, which did not have enough credibility, and also their need to make a team with France, the only European country apart Britain capable of projecting national military forces to a distant theatre.

The proposal was indeed well received in Paris and the two countries and in December 1998 concluded the famous Saint Malo agreements. Those were extended in the following months to the other Member States with a strong push from the German Presidency of the Union. This was the beginning of the progressive development next to CFSP—but as a part of it—of the European Security and Defence Policy (ESDP)

ESDP was launched with caution in order not to scare away the United States but also because the 'neutral' members of the European Union continued to refuse to adhere to the commitment of mutual defence—which in principle should have been at the basis of the whole exercise. Since the Union was unable to agree on the objective, attention was concentrated on the means—which also helped make the initiative credible: a specific goal was set, which was called 'the headline goal': to be able to deploy a force of 60000 troops in 60 days and for a full year. To implement this goal but also advise the Union authorities and liaise with NATO planning authorities, it was not long before more and more people in uniform were seen in the EU Secretariat facilities.

Many came from the dismantled WEU whose missions had been transferred to ESDP. The WEU Treaty could however not be denounced since some EU Member states continued to refuse to transfer its defence commitment—stronger than NATO's article 5—in the EU Treaty. But the WEU's survival is merely symbolic since common military capabilities are clearly developed in NATO and... in ESDP.

A result of the setting up of ESDP, which coincided with the creation of the High Representative position, was the relocation by the Member States of one of the strongest pillars of EPC and later CFSP, the Political Committee, to Brussels. In creating what was called the 'Political and Security Committee' (PSC or COPS in French), the aim was to allow representatives of the Member States to meet more often to discuss CFSP and ESDP issues and—when the time would come—to be able to manage a EU military operation. (See footnote 22)

From an intergovernmental point of view, the PSC was also established to 'supervise' the new structures of CFSP created by the Amsterdam Treaty. But in doing so it provided the High Representative an intergovernmental interlocutor in close proximity and the PSC became quickly his accomplice in the installation of military capacities in the Union's bureaucratic structures, which, as far as security and confidentiality were concerned, were light years away from that new culture.

Relations between ESDP and NATO were at first cautious but grew increasingly confident. The fact that the idea had come from Britain and had been put in place by a former NATO Secretary General helped overcome the numerous obstacles that had poisoned the efforts to revitalize WEU.

WEU had also been incapable of developing an operational credibility whilst ESDP very quickly showed the capacity to organise military operations.²⁵

First ESDP Operations

The declared intention of G.W. Bush's administration to take some distance from the Balkan issues as well as its reticence to 'nation-building' allowed ESDP to take part in the peace keeping activities in ex-Yugoslavia as soon as in 2003. The first European operation was a police operation: the replacement of the UN police in Bosnia by 500 European policemen. The same year a peacekeeping operation involving military personal was deployed in Macedonia under the name Concordia that at the end of that same year was replaced by a European police force Maxima.

Meanwhile, as the EU was preparing to take over the NATO peacekeeping mission deployed in Bosnia to help implement the Dayton agreements, the opportunity arose to fly the European flag on a more distant stage, Central Africa.

Unable to face complex guerrilla actions in the Ituri province of Congo, where local militia were brutalizing the civilian population, the United Nations discretely asked France to send a battalion with a stronger mandate than the one the UN mission MONUC were able to implement at the time.

France agreed but from the beginning tried to 'Europeanise' its contingent. Within a few days they had succeeded in creating the perception that the operation was an ESDP action. The so-called Artemis operation was improvised and embryonic but it allowed ESDP to test its procedures and its chains of command. It also revealed Europe as a new player on the international scene, demonstrating the role it could play in support of the United Nations—serving also a European Foreign Policy.

The European Security Strategy

Incapable at the beginning of agreeing the purpose of ESDP—as well as the action fields of CFSP—European governments were shaken after the September eleven events by the military initiatives of the United States as well as by the presentation in Washington of a 'National Security Strategy' founded on the neo-conservative agenda. The Iraqi crisis confirmed that the misunderstandings across the Atlantic were deepening and that it was high time to find new ways of restarting a dialogue.

But in order to enter into a new dialogue with the United States it was necessary first to define the European perception of the 'new threats' to international security. In this spirit, the heads of state and governments of the EU asked Javier Solana to present—finally—a 'European Security Strategy'. The High Representative prepared a draft that was tested in a few seminars in the fall of 2003 and adopted in December of that same year by the European Council.

The document starts by noting that 'As a Union of 25 States with over 450 million people producing a quarter of the World's GNP, the European Union is inevitably a global actor ... it should be ready to share in the responsibility for global security and in building a better World.'

The ambition was made clear: Europe is not just a regional power, as Henry Kissinger saw it. Europe wants to face the new threats of our time as a global actor: terrorism, proliferation of weapons of mass destruction, regional conflicts, failed states, organised crime. To face these effectively, territorial defence is not sufficient: '*distant threats may be as much a concern as those that are near at hand...with the new threats, the first line of defence will often be abroad.*'

25 See Stanley Sloan, 'The United States and European Defence', cahiers de Chaillot # 39, 2000 and the collective study 'Défense européenne, la mise en oeuvre' by Francois Heisbourg and Nicole Gnesotto 'les 5 premières années de la PESD', Cahiers de Chaillot # 42.

Europeans should therefore be able to project forces, or in any case to be ‘more active in pursuing (their) strategic objectives’ which means that ‘(they) need to develop a strategic culture that fosters early, rapid and when necessary, robust intervention’.

But this robust strategy is supposed to serve the cause of multilateralism and of the United Nations. As far as the transatlantic relationship is concerned, it is ‘irreplaceable’: acting together, the EU and the US ‘can be a formidable force for good in the World.’

These commitments aside, Europeans need to demonstrate that they are ready to develop a capacity to act, in other words to develop their military capabilities. It is on this weakest aspect of European performance that the Americans happily and easily criticise Europe.

To bring Europe closer to the U.S in the area of defence, it is important to have the European citizen better understand the economic interests and the technological progress generated by an armament policy. Eventually in November 2003, the Union decided to create a ‘European Defence Agency’ under the authority of the Council and open it to all Member States.

The Debate in the European Convention

The spectacular progress of ESDP at the time of the Convention allowed the drafting of ambitious Treaty texts about this new field of action of the Union. This was done in Working Group number VIII under the Presidency of Commissioner Michel Barnier who would later become the Foreign Minister of France.²⁶

Debates in plenary concentrated mainly on the famous problem of the ‘solidarity clause’: how to include in the Treaty the solidarity clause of WEU while not weakening the NATO article 5 clause or forcing the ‘neutral’ to enter a European ‘military Alliance’? Results on this point were not very convincing.

But the proposals made to reinforce the PSC, as well as the High Representative and his special envoys and too a stronger definition of the so-called ‘Petersburg tasks’ were positively welcomed by the group and did not raise substantive objections—since the actual or planned operations of ESDP demonstrated their relevance.

The debate was obviously disturbed by the war in Iraq and progress stalled for a certain time but in the end, as we’ve said, the Iraqi crisis stimulated rather than discouraged the political will of the Convention participants.

The famous ‘chocolate summit’ in Belgium on 29 April 2003, gathering the leaders of France, Germany, Belgium and Luxemburg created a certain irritation, confirming apparently the division between ‘the old Europe’ and the ‘new Europe’ as famously labelled by Donald Rumsfeld. But, apart from the controversial question of the creation of autonomous European military headquarters, the declaration by the four contained language essentially confirming agreements reached in the Convention.

The Berlin Meeting and the IGC

In spite of their divisions on the ground, the European powers were still eager to reconfirm as soon as possible and in a formal way their confidence in the future of ESDP. In September 2003, France, Germany and Britain met in Berlin and agreed on a compromise over the main differences debated at the time.

²⁶ The group’s proceedings have been commented by Philippe de Schoutheete former Permanent Representative of Belgium to the EU and advisor to Commissioner Barnier for the Convention in ‘La cohérence et la défense’, Cahier de Chaillot # 71.

The meeting in Berlin played an important role because it brought the three biggest powers in the Union to common views on defence issues at the time when the IGC for the Constitutional Treaty was about to start. The UK conceded on the planning cell but France and Germany withdrew their Treaty text proposals on mutual defence and on ‘structured cooperation’—proposals which gave the impression of being the basis for the creation of a core group of Allied countries in the EU of which the neutrals but also Britain could have been excluded.

The Berlin compromise served as the framework for the IGC and the Constitutional Treaty texts: the mutual defence clause among those who wish it is replaced by a vague commitment of ‘aid and assistance’ based on article 59 of the UN Charter (Art. I-41, §7) and by a solidarity clause among (all) Member States (Art. I-43) when one of them is ‘*the object of a terrorist attack or the victim of a natural or man-made disaster*’. In this case: ‘*The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States*’.

The Treaty also takes over the Convention texts providing that the Council may entrust the execution of a task to a group of Member States (Art.I-41 §5), an extended definition of the Petersberg tasks (III-309) and the financial provisions. It also foresees the creation of a European Defence Agency (Art.I-41, §3), which was created, as mentioned above, as early as the end of 2003.

Finally, the Treaty (Art.I-28) gives the Minister for foreign Affairs the same responsibilities for the ‘Common Security and Defence Policy’ as for CFSP. This means that he ‘*shall conduct*’ CSDP and ‘*contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council*’.

Article I-41 specifies that ‘*European decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the Union Minister for Foreign Affairs or an initiative from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate*’

Security and Defence at the European level is thus a privileged domain of action for the Minister—as it is already for the High Representative. The Minister should play a central role in initiating but also in the political monitoring of the operation after it has started.

Indeed, when military operations are engaged, political responsibilities must be clearly defined but also implemented at the operational level. This implies that they are in the hands of an individual, mandated by the participating states. Javier Solana himself had already played that role as the Secretary General of NATO in its first important military operation—the bombing of Serbia in the Kosovo crisis.

V: The European External Action Service

The European Convention was mainly interested in reinforcing the coherence in the external action of the Union and in giving CFSP one voice; less by the institutional implications or the administrative challenges to the already complex functioning of the European Union.

After the signature of the Treaty however, the setting up of the European External Action Service (EEAS) became one of the most actively debated topics in the corridors of the Council and Commission buildings when ‘Eurocrats’ discovered that this new instrument would indeed deeply shake the functioning of their external services and be a major challenge to the institutional balance resulting from the Rome Treaty.

The EEAS will also be a challenge for the Member States—big and small. The European Service can only be credible and efficient on the world scene if they offer their best diplomats and find a way

of working harmoniously together, so giving Europe the assets needed to be represented comprehensively and professionally.

The Minister and His Ministry

In order for the Minister to fulfil his impressive responsibilities, he needs to be informed directly and in a systematic way about all world events and enjoy, as national Foreign Ministers, the advice and the support of professional diplomats.

In charge of ensuring the consistency of the Union's external action, he must also receive an integrated input, i.e. resources in the form of integrated geographical and thematic desks in his 'Ministry'. Since he will represent one of the major actors on the world scene, this Ministry should be as large and as well equipped as the Foreign Ministries of major countries.

He should be assisted in his task by high-level collaborators capable of presiding working groups and preparatory committees for the Foreign Affairs Council. He should also be represented adequately abroad, which means having at his disposal a network of Embassies and Permanent Representations all over the world.

Because of his double hat, these representatives cannot belong solely to the Council or to the Commission. While using the resources available in both as much as possible, the new Service will have to be autonomous and enjoy the maximum possible flexibility in its recruitment procedures to be able also to integrate high level representatives of the Member States who would later return to their national ministry.

The participants in the Convention were conscious of this problem and the need for a substantive 'diplomatic Service' at the European level was mentioned as early as the fall of 2002.

In their common contribution of January 2003,²⁷ France and Germany clearly defined the outline of what they call 'The European Diplomatic Service':

The European Minister for Foreign Affairs:

leans on a European diplomatic service associating the General Directorate for External Relations of the Commission to a Foreign Policy Unit which will have to be created. This includes the foreign policy services of the Council Secretariat and is reinforced by civil servants originating from the Member States and the Commission. The European diplomatic service works closely with the national diplomatic services of the Member States. The existing delegations of the Commission are transformed into delegations of the European Union. This schema should allow the emergence of a European diplomacy.

This approach was only slightly modified to become the text of Article III-296 §3 of the Treaty that calls the Service 'the European External Action Service' (EEAS)—a less ambitious but resolutely 'transversal' title.

A Careful Start

As the Treaty was supposed to have entered into force before the end of 2006, preparations for the launching of the EEAS had to start as soon as possible. In this sense, the IGC in a declaration on Article III-296 annexed to the Final Act of the Constitutional Treaty declares that:

as soon as the Treaty establishing a Constitution for Europe is signed, the Secretary-General of the Council, High Representative for the common foreign and security policy, the Commission and the Member States should begin preparatory work on the European External Action Service.

27 Conv.489/03

Discussion started as early as the Autumn of 2004, with great caution at the level of the Commission and Council Services, between capitals and in the Political Committee. Within the Commission, worries were quickly expressed about the Service challenging the integrity of the Community competences and the status of the Commission's Representations abroad.

Javier Solana was pressed by everyone to present his own contribution but, conscious that his final proposal, according to the Treaty would have to be approved by the Commission, he chose to have his experts work together with those of Commission's President Jose Manuel Barroso. On the basis of this common work, the future Minister and the President of the Commission presented on 3 March 2005, a document called 'Issues Paper on the European External Action Service' (see note 23).

This document establishes a few principles—respect for the pillars, no duplication, consistency, *sui generis* character of the Service—but leaves open sensitive questions, essentially those which touch on the internal organisation of the Commission and of the Community method. The 'issues' paper was used to prepare what should have been a first discussion with member States in the June 2005 European Council, discussion which, after the negative Referendums in France and the Netherlands, did obviously not take place. The result of this rather substantive preparatory work can still be found in a joint report of the High Representative and the Commission presented on 27 May.²⁸

Even if there were good reasons to have this new Service in place in due time to allow the Minister to function efficiently from the beginning, it was established from the outset that operational decisions would have to wait for the entry into force of the Treaty—in order to pay respect to the ratification procedures.

The Solana-Barroso paper confirms that the Minister will only present a draft 'European Decision' when the Treaty is in force. Now that ratification as such has been put into question, this principle might be reviewed again—even if it would be difficult, or even impossible to disassociate the setting up of the EEAS and the arrival of the Minister as defined by the Treaty.

This should not prevent a discussion to take place in the meantime about the structures, the parameters, organigrams and so on—but the fact that nothing can be decided formally makes the Service eminently virtual. As previously mentioned, the creation of the Service is closely linked to the double hat of the Minister and the suppression of the rotating Presidency as an actor in CFSP. Its fate, if the Treaty does not enter into force, will thus be directly linked to the fate of these two innovations.

Challenges to the Setting up of the EEAS

Many difficult and delicate questions still have to be resolved in order to set up the EEAS. The most important ones are:

- If Member States were convinced to accept the creation of a European Foreign Minister position, did they anticipate the implications of running a European Diplomacy—whose agents will quickly think and act 'European'? Will they let the Service act independently on the world scene and speak on behalf of the Union in multilateral organisations?
- The EEAS will take over personnel from the Council as well as from the Commission. Both cultures are different—the Commission using the Community method, the Council on CFSP matters working on the basis of the consensus rule of the intergovernmental method. Which method will dominate the other?
- EEAS will in addition include personnel coming from national diplomatic Services. In what proportion? Will there be quotas according to the size of the Member States? Will these

²⁸ 'European External Action Service: joint progress report to the European Council by the Secretary General/High Representative and the Commission' 27 May 2005.

diplomats go back to their national administrations or stay—as it is usually the case for national civil servants joining the Commission or the Secretariat?

- When the Treaty stipulates that the Service will ‘*collaborate with the Diplomatic Services of the Member States*’, does it mean exchange of information or Intelligence, as is already the case or a new system of ‘mixed’ representation or sharing of responsibilities?
- Will all the personnel of the external Representations of the Commission—dealing mainly with commercial, development or enlargement issues—be integrated in the Service and what effect would this have on the career of these Commission agents when they come back to Brussels?

Consistency, Professionalism and Efficiency

All these problems will have to be addressed and one can hope that they will be solved in a balanced way respecting the new sharing of responsibilities between the Council the Commission and the Member States that inspired the authors of the Treaty provisions relating to the European Foreign Minister.

The most important is to give him as soon as possible a competent and efficient staff. The key words during this debate should be:

- Consistency—which implies ‘a priori’ the respect of the established competences;
- Professionalism—diplomacy is a profession;
- Efficiency—the challenge is great, the means limited and bureaucratic quarrels should therefore be avoided at all cost.

To ensure consistency in the external action of the Union, which is one of his responsibilities according to the Constitutional Treaty, the Minister should have, close to him, a personal staff capable of juggling adequately the two hats and of neutralising the unavoidable bureaucratic rivalries. He will also need, within the Commission, a good coordination structure for external relations adapted to the ‘transpillar’ dimension of his function.

Should the Commission staff dealing with commercial or development issues be integrated in the EEAS? There are arguments for and against but it should be noted that if the agents belonging to these Directorates want to make a career in the external delegations of the Union, and accede to the managing positions in these delegations, it is in their interest to be part of the diplomatic service.

To ensure professionalism, a substantive part of the staff of the EEAS should come from the diplomatic services of the Member States. It is after all a profession not learned overnight and in order to be given a managing responsibility in EEAS—in Brussels as much as abroad—experience in a diplomatic post (national or European) should be an indispensable asset.

Besides, the major Member States will only accept to collaborate openly with the Service if they find within it interlocutors with whom they can conduct a ‘professional’ dialogue. The presence in the Service of diplomats coming from their own diplomatic service will reassure them and be key to the success of the whole exercise.

For the sake of efficiency, consistency and for the image of the Union abroad, the distinction between Council and Commission representatives in the Representations abroad should be suppressed as soon as possible. The mission has to be integrated and its Head, as well as his direct collaborators, need to have the same profile as the Minister—and therefore be part of EEAS.

These representatives will be in charge of the main ‘diplomatic’ responsibilities, i.e. the management of international crises and other CFSP activities but also, from the representational point of view, commercial relations with the said country the management of Association Agreements and of Development Aid and—in the candidate countries, the enlargement negotiation. To keep abroad

two different representatives, one in charge of CFSP the other of 'Community' matters, would clearly be contradictory with the spirit of the new Treaty and would prevent the Minister from adequately fulfilling his complex responsibilities.

However, as in the Embassies of many countries, it is logical that in the Union representations, there should be agents who represent Commissioners with technical competences outside the field of external relations—for example Agriculture, Justice and Home Affairs. There will also be in many countries EU Military Attaches—but for them a specific hierarchy will probably have to be organized.

The specificity of the new career is an argument for keeping it as independent as possible from the staff of the Council and the Commission. A *sui generis* status is needed—independent of both of them. This autonomy is required anyway in order to integrate the diplomats coming from the Member states but also to make clear the difference with the rest of the European Public Service whose staff is not supposed to alternate posts in Brussels and in Foreign Countries or International organizations.

The Services of the Commission and the Council insist however in linking the Service to their administrative systems in order to prevent duplications and also because the Commission is in charge of the budget. Accommodations should be found to prevent the budget rules to dominate and deprive the EEAS of the necessary flexibility and autonomy of action.

Consequences for the External Representations of the Member States

What influence will the development of the EEAS have on the way Member States organise their national representation abroad? Will major Member States want to 'control' the new structures? Will smaller countries renounce covering international crises where no direct national interest is involved?

As a matter of fact, many Member States already renounced the development of capabilities abroad allowing them to deal with or even to 'follow' most international crises: this is indeed one of the reasons why it was decided to exclude the rotating Presidency from CFSP issues.

All Member states will have to remain capable of taking part in Council decisions and therefore need to keep a diplomatic staff capable of preparing the Council proceedings. But budgetary and personnel constraints will probably encourage them to keep this capacity for most of the issues at a minimum.

One can therefore imagine, if the EEAS is put into place, that the diplomatic staff abroad of many member States will be reduced or their priorities modified. Having diplomats abroad will still be necessary, but probably increasingly for consular reasons, for assistance to compatriots and for development aid and less and less for international affairs or crisis management. On these matters it will probably be more important to have diplomats in Brussels than in the countries concerned.

To limit as much as possible the negative reactions to this unavoidable evolution, it is important that the EEAS draws largely from the national diplomatic Services of the Member States—big and small. Diplomats from small countries will be pleased to have the opportunity to deal with the big issues; diplomats from big countries will be there to keep the necessary link between EU and national diplomatic initiatives.

From the outset, a climate of confidence will have to be created in order to allow the collaboration to develop smoothly between the Minister and the EEAS on one side, national Foreign Ministers and diplomats on the other side. This will require flexibility, tact and ...diplomacy from both sides.

VI: CFSP and the Member States

The appointment of a European Foreign Minister will certainly not discourage the major Member States from acting unilaterally, as world powers, on the international scene. They keep the right to do so and even the obligation—under the present international relations system.

The same countries will by instinct try to control the structures put in place by the Union. In doing so, they might develop negative reactions from smaller countries, which—as a question of principle—have the right to participate fully in all Union actions and initiatives.

But international relations are based as much on power relations as on principles. The fact that some Member States will be more ‘important’ for him than others will be one of the most delicate problems facing the Minister.

CFSP and National Foreign Policy

The European Foreign minister will ‘conduct’ the Foreign Policy of the Union but he can only act on the basis of a mandate from the Council or the European Council, composed of States, which will want all of them to maintain a national Foreign Policy, implemented by national Foreign Ministers. The Treaty is a major step forward towards the political Union of Europe but does not create a federal Europe in which Foreign policy would be a EU monopoly as in the case of the United States.

The competences of the Union in the field of CFSP are certainly not ‘exclusive’. According to the Treaty they are also not ‘shared competences’. Among the ‘competences’ of the Union, CFSP appears in a specific article (I-16), which specifies that: ‘*Member States shall actively and unreservedly support (it) in a spirit of loyalty and mutual solidarity and shall comply with the Union’s action in this area*’. This means ‘a contrario’ that national states can continue to act at the national level as long as they ‘*refrain from action contrary to the Union’s interests or likely to impair its effectiveness*’.

The commitment is certainly far reaching, much more than those formulated in the first years of the European Political Cooperation, but it is not a legal commitment implying a formal abandon of national sovereignty in this field. The basic postulate remains ‘convergence’(art. I-40 §5) but as Jacques Delors noted at the time of the Maastricht Treaty it is still misleading and certainly premature to talk about a ‘common’ foreign policy.

Besides, beyond the formulae, remains the unanimity—or consensus—rule for decision-making. The authors of the Treaty, as those of previous EU Treaties have tried desperately to make it less strict: article III-300 takes over all imaginable formulae in order to achieve it but the accommodations to the consensus rule remain limited to the decisions implementing a well established policy.

Unanimity in CFSP matters remains the rule, which implies that when there is no agreement there is no longer a common policy and everyone is entitled to act freely at the national level. The Foreign Minister has extended competences but he remains, in principle, without any voice if the Member States are in disagreement.

However, the political will to overcome the divisions among Member States during the Iraqi crisis had some influence on the way the Convention defined the position of the Minister: as we will argue in the section VII, his ‘horizontal’ profile, the fact that he alone will conduct all aspects of CFSP and take initiatives in all possible fields of foreign policy, will be essential assets for him in order to accommodate divergences among Member States—even when they are linked to the transatlantic relationship.

A Union among Former Empires

What makes the political union of Europe difficult to achieve, beyond cultural and linguistic differences, is that many Member States were at some point or are still even now major powers on the world scene. This obviously makes the EU integration process very different from the Philadelphia Conference, which assembled emerging states whose foreign policy was limited to the fight against their colonial power.

In the EU however, how many capitals were not the capital of an Empire extending sometimes over two or three Continents? Rome was the first, then Madrid, Lisbon and Vienna; Also Paris, London, Amsterdam, Berlin...Brussels was Charles V capital and when it entered the EEC, Belgium still owned a colonial Empire eighty times larger than itself. Poland was one of Europe's major kingdoms before being cut into pieces. Sweden too, and Denmark, which for long dominated vast territories.

The EU's development brought European states closer by making their interests converge, encouraging them to defend these interests together. The political Union of Europe will only develop in parallel with the integration process as far as this convergence increases.

For a long time, politicians will have to demonstrate, perhaps in each case, that common action is better than unilateral action; yet, the members of the Union retain untouched the right to intervene at the national level but, in the present state of development of the Union, they will also more and more have to demonstrate that individual action is better than common action.

Many Member States, for example might be expected in the near future not to follow closely what is going on in Africa or in South Asia. But most Member States, often for reasons related to internal politics, will continue to be interested with developments in the Middle East. All, without exception will want to keep a privileged relationship with the United States and the Minister should be careful not to pretend to monopolise it.

A process like CFSP can only be progressive. National Foreign policies and the European foreign policy will thus for a long time coexist. Europe was not created by a coup. As Article I-40 of the Treaty states very clearly CFSP is founded on '*a development of mutual political solidarity among Member States, on the identification of question having a general interest and on the realisation of an ever growing level of convergence of the actions of the Member States*'.

The Specific Role of the 'Great' Powers

For CFSP to develop harmoniously it will need the support of the national foreign policies of the Member States. It needs to take into account the interests of each, inherited from history or imposed by geography but it needs also to take into account their relative weight and the influence they exert on the world scene.

The management of the most important world crises by the UN Security Council is ensured through a permanent coordination among its five permanent members including two members of the Union, France and the UK. The Constitutional Treaty itself acknowledges their 'responsibilities' according to the UN Charter, even if it presents this in a more discreet way than previous Treaty texts (Art. III-305)

It is clear anyway that the EU Foreign Minister can only reach the Security Council indirectly: the Treaty provides that, when a common position has been decided on a matter on the agenda of the Security Council, '*those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union's position*'—which only gives him a prerogative which the rotating presidency enjoys for the moment.

The issue of a European seat in the Council was debated at length recently in the context of UN reform following the report of the Panel appointed by Secretary General Kofi Annan. But at this stage it is only a rhetorical aspiration, not only because the two present permanent members are attached to their privileges but also because, precisely, the Union does not yet have a foreign policy sufficiently 'common' and operational to be capable of imposing it as such to the other world powers on the Council.

The same five countries permanent members of the UN Security Council—thus the same two Europeans, France and the UK—have also, on the basis of the Non-Proliferation Treaty the monopoly of the development of nuclear weapons. No other member of the EU enjoys this right and there is not a hint in the Constitutional Treaty that the Union might one day have anything to say in this matter,

which is logical as the development of nuclear weapons implies being also ready to use them and it is unthinkable at this stage that the member states might give this power to a 'President' of the Union.

France and the UK are also the only European countries with the capacity and the political will to deploy troops in their former colonies or in other troubled zones to restore peace by force. This is why these two countries initiated the project of European defence, which will only make progress if they continue to take the lead.

Germany is less committed to the world scene for reasons of the heritage of World War II but also the loss of its colonies after World War I. Nevertheless it is an economic giant at the world level: third world GNP, third contributor to the UN, member of the G7 etc. Before the creation of the Euro, the Deutsche Mark was one of the world's leading currencies and the European Central Bank was largely conceived on the model of the Bundesbank and headquartered in Frankfurt.

It is logical that Germany continues to be increasingly insistent about a permanent seat in the Security Council. That this has not yet happened is for the reason that there is not yet a formula for the enlargement of the Council that rallies enough support.²⁹

France, the UK and Germany need to play a more advanced role in Foreign Policy within the Union. To deny this would be naïve; it is understood the world over. The day after September 11, 2001, three Europeans found their way to the White House to comfort President Bush and express the solidarity of Europe: President Chirac of France, the German Foreign Minister Joschka Fischer and the British Prime Minister Tony Blair—but not notably, the President of the European Union or the President of the European Commission.

Most American commentators continue to view European foreign policy as merely a power game between the three big Countries. When the Yugoslav crisis degenerated to the point where the U.S had to intervene, they invited the three to the Dayton negotiation and organized with them, together subsequently with Italy, a contact group to deal with the Bosnia peace process in which CFSP was for a long time not involved. The same countries develop every year new initiatives in the G8 framework, in which the European Union is represented only in the meetings dealing with economic issues.

A Balance between Three Imperatives

CFSP must obviously take into account these realities. In order to exist, it needs to lean on the major European powers—and encourage them to work together.

But we are no longer at the time of the Congress of Vienna and the common policy must also rest on the acceptance of the other Member States, among which mutual solidarity should be developed. The EU is a union of democracies. The majority of the citizens of the Union do not have more to say in the election of the French President than in the election of the president of the United States and cannot accept common foreign policy being decided by a *Directoire* of the great powers.

Besides, even many Member States who do not pretend to be great powers have responsibilities inherited from history or dictated by geography which do not allow them to renounce being involved in relations with particular countries and so influence European policy in relation to them. The Nordic Countries are concerned with all that is related to the Baltic sea; Belgium by the region of the Great Lakes in Central Africa; Italy by Libya and Somalia; Italy, Austria and Greece by the Balkans; Spain by South America, Portugal by the ex- 'Lusophone' Empire etc...

To reconcile the specific role of the great powers, the interests of everyone and the necessity to speak with one voice was already a major challenge for European Political Cooperation, which faced it

²⁹ Germany together with Japan, India and Brazil presented a draft Resolution to the General Assembly in July 2005 but it was withdrawn when it became clear that it would not get enough support.

with certain hypocrisy. Indeed while each Member State received the same seat at the table and the guarantee that all would be agreed by consensus, everyone pretended to ignore that some were weighing more than others on EU initiatives, joint decisions and common actions.

The smaller countries never perceived the creation of a position of ‘Secretary General’ for the political Union as a guarantee. On the contrary, for a long time they rejected it, fearing that, unlike the President of the Commission, he would be excessively under the influence of those who have the capacity to impose themselves on him. When the creation of such a position became a necessity to make CFSP work, they tried (unsuccessfully) to have him in the Commission and later insisted keeping the rotating Presidency in parallel to him.

Notably, the debate in the Convention about the Minister did not address this problem. Contrary to the project of a President of the European Council, viewed by the smaller countries as a war machine of the ‘great’, the idea of the Foreign Minister was supported from the beginning by big countries like Italy and Germany as well as by smaller ones, which confirms that this institutional innovation is overdue and thus accepted by all as such.

However, the question of the role of the great powers in today’s Europe is more sensitive now than ever. The Treaty wanted to give Europe a strong external representation: a long term President of the European Council and a double hatted Foreign Minister. If the Big Countries do not give them their chance, they will not have the credibility required but if the smaller countries want to take their appointment as a pretext to deny the bigger any right of initiative, CFSP will also be in crisis or paralysed. It is thus an important question and it is no longer possible at this stage to prolong the ambiguities or the hypocrisies that allowed everyone to hide behind until now.

Therefore, the ‘new’ CFSP should establish clearly that:

- Major countries have a specific role and should be encouraged to collaborate with each other and with the Minister;
- The Minister has a new and more extended role when a policy is perceived as ‘European’;
- All member States have the right to be associated to common actions and reassured that their national interest will be fully accounted for.

The Necessary Cohesion between the Major Member States

Everyone should recognise from the outset that the success of the ‘new’ CFSP implies that the specific capacities of the big European Member States have to be used as much as possible and that where it can make a difference they should be encouraged to take common initiatives.

All should accept that that the power of these countries in the world reinforces the overall capacity of the Union and that creating obstacles to this influence would mean weakening the Union itself. One should indeed remember that one of the major miracles of the European integration after World War II is that the major powers in Europe now cooperate in the common project of its unification and that this political choice has been the key to the stabilisation of the Continent—the West first, the East at the end of the Cold War.

When a crisis threatens to divide the Union, the other Member States should consider it their duty to encourage the major powers to reach agreement. This is true for matters discussed in the UN Security Council as well as in the framework of the reaction of the international community to new major threats in the field of terrorism or the proliferation of weapons of mass destruction.

The Iraqi crisis confirmed that when France and Great Britain do not agree on the way to handle a major international crisis, CFSP is powerless. On the contrary, when they work together in the Security Council, with the support of the Union, to launch an initiative, they are capable of generating a positive dynamic. These two countries therefore bear important responsibilities in world foreign

policy and the other members of the Union should encourage them to exert it, by obviously using the instruments of CFSP in the best possible way.

The European ‘weight’ in the Security Council would be even stronger if the weight of the three great European powers were combined. The presence of Germany in 2003 and 2004 as a non-permanent member, even in the difficult circumstances of the Iraqi crisis, confirmed the remarkable influence the three can have when they agree on a common initiative.

The best example of this is the crisis between the international community and Iran, over the nuclear program of that country. But one can find others like the ‘nation building’ in Afghanistan, the promotion of the International Criminal Court etc...

The ‘new’ CFSP will however only be credible to the rest of the world if the common initiatives of these countries are ‘carried’ by the whole Union and not jealously kept out of it. These countries must also accept to play ‘fully’ the Union’s game in the Security Council, accepting that in the long term the Union itself will be represented in the Council. To deny that this could ever happen would mean denying the Union its full integration on the world scene and so, diminish its credibility.

The Entourage of the Foreign Minister

Two examples—the Balkans and the Middle East Peace Process—demonstrate that even a major foreign policy issue that touches the interest of the major powers can gradually become a common policy of the Union and therefore be managed by the High Representative. With the support of the major powers, Javier Solana succeeded in being considered by third parties as the major European player in the two regions. This example was largely due to his personal skills but his appointment as European Foreign Minister would make this role even more prominent.

For the big countries to accept this evolution, some guarantees have to be provided. The President of the European Council could, at first sight, function as a sort of guarantor or ‘counterweight’ to a Foreign Minister who would become too independent. But it is difficult at this stage to anticipate how the two functions will interact and it is not desirable that the dialectic between the two major actors of the foreign policy of the Union be established on that basis. Consistency and complementarity are instead the basic principles on which their relationship should be established.

A way to reassure the big three could be found in the composition of the Minister’s private office. Within the other international organisations, it is accepted as an unwritten rule that if the Secretary General himself comes ideally from a smaller country then his deputies or the members of his cabinet are composed mainly of nationals of the major powers.

Such a system cannot be established formally but it usually results from the fact that the Secretary General—in this case the Minister—himself chooses his close collaborators. If these had to be appointed by the member States this system could not work. It is therefore important that the Minister—as foreseen in the Treaty—keeps a wide autonomy in the selection of his staff—and the top of the EEAS.

It is not easy for smaller countries to accept that the bigger ones are better represented in the Minister’s entourage but if this were not the case, it would be more difficult for the Minister to have a smooth access to the Security Council, work in harmony with the G8 or participate fully in the restricted contact groups.

Besides, the system described above should not be seen as exclusive: the Foreign Minister would be wise too, on choosing the heads of his geographical or thematic teams to take into account the specific sensitivity and expertise of the country of origin of the person to be chosen: an Austrian or a Greek for the Balkans, a Spanish for Latin America, a Belgian for Central Africa etc...

The Guarantees to be Given to the Smaller Countries

Smaller countries should also be reassured that they would be able to participate in intergovernmental consultation on foreign policy issues which particularly interest them.

It is neither acceptable nor logical that ‘contact groups’ be the privilege of major countries. Which was criticized in the group on Bosnia is that it only associated them. The criteria of being part in restricted groups or ‘core groups’ rather than the size should be the expertise and the capacity to get involved on a daily basis in the management of a crisis.

To manage the crisis in Somalia for example, a small group meets on a regular basis. It is composed of Britain, Italy and Sweden together with the European Commission. For the Great Lakes region, experts from France, Britain, Belgium and the United States meet informally at expert level together with the EU representative Aldo Ajello. This type of group could be useful to support the action of the Minister by offering him information, expertise and additional means to interact with the local authorities. The Belgian Foreign Minister Karel De Gucht in a Conference in the Florence European University Institute in July 2005 presented this formula as a model to develop.³⁰

But the main guarantee for all to be associated in decisions of interest to them is their participation in the Council of Ministers of the Union. In CFSP procedures, smaller countries are much more comfortable than for instance in the Council of Governors of the European Central Bank or on the Board of the IMF and the World Bank—not to speak about the G8 and the UN Security Council—all conceived on the principle that the major powers have a privileged role.

IN CFSP however the decision body, the Foreign Affairs Council, offers each Member State the same position and most of the decisions are made by consensus. Even when pressure is exerted on a reticent country to accept ‘constructive abstention’ in order not to block a decision, CFSP culture makes that it will never lose face or be forced to renounce serious national interests.

The best guarantee for the smaller Member States is that the Council work well. The fact that the Minister presides it himself is a positive element, making him a sort of referee among the various pressures, and among bigger and smaller. All Member States should continue to have the possibility to express themselves in the Council if they so wish.

For the Council to work well, its Secretariat—unlike the close entourage of the Minister—should be broadly representative of all Member States. Representatives of countries with expertise in a specific field should, as we’ve already said, be part of or lead the Services which deal with them in order to increase the expertise but also to develop a certain transparency and confidence between the Secretariat and the national administrations.

To have the Council work efficiently requires also that the national Foreign Ministers be good professionals in diplomacy or at least skilled politicians with a large experience in international relations, familiar with the complex institutional network of multilateral diplomacy and who also have a good personal knowledge, from the outset of the conflicts discussed in the Council.

An Ever-Closer Union

As with all policies of the Union, the foreign policy is in permanent evolution. This evolution could be faster than we think, given that it is not only dictated by the political will of European states but also by their capacity to react to crises in a world where the challenges are more and more complex and global. To face and continue to have an influence on the superpower of today, the United States, or that of tomorrow, China?, Europeans might decide to work together even more closely together, and sooner rather than later.

30 It can be found on the European University Institute’s website, at: www.iue.it

A lot of ground has already been lost by national diplomacy during the last sixty years and looking at this evolution one notes that it touches the bigger as well as the smaller countries.

Indeed, for a long time now, Member States of the European Union have ceased to negotiate themselves on commercial matters even if this was the most important national diplomatic activity before World War II. Competition policy has also become a closely guarded domain of the European Commission.

Many European countries count on NATO to ensure their security and have only a limited bilateral activity in the defence field. The development of ESDP will reduce even more unilateralism in this field, not only for smaller countries but also for the major powers: for example, as was already noted in section IV, when France was asked by the UN Secretary General to intervene alone in Ituri, it voluntarily transformed this operation into a European operation.

In all UN bodies, the Security Council aside, it is long established that the EU speaks with one voice. This practice is accepted and respected by all Member States as in speaking with one voice we can better defend and assert our common—or largely shared—positions on development issues, human rights or the defence of our values. The Union in doing so ‘polarizes’ the position of the North in face of the often too rigid or conservative position of the South defended in the ‘group of 77’. This gives the Union an influence in the debate on global issues that no Member State could ever dream of regaining for itself.

It is therefore realistic to imagine the Union’s foreign policy evolving towards more and more cohesion and that the bigger Member States will increasingly accept their power being expressed through the common instruments—as long as these are established step by step, with efficiency as the prime objective.

VII: The Minister and the Transatlantic Dialogue

How to assess the added value for transatlantic relations of the new institutional changes introduced by the Constitutional Treaty?

Perception-wise, the difference would be spectacular compared with the complex and confusing image given currently by the Union. The American President would be confronted with a European Council President elected for two and a half years and Javier Solana, ‘promoted to Minister for Foreign Affairs and Vice President of the Commission.

But will they be accepted as interlocutors? Americans often blame Europeans for being more interested in the process than in the substance and of being more concerned about existing than acting. How to convince them that these two interlocutors are genuinely representing the Union?

The first condition is to have the European leaders themselves play the game and accept the principle of being represented. It is already largely the case with Javier Solana in his present function

All European leaders will certainly continue to want for themselves a ‘privileged’ relationship with the American administration and the major countries will continue to work with Washington on world affairs within the framework of the G8, in the Security Council or bilaterally. But the Foreign Minister and his staff should no longer be marginalized by these initiatives.

The President of the European Council should be a personality sufficiently representative to be accepted by the American President as an equal without ‘eclipsing’ too much the Foreign Minister. There might be ambiguities or quarrels among collaborators but it is essential that the two establish from the outset a confident relationship.

But the EU representatives need above all to have real policies to present and to defend. Not only on specific issues but on all matters covered by the Union Security Strategy. Their authority and their

credibility will largely depend on the capacity of the Union to define a global and coherent foreign policy—even when European and American views diverge.

An Ambiguous Relationship

The relationship with the United States remains indeed the major challenge to better cohesion among the 25 EU Member States in foreign policy issues. This is perhaps not surprising in the unipolar world in which international relations evolve.

Most EU Member States count on the United States for ensuring their security. Because of this, or for historic, economic or cultural reasons all want and need to keep a privileged relationship with Washington. So, when a divergence develops between the two sides of the Atlantic on an important foreign policy issue, the Union Member States tend to react by giving their relationship with the U.S. more weight than the CFSP commitments or even the EU common interest.

The United States has always strongly supported the Union's integration process and encouraged its successive enlargements, mindful of the stability of a continent where twice in the twentieth century they have been needed to restore peace. Conscious too that the Union's influence improves democracy, market economy and the promotion of the values of the Western World.

Still, Americans find it very difficult to accept the concept of Europe as a world power. Even at the highest levels of the Administration but mainly in Congress some still do not understand why the EU—US dialogue on foreign policy issues could not take place in NATO only. The EU is often seen only as an attempt to create a 'counterweight' to American power or to be a war machine of multipolarity.

Economically, the European Commission was rather quickly accepted as a credible interlocutor for trade negotiations and in competition disputes as long as it defended the fundamental principles of liberalism and free trade. But as soon as another agenda was perceived, as was seen in negotiations related to the environment, all anti Union prejudices come back to the surface.

Politically, Washington's main concern is with its relations with Great Britain, France and Germany, using the transatlantic dialogue and NATO to bring them closer to American positions but happily exploiting divergences between them when they feel that a 'European' position could challenge their own. The other European countries are courted as members of the Alliance, potential participants in coalitions of the willing, but sometimes brutally abandoned and pressured when they object American policies—as was seen with the Iraq crisis.

It is easy, from a European perspective, to criticise what could be seen as an arrogant way to promote American 'hegemony' but, seen at a distance, this behaviour is rather logical from the point of view of a power defending its own interests and values in a world where a majority of Nations rely on it for their security. It would thus be illusory or even unjust to address transatlantic disputes only from that angle.

What is important for Europe is less its positioning in relation with the US than the adequate defence of its own interests, political and economic. Contrary to what Henry Kissinger pretended at the time, Europe has 'global' and not only regional interests and should not expect the United States to defend them in its place. This was already mentioned in the Declaration on European identity in 1974 and repeated forcefully in the European Security Strategy in 2003.

The Transatlantic Dialogue

From that point of view, and because European interests are more and more convergent, European solidarity should continue to be respected even in the face of divergent views from the American

Administration. It is therefore interesting to assess what influence the ‘new’ CFSP and the Foreign Minister will have on the American relations with Europe.

It is worth repeating here that the United States have for several years accepted Javier Solana as an interlocutor and as a partner in crisis management for some of the most important crises of our time—the Middle East, the Balkans and even more recently Ukraine and Georgia. The one simple explanation for this is that it was clear that European governments—even the major ones—allowed Solana to act on their behalf.

The personality of the High Representative and his own pragmatism certainly contributed to this achievement. But if this position is to be consolidated, especially when the rotating Presidency disappears from the scene, the ‘modus operandi’ of the current transatlantic dialogue must be revised substantially.

A formal dialogue between the U.S and the European Community was established only at the beginning of the nineties. Europeans had always been reluctant to mix discussions about trade and political issues, fearing the United States might use their military weight to obtain commercial concessions. Americans did not want a political dialogue outside of NATO and did not, as a point of principle, accept that Europeans would agree among themselves prior to consultation with Washington.

At the end of the eighties, when the Single European Act entered into force, the U.S was in recession. It did not welcome with too much enthusiasm the development of the ‘internal market’ and accused the European Community of creating a ‘fortress’. Since no American University at the time encouraged studies in European community issues, the initiative for opening a formal dialogue with the Community came from diplomats in the Bush (father) Administration. They were very conscious of the damage this growing misunderstanding of what was going on in Europe could have at the time when the implosion of the Soviet Empire and the reunification of Germany imposed—on the contrary—more cohesion and more solidarity across the Atlantic.

It was in this context that the first ‘Transatlantic Declaration’ was agreed. Direct and structured dialogue was organised between the Community and the American Administration preparing for ministerial contacts and a Summit every term.

Washington seemed to believe at the time that the U.S could use this channel to monitor from a distance, European crisis management initiatives that did not touch American interests. This was the case with the Yugoslav crisis for about three years, until the situation deteriorated and the U.S did eventually take charge.

The political dimension of this dialogue rapidly lost substance following the debacle in Yugoslavia. The necessity perceived by the Clinton Administration of ‘reviving’ NATO post-cold war, and the fact that the leading role had been taken over by the Commission contributed to change the dialogue into a simple exchange of information on respective positions and to reduce the EU-US Summits to embarrassing occasions where the President in charge of the Union and the President of the Commission competed to take first place, more concerned with the photo opportunity with the American President than to explain why the European position was right even if it did not match the American view.

The Iraqi crisis did obviously not improve the situation. The transatlantic dialogue became more and more bureaucratic and academic until President Bush, criticized from all sides for letting relations with Europe deteriorate, decided to spend three days in Brussels in February 2005.

The Relationship between the EU and NATO

The press did not fail to note during Bush’s visit to Brussels, that twice on the same day, he was meeting the representatives of the Union’s Member States: the Council of the European Union in the Justus Lipsius building, and in the North Atlantic Council in Evere. Some however noted also that it was the first time that an American President visited Justus Lipsius.

The relationship between the EU and NATO has always been complicated. To quote Robert Hunter, the American representative to NATO in the Clinton years and a connoisseur of the EU system: *'the European Union and NATO have their seat in the same city but on two different planets'*.³¹

Even if Bush's visit to Brussels seemed to emphasize this institutional schizophrenia, it should be noted that the relationship between the two organisations have improved, even more since the creation of the European Security and Defence Policy which implied at each step a demonstration that the European efforts did not weaken the Alliance or generate duplications.

The taking over by ESDP of NATO's SFOR operation in Bosnia was from that point of view a breakthrough: the discussion was tough but the fact that NATO and the Union were able to complement each other rather than compete seemed now to be accepted by most. The sharing of tasks is now experimented on another stage, in Darfur where, for political reasons, both organisations were asked to participate in the support of a Peace keeping operation conducted by the African Union.

This evolution is a success for the European security identity. But one must recognize that in giving more room for action to an autonomous European defence, the American objective is more to help NATO gain a 'world' role in addressing crises beyond the European arena or at least in serving as a toolbox to be used for American unilateral actions over the world.

If NATO's role is now to face the 'new threats' wherever they originate and if the United States accept that the EU takes its part in the management of less acute crises without American participation, a new and more mature relationship could develop between NATO and the Union.

If indeed European and Americans commit themselves together in the framework of NATO to manage crises in the Middle East, where the European and American sensitivities have traditionally been different, it would be logical for the U.S to accept prior European coordination before participating in the Alliance's decision. Europeans, on the other hand, will have to make the effort to develop the capabilities required for conducting their own autonomous operations while taking their share in NATO's actions.

Added Value of the Foreign Minister and of the President of the European Council

The European Minister for Foreign Affairs could be playing an important role in this new context.

One aspect of the innovations brought by the Constitutional Treaty should indeed be emphasized in this context: since CFSP covers 'all areas of foreign and security policy', the political dialogue should cover also all themes and crises, even those on which there is no agreement inside the European Union.

A crisis like the one caused in Europe by the American intervention in Iraq was predictable and could have been managed long before it erupted. In the new institutional framework created by the Treaty, in respect of the principle that they only act under mandate, the Minister should have the authority to address it, to mention it in the meetings of the Council he chairs and even to address it with third parties in Washington and elsewhere: how to avoid misunderstandings? Is a compromise formula feasible? Which initiative is worth developing? All this could be much more openly discussed among Europeans and with third parties in the new framework than currently with the rotating Presidency and troika system.

This should indeed not be so extraordinary: Colin Powell openly discussed the Iraq crisis with European counterparts even before a compromise between doves and hawks had been made in

31 See among others Robert Hunter 'The European Security and Defence Policy—Nato's Companion or Competitor?', Rand Europe, 2002

Washington. The American Secretary of State often addresses issues with his interlocutors from third countries for which there is no agreement between the Administration and Congress. Issues like the International Criminal Court or the Test ban Treaty for instance were discussed with European governments even if the Administration's position had not been approved in the Senate.

As has been noted repeatedly, the creation of the Minister's position will not, by miracle, diffuse all crises and generate consensus among European governments when there is a disagreement with the United States. But if the principle that all aspects of the transatlantic agenda can be addressed by him, the Council would at least be forced to agree on what can be said and give the Minister a mandate to explore all possible solutions.

The margin thus created would be important even if not spectacular from the outset. Differences are still very deep and Great Britain will always tend to position itself by instinct closer to Washington than France will ever. CFSP must therefore also address the problem of substance.

A Balanced Use of Two Approaches

The difference in approach between Europeans and Americans about the way to deal with a crisis, to encourage democracy or to stabilise a region of the world is well known. It was already obvious at the time of the Vietnam War or under Ronald Reagan when he bombed Libya. It continued during the Clinton administration with the Yugoslav wars and under G.W. Bush, whose perspective was more provocative and ideological.

If during its second term, the Bush Administration had continued with the neo-conservative agenda without caring about the European reaction, bringing the two approaches together would have been difficult and European policy would have been reduced to repair damages or pay costs. But, as recent events seem to demonstrate, if a genuine will develops on both sides of the Atlantic to draw the lessons from the Iraqi crisis and temper the enthusiasm of those who pretend to impose democracy and western values by force, opportunities do exist to work together efficiently in facing the new threats. The Foreign Minister would obviously be a key player in such a context.

The major threats today are well identified and, apart from a few exceptions like Cuba, there is a broad agreement on approach on both sides of the Atlantic. The difference emerges when it comes down to how to address them, even if this difference is less spectacular than has been written.

But the threats themselves are serious. They require Europeans to create capabilities, which would encourage the United States to accept joint initiatives, reached as pragmatically as possible and as a well balanced mix of the two approaches. To demonstrate the feasibility of this, a group of European and American experts tried to define a common 'strategy' for the major current crises in a document published on the eve of Bush's visit to Brussels in February 2005, to rally both the U.S and the EU.³²

The High Representative in his present position has already tried repeatedly, with clarity and wisdom, to identify concrete actions, which the Europeans and Americans could manage together, even without total agreement on all aspects. With the new tools he would receive from the Constitutional Treaty and the support of the Member States conscious of their incapacity to act alone or within small groups, the Minister for Foreign Affairs could well become the first interlocutor of the American Administration in the gradual elaboration of a common policy of that kind.

He could do this by revisiting the transatlantic dialogue. There is also the Atlantic Alliance that plays a key role in the implementation of a Euro-American policy in the field of crisis management as we've seen in Afghanistan and in Iraq. Again, only when CFSP will feel comfortable in the Alliance's

32 'The Compact between the United States and Europe', Brookings Institution and the Centre for European Reform, February 2005.

political structures will it be able to intervene efficiently far from its 'area'. The Foreign Minister is the ideal conduit to progress this on behalf of the EU.

In his position as High Representative, Javier Solana enjoys already a certain capacity to implement this ambitious agenda. But the stakes are so high that it would be absurd to continue to have his capacity of action reduced to what it is now. The stakes are such that this should be enough to convince all European citizens of the necessity to put in place without delay, if not the whole Treaty, at least the institutional innovations aimed at managing better their common interests.

It would be a great pity to have to wait for a new important crisis to implement the instruments that Europe needs urgently in order to be able to play fully its role, together with the United States and other global actors.

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Annex: Relevant Provisions of the Constitutional Treaty

Article I - 3: (The Union's objectives) § 4

In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

Article I - 16 (Union competences): The common foreign and security policy

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressing framing of a common defence policy that might lead to a common defence.

2. Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area. They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness.

Article I - 22: The European Council President - § 2 in fine:

The President of the European Council shall, at his or her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the Union Minister for Foreign Affairs.

Article I - 26: The European Commission:

§ 1: ... With the exception of the common foreign and security policy, and other cases provided for in the Constitution, it shall ensure the Union's external representation...

§ 5: The first Commission appointed under the provisions of the Constitution shall consist of one national of each Member State, including its President and the Union Minister for Foreign Affairs who shall be one of its Vice-Presidents.

§ 6: As from the end of the term of office of the Commission referred to in paragraph 5, the Commission shall consist of a number of members, including its President and the Union Minister for Foreign Affairs, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

§ 8: The Commission as a body shall be responsible to the European Parliament. In accordance with Article III-340, the European Parliament may vote on a censure motion on the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the Union Minister for Foreign Affairs shall resign from the duties that he or she carries out in the Commission.

Article I - 27: The President of the European Commission:

§ 2 al. 2: The President, the Union Minister for Foreign Affairs and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

§3 c: (The President of the Commission shall) appoint Vice-Presidents, other than the Union Minister for Foreign Affairs, from among the members of the Commission.

A member of the Commission shall resign if the President so requests. The Union Minister for Foreign Affairs shall resign, in accordance with the procedure set out in article I-28 (1), if the President so requests.

Article I - 28: The Union Minister for Foreign Affairs:

1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs. The European Council may end his or her term of office by the same procedure.
2. The Union Minister for Foreign Affairs shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The Union Minister for Foreign Affairs shall preside over the Foreign Affairs Council.
4. The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He or she shall ensure the consistency of the Union's external action. He or she shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the Union Minister for Foreign Affairs shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

Article I - 40: Specific provisions relating to the common foreign and security policy:

1. The European Union shall conduct a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.
2. The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy. The Council shall frame this policy within the framework of the strategic guidelines established by the European Council and in accordance with Part III.
3. The European Council and the Council shall adopt the necessary European decisions.
4. The common foreign and security policy shall be put into effect by the Union Minister for Foreign Affairs and by the Member States, using national and Union resources.
5. Member States shall consult one another within the European Council and the Council on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.
6. European decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council unanimously, except in the cases referred to in Part III. The European Council and the Council shall act on an initiative from a Member State, on a proposal from the Union Minister for Foreign Affairs or on a proposal from that Minister with the Commission's support. European laws and framework laws shall be excluded.
7. The European Council may, unanimously, adopt a European decision authorising the Council to act by a qualified majority in cases other than those referred to in Part III.

8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy. It shall be kept informed of how it evolves.

Article I - 41: Specific provisions relating to the common security and defence policy

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civil and military assets. The Union may use them on missions outside the Union for peacekeeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

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, it 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.

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States, which together establish multinational forces, may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. An Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency) shall be established to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities.

4. European decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the Union Minister for Foreign Affairs or an initiative from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by Article III-310.

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article III-312. It shall not affect the provisions of Article III-309.

7. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy. It shall be kept informed of how it evolves.

The Union 's external action (provisions having general application):

Article III - 292 §3 al.2 :

3. The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the Union Minister for Foreign Affairs, shall ensure that consistency and shall cooperate to that effect.

Article III - 293

1. On the basis of the principles and objectives set out in Article III-292, the European Council shall identify the strategic interests and objectives of the Union.

European decisions of the European Council on the strategic interests and objectives of the Union shall relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. European decisions of the European Council shall be implemented in accordance with the procedures provided for in the Constitution.

2. The Union Minister for Foreign Affairs, for the area of common foreign and security policy, and the Commission, for other areas of external action, may submit joint proposals to the Council.

Common Foreign and Security Policy: Common Provisions

Article III - 294

1. In the context of the principles and objectives of its external action, the Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy.

2. The Member States shall support the common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council and the Union Minister for Foreign Affairs shall ensure that these principles are complied with.

3. The Union shall conduct the common foreign and security policy by:

a) Defining the general guidelines

b) Adopting European decisions defining:

- i. Actions to be undertaken by the Union
 - ii. Positions to be taken by the Union
 - iii. Arrangements for the implementation of the European decisions referred to in points i. and ii.
- c) Strengthening systematic cooperation between Member States in the conduct of policy.

Article III - 295

1. The European Council shall define the general guidelines for the common foreign and security policy, including for matters with defence implications. If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments.
2. The Council shall adopt the European decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines and strategic lines defined by the European Council.

Article III - 296

1. The Union Minister for Foreign Affairs, who shall chair the Foreign Affairs Council, shall contribute through his or her proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the European decisions adopted by the European Council and the Council.
2. The Minister for Foreign Affairs shall represent the Union for matters relating to the common foreign and security policy. He or she shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.
3. In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This Service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a European decision of the Council. The Council shall act on a proposal from the Union Minister for Foreign Affairs after consulting the European Parliament and after obtaining the consent of the Commission.

Article III - 297

1. Where the international situation requires operational action by the Union, the Council shall adopt the necessary European decisions. Such decisions shall lay down the objectives, the scope, the means to be made available to the Union, if necessary the duration, and the conditions for implementation of the action.

If there is a change in circumstances having a substantial effect on a question subject to such a European decision, the Council shall review the principles and objectives of that decision and adopt the necessary European decisions.

2. The European decisions referred to in paragraph 1 shall commit the Member States in the positions they adopt and in the conduct of their activity.

3. Whenever there is any plan to adopt a national position or take national action pursuant to a European decision as referred to in paragraph 1, information shall be provided by the Member State concerned in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of such a decision.

4. In cases of imperative need arising from changes in the situation and failing a review of the European decision pursuant to the second subparagraph of paragraph 1, Member States may take the necessary measures as a matter of urgency, having regard to the general objectives of that decision. The Member State concerned shall inform the Council immediately of any such measures.

5. Should there be any major difficulties in implementing a European decision as referred to in this Article, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the action or impair its effectiveness.

Article III - 298

The Council shall adopt European decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the positions of the Union.

Article III - 299

1. Any Member State, the Union Minister for Foreign Affairs, or that Minister with the Commission's support, may refer any question relating to the common foreign and security policy to the Council and may submit to it initiatives or proposals as appropriate.

2. In cases requiring a rapid decision, the Union Minister for Foreign Affairs, of the Minister's own motion or at the request of a Member State, shall convene an extraordinary meeting of the Council within forty-eight hours or, in an emergency, within a shorter period.

Article III - 300

1. The European decisions referred to in this Chapter shall be adopted by the Council acting unanimously.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration. In that case, it shall not be obliged to apply the European decision, but shall accept that the latter commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.

2. By way of derogation from paragraph 1, the Council shall act by a qualified majority:

a) when adopting European decisions defining a Union action or position on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article III-293(1);

b) when adopting a European decision defining a Union action or position, on a proposal which the Union Minister for Foreign Affairs has presented following a specific request to him or her from the European Council, made on its own initiative or that of the Minister;

- c) when adopting a European decision implementing a European decision defining a Union action or position;
- d) when adopting a European decision concerning the appointment of a special representative in accordance with Article III-302.

If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a European decision to be adopted by a qualified majority, a vote shall not be taken. The Union Minister for Foreign Affairs will, in close consultation with the Member State involved, search for a solution acceptable to it. If he or she does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a European decision by unanimity.

3. In accordance with Article I-40(7) the European Council may unanimously adopt a European decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 of this Article. 4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

Article III - 301

1. When the European Council or the Council has defined a common approach of the Union within the meaning of Article I-40(5), the Union Minister for Foreign Affairs and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.
2. The diplomatic missions of the Member States and the Union delegations in third countries and at international organisations shall cooperate and shall contribute to formulating and implementing the common approach referred to in paragraph 1.

Article III - 302

The Council may appoint, on a proposal from the Union Minister for Foreign Affairs, a special representative with a mandate in relation to particular policy issues. The special representative shall carry out his or her mandate under the Minister's authority.

Article III - 303

The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter.

Article III - 304

1. The Union Minister for Foreign Affairs shall consult and inform the European Parliament in accordance with Article I-40(8) and Article I-41(8). He or she shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.
2. The European Parliament may ask questions of the Council and of the Union Minister for Foreign Affairs or make recommendations to them. Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.

Article III - 305

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such fora. The Union Minister for Foreign Affairs shall organise this coordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.

2. In accordance with Article I-16(2), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter, as well as the Union Minister for Foreign Affairs, informed of any matter of common interest.

Member States which are also members of the United Nations Security Council shall concert and keep the other Member States and the Union Minister for Foreign Affairs fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union's position.

Article III - 306

The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the European decisions defining Union positions and actions adopted pursuant to this Chapter are complied with and implemented. They shall step up cooperation by exchanging information and carrying out joint assessments.

They shall contribute to the implementation of the right of European citizens to protection in the territory of third countries as referred to in Article I-10(2)(c) and the measures adopted pursuant to Article III-127.

Article III - 307

1. Without prejudice to Article III-344, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the latter, or of the Union Minister for Foreign Affairs, or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the powers of the Union Minister for Foreign Affairs.

2. Within the scope of this Chapter, the Political and Security Committee shall exercise, under the responsibility of the Council and of the Union Minister for Foreign Affairs, the political control and strategic direction of the crisis management operations referred to in Article III-309.

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant measures concerning the political control and strategic direction of the operation.

Article III - 308

The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Constitution for the exercise of the Union competences referred to in Articles I-13 to I-15 and I-17.

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Constitution for the exercise of the Union competences under this Chapter.

The Common Security and Defence Policy

Article III - 309

1. The tasks referred to in Article I-41(1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.

2. The Council shall adopt European decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The Union Minister for Foreign Affairs, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

Article III - 310

1. Within the framework of the European decisions adopted in accordance with Article III-309, the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the Union Minister for Foreign Affairs, shall agree among themselves on the management of the task.

2. Member States participating in the task shall keep the Council regularly informed of its progress on their own initiative or at the request of another Member State. Those States shall inform the Council immediately should the completion of the task entail major consequences or require amendment of the objective, scope and conditions determined for the task in the European decisions referred to in paragraph 1. In such cases, the Council shall adopt the necessary European decisions.

Article III - 311

1. The Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), established by Article I-41(3) and subject to the authority of the Council, shall have as its task to:

- a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
- b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;

- c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;
- d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
- e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.

2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a European decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

Article III - 312

1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article I-41(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation shall notify their intention to the Council and to the Union Minister for Foreign Affairs.

2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a European decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs.

3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the Union Minister for Foreign Affairs.

The Council shall adopt a European decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation. The Council shall act by a qualified majority after consulting the Union Minister for Foreign Affairs. Only members of the Council representing the participating Member States shall take part in the vote.

A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a European decision suspending the participation of the Member State concerned.

The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote.

A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained.

5. Any participating Member State which wishes to withdraw from permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.

6. The European decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity.

For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.

Financial Provisions

Article III - 313 § 3 :

3. The Council shall adopt a European decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article I-41(1) and Article III-309. It shall act after consulting the European Parliament.

Preparatory activities for the tasks referred to in Article I-41(1) and Article III-309 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority, on a proposal from the Union Minister for Foreign Affairs, European decisions establishing:

- a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;
- b) the procedures for administering the start-up fund;
- c) the financial control procedures.

When the task planned in accordance with Article I-41(1) and Article III-309 cannot be charged to the Union budget, the Council shall authorise the Union Minister for Foreign Affairs to use the fund. The Union Minister for Foreign Affairs shall report to the Council on the implementation of this remit.

The Union's Relations with International Organisations and Third Countries and Union Delegations

Article III - 327

1. The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.

The Union shall also maintain such relations as are appropriate with other international organisations.

2. The Union Minister for Foreign Affairs and the Commission shall be instructed to implement this Article.

Article III - 328

1. Union delegations in third countries and at international organisations shall represent the Union.
2. Union delegations shall be placed under the authority of the Union Minister for Foreign Affairs. They shall act in close cooperation with Member States' diplomatic and consular missions.

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