

GULLIVER IN WONDERLAND

The Search for a European Foreign Policy: an Institutional Perspective

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## FOREWORD

One may fancy the character of Gulliver as a wanderer in search of his own identity: at times he is a giant among the diminutive Lilliputians, but more often he finds himself a dwarf in the land of the giant Brobdingnagians. The European Union may be viewed in this way as it strives to find a voice of its own, matching its demographic and economic weight, on the international stage. Indeed in international matters related to trade, development and humanitarian aid, the Union is speaking and acting as an actor in its own right. By contrast, as far as foreign and defense policy is concerned, national governments exercise and guard jealously their full sovereignty and control. The structures and mechanisms put in place by the Union in this area over time have not dented individual member states' powers. In other words, foreign policy has remained firmly anchored in intergovernmental ground. The European Union's Constitutional Treaty does not change this state of affairs, but it does introduce a number of refinements and enabling clauses that may lead to a more structured and coherent policy framework of the Union. This paper, in light of past experience, attempts to assess the institutional innovations enshrined in the Treaty; to examine how this process was perceived in the United States—both during the work of the Convention and after the rejection of the Treaty by the citizens of France and the Netherlands; and to venture possible avenues for moving forward, away from the present institutional impasse.

This research was made possible thanks to the fellowship at the Weatherhead Center for International Affairs at Harvard University (2005-2006). While my research drew heavily on personal past experience dealing with foreign policy issues at the

European Commission, I benefited from the extremely inspiring environment of the Center and of the Harvard academic community at large. I am particularly grateful to Professor Stanley Hoffmann for inviting me to participate actively in his European studies seminar on “European foreign policies” at the Minda de Gunzburg Center for European Studies, where some of the issues examined in the present paper were debated. Similarly, I am indebted to Professor Glyn Morgan for his course on “European Integration: Philosophic, Legal, and Political Perspectives” and for inviting me to address his students on current Constitution-related issues. I also benefited from auditing the course on EU-U.S. relations taught by Professors Karl Kaiser and Dick Morningstar at the John F. Kennedy School of Government. I explored some of the concepts and historical references in this paper with Professor Peter Tarnoff, former U.S. Under-Secretary of State during President William Clinton’s first term; his vast experience in dealing with EU foreign policy, and his deep knowledge of the formative period of CFSP, have been invaluable.

I was encouraged and inspired, too, by many useful comments and remarks made at the lectures I presented at the International Relations Council at Harvard, at the University of Massachusetts-Dartmouth, and at St.Johnsbury Academy in Vermont. I also benefited from the hard work of my research assistant Mr. Jon Gatto, who developed useful bibliographical sources and offered helpful comments as the work proceeded.

Finally, I would like to make special reference to Professor Jorge I. Domínguez, director of the Weatherhead Center for International Affairs, to Dr. Katherine Molony, director of the Fellows Program, for their constant support and inspiration, and to all my

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## INTRODUCTION

In January 1999 I was the keynote speaker at an international colloquium on Common Foreign and Security Policy (CFSP) at the Hebrew University of Jerusalem. In my introductory remarks, I noted, tongue in cheek, that the titles of several papers presented included the preposition ‘toward’ or asked a question, or both.<sup>1</sup> This is not surprising since CFSP remains an elusive subject. It has defied established theories and current approaches to the study of actor-based international behavior and, given its predominantly intergovernmental character, explanations of it are not conducive to integration models and theories.<sup>2</sup> These difficulties are compounded by the current confusion about CFSP being conceptualized as a ‘project,’ a ‘process,’ or a ‘product.’<sup>3</sup> As a ‘project’ CFSP—and its defense component the European Security and Defense Policy (ESDP)—refers to attempts at preconfiguring a desirable state of affairs as, for instance, “an ever closer union,” or in the case under consideration, as the “progressing frame” of a common Union defense policy, as formulated in the Constitutional Treaty (art.I-41). The ‘process’ involves the step-by-step building of common institutions and

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<sup>1</sup> See for instance a contemporary example in Stanley Hoffmann, “Towards a Common European Foreign and Security Policy?”, *Journal of Common Market Studies*, June 2000 presented at the 1999 *Journal of Common Market Studies* Lecture at the Royal Institute of International Affairs in London on June 15, 1999.

<sup>2</sup> For a detailed analysis of the particular constraints in theorizing on European foreign policy see Ian Manners and Richard G. Westman (ed.) “The foreign policies of the European Union member states”. In contrast what I call “product” oriented research is to be found in Karen E. Smith’s “European Union Foreign Policy in a changing world”, *Polity*, 2003.

<sup>3</sup> I borrow the terms (while adapting them slightly to the purpose of my research) that Glyn Morgan has used in his analytic search for a justification of European integration in his book “The idea of a European Superstate – Public justification and European integration”, Princeton University Press, 2005.

procedures.<sup>4</sup> Finally, the ‘product’ exists in the observable behavior of the EU on the international stage as it is embodied by the CFSP tools (common strategies, actions, positions, and declarations) and it is thus distinct from that of its member states acting as national actors.

The present research work focuses on CFSP/ESDP as a ‘process.’ I argue that the relevant provisions in the draft Constitutional Treaty do not constitute a ‘big-bang’ in terms of a redistribution of powers among the European institutions and member states; the intergovernmental character of the European foreign and defense policies remains unchanged. As an uneasy compromise between those states craving a more federalist outcome and those satisfied with the status quo, the Treaty, short of modifying the present balance of powers, stretches the intergovernmental approach to its outer limits. A number of institutional innovations, however—a Minister of Foreign Affairs, a president of the European Council, a European/ External Action Service, a Defense Agency, and enhanced cooperation—may contribute to the enhancement of the European Foreign Policy’s ‘products.’ In the context of the European integration process, a common foreign and security policy took a long time to emerge and this policy has come a long way. After the failure of the European Defense Community in 1954 (the ratification by France was defeated in the French Parliament), and the stalling of the two plans for foreign policy cooperation (engineered by Christian Fouchet, minister of foreign affairs of for General Charles de Gaulle in the late sixties), an embryonic European Political Cooperation (EPC) launched in 1970,<sup>5</sup> and has progressively developed into a

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<sup>4</sup> A process-related approach was promoted by Michael E. Smith in “Europe’s Foreign and Security Policy – the Institutionalization of Cooperation”, Cambridge University Press, 2004.

<sup>5</sup> For a comprehensive appraisal of the creation of EPC, see Philippe de Schoutheete, *La Cooperation Politique Europeenne*, Editions Labor, Bruxelles, 1986 and for an evaluation of its “product” see Simon

more ambitious framework of cooperation. This process has culminated in the relevant provisions of the Constitutional Treaty. It is interesting to note that critical stages of this evolution seem to correspond to specific crises and conflicts worldwide that challenge the Union's capacity for optimizing its collective resources and weight: the aftermath of the Six Day War and the ensuing energy crisis, the crisis and war in the Balkans, and, most recently, the ripples of the war in Iraq. Similarly, 9/11 triggered a new urgency for closer coordination and action at European level.

But a 'common policy' is not a 'single policy.' CFSP has not divested member states of their sovereign foreign policy prerogatives. Members remain fully-fledged actors on the international chessboard, even if the Constitutional Treaty bestows—for the first time—a legal personality on the European Union. Reinforcing cooperation among its members, while harnessing additional Union resources to implement mutually agreed upon actions without impairing the sovereign powers of its component units, is, after all, what CFSP is about. Professor Christopher Hill underlines this point by stating that, "this important and fascinating new development in international diplomacy can only be understood properly in terms of the interplay between the attempts of collective action on the one hand and the national foreign policies which continue vigorously, on the other".<sup>6</sup> This interplay has generated, according to Ian Manners and Richard Westman, a progressive 'socialisation' of national diplomacies within the multilateral culture, which does not interfere with the pursuit of specific national interests in member states' 'domains reserves.' Thus, CFSP embodies only that layer of foreign policy upon which

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Nuttal , "Two decades of EPC Performance" in E. Regelsberger and al. (ed), "Foreign Policy of the European Union – From EPC to CFSP and Beyond", Lynne Rienise Publications, London, 1997.

<sup>6</sup> Christopher Hill and William Wallace, "Actors and Actions" in Christopher Hill (ed.), "The Actors in Europe's Foreign Policy," Routledge, 1996, p. 3.

the member states were able to unanimously agree. This often leads to confusion when it is wrongly assumed that any subject automatically falls within the scope of the ‘common policy.’ This may well be the ultimate aim of the federalist ‘project’ of a unified and centralized European Foreign Policy, but reaching that goal remains miles away from the reality of the current ‘process.’ Such confusion leads to underestimate, systematically, what CFSP is, and what—within its limits—it has achieved.

In a recent speech, Javier Solana, the High Representative for CFSP, underscored a belief that, “the outside world will not wait for the EU to get its act together. And the call for the EU to act is there, every day.”<sup>7</sup> Indeed, situated on the westernmost tip of Eurasia, Europe occupies a key geopolitical position and its role on the world stage is amplified by its weight in demographic, economic and trade terms. The slow but gradual search for CFSP is the result of both ‘push’ and ‘pull’ factors. Individual member states realize that common action, supplemented by considerable community resources, bears the chance of impacting more forcefully the international system than would separate actions by individual member states. At the same time, other actors expect the Union to assume a political role comparable with its economic power.

CFSP has attempted to reconcile full national sovereignty in foreign and security affairs by optimizing collective action. It has strived to prevent the dilution of national state powers, while at the same time adding—in certain areas—a comparative advantage by pooling political capital and material resources together. And, because national sovereignty was not constrained significantly by a common discipline, CFSP has been allowed to evolve gradually within the Union framework. This process culminated in the

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<sup>7</sup> Speech by the European Union High Representative for the Common Foreign and Security Policy, Javier Solana, at the Annual Conference of the Institute for Security Studies of the European Union, Paris, September 26, 2005.

relevant provisions of the Constitutional Treaty, signed in Rome on October 30, 2004 (but not yet ratified by all member states at the time of this writing). The Treaty optimizes the full potential of CFSP and ESDP within the intergovernmental approach; it does not, however, constitute a qualitative leap forward into the supranational realm. Which is why authors, such as Glyn Morgan argue that Europe will not become a world player unless it changes the constitutional foundations of its 'polity,' that it will become a 'superstate.' A Europe that is capable of assuming the role of a great power, and of adopting an autonomous foreign and military policy, is a Europe that cannot afford to adopt the radically decentered polity advocated by post-sovereign followers. It is no accident that the nation-state emerged as the dominant type of political unit in the modern era, just as it is no accident that the world's sole global power, the United States, is a nation-state. If Europe is to play any comparable role, then it must adopt a comparable type of polity: Europe must, in short, become a 'superstate.' Those who refuse to accept this conclusion are either deluding themselves, or they are prepared to see Europe remain a weak and dependent power.<sup>8</sup>

The conspicuous disagreement among European states regarding the war in Iraq led a few high-heeled thinkers to advocate the creation of a European 'superpower' capable of measuring up with the United States. The philosophers Jurgen Habermas and Jacques Derrida pleaded in this vein of thought. Similarly, the writer Umberto Eco maintained that "in order to survive, so to speak, Europe is condemned to find common strategies for foreign policy and defense. Otherwise it will become, no offense to anyone,

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<sup>8</sup> Glyn Morgan, "The Idea of a European Superstate – Public justification and European Integration, Princeton University Press, 2005, p. 161.



Guatemala”.<sup>9</sup> They failed to explain, however, how countries showing such a wide disagreement on Iraq would agree to merge their national policies on a permanent basis. These authors tend to discard the provisions of the Constitutional Treaty as largely insufficient for attaining this goal. Conscious of the challenge involved in building consensus among twenty five members, several prominent figures advocate the creation of a “core” Europe acting as a spearhead of the integration process. The emergence of such proposals is not new in the history of European integration; they tend to surface, with regularity, at times of political impasse and institutional uncertainty. Following the rejection of the Constitutional Treaty by the electorates of France and The Netherlands, Guy Verhofstad, the Belgium prime minister argued in favor of a “United States of Europe,” a federal polity endowed with a “European diplomacy.” Such a scheme would imply a “single diplomatic service for Europe” and the creation of a European army: “European foreign policy will only be credible if there is a true European defense”.<sup>10</sup>

Contrasting with the preceding views, a more realistic institutions-based approach acknowledges continuous and gradual progress toward a more integrated European foreign policy within the existing constitutional framework. Professor Michael E. Smith, for instance, claims that “it is misleading to argue that the European Union will never have a common foreign policy as long as it is not a unitary state with centralized decision-making and its own army.” According to Smith, “as long as the European Union remains a collection of States, the comparison is entirely inappropriate”<sup>11</sup> And Lord

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<sup>9</sup> D. Levy, M. Pensky, J.Torpey, eds., “Old Europe, new Europe, core Europe – Transatlantic relations after the Cold War”, Verso, 2005.

<sup>10</sup> Guy Verhofstad, “The United States of Europe: Manifesto for a New Europe”, 2006.

<sup>11</sup> Michael E. Smith, op. cit. p.

Christopher Patten, former European Commissioner responsible for external relations, reminds us that the ambition of a supranational Europe, “was embraced because it suited national interests.”<sup>12</sup>

One may argue, too, that these proponents—of a federalist “core” Europe’s single foreign policy—fail to explain why such a foreign policy never materialized when the Community was restricted to the initial six members. They also tend to amalgamate ‘project,’ ‘process,’ and ‘product.’ The existing limitations of the CFSP ‘product’ do not result from a flawed ‘process,’ rather they come about because of the lack of consensus among the member states on the overall ‘project.’ The federalists may point to the structural weaknesses in, and occasional failures of, European Foreign Policy. The above-referenced proponents make several assumptions: that the sober role of the European Union in world affairs is derived from the lack of an appropriate institutional setting (the ‘process’), based on qualified majority and more centralized decision-making; and that such a “process” could be achieved by pooling together a smaller number of states willing to travel the federalist road. The latter, however, has proved elusive since the inception of the European integration process. In the absence of a common understanding of the European ‘project,’ there is no geometrical configuration that ensures the operation of a single foreign policy. In other words, no integrated “process” will spring out of a fundamentally divisive “project.” And the *Deus ex machina* is not yet born!

That is why the realists believe in a gradual learning process without necessarily leading to a single foreign policy. Realists point to the fact that, against all odds, the European Union has succeeded in making continuous progress toward a more mature foreign and

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<sup>12</sup> Chris Patten, “Not Quite the Diplomat – Home Truths about World Affairs,” Penguin/Allen Lane, 2005, p. 116.

security policy without questioning its intergovernmental foundations. What is even more remarkable is the fact that such improvements occurred in tandem with the uninterrupted expansion of the Union itself.

The present paper will attempt to show how the Constitutional Treaty brings the CFSP “process” to the limits of the intergovernmental approach, but refrains to enter the realm of supranational, single European Foreign Policy. My analysis will link these provisions to past practice in order to reestablish the thread guiding Gulliver’s elusive search for a place in the wonderland of international politics.

#### CFSP: “THE “C” WHAT?”

In his recent book,<sup>13</sup> Chris Patten alludes to the abuse of European jargon. CFSP is as inelegant as its meaning is obscure outside a very restricted circle of experts. But it is not by chance that the European institutional life is cursed with hundreds of acronyms. The Union, having received delegated authority, can only operate within the boundaries of a specific legal base. These legal bases are given very precise and carefully crafted names that denote the precise nature and limits of the policy area concerned. There is thus a fundamental difference between CFSP, with its precise meaning and constraints, and the broad concept of foreign policy as it is usually referred to when speaking of national government’s policies, even if we keep referring for convenience to European Foreign Policy. The acronym should also be read for what it stands: ‘C’ really does mean ‘common’ i.e., not ‘single.’ The Treaty did not change this nuance: it kept the term while stretching the intergovernmental logic to its outer limits. One may imagine that this is the

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<sup>13</sup>Chris Patten, *op. cit.*

last stop along the intergovernmental road, beyond which lies the unknown and hypothetical territory of a fundamentally different Union.

It took approximately twenty years for a “Common Foreign and Security Policy” to emerge from its pioneer ancestor, the “European Political Cooperation,” which was established in 1970. During this span of time, governments learned that moving from systematic consultation to a coordination process—and ultimately to common positions and joint actions—did not threaten their sovereignty and autonomy. The first experiments were rewarding and successful: in the late seventies, the European Community (as it was then called), carved an international identity for itself with respect to the Conference on Security and Cooperation in Europe (CSCE), and to the situation in the Middle East. Almost two decades later, the Single European Act (SEA) and its immediate successor, the Maastricht Treaty (1992), formalized the Common Foreign and Security Policy. It was received with anxious and unrealistic expectations. The war among the states of the former Yugoslavia was raging. As the cold war period state structure started unraveling, the George H. W. Bush administration viewed the emerging conflict as a European-backyard issue to be sorted out by a growing vocal European Community eager to prove its ability to move from the former political cooperation to a more assertive and effective European Foreign Policy. Both the rotating President of the European Council, Jacques Poos of Luxembourg, and the President of the Commission, Jacques Delors boasted about the “hour of Europe.” Unfortunately, the Europeans were divided along fault lines related to their specific geo-political traditions and perceptions.<sup>14</sup> It was not until then, the mid-

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<sup>14</sup> What the conflict in Yugoslavia revealed, therefore, was both the opportunities for innovative policies in a changed European system and the limits to common action. In challenging the member states to commit themselves to common action, it brought to the fore their own particular concerns and revealed clearly that there was no overall coherent, relevant, political analysis at European level that encapsulated the

nineties—when the U.S. provided leadership, focus, and military capabilities—that the newborn CFSP could prove its worth, but even then not without difficulty. The former US diplomat, Richard Holbrooke later recognized that both Americans and Europeans had overestimated the latter’s capacity to act, leading to what he called “the greatest collective security failure since the 1930’s.” He goes on, saying that “Yugoslavia was the worst possible place for a first test of a new American policy designed to make “the Europeans to step up to the plate.”<sup>15</sup>

At this point it may be worth recalling the peculiar situation of the European Commission, regarding what came to be called since Maastricht, the “second pillar” of the European institutional architecture. This Greek temple configuration separated clearly the traditional areas of community competence from the intergovernmental cooperation areas of foreign and security policy and justice and home affairs. When the European Political Cooperation was established in 1970, the Commission was initially excluded from its discussions and procedures. The resistance of member states to mix community business with foreign policy consultations kept the European executive at arms length. The Institution, too happy to be admitted in the government’s foreign policy backyard, kept a low profile and did not attempt to behave in a similar way as a member state. Simon Nuttal, former European correspondent of the Commission and a historian of these early debuts, noted that the Commission was eager to demonstrate its value added by introducing its expertise to areas of community competence, with direct implications for

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“European” interest””, Geoffrey Edwards, “The potential and limits of the CFSP: the Yugoslav example”, in E. Regelsberger and al. (ed.), *op. cit.*, p.190.

<sup>15</sup> Richard Holbrooke, “To End a War”, Random House, 1998, p. 28.

foreign policy action. This was namely the case regarding the application of economic sanctions to the former South African regime that espoused apartheid regime.<sup>16</sup>

The Commission's role and profile were raised by the Maastricht Treaty formalizing CFSP. The Commission was recognized as a full-time player, was admitted in all CFSP fora, and was endowed with a right to make proposals on equal footing with member states. In the lead up to the adoption of the Treaty, Delors was very vocal in favor of a foreign policy anchored by the community method and giving the Commission a key role. George Ross, who made an in-depth study of the Institution while spending several months with Delors' entourage, stated that "developing CFSP was Delors' own most important concern."<sup>17</sup>

The outcome of the Maastricht Treaty came short of Delors' and federalists' expectations. Negotiations were intricate and painful and resulted in leaving many loopholes unresolved. According to a particularly qualified observer, "the Twelve had failed to agree, or even seriously to debate, a number of important issues linked to the Common Foreign and Security Policy, such as: the decision-making process, including majority voting; the means of implementation, including finance and the role of community institutions; the implications of a common defense policy. Those weaknesses were soon to become apparent, once Maastricht was ratified."<sup>18</sup>

Some of these weaknesses were to be overcome, at least partly, some five years later. The Amsterdam Treaty (1997) laid down some of the cornerstones that were to be refined in the draft Constitutional Treaty. The function of High Representative for CFSP

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<sup>16</sup> Simon Nuttal, "European Political Co-operation", Oxford; Clarendon Press, 1992.

<sup>17</sup> George Ross, "Delors and European Integration", 1995, p. 92.

<sup>18</sup> Philippe de Schoutheete de Tervarent, "The Creation of the CFSP", in Elfriede Regelsberger (ed.), "Foreign Policy of the European Union – from EPC to CFSP and Beyond", Lynne Rienner Publishers, London, 1997.

was created to provide focus and continuity in policy implementation. This outcome represented an uneasy compromise with the original French proposal for an upgraded political figure acting with wider and more autonomous policy-making powers, the so-called “Mr. Pesc.” Instead, the High Representative was a hybrid figure: half foreign policy supremo, half bureaucrat (he combined his function with that of secretary-general of the Council of Ministers). As this position sprouted out of the Amsterdam Treaty, it would become the ancestor of the European minister of foreign affairs in the Constitutional Treaty.

On the security/defense front, Amsterdam was less successful. A feverish last minute attempt to incorporate the Western European Union (WEU) into the European Union was aborted by the neutral member states. In fact, although the Maastricht Treaty had confirmed that WEU was an integral part of the development of the European Union, Amsterdam did not provide any organic link between the two institutions. This was eventually accomplished when the French and the British agreed at St. Malo (1998), on the tenets of a European defense component. It opened the way for a European Security and Defense Policy (ESDP), which should find its place in the Constitutional Treaty.

The foreign and defense policy clauses enshrined in the Constitutional Treaty may be seen as “the last major ‘construction site’ in the building of the European Union.”<sup>19</sup> They bring ESDP under the purview of the Treaty by including it as part and parcel of CFSP, thus giving foreign policy some teeth with the possibility of use of force, the *ultima ratio*.<sup>20</sup> In this context, according to Antonio Missiroli, “the constitutional treaty now contains enabling clauses and does away with almost all the traditional constraining

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<sup>19</sup> E. Baroch and N. Gresch, 2004, p. 188.

<sup>20</sup> R.Cooper, in N.Gnesotto, op cit., p. 192.

and limiting clauses of the previous treaties.”<sup>21</sup> The treaty did not create ESDP, it merely “constitutionalized” it.

The CFSP/ESDP provisions in the Treaty, however, remain firmly anchored in intergovernmental ground. The Treaty does not trigger the institutional “big bang” advocated by the federalists. As underlined by Morgan, “it is surprising that the changes envisaged by the Constitutional Treaty remain so minor.”<sup>22</sup> Unanimity remains the general rule for decision-making, with only minor exceptions related to more procedural aspects allowed. A notable exception applies to decisions made by the Council, “on the basis of proposals put forward by the European minister of foreign affairs following a direct European Council request” (Article III, 300).<sup>23</sup> Indeed, the European Council retains the powers of policy orientation and decision, although in certain cases, delegates powers to the Council of Ministers).

The major institutional innovation of the Treaty is the creation of the European Minister of Foreign Affairs (EMFA), who will also be one of the vice-presidents of the European Commission. This is a key figure, a much more robust High Representative or, in Chris Patten’s words, an “Even Higher High Representative.” Not only will he absorb the former responsibilities of the Commissioner for External Relations, but he will chair the Foreign Affairs Council, and manage an integrated service combining resources from the Commission, from the Council secretariat, and from seconded national diplomats.

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<sup>21</sup> A. Missiroli, “ESDP-How it works” in N. Gnesotto (ed.), *op. cit.*, p. 153.

<sup>22</sup> Glyn Morgan, *op. cit.*, p. 9.

<sup>23</sup> European Union, “Treaty Establishing a Constitution for Europe”, Brussels, 2005.



## THE MINISTER: A CARDINAL FIGURE?

### A. The Minister's Institutional Genealogy

In the context of the difficult talks about the Multilateral Nuclear Force (MLF) President John F. Kennedy confided to Richard Neustadt: "There is no "Europe." I understand their objection to my speaking for them on nuclear matters, but who is my opposite number? I can't share this decision with a whole lot of differently motivated and differently responsible people. What one man is it to be shared with – De Gaulle, Adenauer, Macmillan? None of them can speak for Europe."<sup>24</sup> A decade later, President Richard Nixon's Secretary of State Henry Kissinger pressed to be more forthcoming in consultations with Europe, allegedly joked about not having Europe's telephone number.

Even if Kissinger later denied having made such a remark, its recurrent recalling confirms the Italian dictum that *si non e vero e ben trovato*, or, if it is not true is well found. It encapsulates the ambivalent nature of European foreign policy. Of course, one may debate what a single telephone number means: even in the case of the United States, foreign policy is hardly designed to conceive one single such number. After all, the president, his national security advisor, or the secretary of state, do not share the same phone. The major difference with Europe, however, is that there is a "single" policy resulting from a centralized decision-making system. The expression of that policy in daily terms falls on the shoulders of the secretary of state. A similar role in the European context is not conceivable unless the Union is to become a sort of "United States of Europe." In other words "the early modern state had two intimately functions: raising taxes and making war. Europe—the European Union—is not a state. It does not raise taxes and it has no capacity for making war. As we have seen it took a long time indeed

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<sup>24</sup> Quoted in Theodore C. Sorensen, "Kennedy", Harper and Row Publishers, New York, 1965, p. 569.

for it to acquire even the rudiments of a military capacity, much less a foreign policy”.<sup>25</sup> (Thus the corresponding title of ‘minister’ in the Constitutional Treaty is misleading and is not the European equivalent of the U.S. secretary of state. The European Minister of Foreign Affairs (EMFA), as it is formally designated, will barely cut down the multiple phone lines (not to speak of cell phones). In one respect, however, the minister will be able to save one phone line, that of the future defunct Commissioner for External Relations, which, like an institutional Phoenix, will rise from the ashes to be reincarnated as the minister himself.

The minister does not emerge *ex nihilo*. As noted above, he is the successor to the High Representative for CFSP. Resulting from a compromise, the High Representative is a hybrid figure. He plays an administrative role (secretary-general of the Council of Ministers), in addition to having the potential for playing a political role to the extent that the Council itself would allow or encourage. Having defined the mandate, Amsterdam left open the question of the exact profile of the future incumbent. The debate on whether the position should be filled with a bureaucrat or a “politician” was conducted at the Committee of Permanent Representatives (COREPER), the organ in charge of preparing the minister’s decisions. A vast majority of member states argued in favor of a “beaurocratic/administrative” profile, having in mind a sort of super director-general for CFSP. Brian Crowe’s name, the discreet and competent CFSP supreme in the Council secretariat, was often mentioned. Should this option win the day, very little would have been added to the essentially technical nature of the Council secretariat. In contrast, France, joined by the Commission, insisted on the need to select a “political figure.” They argued that only such a qualitative step would give credibility to the revamped

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<sup>25</sup> Tony Judt, “Postwar – A History of Europe since 1945”, The Penguin Press, New York 2005, p. 797.

CFSP. This position prevailed and Javier Solana was appointed by the European Council. The choice proved to be decisive for legitimizing the mandate and, more importantly, for opening the way for the future minister. As it was rumored at that time, even Solana would have preferred to become President of the European Commission, the position of High Representative presented him with a formidable challenge and a unique opportunity to deploy his talents, experience, creativity, and tireless dynamism. Besides, he had been secretary-general of NATO, a strategic asset in his upcoming discussions on ESDP, while at the same time building on his former position to maintain a credible and constructive relationship with the U.S. This also entailed risks, as Solana was to be the public face of policies that were practically decided in the national capitals. Against all odds, Solana fared remarkably well, which is why it came as no surprise that, even before the ratification of the Constitutional Treaty, the European Council appointed him to succeed himself in the newly reincarnated position of European Minister for Foreign Affairs.

The minister is also the successor of the recurrently failed attempt by the Commission to have a CFSP champion of its own. After the EPC period during which the Commission was a shadow partner in a practical exclusive intergovernmental game, the Maastricht Treaty created a unique window of opportunity for the Commission not only to raise its profile, but even to fancy a leadership role. It was a daring attempt to place the Commission, if not in the driver's seat (the role clearly assigned to the Presidency of the Council), then at least on almost equal terms with it. In sharp contrast with the discreet and rather cautious approach taken in the past, President Delors inaugurated his third and last term in office<sup>26</sup> by appointing a Commissioner with full-time responsibility for CFSP, and by carving out of various services a full-fledged

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<sup>26</sup> Delors was with Hallstein the longest serving President of the European Commission: ten years.

department in charge of external political relations (Directorate-general IA) separated from the external economic relations, including trade aspects. This decision, which was not without the transmission of shock waves through the external relations establishment within the Commission, and which was viewed with some suspicion in some European capitals, was consistent with Delors' vision of European integration. Encouraged by the dynamics created by the single market and by the promising perspectives on the creation of a single currency, he understood CFSP as being the last major construction site of the European project. Besides, the Treaty endowed the Commission with the equal rights of member states in terms of initiative and a co-responsibility shared with the Presidency of the Council to ensure coherence of external action while retaining all its traditional community-based powers and competencies. Furthermore, there was of yet no provision for a catalyst figure in the Council of Ministers (it would later emerge as a High Representative as described above), and almost all assets of the European Community's "soft power" were solidly rooted in Commission territory. The CFSP secretariat in the Council of Ministers was still incipient and mainly formed of seconded staff from national diplomatic services and disposed of only two tiny representation offices in Geneva and New-York, as compared with the wide network of Commission delegations covering around 120 Delegations.

The choice of the Commissioner for external political relations was the principled and experienced former Minister of Foreign Affairs of Netherlands, Hans van den Broek. He was, with the exception of Dieter Genscher, the longest serving top European diplomat, and had held the Presidency of the Council of Ministers during the first months of the crisis in the Balkans. Country-wise it fitted: a small founding member state with a

strong commitment to further European integration did not constitute a threat to the sensitivities of the Union major players. Moreover, van den Broek's close links with Washington augured a smooth transatlantic relationship. This aspect was not negligible given the initial U.S.'s rather reticent views on CFSP.

In spite of this promising start, the first attempt to put the Commission on the map of European foreign policy was far from successful. Member states were not ready to see the CFSP balance tilt towards the Community plate. For his part, van den Broek did not disguise his gusto for outspoken positions on key international issues such as Chechnya, the Middle East, or the former Yugoslavia. In doing so, he ruffled a few feathers in big member states' diplomatic egos. They reacted grudgingly, particularly when the Commissioner's views proved to be right, which happened often. But timing was not in the Commission's favor. The wars in the Balkans were raging and the European Commission was becoming marginalized as an institution with no power in military and defense matters. The result was that the CFSP hard core decision-making shifted towards "contact groups" of selected member states from which the Commission was often excluded.

Inside the Commission life was no easier. The creation of the new department for external political relations triggered a protracted turf war with Commissioner Sir Leon Brittan and his services responsible for external economic relations. As an eyewitness, Ross reports that "this was a risky operation because it put two very strong personalities into a struggle over ill-defined administrative and political territory, but possible benefits were great ... van den Broek and Brittan were strong liberals who in other circumstances might have made common cause against Delors. Dividing foreign affairs to rule them was

therefore good politics. But for the first months of the new Commission the confrontation was so noisy that other Commission work became painful and difficult”.<sup>27</sup> Fragile on the external front, van den Broek was not well served by the fact the strongest of the Commission’s competencies were located in the trade and cooperation areas, which were outside his authority.

This first attempt to create a sort of “Mr. Pesc” inside the Commission collapsed in less than two years. The European ambassadors in Brussels allegedly pleaded with Delor’s successor, Jacques Santer, to reorganize external relations in a fundamentally different way. Anything else, they argued, would be better than the preceding organization. Santer took these considerations into account. He allocated responsibilities on the basis of geographically areas under different Commissioners. Each one became responsible for one specific region with fully vertically integrated powers, including CFSP. As an uneasy compromise, van den Broek received, in addition to his geographical portfolio (Balkans, central and Eastern Europe, and the Russian Federation), a token virtual mandate to coordinate CFSP across the Commission. For this purpose he inherited the small unit of the European Correspondent to assist the Political Director with the representation of the Commission in the Political Committee.<sup>28</sup> This arrangement never worked convincingly. Well entrenched in their vertically integrated powers for a given region the other Commissioners—Leon Brittan for Western industrialized countries, Manuel Marin for Latin America, Mediterranean and Asia, and Deus Pinheiro for Africa—resisted van den Broek’s sporadic incursions into his colleagues territories. He had his own hands full with the ongoing war in the former Yugoslavia, with the

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<sup>27</sup> G. Ross, *op. cit.*, p. 221.

<sup>28</sup> The Political Director cumulated his functions with those of Director-general of van den Broek’s geographical department, thus further diluting a more autonomous CFSP horizontal role.

preparations for the new wave of expansion of the Union to the central and eastern European countries, and with the vagaries of the complicated relations with an instable and problematic Russian Federation. This difficult and complex portfolio required a substantial investment of political and managerial energy in view of the expanding pre-enlargement funds for central Europe (PHARE) and for the Russian Federation (TACIS), not to speak of the growing chaotic situation in the Balkans. Furthermore, the Commissioners showed little appetite for collegial discussions on CFSP at their regular weekly meetings. And whenever the College engaged in such exercises they were mostly inconclusive.

Amsterdam constituted a new landmark in the search for a European foreign policy. Humbled by the dismal situation in the former Yugoslavia, the European Council, as explained above, attempted to reinforce the CFSP process by providing for a High Representative, thus further reducing the relative institutional weight of the Commission. Santer sensed the institutional pitfalls of such a move, but he was also conscious of the dilemma faced by the Institution he was presiding over. On the one hand, the Commission was keen to promote a Union speaking with one voice and reinforcing the CFSP machinery in Brussels; on the other hand, it was rather obvious that the member states would resist that such a trend reverts in benefit of the Commission. After having opposed the creation of a “Mr. Pesc” prior to Amsterdam, the Commission sided with France to advocate the choice of a High Representative with a “political” profile. At the same time and in order to rebalance the institutional pendulum, Santer proclaimed the

need for the future Commission to raise its profile by appointing a vice-President responsible for external relations.<sup>29</sup>

In the Prodi Commission, the British second Commissioner, Chris Patten, took the portfolio of external relations and the chairmanship of the group of Commissioners Relex which comprised trade, development, and international financial matters. The general expectation was that there would be a permanent tension or even a conflict between the Commission and the Council secretariat. It didn't happen. The two incumbents, Patten and Solana realized from the very start that they would win together or fail together. Clever cooperation optimizing the value added to each one was the key to succeed. Patten coined the terms "front office" and "back office" to describe the respective roles of the Council secretariat and the Commission. This distinction did not please everybody in his own services as he recalls: "Some of my staff did not like the analogy. They would have preferred me to have made a grab for foreign policy, trying to bring as much of it as possible into the orbit of the Commission. This always seemed to be wrong in principle and likely to be counterproductive in practice. Foreign policy should not in my view ... be treated on a par with the single market. It is inherently different. To attempt to grab foreign policy to Commission would have courted humiliating rebuffs from ministers in the Council. If they were obliged to choose between Javier Solana and me, there was only

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<sup>29</sup> In Santer's view, a second vice president should have been appointed for economic and monetary matters. History would, however, decide otherwise. In March 1999, following a report by a high level group of experts on irregularities and mismanagement, the Santer Commission collectively resigned. This was a heavy heritage. Santer's successor, Romano Prodi was left with practically no choice. He had to sacrifice the two anticipated portfolios on the altar of good management and smooth relations with the European Parliament. The two vice-presidents in the new College would be dealing with "internal reform" (Neil Kinnock), and "relations with the European Parliament" (Loyola de Palacio), respectively. Besides, member states were not too unhappy to leave the CFSP field wide open to the High Representative.



one possible outcome”.<sup>30</sup> This approach proved to be the right one. The odd tandem was exploited adroitly by their complementarities. Within the limits authorized or tolerated by the ministers, Solana made full use of his shrewd diplomatic skills and of his personal kinship with NATO world and with the U.S. Internally he reshaped the secretariat to meet the new challenges. He even succeeded in bringing some of the most capable brains in foreign policy from the Commission to his immediate entourage.

For his part, Patten exploited to its fullest the margin of the Commission’s maneuver. He optimized the contribution of the Commission’s considerable resources, including those of its external Delegations. The “back office” consisted mainly to provide substantive studies and strategies, to make accessible the information flowing from its Delegations, to mobilize its budget, and to participate, as member of the Troika, in dialogue with third countries. In contrast, the “front office” offered the more visible and often invisible face of the emerging European foreign policy. It was the High Representative who maintained a regular and intimate contact with Washington, participated in the “Quartet” involved in the Middle East negotiations, and was associated with the diplomatic efforts of France, Germany, and UK (the EUR-3 as they became known) to negotiate with the Iranian authorities on the nuclear issue. In parallel, the Council secretariat also reinforced its research and planning capacity (thus completely overshadowing the Commission’s meek attempts in this respect) by setting up the situation center for risk analysis (SITCEN) and oversaw the first steps of the infant European Security and Defense Policy, which was inaugurated in Helsinki in 1999. Paradox were the positive complementarities and smooth cooperation between Solana and Patten, far from discouraging it, that opened the way for merging their respective

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<sup>30</sup>Chris Patten, *op. cit.*, pp. 155, 156.

roles in one single actor. The Commission's relative but sensible loss of institutional clout made it possible for the Constitutional Treaty to merge the two halves in one single Centaur. The hybrid figure of the EMFA reflects the compromise reached at the Convention. It "reflects an uneasy compromise between the minority in the Convention that drew up the draft treaty and some member states (who wanted to go further in giving foreign policy a distinctively European personality and management) and the majority keen to preserve the previous division of responsibilities".<sup>31</sup> The minister has been presented as a mere fusion of the High Representative with the Commissioner for External relations. In reality, this whole is more than the sum of its parts. The minister, though embracing the former functions of the High Representative, will assume new powers, namely the chairmanship of the Foreign Affairs Council. The main institutional innovation is a double role and legitimacy, what came to be called a "double-hatted" position, which Patten sarcastically alludes to as sounding cardinal-like. The minister may have two hats, but he surely has one foot solidly grounded in the Council an upgraded mandate as vice-president of the Commission. The appointment procedure reflects this double nature. The minister is appointed by the European Council with the agreement of the president of the Commission but is subject, as a member of the College, to the vote of approval by the European Parliament of the Commission as a whole. This double legitimacy is not an unalloyed blessing. Based on his own experience, Patten believes that "it is not a perfect piece of institutional engineering." By chairing the Council, the minister overshadows member states and the rotating presidency; by sitting in the Commission as vice-president he enjoys a special status, placing it in certain

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<sup>31</sup> Chris Patten, *op. cit.*, p. 158.

respects above the normal rules of collegiality. On both accounts, the “double-hatted EMFA runs the risk of being “double-hated!”

The minister may become a sort of *primus inter pares* simultaneously in the Council and in the Commission. Within the latter, his authority is reinforced over other colleagues responsible for external relations related portfolios such as trade, development, humanitarian aid, and enlargement. This authority is further enhanced by its chairmanship of the Council. The features of the minister’s mandate may be conveniently grouped around four main headings: agenda setting, political leadership, policy implementation, and political representation.

## B. Agenda Setting

This is in my view the cornerstone of the minister’s powers and is enhanced by its ubiquity. As chairman of the Foreign Affairs Council, the minister convenes its meetings and sets the agendas. He can also indulge in long-term planning and programming, being freed from the constraints of the periodic six-month shifts of the rotating presidency. This role is reinforced by the enabling clauses in the Constitutional Treaty which empower his personal representatives to chair the main subsidiary organs in the Council.

The minister enjoys also the right of making proposals in the area of ESDP. While he shares this right with member states, he retains the possibility of making his own proposals, or proposals “with Commission support.” This seems to imply that the proposals would come out of the two distinct “hats”: one from the minister/Council and

the other from the minister/vice-president of the Commission. The former does not require a collegial backing; the latter would make it indispensable. Such distinction is coherent with the nature of its double mandate and reinforces his position as agenda setter. In contrast, the situation is more complicated as far as the Commission is concerned. In fact this seems to imply that the Commission would see its right of initiative eroded. The formulation in the Constitutional Treaty is clear: it is not the Commission, as such, that has the power of initiative, rather it is the minister (identified as separate from the College), with the support of the Commission, who has that power. There is a weakening of the collegiality principle. For the first time in the institutional history of the European integration process, a Commission member is empowered to make proposals of his own outside the College decision-making process. The Treaty, in somewhat disguised language, recognizes implicitly that the minister enjoys a unique and distinctive status inside the Institution. Although the Treaty states that the minister is “bound to the Commission procedures” this is only to the extent that such respect is consistent with its right of initiative and its role as chairman of the Foreign Affairs Council. It could be guessed that in the case of conflict between “Commission procedures” and the minister’s right of initiative/chairmanship of the Council, the latter would prevail. Intentionally the Constitutional Treaty is totally silent on how this matter would be resolved should such a conflict arise.

### C. Political Leadership

Empowerment to exercise leadership is the second major innovation regarding the minister's role. For the first time, a ministerial formation is not to be chaired by a member of a national assuming the rotating presidency of the Council, but by a hybrid figure, also member of the Commission, appointed by the European Council. The minister convenes the regular meetings of the Council and sets their agendas. In special cases, on the minister's "own motion or at the request of a member state, an extraordinary meeting of the Council within forty-eight hours or, in an emergency, within a shorter period" can be convened if a rapid decision is required.

The chairmanship of the Foreign Affairs Council is not without raising interesting questions about the relationship between the Council and the Commission. One of these questions is: who will represent the Commission at the Council meetings? Certainly not the minister/vice president, since he or she would be chairing them. Traditionally the Commission has been represented in the General Affairs Council (which includes foreign policy), either by its president accompanied eventually by the commissioner responsible for external relations, which was the practice during Delor's tenure, or by one of the commissioners dealing with external affairs matters under Santer and Prodi.<sup>32</sup> Should the Commission reinstate Delor's approach and have the president represent the Institution at the Council? It would, however, appear odd if not squarely inappropriate that the President of the Commission sits around a meeting table chaired by one of its vice presidents. The alternative left would be for one of the commissioners responsible for a specific external relations portfolio (trade, enlargement, development) to represent the

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<sup>32</sup> This multi representation did not help to enhance the impact of the Commission in the Council. It was particularly embarrassing when the seat reserved for the representative of the Commission at the ministerial lunches was fiercely disputed among three or four eligible members of the College.

Commission at the Council's meetings. But, as noted above, this is not an ideal situation from the Commission's perspective.

Another important open question about the future minister's leadership role is his relationship not only with the President of the Commission but also with the future presidents of the European Council. Only a very close coordination between their offices may offset the potential risk of speaking with different voices or even multiplying the phone numbers. *A priori*, this coordination may be easier regarding the relationship with the former, since the minister will be fully integrated in the Commission's structure. In contrast, it is far less obvious how he will deal with the President of the European Council who is also endowed with foreign policy powers. The *modus operandi* of the trio would need to be sorted out if the potential benefits of the new arrangement were to bear fruit instead of adding to the present uncertainties.

#### D. Policy Implementation

The minister is given wide implementation powers and coordination functions both in relation to the Council of Ministers as well as vice-president of the Commission.

Together with member states he puts into effect the CFSP "using national and Union resources"<sup>33</sup> and "coordinates activities." He also proposes, and the Council appoints, "special representatives"; he informs and consults the European Parliament; oversees coordination with member states regarding positions to be taken in international organizations; he may be requested to present to the UN Security Council an agreed

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<sup>33</sup> Constitutional Treaty, Art. I-40, 4

position of the Union; and he acts under the authority of the Council to ensure coordination of civilian and military aspects of tasks undertaken.

It is worth noting that although the minister is called to perform a wide range of coordination and implementation tasks, he must exercise them under the strict political control of the Council and within the limited range of agreed positions. This is clearly the case regarding the UN Security Council. The minister may be requested to present there the position of the European Union, but only to the extent that such a position has already been agreed upon. It represents, however, an interesting development: in the framework of CFSP, and since Maastricht, the two European permanent members of the UN Security Council were invited to take into Account the agreed positions of the EU and to keep their partners informed of Security Council debates and decisions. The Constitutional Treaty does not contemplate, however, a single EU representation at the Security Council, as many federalists would have liked. Verhofstad argues in this sense when he states that “a common foreign policy with a single foreign minister and a single diplomatic service could entail us opting for Europe to have a seat on the UN Security Council”.<sup>34</sup> What the Constitutional Treaty does in this respect is introduce what could be called a Union “identifier” in the UN context. It remains to be seen how the UN and, in particular the non-European permanent members, would react to such innovation in light of their reticence to recognize a distinct European representation additional to its individual members.

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<sup>34</sup> Guy Verhofstad, *op. cit.*, p. 37.

## E. Political Representation

The minister also plays a significant role in representing the Union. He is to become the public face of the Union in all matters relating to CFSP, including conducting the political dialogue with third parties.<sup>35</sup> He shares this responsibility with the future President of the European Council who, as stipulated in the Treaty, “shall, at his 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 of Foreign Affairs”.<sup>36</sup> The Treaty does not specify the specific division of labor between the two so it is not unreasonable to think that some overlap and uncertainty about their respective roles are likely to occur. Much will depend on the personalities of the respective incumbents in their balancing act. The Treaty is silent about the role of the President of the Commission in this respect. It is assumed that the President of the Commission would continue to participate in the summits with third countries. His role, however, may be overshadowed by the political upgrading of the minister/vice president of the Commission and by the creation of the President of the European Council. It should also be noted that the structure of the dialogue with third countries at the summit level will become more complex with a trio from the Union replacing the existing duo (rotating presidency of the Council and President of the Commission). In the same vein, the question of the representation of the Union at the G-8 summitry remains open. Presently, the President of the Commission participates in these summits along with the Commission’s European members (France, Germany, the UK, and Italy). When the

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<sup>35</sup> Constitutional Treaty, Art. III-296,2

<sup>36</sup> Constitutional Treaty, Art. I-22-2.



rotating presidency of the Council falls on any other member of the Union, the President is invited to participate in the summit, but its personal representatives are not allowed to take part in the preparatory process. This situation would have to adapt to the new constitutional configuration. It would be unlikely that the United States, Canada, Japan, and Russia would accept two “permanent” EU members (President of the European Council and President of the Commission), in addition to the four existing European national governments.

#### F) The European External Action Service: Harbinger of a European Diplomacy?

The Constitutional Treaty provides for a special service to assist the minister. It would be composed of staff from the Secretariat of the Council, Commission services, and seconded personnel from national foreign affairs services. The precise location of this service has been left for further discussion. It is a long shot from the embryonic secretariat that was set up to assist the presidency in the context of EPC back in the 1970s.

This service is sometimes incorrectly referred to as “European diplomatic service” or understood to become the original core from which a full European diplomacy will sprout. I believe this is not the case. As explained above, the Treaty does not create a “single” European foreign policy at the expense of the full sovereignty of member states, much like the Treaty does not provide for a supranational European state.

The idea of a common service within CFSP is not entirely new. In the aftermath of Maastricht, Delor’s decision—to set up a new department responsible for external political relations (D-G IA), instead of just reinforcing the small political cooperation unit

in the Secretariat-general—reflected a willingness to establish a sort of European diplomatic nucleus within the purview of the Commission. The President of the Commission was encouraged by a favorable wind filling the Institution’s sails. After all, the Summit of Economic Leaders (G-7) in Paris in 1988 had empowered the Commission with the overall coordination of the G-24 aid program for central and eastern European countries. Besides, the Yugoslav conflict had entered a new and acute phase with the member states divided and irresolute. The Commission prided itself on its role in coordinating the European Community monitors (“the men in white”) in the former Yugoslavia, and by anticipating the importance of mobilizing community resources for the future stabilization of the region. The scheme included also the appointment of national diplomats for limited periods of time to the Council Secretariat.

The European External Action Service (EEAS), as it is called in the Constitutional Treaty, is a different kettle of fish altogether. It reaches well beyond a mere reorganization of preexisting services. The creation a specific legal base reflects the political will to introduce an innovative *sui generis* solution. As a “unified” conglomerate assisting and supporting a “double-hatted” boss, the question of its institutional grounding is paramount. Where is the EEAS to be anchored: in the Council Secretariat, the Commission, or would it be allowed to hover somewhere between the two as a semi-autonomous entity?

The final decision lies with the Council of Ministers on the basis of a proposal by the minister, “after consulting the European Parliament and after obtaining the consent of the Commission”.<sup>37</sup> It is likely that both the Commission and the European Parliament will favor the insertion of the service in the Commission. For obvious reasons, and with

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<sup>37</sup> Constitutional Treaty, Art III-296, 3.

good arguments, the Commission may advocate hosting the new service. After all, it is destined to serve its vice-president and placing it in the Commission will achieve significant economies of scale, particularly as far as far as administration and budget management are concerned. Besides, the delegations of the Commission in third countries (which will become delegations of the EU) are managed by the Commission. The European Parliament is likely to support this option as it would enhance its role in CFSP through the political control of the Commission. In contrast, member states, or at least a majority of them, would prefer to see the new service located in the more familiar surroundings of the Juste Lipsius, the Council of Ministers headquarters in Brussels. They can also put forward cogent arguments: the minister is the chairman of the Foreign Policy Council, his daily work is highly dependent upon a permanent interaction with the member states. Furthermore, the subsidiary decision-making bodies (Military Committee, Political and Security Committee, and all CFSP working groups) meet in the Council. Similarly, SITCEN, the highly protected situation room is located in the Juste Lipsius. By contrast, the minister may hold a different perspective. A “separate” but not “separable” location may become the preferred one. In its balancing act, the minister would avoid being identified either with the Commission or with the Council. Symbolically, it would enhance the innovative role of the minister and reinforce the image of a future possible diplomatic service.

## A DISTANT MIRROR: U.S. PERCEPTIONS AND APPROACHES

The United States has always looked at the European integration process with a mixture of sympathy and suspicion. America treasures European contribution to a more peaceful, stable and democratic world. Sixty years after the end of World War II, Europe is a continent reconciled with itself. The southern arc of dictatorships fell in the mid-seventies and Portugal, Spain, and Greece joined the European Community during the 1980s as fully democratic countries. Twenty years later eight former communist countries, and Cyprus and Malta became in turn members of the democratic European family.

Romania and Bulgaria are on the threshold of Europe with the prospective entry to the community scheduled to occur in January 2007. In the Balkans, where war raged only a decade ago, prospects are encouraging for stability and future rapprochement with the European Union. This progressive and inclusive trend has been saluted as the most significant European foreign policy achievement. The United States strongly supported such a trend and remains an outspoken advocate of the extension of membership to Turkey. After the endless European “civil wars” of the twentieth century, a conflict-free continent represents a major contribution to world peace and stability, and a strategic asset for the United States in its global position on the world geo-strategic chessboard.

U.S. support for European integration, however, does not go without occasional misapprehension concerning aspects of the process which could collide with fundamental U.S. interests. Everybody remembers the anxieties triggered by the creation of the European Single Market in the early 1990s, which was feared on the other side of the Atlantic as giving rise to “Fortress Europe.” It did not take long for U.S. firms to realize

that, instead of an additional barrier to entry, the Single Market provided unprecedented access for U.S. businesses. Ten years later the creation of a European common currency was initially resented as a potential threat to the dominant position of the dollar, world-wide. Here again, these fears proved unfounded.

Another area where the process of European integration was perceived in the United States as posing a potential threat was that of common foreign and defense policy. When the Maastricht Treaty in 1992 set up CFSP the United States welcomed it and attempted to use it to its own advantage. Consolidated European positions in diplomatic and mainly in financial support to U.S. actions were welcome. Moreover, the rather limited scope of CFSP did not prevent the United States from maintaining, opening, and activating the bilateral diplomatic channels with the individual member states. As a consequence, U.S. diplomacy pursued a double-track approach, making sure that it intervened upstream in policy decision-making, both of CFSP forums and of foreign policy national establishments. Short of being a player at the CFSP table, the U.S. foreign policy apparatus became a virtuoso in playing on two distinct but interconnected keyboards. And in any case, under the CFSP decisions being accepted unanimously there was no remote possibility that positions could be taken against the United States. Furthermore, since Maastricht did not include any defense policy component, a potential conflict with NATO did not exist. The crisis in the Balkans at that time clearly showed the limits of the embryonic CFSP and the need for U.S. leadership.

U.S. perceptions sharpened towards the end of Clinton administration when the French and the British agreed on a basic outline for a more autonomous European

defense at St. Malo in 1998. The St. Malo declaration was resented in the United States as a potential weakening of the NATO bond.

The dawn of the twenty-first century was a testy period for the transatlantic relations. While the Europeans expressed unreservedly their solidarity with the United States in the aftermath of 9/11, soon the internal cleavages within the European Union—regarding the War in Iraq and the rather arrogant way in which the Bush administration dealt with the situation—poisoned those transatlantic links. President Bush’s visit to Europe and the European institutions in February 2004 was an effective public relations operation, but it did not dispel the uneasiness created by the situation in Iraq. This was also the time the Europeans were struggling to get their Constitutional Treaty signed and ratified. On this point President Bush was cautious not to give the impression that he would be interfering in European “internal” affairs. He limited himself to reiterate that a strong Europe was in the interest of the United States, insisting that its specific institutional shape was for the Europeans to decide. The tone was decidedly less guarded among scholars and think tanks in the United States, particularly those of neo-conservative affiliation. The work of the Convention was a subject of immediate interest and debate across the Atlantic. The method was unheard of and the level of ambition seemed to echo the opening remarks of the President of the Convention, Giscard d’Estaing, boasting about the parallel between this exercise and the Philadelphia Convention. Such rhetoric couldn’t help but reinforce the conviction in certain U.S.

circles that the European Union was on its way to becoming a “superpower” and a potential challenge for the United States.<sup>38</sup>

It is not surprising that the main criticism by the neoconservative think tanks focused mainly on foreign and defense policy aspects. The emergence of a new institutional canvas for CFSP/ESDP was perceived as a direct threat to the U.S. hegemon on the world stage. Fear of a “European superstate” gave rise to other convoluted designations such as “European *uber* nation,” or more insidious ones such as “Sniperpower,” a stealth spoiler of U.S. foreign policies.<sup>39</sup> Ideology, rather than sound scholarly investigation, seems to have dimmed the value of certain interpretations of the constitutional treaty. Jeffrey L. Cimbalo, for instance, overstates the role of the European Foreign Minister in assuming that he would conduct “his own foreign policy.”<sup>40</sup> Such an overstatement is not found only among those hostile to further European integration. Among the enthusiasts of Europe, Rifkin in his “European dream” also tends to read more in the Constitution than it is written there. Others, however, have taken a very different perspective. Some were skeptical about the chances of the Constitutional Treaty being ratified by all member states, and the subsequent rejection by the people of France and the Netherlands proved them right. But even assuming full ratification, conservative authors such as John C. Hulsman, Nile Gardiner, and Michael Ledeen have dismissed the impact of the Constitution altogether. They pretend “to see Europe as she is and not as some would like that she would be.” According to their vision, Europe is not only weak militarily, but is fragile economically, and incapable of getting its act together in

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<sup>38</sup> See the very informative bibliographical review by Valerie Aubourg entitled “Une constitution pour l’Europe, regards croisés: la perception américaine de la constitution européenne, 2002-2004” in *Critique Internationale*, n. 26, janvier 2005.

<sup>39</sup> G. Baker, “Against United Europe”, *The Weekly Standard*, September 22, 2003.

<sup>40</sup> Jeffrey L. Cimbalo, *Foreign Affairs*, November-December 2004.

geopolitical terms—as shown in the case of the Iraq war. The European Union, they argue, even with a Constitution would not become a superpower, nor would be it a challenge to the United States. Robert Kagan’s thesis about the opposite attitudes regarding the use of power between the United States (“from Mars”) and Europe (“from Venus”) gives credence to the skeptics about the emergence of strong and unified European “polity” speaking and acting with a single voice and purpose on the world stage. An ongoing research project of the International Security Program at the Kennedy School of Government’s Belfer Center, titled, “How Europe Became Irrelevant” may be included in this line of thought. The central hypothesis purports that the EU is neither a political, security, or economic/trade threat to the United States and is therefore irrelevant to strategic U.S. interests.

In contrast, a realistic approach attempts, at least implicitly, to distinguish between the European ‘project’ and ‘process.’ This implies the need for examining the European Union in its unique specificity and not as an extrapolation of nation-based models. Among the most lucid analysis of this specificity are Andrew Moravcsik’s writings on the subject.<sup>41</sup> As an uneasy compromise between intragovernmental process and fragmented supranational features, the building up of a European foreign policy cannot be assimilated in the sum of its national foreign policies. Nor can it be seen as a superpower in the making.

The unique characteristics of the European “polity” as embodied in the Constitutional Treaty have geo-strategic implications more particularly insofar as the

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<sup>41</sup> See “The choice for Europe: Social Purpose and State power from Messina to Maastricht”, Ithaca, New York, Cornell University Press, 1998; Despotism in Brussels? Misreading the European Union”, *Foreign Affairs*, May-June 2001; “Europe Without Illusions” in A. Moravcsik (ed.), “Europe Without Illusions-The Paul-Henri Spaak Lectures 1994-1999”, Weatherhead Center for International Affairs, University Press of America, 2005.



relations with the United States are concerned. Far from being a threat, the Constitution creates a window of opportunity for redefinition of the transatlantic strategic partnership. It was in this vein that the report of the Independent Task Force, led by Henry A. Kissinger and Lawrence H. Summers, underlined the positive complementarities between the European Union and the United States and called for a common strategic policy framework.<sup>42</sup>

At official levels, the U.S. authorities adopted a carefully crafted position of discreet encouragement, provided that further developments would remain compatible with NATO and wider U.S. strategic interests. Regarding ESDP for instance, J.D. Crouch II, former assistant secretary of International Security Policy at the U.S. Department of Defense, stated before the Committee of International Relations in March 2003: “As the European Union has developed its Security and Defense policy (ESDP), the United States has worked to ensure it is done in a cooperative way, and results in Europeans providing more for Europe’s security, as we have urged for decades ... This cleared the way for NATO to finalize its long-proposed arrangements for the EU to use NATO planning, assets and commands. These arrangements, known as “Berlin-Plus” will serve important U.S. and NATO interests by anchoring EU planning and operations in NATO, avoiding wasteful EU duplication of NATO assets and promoting ESDP compatibility with NATO capabilities and procedures”.<sup>43</sup> A year later, Elizabeth Jones, assistant secretary of state of European and Eurasian Affairs passed a positive judgment on the first results, underlining that “the European Union has made progress in developing its European

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<sup>42</sup> “Renewing the Atlantic Partnership”, Council of Foreign Relations, March 18, 2004. See also P. Gordon, J. Steinberg, “United States Has a Stake in Europe’s Success”, International Herald Tribune, October 3, 2003.

<sup>43</sup> Committee on International Relations, House of Representatives, March 13, 2003, Serial n.108-7, p.34. Emphasis added.

Security and Defense Policy (ESDP).” She went on, saying that “last year saw the first successful test of the cooperative arrangement for NATO to provide support to EU-led military operations...in Macedonia”.<sup>44</sup> During these same hearings, Jones, asking about the administration views on the Convention, stated that “we actually believe that a European Union with a cohesive foreign policy is one that we work well with”. She added that welcoming more European “cohesion” “does not imply vouchsafing the ability of the U.S. to exert its influence both with individual member states and with the Union institutions”.<sup>45</sup> This same perception on the U.S. side was confirmed by Condoleezza Rice in her new capacity as secretary of state a month before the referendum in France. During a joint press conference in Washington, with the then Minister of Foreign Affairs of France, Michel Barnier, asked the hypothetical question on how she might have voted on the Constitution, Rice hesitantly replied, “[y]es, for—yes. I don’t have a vote so it doesn’t matter. But let me just say that the United States has been from the very beginning, supportive of European integration ... and the United States remains supportive of the European project”.<sup>46</sup> Rice added that “a Europe that is strong and capable ... can only be good for the forward march of progress and democracy in the world”. She also expressed the “hope that a strong Europe would be outward looking, that it would continue to bring, as it has now, more members”.

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<sup>44</sup> Committee on International Relations, House of Representatives, March 13, 2004.

<sup>45</sup> “...[A]s much as we welcome a cohesive effort by the European Union, at the same time, we are very clearly with the European Union and the member states that we appreciate our ability to go early to the Commission in Brussels and to the member states to make sure that they understood our views on hundred of issues... to make sure that the member states in capitals also know what our position is so that the United States views can be fed into the discussions in Brussels before all compromises are made”, *Idem* ,p.35/43. Emphasis added.

<sup>46</sup> “Rice, meeting Barnier, reaffirms support for European integration”, United States Mission to the EU, May 2, 2005.

The rejection of the constitutional treaty by France, followed by the Netherlands, did not take the United States by surprise. As noted above, many in the United States did not believe in the chances of the treaty to be ratified by all member states, a *sine qua non* condition for it to enter into force. The outcome has even been rejoiced by those skeptics among the adversaries of European integration. In the U.S. government circles, the reactions were muted avoiding any hint of taking positions in a delicate European internal matter. The overriding concern seems to have focused not on the institutional and legal implications of the failed ratification, rather on the consequences of a prolonged soul-searching exercise that might distract or even prevent the continuing expansion of the Union. This concern was echoed by Daniel Fried, the recently appointed new assistant secretary of state of European and Eurasian affairs in the aftermath of the two referenda. Fried, while reaffirming that “the United States seeks a strong Europe as a partner in the world,” cautioned against a possible institutional solipsism by stating that “we want a Europe that is forward looking, which is beyond itself, to work with us in resolving problems of a wider world...we are hopeful that the debate which will take place following the referenda will not result in a Europe which is inward-looking”.<sup>47</sup> Such support for a forward-looking, strong Europe is, however, predicated on the assumption that the European Union plays a constructive complementary role compatible with U.S. global strategic vision and interests. In the new division of labor on the international scene, the two entities are assumed to be “natural allies” because, as the Undersecretary of State for Political Affairs Nicolas Burns put it: “we are democratic and that will be the glue that really holds this transatlantic relationship together.” He warned, however, that the United States expects the Europeans to conduct their foreign policy, if not always

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<sup>47</sup> United States Mission to the European Union, June 9, 2005.

along U.S. perspectives, at least not in contradiction to American policies where the United States has strategic interests and global responsibilities. Taking the example of the European Union considering lifting its arms embargo to China, Burns was categorical: the United States “cannot accept that Europe would move forward when we are alliance partners and we have such profound security interests in East Asia itself”.<sup>48</sup>

#### THE UNITED “STAKES” OF EUROPE: THE FUTURE OF CFSP

The constitutional treaty was solemnly signed by all 25 member states’ governments of the European Union, in Rome on October 30, 2004. It needed ratification by all states according to their specific constitutional procedures to enter into force. As mentioned, this ratification process failed in France and in the Netherlands. The European political establishment was stunned. Everyone may have anticipated that failure to ratify would have come from the UK or Denmark, but could have hardly believed the rejection could come from two of the founding fathers of the European integration process. What compounded further the political significance of these results were the high percentages of no votes in the French and Dutch referenda, respectively 54.7 percent (45.3 percent yes) and 61.6 percent (38.4 percent yes). The reasons for rejection varied widely from one country to other. According to the Eurobarometer Poll conducted on a sample of the “no” voters, the employment situation and the fear for deteriorating conditions in economic life were the most frequently cited reasons for rejection, while in the Netherlands as many as 32 percent of the respondents complained that they had not

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<sup>48</sup> “State Department official outlines U.S.-EU Agenda”, United States Mission to the European Union, June 1, 2005.

received sufficient information prior to the vote. On one single item the voters in both countries concurred: it was with the fierce opposition to the domestic policies of their respective countries which accounted to, respectively 13 percent (the Netherlands) and 14 percent (France). It is interesting to note that in neither case an explicit opposition to the foreign and defense policy aspects of the Treaty had been formulated. To the contrary, the results of opinion polls have shown over the years a consistent high approval rate regarding European foreign and defense policies. Moreover, it was an embarrassing fact that the European Council—without waiting for the ratification of the Treaty—had already designated the High Representative for CFSP as the future European Minister of Foreign Affairs and called for initial work to be done on the establishment of the of the European External Action Service (EEAS).

A month before the French referendum, Solana warned that “in rejecting the constitution, one risks dashing the hope of a better Europe and a more balanced world”.<sup>49</sup> But he felt optimistic about pursuing the arrangements for the establishment of the EEAS. More critical was the creation of the post of Minister itself, given its institutional implications that could not be resolved outside the ratification of the Treaty. The “pause for reflection,” decided by the European Council to give member states breathing space for coming up with an agreed solution for resolving the institutional crisis, has somewhat cooled down the prospects for partial implementation of certain foreign policy aspects of the Constitutional Treaty. Preparatory work on the launching of the EEAS seems to have come to a halt. The likely decision by the European Council to prolong the “pause for reflection” for another year and to tackle the institutional crisis

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<sup>49</sup> “Solana hopeful EU diplomatic service will “forge ahead” by Daniel Dombey, Financial Times of May 31, 2005.

after the presidential elections in France during the German rotating presidency in 2007, puts additional pressure refraining from partial anticipation of the Constitutional Treaty provisions. Some, such as Richard North, are already accusing the Union of proceeding in stealth by putting up and running the European Defense Agency. Such anticipation may not only be unnecessary, it also may be counterproductive. After all, CFSP and *a fortiori* ESDP being fundamentally of intergovernmental character are less vulnerable to ratification failure. The present legal basis seems adequate and functioning. On the level of European Union action, the last twelve months after the rejection of the Treaty by the electorates of France and the Netherlands do not appear to have been a time of suffering. The Union has been playing a crucial role in the negotiations on the nuclear stalemate in Iran, leading the effort to find a balanced alternative to come in support of basic human needs of the Palestinian people without dealing with the Hamas government, conducting a complex strategic negotiation with Russia on energy, and contributing to the further stabilization of the Balkan region, not to speak of the peacekeeping operations in Africa and Afghanistan. Rather than being in a period of “institutional uncertainty,” the Union may have started an age of what I would call “institutional ambiguity.” The case of negotiations with Iran is a case in point. Popularly known as “EUR-3,” the European Union triumvirate (France, Germany, and the UK), joined by the High Representative for CFSP, Javier Solana, negotiates with Iran on behalf of the European Union—even if this composition does not coincide with the traditional “troika” formation for political dialogue with third countries. From an operational perspective it makes sense. Out of the three countries, two are nuclear powers and permanent members of the Security Council. Germany is the largest member of the Union and its first national economy. Moreover,

Angela Merkel, the new German chancellor is acquiring a prominent profile in foreign policy in her own right and is adding credibility to the European efforts. It is likely that we will see in the future more ad hoc coalitions of concerned countries acting to spearhead efforts with the full backing of the Union. Another potential area of “institutional operational ambiguity” concerns the articulation between the Commission and the High Representative. Solana sees himself as the natural interlocutor of the president of the Commission and not of the commissioner in charge of external relations. This perception is rooted, egos aside, on the fact that external policy-related matters are scattered among different commissioners, without the external relations commissioner having any recognized authority over her colleagues. Moreover, issues in the “domestic” policy remit are acquiring a strategic relevance in international relations. A case in point is the sudden surge of energy and security as a strategic concern. This has given rise to the notion of “energy diplomacy” or a foreign policy aimed at securing supplies and stable market conditions. Normally, the responsibility to conduct such a “diplomacy” would have fallen to individual member states and/or to the Commission. The High Representative is now expected to act jointly with the Commission in the framing and conduct of such action at the European level. In other words, the High Representative may start acting in some respects as a minister in the making.

This “institutional operational ambiguity” may also provide an opportunity for the Commission to recover some lost ground with respect to foreign policy. In its contribution to the European Council on June 15-16, 2006, the Commission underscores the concept that “the absence of an institutional settlement should not prevent the development of the EU’s role as a global player in foreign policy and defense.” It goes on,

saying that “[f]or Europe to become more than the sum of its parts as a global player it needs to have focus...coherence...coordination” and needs to create public awareness.<sup>50</sup>

The Commission argues that the EU disposes of a multiplicity of tools “that go far beyond traditional ‘foreign policy’” including such policy areas as environment, transportation, and energy. Coherence between the internal and the external dimensions of these policies is essential for the efficacy of European external action. What is advocated here is an extensive concept of ‘foreign policy’ more in tune with the Commission’s traditional understanding of ‘external relations.’ In the absence of the constitutional framework, enhanced coordination among concerned institutions is critical. The Commission maintains that different actors must “focus on what they are trying to achieve rather than who does what”,<sup>51</sup> and announces a Concept Paper dealing with the challenges to Europe’s role in the world “within the framework of the present Treaties”. The idea that the present legal basis provides for the necessity of action is also echoed by Douglas Hurd, the former UK foreign secretary, when he argues that “a single European foreign and security will not emerge from clauses in a Constitutional Treaty, but from facts on the ground”.<sup>52</sup> Others, however, advocate the rescue of the CFSP/ESDP related provisions in the Constitutional Treaty by extracting them from the failed document and have them ratified through Parliamentary procedures. Such a course of action is advocated among others by Nicholas Sarkozy in France. Some would like to take advantage of the impasse on the ratification of the Constitutional Treaty to create the ‘United States of Europe’ based on a ‘coalition of willing’ states ready to sign up for a

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<sup>50</sup> European Commission, “A Citizens’ Agenda. Delivering Results for Europe”, COM (2006) 211/3, May 2006, p. 7.

<sup>51</sup> Ibidem

<sup>52</sup> Financial Times, September 19, 2005.



supranational entity. Guy Verhofstad appeals for such a qualitative leap forward without detailing, however, the conditions for such an act of creation.<sup>53</sup>

The reality is that the EU is not the United States of Europe. It may actually never be. But it is the United ‘Stakes’ of Europe. Challenges in a changing world are common to all member states. Only together, with the EU actors, and by using the rich ‘toolbox’ of the Union’s resources, can these challenges be effectively met. While waiting for the final decision on the fate of the constitutional treaty, the method of “institutional operational ambiguity” seems to be the more appropriate for obtaining the expected results. It will require strong leadership by all responsible actors and strong coordination between the Commission and the High Representative.

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<sup>53</sup> G. Verhofstad, *op.cit.*