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The Commission and the CFSP

By
Dr. Simon Duke

Paper presented at the EU-Consent Workshop 'Institutions and
Political Actors: New Forms of Governance?'
held in Edinburgh (UK), 8-9 February 2006

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The Commission and the CFSP

**Paper prepared for EU-Consent Work Package IV
‘Institutions and Political Actors:
New Forms of Governance?’**

by

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The Maastricht Treaty established the Common Foreign and Security Policy (CFSP) as an intergovernmental second pillar, following from the historical antecedent of European Political Cooperation. The advent of the EU’s CFSP and, more recently its subset, European Security and Defence Policy (ESDP), introduced an inherent tension into EU external relations between the intergovernmental areas and the supranational, or *communautaire*, aspects. The need for consistency as a whole in EU external relations, alongside the presence of a ‘single institutional framework’ placed the focus upon the instruments and tools of coordination between the Community and Council aspects of external relations. The emphasis in this overview is upon the Commission and CFSP and the often complicated and at times fraught relations between the former and the latter.

Relations between the Community and CFSP aspects of external relations have been complicated by changes in the international system itself that face the EU with a set of diverse challenges that, in terms of competence, often fall in the grey area between the Community and intergovernmental responsibilities in external relations. This has heightened the importance of consistency in EU external relations and the way in which the Community coordinates with the Council in the CFSP area and *vice versa*. Subsequent modifications to the Treaty on European Union would introduce important

new changes to the institutional structures in the second pillar which, in turn, would have important implications for the Commission's role in CFSP. Of utmost importance was the introduction of the post of High Representative for CFSP which, amongst other things, served to personalise relations between the Council Secretariat and the Commission in the form of Javier Solana and the Commissioner for External Relations, initially Chris Patten and now Commissioner Benita Ferrero-Waldner.

The evolution of the European Security and Defence Policy (ESDP) would also have an important impact on the Commission's role in CFSP, most notably in the civilian areas of crisis management. Finally, the status of the constitutional treaty remains uncertain and to some it remains, at least in external relations terms, a panacea. This brief analysis of the Commission's role in CFSP will conclude with an assessment of the extent to which the principal changes introduced by the constitutional treaty might enhance consistency and clarify the Commission's role in CFSP.

We shall though commence with a brief historical review since many of the contemporary issues facing the Commission in the second pillar are linked to the origins of CFSP itself. The relevance of the historical dimension to many contemporary problems was captured by T.S. Eliot in *Burnt Norton*, the first of his famous *Four Quartets*, when he wrote that, 'Time present and time past, Are both perhaps present in time future, And time future contained in time past'.

Time past, time present

European Political Cooperation (EPC), CFSP's predecessor, was established in the second half of 1970 as a way of providing a somewhat informal framework for identifying common interests in the foreign policy area. The cooperation machinery, dealing on the intergovernmental level with problems in international relations, was a parallel process to the European Community. The 1970 Luxembourg Report, provided for consultation amongst the governments of the Member States on 'all major questions of foreign policy'. The report provided for twice yearly meetings of the foreign ministers

and (at least) quarterly meetings of the Political Committee, comprising the Political Directors of the foreign ministries of the Community members, to prepare for the ministerial meetings and otherwise assist them. The Commission 'will be consulted if the activities of the European Communities are affected by the work of the Ministers'.¹

The Paris Summit of October 1972 touched again upon the issue of EC/EPC coordination when, having agreed that political cooperation between the Member States in the area of foreign policy had 'got off to a good start', also recognised that 'for affairs which impinge on Community activity close contact will be kept with the Community institutions'.² The apparently vibrant state of EPC was borne out in the recommendation that, from 1973 on, the foreign ministers should meet four times per annum.

A report, approved by the foreign ministers on 23 July 1973 and presented to the European Council's summit in Copenhagen, contained a number of innovations which included the addition a group of 'correspondents', consisting of an official from within each members' foreign ministry, who should maintain contacts with his counterparts and draft minutes of the ministerial and Political Committee meetings. In so far as the Commission was concerned the report provided that, 'should the work of the Ministers affect the activities of the European Communities, the Commission will be invited to make known its views'.³ The Commission was also informed, through the Committee of Permanent Representatives, of agreed conclusions resulting from the work of the EPC machinery, 'to the extent that these conclusions have an interest for the work of the Community'.⁴ The Commission was also invited to participate in ministerial discussions and in sessions of the Political Committee and of the groups of experts where the agenda provided for items 'affecting the activities of the Communities'.

The apparently positive progress made in EPC and the acknowledgement of the need for a close link between political cooperation and the Community was tempered by the observation that:

The political cooperation machinery, which deals on the intergovernmental level with problems of international politics, is distinct from and additional to the activities of the institutions of the Community which are based on the juridical commitments undertaken by the Member States in the Treaty of Rome.⁵

Within a relatively short period of time the EPC machinery had thus been constructed in such a manner that frequent judgements were necessary about what was perceived to be within the activities of the Community (and, by implication, what was not). The growth of EPC could be portrayed as an informal coordination mechanism between the Member States and the Community but, as Michael E. Smith has argued, it was 'first and foremost a defensive measure protecting the EC'.⁶ Hence, it was as much about preventing damage to the Community's international interests through uncoordinated or unilateral damage action by one of more Community members.

The October 1981 London summit contained further efforts to streamline the workings of EPC with importance being attached by the Ten 'to the Commission of the European Communities being fully associated with political cooperation, at all levels'.⁷ The phraseology clearly illustrates the tension between 'full' association of the Communities and the need, at least from some quarters, to guard against Community trespassing in EPC. This aside, continuity of EPC was improved by the introduction of a 'troika' system of seconded officials from the preceding and succeeding Presidencies working with the Presidency. The early years of EPC were also problematic for the Community since the Coreu network, established by the Danish Presidency in the second half of 1973, was not extended to the Commission until its full association with EPC was accepted in the London Report. The EPC continued to operate without a secretariat, relying instead on a modest support staff that rotated each six months with the Presidency. Only with the Single European Act (SEA) in 1987 was a secretariat established in the same premises as the Council Secretariat, albeit with separate access. The absence of an EPC secretariat for the first seventeen years was symptomatic of the concerns about communitarisation (through a seat in Brussels) or adherence to overly-rigid intergovernmentalism by locating the headquarters in a capital.⁸

The SEA formally established the EPC process as a part of the EC under Title III, 'Provisions on European Cooperation in the Sphere of Foreign Policy'. The title defined the overall objective of EPC as the formulation and implementation of a 'European foreign policy'.⁹ Under Article 30 of the act, the parties agreed to 'inform and consult each other on any foreign policy matter of general interest' which, compared to the London Report which restricted cooperation to 'important foreign policy questions', was a significant change. The act noted that external policies were to 'be consistent' and the Presidency and the Commission were given 'special responsibility' in this regard.¹⁰ However, the Preamble to the SEA stressed the importance of Europe 'speaking increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence', but also that the Member States 'may make their own contribution to the preservation of peace and security ...'. The curious juxtaposition between 'one voice' and 'own contribution' point the absence of any common policy as such and, less specifically, to the difficulties that would be encountered in achieving that 'voice' with the EPC as a parallel and not an integral part of the Community.

The theme of consistency was given added saliency when the signatories agreed to coordinate their positions more closely on the 'political and economic aspects of security', which included maintenance of the 'technological and industrial conditions necessary for their security'.¹¹ Although defence industrial aspects were specifically excluded from Community purview by Article 223 of the Rome Treaty, the addition of security responsibilities appeared to signify a significant extension of EPC's remit.

The SEA contained few innovations but codified much of what was happening anyway. This was the case with the Commission and EPC where, prior to the SEA, there were an 'increasing number of occasions on which there is interaction between EPC and the Community'.¹² What was new however was the recognition that the practice of trying to keep EPC separate from the Community to the greatest extent possible, largely at French insistence, was becoming not only difficult but artificial.

The Commission's role in EPC was, for the most part, limited. It was only with the collapse of communism in central and eastern Europe that the emphasis turned away from 'traditional diplomacy' to 'financial and economic diplomacy'. With the advent of programmes for economic reconstruction in the region, such as PHARE and TACIS, the Commission 'gained a prominent role by negotiating the Europe, or association, Agreements with the countries of the region'.¹³ The changes in Europe, and elsewhere, were to strengthen the Commission's hand in the intergovernmental conference leading up to the Maastricht treaty, but not the extent that any communitarisation of EPC's successor would be warranted.

'Fully associated' ... but

The Maastricht Treaty (TEU) incorporated EPC into the Union as CFSP, or the second pillar. The former EPC Ministerial Meetings were replaced by meeting of the Foreign Ministers meeting as the Council (changed in 2002 to the General Affairs and External Relations Council). In spite of the creation of the European Union and a single institutional framework, CFSP's presence as an intergovernmental pillar reflected its origins in EPC as a parallel process to the Community; hence, CFSP remained distinct in terms of its decision-making procedures and the respective rights accorded to the Member States and the Community. As with EPC, the TEU reflected the apparent need for consistency between the Community aspects of external relations and the foreign and security elements of CFSP. Under the TEU the Union shall 'in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies'.¹⁴ The Council and the Commission, in the context of the Union's 'single institutional framework', were not only given responsibility for consistency but were also required to 'ensure the implementation of these policies, each in accordance with its respective powers'.

Although the Council superficially responded to the need for consistency, it nevertheless rested upon a narrow definition of 'external activities' since many other areas of

significance for external relations were not mentioned in the treaty. The TEU mentions that the Union is to 'assert its identity *in particular* through the implementation of a common foreign and security policy' which implies, clearly, that CFSP is not akin to Union's external relations as a whole. Article 2 of the Treaty establishing the European Communities lays out the objectives of the European Community which, while internal in nature, nevertheless also have external dimensions. A number of significant grey areas were notable from the outset such as the common commercial policy (and how that differs from political foreign policy); development cooperation; environmental policy (which specifically mentions the 'international level' and 'worldwide environmental problems' as part of the Community remit); or educational and vocational concerns where the Community will 'foster cooperation with third countries'.

In spite of the full association of the Commission with CFSP and, arguably, its growing influence on CFSP matters, its influence remains far from that it enjoys in the Communities. Article 211 (TEC) refers to the extensive powers that the Commission enjoys in the *communautaire* areas, but these do not extend to CFSP where no reference is made to this important article. This factor, alongside the fact that the Council does not depend upon the Commission to make proposals, significantly dilutes the Commission's role vis-à-vis CFSP.

Part of the initial confusion regarding where the respective competences, and thus hierarchy, of the Community and CFSP lay can be found in the treaties themselves. The legal relationship between the EC Treaty and the TEU gives little guidance as to whether the Community aspects are hierarchically superior to those of Title V, addressing CFSP. The evidence is mixed. On the one hand it could be argued that the Community aspects are superior since the Union is 'founded on the European Communities, *supplemented* by the policies and forms of cooperation' established by the TEU (Article 2). On the other hand the Community's ability to 'interrupt or to reduce, in part or completely, economic relations with one or more third countries' (Article 301, TEC) relies on a prior decision by the Council on the basis of a common position or joint action. In spite of the conflicting evidence, the weight of evidence would appear to tip in favour of the

Community since, under Article 47 TEU, ‘nothing in this Treaty shall affect the Treaties establishing the European Communities ...’. Therefore, CFSP is bound to respect the *acquis communautaire*. This is not, as we shall see later, merely an academic debate but one that has thrown up an interesting test case precisely on this issue.

Anyway, returning more specifically to the CFSP dimension in the TEU, the Commission is ‘fully associated’ with the work carried out in this field. Commission officials are therefore involved at every level of CFSP with the overall objective of ensuring consistency in the external relations of the Union as a whole, safeguarding the *acquis communautaire* and the EC Treaties. Under Article 22 of the Treaty on European Union the Commission shares the right, alongside the Member States, to refer to it any question relating to the CFSP and to submit to the Council proposals. However, unlike the Community, the Commission’s powers regarding implementation are limited except where an invitation is made by the Commission to submit to the Council ‘any appropriate proposals’ relating to the CFSP to ensure implementation of a joint action. In the case of CFSP joint actions, where the ‘means to be made available’ are normally expressed, the involvement of Community funding would naturally give the Commission a role in implementation of the instrument.

The first decade of CFSP’s existence was one fraught with challenges and difficulties, many of them stemming from the effects of real-world crises in the Western Balkans. The disintegration of Yugoslavia at the time of CFSP’s creation was supposed, according to the unfortunate words of Jacques Poos, to be ‘the hour of Europe’. Instead, CFSP proved itself to be weak and beset by national differences. Most of the foreign and security issues pertaining to the region were negotiated not through CFSP or the EU, but rather the six-member Contact Group accompanied by the occasional assertion of American diplomatic and military muscle. This was far from Europe’s finest hour and the humiliations in the Balkans led to fresh efforts in Amsterdam to make the Union’s external relations more coherent and efficient. It was also realised that the effectiveness of the Community in the Western Balkans, as well as elsewhere, might also depend upon CFSP.

The Commission had to adapt to the relatively new CFSP both in its external activities, notably through external political dialogue, but also in its internal structures. As has been noted EPC was a parallel process that was not an integral part of the EC, it was however supported by an EPC special unit. Under the first Commissioner for External Relations Hans van den Broek the former Dutch Foreign Minister, who was appointed in 1993, the EPC special unit became a Directorate General (DG 1A) addressing the political aspects of external relations, with special responsibilities vis-à-vis CFSP.¹⁵ The overall aim of DG-1A was to ‘strengthen the Commission’s capacity to play a full role in CFSP’.¹⁶ External economic affairs remained separate under DG 1, with the immediate consequence that DG IA had little access to Community instruments. Staffing the new DG was not helped by the fact that it was launched during a staffing freeze which led to early scuffles between DG I and DG VIII over staffing, competence and external representation.¹⁷ Günter Burghardt, the first director-general of DG 1A and a veteran of the EPC’s secretariat-general, was dealt a further blow since the political director no longer attended Coreper meetings, thus breaking another valuable link and tool to reinforce consistency between the Community and CFSP aspects of external relations.

Under the Santer Commission competence for external relations and development was split between four DGs with, in addition to DG 1A, DG1 assuming responsibility for Australia, China, Japan, South Korea, Taiwan and the United States; DG1B responsible for the Far East, Latin America the Middle East and Asia (except those falling under DG1) and; DGVIII dealing with the ACP countries and the Lomé Convention (now superseded by the Cotonou Agreement). Van den Broek retained his responsibilities vis-à-vis CFSP but saw his portfolio increased to include Central and Eastern Europe, Russia and the Commonwealth of Independent States (CIS). The Santer Commission had therefore tried to avoid competition within the College by a rationalisation of duties along geographical lines which, perhaps unsurprisingly, carried its own problems.

The inevitable competition that resulted between the DGs and their respective Commissioners may, in part, account for the difficulties encountered within the Commission in defining its profile in EU external relations and in shaping the substance

of its ‘full association’ with CFSP. Wessel commented that ‘internal communication problems have prevented the Commission from acting as a coherent force, which has sometimes led to contradicting policies towards third parties because of a non-cooperative attitude between the various DGs involved in external relations’.¹⁸

Further restructuring took place in the summer of 1998, with notable consequences for development and assistance in particular, with the creation of the Service Commun Relex (SCR) or Joint Relex Service. The SCR represented the result of the unification of the financial and technical services of DGs 1A, 1B and VIII and in due course, in 2001, this became the EuropeAid Cooperation Office. With the Amsterdam Treaty the Commission’s external relations structures were simplified further with the creation of DG RELEX (External Relations), with responsibility for the planning and policy aspects of Community external relations, working in close collaboration with the *famille Relex* which included the External Service (with responsibility for the External Delegations); Trade; Development; Enlargement; EuropeAid; the European Humanitarian Aid Office (ECHO); and a number of external aspects of Economic and Financial Affairs. The creation of EuropeAid prior to DG RELEX implied that the new DG was more distant from the financial leverage that could be exerted by direct access to sizeable Community funding.

The question of who, or what, the Commission was to be ‘fully associated’ with in physical terms emerged with CFSP. The Commission is represented at all levels in the CFSP decision-making structures, from European Councils to working groups. The Commission has been portrayed as ‘the ‘sixteenth’ member state at the table; it safeguards the EU Treaties and the *acquis communautaire* and ensures the consistency of the action of the Union’.¹⁹ The question of which part of the Commission is associated arises in some cases, such as the General Affairs Council or, more recently, the ‘troika’, but the Treaty leaves this issue to the Commission to decide. The Commission, or more precisely DG IA (now DG RELEX), liaises directly with the Council Secretariat, headed initially by Brian Crowe. The Council Secretariat was initially fairly modest in terms of numbers and it concentrated on supporting the presidency and political dialogue partners.

This meant that there was relatively little overlap to begin with between the Council Secretariat and DG IA but, as will be explained, this was to change as the Council Secretariat grew and assumed new roles beyond that of the traditional secretariat.

The early years of CFSP saw the Commission reacting to CFSP cautiously, in part because of ongoing upheavals and turf battles within the Commission itself, but also due to more general caution regarding the dramatic changes of the early post-cold war years in the region and beyond. The lessons emerging from the Balkans focussed the debate about the Union's external relations, especially the security aspects, in the intergovernmental conference preceding the Amsterdam Treaty. The Treaty was notable for the introduction of the High Representative for CFSP (HR/CFSP) post and, in a declaration attached to the Treaty, the Policy Planning and Early Warning Unit (the Policy Unit). This was to sharpen the difficulties and differences between the Community and rapidly growing CFSP aspects of EU external relations and it soon became popular to portray it as a struggle between the Commissioner for External Relations, Chris Patten, and the HR/CFSP, Javier Solana.

The High Representative for CFSP ... and beyond?

The HR/CFSP was tasked with assisting the Presidency and the Council in matters falling within the policy area, 'in particular through contributing to the formulation, preparation and implementation of the policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties'.²⁰

The appointment of the High Representative led to the creation of a dedicated CFSP directorate within the Commission, most notably with an eye on the emerging crisis management role of CFSP which had multiple implications for the Commission's operations. Directorate A of DG RELEX deals with all CFSP/ESDP related issues, the European Correspondent's office, Commission coordination and contributions, as well as the Community aspects of CFSP Joint Actions, sanctions, counter-terrorism, non-

proliferation, disarmament, conflict prevention, Community contributions to crisis management and any CFSP/ESDP aspects stemming from relations with the seventy-eight African, Pacific and Caribbean countries. It also follows any CFSP aspects of the efforts to stem the flow of ‘conflict’ diamonds (the Kimberley process) and any relevant matters arising in the G8 context. The directorate may submit proposals to the Council or raise questions on CFSP issues, it may also request the Presidency to convene an extraordinary Council meeting or make suggestions to the Policy Unit – all of this in a DG of just over one hundred people. Given the sensitive nature of the DG’s work, access to and the handling of information is carefully controlled in a secure area of the Charlemagne building.

In addition, the Commission’s Secretariat General (F1-3) coordinates Commission action in Council bodies and reports to the relevant Council bodies on the Council and Coreper’s deliberations. The Secretariat General will be present at Council meetings (at appropriate rank), at the preparatory meetings of the Council Presidency and with briefings prior to Council meetings with the *cabinet* and DG concerned. A further group, the *Groupe des relations inter-institutionnel* (GRI), was established in November 2004 to ensure maximum coherence of the Commission’s relations with other EU institutions and assumes collective responsibility for the handling of matters under discussion in the Council and the Parliament, including the follow-up for any sensitive items on the Council’s agenda.

Although the Amsterdam treaty suggested a reasonably modest role for the High Representative (assisting the Presidency and Council; formulating, preparing and implementing policy decisions and acting on behalf of the Council at the behest of the Presidency), the appointment of Solana was to shape the office in ways that have given him a unique stature in the diplomatic world and, for many, he has become ‘the’ face of EU external relations. Solana’s apparent rise to prominence has been all the more remarkable since in few areas is he in the position to actually back up political statements with economic or military tools which, respectively, are under the Community and the

Member States. Unfortunately, the advent of the HR/CFSP was also to focus popular attention, as well as a good deal of speculation, on the personal relations between the Commissioner for External Relations and the HR/CFSP – to the detriment of a broader understanding of the complex institutional ties between the Community and CFSP.²¹

Notwithstanding the protestations of harmonious relations at the personal level, Solana's appointment resulted in a number of important speeches designed to clarify the Community and CFSP-related roles in EU external relations. In June 2000 Patten expressed his determination that the Commission 'should make a more coherent and coordinated contribution to the external relations agenda'. A number of constraints and areas for improvement were identified, including reference to Patten's work with Solana 'to create sensible structures and the right division of responsibilities' between the Commission and the HR/CFSP.²² Shortly thereafter Patten quoted President Chirac with apparent approval when he said that 'some members can act as a driving force ... to give Europe a coherent, high-profile foreign policy. But force of will and the appeal to shared values are not enough. That is why the Member States decided at Maastricht and at Amsterdam to combine the Community and the inter-Governmental methods. Only in this way would they be able to sing, if not in unison, at least in closer harmony'.²³ In a speech to the European Parliament three months later Patten observed that 'too often the rhetoric [of CFSP] has not been matched by what we actually do'. Patten recommended that the 'prime task in the EU's external relations is surely the projection of stability in our immediate neighbourhood', as well as beyond that.²⁴ While he acknowledged that foreign policy will remain 'fundamentally' a matter for national governments, he warned that 'mere intergovernmentalism can be a recipe for weakness and mediocrity: for European foreign policy of the lowest common denominator'.

Patten was not alone in trying to come to terms with the apparent ascendancy of CFSP. Commission President Romano Prodi referred to 'those who see a positive side to any confrontation between the Council and the Commission, as if this might be to Parliament's advantage'.²⁵ He referred to the European system as one of 'checks and balances' in which the smooth running of each institution serves the common interest, but warned 'of the worrying tendency to think that further European integration can be

achieved using methods based primarily on direct cooperation between governments'. The advent of the HR/CFSP, or Monsieur PESC as the post was often dubbed in French, was greeted by Prodi as providing 'only a provisional response to a lasting need'. He then went on to reflect more specifically on Solana's new role:

While I can assure Javier Solana of the wholehearted support of the Commission, and I admire the extraordinary personal commitment which has enabled him to achieve important and unexpected results, I have to stress that the present organisational model is not sustainable in the long term. This model confuses the roles of the Council and the Commission in a way that could ultimately jeopardise both struts of the institutional system and exclude Parliament from any effective power... That is why I firmly believe that the function of High Representative should be integrated into the Commission, with a special status tailored to the needs of security and defence.

For his part, the newly appointed HR/CFSP (first appointed for a four year term in October 1999) had firm ideas about how to improve coherence in external relations. From the outset Solana did not shy away from talking about external relations more generally, not just CFSP. In a broad-ranging paper, presented to the informal General Affairs Council at Evian in September 2000, Solana reflected upon the role of not only the Council but the Commission in EU external relations as well. For instance, on the financial aspects he lamented the fact that 'the full picture of commitments/disbursements originating from the Community budget and directed to any specific country is not readily available to the Council and the Member States'. He also noted that, 'The external financial assistance from the Community budget varies considerably from case to case in terms of legal foundation, as well as of political motivation/justification thereof'.²⁶ Although Solana touched on many other aspects of external relations, it is significant that he mentioned the budgetary aspects since this was in many ways the crux of Community influence in EU external relations and one of the main weaknesses of CFSP. This was to become especially salient in the security aspects of CFSP where, in operational terms, the Member States played not only the main role in decision-making but also provided the practical underpinnings and most of the funding for crisis management operations.

The appointment of a HR/CFSP was supposed enable the appointee to bridge the apparent divide between Community and CFSP aspects of external relations. Certainly the choice of Solana presented a person with the experience and gravitas to play such a bridging role. Clearly much of the potential to portray a common foreign policy and a less fragmented face to the world depended upon the personal dynamics between Solana and Chris Patten, then the Commissioner for External Relations. Patten's retrospective comments on his relations with Solana made after he retired from the Commission are revealing and worth quoting at some length:

Solana was the representative of all of the foreign ministers; I had charge of the Commission's external services – development and cooperation programmes, and the coordination of all the activities that had a major bearing on other countries. As far as I was concerned, Solana occupied the front office and I was in charge of the back office of European foreign policy ... But at least in the back office, the levers were connected to machinery; pull them and something normally happened, if sometimes too slowly.²⁷

Put differently but making a similar point, Patten noted the 'suboptimal institutional architecture of CFSP' which meant that the High Representative and the Commissioner for External Relations are required to get on well together.²⁸

A second complicating factor for the Commission was the advent of the Policy Unit. The Unit, drawn from the Council Secretariat, the Member States and a Commission representative, has a variety of broad monitoring and analysis roles, including the provision of 'timely' assessments of the Union's foreign and security interests, early warning and, at the request of the Council, the Presidency or its own initiative, of policy option papers for the Council. The first Director, a German diplomat, Christoph Heusgen, steered the unit towards the policy formulation aspects of its duties, in support of the High Representative. The Unit initially had a difficult reception not only in the Commission but also in the Council Secretariat, although this has now improved somewhat with the integration of Policy Unit members into DG-E's work in areas such as the Western Balkans or the Middle East. Nevertheless, the Policy Unit has become

increasingly pro-active and influential in shaping policy, especially since it serves as one of the principal sources of ‘intelligence’ (via the seconded diplomats) in the CFSP area. The Unit has also proven quite unabashed about using (not always with due acknowledgement) valuable insights gleaned from Commission sources, especially the External Service, which regularly appear in their policy recommendations.

A third small, but important, addition to the Council structures was the Situation Centre (Sitcen) comprised of both civilian and military staff. The centre maintains a ‘24-7’ watch over a number of potential or actual trouble spots, agreed to in the form of a Watchlist with DG RELEX. More recently, the Sitcen includes seven seconded national intelligence officers with particular responsibility for counter-terrorism; this number will be expanded in due course and may also broaden in terms of focus.

Thus, while the burdens on Solana are no doubt immense, the advent of the Policy Unit, the Sitcen, as well as the traditional role played by the DG-E have freed him up to concentrate on his role as the EU’s ‘Foreign Policy Chief’ as the *Financial Times* dubbed him. It would however be a mistake to assume that all of the innovation was on the CFSP side since Patten introduced a number of extensive reforms, most notably in the Commission’s External Service which underwent a process of deconcentration and decentralisation. More emphasis was placed on managing projects in the field, with EuropeAid being responsible for the full project cycle management and implementation of the Commission’s ODA programmes, and reporting to Brussels was streamlined.

Even if the relations that were established with Solana and Patten, and the latter’s successor, were cordial or even close, many practical difficulties associated with the offices and the institutions they represented lurked not far beneath the surface.

The inexorable rise of CFSP?

The growth of CFSP and the arrival of the High Representative, the Situation Centre and the Policy Unit, followed soon after by Special Representatives (there are currently ten appointed to different countries or regions) and Personal Representatives (currently three), alongside early steps towards what became ESDP, might appear to suggest the

inexorable rise of CFSP and the resignation of the Commission to the unglamorous, but necessary, administrative and practical aspects of running sizeable aid and assistance programmes and negotiating framework or association agreements with neighbours. This would however be a distortion since the Commission was active in its efforts to prepare the candidate countries for membership of the Union, as well as negotiating a series of association agreements with partners such as Russia or the Ukraine and in 1995 the Barcelona process with the Mediterranean countries was launched. None of these could be dismissed as inconsequential developments for EU external relations.

The Commission was able to use its budgetary influence to good effect in a variety of development, assistance or partnership programmes with regions (such as the Western Balkans or the Middle East) as well as countries (China, Japan, Mexico, South Africa and so forth) and other regional organisations (like Mercosur or the emerging African Union). The influence of the budget meant that the Commission was in a position to play a leading role as a political actor, both as part of political dialogue with third parties, as well as through the application of political conditionality to its aid, assistance and development programmes. Furthermore, the Commission was in a position to introduce, or mainstream as the jargon goes, transversal elements into its policies. For example, following the Commission's April 2001 Communication on Conflict Prevention, reporting from countries or regions regularly included an assessment of the potential for conflict.²⁹ It was henceforth to be the Commission that played the central role in long-term conflict-prevention, while the 'harder' elements of crisis management were gradually being developed in CFSP.

In a more general way the transitions following the Cold War changed a number of factors, including the essence of power in the international system. Although military potential still remained relevant, more attention was paid to the ways in which other forms of 'soft power' could be used to induce positive change. Here again, the exercise of soft power fell primarily to the Commission and not to CFSP, which was trying to grapple with the sobering 'hard power' realities of the ongoing genocide in Kosovo and the resort to (primarily American) military force in the spring of 1999.

The gradual growth of CFSP and, more recently ESDP, has served to highlight the need for the EU to be able to exercise elements of ‘hard power’, such as its ability to intervene with military force in the Western Balkans or the Democratic Republic of the Congo, and this perceived need undoubtedly boosted Solana’s standing both in and beyond Brussels. But it is equally true that Solana’s diplomatic strength stems largely from the willingness of the Commission to use the necessary inducements or admonishments to back up Council instruments. It is easy to see that the deployment of military personnel or police is more interesting to the media than mastery of the details and intricacies of sizeable Community development or assistance programmes, association agreements or partnership arrangements. Nevertheless, the EU’s policies towards virtually any region rely upon the Commission to go beyond diplomacy, in the sense that the relevant DG’s will manage the details and set up the programmes that actually help achieve the desired ends; the support for KEDO in North Korea, the free trade agreements with Mexico or Chile, the implementation of the African Peace Facility or the European Neighbourhood Policy, are all examples of the critical, yet often underappreciated, role of the Commission.

The Commission’s role in EU external relations has also been reinforced by the number of transversal issues that appear on the Union’s agenda such as non-proliferation issues, human rights, counter terrorism or organised crime. All of these threats, outlined in Solana’s December 2003 Security Strategy, are inherently inter-pillar in nature (this includes the growing importance of the external dimensions of the third pillar). These transversal, or horizontal, issues stress the need for coordination across the pillars but also underline the importance of the Community in using its expertise and budgetary weight to actually implement extensive programmes in the areas outlined above. Although CFSP certainly has a role to play in all of the issue areas mentioned, it has struggled to define an active role for itself in critical areas such as counter-terrorism (arguably, the ESDP implications of terrorism are still far from clear).³⁰

The growing number of transversal issues has also increased the potential for disputes over competence between the Commission and Council. The most dramatic example of this to date is an action brought by the Commission against the Council ‘seeking

annulment for lack of competence' of a Council decision implementing a joint action.³¹ The fact that the case has arisen is utterly unsurprising, given the growing number of issues that fall between the traditional Community areas of external relations and the more traditional foreign policy tools controlled by the Council.

The essence of the Commission's case is that the CFSP decision is an infringement of Article 47 of the Treaty on European Union 'since it affects Community powers in the field of development aid'.³² The issue involved the Council's decision to contribute to the Economic Community of Western African States (ECOWAS) in the framework of the Moratorium on Small Arms and Light Weapons. The Commission argued that Article 11(3) of the Cotonou agreement covers *inter alia* against the spread of small arms and light weapons and the Commission had also concluded a Regional Indicative Programme for West African States giving support to conflict prevention efforts, enhancing good governance and, in particular, for the moratorium on the import, export and production of small arms in the region. The Council's counter-argument is that the Commission's powers should be confined to those areas that do not fall under CFSP objectives (which, it will be recalled, include 'all areas of foreign and security policy').

The outcome of this case is not yet known but the case signifies that 'tolerance for overlapping competencies has been reduced' and that the Member States increasingly see the issues of competence 'as a zero sum game in which there is little room for both the Council and the Commission to make concessions'.³³ The outcome of the case may also have important ramifications for the future since the Commission's ambitions are to increase its crisis response role in the form of the Stability Instrument. The Commission has proposed streamlining over 30 current instruments into six instruments (four being new) for the 2007-12 budgetary period.³⁴ The scope of the Instrument, which includes many aspects of peace-building, poses the strong likelihood of even more overlap with CFSP competences. The outcome of the case referred to above may also impact on a further issue directly connected to the proposed Stability Instrument, namely the issue of whether the European Development Fund will be 'budgetised' (i.e. incorporated into the EU budget).

The case referred to above is likely to be an important test case for the respective competences of the Community and CFSP, especially when it comes to areas that have already been identified as significant areas of grey such as conflict prevention, disarmament, demobilisation and reintegration (DDR) and measures to prohibit the export, import and manufacture of small arms and light weapons (SALW). Many of these functions were attributed to the Common Security and Defence Policy (the renamed version of the current ESDP) in the constitutional treaty.³⁵ Even without the adoption of a constitutional treaty, the *de facto* assumption of these competences within the CFSP area or by the Community may generate further tensions.

The potential importance of the case discussed above cannot be over-emphasised since it goes to the heart of the institutional divide between the Council and the Commission and to the ‘disconnect’, as Barroso called it, between the institutions.³⁶ Of relevance to the question of overall competences in external relations, and thus to the issue of coherence, will also be a report that Barroso will present to the commissioners in April and to the heads of state and government in the June 2006 European Council. The report may contain proposals for ‘a common planning staff bridging the European Commission and the Council of Ministers’ as one measure, in the absence of the constitutional treaty, to enhance coherence.³⁷ The Barosso report will be complemented by one written by Michel Barnier, a former commissioner and French foreign minister, on improving the Union’s civilian crisis management capabilities.

The Commission and ESDP

It has already been argued that the question of competences between the Community and CFSP centre on many of the crisis prevention, crisis management and resolution tools being developed by the Commission and within the CFSP context. This applies with particular force to ESDP where many of the crisis prevention and management tools are located. Developments within the conflict prevention and crisis management areas are likely to be monitored very closely by the Council and the Member States with a view to addressing any perceived ‘incursions’ into CFSP competences. Although this should not necessarily be perceived as a zero sum game the security-oriented nature of the

discussions are more likely to raise, or even exaggerate, sensitivities regarding attempt to limit or curtail CFSP.

The Commission's role in ESDP is necessarily limited when it comes to the military dimensions; the Commission is, for instance, not represented on the EU Military Committee. There are though obvious issues of consistency between the more general efforts to support peace and stability and the crisis management dimensions represented by ESDP. One area where tensions might have been expected is the area of civilian crisis management where the Commission and the ESDP structures have overlapping competences. For instance, over the last few years a range of civilian crisis management tasks have been assumed by ESDP (such as rule of law missions; police roles; civil protection; and civil administration). The Commission has an active civil protection role which has not only internal but also external dimensions. Possible tensions between the growing ESDP role in this area and those of the Community's civil protection mechanisms might have been expected but, to the contrary, it would appear that:

In parallel, the Commission and the General Secretariat of the Council have cooperated on developing optimum synergy between work on rapid deployment of civilian crisis management capabilities and the Commission plan to establish identification and planning teams within the Community civil protection mechanism.³⁸

The apparent harmonious development of ESDP and Community relations in this specific sector could suggest that where areas of competence are developed more or less at the same time (in this case since 2001) there is less chance of serious friction. It might also be the case that rhetoric, coming from an outgoing Presidency in the case of the quote above, belies the frictions encountered in practice. It is though only logical to suggest that where competences are more entrenched, or where there are significant areas of ambiguity (as in the case over small arms and light weapons and ECOWAS cited above) clashes are more likely.

Aside from possible frictions over competences, there is a broader issue for Commission-ESDP relations that has been raised by a number of academics; namely, the extent to which the Community's essentially normative role will adapt to the military aspects of CFSP, or vice versa.³⁹ If indeed the EU is no longer merely a civilian power, but lacks the accoutrements of a full global power (like the U.S.), the issue becomes one of balancing the normative and 'soft power' roles with the desired role that the EU and its members wish to play on the international stage.⁴⁰ Unlike the U.S. or China, for example, the EU is primarily perceived to be a soft power in the sense that it does not have the overt military muscle to impose its will (should it wish to) – a notion that was most popularly, if somewhat inaccurately, popularised by Robert Kagan.⁴¹

In EU terms the soft power aspects are very much dependent upon the powers of attraction, represented mainly through the Community, its extensive External Service and numerous overseas programmes. The linkage between elements of conditionality, such as those enumerated in the 1993 Copenhagen criteria, had the logical security corollary that the various forms of conditionality began to include a number of security dimensions and, through the mid 1990s to the present, an important conflict prevention aspect. This was, however, at once strength as well as a weakness for the Community. Yet, as noted, the grim events in the Balkans in the 1990s were a salient reminder of the shortcomings of reliance on soft power.

The charge that the EU has, or is in the process of, engaging in unreflexive militarization risks exaggeration since the EU has only partially 'militarised' -- missions undertaken are limited, not only in terms of scope and capability, but also in terms of mandate. It is also worth observing that the current Petersberg tasks, or the expanded version found in Article III-309 of the Constitutional Treaty, go beyond the purely military (such as 'tasks of combat forces in crisis management') to include joint disarmament operations, humanitarian and rescue tasks and conflict prevention. It is also an exaggeration to claim that the EU is being militarised and, hence, that it is becoming a military organisation on a par with, for example, NATO (which, ironically, has been consistently downplaying its overtly military role and emphasising its crisis management tasks).

‘Reflexive’ militarization would give rise to the expectation that measurable shifts would have occurred in, for instance, Russia’s position vis-à-vis Chechnya or Turkey’s regarding its Kurdish enclaves – there is little evidence of either and, what changes there have been, are not clearly attributable to militarization. In fact, it could be argued that the development of CFSP has done little to change the state of inter-state relations, whereas the lower-profile process of gradual change (introduced through Community instruments) may well have achieved more. Even where the EU or the Member States maintain a visible military presence, as in the Western Balkans and Afghanistan, they relied upon initial military action by the United States. Alleged militarization may be responsible not so much for compromising the normative role of the Community but, as has been examined above, it is perhaps more accurate to argue that ESDP’s development has sown seeds of confusion between the civilian aspects of external actions, including those of a humanitarian nature, and those of a military nature.⁴²

Although the growth of CFSP and its crisis management elements was facilitated by the changed international situation after the end of the cold war and the Soviet Union’s demise, it could also be argued that the Community’s potential normative powers in external action have never been greater, especially through the ability to apply conditionality to a wide range of economic and development programmes. However, the entrenchment of many of the Community’s policies, past and more recent, when combined with less agile bureaucratic structures, ensured that the Commission’s external relations DGs would inevitably be associated with implementation. The lighter, more agile, CFSP structures, capped by the High Representative, also meant that policy-formulation would be more attractive to the seconded diplomats working in the CFSP structures. The normative issue is therefore raised at a number of levels, not only with the alleged militarization of the EU, but through the growing influence of the General Secretariat of the Council on EU foreign policy.

It would of course be incorrect to disassociate CFSP from any normative role, since it also promotes notions of good global governance, but the question of legitimacy (who can speak for ‘Europe’ in foreign policy and on what basis?) inevitably arises. It remains unlikely that there will be much communitarisation of CFSP in the foreseeable future but

there is clearly a need to address the issue of consistency in EU foreign and security as a whole (both between the EU institutions as well as between the EU and the Member States) and to ensure that the fundamental criterion for legitimacy (as laid out in the December 2003 *European Security Strategy*) are observed; namely democratic practice, human rights, well-functioning international institutions and the promotion of a rules-based international order.

One of the possible responses to the perception that the normative role of the Community in foreign policy will be undermined by the growing military elements represented in CFSP, is that first, any use of force must be seen as legitimate and, second, that it should support the EU's broad foreign policy values and objectives. Even if the use of force is legitimate, it is important, as Manners observes, that the temptation to 'use short-term military interventions instead of long-term civilian solutions' should be resisted.⁴³ There is also the risk of 'mission slide' from civilian to military operations. Unfortunately, the 'fog of war' may also make such distinctions less important from the point of view of combatants or insurgents who may see civilian or humanitarian personnel operating on the ground as targets for attack. Sadly, such attacks have been frequent in Afghanistan, Iraq and more recently Gaza. This then opens up the inevitable Catch-22 of whether such personnel become targets because of the military presence (endangering, amongst other things, their impartiality) or whether their work is facilitated due to the very same presence.

In terms of the more immediate concerns regarding the Commission and CFSP, it is not clear that short-term military interventions are being resorted to at the expense of long-term civilian solutions. Where there is an issue is in the relation between the short and longer terms and what the respective competences are vis-a-vis CFSP and the Community. It is true that CFSP is primarily geared towards short-term military interventions, largely due to capability considerations but also due to budgetary restrictions as well. Indeed, there may be incentives to hand over to the Community longer-term responsibility prematurely. The key issue is therefore, as above, that of coordination between the Commission and its various responsibilities in external relations and that of the relevant CFSP bodies. As we have seen, the respective competences when

it comes to crisis prevention and resolution are far from clear; even when considering the non-military aspects of crisis management, significant areas of grey may be encountered.

One of the obvious retorts to the scenario whereby the Commission held most of the carrots, while the sticks were to be found primarily in CFSP, is that their effectiveness could be enhanced by explicit and direct linkage between them in the form of a Union Minister for Foreign Affairs and an External Action Service.

The Commission, CFSP and the Constitutional Treaty

The Economist asked ‘What part of ‘no’ do they not understand?’ in response to various efforts to revive parts of the constitutional treaty following the Dutch and French referenda in 2005. In spite of the belief in some quarters that the constitutional treaty is dead, not all share that view. The Austrian Presidency, Germany and, unofficially, some political parties in France, have revived the constitutional treaty debate.⁴⁴ However, it remains unclear what type of revival is envisaged and, moreover, what type of general public support there may be for the partial or complete resurrection of the constitutional treaty, or even a completely fresh start.

One of the options being discussed is that of ‘cherry picking’, with public support, select elements of the constitutional treaty. In this regard the constitutional treaty’s stipulations regarding external relations and, in particular, the role of the Union Minister for Foreign Affairs (UMFA) and the External Action Service are often mentioned as desirable elements to salvage. As we have seen, the development of the second pillar has necessitated a number of compromises with the Community aspects of external relations. The Maastricht and Amsterdam treaties also introduced elements of ambiguity into mutual relations, as well as tension between the Commission and the CFSP institutions. The Convention on the Future of Europe was designed to address, as best they could, these areas of compromise, tension and ambiguity alongside the more unworkable aspects of CFSP, such as the ponderous rotating Presidency system or the troika mechanism. The overall aim of the Convention was to:

- Improve the consistency of EU external affairs policies and actions;

- To enhance cooperation between the EU institutions, as well as between the institutions and the Member States; and
- To simplify the management of EU external relations and to enhance its visibility, most notably through the appointment of a UMFA.

The resulting constitutional treaty was, perhaps unsurprisingly, also a compromise. It did not involve the wholesale abolition of the second pillar which, in terms of procedures and decision-making, remained distinct. It did not solve the problem of inconsistency between the *communautaire* and intergovernmental aspects of external relations, even if it appeared to superficially. Nor did it rid the institutions of tension; in fact the ambiguous mandate and design of the European External Action Service promised to focus the tension in a significant turf battle (which, arguably, is necessary).

Whilst there are undoubtedly elements of the constitutional treaty that were genuinely innovative, it would be a danger to see it as a panacea for external relations or our more immediate concern with the Commission and CFSP. The constitutional treaty raises a number of profound questions. The UMFA would be ‘one of the Vice-Presidents of the Commission’ and he or she ‘shall ensure the consistency of the Union’s external action’. Importantly, from the Commission perspective, ‘he shall be responsible within the Commission for responsibilities incumbent upon it in external relations and for coordinating other aspects of the Union’s external action’ [Article I-28 (4)]. However, these responsibilities were to be exercised ‘to the extent that this is consistent’ with his duties in the CFSP and Common Security and Defence Policy fields.

The immediate repercussions of this would have been that, at a minimum, the UMFA would coordinate 4 Commissioners, 6 Directorates General and, in addition, a whole host of other external relations aspects of the Commission’s work, ranging from environmental and energy to monetary aspects. This would have given the UMFA, as a Vice-President of the Commission, heavy responsibilities and assumes a high level of willingness on the part of the Commissioners and DG’s involved to be coordinated, especially by someone who wears another hat in the Council. The awkward formulation of the UMFA’s responsibilities vis-à-vis the Commission and the Council seems almost

designed to heighten suspicions that Solana is a Council person in the Commission, and vice versa. The crippling burden and inherent tensions in the UMFA's role, at least as laid out in the constitutional treaty, were summarised critically by William Wallace:

No one person could chair foreign affairs councils, provide leadership for a substantial staff, conduct a significant part of EU diplomacy and play a useful role in the internal politics of the Commission. Nor could he or she gain and retain the trust of national foreign ministers in the Council while also respecting the different collegial loyalties of the Commission. Both the Commission president and the Council president will demand the foreign minister's respect and attention; both will play their own competing roles in European foreign policy.⁴⁵

The presence of the UMFA, chairing the Foreign Affairs Council, would have implied the disappearance of the rotating Presidency in the foreign affairs area.⁴⁶ This too would have introduced a number of tricky internal issues, such as who represents the Commission in Foreign Affairs Council (FAC) meetings, or who would chair the support bodies such as the Political and Security Committee or COREPER (the latter of course being responsible for more than external relations). The effects of the disappearance of the Presidency from the foreign affairs realm should not be underestimated when this has traditionally been an area of preoccupation of the rotating Presidency. The demise of the Presidency may elicit little lament from the larger EU Member States, who assume self-appointed roles on behalf of the EU or who may be asked to act on the Union's behalf by the Council, but may well have been seen as a lost opportunity by the new, smaller EU Member States who have never had the chance to run a Presidency. Solana's role vis-à-vis the FAC might well, as Patten observes, have created some 'scratchiness' by placing responsibility for chairing meeting and for providing the main input onto one person.⁴⁷

The UMFA's relationship with the President of the European Council also remains ambiguous. The latter would, 'at his or her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the Union Minister for Foreign Affairs' [Article I-22

(2)]. The UMFA would therefore have been caught between the President of the Commission, who retains a representative role in external relations, outside the CFSP area, and the President of the European Council. Hence, the UMFA would have been not only ‘dual-hatted’, as have often been observed, but would in fact have carried triple accountability when those of the President of the European Council are included.

The Constitutional Treaty also included provision for a European External Action Service (EEAS) located significantly, but perhaps unfortunately, in the chapter on CFSP. Most of the details were left to be filled in since the constitutional treaty only stipulates that the UMFA ‘shall be assisted’ by a EEAS, which shall work ‘in cooperation with the diplomatic services of the Member States’ and shall comprise officials ‘from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States [Art. III-296 (3)]. One of the most sensitive issues to arise was that of the status of the ‘service’ and what it implied in institutional terms (autonomous or attached to the Commission and Council, an institution, or merely a service build within existing institutions?).

The issue of institutional status was never resolved, due the truncation of discussions between the Commission and the Council by the Dutch and French referenda.⁴⁸ It had nevertheless been informally agreed that the Service should be of a *sui generis* nature and would therefore not be an institution as such, but would enjoy close links with the Council and Commission.⁴⁹ Had the debates continued they would have gone to the heart of many of the issues mentioned above: the competences of the Commission and Council in external relations; tensions between the community and intergovernmental methods; the question of democratic legitimacy and the role of the European Parliament; as well as control and staffing of the External Service. Similar vagaries exist with regard to staffing since the discussions never advanced far enough to ascertain from what parts of the Council Secretariat or the Commission officials might emanate, quite aside from the Member States who had not entered the discussions at the time of the referenda referred to above. Other significant issues would have been encountered, had the discussions continued, such as budgetary arrangements and alignment with existing career structures.

A further notable change mentioned in the constitutional treaty was the transformation of the current 123 country or region delegations, plus the five delegations to international organisations, into Union delegations under the authority of the UMFA and acting ‘in close cooperation with the Member States’ diplomatic and consular missions’ [Art. III-328 (2)]. The Union delegations, as opposed to the current Commission delegations, would enjoy the ability to represent the Union’s external relations but within the context of Article I-26, which gives the Commission the right to ‘ensure the Union’s external representation’ but ‘with the exception of the common foreign and security policy’. As with the discussions above regarding the EEAS, the composition and the exact mandate of the Union delegations were not discussed in the initial (and now frozen) discussions on the EEAS and delegations.

Discussions on all of the above items were frozen as part of the general impasse imposed on the constitutional treaty by the Dutch and French referenda. It is clear however that the negative results had little to do with the EU’s external relations; to the contrary, public opinion evidence such as that contained in successive issues of *Eurobarometer* suggests strong public support for a more effective European role in foreign and security issues.

The picture left after the referenda is confusing, but a few things are clear. First, the shortcomings in EU external relations identified by the Convention, including the issues of consistency, remain. Second, while some ‘cherry picking’ may be feasible, it is unlikely that Solana could be appointed as UMFA, at least as the post is envisioned in the Constitutional Treaty – this would imply major institutional upheavals to the Council, the Commission, the Presidency and the European Council. Third, the valuable discussions that took place in the Convention’s working groups on external action, legal personality and defence should not be lost, nor should the Dutch and French referenda lead to the conclusion that all innovations contained in the constitutional treaty are stalled. There are aspects of the treaty, such as the creation of the EEAS or the move towards Union delegations, which might usefully be explored in spite of the referenda results. Even if the discussions over, for example, the composition and mandate of the EEAS proves to be

difficult, the process of talking through the multifarious issues will in itself be immensely valuable, especially if it helps to clarify the Commission's relations with CFSP.

Given that the longer-term prospects for the constitutional are uncertain, but the shorter-term would tend to indicate that it is dead for the duration of the current Commission, there remains ample latitude for enhancing coordination between the Community and CFSP aspects within the existing treaties. The creation of a *sui generis* EEAS would be perfectly compatible with the existing treaties, as would greater participation of Council or national officials in the External Service. More high-level coordination at senior level, notably between Barroso and Solana or, lower down, building upon the cooperative practices in FYROM, Iraq and Moldova, would also not require treaty reform. Outside any treaty reform the outcome of the case referred to above, in connection with the Commission and Council competences in small arms and light weapons, will also be very important for future collaboration. Finally, it should be borne in mind that major institutional reform of the Commission will have to take place anyway in 2007-8 and this may therefore provide the perfect chance for restructuring of EU external relations. The public opinion poll data, such as that provided by *Eurobarometer*, indicates that these are precisely the kind of steps that would support the desire for a stronger and more effective European voice in foreign and security policy.

ENDNOTES

¹ Davignon Report (Luxembourg, 27 October 1970), in *Bulletin of the European Communities*. No.11-1970, pp.9-14.

² *Bulletin of the European Communities*, No. 10-1972, p.22.

³ *Bulletin of the European Communities*, No. 9-1973, pp.20-21.

⁴ *Ibid.* P.18.

⁵ *Bulletin of the European Communities*, No. 9-1973, p.18.

⁶ Michael E. Smith, *Understanding Europe's "New" Common Foreign and Security Policy*, Policy Paper No. 52, 2000, Institute on Global Conflict and Cooperation, p.5.

⁷ 'Report on European Political Cooperation (London, 13 October 1981)' in *Bulletin of the European Communities*. Supplement 3- 1981, pp.14-17.

⁸ Ben Tonra notes that Paris had suggested that it might provide such a location, in 'Committees in Common: Comitology and the Common Foreign and Security Policy', Thomas Christiansen and Emil Kirchner (eds.), *Administering New Europe: Inter-Institutional Relations and Comitology in the European Union*, (Manchester: Manchester University Press, _____).

⁹ Treaties Revising the Treaties establishing the European Communities and Acts relating to the Communities (Single European Act), 11 June 1986, Title III, Art.30.

¹⁰ *Ibid.* Art. 20. Para. 5.

¹¹ *Ibid.* Art. 30. Para. 6(b).

¹² Simon Nuttall, *European Political Cooperation*, (Oxford: Clarendon Press, 1992), p.24.

¹³ Fraser Cameron, 'Where the European Commission Comes In: From the Single European Act to Maastricht', in Elfriede Regelsberger, Philippe de Schoutheete de Tervarent and Wolfgang Wessels (eds.), *Foreign Policy of the European Union: From EPC to CFSP and Beyond*, (London: Lynne Rienner Publishers, 1997), p. 90.

¹⁴ Interestingly the list of areas subject to consistency does not cover 'external activities' as a whole since many other areas, such as energy, JHA, agriculture or Economic and Monetary Affairs, have important external aspects.

¹⁵ DG IA had primary responsibility for Central and Eastern Europe, the former Soviet Union, Mongolia, Turkey, Cyprus, Malta and European countries outside the EU

¹⁶ Cameron, in Regelsberger *et al.* p.101

¹⁷ *Ibid. Loc cit.*

¹⁸ Ramses Wessel, *The European Union's Foreign and Security Policy: A Legal Institutional Perspective*, (The Hague: Kluwer Law International, 1999), pp.90-91.

¹⁹ Wessel, p.91.

²⁰ *Treaty on European Union*, Article 18 & 26.

²¹ See Boso Esteruelas, 'El comisario europeo Patten acusa a Solana de "usurpar" sus tareas en política exterior', *El País*, 8 de junio, 2000, p.4.

²² 'Communication from Chris Patten to the European Commission aimed at engaging in the debate on the EU's external relations', in *Bulletin Quotidien Europe*, No. 2193 10 June 2000, Patten expounded on 'why external relations are a core function for the Commission' as well as referring to the 'unresolved tension between intergovernmentalism and Community powers' and 'ambiguity about the limits of the Commission's role [as] particularly acute in the security field'.

²³ Speech by Chris Patten, European Commissioner responsible for External Relations, 'European foreign policy and the role of the Commission within this policy area', *RAPID*. The Press and Communication Service of the European Commission, SPEECH/00/219, 15 June 2000, European Commission, Brussels.

²⁴ 'European Union external priorities', speech by Chris Patten, Member of the European Commission responsible for External Relations, to the European Parliament, Strasbourg, 4 September 2000 at http://europa.eu.int/comm/external_relations/news/patten/speech_00_291.htm.

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- ²⁵ Roman Prodi, President of the European Commission, Speech to the European Parliament Plenary Session, Strasbourg, 3 October 2000, SPEECH 00/352.
- ²⁶ Javier Solana, 'The EU's External Projection: improving the efficiency of our collective resources', Paper submitted to the informal General Affairs Council, Evian, 2-3 September 2000, SN 1731/6/00.
- ²⁷ Chris Patten, *Not Quite the Diplomat: Home Truths About World Affairs*, (London: Allen Lane, 2005), pp.155-6.
- ²⁸ *Ibid.* p.157.
- ²⁹ *Communication from the Commission on Conflict Prevention*, COM (2001) 211 Final, 11 April 2001.
- ³⁰ The main application appears to be in possible military assistance, as well as other specialist services, in alleviating the effects of a terrorist attack.
- ³¹ Action brought on 21 February 2005 by the European Commission against the Council of the European Union, Case C-91/05, *Official Journal of the European Union*, (2005/C 115/19), 14 May 2005. The decision referred to is 2004/833/CFSP implementing Joint Action 2002/589/CFSP.
- ³² Article 47 states that '... nothing in [the Treaty on European Union] shall affect the Treaties establishing the European Communities or subsequent Treaties and Acts modifying or supplementing them'.
- ³³ Aline Dewaele and Catriona Gourlay, 'The Stability Instrument: defining the Commission's role in crisis response', *ISIS Briefing*, 27 June 2005, p. 4.
- ³⁴ 'Communication from the Commission to the Council and the European Parliament on the Instruments for External Assistance under the Future Financial Perspective 2007-2013', COM(2004)0626.
- ³⁵ See Article I-41 and III-309 of the *Treaty Establishing a Constitution for Europe*.
- ³⁶ Andrew Beatty, 'Barroso in bid to bolster EU foreign policy efficiency', *European Voice*, 2 March 2006.
- ³⁷ *Ibid. Loc cit.*
- ³⁸ *Presidency Report on ESDP*, Council 10032/05, 13 June 2005, Brussels.
- ³⁹ This is a debate that has been developed by Ian Manners in particular; see Ian Manners, 'Normative Power Europe: A Contradiction in Terms?' *Journal of Common Market Studies*, June, Vol. 40 (2), pp. 235-238 and, *Normative Power Europe Reconsidered*, CIDEL Workshop, Oslo 22-23 October 2004.
- ⁴⁰ The term 'soft power' was first developed by Joseph S. Nye Jnr. in *Bound to Lead: The Changing Nature of American Power*, (New York: Basic Books, 1990) and it constitutes the 'ability to get what you want by attracting and persuading others to adopt your goals'. Hard power, by contrast, is the ability to use 'the carrots and sticks of economic and military might' to make others follow your will.
- ⁴¹ Robert Kagan, 'Power and Weakness', *Policy Review*, June 2002, at <http://www.policyreview.org/JUN02/kagan.html>.
- ⁴² The distinction may become even more blurred as the EU develops a para-military role in the form of a 'gendarmerie' involving a number of EU Member States.
- ⁴³ Manners, *Normative Power Europe*, p.15.
- ⁴⁴ See 'Germany will try to revive European constitution', *Financial Times*, 23 November 2005; 'Sarkozy proposes slimmer version of EU treaty', *Financial Times*, 12 January 2006; and 'Austrian presidency to revive EU constitutional debate', *EU Observer* at <http://euobserver.com/9/20635/print=1>.
- ⁴⁵ William Wallace, 'Europe's Impossible Foreign Policy brief', *Financial Times*, 11 November 2003.
- ⁴⁶ *Treaty establishing a Constitution for Europe*, Article I-24 (7).
- ⁴⁷ Patten, p.159.
- ⁴⁸ Nevertheless, important progress was made which resulted in a May 2005 Progress Report, prepared jointly by Solana and Barroso, as well as hearings on the EEAS in the European Parliament.
- ⁴⁹ Graham Avery, 'The European External Action Service: The Viewpoint of the European Commission', presentation at a Symposium of the Europäische Akademie, Berlin, 17 October 2005.