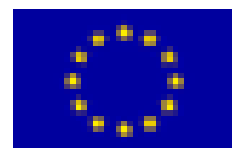


From the Convention to the IGC:  
Mapping Cross-National Views  
towards an EU-30



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**“Capacity and Actor building: Which Instruments and Institutions does the EU need to enhance its Capacity to act with regard to its Trade, economic Cooperation and foreign, Security and defence Policy?”**

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**PAPER BY**

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**“THE EU’S SYSTEM OF EXTERNAL REPRESENTATION”**

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## I. To start with - more questions than answers as to the potential for reform

The **divergences of views of the Fifteen over Iraq** and the way in which the issue was treated (“letter of Eight”) have produced a considerable setback for the CFSP. Some commentators have gone as far as to predict **the end of the whole “undertaking”** while others – rightly – argue that despite the undeniable, however, understandable rifts over such a key question, i.e. on peace or war – the CFSP continues to exist and produces remarkable results like the most recent crisis management operations in Bosnia (EUPM) and Macedonia. Sceptics argue that this negative experience will massively reduce the potential for CFSP reform – and the postponement of drafting the relevant articles in the skeleton treaty in the European Convention might confirm this trend; others, on the contrary, see **increased synergetic effects** to achieve substantial progress.

After signature of the Accession Treaty, i.e. from mid-April onwards, the **future ten member states** will have full access to all CFSP levels as observers and later on “participate fully” in the intergovernmental conference. Though it is generally assumed that the “newcomers” already widely **share the acquis politique of CFSP** their rather newly gained national sovereignty might prevent them from favouring far-reaching reform proposals like the one on majority voting in CFSP thus **not necessarily facilitating compromises**. Depending on how the representatives of the new countries will perform in the daily CFSP business and familiarise with the procedures in particular the debate on **institutional reform** in the second pillar **might be further accelerated**, e.g. with regard to the system of rotating presidencies.

The debate on the EU’s external representation and the potential of reform there cannot be isolated from the rest of the reform agenda, i.e. **the final outcome** will be the **product of larger package-deals** among those favouring more **integrationist or intergovernmental approaches** and will not necessarily follow the criteria of more visibility, continuity, greater efficiency and more consistency of Europe’s profile in matters of foreign and security policy.

**Current proposals focus** very much on the idea of how to improve **external representation at the political level** while the administrative dimension seems to find less attention. Both dimensions leave the outside observer increasingly blurred the more he/ she tries to identify the elements in greater detail and how the new constructions might work.

## II. Where do we come from – a proliferation of functions and actors

The system of the EU’s external representation is a complex one. This is due to

- the distribution of competences, - exclusive, mixed and national – in the various policy fields which per se have an external dimension like trade, economy, development cooperation, CFSP, fisheries, agriculture, enlargement etc. which “produce” a number of

different actors in international for a like WTO, IMF, G 8 etc. (“bicephalous” presidency or Commission alone)

- increased external dimensions of traditionally internal policies like on environmental issues, justice and home affairs, monetary issues etc.
- the **growth in CFSP**, including ESDP, most obvious in
  - **permanent presence of CFSP presidency all around the world at both political and administrative level**
  - normal business to inform third countries about CFSP output (e.g. almost 200 declarations and over 400 demarches a year) either by the Presidency Foreign Minister or even Prime Minister, the Troika, presidency embassy in third countries
  - fact finding and mediation in crises regions like the Middle East, the Balkans
  - regular political dialogues (at present over 300 meetings a year with different formats)
  - **High Representative for the CFSP**
  - **Special envoys** (at present eight, including the Head of the EUPM and the Operation Commander for Macedonia)

Since the relationship between CFSP and other external policies will be dealt with elsewhere during the seminar the focus of this paper will be on the external representation of the EU through the CFSP framework.

It is more than obvious with regard to treatment or better non-treatment of the then Belgian Presidency by the US Administration after 11 September 2001 and the forthcoming enlargement that **the external credibility of the CFSP is affected to the extent small EU countries have to carry out the role of the CFSP spokesman**. This is not to say that small countries are per definitionem unable to manage the CFSP business. They have done so quite successfully since their interests in a given problem are minor compared to the bigger partners thus easing the task to find a compromise. But the political weight of their representatives in the international arena might count less and also among their EU partners similar concerns have been issued more than once. In contrast the **profile of the Fifteen** has been considerably **improved by the post of the High Representative for the CFSP** which, however, has a lot to do with the impressive skills of the person who holds the post until 2004 at least, former Spanish Foreign Minister and Nato Secretary General, Solana. At the same time **structural rivalries** between the post of the High Representative and that of the **Commissioner in charge of the CFSP** have become obvious especially in the area of civil crisis management.

The nomination of **special envoys** for regions/ countries which have been defined as particularly relevant for the Fifteen has added to giving the CFSP a clearer and more permanent “face” and “voice” though increased financial resources and a clearer definition of their relationship with other CFSP actors and in particular the High Representative seem to be necessary.

### III. Requirements for reform – some comments on current proposals

Among the ideas presently under debate the up-grade of the post of the High Representative for the CFSP towards a European Foreign Minister<sup>1</sup> (Secretary of the Union<sup>2</sup> or European Representative for External Affairs)<sup>3</sup> receives most attention. He is supposed to act as the key

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1 Term used in the Franco-German proposals for the Convention.

2 As suggested in the Communication of the Commission KOM(2002) 728

3 This term was preferred by the majority in the working group VII of the Convention CONV 459/02.

spokesman towards the outside instead of the rotating presidency and Troika at ministerial level at least. He should receive the right of initiative along the one the member states dispose of in CFSP and be better staffed both in terms of personnel and finances.

Though the principle seems to be widely accepted (also among the smaller EU member states)<sup>4</sup> not surprisingly the proposals differ with regard to the details and pose **numerous questions**:

- **Can one single person over a period of five years carry the already heavy burden to speak in the name of the EU internationally** (in 2001 93 meetings at ministerial level were held with third countries in the framework of the regular political dialogues - not to mention the other travelling activities of the Presidency and/ or the High Representative e.g. to the Middle East and the Balkans), plus to actively contribute to the internal forming of the *acquis politique* through his right of initiative and to act as the mediator of an enlarged CFSP group since he is to chair the meetings of the Council in its format of external relations<sup>5</sup>?
- If the future European Foreign Minister is to become at the same time Commissioner for external relations or act in the “double-hat” version the workload would even grow. While some may emphasise the physical resilience linked to just a demanding post others may fear a too big concentration of power in the hands of one single actor.

#### Questions in **relation to the President of the European Council**

- Will a strengthened High Representative not immediately run into **rivalry** with an elected President of the European Council who is supposed to carry out a representative function in foreign affairs as well?
- Is it a realistic scenario that such a President will limit himself to a mere conduct of the political dialogues at the level of heads of government (at present in total 12 meetings a year, i.e. with Russia, the United States, China, Ukraine, Japan, Canada, India) at summit level in the CFSP framework and informing the outside world about the CFSP decisions of the four meetings (normal frequency of European Council plus eventually one or two special ones) while the High Representative will do the daily business also and in particular when it comes to an international crisis?
- Does the fact that the future European Foreign Minister will be nominated by the Heads of State and Government not automatically imply a somewhat subordinate position towards the President of the European Council?

It is more likely than not that the President of the European Council will also claim a permanent foreign policy service to conduct his functions, i.e. he will take recourse to the staff of the European Foreign Minister or create a bureaucracy of his own which will require additional coordination efforts.

#### Questions in **relation to the future role of the Commission in CFSP**

Will the up-grade of the High Representative imply a **downgrade of the Commission's role** in CFSP (arts. 18, 22 and 27 TEU) and in the longer term even a shift in the institutional triangle ?

The “double hat” approach favoured by many at the moment obviously means that there will be only one person, i.e. the European Foreign Minister, and no longer a separate Commissioner at

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<sup>4</sup> See also the Benelux-Memorandum of 4 December 2002.

<sup>5</sup> Which include also external trade, development cooperation and ESDP according to the Conclusions of the European Council of Sevilla, 21/22 June 2002. Annex II.

the negotiation table and the Troika will automatically disappear, i.e. the High Representative will exert the former right of initiative of the Commission, he will obviously have a special status inside the Commission College and will be nominated in a different way than the other members of the Commission, i.e. with qualified majority by the European Council and in consultation with the President of the Commission (obviously no participation of the European Parliament).

In a **less ambitious though more practicable option** (as suggested e.g. jointly by Spain and the United Kingdom)<sup>6</sup>, i.e. a less integrationist model and oriented towards the intergovernmental approach, the separation of competences would remain and the future European Foreign Minister would take only part as some sort of observer in the CFSP related meetings of the Commission **leaving the latter's right of initiative and the Commission participation at all CFSP levels untouched**. Whether this would also imply continued external presence in CFSP with a strengthened High Representative needs further clarification.

In order to achieve greater consistency of the EU's international profile joint initiatives of the European Foreign Minister and the External Affairs Commissioner could be envisaged. Assuming that they would reflect in a particular way the common interests of the Union in a given subject decisions in the Council on these matter might be taken by qualified majority.

The **need for a deputy /deputies**, i.e. who will chair the Council in case the European Foreign Minister is absent and represent him in the Commission framework.

The German proposal submitted to the Convention working group VII suggests that **the European Foreign Minister himself should nominate two of them: one chairing the COPS<sup>7</sup>** and – in exceptional cases – **the Council**, the other one **representing him inside the Commission**. The deputies should be confirmed both by a majority vote in the Council and by the President of the Commission. Though not explicitly said the deputy Council chair would also act as spokesman towards third countries in case the European Foreign Minister could or would not do so at ministerial level. Besides, he would be responsible for the EU's external representation at the level of senior officials (COPS) where regular political dialogue meetings already mounted up to 66 meetings in 2001 not to mention ad hoc consultations with third countries.

#### Requirement for **administrative support**

For reason of greater efficiency it is necessary to **end the separation of the CFSP bureaucracy inside the Council Secretariat and to integrate both DG E and the Policy Unit into one** which would form the basis of a future European Foreign Ministry/ European Diplomatic Service. This new "creature" would be **additionally staffed by diplomats from all the EU member states** – e.g. the Policy Unit suggests five officials from each country – in order to meet the enlarged challenges of CFSP policy formulation and implementation. Compared to the old presidency formula member states and particularly the smaller ones might find it an attractive alternative to send their diplomats to this new "institution" in Brussels where they might take over responsibility for certain CFSP issues on a much more permanent basis than doing so for six months once in 12,5 years.

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6 Contribution of the Convention members Palacio and Hain on the Union institutions, 28 February 2003, CONTRIB 264.

7 So far the High Representative has not exerted the chair in the meetings of the Political and Security Committee which is explicitly foreseen for crises situations.

For the sake of greater consistency a **direct link with the Commission services** and in particular with the DG External Relation has to be established. Whether this will go beyond intensified contacts between the officials e.g. towards a delegation of additional Commission personnel to the European Foreign Minister or even as far towards a more general right of the latter to take recourse to the Commission staff or even to integrate the Commission DG into the new body<sup>8</sup> will depend on the final construction of the “double hat” approach or any other model.

As a logic consequence to achieve greater visibility and continuity in CFSP the EU Foreign Minister’ s staff would also be responsible for the daily diplomatic business towards the outside, i.e. **to conduct the political dialogue (in 2001, 140 meetings) at expert level, fact finding missions etc.**

Whether such a complete shift of responsibilities from the former CFSP Presidency system to a Brussels-based permanent unit will find the support of all the member states remains to be seen. It may well be that the advocates of the rotating presidency and those who fear a new source of power emerging from the post of a European Foreign Minister and his bureaucracy might opt for a **system which preserves some functions for the member states**. They might claim to have **chairmen at the CFSP working group level** (at present 31 groups) who would either **follow the existing rotation**, or – going a step further as has been done already with the EU Military Committee – to **elect their presidents from their own groups for one or more years**.

Another possibility might be to translate the idea of **team presidencies** as suggested in the British-Spanish text<sup>9</sup> to the CFSP working level though immediately the question arises as to the composition of the teams and the distribution of the “portfolios” among them (according to special expertise, historical ties, regional proximity...? Furthermore, any such mixed system would also require a clarification of who is going to be responsible for CFSP external representation at administrative level and make intense coordination between Brussels and the responsible diplomats in the capitals urgent.

**As a logical consequence of the up-grade of the High Representative towards the “double-hat” model and of the introduction of an “institutional presidency” in the Council of External Relations CFSP external representation in third countries should be organised accordingly, i.e. the already existing Commission Delegations should be staffed with personnel from the European Diplomatic Service (see above) and would both act as the EU spokesman towards the host country (instead of the diplomatic mission of the former EU Presidency country) and chair the regular CFSP related meetings of the diplomats from the EU member states at place.**

Complaints have been numerous about who speaks in the name of whom particularly at places where not all EU member states have diplomatic missions and where the system of the rotating presidency caused additional irritation. The fact<sup>10</sup> that only four of the present EU member states have diplomatic missions in more than 100 out of the existing 190 countries in the world and two thirds of the Fifteen are represented in less than 90 countries while the Commission delegations amount up to 128 give some indications where the limits and the potential for the EU’s “voice” might be.

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8 This can be read from point 5 of the Chirac-Schröder contribution on the institutional architecture of the EU, 15 January 2003. [Http://www.bundestkanzler.de](http://www.bundestkanzler.de)

9 Contribution of the Convention members Palacio and Hain on the Union institutions, 28 February 2003, CONTRIB 264.

10 For greater detail see: Simon W. Duke: Preparing for European Diplomacy? In: Journal of Common Market Studies 5 (2002), pp.849-870.

Since the responsibilities of the Commission representations have mostly been in the sphere of economic assistance, humanitarian aid etc. their staff would need some professionalization towards CFSP issues. This could be done by special training in an European Diplomatic Academy (to be created yet) which should also be offered to the services of the European Foreign Minister and the diplomats from the EU member states as well.

In order to make such a solution of **future EU Delegations**, which requires also the legal personality of the EU, acceptable to the member states a **secondment from national diplomats** should be envisaged. They could – preferably - come from the services of the future European Foreign Minister, from the diplomatic missions of the member states at place or the foreign services in the capitals. More far-reaching ideas towards integrating parts, i.e. those related to political and economic issues, of the national embassies already into the EU missions seems to remain a too conflictive issue.

The new profile of the EU delegations would also solve recent tensions and competition between the Commission Delegations and other EU actors in third countries namely the offices of the special envoys and some sort of Council “offices” which do political observation and concertation in order to support Solana’s mediation services e.g. in the Balkans. To unit these various speakers under one common “roof” could add to the EU’s credibility and homogeneity as an international actor.

**CFSP external representation at international organisations, i.e. the United Nations and the OSCE in particular, through “one single face and voice” should almost “naturally” belong to the duties of the future European Foreign Minister and his diplomatic service though such an approach might presently meet with certain reservations among the member states at least as far as the UN Security Council is concerned. More ambitious ideas towards one single EU seat therein seem to be less timely at the moment.**

To present the EU’s position in the annual **UN General Assembly** as well as in the **OSCE ministerial meetings**<sup>11</sup> would belong to the normal business of the future European Minister of Foreign Affairs which was previously carried out by the respective Presidency Foreign Minister. Besides, the future CFSP spokesman might profit from a practice introduced in 2001 which enables the High Representative for the CFSP to speak in the **UN Security Council**. However, this “right” has been limited to one appearance a year so far and has been confined to policy substance which has been formulated already in CFSP as the *acquis politique*. Against the background of recent experience of member states’ behaviour in New York national interests play a dominant role there and the obligation to consult the other EU partners and to emphasise the common EU viewpoints<sup>12</sup> seems to be easily forgotten. **An enhanced role for a strengthened High Representative looks therefore rather unlikely** at the moment.

Concerning **CFSP representation at the numerous administrative levels** of the UN-system, e.g. the Committees, doubts may be justified as to whether a joint EU delegation composed of the existing missions of the Commission and the permanent offices of the Council (in New York and Geneva) will be the appropriate spokesman. The fact that the definition of the member states’ positions on the UN agenda remains a national competence for foreign policy issues seems to work in favour of continuing with a system which would **leave the main coordination and external representation tasks in the hands of the diplomatic missions of the member**

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11 While EU representation at the OSCE summits would be secured by the President of the European Council and the President of the Commission.

12 As defined in articles 11 and 9 TEU.

**states.** Similar to the above-mentioned division of labour at CFSP working group level in Brussels diplomats from the EU member states which are all present at the sites of the UN and OSCE might take over specific tasks according to subjects and to the special skills of the personalities involved. These would include both to chair the internal CFSP coordination meetings at place and to speak on the EU's behalf in the respective international committee sessions.