

Notre Europe

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## Can Europe's Foreign Policy rekindle the constitutional Process?

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Two publications by Jean de Ruyt and Gilles Andréani

## Notre Europe

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# Foreword

This study comes second in a series of contributions Notre Europe proposes to publish with a view to get the integration process back on tracks after the setback inflicted by the French and Dutch referendums.

In the first, MEP Andrew Duff looked into the ways to preserve the mainstay of the Constitutional Treaty. The current publication extends the discussion with a critical look at the future of the foreign policy part of the Draft Constitution.

This topic lays claims to our particular attention on a number of grounds. For many years opinion surveys have shown that it is in the domain of Foreign Policy that the call for a European voice is the strongest. However the intergovernmental cooperation mechanisms set up in Maastricht and Amsterdam have not done much to help Europe assert herself on the international stage while the relevant provisions in the treaty met with a relative consensus, when they were being evolved by the convention as well as during the ratification debates. It therefore makes a lot of sense to consider the best way to preserve this achievement.

Does this then entail the provision of a separate treaty retaining the main advances in the Constitutional Treaty? Jean de Ruyt, Belgian Ambassador in Rome, has the merit to grasp the nettle and to do so with caution. For the dismemberment of the Treaty would be followed by a range of fallouts. The Constitutional Treaty reflects a fragile balancing act between the diverging preferences of the Member States and it would not be easy to pluck out one or other element without opening the door to a “cherry picking” exercise, the end result of which would unavoidably be to force down the ambitions of the constitutional project.

Gilles Andreani, Senior Auditor in the Court of Auditors and Associate Professor at The University Panthéon-Assas Paris II approaches the question under another angle. Addressing the structural weaknesses, which prevented the CFSP to keep the promises of Maastricht, he reviews uncompromisingly 15 years of short-lived progress, now compromised by the Iraqi crises and enlargement. In this context, he concludes it would be futile to have great expectations of the implementation of the treaty’s provisions, useful though they may be. Better favour a pragmatic approach focussed on a small number of key issues, such as the Middle East, Russia or Iran and on modest reforms aimed at a prompt reinforcement of cooperation between European national governments. These distinctly contrasting perceptions have in common a resolve to move things on without waxing lyrical on the destiny of European foreign policy, as has unproductively been the case. *Notre Europe* publishes these studies with a view to ease the shift from critical analysis – unobtrusive as it was – to debate. Looking forward to a fresh start.



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# I. Is a separate Treaty for Foreign Policy Worth

## Considering?

### Jean De Ruyt

Jean De Ruyt was born on 14 September 1947 in Louvain (Belgium). He entered the Belgian Diplomatic service in 1974. After assignments in Kinshasa, Algiers and New York, his career centred on multilateral diplomacy. He was successively Counsellor at the Belgian Representation to the European Union (1982 to 1987), Deputy Chief of Mission in Washington (1987 to 1991), Head of the politico-military Department in the Belgian Foreign Ministry as well as Ambassador to the Western Union (1991-1994). In 1994 he was accredited as the Belgian Ambassador to Poland. He went back to Brussels in 1996 as the Permanent Representative to the NATO Council and, at the end of 1997, was appointed as the Director General for Political Affairs in the Foreign Ministry. He served in this capacity as the Belgian member of the Political Committee of the European Union. In April 2001, Jean De Ruyt moved to New York to be the Belgian Permanent Representative to the United Nations. He presided the European Union Group in the second half of 2001, at the time of the September 11<sup>th</sup> events. He was accredited as Ambassador to Italy in September 2004.

Jean De Ruyt studied Law at Louvain University and International Relations at the School of Advanced International Studies (SAIS) of the Johns Hopkins University.

His main publications are: « L'acte Unique Européen », Editions de l'Université Libre de Bruxelles, 1987 (2<sup>nd</sup> edition 1989) ; « European Political Cooperation towards a European Foreign Policy », Atlantic council of the U.S., 1989; «A Minister for a European Foreign Policy», Robert Schumann Centre, European University Institute, Florence, 2005.



## Executive Summary

- Recent events in the Middle East have confirmed the “need for Europe”, i.e. the necessity of an increased involvement of the European Union as such in the management of international crises.
- The innovations introduced by the Constitutional Treaty could, at the present stage of European integration, make this involvement more efficient and coherent. But, due to the negative results of the referendums in France and in the Netherlands, they cannot materialize - and some even challenge their relevance.
- Four years ago already, the European Convention recommended the appointment of a European Foreign Minister and the creation of a European External Action Service and, ever since, these new instruments have enjoyed a broad support from the European citizens. But, since they can only be put in place by modifying the existing Treaties, they remain hostage to the stalemate reached by the debate over the future of the Constitutional Treaty.
- In a more and more dangerous world, the European Union should strive to appear stronger and more united, whereas, if some outdated and discredited practices of CFSP remain in place - or if their adaptation is merely pragmatic - the present “acquis” of EU’s foreign policy itself might be challenged.
- The credibility reached by Javier Solana from his ambiguous position as Secretary general/High Representative for CFSP might not survive his departure, unless it is consolidated by the institutional innovations proposed by the European Convention.
- Therefore, whatever compromise is reached at the end of the German Presidency on the future of the Constitutional Treaty, a formula should be agreed to put in place the new instruments of EU’s foreign policy as soon as possible. The basic objective should be to have a European Foreign Minister as a member of the next Commission in 2009.

## 1.1 THE NEED FOR EUROPE

This summer 2006 has been particularly testing for those to whom it falls to manage international crises.

The latest war in Lebanon has made plain the emergence a new balance of power in the Middle East: Israel seen as vulnerable; the United States weakened as a result of the Iraqi quagmire and the lack of internal consensus on foreign policy; Hamas and Hezbollah, terrorists for some, heroes for a growing number of others; Iran confirmed as a regional - and nuclear - power; Arab governments frightened by Shiite rising strength; regimes such as Pakistan and Egypt fragilised by the Islamist groundswell.

So, what of Europe in all this? In this August Lebanese crisis, she has exposed both her strength and her weakness.

Her strength is that she comes over as an exporter of peace and security and defends the values, which make the rest of the world wish that she were more involved in the management of international crises.

Her weakness is her inability to put up from the outset a united front. Not because of deep political disagreement regarding the policy to adopt. But because independent initiatives spring up from hither and thither without prior coordination. Her external representation remains diffuse and unclear – only to disappear altogether no sooner has the debate moved to the United Nations Security Council. The Member States continue to act in dispersed order – even for the evacuation of their nationals.

Some European States did take a courageous and determined stand and the Council of the European Union played an all be it symbolic role in the mobilisation of the peace force. Finul + will be essentially European, which represents a new and significant dimension. But it does not follow that this generous involvement will confer the Union greater authority in the region than have her past contributions to the Israelo-Palestinian peace process.

Thus there is, in today's world, a growing need of Europe. The convergence in Member States positions is growing stronger as their interests come closer. But the European Union does not always have at her command the required capacities to fulfil the expectations vested in her and to take up fully the place that could be hers.

"So what's new?", one might be tempted to say: the depressing dirge of European impotence in the Middle East is well rehearsed. True, but it is also true that things could have been different: European governments, along with the Union's Institutions had taken steps, only four years ago, as the Iraq war loomed large, intended to improve their ability to manage more efficiently and with a greater coherence such a crisis as we face today.

They had unanimously decided that, this autumn, the European Union would give herself a Minister for Foreign Affairs supported by a truly European diplomatic service. This would have enabled the Union to present, at the peace negotiation table, a unified external capability,

bringing to bear, in a concerted effort, the joint leverage of the Commission, the Council and the Member States’.

This was provided for in the Constitutional Treaty, which should have come into force in November this year. The momentous accident, which broke the momentum towards an ever-closer Union, also blocked the implementation of the new capabilities Europe needs to take up her place on the world stage there to defend her interests.

The rejection of the treaty in France and in the Low Countries was not directed at provisions dealing with foreign policy. Its reinforcement continues to enjoy broad support in these countries as everywhere else in Europe. But the presence of these measures within a set of texts to be given constitutional value has had the coincidental effect to deprive Europe of an external capability recent events show she is in urgent need of.

Javier Solana’s new incarnation as Minister for Foreign Affairs would obviously not have been enough miraculously to transform the Union into a united and powerful world actor. But the High Representative has, seven years down the line of a remarkable rise in influence, achieved the absolute maximum permitted on the basis of the prudent provisions taken in the Amsterdam Treaty; whoever succeeds him in this position would have to scramble through the same obstacle course.

The further stage set in the treaty is therefore indispensable, its necessity has been felt for years. The fact that it could not be met, the fact that the CFSP continues to function according to procedures long thought outdated is a severe handicap – in the field but also in the perception by third parties of the Europeans’ political will to sing from the same hymn sheet.

So we must, without further ado, as early as next year and independently from the debate on the future of the Constitutional Treaty as a whole, resume work on the innovations put forward by the Convention all of four years ago, to reinforce the Union’s external action. There is no other choice and the alternatives put forward during the period of reflection owe much to hypocrisy, or an unwarranted/untested use of the Coue method.

This is what we propose to demonstrate here. In our view, the minister option as set in the Constitutional Treaty is the only one that, at this stage in the European construction, genuinely allows for advances towards more coherence and efficiency in Union foreign policy.

To this end, a new treaty is required; No other procedure is open to us; however this treaty can take different shapes depending on the evolution of the overall debate on the future of the Union.

## 1.2. THE INNOVATIONS SET IN THE CONSTITUTIONAL TREATY

In the autumn of 2002, the participants to the European Convention, mandated to prepare the Constitutional Treaty, had delegated to a task force the examination of the ways to improve the coherence the Union's external action and especially: how to enable it to act more rapidly and more effectively on the international stage<sup>1</sup>.

The group had soon arrived at an agreement on an inventive formula making it possible to correct the weaknesses in the external representation of the Union as well as preparing her to face up to the challenges looming on the horizon – a formula originally known as the “double hat”.

For the idea, which had been around for a few months, consisted in entrusting the same person with the function of High Representative for the Union common foreign and security policy (the CFSP) and that of Commissioner for External Relations. The “Minister for European Foreign affairs”, as s/he was soon known, would preside the Council of Foreign Affairs and would replace the revolving presidency in all its contacts with third parties by virtue of the of the CFSP. Alongside this, s/he would ensure the coordination of external activities within the Commission of which s/he would be a Vice-President.

This would reinforce the coherence the Union's action as well as its efficiency since there would henceforward be one single representative instead of three to state Europe's position and act in her name<sup>2</sup>.

At the time the European Union was fairly confident regarding her role on the international stage:

- Indeed, she had just succeeded, by way of a large-scale enlargement, in stabilising for good the European zone of the former Soviet empire.
- She had responded effectively to the first post 9-11 fallouts and was taking part in her own capacity, from the second half of 2001, to the “Quartet” set up to manage the Middle East crisis and draft the road map leading out of it.
- She had taken back the upper hand in the Balkans, where she prepared gradually to take up NATO and UN responsibilities.

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<sup>1</sup> The composition, the mandate and the activities of the so-called Dehaene group are kept in the European Convention's records. See also Jean De Ruyt, *Un Ministre pour une politique étrangère européenne (A Minister for a European Foreign Policy)*, Policy Paper 05/02, RSC, European University Institute, pp. 14 and 15

<sup>2</sup> A good description of the minister's desired profile is to be found in the feature published by Brian Crowe, *Foreign minister of Europe*, The foreign Policy Center [info@fpc.org.uk](mailto:info@fpc.org.uk); See also Jean De Ruyt, *Un Ministre pour une politique étrangère européenne*, op.cit. Pp.18 to 24

- The foreign and security policy, enshrined in the Nice Treaty, was starting to command operational capabilities, which, no later than 2003, placed her in a position to launch “European” operations not only in the Balkans but also in Africa<sup>3</sup>.
- The Union was achieving at last an identity on the international stage thanks to its “High Representative for European Security and Defence Policy”, function created by the Amsterdam Treaty and brilliantly carried off since 1999 by Javier Solana.

Yet a threat was emerging: that of an internal split between Europeans on what remains the Achilles tendon of EU “common foreign policy”: its relationship with the United States. For the Bush administration was preparing a military intervention in Iraq, which did not enjoy much support in the Union. And it is well known that, when the United States put their European allies to the test of transatlantic solidarity, all the efforts undertaken to develop a common European position become subordinated to each member’s impulse to define first their position towards Washington.

Convention members had understood that this would be a tough nut to crack, but decided that it should not prevent the Union to pursue its sedate progress towards the implementation of an authentic foreign policy, quite the reverse. They judged that, confronted to the threat of an internal division on American policy, and to the risk of dilution of common positions over the Middle East issues, the best course of action had to be the reinforcement internal structures.

Accordingly they came to a prompt agreement on the extension of existing instruments with a view to make them more effective and thereby better suited to the prevention of internal crises and the consolidation of common positions – through the reinforcement of a joint action capability, with a single spokesperson, highly visible and highly identifiable.

This explains the success of the Minister for Foreign Affairs formula from its conception and why it remains popular, all the reservations regarding the “constitutional” package notwithstanding. It has not been seen as an institutional shake-up, a supranationalist victory. It has been seen above all as a means for Europe better to defend her interests in the world.

That is why the formula sailed through the intergovernmental Conference stage. When they agreed on a final text for the Constitutional Treaty, the heads of government of the European Union went so far as to decide there and then that Javier Solana would be the Minister as soon as the Constitution, planned for the autumn of 2006<sup>4</sup> came into force.

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<sup>3</sup> The first operation of the ESDP in 2003 was a police operation in Bosnia, the replacement of the United Nation police force; it was followed by a military peace keeping operation in Macedonia. Then came operation «Artemis» in Ituri in the Democratic Republic of Congo to reinforce the United Nation mission for the Congo, MONUC

<sup>4</sup> See the declaration by the Heads of State and Government set in annex to the Council press release 29 June 2004 n°10995/04, press 214

This decision added to a prestige and credibility, which he – fortunately – continues to enjoy, more on personal grounds than on account of his title and function of High Representative.

### 1.3 A STAGE IN A PROGRESSIVE EVOLUTION

The innovations of the Constitutional Treaty concerning the CFSP don't even come close to setting up the United States of Europe. They take next to nothing away from national sovereignty in this domain and do not alter the prerogatives of European "powers" – particularly not those of the permanent members of the Security Council. The fact that these novelties are written up in a "Constitutional Treaty" should not raise any false hopes in this respect: they are nothing but a stage among many in the development of Union instruments for foreign policy purposes.

The European Union's foreign policy has, in effect been in constant evolution since the launch of Political Cooperation at the beginning of the 70s. Learning from the failures of bolder initiatives, it has deliberately been thought out as an evolutive and pragmatic process so as not to fluster national sovereignties let alone sensitivities.

Its progress was smoothed by the end of the Cold War and the advent of new challenges – those of a global world in which no member of the Union can alone, take the world stage by storm to defend their interests. A world in which Member States' interests have, by and by, become more and more "common".

The development of the CFSP was indeed gradual, in order to enable the Member States – particularly the big states – to evaluate at each stage the advantages of common action as against an isolated national initiative and thus to justify the principle of working towards a "convergence" of individual member's sovereignties. But it was so also because community gains, the single market without internal barriers, the European dimension to industry that it creates have multiplied the motives to stand as a homogenous grouping.

This grouping, meanwhile, found itself increasingly confronted to competition within a "global" world with new entities capable of – and intent on – taking up on the world stage a role no European country is able – or still willing – to fulfil alone. These are the hard facts of today's world and the integration process, in political terms, does no more than follow this evolution, accepted if not desired by the vast majority of the continent's peoples.

The evolution of political cooperation then of the CFSP has been remarkably regular throughout the 80s and 90s, at the level of engagements, field of action as well as at the level of institutional and operational capabilities. The designation of a High Representative then the launch of the common security and defence policy – so soon become operational – brought, in the first years of the new century, evidence that the Member States were not only able to put out common statements and to agree on economic sanctions but that they were also ready collectively to take their responsibilities in the management of international crises.

The Yugoslav wars sped up this Union assertiveness as political actor in the management of crises but the Maastricht Treaty had created a European "foreign policy" without providing it with the means to make a stand when confronted to challenges of that order. The poor show of

successive Presidencies at the beginning of the crisis led the Union to create the position of special representative– David (Lord) Owen, then Carl Bildt – a formula, the relative success of which opened the way for the inception of a High Representative alongside the revolving presidency– as provided for in the Amsterdam Treaty – which none the less carefully circumscribed his/her powers.

Among the lessons drawn from the Yugoslav crisis, came the Union's growing awareness of its need for its own military capability, autonomous from NATO. The implementation of the European Security and Defence policy (ESDP), born from the Franco-British Saint Malo agreement in December 1998, coincided with the nomination of the first High Representative, Javier Solana, fresh from his "victory" in the war against Milosevic's Serbia as NATO's Secretary General.

Javier Solana's personal successes but more importantly the "need for more Europe", that is the wish of third parties - and of the very Europeans citizenry – for a deeper as well as more direct implication of Europe as such in the management of international crises, brought into light the weaknesses of external representation as framed in the Maastricht and Amsterdam Treaties.

At this stage in its evolution, the Union's external action needed more coherence and its efficiency could no longer be accommodated in the lopsided system of revolving presidency and "troika" representation. This is a generally accepted fact – especially in the light of an enlargement to numerous small countries, which nothing has prepared for presidency duties in the CFSP field.

It had thus become clear, at the time of the European Convention sittings, that a new stage had been reached. And it is almost organically, on the basis of what the Union had under its belt, building on Javier Solana's successes, that the idea of a minister advanced.

In spite of the liberties its implementation took with the Union's institutional system, the "double hat" formula won the day because it broadly fitted in with the "pillars" system while keeping the CFSP outside the community method; it sidestepped the more cosmetic than effective uniformisation of decisional instruments<sup>5</sup>.

It is clear that, with the creation of a Minister for Foreign Affairs post, Convention members did not think they had come up with the perfect instrument to run Europe's foreign policy for generations to come. Unlike the formula for a President of the European Council, the Minister for Foreign Affairs formula was thought up for the pragmatic improvement of the existing set up and not at all as a "break" with regards to existing checks and balances: the formula would be set up, its operations kept under review and, on the strength of experience, time would tell whether further improvements were possible. Nothing could be further from a great "constitutional" design.

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<sup>5</sup> See on this subject the lucid comments on the treaty from the Jurisconsult at the Council: Piri Jean Claude, *The Constitution for Europe, a legal analysis*, Cambridge University Press, 2006

#### 1.4 THE RISK OF REGRESSION

However the so-called "Monnet" method of a progressive evolution in stages towards an ever-closer union does not sit well with breaks.

The autumn 2006 is upon us. The world has become a more dangerous place; increasingly, Europe is expected to make herself heard in the Middle East; everybody relies on her too to uphold Balkans stability before challenges still to come, such as Kosovo independence. Europe has troupes deployed there, as she has too in Africa.

Yet there will be no Foreign Affairs Minister this year or next year. Javier Solana will remain High Representative, in principle up to the end of the current Commission in 2009. The Union will continue to be represented on the international stage by the Revolving Presidency – Commission – High Representative trio and nobody knows what will happen thereafter.

If no action is taken, the situation actually risks remaining blocked into the next decade. For a minister to be in post, even within such a loose time frame, current inhibitions must be neutralised and numerous obstacles overcome – which have not much to do with European foreign policy but are liable, if nothing is done, to paralyse it, nay to undermine what has been achieved to date.

Thus, and much against better judgment, the Union's European foreign policy has become the hostage of the great debate on the construction of Europe, whereas it had always managed to evolve on the fringe, prudently, empirically.

The paradox is that a foreign policy, the consolidation of which had been sought by writing it into the "Single Act" then in the Treaty on European Union, has now been weakened in the process that lumps it together with Community policies in one treaty. Now, as a result of the blockage in this treaty's ratifications, it is impossible to undertake the modifications needed for it to function efficiently.

Some will say that the result of the French and Dutch referendums means that European citizens wish to slow down the European integration process whence it follows that popular will, clearly present in other Member States as well, should be respected.

But the fact is that, in the debates on the Constitutional Treaty as in the "eurobarometers" published since 2004, it is patently clear that, whereas citizens balk at a greater communitisation of policies directly affecting their everyday life or at the rate of enlargement, they conversely think that there is a dearth of Europe on the world stage and that they would gladly support all the means the old continent needs to assert itself faced with the new actors of the multipolarity born with the new century.

So there are sound arguments in favour of an attempt to extricate foreign policy from the current European crisis and find the means to set up as soon as possible the instruments for which an urgent need was felt as early as 2002. Failing which we risk to see the momentum of the CFSP broken and even that of the ESDP. We risk witnessing a regression of the Union as a global actor in a world, which will not be waiting for it.



To be sure, the High Representative continues his mission with utmost credibility – both within the EU and with third parties – but this, to a great extent, is down to Javier Solana's personality. What potential successor could from the outset lay claim to such credibility? Be entrusted by ministers for sensitive missions – viz recently in the Ukraine or with the Iranian nuclear quandary? Have constant access to the heads of State and government of the great powers?

The same applies to the security and defence policy: his early successes largely rest on the trust his strips of former NATO Secretary General earned him. What successor will like him prove able to manage forces and assert his authority in the running of military operations without a formal mandate to that end?

The very purpose of the creation of a Minister for Foreign Affairs post was to transform Javier Solana's personal successes into a lasting institutional formula less reliant on the personality of its bearer.

Should Solana resign or if, in 2009, at the end of his mandate, a new Secretary General/High Representative had to be found, the odds are that, adept though he may be, he will have to jump through all the same hoops as his predecessor to assert his authority and affirm his international credibility. So he would have to start right back from the start losing to the Union the benefits accrued through Solana's experience.

Things would of course be very different if the person in question was designated from the outset as a minister, with the powers and the institutional backing provided for in the Constitutional Treaty. In this case we are no longer talking of individual performance but of an institution directly stemming, on the basis of clear rules, from the Council, the Commission and the Member States.

Furthermore, the Constitutional Treaty provided for the minister to have his own diplomatic service, the European External Action Service (EEAS), astride the Council and the Commission and benefiting from the added expertise and staff from national diplomatic services.

The creation of the EEAS, lavishly debated after the signature of the treaty, has become some sort of taboo after the French and Dutch referendums. Yet, for all the efforts of the European Commission to prove that the creation of this service is not an absolute necessity, the absence of specifically European actors abroad – in the field but also in big capitals such as New York and in the multilateral arenas where crises are managed – represents a glaring handicap and considerably delays the empowerment of the Union. It also cruelly deprives her of the minimal visibility necessary to her credibility.

## 1.5. WHY IS A TREATY NEEDED?

The European Union's foreign policy began and developed over close on 20 years in a pragmatic way, outside the sphere of Community institutions. When it was brought into the treaty system, through the Single Act then through the Treaty on European Union signed in Maastricht in 2001, it remained separate from strictly community operations, in what became known as the "second pillar" beyond the Court of justice jurisdiction, out of reach of the Commission's right of initiative and, of course, free from the majority vote.

If it is so, some will say, why not stick to our guns? Why not continue to develop in a pragmatic way, outside the treaties, or more correctly, on the basis of existing treaties, implementing the modifications a more efficient operation requires upon decisions of the European Council or the Foreign Affairs Council – or indeed through practice or mere initiatives from the Commission?

Appealing though it may appear (there would be immediate progress, leaving behind the debate on the Constitutional Treaty), this third way is not open to us and to pretend otherwise is on the contrary likely to increase further the risks of regression already perceptible today.

As we shall see, it is not possible to implement the Constitutional Treaty innovations dealing with the CFSP without modifying the existing treaties. Therefore, the measures aiming to reinforce Union external action "under constant treaty revision" are tantamount to a climb down on Constitutional Treaty gains. They create the impression that they are not necessary – even though they had been deemed indispensable by a large majority of Convention members, at the time of its conception.

This is the risk the Union is exposed to by the Commission's recent initiative put to the June 2006 European Council. Indeed, and even though this was probably not its aim, the European Commission Communication "Europe in the world"<sup>6</sup> gives the impression that it is possible to progress Union action in the world "under constant treaty revision", doing thus without the innovations in the Constitutional Treaty.

The Communication has its origin in a (laudable) initiative from President Barroso essentially designed to plug the "gap" and create the impression that the Union continues to act and assert itself in the world in spite of its internal crisis.

He mandated a "task force" presided by Secretary General of the WEU Jose Cutilhero to explore what could be done to improve the action of the Union in the world without a new treaty. But the task force was received from the beginning with some reservations for it was exclusively made up of Commission representatives; Javier Solana's team was not invited to take part when, the year before, on the contrary, the groundwork towards the implementation of the European External Action Service had been a joint effort.

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<sup>6</sup> "Europe in the world", concrete proposals aiming to reinforce coherence, efficiency and visibility, 08.06.2006, Com (2006)278 final

As for the substance, the Commission Communication lists proposals aiming to improve internal “strategic planning” by way of a multiplication of “external relations” coordination meetings. However whilst it gives the President of the Commission a larger role than had hitherto been his, it blatantly marginalises the High Representative: Solana will be “invited to join the activities of the external relations group (relex) when strategic planning will be on the agenda” - whereas the Constitutional Treaty intended for him to preside it – as a Vice-President “*primus inter pares*” of the Commission!

The Commission Communication is also very conservative regarding the development of a European service for external action. It does not go beyond recommending “a better use of the Commission’s network of delegations, EU special representatives and Member States Embassies”, whilst announcing the elaboration of a “reinforced programme of staff exchange between the Member States’ diplomatic services and the Council Secretariat this taking place both within the delegations and at the Council seat” - This was already happening and it was the limited impact it had which had prompted the decision to create the EEAS.

Of course, some will say that it would not be right to pre-empt the entry into force of the Constitutional Treaty and that you cannot pick out this or that measure on the pain of distorting the whole, showing no consideration for the majority of Member States who have ratified.

The argument is unanswerable on account of its principle and would remain so if all the Member States got on with the ratification process. However, there can be no doubt that it is not the case and the “taboo” on an early implementation of some provisions in the Constitutional Treaty should not be used to backtrack on evolutions on which there was, and still is, at public opinion and governments level, a very broad consensus.

In any case, even if the political will to further anticipate the implementation of provisions in the Constitutional Treaty became more clear, it would not be possible to go much further without a new treaty or at the very least a modification of the treaty on European Union, in which are laid the provisions governing the CFSP.

Thus, if the Constitutional Treaty had come into force as originally planned in November 2006, the plan was that the Spanish commissioner left the Commission, his powers, duties and functions be handed over to the current Commissioner for External Relations Benita Ferrero-Waldner and that Javier Solana slipped into the current Commission with the “portfolio” the Constitutional Treaty has ascribed to the Minister for Foreign affairs. Could this scenario be brought about through sheer can-do – the High Representative becoming also Commissioner to External Relations despite the fact that the treaty has not been brought into force?

It would appear not. First, if such a pragmatic solution had been possible, the heads of State and government would long since have resorted to it in the more favourable political context of June 2004.

Moreover, from a legal point of view, the Secretary General/ High Representative function as defined by the treaties in force is barely compatible with a Commissioner’s mandate because it is already a double hat formula: the Amsterdam Treaty when it bound together the functions

of High Representative and Secretary General of the Council wanted to keep the function in a state of some subordination to the Presidency of the Council in office (the Secretary General of which, under current treaties, remains an auxiliary)

Neither is it possible, without modification of the treaty of European Union, to entrust the High Representative with the presidency in office's responsibilities regarding the CFSP – responsibilities devolved from it under the Constitutional Treaty but which remain an obligation the Presidency cannot elude under current treaties.

It is quite possible to imagine the presidency receding further in the background to leave the initiative of a punctual crisis management to Javier Solana – as is often the case today. But formally and as far as external representation in general is concerned, the Commission and the Presidency both remain the key players and the High Representative a figure (deliberately defined as) subordinate. Only a new treaty can ensure a unified representation.

## **6. WHAT IS THE WAY OUT OF THE CURRENT STALEMATE?**

A new treaty is thus required to change the Treaty on European Union provisions which define the respective roles of the Commission, the Secretary General/High Representative and the revolving presidency with regards to the CFSP and to allow the inception of the European Minister for Foreign Affairs. And, as we have argued above, it is desirable for these modifications to the treaty to come into force as soon as possible.

This unavoidably leads to the question of the future of the Constitutional Treaty in which these modifications are enshrined.

We shall not go into an analysis of the pros and cons of the continuation of the ratification process nor into the debate on the options open to the 2007 German Presidency to drag Europe out of the paralysis induced by the negative results of the French and Dutch referendums.

Only let us agree that, as demonstrated above, the treaty provisions regarding the CFSP are not by nature “constitutional” but rather functional and should not necessarily be integrated in a treaty at a level on the par with that concluded in Rome in 2004. Let us also agree that they do not substantially affect, the Union's institutional balance and can therefore be “isolated” from other treaty provisions<sup>7</sup>.

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<sup>7</sup> Bar conceivably, for reasons of political stability, the provisions regarding the Presidency of the European council. From a purely legal point of view, however the two functions are not linked et were incidentally developed discretely during the Convention

Meanwhile, as reasoned above, it is urgent for these provisions to come into force and this imperative should lead to a pragmatic approach with regards to the form they will take:

- In the treaty as is, after (by some miracle) all had been persuaded to ratify it;
- In a more low key presentation of it minus part III (the important provisions dealing with the CFSP and figuring in part III would be integrated, with others, in a protocol or a decision by the European Council);
- In a “thematic” treaty dealing specifically with external relations and separately submitted to ratification;
- Or finally, in a horizontal treaty of purely institutional nature.

Either of these formulae would make it possible for the provisions regarding the CFSP to make their way to ratification and the choice of one or other will essentially depend on the political will of governments.

What matters under the circumstances – much more than most of the other provisions in the Constitutional Treaty – is the urgency. As highlighted above on a number of occasions, the challenges the Union is facing can no longer be addressed effectively with the instruments currently at her command to conduct her external activities and it therefore behoves to prise the provisions on the CFSP from the trap in which they have been marooned by the (prolonged) “period of reflection”.

When it comes to timing, it makes good sense to wait for the 2007 German Presidency before re-launching the debate as any fragmentary proposal made before then would just be thrown out of court.

But there is no reason to wait any longer. The decision to create the post of Minister for Foreign Affairs should be confirmed – one way or another – in the course of 2007. A process of ratification can then be envisaged which should in any case be completed by the time the next Commission is constituted in the summer of 2009.

This timing is admittedly not very ambitious considering the dire need but it has the advantage to allow for the advent of the minister and the setting up of the next Commission to coincide.

Besides, a decision in 2007 reaffirming the Union’s intent to create the post of minister would get the positive momentum broken in the spring of 2005 going again, avoid a looming regression and prepare, in comfort and serenely, the implementation of new structures enabling the minister to function efficiently from the outset – essentially through the European external action Service.

Whichever way you look at it, it will be necessary to take in 2007 decisions regarding the future of the Constitutional Treaty. We are of the – not negligible – number who still wishes to see it ratified by all before 2009. But, from where we stand, it is necessary to make sure that the reticence felt here and there on account of some provisions do not become a pretext for the rejection of the whole.

The Constitutional Treaty texts regarding the CFSP can be kept as they are because they are relatively concise and not difficult to comprehend. But they can too, if necessary, be simplified in order to preserve at treaty level only what is essential to the creation of the function of minister, giving him/her the competences listed in the constitutional treaty and the means to function efficiently. Some less fundamental modalities could, if necessary, be subsumed in more easily revised decisions.

So we are asking that we attend first if necessary to the implementation of what is needed right now, pragmatically, without taking unnecessary risks.

We call above all for the future of the CFSP to be ensured, on the strength of what is wished by European citizens and those among the third party States keen on seeing the world draw greater benefits from Europe's action.



## II. Is there a future for the CFSP?

### Gilles Andréani

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Born in 1956, he has Masters degrees in political science and law, and graduated in 1981 from the French school of government (Ecole nationale d'administration). He has served in government since then, mostly in positions related to security policy. His latest position before his current one was head of the policy planning staff in the French foreign ministry, which he held twice, from 1995 to 1999, and from 2001 to 2004. He previously was deputy head of the French mission to NATO (from 1993 to 1995), head of the disarmament division in the Foreign Ministry (from 1989 to 1993), and deputy head for studies in the Ministry of defence (1988-1989). Parallel to his career in government, he has pursued teaching and research activities: he spent two years in 1999-2000 at the International institute for strategic studies as a senior fellow for international security, also teaching at the London school of economics. Since 2001 he teaches international relations at Paris II. His research and teaching activities have mainly focused on transatlantic and European security issues.



## INTRODUCTION

Much has been said of the CFSP. The endless train of institutional debates, European infighting, and failures in the field, which, over the last 15 years have been the hallmark of the Common Foreign, and Security Policy has been put under repeated scrutiny. Here the Eurosceptics found in the CFSP rich pickings for controversy, waxing lyrical like Gabriel Robin, who, quoting Mallarmé, saw in it the "*aboli bibelot d'inanité sonore*"<sup>8</sup>. There unswerving partisans of a communitarian Europe, such as Jean-Louis Bourlanges, diagnosed a "CFSP sickness" striking the Europeans, in a 1996 article<sup>9</sup> which has lost nothing of its validity.

Poor CFSP: too integrated for the Eurosceptics, too intergovernmental for the federalists, unconvincing all around, it has for the last seven years assumed the urbane guises of Javier Solana. As a former Secretary General of NATO, well practised in the arts of multilateral diplomacy and transatlantic relations, he has learnt that survival is entirely dependant on keeping within the consensus circumscribed by the organisation one represents, and giving no offence. The Secretary General of the Council of the European Union, High Representative for the CFSP, (for such is his title<sup>10</sup>) cannot be blamed for this, since this is precisely what the Member States and the European institutions expect from him.

Still, he exists, in as much as permitted, and not without talent, in the minuscule space in which he has been confined. Let us add that Javier Solana's prudent insightfulness, which has kept him within his remit, in no way protects him from Member States' wrath. During the Israeli operation against Lebanon in July-August 2006, Jacques Chirac publicly denounced European inertia<sup>11</sup>, even though French diplomacy had handled the crisis from beginning to end, mainly through a dialogue with the United States, and without for one moment considering a European Union intervention.

The CFSP was enshrined in the Maastricht treaty fifteen years ago; nine years ago the Treaty of Amsterdam gave it, as they put it, "a face and a voice" through the establishment of a High Representative, and brought in "common strategies" for foreign policy; eight years ago, the Franco-British initiative of Saint-Malo opened the way for the development of serious military capabilities empowering the Union; six years ago, the Nice treaty reinforced the role of the

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<sup>8</sup> "Trinkets abolished of sonorous uselessness", Translation by A. S. Kline

<sup>9</sup> *Politique internationale* N° 74, Winter 1996-1997

<sup>10</sup> This quaint wording results from the negotiation of the Treaty of Amsterdam. It was settled between Germany, whose then Foreign Affairs Minister, notoriously hostile to the nomination of a political figure as representative for the CFSP, pushed for this function to fall to the secretary general of the Council, at the time a German civil servant, and France who favoured a high-representative of political standing. France secured the principle, but the compromise title, which combined the titles desired by each side stuck.

<sup>11</sup> "As for the lessons to be drawn by Europe from the Middle East crisis, Mr. Chirac deplores her lack of presence in the Lebanese crisis. M. Chirac called, on several occasions, during the conflict in Lebanon, for the head of European diplomacy, Javier Solana, to be conferred a mandate enabling him to act in the name of the 25 EU countries, as was the case for the Iranian nuclear issue. This request was not acted upon. "Le Monde, 26 August 2006. (The fact is that Javier Solana was on the spot as early as 16 July, his offers to help were thereafter ignored).

High Representative, (which the erstwhile European Constitution later sought to refine by collapsing it with that of Commissioner in charge of External Relations). To put it simply, the CFSP has been the object of institutional improvements as numerous as its political successes have been rare. The European Union Institute for Security Studies (EUISS) carries out a recension of the "founding texts", the results of these institutional debates, the which fills three mighty tomes. By contrast, it is hard to find in the institute's publications any compelling outcome to European action in any of the major current international political theatres, from the Middle East to the strategic tension in North Eastern Asia, via Russia, proliferation or the African crises.

This state of affairs is, sadly, patent enough not to require *a priori* a further assault on the European Union by way of a fresh critique of her common foreign and security policy. There is surely more merit in defending Europe's efforts to find the path to a foreign policy suited to her specificities, and this is the ground we have long chosen to occupy.

Yet we have to confess that the exercise, commendable though it be, has proved increasingly difficult. Having got this far, we consider progress unlikely, including towards Europe's defence, without first drawing a balance sheet itemising the liabilities, and seeking better explanations than those hitherto provided. For we believe that the traditional explanations for the stagnation Europe has suffered in this field do not provide us with a diagnosis apt to suggest remedies matching the seriousness of the problem.

Europe may well say: "My pain is not so new <sup>12</sup>". Indeed, and we would like to get to the bottom of the CFSP's problems. Of course, it does not want for ill-conceived institutions, inadequate resources, and a European Union double crossed by her members, but that record, even if particularly distressing in the field we are concerned with, does not, alas, single it out. Beyond this, the problem Europe is confronted with is twofold. It has identity and historical strands which cause her to waver as to her place in the world and her capacity to remain an active agent in history: no policy can emerge from a body which doesn't not appear to know what it is and where it is bound. It is this, no less, which Europe needs addressing with the impasse the CFSP has reached today.

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<sup>12</sup> Translation by Eric Korn

## 2.1. THE ORIGINAL SINS OF THE CFSP

With hindsight, it is not that hard today to identify the CFSP's constitutive defects, which it sadly shares with an increasing number of European undertakings. Four of them are developed below – not that this list claims to be exhaustive: inadequate budgetary and institutional means, Member States' restrictions and divisions on the aims of the policy and the role of Europe, preference for institutional approaches, disconnection from practicalities and community instruments.

### PRIDE AND AVARICE

Taken together, they unfortunately preside today over many a European undertaking, where the grand scale of the stated objectives is matched only by the insignificance of the means to serve them. To wit, among the most egregious, the Lisbon agenda, through which the Europeans, in March 2000, set themselves the task to turn Europe into "the most competitive and most dynamic knowledge economy in the world between now and 2010": outwardly an offshoot of the management by objectives and preset deadlines which, up to and including the Single Market, has historically earned Europe its most significant advances; in effect a bloated ambition, with no backing from any fresh European resource. A second example is provided in the "Area of freedom, security and justice", the implementation of which was publicised in the Treaty of Amsterdam on the occasion of the partial communitisation of the third pillar; in reality a welcome but limited extension of the Union's competences which leaves her utterly bereft of the means needed to construct such an area.

The CFSP belongs in that tradition – which indeed it may have initiated – of overblown ambitions ("A common foreign and security policy is hereby established", the Maastricht Treaty proudly announces), with no institutional or budgetary provisions to match. The "common strategies" set up in support of the CFSP by the Treaty of Amsterdam proceeded in the same spirit: the Union has adopted four since 1998, on such light matters as Russia, the Ukraine, the Balkans and the Mediterranean region, namely its four most sensitive neighbour regions and the most strategically loaded. These public documents were not well received by the "objects" of said strategies who required to be treated as partners, Russia in particular<sup>13</sup>. In 2000 Javier Solana returned on them a clear-sighted verdict, estimating that "common strategies called on to date have yet to contribute to make the EU stronger and more effective in international affairs"<sup>14</sup>.

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<sup>13</sup> Who, following the publication of the Union strategy towards her, produced forthwith a "Russia's strategy regarding the European Union" and demanded the opening of negotiations aiming at the reduction of the divergences between the two documents.

<sup>14</sup> Report from the Secretary General High Representative to the Council on common strategies, 9 October 2000, P.2 (translation by the translator of this paper)

The funds available to the CFSP are the object of a specific section ("chapter 19-03") of section 4 "external actions" of the general budget of the Communities. Commonly known as the "CFSP budget", this chapter of the community budget was allocated 102.6 million euros for the year 2006. Financial perspectives 2007-2013 anticipate a rise to 250 million per year for that period.

To measure the gap between the objectives and the means to these ends, it is enough to stack these sums against the objectives set for the CFSP by Title V of the Maastricht treaty, namely:

- developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms;
- to safeguard the common values, fundamental interests and independence of the Union;
- to strengthen the security of the Union and its Member States in all ways;
- to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter;
- to promote international cooperation.

Even allowing for the slack in these objectives, and the fact that the Union contributes to their implementation alongside the Member States, who bear the brunt of the responsibility in this field, it is pretty clear that 1/1000<sup>th</sup> of the community budget<sup>15</sup>, itself amounting approximately to 1% of the 25's GDP, do not come near making the implementation of such a programme remotely conceivable.

#### **"DONNER AND RETENIR NE VAUT"<sup>16</sup>**

The modesty of the resources devoted to the CFSP is a good indication of the sincerity with which the recognition of a foreign policy competence was granted to the European Union. Many Member States among the most influential acquiesced to it with the greatest reluctance, because they feared the inroads of the projected CFSP into their own freedom in the field of foreign policy.

Nevertheless, this particular question was quite speedily resolved in the Maastricht negotiation, for there was never any question that common foreign policy decisions to come be taken other than unanimously. This crucial element assured the continuity between the "European political cooperation" of old, which, since 1972, had consisted in coordinating Community Members' foreign policies, and the CFSP in the making. Governments know they need fear nothing from

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<sup>15</sup> 112 billion euros in 2006

<sup>16</sup> This is a legal concept in English viz: The maxim (...) roughly translated to English means "giving and retaining is not worth anything," (...) encapsulates the idea that (a) person cannot give away property and at the same time retain it (re Portnoy 201 B.R. 685 (Bankr. S.D. N.Y. 1996) <http://www.uniset.ca/microstates/201BR685.htm>)

it since it continues wholly to operate under the unanimity rule. Though the opponents of the Maastricht Treaty claimed to be concerned at the extension to foreign policy of community competences, deep down, they concurred with the treaty's advocates in the view that national governments' freedom of action would not be restricted by it.

The astonishingly complicit exchange between François Mitterrand and Philippe Seguin during the 3 September 1992 televised debate on TF1 on the occasion of the referendum campaign bears this out:

“Philippe Seguin – When it comes to community diplomacy, I do not wish for France to restrict her diplomacy to compulsory Community scrutiny, even subject to the unanimity rule, as you know very well, Monsieur le President, unanimity rules often amounts to levelling out. Now, France is a great country with a long history, values to embody and uphold, who still has a foreign policy of her own and who must have her say.

François Mitterrand - Fortunately.

Philippe Seguin – which must be run.

François Mitterrand – We are making sure of that.

Philippe Seguin – I have in mind two great moments of your foreign policy: your address to the Bundestag in 1983 and your trip to Sarajevo, of which I approved. I approved these two initiatives, I hope that tomorrow, whatever the referendum outcome, the possibility for your successors to act similarly will be safeguarded.

François Mitterrand - The Maastricht Treaty will allow it. I thank you.”

Indeed, the nub of the Maastricht negotiations about foreign policy was not concerned with upholding the Member States' freedom of action, which was a given from the outset, but with the desirable degree of European ambition in the field of defence. This debate opposed the most atlanticist among the twelve, lead by the UK, to a more “European” camp, featuring France, Spain, and Germany (who, in the event held the balance in the negotiation by associating a genuine European ambition to the utmost care not to weaken the atlantic Alliance). The Atlanticist camp had the upper hand. The perusal of Article J4 of the Maastricht Treaty gives the full measure its success: “The common foreign and security policy shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence”, provided of course the European Council so decides. In his Memoirs, Jacques Delors has this to say about this text: “make of it what you will”.

So, a common foreign policy was proclaimed whilst every step was being taken for it not to encroach in any way on that of Member States, whose freedom of action in this field was kept intact; Much was made of an ambition for a European defence which a majority among the twelve<sup>17</sup> did not want, and which was diluted in abstruse language. Europe was given action

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<sup>17</sup> The Dutch, the Danes, the Portuguese, the Italians sided with the British in the Atlanticist camp. Luxembourg and Spain alone clearly supported the Franco-German proposals, the others were undecided.

capabilities, which in effect the Member States and the atlantic alliance still had unchanged at their command. As the old legal saying goes, an agreement whereby a thing is given which is being retained is null and void: that is indeed what befell the CFSP.

#### **FAVOURING THE INSTITUTIONAL APPROACH**

The CFSP was, from the outset, thought of as a set up where institutions and procedure would be key. The dispositions in the Maastricht Treaty provided for the intervention, in the formulation of the CFSP, of the Presidency, of the European Council, of the Council of Ministers, of the Political Committee, of the COREPER, after a complicated repartition of roles, which would, right up to and including the Convention, be constantly reworked. (The most significant change took place when the Political Committee was replaced by a Permanent Political and Security Committee, the COPS, based in Brussels; a second change, the transformation of the High Representative into a Minister for Foreign Affairs who would also be the Commissioner to external relations of the European Union, is held in abeyance with the implementation of the Constitutional Treaty).

A range of "instruments", common position, common action, common strategy, were provided, the use of which could include resorting to a majority vote (though it was never used). The relationship between the CFSP's "political" decisional process, and its military component (entrusted to the WEU by the Maastricht Treaty, then fully assumed by the European Union from 2000) involved, besides European outfits, those of the WEU, the Union's military outfits: European Union Military Committee and staff, NATO's instances with which consultation and cooperation mechanisms of Byzantine complexity have been evolved.

During the Maastricht Treaty negotiation, the Dutch presidency suggested that an informal meeting of the ministers for foreign affairs be dedicated not, for once, to debates on the competencies and machinery of the CFSP, but to the key questions the Member States wished, in due course, to hand over to their common foreign policy. France, deeming it time-consuming and liable to cast some doubts on the CFSP (which it may well have), firmly rejected the suggestion. Meanwhile, Jacques Delors pleaded for a step-by-step approach in foreign policy, progressing slowly on circumscribed issues, which could gradually be entrusted to the Union, once basic agreement between the states and the intent to advance together had been established.

We have the opposite: a CFSP as ambitious as it is ill-defined, where basic disagreements were translated into a range of defences better suited to protect the States from possible common decisions than to further them. The procedural nature and institutional complexity that have been the hallmark of the CFSP from the outset should therefore come as no surprise. They are the function of the two major reservations that beset it from the start: intellectual reservations on the part of the States, particularly the largest, who wanted to preserve their own foreign policy, political reservations from the Atlanticist camp directed at the very principle of the Union's defensive role. They were the stuff of endless debates on approach; the more readily so since they were grist to the legal mill that is the European construction.

## DISCONNECTION FROM COMMUNITY INSTRUMENTS

Since the negotiation of the Maastricht Treaty, its pillar structure has been denigrated so many times, along with the disconnection between the CFSP and the community external policies, that we should like to take a slightly different stance. Not that these criticisms were unfounded. At the beginning of the 90s, when the integrationist ethos still held sway in Europe, and kept a lively debate going between federalists and partisans of a Europe of States, it was legitimate, from a community point of view, to denounce the CFSP as a heresy.

It was unquestionably a double error of the Maastricht Treaty to insinuate, at the core of the European Union's institutional mechanism, an intergovernmental block, which overrode the Community decisional process, and was cut off from its policies. This amounted to disqualifying the Commission as natural political leader of the European Union in gestation on the one hand, stopping it from running one of the two Maastricht leading policies (the second, the Economic and Monetary Union being set on automatic pilot and thus neutral in this respect). On the other hand, it established between the CFSP and the Community's external policies a damaging duality both at the level of directions and decisional method.

However, fifteen years on, this debate is behind us: the loss of authority of the Commission, intergovernmental contamination, and the demise of community loyalty are only too plain to see, in today's Europe, for us to dwell on. Nobody can be seriously thinking today of communitarising the CFSP, except as a long term prospect, to be preceded by a transformation of community institutions much deeper than that envisaged in the Constitutional Treaty.

In the meantime, who would want to entrust the Commission as it stands today with the role of foreign policy leader (leaving out the initiative monopoly, and the option to maintain one's positions so long as they have not been modified unanimously, which would be the certain upshot of the CFSP's communitisation)? Who would care to contemplate a majority vote of the States in this field, in a 25 strong Europe so low on solidarity, divided as it was on Iraq, and is today on Russia? In the name of what common project and on the basis of what recompense, would States who still fancy their international chances and still have notional influence in this field, accept to curtail their margin for manoeuvre to further a Europe wherein the capacity for compromise and the respect of other people's point of view is at its lowest ebb?

If, with hindsight, communitisation in its strictest form was not a sensible option for foreign policy, the rigorous duality set up between CFSP and community external policies has contributed to weaken a nascent CFSP, cut off from the political legitimacy of the community system, from its external representations network, and from its budgetary resources. The asymmetry between the 7 billion euros the Community sets aside in its budget for the purpose of international aid and the 100 millions it allows for the CFSP gives the measure of how absurd this choice is.

Its impact on the external representation of the European Union has been no less damaging, since it ended up split between the Commission, responsible for the Community's external representation, and a range of set ups responsible for the representation of the CFSP outside

Europe. The revolving Presidency and the Troika held this role in turn before the system provisionally settled on the High Representative.

To be sure, the duality of representation was seized upon by the Convention, which sought to remedy it by inserting in the Constitutional Treaty, a plan to concentrate on one person the posts of high representative for the CFSP and commissioner to external relations. However, and supposing the Constitutional Treaty were implemented, the rationalization thus achieved, is likely to be more than offset by the emergence of a new actor embodying Europe at the highest level, the permanent President of the European Council. It is more than likely that the fragmentation of external representation, one of the CFSP's constitutive defects will endure one way or another, for quite some time.

## **2.2. ADVANCES AND SETBACKS**

Under the circumstances outlined above, one should not wonder at the failures of the CFSP, but instead at its relative advances, and in particular two of them, a priori quite unanticipated. The first is the development of some EU military capability resulting from Tony Blair's taking to the idea of a European defence; the second is the emergence of a degree of European individuality in foreign policy. These auspicious developments were, even so, soon to be cancelled out by the combined effect of transatlantic and European discord over Iraq and enlargement.

### **TWO STEPS FORWARD: DEFENCE AND STYLE**

In 1998, the conversion of Tony Blair's British government to the idea of developing a "capability for autonomous action" at military level in the European Union, as the Franco-British Saint Malo communiqué had it, marked a treble break:

- Break with years of European infighting over whether a European defence, aka the European security and defence identity, should unfold in the framework of the WEU or of the European pillar of the Atlantic Alliance, which paralysed the defence dimension of the CFSP. It was agreed to use the Union institutional framework, a cogent and simple move at institutional level, which reinforces its political clout;
- The word "autonomous" in the Saint Malo communiqué (for which the Americans would bitterly reproach the British) puts an end to decades of European infighting on the legitimacy of a degree of European autonomy as regards NATO in the field of defence: the notion was accepted by the British, hitherto the naysayers' cheerleaders within the Union;
- Finally we have British pragmatism to thank for attempting to focus European efforts on the concrete issue of developing a military capacity, cutting out the institutional and symbolic concerns at the centre of earlier debates on defence within the Union.

Admittedly this has been realised only in part, and painstakingly: the EU's defence dimension remains modest and does not provide for her to conceive and command in her own name



major operations; the liaison with NATO, fought over every inch of the way in the so called "Berlin plus" agreements of March 2003, operates along rigorous procedures wherein European autonomy is confronted to numerous practical restrictions; the ambitious capacities defined at the 1999 Helsinki European Council have only partly been fulfilled. However the EU took over from NATO in Macedonia and in Bosnia, conducts, in the Ituri region of the Congo, her first military intervention, has contributed an armed presence during the elections in the Congo and helped uphold the cease fire at Aceh in Indonesia. There has been real progress.

The Union has also advanced in an other direction: she shows signs of individual style, at any rate, she conveys a diplomatic approach common to the Europeans, which distinguishes them from Bush's America's unilateralist and supremacist excesses. This style weaves together a sustained belief in the virtues of dialogue and classic diplomacy with the acceptance of interdependence and its corollaries: interference and consented limitations to sovereignty. This has earned the European Union a good deal of appeal when it comes to multilateral diplomacy, and a mitigating influence in world affairs.

In the Security Strategy adopted by the European Union in December 2003, the Europeans have carried out a forthright analysis of the threats they must address. They added to the classical security response those required two security targets more distinctly "European" and in keeping with EU style: the stabilisation of their geographic neighbours to the South and the consolidation of the multilateral international order. This "Strategy" shows Europe in modest evolution towards strategic maturity: she shuns any pretension to "power"<sup>18</sup>, accepts a commonality of interests with the USA in the face of common threats, and takes on a different personality in foreign policy. This places the Europeans in a position to claim a specific role of guarantor of the international order, essentially political in nature, which seems reasonably well suited to Europe's geopolitical situation and comparative advantages.

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<sup>18</sup> On the limitations of the concept of "Europe as a Power" and its incompatibility with the European endeavour, return to Jean-Louis Bourlanges' article quoted earlier

### ... AND TWO STEPS BACK: IRAQ AND ENLARGEMENT

These advances were to be short-lived: Iraq, chiefly, and enlargement, have swept them away.

Through their confrontation on the Iraqi affair, France and the UK lost the benefit of their unexpected Saint-Malo convergence. The clash was such that the British government accused France of "poisoning" the diplomatic climate in her obduracy, and of having contributed to the outbreak of the war. The ongoing solidarity in the anti-war camp, the initiative in April 2003 at the Brussels summit to boost European defence in a way the British and the Americans perceived as offensive, was the last straw: France and Great Britain are not today the moving force behind the CFSP that they were between 1998 and 2002.

Hostile positions towards Europe have been reinforced in both countries, fallen back on their pre-Saint-Malo positions: France at the vanguard of an – essentially nominal – European defence ambition, the United Kingdom opposed to it in the name of some Atlanticist orthodoxy (even as disillusionment towards George Bush's US is deeply felt in the UK). Everywhere in Europe, positions have hardened in mutual relations, and the new Members, joining the Union at the time of the crisis, were dragged in the argument: they could take the measure of the fragility of European sociability and willingness to compromise, assumed to be part and parcel of the past fifty years' European *acquis*.

It would be excessive to make of the Union's enlargement one of the active elements in the stalemate where the CFSP is confined post Iraq. In this domain the responsibility for the failure falls first to the long standing Members who, had they been in agreement, could have created a hard core the new Members would have found it hard to dissociate themselves from. Enlargement and the advancement of the CFSP are separate issues; but they have had historic impact on succeeding developments, which it may be worth listing for the record:

The 1994 enlargement took place after the failure of the 1991 Danish referendum and the narrow "yes" victory in the 1992 French referendum. It saw in three neutral counties, Austria, Finland and Sweden, which introduced an extra source of division on the principle of the CFSP: naturally reticent towards its "defence" component, they rallied the camp of the most Atlanticists Europeans in order to slow its development;

The 2004 enlargement, bringing the number of Union members from 15 to 25 has made foreign policy attitudes and objectives more heterogeneous within the Union: new Members, mostly hailing from the Communist bloc made much of their loyalty towards the United States, and, for some, of their coolness towards Russia, which has shifted the fulcrum of the CFSP in respect of its relations with the two main partners of the Union.

All told, a twelve member strong community which had shared an involvement in the Cold War alongside the United States, and the experience of a freely consented alliance, became a 25 Members Union with historical experiences and foreign policy traditions much more contrasted: neither the experience of a free alliance, nor that of an international and trusting cooperation between neighbours on equal terms figured in the new Members historic heritage. They

retrospectively formed an idealised view of the American alliance, and protected their newly found international independence from CFSP interferences. Small wonder that, in a more numerous and diverse Europe, her main political basis, the convergence of its Members' foreign policy interests and attitudes, was destabilized.

## 2.3 THE CFSP, POLICAL UNION AND ENLARGEMENT

The Iraqi crisis, like enlargement, takes us back to the deep-rooted causes of the CFSP' weakness. For the four structural causes highlighted above do not alone account for the depth of the Iraqi crisis in Europe, or for the disarray enlargement has brought to the CFSP. Two more fundamental considerations come into play at this point: the relationship between the political union and the CFSP, on the one hand; and the function of enlargement in EU foreign policy on the other.

### CFSP AND POLITICAL UNION: TWO SEPARATE IDEAS

Since the Tindemans Report in 1975, the European construction has been wont to treat the political union – that is its end goal – and the realisation of its unity in the field of foreign policy as one. A cursory look at the substance of the intergovernmental conference on “political union” called in 1990 and which would lead to the Maastricht Treaty, shall find three quarters of it dedicated to the development of the CFSP mechanisms: economy, trade, agriculture “had been done”; remained the “political dimension”, and, from the outset, for Europe, the “political dimension”, means foreign policy.

This line of thinking does however miss out on two considerations: foreign policy may federate politically in the face of a consensus-building external threat; however, in that respect, History has not served Europe: during the cold war, the threat was worldwide, and the response Atlantic, much more than European; since 1989, there is no common foe likely to stir the emergence of a common political conscience among Europeans. International politics today does not unite: it divides and alarms, for it does not have the moral and political clarity of the huge confrontations of old, but consists in the management of interdependences and threats, both complex and diffuse, pertaining to the global world.

Political union, if at all feasible, must therefore rest mainly on other bases, liable to nurture the Europeans sense of common belonging, and their desire to do politics together. Should these bases be a “Europe of projects”, “a social Europe”, or something else? Will those be enough to unite more effectively the peoples of Europe without a strictly political component, in which the significance of being a citizen of Europe today could be spelt out?

In any event, moderation and the willingness to compromise, which the Europeans so lacked in the Iraqi business, are not related to CFSP imperfections but to a constitutive weakness in the feeling of belonging to a Europe of European States and peoples. CFSP failings are not the chief culprits in this, but rather the want for a “political union” in the full meaning of the words. In relation to this failure, CFSP weakness is more a symptom than a major cause, and its

improvement, desirable though it be in itself, can but marginally contribute to the emergence of this political union.

#### **THE MYTH OF ENLARGEMENT AS A TOOL OF FOREIGN POLICY**

Beyond the amalgamation of the CFSP with political union, a second confusion befuddles EU foreign policy: it leads numerous European leaders to think that enlargement is the best tool of Union foreign policy (or its greatest achievement)<sup>19</sup>. This vision if any epitomises the fundamental weakness of the CFSP, and of the political union.

As a rule, internal policy and foreign policy are distinct. The enlargement of a State or a federation may result from a foreign policy event, but it can never be the means to it since it is its end, that is the incorporation to a political entity of a population and a territory hitherto external. Through this act, the relationship between them and this entity passes from the realm of foreign policy to that of home affairs.

Why does Europe pretend to ignore this patent fact to insist instead on the non-sense of “enlargement tool of foreign policy”? It is actually fairly easy to grasp. The accession process is (at least theoretically) the moment when the Union exerts maximal influence on a part of the outside world, the aspiring State. If power can classically be defined as the ability to have another party do what they would not have done of their own accord, Europe is, at that point in time, in a position of power over them. The in-depth transformations effected in Central Europe as a result of enlargement are a testament to that. Enlargement has undoubtedly been a powerful tool over the aspiring countries, probably the most effective the Union ever resorted to towards a third party.

However the adhesion process is but one moment, after which the Union can forget about any position of power or foreign policy measure applicable the newly admitted member.

Whereas enlargement is an unqualified success, the enlisting of its contribution to Union foreign policy only serves to expose the weakness of her political identity. The distinction between what is in and what is out, domestic policy and foreign policy, is the hallmark of an organised body politic. When she overlooks this distinction, the European Union signals abroad an awesome admission of weakness.

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<sup>19</sup> For the development of this opinion, see Olli Rehn, european Commissioner to enlargement, «The EU accession process, an effective tool of the European foreign and security policy », 21 February 2006 speech text available at [libertysecurity.org/article836.html](http://libertysecurity.org/article836.html)

## EUROPE: A WEAK POWER?

All said and done, the reference to enlargement brings into light an essential difficulty for Europe in foreign policy, which is to make discretionary choices. Enlargement itself which should essentially proceed from a free decision by Europe to admit new entrants, and represents for her the very essence of a political choice, is signposted with standards designed to structure and reduce the room for all apparent choice in the process. Membership criteria before opening the negotiations, screening process and resumption of the *acquis* afterwards, confine the process to what the community system is best at: creating standards and checking their implementation (or rather their "resumption", purely factual notion which spares the system the trouble to pass judgment on the implementation of the *acquis*, which would get dangerously close to the exercise of political judgement. This logic has hit a sticky patch over the issue of Turkey where the voicing of a political choice is proving as unavoidable as it is thorny).

Leaving out the question of whether this kind of approach is suited to enlargement, we can confidently say that it cannot apply to foreign policy, a realm where standards are no substitute for judgement or political choices if ever there was one. As long as European software will operate on that mode, the Union will not have a foreign policy worthy of the name. Now this problem is not restricted to the CFSP: it pervades community policies, quite as much as intergovernmental practices.

The same need to make a virtue of necessity, and to rationalise their weaknesses, which causes the Europeans to celebrate the virtues of enlargement foreign policy, leads them to endorse a Union as "civil power" identity. They are right as it is in the line of influence and "soft power" that the Union has a priori the best cards to play. But "soft" though it may be, power does no less rely on the faculty to choose and the will to bring partners to modify their actions on the basis of discretionary political choices. Can Europe, "Soft" that it is, just take on the political mantle of an identity and will that are hers, and that, by definition, will be compelled to stand aloof from other identities and to oppose, be it civilly, other wills?

## 2.4. THREE PROPOSALS

Let us face it: Europe has yet to answer this fundamental question convincingly. The ways open to her to do so in the realm of foreign policy are tortuous, complex, and elude the simple but false solutions of communitisation, “a telephone number for Europe”, or the “double hat” for the High Representative.

The evidence suggests that will and identity remain essentially the preserve of the States in today's Europe. Mixed regimes and provisional solutions are therefore needed until a true European political conscience emerges, capable of sustaining a **common foreign and security policy** in the full meaning of the words.

In conclusion, we will attempt the description of three of the provisional compromises, which could contribute to fill the vacuum left today by the transience of the CFSP:

1. Towards the United States, the only EU representational mode to have delivered is the one which brought together in the contact group on former Yugoslavia, the major European States alongside the Union Representative for the CFSP, initially the revolving presidency, then the High Representative. The same formation was brought in for the Euro-American consultation on Iranian nuclear programme, one of the rare CFSP dossiers where the European Union performed well. Conversely, the single EU representative sitting on the Quartet set up with the United States, Russia and the UN on the Israel-Palestinian question allows Europe too little room for manoeuvre which the United States have made good to marginalise what European views expressed diverged from theirs. It would be good to try to extend to this issue, and some others, the contact group model, which enables Europe to weigh more, and the United States to find together before them a critical mass of spokespersons capable of voicing a credible European position.
2. The times of highest dynamism for European defence resulted from the conjunction of British, French and German intent. The Franco-German couple, which remains crucial to community affairs, can no longer claim the same position in foreign policy. Meanwhile, when the three countries agree on foreign policy, they have little difficulty in crystallising a European consensus. This three-pronged leadership must be encouraged, not as a substitute to a full 25 agreement, but as a necessary stage in the formation of a consensus on the lines of the Franco-German trendsetting in other European matters. Made impossible by the Iraqi crisis, and the main protagonists' inability subsequently to resolve it, the three-pronged cooperation may be the way, given different European leaders, to overcome it.
3. Finally the integration of the community and CFSP tools must not wait on the reform of the High Representative's status provided for in the constitution project. On two or three high-priority subjects where a cogent and visible position from the Union is lacking, why not give high-ranking European political figures a short-term mandate to represent in the field the Union in her diverse components? They would be instructed

by the Council and the Commission to recommend a policy combining community and CFSP aspects of the question, and be supplied to that end with resources from the two branches of the European system on the spot and in Brussels. Russia springs to mind, when a figure unrelated to either conflicting view on the subject within Europe, could be chosen to that end; this could also be applied to the Israelo-Palestinian issue: the false agreement prevailing within the Quartet deprives this crucial question of the voicing of a strong European point of view distinguishable from that of the United States, for all that it is today more necessary than ever.

## CONCLUSION

The provisions intended for foreign policy and defence in the project of Constitutional Treaty are as good as could be, given the original weakness of the CFSP project, compounded by Member States ambiguity and divisions concerning it. The major advances are limited but authentic: existence of a solidarity clause, consolidation of armament cooperation through the establishment of an agency, merging of the functions of High Representative for the CFSP and External Relations Commissioner (this latest advance being, as was pointed out earlier, unfortunately overshadowed by the advent of a permanent President of the European Council who will invariably be inclined to play his own part in external representation.)

However, in the foreseeable future, the possible advances of the CFSP will depend much less on these provisions coming into force, which is in any case unlikely, than on a new-found will from the Europeans to act together in an effective and visible way on two or three high-priority foreign policy dossiers. This will must be first shared by the three countries who act as leaders in this domain, and whose consensus has permitted some progress, tenuous in the greater scheme of things but significant when set against the Europeans' historical incapacity to keep the CFSP's promises. They stood Europe well from Saint Malo to the Iraqi crisis, on the defence component of the CFSP and, since 2004, on the Iranian nuclear programme issue. A unified representation of CFSP and community elements can be set up, as and when, through the nomination of high-ranking European Union special envoys.

To put it simply, it would be good if, after fifteen years during which the Europeans have confused CFSP progress with the enlargement of its breadth of competences and the refinement of its institutions and procedures, they undertook to actually tackle some foreign policy issue.

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