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The European Union's External Action Service

Natividad Fernández Sola

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*Natividad Fernández Sola**

Summary

The European Union's international representation under the primary law now in force, and the way this has been put into practice both by the EU and the European Community before it, are clear reflections of the institutional complexity and partial integration – by sectors and in different phases – that the bloc has suffered from since its creation. Today, this representation can be three-fold, carried out by the European Commission, the Council and member states. Within the second of these, it can be implemented by two different institutions: the High Representative for Common Foreign and Security Policy (the so-called Mr. or Mrs. CFSP) and the Presidency.

Index

- (1) The origins of the current chaotic situation and proposals for reform
- (2) The proposals advanced by the European Convention, which negotiated the text of the Constitutional Treaty
 - (a) The Foreign Minister and his corollary of a foreign service with a mixed composition
 - (b) The path to 'EU embassies'; their nature and functions
 - (c) Moving towards a European School of Diplomacy?
- (3) The Treaty of Lisbon solution and its problematic ambiguity
 - (a) The goodness and logic of the formula that was adopted
 - (b) Difficulties in its implementation
 - (c) Relations with national diplomatic services
 - (d) Future consequences
- (4) Implications for Spain
- (5) Conclusions

Introduction

(1) The origins of the current chaotic situation and proposals for reform

The EU's international representation under the primary law now in force, and the way it has so far been put into practice both by the EU and previously by the European Community, are clear reflections of the institutional complexity and partial integration – by sectors and in different phases– experienced since its creation. Today, this

** Professor of International Law and International Relations, and Jean Monnet Professor, University of Zaragoza.*

representation can be three-fold, carried out by the European Commission, the Council and the Member States. Within the second of these, it can be implemented by two different bodies: the High Representative for Common Foreign and Security Policy (the so-called Mr CFSP) and the Presidency.

According to the foundational treaties –the Treaty of Rome and the Treaty of Paris–, the task of international representation was the responsibility of the Commission. This monopoly was in line with the Commission’s role as the EU’s executive body, and came at a time when integration was completely supranational, although the internal market was still lacking. The Commission has carried out this task until the present and perhaps its most visible elements are the Commission’s offices and delegations in 123 countries and at five international organisations. The latter are before the OECD in Paris, the OSCE in Vienna and the United Nations in Geneva –including a section at the WTO– New York, Rome –for the FAO– and Nairobi.¹

Under article 20 TEU, the Commission’s delegations and the Member States’ diplomatic missions in third countries work together to ensure the common positions and actions that are mandated by the Council are applied.

The establishment of European Political Cooperation (EPC) in 1970, which was aimed at unifying positions in foreign policy apart from treaties, led to a parallel and *de facto* international representation exercised by whatever member State held the rotating presidency of the Council, and even by the State or Group of States most directly concerned by the measures or resolutions that were adopted. This new role that has emerged for the Presidency of the Council led to the establishment of a permanent secretariat of European Political Cooperation within the Secretariat of the Council itself as a structure parallel to that of the EU.

As a result of international political representation being attributed to the Council through the establishment of EPC, it quickly became apparent that there was a lack of continuity inherent in the six-monthly rotating Presidency both for the European Community and for how it was perceived by third countries. This unsatisfactory situation led to the –also informal– creation of the *troika*, made up of the current Presidency, plus its immediate predecessor and the one due to succeed it. With that makeup the *troika* managed to alleviate the Presidency’s lack of continuity and even of common and clear

¹ Their mission is to explain and implement the policies of the EU, analyze and report back on the policies and development of the countries where these delegations are located, and carry out negotiations with these countries under specific mandates. These delegations serve to promote the interests of the EU, and are also involved in such areas as justice and internal affairs, development aid, common foreign and security policy (conducting political analyses and joint evaluations with the embassies of the Member States.). They can aid other institutions or organs of the EU such as the high representative for common foreign and security policy, the European Parliament, the chairman of the European Council, etc. More than 800 officials and some 3,000 local employees comprise the Commission’s delegations.

goals, especially on foreign policy issues. However, it did not manage to resolve its lack of political weight, which was particularly evident at times of great political concern. Such was the case in July and August 1991, at the start of the Balkan crisis, with the first declarations of independence by Slovenia and Croatia, who looked to the European Community for a preventive arrangement that would avert an escalation of a conflict that had already cost lives on both sides. The EU *troika* –at the time comprising the Netherlands, Luxembourg and Portugal– showed up in Belgrade and was perceived by the Yugoslavs as a sign that Europe was not taking such a grave situation seriously. More importantly, it made the European political and negotiating position seem irrelevant, since the Yugoslav parties did not feel that the *troika* represented the countries with real power within the Community, which they considered were indifferent to the crisis because they had not even showed up in Belgrade.

All of Europe's negotiating efforts aimed at averting war were in vain. And this was not due to a lack of proposals, willingness to negotiate, diplomatic experience or political and economic instruments to exert pressure on the parties involved. Rather, the failure stemmed from the lack of political weight of the 'spokespersons', not to mention the absence of a military force to back up any agreements reached or to impose them if necessary.

Under the Maastricht Treaty, which created the EU, foreign policy is integrated into treaties under the heading of Common Foreign and Security Policy. Its functioning falls under an institutional unit that is in theory formal, although in practical terms each institution continues to work in line with whatever EU pillar is being acted under. The Treaty on European Union, as amended by the Treaty of Amsterdam, which was signed on 2 October 1997, created the position of High Representative for Common Foreign and Security Policy,² to which it gave the task of assisting the Council in issues involving common foreign and security policy, 'in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties (article 26). These innovations involved the consolidation and a strong institutionalisation of the EU's foreign policy, which in this way gained continuity and a political line, always in accord with the Member States but with a significant political weighting and international visibility that therefore lead to an adjustment of certain aspects of the foreign policy of Member States. In other words, it involved the Europeanisation of national foreign policies on issues such as the Middle East, the Balkans, etc.³ At other times, the High Representative for CFSP will help ease troubled relations between Member States and important allies. Such was the case of the

² Article 18.3 TEU: 'The Presidency shall be assisted by the secretary general of the council, who shall exercise the function of High Representative for the common foreign and security policy'.

³ J.I. Torreblanca, 'La europeización de la política exterior española', in C. Closa (Ed.), *La europeización del sistema político español*, Istmo, Madrid, 2001, p. 486-512.

Transatlantic relationship, in particular with the US, after the invasion of Iraq and the consequent division of opinions among European states.⁴ The high representative devised what is so far the first and only European security strategy⁵ involving the overall engagement between the EU and the US in an effort to harmonise positions on the greatest security threats of our era.

The High Representative has his own service and staff, a Policy Unit or Prevention and Rapid Alert Unit as well as a Civilian Planning and Conduct Capability. The EU Military Staff is also under the direct control of the High Representative for Common Foreign and Security Policy. This provides him with a very limited tool for carrying out foreign policy tasks, apart from his responsibilities as Secretary General of the Council.

At the same time, the Commission and its legal service and Directorate General of Foreign Relations (RELEX) have their own staff tasked with foreign policy issues.

In these conditions, in carrying out his functions the High Representative is a real source of continuity in common foreign and security policy amid the changes every six months in the Presidency of the Council. However, the Representative is not seen as constituting a strong political representation of the EU because the post draws its legitimacy from the mandate of the Council. Meanwhile, with the EU's pillar-based structure, situations of inconsistency have emerged in the actions of the European Commission under the first pillar and those of the High Representative under the second pillar. And these have been resolved only with goodwill and personal rapport between the High Representative and the RELEX Commissioner.

To give an approximate idea of the human resources that each institution dedicates to foreign policy, Table 1 illustrates this breakdown.⁶

⁴ N. Fernández Sola, 'La redefinición de la relación transatlántica desde una nueva óptica europea', in P. Vilanova & J. Baqués, *Crisis del vínculo transatlántico ¿coyuntural o estructural?*, 2nd ed., Thompson Aranzadi, Madrid, 2008.

⁵ In the second half of 2008, the goals of the French presidency of the Council included a re-evaluation of the EES. It issued a mandate for studying how it is applied and correcting whatever deficiencies are detected. The action program of the French presidency: 'Programme de dix-huit mois du Conseil', Conseil de l'Union Européenne, POLGEN 76, 11249/08, dated 30/VI/2008.

⁶ Data drawn from Working Document 6, Working Group 7 of the European Convention that prepares the draft Treaty that establishes a Constitution for Europe, 11/XI/2002. This and other documents from the Convention and the rest of the amendments to the constitutional treaties can be seen at <http://www.unizar.es/euroconstitucion/Home.htm>.

Table 1. Human resources dedicated to foreign policy

Institution	Bodies involved
Commission	<p>6 Directorates General</p> <ul style="list-style-type: none"> - Relex - Trade - Development - Enlargement - Office of Humanitarian Aid (ECHO) - Office of Cooperation EuroAid <p>Other DGs that project its policies externally Delegations and offices in third countries (123) and international organizations (5), plus a joint representation along with the Council at the African Union</p>
Council	<p>General Secretariat</p> <ul style="list-style-type: none"> - GD: Foreign and political-military issues - GD of agriculture, fisheries, environment in its external projection - UPPAR with <i>task forces</i> assigned by geographic region and issues - Situation centre - EMUE - <i>Civilian Planning and Conduct Capability</i> - at the UN in Geneva and New York - liaison official at NATO (SHAPE) <p>High Representative for Common Foreign and Security Policy</p> <p>Liaison offices</p> <p>Joint representation with the Commission at the African Union</p>
European Parliament	<p>Commission on foreign policy, security and defence policy</p> <p>Commission on foreign economic relations</p> <p>Commission on Development and Cooperation</p>

Source: the author, drawing on information from the three institutions.

Within the Commission, foreign affairs are managed by four members of the Commission, who are responsible for six General Directorates and Services: the RELEX General Directorate, the General Directorate of Trade, the General Directorate of Development, the General Directorate of Enlargement, the Office of Humanitarian Aid (ECHO) and the cooperation office known as EuropeAid. The General Directorate of Foreign Relations comprises transversal offices as well as others of a geographical nature, in line with the different regions of the world with which the EU maintains relations. The Foreign Affairs Commissioner coordinates the activities of the Commission in this area, is the link with the Council of General Affairs and Foreign Relations and is the party that deals with the High Representative.

Besides the General Directorates and services with specific responsibilities in the area of overseas activity, most of the rest of the General Directorates have units, or parts of them, that address the foreign component of whatever domestic issue they are dealing with. The specific role of the Directorate General for Economic and Financial Affairs should also be noted. It has specific responsibilities in, among other things, representing the EU at international economic and financial forums, and economic and financial relations with third countries.

Within the Council, the General Secretariat has a General Directorate E (foreign and political-military issues) that features 104 posts for A-level officials, of which 26 work in the political-military field. The external aspects of certain internal issues such as agriculture, fisheries and the environment are handled by the corresponding general directorate. As pointed out, the High Representative is assisted by the political planning and rapid response unit, which works under his mandate as a sort of surveillance and early warning body and provides him with the information necessary to get the job done. The prevention and rapid alert unit is composed of different task forces which address geographic and thematic issues of the common foreign and security policy. Its members include diplomatic staffers from Member States, from the general secretariat of the Council, and from the Commission.

The EU's joint Situation Centre is linked to the High Representative and comprises seven administrators. This centre provides an analysis and rapid response capability for international political events, to the Council and the High Representative. Since the Treaty of Nice, within the Secretariat of the Council there has been a European Union Military Staff, made up of seconded military officers from Member States. It falls under the direct mandate of the High Representative. Altogether, there are 125 military staffers and 10 support staffers. More recently, the Civilian Planning and Conduct Capability has been created. This organ reflects a will to enhance the planning of EU civilian operations and also answers to the high representative.

As for external offices or representations, the Council has two liaison offices at the United Nations, one in Geneva that features four administrators, and another in New York, made up of three administrators.

At the European Parliament, foreign policy issues are dealt with by three different commissions: the commission on foreign policy, security and defence policy, the commission on foreign economic relations, and the commission on development and cooperation. These commissions adopt draft reports and draft resolutions for their approval by the plenary of the European Parliament.

Each of the parliamentary commissions is assisted by a secretariat (DGII). Furthermore, the general directorate for research (GDIV) supports the work of the parliamentary panels. Some 79 staff members of DGII (parliamentary commissions and delegations) and

from DG IV (Research) work on issues of common foreign and security policy and external relations. What is more, some 145 people from these services work at the same time on internal and external aspects of the different political fields of the EU and of the Community.⁷

This multifaceted international representation of the UE stems from the co-existence of two centres of gravity in foreign policy, with the High Representative serving as common spokesperson for the Member States' common will, and then the Commission, whose role is limited to mobilising common resources but without taking diplomatic initiatives.⁸ This duality has sometimes meant a lack of consistency and unity in external action, especially between the Council and the Commission, while at the same time blurring the international visibility of the EU.

To these difficulties arising from the current organisational model should be added the problems that stem from the lack of a unified EU presence at international forums and organisations. This can be either because it is not legally possible for the EU to become a member, or because of a lack of coordination among Member States that would be essential for a unified presence to be arranged. Despite attempts to make it politically mandatory for Member States to coordinate at international forums or in third countries – and this means advanced preparation to reach a common position (articles 19 and 20 TEU)–, this is still not a reality, in part because of the overlap in representation and in part because of the reluctance of Member States to lose the international spotlight. For this reason the Convention insisted on the issue. Many members favoured moving towards a single international representation of the EU⁹ without detriment to the jurisdiction of Member States as subjects of international law and their status in international organisations.

One particular case worth mentioning is the joint Commission-Council delegation that the EU maintains at the African Union, inasmuch as it might ideally constitute a model for the future. The reason for this kind of joint structure, besides the fact that it was created recently, stems from the prominent role assumed by the EU in the Darfur mission¹⁰ under

⁷ According to working document 6 from Working Group VII, which addresses the capabilities of EU institutions for external action, the human resources dedicated specifically to foreign relations total about 3,000 people all of the headquarters' services and delegations abroad (around 50% of this corresponding to support staff), of which around 70 work on issues related to common defence and security policy. In the area of development and relations with ACP countries, total staff (including delegations) is about 2,000 people; in humanitarian aid the figure is about 150, some 480 in trade and around 780 in the area of EU enlargement.

⁸ E. Brok, WG VII, working document 2, 3211, 24/IX/2002.

⁹ Working Group VII, External Action, working document 21 REV 1, Draft final report of Working Group VII on EU External Action.

¹⁰ Since the now-concluded *EU support to AMIS* mission in 2005 in support of the African Union (common action of the Council 2005/557 of 20/VII/2005). Currently, the EU maintains EUPOL DR Congo in the civil operation area (common action 2007/405/CDSP of the Council, of 12/VI/2007, regarding the EU police mission carried out in the framework of the reform of the security sector (RSS) and its connection with justice in the

the second pillar of the EU. Thus, one could not imagine a delegation monopolised by Commission as is the case with most other EU international organisations. However, despite the innovative and to some extent exemplary nature of this external representation of the EU,¹¹ it has been hindered by disagreement between the Council and the Commission on naming its deputy chief, given that the ambassador is a diplomat from a member State and the Commission sees it as only appropriate that the number two official in the delegation be one of its own staffers.

Another recent example of joint representation, or rather joint presence, occurred during the war in Georgia in August 2008. Here, what stood out is the role played by the French Presidency of the EU at its highest level. But for the purposes of this study what is most noteworthy was the rare visit paid to Moscow on 8 September by the acting President of the European Council, the President of the Commission and the High Representative for Common Foreign and Security Policy. A mandate for talks with Russia's President and Prime Minister had been established in a special Council meeting on 1 September, and as a result of this visit Russia committed to withdrawing its troops from Georgia, accepting a 200-strong EU Observer mission and undertaking negotiations on the situation in the breakaway republics of Abkhazia and South Ossetia. Although there has been criticism that the European position marked nothing more than acceptance of Russia's arguments, it is important to note the unified presence and common position which gave the European side strength. It is also true that efforts to resolve the crisis were probably aided by the fact that the rotating EU Presidency was then held by France, which is strong both at home and abroad.

In the confusing current situation, what became clear through the work of the European Convention and the subsequent Intergovernmental Conference, which gave rise to the Constitutional Treaty, and in the Treaty of Lisbon, is that the EU's external actions need more consistency and effectiveness, and that in order to gain them it requires institutional and legal tools that make this possible. With backing from all the Member States and a vast majority of European public opinion, the Treaty of Lisbon is aimed at achieving this goal, although its entry into force is up in the air at this point. Clearly, a new High Representative for Foreign Policy as called for in the treaty will not be the automatic solution to the EU's problems of inconsistency in its international representation if this post is not backed up by the political will of the Member States to work in a coordinated fashion and facilitate the efforts of the bodies that the treaty aims to create. Such will –and

Democratic Republic of Congo, modified under common action 2008/485/CDSP of 23/8), and the military mission EUSEC DR Congo (common action 2008/491/CDSP of the Council, of 26/VI/2008 which modifies and extends common action 2007/406/CDSP regarding the mission of the council and EU assistance in reforming the security sector in the Democratic Republic of Congo).

¹¹ Also in the Former Yugoslav Republic of Macedonia, the EU representation is joint but in this case it is because the Commission office, which opened officially in March 2000, also houses the Council due to the double function of Ambassador Erwan Fouéré. He is both EU special representative and chief of the European Commission delegation.

this is one of the main conclusions of this study– should be generated more easily through a close relationship between the High Representative and the Member States, and with an External Action Service that notably counts on national diplomats so that Member States can benefit from this service without undertaking large costs in exchange.

2. The proposals advanced by the European Convention, which devised the draft Constitutional Treaty

The following are the proposals made by the European Convention, and what finally ended up in the treaty creating a Constitution for Europe, in terms of external representation and its support services, and the content of the joint report presented by the High Representative and the President of the Commission in 2005.¹²

(a) The Foreign Minister and his or her corollary in a mixed external service

Issues related to the organisation and structuring of the EU's external relations and foreign policy were essentially addressed in the 'external relations' working group of the Convention that drafted the constitutional treaty, without ignoring the impact of the work of the groups that addressed international legal status and defence. Their results were included practically word for word in the final text, and although with some modifications, almost to the same extent in the Treaty of Lisbon.

The creation of a semi-permanent Presidency of the European Council tasked with, among other roles, an international representation function was one of the recommendations that the Working Group made to the Convention, even though it did not have total support. Some representatives felt that a permanent President of the European Council, besides not being subject to parliamentary control, would simply worsen the EU's external representation problem and its lack of efficiency in this area by adding yet another figure to those already present and increasing bureaucratic rivalries between the various services.¹³

Even so, the main innovation proposed was to recommend the creation of a European Minister of Foreign Affairs or EU representative for Foreign Affairs and Security Policy, as the post is finally referred to in the Treaty of Lisbon in a bid to avoid terms that smack of federalism or supranational integration. This proposal stems from the dissatisfaction in regard to the functioning, consistency, efficiency and visibility of EU foreign policy and the need to reconsider the existing figures of the External Relations Commissioner and the

¹² *Joint Progress Report* of 2005 presented jointly by Javier Solana and J.M. Durão Barroso on 9 June 2005 to the European Council.

¹³ E. Brok, Working Group VII, working document 26, 4781, 'The External Representation of the European Union', and Brok, van der Linden, Cushman & Lamassoure, working document 46, 5331. For these representatives of the European Parliament –except van der Linden, who is from the Dutch Parliament– the high representative should fuse with the external relations commissioner within the Commission and the resulting post should preside over the External Relations Council.

High Representative for Common Foreign and Security Policy.¹⁴ As is known, four options were considered. The first was to retain the current situation in which the High Representative has a role in common foreign and security policy and the Commission looks after external relations, enhancing coordination between the two but maintaining separate functions. The second involved fusing the two under the aegis of the Commission; in other words, fully integrating the role of the High Representative into the organic structure of the Commission.¹⁵ The third proposal aimed to assign the two tasks to the same person; this was the so-called 'double hat' formula that would maintain both functions separately, and different procedures for dealings that are now covered by the first and second pillar, but assigning all of this to one person. Finally, the fourth option was the creation of a European Minister of Foreign Affairs, under the authority of the President of the European Council that would come to have a semi-permanent nature, and melding the missions of the two already existing posts.¹⁶ With this last option there were two possibilities with regard to the support service for the Foreign Minister. One involved the creation of a joint service with officials from the Commission's Directorate General for External Relations (DG RELEX), from the Council's Secretariat and with support from members of national diplomatic services. The other possibility was to maintain two different administrations and a private, joint office of the Foreign Affairs Minister that would ensure coordination between the two.

In the end, it was decided to go with the third option, which involved giving one person the functions carried out by the High Representative, the Commissioner for External Relations and by the President of the General Affairs and External Relations Council, although the proposed Minister of Foreign Affairs will not have the right to vote at the Council.¹⁷

Although positions on the pros and cons of these four options varied, there was a consensus on the need to meld external services and avoid unnecessary and costly overlap. In this respect, the group showed a majority tendency toward creating a specific External Action Council differentiated from that of General Affairs, and toward establishing a focal point in the Commission for dealing with all the external action issues

¹⁴ The generalised position at the Convention on the need to mobilise all the tools at the EU's disposal (Working Group VII, working document 4, doc. 3376, presented by L. Michel).

¹⁵ See Working Group VII, working document, doc. 6233 –presented by E. Brok and J. Cusnahan of the European Parliament–. It says the new Minister should be based at the Commission's General Directorate of Foreign Relations.

¹⁶ Working Group VII, External Action, working document 21 REV 1, Draft final report of Working Group VII on EU External Action, doc. 5573.

¹⁷ See Brian Cowe, *The European External Action Service: Roadmap for Success*, Chatham House Report, 2008, p. 13, although the normal practice is to cite only the first two functions. Michel Barnier's amendments to the revised text proposed at the European Convention (working document 59, doc. 6090) highlight the lack of a right to vote in the Council, a circumstance which to some degree accentuates its impartiality. We note that the first Preliminary Draft Report (working document 21, doc. 4726) did not yet mention the fusing of the two existing positions into one single official.

addressed by the institution. A broad consensus emerged from the group on organisational recommendations to create a joint service composed of officials from the DG RELEX and the Secretariat of the Council, to be assisted by the diplomatic services of Member States, and as well as a Diplomacy School and an EU diplomatic service that would work in addition to the analogous national diplomatic services. The minority opposition to the proposed External Action Service came from the British delegate to the Convention and from the German government representative Martin Bury. Their main argument was that, if the proposed fusion of positions does not also affect the respective jurisdictions of those two current posts, and those areas of competence do remain separate, then the respective administrative bodies should also remain separate; on one hand the Directorate-General RELEX and on the other a newly created European External Policy Unit that would include the current Prevention and Rapid Alert Unit, the Situation Centre the Council's directorate-general of external relations and officials from the Member States and the Commission.¹⁸ It should be noted here that the position of the British government representative is shared by the High Representative himself, who opposes the idea of fusing functions and giving them to one person, the so-called 'double hat' formula, and instead prefers enhanced cooperation between the High Representative's staff and the Commission.¹⁹

Despite this, and given the minority nature of this position, it comes as no surprise that the both the Treaty establishing a Constitution for Europe and the Treaty of Lisbon call for the creation of an External Action Service under the new High Representative of the EU for Foreign Affairs and Security Policy.

There was less consensus on the naming of a semi-permanent President of the European Council. Still, this survived in the final text.²⁰

(b) The path to 'EU embassies'; their nature and functions

The attribution of a single international identity derived from the Treaty of Lisbon, and doing away with those that now exist in the European Communities, mark a major push for the consolidation of an international representation that is also unitary. It will be

¹⁸ H. Martin Bury, Working Group VII, working document 53, doc. 5584. To read more on this line of opposition to the proposal, see the comments of P. Hain (working document 66, doc. 6178) and B. Mc Donagh, (working document 16, doc. 4450); G. Pleuger (working document 17, doc. 4484) advocated the existence of two separate support bodies. This was suggested as one of the proposals to be considered in the final revised draft report (working document 21 REV1, doc. 5573).

¹⁹ J. Solana, Working Group VII, working document 8, doc. 4506, and P. Hain, Working Group VII, working document 66, doc. 6178. Also, working document 68 REV, doc. 6200, presented by L. Hjelm-Wallen, a representative of the Swedish government, is against the idea of melding the two positions. L. Michel, representing the Belgian government, (working document 4, doc. 3376) only goes so far as to push for a strengthening of UPPAR and the planning cell.

²⁰ Working Group VII, working document 26, presented by E. Brok, working document 53, doc. 5584 presented by M. Bury, and working document 46, doc. 5331, presented by Brok, van der Linde, Cushnahan & Lamassoure.

crystallised in the new High Representative, assisted by a single External Action Service. This service will support the Representative in his work both inside the EU and abroad, on the ground, where the different facets of external action must be put into practice.²¹ The question that is raised most immediately is that it makes no sense to maintain European Commission delegations in third countries. It was for this reason that the Convention recommended to the Intergovernmental Conference that these offices be transformed into Delegations or Embassies of the EU. The term 'embassy' was rejected in the interest of reaching a consensus among the Member States, but the proposal did not succeed at the conference and does not appear in the final text of the treaty. Nevertheless, the Treaty of Lisbon mentions 'Delegations of the Union'.²² So once the treaty takes effect, the name of these delegations must be changed and their composition and functions must be adapted to the new institutional reality of the EU.

However, the idea of creating EU embassies went beyond a mere cosmetic change in the existing delegations. And without detriment to national diplomatic delegations, it sought to favour the perception in other countries of the EU as a single entity, while also being a useful tool for Member States. EU embassies were considered for third countries in which only a few Member States had diplomatic representation. In such countries, these national embassies could group together with the Commission delegation, naturally maintaining their separate legal status but within the framework of the EU embassy. In this way, the interests of Member States which do not deem it necessary –or feel it too costly– to maintain an embassy in such countries would be represented by the EU embassy. Those which do have their own embassy would also retain them, although some services, mainly technical means, could be shared.

This proposal was of particular interest to States that had recently joined the EU and whose diplomatic structures were usually weaker.²³ It was also appealing to all the rest of the members because it would allow for joint diplomatic initiatives and Joint reports and analyses.

(c) Moving towards a European School of Diplomacy?

With the creation of the External Action Service generally accepted, going a step further would involve coordinating programmes to train the various officials that make up this service and eventually creating a European School of Diplomacy.

²¹ Working document 21, Preliminary draft report, doc. 4726, includes the proposal by some member states to create a diplomatic service and EU diplomacy Academy, and develops the tasks that would be entrusted to EU embassies.

²² Article 211 Treaty on the Functioning of the European Union.

²³ 'Towards the establishment of a common European diplomacy, paper by Mr Iñigo Méndez de Vigo, member of the Convention', Working Group VII, working document 55, 3/XII/2002, p. 5. An opinion similar to that expressed in this document is found in the written statement presented in line with Article 116 of the Rules of the European Parliament by E. Brok, N. Fontaine, B. Geremek, J. Leinen & I. Méndez de Vigo, on a Union of Foreign Policy, Security and Defence, EP 0010/2007, 31/I/2007.

No one questions the top-rate training of the members of the national diplomatic services. But the same cannot be said for those who address international affairs from the Secretariat of the Council or the Directorate General RELEX. The reason is obvious. The career path of an EU official has a hierarchical trajectory within his institution but no specialisation in a specific issue. There is no impediment to horizontal moves between the different EU institutions and in fact this is encouraged. This may have made sense at the time when the European Communities were created. But it is hardly tenable these days for people who work in international representation. There is no doubt about their material preparation but they are not necessarily equipped with the best negotiating methodology or other techniques that come with diplomatic training. For this reason it is a good idea to provide specific training for those EU officials who are going to take on this important task.

Meanwhile, the members of the national diplomatic services, who obviously do not suffer from this handicap, do lack training to defend the interests of the EU. Their mindset is geared towards protecting the interests and sovereignty of their own countries. This creates another training need that is perhaps not as big as the other but nonetheless important.

The proposal made by the External Relations Working Group²⁴ called for a gradual approach to achieving this goal, starting with a network of European diplomatic schools and other diplomatic training centres including the European diplomatic programme and the association programme offered to countries seeking membership. In this way, from the outset there would be coordination of training programmes that are widely disparate on European issues among the Member States. A programme with a common basis drawing on a minimum of European content would be developed. The modular structure of the programme would allow it to include diplomats still in training and others who are already trained, either national or in EU delegations, through continuing information programs and correspondence courses. Although the idea emerged at the European Convention, it should be noted that there are currently 17 diplomacy schools and centres from European countries taking part in the so-called European Diplomatic Training Initiative (EDTI). It offers courses to officials of European institutions and Member States, with an eye to creating a European External Action Service in the future.²⁵ Under the gradual scale featured in the proposal launched at the Convention, at a later time a joint programme could be developed and assigned to a European School of Diplomacy. It is our understanding it would be possible to turn the existing network of diplomatic training centres into such a school.

²⁴ I. Méndez de Vigo, 'Towards the establishment of a common European Diplomacy', Working Group VII, working document 55, 3/XII/2002.

²⁵ See *European Diplomatic Training Initiative*, <http://www.diplomacy.edu/edti/>.

Although the creation of a European School of Diplomacy was ruled out by the Convention, one might still materialise through a spill-over effect if a High Representative for Foreign Affairs is in fact established with the functions spelled out in the Constitutional Treaty and the Treaty of Lisbon and with an External Action Service that assists said representative.

In a best-case scenario, and if this circumstance were to come about, it should not be forgotten that, as stated at the Convention, real European diplomacy can only emerge through the organised convergence of the interests of Member States.²⁶

3. The Treaty of Lisbon solution and its problematic ambiguity

Under the Treaty of Lisbon (article 27.3 TEU),²⁷ the External Action Service is to be made up of officials from the General Secretariat of the Council and from the Commission, all drawn from Directorates General that deal with external relations. These officials are to be backed up by staff from the diplomatic services of Member States, with which the new EU service is supposed to work closely.

The preparatory work to get the service up and running has experienced ups and down like those endured by the Constitutional Treaty and more recently the Treaty of Lisbon. This work began as soon as the treaty was signed in October 2004, but it ground to a halt after voters in France and the Netherlands rejected the document in referendums held in May and June 2005. When the Treaty of Lisbon was signed, the preparatory work resumed out of the need to have the External Action Service ready as soon as the treaty went into effect and a high representative was named, as called for in the treaty. Member States and the European Parliament have taken part in this preparatory work, endorsing different positions. The Member States were consulted in 2005, discussing their positions in the COREPER meeting on 12 May of that year. They expressed support for an External Action Service that would not overshadow national diplomatic corps or duplicate them, and that had a balanced make-up of staff from the services of the Commission, the Council and the Member States. The European Parliament adopted a resolution on the External Action Service on 26 May, calling for it to be incorporated into the organic structure of the Commission.²⁸

²⁶ Amendments proposed by P. Andreani to the revised draft of the final report, Working Group VII, working document 72, doc. 6255.

²⁷ Article 27.3 of the TEU, modified by the Treaty of Lisbon, 'In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission'.

²⁸ European Parliament Resolution on the institutional aspects of the European External Action Service, 26/V/2005, JO C 117E/233.

After a new setback to the Treaty of Lisbon, this time when Irish voters rejected it in a referendum in 2008, the work to prepare the External Action Service was again slowed down. Nevertheless, it is worth noting that, if it is legally possible and can come to be politically viable to create or remodel the High Representative even aside of the Treaty of Lisbon, by the same token it must be possible to found an External Action Service to assist the representative.

(a) The goodness and logic of the formula that was adopted

If the figure of High Representative of the Union for Foreign Affairs and Security Policy is a baroque exercise to reconcile action with the external projection of two institutions and have the whole arrangement gain in consistency, the External Action Service that is supposed to help the representative holds within it the same virtue and what this entails in terms of organisational complexity and design of its future functioning.

Its composition seeks to reflect an institutional balance which will have to be made real in actual practice. The designation also requires agreement among the three main institutions, an ideal starting point for the diverse interests they represent to be compensated. It is also a guarantee of the later consistency of external action based on a consensus on the organ that is to develop it.

Meanwhile, explicit acknowledgement of the Delegations of the EU²⁹ is the logical consecration of an external representation in line with the recognition of a single international legal status and the strengthening of the external projection of the EU. As stated, EU delegations will provide the External Action Service with an important added value, so long as they are equipped with an efficient information system for the Council, the Commission and the Member States, as well as the necessary economic resources.³⁰ The incorporation in them of members who do not belong to the External Action Service, such as staff who work on trade policy, will also require the coordination of their activities in the country in question by the Delegation chief.

(b) Difficulties in its implementation

Efficiency will be demanded of the External Action Service, both to carry out its autonomous political activity and coordinate the external action of the Union. For this reason, as stated by the Secretariat of the Council in its contribution to the group of experts on this Service, it must be capable of showing sufficient dynamism and initiative,

²⁹ Article 35 of the TEU. Article 221 of the Treaty on the Functioning of the EU, as configured by the Treaty of Lisbon, assigns representation of the Union in the third countries and international organisations to the delegations of the Union, placed under the authority of the high representative, and acting in close cooperation with the diplomatic and consular missions of the Member States.

³⁰ External Action Service, Contribution by Council Secretariat Officials, 2008.

while at the same time gaining legitimacy and credibility among the citizens, Member States and institutions of the EU.³¹

Since the Treaty of Lisbon does not specify its organisational chart nor its mode of functioning, these points must be approved by a unanimous decision of the Council at the suggestion of the High Representative and with the approval of the European Commission.

(b.1.) Issues whose resolution is a pre-requisite for establishing the planned European Union External Action Service

Scope and size of the External Action Service. Its legal status. This is not a question that can or should be settled definitively but rather, as with other EU services –Prevention and Rapid Alert Unit, EU Military Staff– one that should evolve in terms of the service’s functioning and the needs that emerge. It should be done on a pragmatic basis, with efficiency in mind, not simply as a formal and thoughtless institutional development.

However, and with that caveat in mind, the question arises of the exact make-up and size that the External Action Service should have; this is an issue directly related to the scope of its jurisdiction. In this regard, there are two theories which seek to interpret which are the ‘relevant departments’ of the Council and the Commission whose members should be part of the service and how supporting diplomats from the national services should be integrated into it. According to the minimalist theory,³² which emphasises the work of the High Representative in coordinating foreign policy, the External Action Service would be limited to officials from the DG-E, the Political Unit of the Council and the Foreign Relations DG of the Commission, in particular Directorate A and the Crisis Unit. Under this arrangement, the External Action Service would essentially advise the High Representative on foreign policy issues other than those involving foreign trade and others which are of the exclusive or partial jurisdiction of EU, in which the service would only engage in coordination. There have been proposals for the service to address only issues involving the current second pillar.³³ We consider this as illogical as the idea of entrusting it only with tasks involving the first pillar, as the new High Representative for Foreign Policy and Defence is to be created specifically to avoid a drastic separation between the pillars, the representative’s work, his or her staff and the non-uniform external projection that is to come out of this post.

Under the maximalist model, the Service would feature a broader representation from the Commission, with the DGs involved in development policy, neighbourhood policy, humanitarian aid, financial management of external programmes and enlargement. By

³¹ External Action Service, Contribution by Council Secretariat Officials, 2008.

³² S. Duke, ‘The Lisbon Treaty and External Relations’, *EIPASCOPE* 2008/1, p. 15.

³³ Only a few Member States prefer this formula, *Joint Progress Report* of 2005 jointly presented by Javier Solana and J.M. Durão Barroso on 9 June 2005 to the European Council.

viewing the High Representative's brief as broader in scope, the service should include the departments that handle the Common Foreign and Security Policy and the European Security and Defence Policy, as well as the geographic and thematic offices.³⁴ The approach even holds that special and personal representatives should be integrated into the respective geographic and thematic services, as well as special envoys for a given crisis if they continue to be necessary.³⁵ From the Secretariat of the Council, this service would include not just the DG E and the Political Unit but also the European Union Military Staff and the Situation Centre. This issue is enormously sensitive because it would involve sharing intelligence analyses, without which the service could not adequately meet its crisis-prevention responsibilities. If there is to be no overlap,³⁶ as stated by the Joint Report, this leads us to think that the bulk of the current external action services in the Council and the Commission would shift over to the new Service.

Choosing the maximalist formula would raise the problem of relations between the new External Action Service and the European Parliament. This is currently dealt with by having a personal representative of the High Representative look after parliamentary issues. If the Service were to be given maximum scope, then this would require an entire section responsible for relations with the European Parliament.³⁷

Intimately linked to the debate over which option to go with for the size of the External Action Service is the hotly debated question of participation percentages, as the Commission has a much larger staff than the Council. The problem could be offset somewhat by the presence of diplomats from Member States, whose role is not yet clearly defined. But this compensation would still be insignificant if all the Commission officials dealing with foreign relations were to be assigned to the new service, including those stationed in third countries. The consequences of this composition have been interpreted in drastically different ways. On the one hand, one might conceive it as involving an almost cleaning-out of staff at the Commission and the risk of inter-governmentalisation of policies whose foreign relations are now handled purely at the European Community level. But, on the other hand, the Member States feel this would be a solution that gave unacceptable weight to the Commission.³⁸ The Commission supports such a broad

³⁴ In their report, the High Representative and the President of the Commission prefer the inclusion of the services managed by the Common Foreign and Security Policy as well as the geographic and thematic offices such as human rights, counterterrorism, non-proliferation and relations with the UN, *Joint Progress Report 2005, cit.*

³⁵ External Action Service, Contribution by Council Secretariat Officials, 2008.

³⁶ *Joint Progress Report de 2005, cit.* Although the Member States agree on the inclusion of the Military Staff in the External Action Service, there are greater doubts about the Situation Centre.

³⁷ In this respect see S. Duke, *cit.*, p. 16 *Joint Progress Report de 2005, cit.*

³⁸ Brian Cowe, *cit.*, p. 15. The House of Commons is extremely wary regarding this issue as it considers it essential to determine the weight of each institution in the new Service in order to avoid a further transfer of power from the Member States to the EU; House of Commons, *Foreign Policy Aspects of the Lisbon Treaty*, Third Report, 20/1/2008, Foreign Affairs Committee, <http://www.parliament.the-stationery-office.co.uk/pa/cm/cmfaff.htm>, §179 & 182.

External Action Service, while the Council says other, more balanced, formulas should be studied, although it would accept including all of the Commission's external services except those dealing with trade policy. One proposal that would balance all of these opposing interests and win the essential support of the Member States might be an initial makeup of 1,000 officials from the Commission, 200 from the Council and 2,000 from the Member States. Over time, this total could rise to 6,000 staffers.

Regardless of the number of Commission officers ultimately assigned to the new External Action Service, it seems necessary that all geographical offices or those with clear involvement in EU external action be at its disposition. The efficiency and usefulness of the support that the service provides to the High Representative will depend on this, and its legitimacy will depend on yielding positive results.³⁹

In realistic and pragmatic terms, the External Action Service should get started with the current officials from both institutions and move toward a gradual 'European expertise'. At first this must involve a greater weight for the diplomats from the national services and gradually a larger role for the EU's own diplomatic corps. Between the two there must be reciprocal trust that is only possible if there is a progressive unification or harmonisation of positions in foreign policy. This would be favoured by the 'coordination reflex' and a common institutional culture, both of which would stem from continued joint work.

If establishing institutional quotas does not seem adequate or acceptable for the majority of the players involved, then national percentages will not work either.⁴⁰ This would break with a tradition of 'fair geographic distribution' in EU institutions, aimed at guaranteeing equality among all Member States and also ensuring the independence of Commission officials, which must be apart from any national allegiance.

If there are no national or institutional quotas, it is clear that the selection of staff to serve the External Action Service must be based on the previous postings of the different services of relations or foreign policy as required by the Treaty and professional merit. But how is the latter measured and by whom? The goal must be to ensure excellence and fairness in the recruiting of the best professionals, because at stake are the prestige and efficiency of EU foreign policy. In that respect, one can establish a procedure only for selecting national diplomats if the understanding is that all current staffers of the Council and Commission services will be transferred to the External Action Service. If not, one could set up such a selection service for all candidates. The final goal is always to be able

³⁹ External Action Service, Contribution by Council Secretariat Officials, 2008.

⁴⁰ The Council's report (External Action Service, Contribution by Council Secretariat Officials, 2008) only refers to an 'overall regional balance without quotas'. The *Joint Progress Report* of 2005, *cit.*, follows the same formula, so it remains undetermined how to combine the balance with the High Representative's capacity to choose those who will make up the External Action Service.

to provide the High Representative with the all the information and support for him to carry out all of their responsibilities in the two current pillars –with the EU and the common foreign and security policy– and in all the geographic and thematic areas now under the jurisdiction of the EU. An initial formula for establishing criteria would be to have all candidates take a test. The evaluation of the candidates' aptitude would be the work of a corps or commission large enough to include representatives of the institutions and the Member States. This method might be described as complicated and discouraging for staff and diplomats who have to sit for a new test for a service that is particularly tough and not particularly well paid compared to others. It can also be argued that this procedure will be slow, high in cost and fails to assign a specific role in it to the High Representative, for which the members of the new service will work.

Most Member States seem inclined to assign a central role in this selection process to the Ministers, who would also guarantee an adequate geographical balance, albeit without setting national quotas.

Another more flexible formula would be for the Council, Commission and Member States to propose the candidates they consider ideal. These would be evaluated by a much smaller body drawn from the staff of the High Representative, who would have much sway in deciding. In this way there would be a preliminary selection at the first level, and the final pick would be from among those presumed to be the most qualified. The high representative would thus have more leeway for forming a service on the joint basis of competence, merit and his own level of confidence in the candidates. The costs of this procedure would be lower, and it would probable buffer the fight among Member States and the two EU institutions to be better represented in the service.

Whatever formula is chosen, the result varies greatly if it is only applied to national diplomats at the support level or to all the members of the external action services of the Council and the Commission. The initial recruitment must also be different from that of staffers or diplomats to fill specific positions once the service is established. In the latter case, a commission from the service itself, with balanced representation from the three focal points (Commission, Council and Member states) could take care of the selection process.

Rotation and promotion. While rotation and mobility are desirable in a professional career, and absolutely necessary if we are talking about a delegation in another country, in an External Action Service continuity that guarantees 'institutional memory' is just as important so that experience and specific acquired knowledge are not wasted. Therefore, it is necessary to ensure balance between the two principles and this could be achieved with adequate promotions and recognition of the work people do in such a service. It could be done by rotating among the External Action Service, national diplomatic services and EU delegations, establishing minimum periods for remaining in a post. In the case of

EU delegations in third countries, as occurs with overseas postings in any national diplomatic corps, the periods would be established as mandatory maximums so as to avoid excessive symbiosis with the positions of a country that might stray from the interests of the EU. One should also encourage rotation among the central services of the External Action Services and overseas delegations or with the embassies of Member States for greater experience on the ground.⁴¹

Physical location. One ideal feature of the new External Action Service should be its autonomy and thus visibility as a body that manage the budget of the common foreign and security policy and propose spending priorities. An important element of this visibility, and in order to encourage an institutional culture would be to set up the delegation in a separate building, with the possibility of having ‘antennas’ in the Commission Secretariat and the Commission so staff can attend meetings of the Council or the college of commissioners.⁴²

Clearly, the External Action Service needs to be based in Brussels. That said, under the progressive solution we have mentioned, and given the cost of setting up a single building to house more than 6,000 people, assuming we accept the large-staff formula, it is not unfeasible to maintain the current location both for Commission and Council officials. Diplomats from Member States would be distributed among the two. This proposal is workable for the service because of the short distance between the *Justus Lipsius* and *Charlemagne* buildings (even *Kortenbergh*) and the presence of national diplomats stationed at either building and assimilated with staffs of their own. Especially if the minimalist formula is chosen, nothing would prevent the existence of a single service with extensions in both institutions. However, we believe the most practical and least polemic thing to do is house the new service in the same place as the new High Representative.

Training. Training the members of the External Action Service is a task that should be addressed over the mid-term in order to ensure a common training technique. But at least a minimum level of training adapted to the new service is needed for those who comprise the service at the outset.

As we have stated, the European Convention that drafted the Constitutional Treaty endorsed the creation of an EU diplomatic service and school of diplomacy, along with developing closer cooperation between the EU’s external services and the Member States.⁴³

⁴¹ External Action Service, Contribution by Council Secretariat Officials, 2008.

⁴² External Action Service, Contribution by Council Secretariat Officials, 2008.

⁴³ Preliminary Draft Report, working document 21, doc. 4726.

As we have seen, this latter proposal did not survive in the final text of the European Constitution or the Treaty of Lisbon.

If we consider that, in the end it is people who determine the success or failure of institutional initiatives, the External Action Service will achieve its goals if the people comprising it share a common training and knowledge of the diverse national interests and traditions of foreign policy. In other words, it will work if there is a common diplomatic culture, the foundation for feeling there is a 'European public service' and a 'European attitude' in the EU's international relations.

It is the opinion of the Council that the training of the members of the External Action Service should go by a different route than a European School of Diplomacy, which as of today does not exist. The Council envisions joint diplomatic training programmes, exchanges of European officials and staff from Member States or accelerated training for specific posts in EU delegations. This would include the functioning of the External Action Service and expectations on the tasks of these delegations and that they have actually achieved.⁴⁴

Over the long term, training can include scholarship programmes, working visits to countries that are relevant to the corresponding geographic or thematic section of the External Action Service, or participation in external training programmes that should be regularly mandatory, such as the existing European diplomatic programme. It is also felt that the members of the Service should help train new ones so as to generate the necessary continuity and institutional memory to which we alluded earlier.

Besides providing skills in languages, protocol, leadership and representation, the main goal of said training should be to create a clear European identity. Here, too, there should be gradual progress in joint programmes, common training programmes and finally, if possible, standardised training at an EU centre that would also be open to external action officials from Member States.

Over the long term, both the European Parliament and the Council would approve the creation of a European School of Diplomacy with very high standards for training 'European diplomats'.⁴⁵

Organisational and budgetary dependence. Another question that needs to be resolved for an External Action Service to get up and running is that of which body it and its members will fall under, in terms of organisation and budget.

⁴⁴ External Action Service, Contribution by Council Secretariat Officials, 2008.

⁴⁵ External Action Service, Contribution by Council Secretariat Officials, 2008.

While at one point the European Parliament urged that, in organisational and budgetary terms the new service be incorporated into the staff structure of the Commission, the High Representative and the President of the Commission wanted it to be constituted as a *sui generis* service. They said it was not a new institution but rather a service under the authority of the High Representative, closely linked to the Council and the Commission.⁴⁶ This second one seems to be the most appropriate option because Member States would not accept the service's being dependent on the Commission. More importantly, such a link would be an obstacle: under EU treaties, staff working for the Commission are required to show independence, both from national interests and others which could hinder their work. This requirement would be difficult for an official coming from the services of the Council, although not impossible. But it would certainly be more problematic for a diplomat from a member state, who as a matter of principle defends the interests of his or her country. One might consider a temporary commitment to independence. But the tools for verifying compliance would not be the same ones for ensuring independence among members of the Commission and, by extension, for the rest of the staff serving it.

As for national diplomats, the question that arises is whether they should have a status as temporary agents or be support staff *détaché* from their respective governments. The terms of the treaty suggest the latter –*staff seconded from national diplomatic services of the Member States*–. However, most Member States seem more inclined to opt for the temporary agent formula. We agree because this would allow all members of the External Action Service to have the same status and employment terms.

For all of the reasons we have stated, the best proposal is this: members of the External Action Service who come from the Directorates General of external relations of the Council and the Commission depend in organisation terms on their respective institutions and members who come from national diplomatic services be seconded by the governments, at least at the beginning, although there is nothing stopping these staffers from being temporary agents from the outset if that is what Member States want. Of course, this might mean that different members of the service, even if they share the same status, particularly with regard to remuneration, could be selected in different ways. Or there could be differences in the amount or level of said national diplomats, and where possible it would be a good idea to harmonise such disparities. The amount and level of the national agents present in the External Action Service will determine to a large extent its final make-up and whether Member States accept and work with it. Later, one can move to a service that is autonomous from those of the Commission and the Council: the High Representative's service.

⁴⁶ See the resolution of the European Parliament in 2005 on the External Action Service, *cit.*, and *Joint Progress Report* of 2005, *cit.*, respectively.

Although it is not yet clear where the new service's budget will come from, we believe it should have the same organisational and budgetary dependency as the High Representative. And the budget should come from EU budget because an agreement to share out the costs among the governments of Member States could harm the service's image as being an impartial body serving the EU. In this way, the European Parliament will wield control that is indirect but important.

The scope of the service's competences: assisting the High Representative or also the President of the European Council? If we stick to the letter of the Treaty of Lisbon, the External Action Service is entrusted with the mission of assisting and supporting the High Representative (article 27.3 TEU). However, there are arguments in favour of it also assisting the new President of the European Council.⁴⁷ Specifically, one can argue that letting it support both, besides giving the service greater scope, would also favour better coordination between this new Presidency and the High Representative. Otherwise, a small support unit would be needed for the new Presidency and this would cause a doubling-up in representation and services, something which the EU is trying to avoid because of the risk of inconsistency in its external action.

It has even been suggested that the External Action Service support the President of the Commission and other members in their foreign policy activities, while avoiding the superimposition or duplication of services.⁴⁸

On the other hand, one can point to the excessive inter-governmental inclination that this would give to the position of High Representative, in detriment of balance with the Commission. This imbalance has to be offset somehow.

(b.2.) The uncertain future of the Treaty of Lisbon and the possibility of sidestepping treaties to create the External Action Service

After the Irish referendum of 2008, the prospects for the Treaty of Lisbon entering force have become grimmer. It is this treaty which calls for the changes we have discussed in this paper. For EU reform treaties to take effect, they currently must be ratified by all the Member States. Both the European Constitution and the Treaty of Lisbon feature mechanisms to break gentle with this requirement, but so long as these tools are not legally in force, they cannot be applied. While solutions are sought to the impasse that exists in the European constitutional process, political solutions to break the deadlock are also being considered. In this regard, the European Security and Defence Policy could turn out to be a paradigm. It was developed in a para-constitutional way, on the sidelines of the treaties until the Treaty of Nice includes express reference to the policy,⁴⁹ although

⁴⁷ External Action Service, Contribution by Council Secretariat Officials, 2008, and B. Cowe, *cit.*, p. 19.

⁴⁸ External Action Service, Contribution by Council Secretariat Officials, 2008, and *Joint Progress Report* from 2005, *cit.*

⁴⁹ Article 17 TEU, which refers mainly to the Petersberg missions to be developed by the EU, the possible

not all the real content of it. In actual practice we have seen how institutions called for in the European Constitution have become reality without this document's having been approved. Such is the case of the European Defence Agency, the application of the solidarity⁵⁰ clause or the generation of military capabilities.

In this same way it would be possible to advance in the area we have been discussing, which is without a doubt the most urgent for the development of the EU as an influential player on the international stage.

However, and given the significance of three referendums which, in practice, rejected the entirety of all of these innovations, for whatever reasons, it is hard to imagine these changes getting approved on the sidelines of the process, at least over the short term. Thus, legally speaking it would be possible to create the new High Representative through a decision approved unanimously by the Member States, although changes would be required in the Commission's rules for choosing and functioning, and other important reforms in basic norms on decision-making. In this same way, creation of the External Action Service could be approved. But if the legal complexity involved in such a step is great, even bigger is the political obstacle to continuing to advance with the 'no' vote of an essential part of the European population. These people would see themselves obligated by changes which they previously rejected as part of their basic law.

(c) Relations with national diplomatic services

Two statements included in the final text of the Inter-Governmental Congress which gives rise to the Treaty of Lisbon display the defensive way in which Member States digest progress in the EU's international representation. Thus, it is stated that the creation of the High Representative and the establishment of the External Action Service will not affect the current responsibilities of the Member States in the formulation and carrying-out of their foreign policy, nor their national representation in third countries and participation in international organisations, including their membership of the UN Security Council.

Despite this, there are two fundamental reasons that there must be close cooperation between the External Action Service and the national diplomatic services. First, the Treaty of Lisbon requires the presence in said service of staff from national diplomatic corps. One might even think of using staff that are not diplomats but as assimilated in the different Member States. The second reason is that the Treaty of Lisbon⁵¹ calls specifically for close cooperation between delegations of the Union under the authority of the High Representative and diplomatic and consular missions of the Member States.

evolution towards a common defence policy and relations with NATO.

⁵⁰ Creation of the European Defence Agency through common action 551, 12/7/2004, *DO*, nr L 245, of 17/VII/2004. Application of the solidarity clause through a Statement contained in the conclusions of the European Council of 25-26 March, 2004, (POLGEN 20, concl.1, 9048/04, of 19/V/2004) –*Declaration on combating terrorism*– after the terrorist attacks that hit Madrid.

⁵¹ Future articles 32 and 35 TEU and 211 of the Treaty on the Functioning of the EU.

In these conditions, it is essential to divvy up tasks clearly between national diplomats and 'European' ones. Underlying this is the idea that the existence of European diplomacy in no way is meant to hinder the national diplomatic corps. Indeed, its experience and high level of penetration are supposed to be the main asset of the future External Action Service. Therefore, as the Service is to bring national diplomats on board and the national diplomatic missions are necessary for achieving goals related to external representation, it seems groundless to criticise the Service as a centralised system with an inherent transfer of power from Member States to the institutions of the EU.⁵²

Since it has been suggested that one of the areas the new EU delegations should cover is related to diplomatic and consular protection, as well as civil protection, crisis intervention and humanitarian assistance, in these areas there should be clear separation of competences between such delegations and those from the national diplomatic services.⁵³ Diplomatic protection is the jurisdiction of a State, and consular protection can be carried out, as already happens currently, by consular staff from another member state or even by EU delegations that have national diplomatic staff. Another task that could be entrusted to the external representation of the EU is the issuing of visas, as this is a national competence already regulated at the EU level. The obstacles or objections to this might stem from the disappearance of the margin of leeway that interpreting EU and national norms leaves in the hands of States when it comes to granting or denying visas. Member states have already expressed interest in transferring some of their obligations in the areas of consular protection and visas to the new External Action Service.

One way to guarantee coordination among national embassies might be an agreement among Member States to have the chief of the EU delegation preside over meetings of national diplomatic representatives in a given third country.⁵⁴

In general, one can say that the External Action Service must offer a chance for greater coordination between the Member States and the EU.

(d) Future Consequences

With or without the Treaty of Lisbon, the creation of the External Action Service does not necessarily imply a diminishing of national diplomatic services. But it could encourage such a reduction unless Member States use the service to strengthen national positions of leadership.

⁵² House of Commons, *Foreign Policy Aspects of the Lisbon Treaty*, Third Report, 20/I/2008, Foreign Affairs Committee, <http://www.parliament.the-stationery-office.co.uk/pa/cm/cmfaff.htm>, §179.

⁵³ M. Barnier, 'For a European civil protection force: Europeaid', May 2006.

⁵⁴ *Joint Progress Report 2005*, cit.

To the extent that multilateral relations among States increase in increasingly varied areas, bilateral diplomatic relations become less relevant. So it could be argued that the dispute over bilateral diplomacy and diplomacy originating in and carried out by Brussels is not a zero-sum game. However, and with political integration not complete, embassies have taken on new functions. And, as has been shown empirically, far from reducing their bilateral representation in other Member States, they are maintaining it or even increasing it.⁵⁵

The positive outcome of creating the External Action Service should be better and more coordinated representation of the EU abroad, greater strength for it as an international player, and greater visibility as such.

Aside from this argument, we could ask if setting up the External Action Service as called for in the Treaty of Lisbon would have any impact on the nature of the EU's international normative power. Two factors might have positive and negative relevance in this regard.⁵⁶ The existence of a single international representation, backed up by a single External Action Service, should strengthen the normative power of the EU because of its goals, means and results or impact⁵⁷ as long as the EU's external action is based on those values and should promote them. However, the presence of national diplomats in the External Action Service might lead to a sidelining of common values, with more emphasis placed on defending individual national interests. This risk could be ruled out if we keep in mind that national staff which join the External Action Service are not supposed to act as such but rather give top priority to serving the High Representative and the interests of the EU. This kind of conduct will be enhanced by a process of joint training and socialisation both in the central headquarters of the Service and in delegations in third countries.

4. Implications for Spain

There are two main implications for Spain and Spanish diplomatic corps as a result of the changes proposed in the Treaty of Lisbon or, aside from it, the creation of the High Representative for Foreign Affairs and Defence and the External Action Service supporting him or her. On the one hand, this might have repercussions for Spain's diplomatic or consular missions abroad. On the other hand, one must consider the consequences of the presence of national diplomats in the new External Action Service.

⁵⁵ Ø. Bratberg, 'Bilateral Embassies in an Integrated Europe: a case of Institutional Robustness?', *European Integration*, vol. 30, nr 2, 2008, p.235-253.

⁵⁶ T. Díez & I. Manners, 'Reflecting in Normative Power Europe', in F. Berenskoetter & M.J. Williams (Eds.), *Power in World Politics*, Routledge, London, 2007, p. 173-188.

⁵⁷ N. Tocci, 'Profiling Normative Foreign Policy: The European Union and its Global Partners', in *Who is a Normative Foreign Policy Actor?. The European Union and its Global Partners*, Centre for European Policy Studies, Brussels, 2008, p. 1-23.

As for the first issue, the idea of transforming the current Commission delegations, with adequate updates, into EU missions is no reason to reduce the number of permanent Spanish missions in third countries. In no way are the EU missions viewed as replacing the national ones because in this area the Member States continue to be sovereign. Another issue altogether is that, for practical reasons, mainly budgetary ones, it might make sense to close down some embassies or reduce their size given the presence of an EU mission. Such a change might take on even more scope if such missions are set up as real EU embassies, as proposed at the European Convention.

As required by the Treaty on European Union with regard to Commission delegations (article 20), the Treaty of Lisbon calls for cooperation from Member States' diplomatic and consular missions and from EU delegations in third countries and at international organizations. It also calls on them to contribute to the formulation and enforcement of EU common positions (articles 32 and 35 of the TEU). One difference with the current situation stems from the disappearance of the rotating Presidency, which currently ensures coordination from the diplomatic missions of Member States in third countries. In most cases, this task will become the *de facto* responsibility of EU missions, which will also have competences in foreign and security policy. As has been stated, and correctly so, this situation will lead EU ambassadors to take on a high profile and give them negotiating power both in trade issues or others that are EU competences, and in political issues. National embassies might perceive the growing role of the EU representative as a threat. But if the EU is to exercise an effective foreign policy, as Member States say they want in the Treaty of Lisbon, it is absolutely essential to have close cooperation from national diplomatic missions, especially those which are best situated and have the greatest weight in a given third country, in order to support the position the EU has decided on jointly.⁵⁸

On the presence of national diplomats in the External Action of Service, Spain's position is clear in that it wants to participate strongly at the highest level. But this maximum level of ambition might be thwarted by the limited nature of the Spanish foreign service: it is short-staffed, although this is offset by the professional quality of the existing staff. In these conditions it would seem only logical that Spain's contribution to the new External Action Service might also be a reduced one, with the negative consequences (Spain): not spreading the Spanish diplomatic culture, one of great tradition and prestige to the new European Service. The solution is clear, and involves increasing the staff and resources of the Spanish external action service until it reaches an adequate level in comparative terms with EU countries of similar political, economic and demographic weight and of such varied external interests. If not done this way, the only palliative measure would be a cut in missions in countries where Spain has little presence, taking advantage in these cases of the renewed EU mission.

⁵⁸ B. Cowe, *cit.*, p. 22.

Spain's legitimate desire for a major presence in the External Action Service also leads to a need for greater training in European affairs. This is in addition to generic knowledge of international relations, which must take into account the role of the EU as an international player and its interests as such. Training at Spanish Diplomatic School should ensure greater specialisation in EU foreign policy issues and Spain's interests within that framework. This should be the case not just for postings in EU institutions or Member States but for all postings. This is because in each diplomatic mission in any third country, diplomats have to juggle their role as representatives of their country with their role as representatives of the 'Embassy of a member state of the EU', with the consequent coordination with representations of the other Member States and with the future representation of the EU.

In no way does this have to mean a weakening of the defence of Spanish interests. That job will remain in the hands of Spanish diplomats, who will be joined by those of the EU, among which there can be national representatives. It is true, however, that the presence of national diplomats in the External Action Service, both in Brussels and in external delegations, must go hand in hand with essential independence from national interests while holding a post with total loyalty to European positions and policies which must be designed beforehand. This means institutional loyalty on the part of the *détachés* and support for the principles of the common foreign and security policy, which are common to all.

5. Conclusion

Of the external action reforms called for in the Treaty of Lisbon, many still need to be developed, a task that is up to the Member States and EU institutions. Such is the case of the role of the High Representative with respect to the other EU agents of foreign relations, the design of the External Action Service that is to assist this official and of EU delegations, or the way in which national diplomatic services can complement the work of the EU and vice versa.

Either through the Treaty of Lisbon, or through other ways of approving the reforms proposed in how the EU represents itself abroad, the EU is moving towards the creation of a new code of EU governance in foreign policy. This includes new positions such as the President of the European Council and the High Representative for Foreign Affairs and Security Policy, as well as a reconfiguring of the current rotating presidency of the Council. The changes will raise the need for a Support Service for this new system and the service will require the following features:

- Unity.
- Specialisation and expertise.

- Multi-faceted sensitivity and the ability to determine common interests, avoiding politization and excessive weight for Member States and national diplomatic corps, even while working with them.

The creation of the new External Action Service of the EU will entail the disappearance of traditional institutional logic of representing the interests of Member States, or peoples or citizens, or of common or supranational interest, moving instead to a functional logic. The new service must address the interests of the EU, which include those of the Member States.

The legitimacy of the new service must be measured by the quality of its results and the added value it provides for the citizens and Member States of the EU. In other words, it will be measured on whether it achieves a more relevant role for the EU on the International stage and external policies that are more efficient and consistent.⁵⁹

*Natividad Fernández Sola*⁶⁰

*Professor of International Law and International Relations, and Jean Monnet Professor,
University of Zaragoza*

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⁵⁹ EAS, Contribution by Council Secretariat Officials.

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