

A Foreign Minister for the EU – Past, Present and Future

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Introduction

Leadership for CFSP and ESDP cannot be provided by institutions, or by isolated individuals, alone but it also requires far-sighted individuals embedded in an appropriate institutional framework and working towards the development of a European strategic culture in security matters. Failure to do so, will lead, at worst, to a discredited and unrealised European security policy or, at best, underperformance and a growing expectations gap in the eyes of European citizens and international partners. The real question is how to enhance continuity, policy coherence and cohesion in the formulation and implementation of foreign and security policy objectives at 25.

The creation of the new position of the Foreign Minister (FM) does not provide the ultimate answer to this question, but it does go some way in this direction. This paper argues that the job description of the Foreign Minister – as outlined in the Constitutional Treaty - stretches well beyond mere double-hatting, if the role of this new figure is taken seriously. Whilst remaining in close dialogue with the Member States, the Foreign Minister will be sitting in the Commission, coordinating external policies, chairing the new Foreign Affairs Council (FAC), as well as initiating proposals and overseeing their implementation; the FM promises to be a major player and locus for EU foreign and security policy. He/she could potentially facilitate the conditions for decisions to be adopted and effectively followed up, thereby improving the track record on common foreign and security policy and developing the strategic culture that has been described as necessary by the Member States in the European Security Strategy.

This said, providing the new position of the FM with adequate institutional and financial resources still requires further work and clarification. If this is not addressed, the new Constitutional undertaking may generate new problems for the credibility of the Union as an actor in foreign policy. The gap between growing expectations on the performance of the Union in international affairs and inefficient decision-making and capabilities for action may grow wider.¹ Whilst the personality of the first incumbent matters, it cannot be a substitute for functioning lines of command and appropriate resources. This paper draws attention to the opportunities and pitfalls of the proposed EU Foreign Minister and calls for complementing such a figure with the appropriate political mandate and support structures.

1. *From Amsterdam to the Convention*

¹ For the concept of ‘capability - expectations gap’ see C. Hill, ‘The Capability-Expectations Gap, or Conceptualising Europe’s International Role’, *Journal of Common Market Studies*, 31, 1992. See also: J. Mawdsley, and G. Quille, ‘The EU Security Strategy: A New Framework for ESDP and equipping the EU Rapid Reaction Force’. ISIS Report, December 2003, found at: www.isis-europe.org; and A. Missiroli and G. Quille, ‘European Security in Flux’ in Fraser Cameron (ed.), *The Future of Europe: Integration and Enlargement*, Routledge, 2004.

The new position of Foreign Minister for the European Union comes at the end of a process originating in the run up to the Treaty of Amsterdam. During 1995, in the context of the proceedings of the Reflection Group chaired by Carlos Westendorp, the French government introduced a proposal for the creation of a ministerial level figure, a High Representative (HR).² The new actor would, according to the French, improve continuity in Common Foreign and Security Policy (CFSP), table policies, and represent the Union to the outside world. Although a HR was eventually created, the original French proposal was met with hostility and a consensus crystallised around giving the HR a remit restricted to supporting the Presidency and to implementing the decisions of the Council of Ministers. In other words, according to a majority of member states, the new HR was to have a predominantly administrative role. The HR therefore was to resemble more like a Secretary General for CFSP rather than a “Foreign Minister” proper.

The consensus was based upon the shared assumption that policy making in the domain of CFSP had to remain the prerogative of the Member States. As a consequence, the HR was firmly anchored under the Member States to the machinery of the Council. The same person would act as Secretary General of the Council and HR for CFSP, and would be primarily responsible for:

- assisting the Presidency “*in matters coming within the scope of the common foreign and security policy*” (Article 18 and 26 TEU). In this context, the HR would contribute to the “*formulation, preparation and implementation of policy decisions*”.
- conducting political dialogue with international partners “*when appropriate and acting on behalf of the Council at the request of the Presidency*”.

On the whole, the language of the Treaty of Amsterdam included a rather loose job description for the new HR. The key role of policy-initiator was excluded from his/her remit, and the HR entered the institutional scene of the Union essentially as a bureaucratic actor, although at a very senior level. The HR was an ‘agent’ bringing more continuity and coherence to policy-making but national governments also re-asserted themselves as masters of CFSP.

Nevertheless, European integration is replete with examples whereby the *simple* creation of a new institutional position has unexpected consequences. Thus, an ‘agent’ can expand his remit well beyond the original expectations of the Member States and may even alter the nature of the process of decision-making. Furthermore, the Member States may even benefit from the new agent’s actions and therefore neglect to prevent such developments.³ Whilst the member states were cautious in empowering the HR figure, they then showed, in 1999, a considerable degree of ambition in appointing a high-profile personality like Javier Solana to the job.⁴ This also reflected a growing awareness of the inadequacy of decision-making in

² Y. Buchet de Neuilly, ‘L’irrésistible ascension du Haut représentant pour la PESC: Une solution institutionnelle dans une pluralité d’espaces d’actions européens’, *Politique Européenne*, 8, 2002 and D. Allen, in J. Peterson, H. Sjursen, ‘A Common Foreign Policy for Europe?’, Routledge, London, 1998.

³ M. A. Pollack, ‘Delegation, agency, and agenda setting in the European Community’, *International Organization* 51, 1, 1997. For an application of the principal-agent model to CFSP and European Security and Defence Policy (ESDP), see J. Howorth, ‘The CESDP and the Forging of a European Security Culture’, *Politique Européenne*, 8, 2002.

⁴ The choice of Javier Solana, former Spanish Foreign Minister and Secretary General of NATO, reflected broader political and institutional developments. The run up to military intervention in Kosovo in spring 1999

CFSP, which they decided would require a seasoned and trusted leader able to boost collective performance. A window of opportunity opened that would not be easily shut.

The HR represented a unique development, including a ‘working style’ that went beyond a narrow understanding of intergovernmental and supra-national forms of decision-making.⁵ This also seemed to push at the boundaries of what Member States had intended when setting up the new office in 1996/7. Other bodies followed, to furnish the Union with the authority necessary to be a credible international actor without accepting the legal constraints of the Community method. Notable developments included the Policy Planning and Early Warning Unit and the Situation Centre, directly linked to the HR, along with the two committees formally established in January 2001: the Political and Security Committee (COPS) and the Military Committee (supported by a Military Staff). The HR proved able to exercise a considerable degree of leadership and delicate balancing skills to act as a catalyst in different institutional formations, at the European and at the national level.

Parallel institutional developments, therefore, enhanced the role of the HR further. The new agencies and actors provided the HR with a considerable platform for policy-shaping, and helped him communicate with a number of national interlocutors sitting in the committees.⁶ Arguably, the permanent dialogue that Solana and his closest advisers held with Member States’ ambassadors and officials over the years is the ultimate source of his success, whilst also representing the ultimate constraint on the role of the HR. Regular exchange and shared expertise are the basis for building a policy and epistemic community at the EU level.

Javier Solana, in addressing the Convention on the Future of Europe,⁷ described the rationale behind the creation of his post as to “*provide coherence, visibility and a distinctly political element to our foreign policy efforts.*” He outlined the considerable achievements accomplished in the first three years of his mandate, and stressed for example that “*visibility, profile and a permanent political channel have been given to the work of the Union with the United Nations.*”

The experience of the first years of the HR/SG and the evolution of the support structures in the Council have shown that whilst personal performance and good relationships have been important they are not always enough to shape and sustain a credible European foreign

showed once again the inadequacy of mere inter-governmental coordination to face up to serious international crises. The importance of cooperation with the United States through NATO was highlighted. The launch of European Security and Defence Policy (ESDP) at the St. Malo bilateral summit between France and the UK in 1998, followed by the far reaching conclusions of the European Council in Cologne in June 1999, entailed a renewed demand for leadership, initiative and coordination to steer the progress and guide the new CFSP/ESDP machinery.

⁵ For a comprehensive and insightful analysis of the requirements for further institutional reform between Nice and the Convention, see, G. Andréani, C. Bertram and C. Grant, ‘Europe’s Military Revolution’, CER pamphlet, March 2001.

⁶ These developments are also reflected at Treaty level. For example, the new Article 25 TEU, introduced by the Treaty of Nice, has entrusted the Political and Security Committee with important tasks in exercising political control and strategic direction of crisis management operations, including decision-taking as delegated by the Council. Although not explicitly mentioning the position of the HR in this context, the new provisions indirectly enhanced his role of interface between national governments and the new Council bodies, and of day-to-day manager of CFSP and ESDP policy-making.

⁷ He addressed Working Group VII on ‘External Action’, chaired by Jean Luc Dehaene, on 15 October 2003. See in particular WG VII, Working Document 9.

policy. The Convention on the Future of Europe would return to this issue in order to work towards a coherent and effective foreign policy.

2. *The Convention debate*

The Convention's mandate, provided for in the Laeken Declaration, included exploring how to improve the performance of the Union on the international scene, and make of it "*a power...to change the course of world affairs*". The debate in the Convention reflected on the successes and the failures of the past and on the shortfalls of existing structures and procedures. On the one hand, the synergy developed by the HR, Javier Solana, and the Commissioner in charge of External Relations (RELEX), Chris Patten, was recognised and considered a positive basis to overcome inter-institutional barriers, although things have not always gone as smoothly at a lower bureaucratic level. On the other hand, the limitations of intergovernmental cooperation in promoting strategic thinking, proactive decision-making and coherent action, were denounced by a large majority of the Convention's members. A diagnosis of EU shortcomings in this domain was almost consensual, but the prognosis and certainly the prescription highlighted divergences between its members.

In the first plenary session specifically dedicated to CFSP, on 11 and 12 July 2002, the UK government representative, Peter Hain, did not miss the opportunity to warn that the communitarisation of this policy domain would not help, because the credibility of CFSP rests with the commitment of Member States and their resources.⁸ The British representative insisted, showing some nostalgia for pre-Amsterdam-like arguments, that what Europe needed was one face and one voice to function as an effective interface with the rest of the world, and his/her credibility would depend on the backing from national governments. Others, however, proposed to overcome the existing inadequate structures by merging the position of HR with that of the RELEX Commissioner. The details on these new positions were not yet clear, but it is significant that this path-breaking option forcefully emerged at such an early stage of the Convention's proceedings.⁹ Most importantly, a fundamental distinction was drawn between policy formulation and the function of representation: the key question was how to shape a common position in order to have an impact on international events. Like the French delegation back in 1995, a majority of Convention members argued for enhancing the political profile of the HR. By introducing a FM that would sit in both the Council and the Commission, however, the Convention debate marked a quantum leap compared to previous thinking on creating the opportunity for closer cooperation between, if not fusion of, the relevant services.

The debate in plenary was paralleled and complemented by the proceedings of the working groups set up to address issues of particular importance and complexity. Working groups would meet over a three months period and deliver their recommendations to the plenary. Their role in bringing about unprecedented institutional innovations proved vital: working groups constructively combined deliberation with the insightful contribution of a range of experts. Among the first groups to be set up was the Working Group on the 'Legal

⁸ See the summary of the proceedings in CONV 200/02 and a more critical report in G.Grevi, 'Political will and institutions: a chicken-egg dilemma in EU foreign policy', EPC Commentary, 16 July 2002.

⁹ For an evaluation of the different options open in the early stages of the Convention to bridge the gap between the position of the HR and the tasks of the RELEX Commissioner, see M.Dassu, A. Missiroli, 'More Europe in Foreign and Security Policy: the Institutional Dimension of CFSP', *The International Spectator*, 2, 2002

Personality’ of the Union, chaired by Giuliano Amato. This group set the tone for subsequent discussions on the international profile of the Union and the instruments at its disposal. The final report, delivered as early in the life of the Convention as 1 October 2002, paved the way for far-reaching developments.¹⁰ The Group recommended the merger of the international legal personalities of the Union and of the Community into one. From a ‘constitutional’ standpoint, that implied the dismantling of the outdated ‘pillar structure’ and also the consolidation of previous treaties into one constitutional treaty. Moreover, the group argued that the attribution of a single legal personality to the Union was consistent with the idea to merge the position of the HR and of the RELEX Commissioner into one post, thereby enabling the Union to present one position with one voice in international *fora*. Such steps would, in turn, justify a more structural re-organisation of the relevant staffs of the Council and the Commission, with a view to setting up a coherent service for external relations of the EU. It was of little surprise that subsequent working groups, set up in September 2002, took the lead from the conclusions of the Working Group on Legal Personality.

The Working Group on ‘External Action’, chaired by Jean Luc Dehaene, convened at the end of September 2002 to examine and propose solutions on ways of enhancing the performance of the Union on the global stage. On 15 October, Solana presented a list of pre-requisites for effective action in foreign and security policy. Notably these included continuity, quick reaction, coherence and solidarity among Member States, along with the political will to tackle sensitive issues in the EU framework, and the need for a clear division of labour between the institutions. Interestingly, on the latter point, Solana spoke against the merger of the functions of the HR and of the Commissioner in charge of External Relations, arguing that it would add confusion and would not bring additional synergies. Instead, efficiency and coherence would be undermined by a conflict of interest whereby the post-holder would have to gain the trust of foreign ministers in the Council while also be bound by collegial rules and loyalties within the Commission.¹¹

Alternatively, Solana strongly advocated that the HR be given a right of initiative on CFSP, and that he/she should chair the External Relations formation of the Council of Ministers. Commissioner Patten had already expressed similar views in front of the same audience, when calling for concrete steps short of a merger of the two functions.¹² These included allowing the HR to participate in the Commission’s meetings where CFSP matters were discussed, and providing him/her with enhanced joint strategic planning and greater financial resources.

A majority of the group, however, advocated a more ambitious response and called for the merger of two very demanding jobs, the HR and the RELEX Commissioner.¹³ The final report of the Working Group reflected a “*large trend*” in favour of setting up a double-hatted “*External Representative*” (ER), combining the functions of Solana and Patten.¹⁴ According to

¹⁰ See CONV 305/02, WG III, Working Document 16.

¹¹ This argument would be echoed – and reinforced with an assessment of the potential workload – by W. Wallace, ‘Europe’s impossible foreign policy brief’, *Financial Times*, 11 November 2003.

¹² See CONV 342/02.

¹³ The representatives of the German government played a key role in making this case, with two important written contributions describing in detail how the new position would function. See the contribution of G. Plugger, WG VII, WD 17 and H.M. Bury, WG VII, WD 53. These proposals were largely in line with the position taken by the Commission in its Communication on institutional reform on 4 December: ‘For the European Union Peace, Freedom and Solidarity’, Communication from the Commission, CONV 448/02.

¹⁴ See CONV 459/02

the final report, the ER would be appointed by the Council with the approval of the President of the Commission. He/she would receive mandates from, and be accountable to, the Council on CFSP matters. In that capacity he/she would have a formal, although not exclusive, right of initiative, which would override the initiative of the Commission. Initiatives or decisions in the CFSP domain would not need approval by the Commission. As a full member of the Commission, on the other hand, the ER would put proposals to the College and take part in decision-making on matters falling within Community competence. Finally, in the exercise of the function of external representation, he/she would replace the EU *troika*.

This report was largely in sync with the report of Working Group VIII on defence, chaired by Michel Barnier. When presenting the recommendations of the group to the plenary session of the Convention on 20 December 2002, Barnier pleaded for the reinforcement of the position of HR by granting him the right of initiative to launch crisis management operations. He also called for endowing him/her with a mandate to take the necessary decisions in crisis management situations, under the authority of the Council and in permanent contact with the PSC. More generally, the HR should be made responsible for coordinating Member States' efforts in developing ESDP.¹⁵

As emphasised by Dehaene on the same occasion, these proposals were described as part of a broader design, dating from the late 1990s, on bridging the gap between the intergovernmental and the supranational features of EU decision-making.¹⁶ However, the new concept of double-hatting raised considerable scepticism among Convention members, albeit for different reasons. The federalist camp felt that the new 'entity' would threaten the collegiality of the Commission, whereas Peter Hain, representing the inter-governmental camp, questioned the proposition that double-hatting would help defuse recurrent tensions between the Council, the Commission and the Member States. Controversy over the job description of the new figure continued for months and became more acute following the ambitious terminology included in the draft articles presented by the Praesidium on 23 April, which called for the creation of a Union Foreign Minister (FM).¹⁷ The UK government engaged in a tenacious exercise of damage limitation in the following plenary, on 15 and 16 of May.¹⁸ Hain argued that it would be misleading to appoint a 'Minister' in the absence of a 'Government', and categorically ruled out that the FM should be bound by the collegiality of the Commission under any circumstances. The representatives of Sweden, Spain and Ireland also offered serious doubts, including whether it would be appropriate for the FM to chair the Foreign Affairs and External Relations Council. A majority of members led by the French and the German governments on the other hand, expressed strong support for the new position.

¹⁵ The summary of the proceedings of this plenary session is reported in CONV 473/02. For the final report of the WG Defence see CONV 461/02.

¹⁶ For detailed and convincing proposals in this direction, see G. Andréani, C. Bertram and C. Grant, op. cit. in note 4.

¹⁷ See CONV 685/03 for the draft articles on external action, and CONV 691/03 for new draft institutional provisions.

¹⁸ See summary of the proceedings in CONV 748/03 and remarks by G. Grevi, 'The future of EU external action: moving forward but on divergent paths?', EPC Commentary, 19 May 2003. Curiously enough, the British government insisted on using the term 'Foreign Secretary' of the Union. This is, however, exactly the definition of Jack Straw's portfolio in the British Government, and seems therefore hardly a helpful option to reject the configuration of a ministerial type of function.

Eventually, the position of the FM within the wider institutional framework was not substantially altered in the final, frantic stages of the Convention. The job description submitted by the Working Group in December 2002 was translated into the draft Constitutional Treaty in June 2003 with very little adjustment. It is important to appreciate that the Convention formula did not amount to a merger of two positions into one, but instead it attributed to one and the same person the exercise of two functions, (i.e. a *personal union*).¹⁹ As examined below in further detail, the FM would work in different ‘modes’ depending on the policy issue at stake, whether belonging to the remit of the Commission or pertaining to the formerly separate CFSP portfolio.

3. *The job description: a two-step process*

Article I-27 of the draft Constitutional Treaty²⁰ included that the FM is to be appointed by the European Council, acting by qualified majority, with the agreement of the President of the Commission. The appointment procedure reflected the Janus-faced nature of the newly established position, with implications for the accountability of the Foreign Minister, as well as for the preservation of the collegiality of the Commission. The Intergovernmental Conference would subsequently address these issues in further detail. The tasks that the draft Constitutional Treaty attributed to the Foreign Minister can be described by breaking them down into five categories:

- **Initiative:** the new right of initiative of the FM was firmly established in the draft Constitutional Treaty. The Foreign Minister “*shall contribute by his or her proposals to the development of the common foreign policy*” (Article I-27). More specifically, the Foreign Minister “*for the field of common foreign and security policy, and the Commission, for other fields of external action, may submit joint proposals to the Council of Ministers.*” (Article III-194.2, restating the content of Article I-39.7). A broader, more political mandate was expressed in Article III-200.1, which provided that “*Any Member State, the Union Minister of Foreign Affairs, or that Minister with the Commission’s support, may refer to the Council of Ministers any question relating to the common foreign and security policy and may submit proposals to it.*” Article III-201.2(b) provided for an important (although limited) opportunity to apply majority voting in CFSP, and places the Foreign Minister at the core of the procedure by envisaging that the Council shall act by qualified majority “*when adopting a position on a Union action or position, on a proposal which the Minister has put to it following a specific request to him or her from the European Council made on its own initiative or that of the Minister.*” The Foreign Minister was therefore in a position to facilitate the abandoning of the veto in CFSP.²¹

¹⁹ This point was (successfully) reiterated on several occasions by P. de Schoutheete, former Permanent Representative of Belgium to the EU and advisor to Commissioner Barnier.

²⁰ The numbering and the wording of the articles mentioned under this chapter correspond to the version of the Treaty Establishing a Constitution for Europe delivered by the Convention and adopted by the European Council on 18 July 2003, COMV 850/03.

²¹ As explained below at greater length, the Foreign Minister is also attributed with the power to make a proposal to the Council to establish “*the procedures for setting up and financing the start up fund*” made up of national contributions, needed to finance EU operations for peace keeping, conflict prevention and strengthening international security.

- **Coordination:** the Foreign Minister, as one of the Vice-Presidents of the Commission, “*shall be responsible there for handling external action and for coordinating other aspects of the Union’s external action.*” (Article I-27.3). Article III-193.3 took a step further and envisaged that the Foreign Minister assist the Council and the Commission in ensuring consistency between the different areas of external action and between these and other policies. In a Union of 25, with a large Commission and with team presidencies rotating the chairs of Council formations, co-ordination will be in high demand. Moreover, the Foreign Minister was supposed to ensure that “*Member States...support the common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.*” (Article III-195.2). When the Union has defined a common approach to a given policy issue, the Foreign Minister and “*the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council of Ministers.*” (Article III-202.1). Again, the implication is that the burden of coordination will fall largely on the Foreign Minister. Given the widespread concerns expressed during the subsequent IGC referring to attempts at closer cooperation in security and defence policy, particularly the potential divisions on structured cooperation in military matters, the Foreign Minister will be expected to guarantee some degree of inclusion for all countries. According to Article III-211.1, when the Council entrusts a group of Member States with the implementation of a Petersberg task, “*those Member States, in association with the Union Minister for Foreign Affairs, shall agree between themselves on the management of the task.*” Turning to so-called ‘structured co-operation’, this provision has undergone radical amendment during the IGC, which go in the direction of opening up decision-making to ‘outsiders’. The role of the FM to bridge the gap between those who are involved and those who are not, however, remains politically sensitive and important.
- **Representation:** in developing the mandate already attributed to the High Representative, Article III-197.2 stated that, for CFSP matters, “*the Union shall be represented by the Union Minister for Foreign Affairs. He or she shall conduct political dialogue on the Union’s behalf and shall express the Union’s position in international organisations and at international conferences.*” From this standpoint, Article III-206.2 contained an innovation that reflected and enhanced the customary practice established by Javier Solana. When a EU position exists on a subject discussed at the UN Security Council, “*those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union’s position.*” Not a permanent seat for the Union, but an innovation with significant implications if this provision were put into effect on a regular basis.
- **Implementation:** Article I-27.2 said that the Foreign Minister “*shall carry out [CFSP] as mandated by the Council of Ministers*” and Article I-39.4 provided that CFSP “*shall be put into effect by the Union Minister for Foreign Affairs and by the Member States.*” Article III-197.1 articulated more precisely that the Foreign Minister “*shall ensure implementation of the European decisions adopted by the European Council and the Council of Ministers.*”
- **Crisis management:** a distinctive type of executive role was entrusted to the EU Foreign Minister in the sensitive domain of crisis management. When the Union carries out Petersberg Task operations, ranging from disarmament to peacemaking,

the COPS is supposed to exercise political control and strategic direction, “*under the responsibility of the Council of Ministers and of the Union Minister for Foreign Affairs*” (Article III-208). More concretely, Article III-210.2 specified that the Foreign Minister, under the authority of the Council and in close contact with COPS, “*shall ensure coordination of the civilian and military aspects of such tasks.*”

This list conveys a good sense of the breadth of the mandate defined by the Convention and of the considerable opportunity that this provides for a skilled political entrepreneur at the heart of the Union. The Convention language provided much more food for thought. Some of the concerns most frequently voiced during the proceedings of the Convention should, however, be put in perspective.

- First, looking at the issue of inter-institutional conflicts, it is in the direct interest of the new FM to build bridges rather than construct new walls between himself/herself and the key constituents in the member states and institutions. This, in turn, might enhance the functioning of the single institutional framework.
- Second, the combination of the right of political initiative and of the chairmanship of an executive Council formation, such as the Foreign Affairs Council (FAC), does not seem to pose a particular problem of compatibility in other international institutions. The Secretary General of NATO, for example, tables policy proposals, and chairs the meetings where subsequent decisions are to be adopted.

Multiple loyalties are indeed an element of complication, but they are not unusual in political life at all levels. For example, national and party leaders preside over Council formations on a daily basis, but their multiple national loyalties are not supposed to be in contradiction with their duties in chairing the Council. On the contrary, the problem lies with the sharp distinction between the role of the FM in the Commission, and its tasks in the Council, introduced by the IGC.

4. *The IGC state of play and the liaisons dangereuses of the FM*

In response to the ambitious job description set out by the Convention, an ‘intergovernmental’ backlash inevitably characterised the beginning of the IGC. Countries like the UK and, though much less openly, France, worried that the new position might escape the rather comfortable control exercised on the activity of the HR. Member States were eager to ensure that the FM would remain more accountable to them than to Community structures when it came to CFSP decision-making. The Italian Presidency tried to offer some reassurance by circulating a questionnaire amongst the member states on 7 October 2003. The questionnaire addressed two of the three ‘institutional dimensions’ of the Foreign Minister: the Minister within the Commission and the Minister’s role in the FAC.²² The

²² Amendments to Articles I-25, I-26 and I-27 of the draft Constitutional Treaty were introduced at two main stages in the course at the IGC. The Presidency drew the implications of the reactions to the questionnaire it circulated by submitting a first range of amendments with CIG 45/03, 10 November 2003. On the eve of the Brussels summit, the Presidency consolidated all amendments to the position of the Foreign Minister in the Commission and in the Council in CIG 60/03, ADD 1, Annex 7, 9 December 2003. For a comprehensive review of all relevant documents, see A. Missiroli, ‘From Copenhagen to Brussels – European defence: core documents’, Chaillot Papers 67, ISS-EU, Paris, December 2003.

relationship between the Foreign Minister and the Chair of the European Council was not included, although that working relationship will be of the highest political relevance.

The FM and the Commission

A large degree of consensus emerged amongst the Member States in their response to the Italian Presidency's three questions. Firstly, participants in the IGC agreed that the Foreign Minister should be given full voting rights in the Commission, even on decisions not concerning external relations. Secondly, most governmental representatives argued that, in the presence of a censure motion from the European Parliament on the Commission, the FM should also resign with the College. The Minister is therefore politically accountable to the Parliament in his role as a Commissioner. Thirdly, a majority of respondents agreed that a simple request from the President of the Commission would not be sufficient to obtain the Foreign Minister's resignation, as it would be with other Commissioners. The solution is now reflected in Article I-27.3, as amended by the IGC,²³ whereby the FM shall resign on the request of the President of the Commission and in agreement with the European Council. The IGC has also amended Article I-28.4, introducing some restrictive and tortuous wording on the scope of the responsibilities of the FM within the Commission. In particular, the new provision underlines that the Minister shall be bound by the Commission's procedures only for those responsibilities "*incumbent on it [the Commission] in external relations and for coordinating other aspects of the Union's external action.*" Moreover, it is made clear that the exercise of these responsibilities has to be consistent with his role as Chairman of the FAC, and with his tasks in the domain of CFSP.

The FM and the Foreign Affairs Council

Faced with the Presidency question on who should represent the Commission at meetings of the Foreign Affairs Council (FAC) chaired by the Foreign Minister, respondents took significantly different positions at the IGC. Some, such as Estonia, Finland, Sweden, and the United Kingdom were not convinced that the Foreign Minister should chair the FAC at all, but a large majority of national governments accepted this and did not regard who will represent the Commission as an issue of constitutional relevance necessitating a solution from the IGC. Some have suggested that a deputy should assist the Minister and represent the Commission, while others proposed that Commissioners relevant by subject matter – development, trade – might represent the Commission when the FAC deals with non-CFSP issues. The IGC has added a new third indent to Article I-28 by providing explicitly that the FM shall preside over the FAC.

The FM and the Chairman of the European Council

The IGC has not addressed the question of the relationship between the Foreign Minister and the Chairman of the European Council, and with this new institution in general. This is not an easy subject, because much will have to be left to practice and precedent. The raft of related Treaty provisions, however, portrays such an entangled web of functions between the two

²³ The numbering and the wording of the articles mentioned under this chapter correspond to the final version of the Treaty Establishing a Constitution for Europe approved by the Intergovernmental Conference on 18 June 2004, and signed in Rome on 29 October 2004, CIG 87/2/04.

bodies that some more clarity would be welcome, in political discussions and in the letter of the Treaty.²⁴ For example, the Chairman of the European Council has the responsibility to “*drive forward its work [and] ...ensure its proper preparation and follow up*” (Article I-22.2). What are the implications for the work of the Foreign Minister in both making proposals for the development of CFSP, and implementing decisions of the European Council and of the Council? Moreover, according to the same provision, the Chairman of the European Council “*shall, at his or her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the responsibilities of the Union Minister for Foreign Affairs.*” This provision remains too vague, and no doubt there is scope for some specification when it comes to implementing it.²⁵

The FM and the European Parliament

Parliamentary accountability gains a significant, and long awaited, boost in the Constitution taking Europe a large step forward in remedying the damaging reputation for having a democratic deficit in CFSP/ESDP. The Parliament will play a formal role in endorsing the candidature of the Vice-President of the Commission, i.e. the Foreign Minister. The Parliament will also play a more active role in foreign policy matters with an expanded Committee (AFET) and a sub-Committee on defence and security policy. It will play a more active role in scrutinising CFSP/ESDP and continue to play a line manager role in relation to the Commission’s spending plans.

On the issue of democratic deficit and parliamentary accountability, one might argue that coherence without democratic accountability is like a glass half-full. Whilst the SG/HR for CFSP and DG-E are making visible efforts to engage on an ad hoc basis with the Parliament, greater thought is required here. The Council and the Commission have an interest in fostering a culture of parliamentary scrutiny, and more pro-active strategies.²⁶ The Parliament must now take up its responsibility to provide oversight but also positively engage in the decision making process. In the present heightened security climate, the key issue will be in fostering a culture of openness and transparency that is essential to effective parliamentary oversight and accountability, whilst not undermining the policy effectiveness to respond to key issues such as terrorism and non-proliferation, which instead requires a certain degree of restriction and classification. A sensible partnership must be fostered that promotes a culture

²⁴ On the complex relationship between heads of government and foreign ministers at the national level, see C.Hill, ‘The Changing Politics of Foreign Policy’, Palgrave Macmillan, 2003. In Part I, dedicated to ‘agency’ in foreign policy, the author explores the role and resources of the key players in foreign policy making, including politicians at government level, cabinets, and larger bureaucracies. In particular, he identifies three basic models of relationship between heads of government and foreign ministers: equality, subordinate foreign minister, and established foreign minister. This is a relevant approach to defining the working partnership that will develop between the Chairman of the European Council and the EU FM, although the former does not enjoy the powers and scope for manoeuvre normally available to heads of government in domestic systems, and the latter has to be accountable not to one, but to 25 governments.

²⁵ For example, it could be established that, when the Foreign Minister does not act alone, the new foreign policy *troika* of the Union would include the Minister, the Chairman of the European Council and the President of the Commission. This would make permanent coordination necessary and would help to preserve the inter-institutional balance. One focus for this co-ordination could be through the Foreign Minister’s Cabinet, which will be explored below in more detail.

²⁶ A positive example is the 20-21 November 2003, Parliament-Commission ‘Inter-Parliamentary Conference’ under its ‘Non-proliferation and Disarmament Co-operation Initiative’. This was a good example of a more proactive strategy on security matters where the Parliament has also responded positively.

of openness and scrutiny on European security policy matters, whilst strengthening the policy responses to key threats and global challenges.

5. *Supporting the FM: double-hatted and also 'double-cabinetted'?*

It is useful to remind ourselves that the very nature of responding to international security challenges today (such as set out in the European Security Strategy) requires the application of political, diplomatic, developmental, economic and military policy instruments, which have for a long time fallen outside the remit of a FM or Foreign Ministry. The very promise of the EU's *added value* as a security provider is in the Union's, along with the member states', potential to apply its wide ranging policy instruments. It is, therefore, perhaps less helpful to think in terms of a classic FM sitting in a Foreign Ministry, but the challenge is for any EU institutional or policy innovation to play an effective role with adequate support in pursuit of the Union's common international security objectives. This section sets out the key operational and institutional features relevant to the FM and assesses how each of these supportive structures may affect his/her functions.

The successful future of the Union's external relations policy cannot rest only on the personal resources of the FM. In the end, much of the FM's ability to carry out his/her duties will depend upon his/her institutional support. What the exact shape and extent of this support basis will look like remains undefined, but at the present stage of debates, four key aspects could be outlined:

- 1) Commissioners/Special Representatives
- 2) personal cabinet(s)
- 3) European External Action Service
- 4) financial resources

Commissioners and Special Representatives

No one disputes the fact that the double-hatted FM will have a very heavy workload. In order to carry out the whole range of his/her activities, he/she will interact with Commissioners and supervise their activities on those matters of external relations falling under the Community method (including some horizontal issues). In parallel, the FM would establish close working relations with Special Representatives/deputies within the Council, each responsible for key policy areas in the framework of CFSP/ESDP. The case for a Mr ESDP (a deputy to the HR being responsible for managing all ESDP matters, based within the Council formations (akin to the present Personal Representative, Annalisa Giannella, for WMD) sitting in the Cabinet and supported by the Military Committee and the Agency in the field of Armaments, Research and Military Capabilities, and possibly chairing the Defence Minister Council if established) had already been made to lessen the overloaded workload of the HR.²⁷ Special Representatives could be appointed to oversee other major priority areas (regional, but also functional). At this level, a *horizontal working group* linking the key senior officials across the two executive branches (Commissioners/Special Representatives) would certainly be required, if the aim is to push for coherent joined-up policy approaches.

²⁷ See Daniel Keohane, 'Time for Mr ESDP?', CER Bulletin, Issue 26, October/November 2002, and Dassu' and Missiroli, quot. fn. 10.

Cabinet(s)

The support of a small group of outstanding professionals will be essential for the FM to oversee a series of key (thematical and regional) policy areas and to ensure co-ordination with the overall machinery. The existing workload and practices suggest the need for a well-staffed Cabinet composed of representatives from the Commission, the Council and the member states. Members of the cabinet would be responsible for specific key sub-policies (capabilities, arms control, conflict prevention, relations with international organizations, development, including regional portfolios, terrorism and so on) and would relate to further existing support structures such as the Civil-Military Planning Cell, the Situation Centre (SitCen) and WMD Monitoring Unit.

It remains to be seen whether there would be just one single structure under the direct authority of the FM, or rather two separate ones drawn from each institution (Council and Commission). In the latter, the double-hatted FM would be also *'double-cabinetted'*. Obviously, the risk here is that what has been unified at the highest political level, remains split at the lower working levels of the hierarchy. The EUSS identified the need to build a strategic culture in decision making as a priority in order to deliver timely and effective action in pursuit of EU security objectives: it is therefore legitimate to wonder whether this will be adequately supported by a dual institutional structure, based upon the *'double-cabinet'* model, at the operational level.

European External Action Service (EEAS)

Along with the Cabinet, the creation of a broader joint administrative and executive structure combining elements from the relevant Council and Commission services, and from the national administrations will be a crucial asset for the FM. Thus, the creation of a *'European External Action Service'* has been seen by a majority of member states as the logical consequence in response to the creation of the FM post, in order to ensure *'horizontal'* and *'vertical'* coherence in the implementation of external relations policies. However, how this service will function in reality in terms of its size, budget, location and internal structure is still a matter of debate.

The idea of a *"combined and joint"* diplomatic service was introduced by the German Foreign Minister, Joscha Fischer, in a letter to the President of the Commission. At the Convention, the German government championed the establishment of an independent EU diplomatic service under the authority of the FM and made up of civil servants from both the Commission and the Council along with seconded officials from the Member States. Widely accepted, the German proposal was translated into the Convention's draft Treaty in a Declaration on the creation of a joint European External Action Service (EEAS), *"to assist the future Union Minister for Foreign Affairs [...] to perform his or her duties [...]"*. The organisation and functioning of the EEAS would be defined by a European Decision taken by the Council, with the opinion of the European Parliament and the consent of the Commission.²⁸ However, many legal and practical constraints make the creation of such a service a daunting task. It involves extremely sensitive negotiations within the Commission and between it and the Council on the scope, structure and internal organisation of the

²⁸ Art III- 197(3), IGC 60/03 ADD 1. It is worth noting that the original formulation of the Declaration on the EEAS drafted by the Convention required agreement between the Council and the Commission .

service. Ultimately it also implies a broader re-organisation of both the Brussels-based institutions (Commission and Council), the EC delegations in third countries, which would become EU delegations.

Current options towards the creation of a EEAS range from a minimalist to a maximalist approach, each striving for different levels of integration of the Commission and Council's services. While the minimalist view suggests that the FM would simply ring-fence the existing actors within separate and parallel services (the Commission's DG Relex and the Council's DGs on CFSP and ESDP), the maximalist perspective would almost mirror the establishment of a EU Ministry for External Relations, where traditional boundaries between the institutions on policy areas would be eroded. If the minimalist approach is simply a EEAS in name, the latter would have more integrated cross-pillar support for the FM, as it would bring together the Commission's DG Relex and the foreign policy services of the Council's secretariat, including the Policy Unit and the Situation Centre, plus Member States' civil servants.²⁹ Clear hierarchical lines of authority would ensure vertical implementation of policies, with the Foreign Minister at the highest level coordinating the different actors and ensuring overall consistency. The maximalist option seems as ambitious as it is unrealistic, at least in the foreseeable future.

In the short term, a more likely solution would reflect a mixed approach, one that reconciles the political interests of the institutions in preserving existing loyalties and separate '*esprits de corps*', and the Member States' concern over their national sovereignty, with the ultimate goal of providing coherence and co-ordination to the EU external action. Now that we have a signed Constitution, one can expect that the appointment of the FM and the establishment of the support structures under his/her authority will follow an incremental path. This can be assumed because incremental adjustments are under way such as within the Commission to provide for a "soft landing" for the Foreign Minister. This incremental adjustment is under way and will have an additional impact on the organisation and role of the two branches (Council and Commission) regardless of whether the Constitution is ratified or not. Practical arrangements for the establishment of the EEAS would be negotiated during a transitional phase in the run up to the entry into force of the Constitutional Treaty and the appointment of the new FM.

Finance

As yet there has not been a serious focussed debate on the crucial topic of finances in relation to the FM and the Joint External Action Service. The draft Constitution stated that the Foreign Minister may make a proposal to the Council to establish "*the procedures for setting up and financing the start up fund*" made up of national contributions, needed to finance EU operations for peace keeping, conflict prevention and strengthening international security (Article III-313.3(b)).

The question of who decides what is to be funded lies at the heart of any balance of power. From this standpoint, one of the major problems that the EU presently faces is the inability to apply financial instruments as political *leverage* to support crisis management and conflict prevention. In this context, the Council does not have any budget and relies upon the Member States to donate funding for crisis management operations. Whereas the Commission has

²⁹ Interviews, Brussels, March 2004.

greater resources, it is very inflexible in its implementation instruments (with the exception of the small Rapid Reaction Mechanism and the potential of the much bigger Africa-focused African Peace Facility). This is the critical area where reform is needed if the FM, EEAS or any future External Relations Commissioner are to be able to move from the present long term inflexible approach (multi-annual strategies, and annual programming) towards a flexible instrument for responding to short term political and security objectives, namely under crisis management and peacebuilding needs (such as based upon the existing Rapid Reaction Mechanism or an International Peace-Building Facility mirroring the existing African Peace Facility).³⁰ Lines of accountability would have to be pre-defined in order to understand whether the FM has direct access to crisis management or peacebuilding funds or whether he has to approach the Commission's President or the College to have his/her policies approved.

7. *Requirements for leadership*

As stressed in introducing this analysis, leadership at the European level does not emerge by chance, and cannot be solely provided by inspired individuals or by institutions. A collective effort will be required involving the holders of new institutional positions, such as the FM, community institutions and national governments. It has been rightly argued that "*Leadership must be identified and fostered, but precisely the existence of recognisable bodies of agents for the formulation and implementation of common policies – rather than just a 'concert' of powers – has been the secret of the success of European integration over the past decades.*"³¹ Coherence, continuity and a strong mandate are the prerequisites for the FM to express credible leadership.

Coherence

Whilst some argue that the Council-Commission relationship can be made to work by a double-hatted FM, the draft Constitution raised two contentious issues on accountability and conflict of interest. Essentially, how could the FM be bound by 'collegiality' to defend positions agreed to by the 'college', whilst at the same time broker with the member states i.e. negotiate to get a compromise. The sharp distinction drawn in Article I-28 between the role of the Minister on matters of external action, and the independence of the Minister from the Commission when dealing with CFSP issues, seems misleading and hardly workable. On the one hand, CFSP is a very important part of external relations. The singling out of CFSP from the wider context seems at least artificial and perhaps even regressive. On the other

³⁰ It is worth noting that in July 2004 the Commission came up with a new Communication setting out proposals on expenditures for the next financial period (2007-2013). In an effort to simplify the existing range of more than 100 external relations delivery mechanism, the Commission proposed a renewed structure whereby all budget instruments related to external relations activities would be regrouped under a single financial heading – generally referred to as 'the EU as a global partner'. This would include a set of six instruments combining both thematic and geographic criteria, namely the pre-Accession Instrument, the European Neighbourhood and Partnership Instrument, the Development Co-operation and Economic Co-operation Instrument, the Instrument for Stability, the Humanitarian Aid Instrument and the Macro-Financial Assistance. The European Development Fund (EDF) shall also be included in the EU budget to strengthen effectiveness, coherence and transparency. The Financial Perspective 2007-13 is currently being debated within the Council and the Parliament in view of reaching an agreement before the end of 2005. See D. Manca, 'EU Community Budget 2007-13: External Relations', *European Security Review* 24, October 2004 (available at www.isis-europe.org).

³¹ M. Dassu' and A. Missiroli, quot. at fn. 10.

hand, the risk is that the Council's decisions would affect the collegial practice of the Commission well beyond CFSP, since the Foreign Minister is mandated with the coordination of all aspects of external actions.³²

It is clear that watertight separation between CFSP and the other domains of external actions is not viable. The position of the Foreign Minister in the Commission should reflect the need for joined-up policy making, as opposed to institutionalising a simplistic distinction. In particular, the relationship between the President of the Commission, expected to steer the political direction of the whole Commission, and the Foreign Minister, when elaborating external policies and taking sensitive decisions with security implications, should be clarified.

Continuity

It is hoped that the FM will be able to deliver longer-term coherence to the Council of the European Union on key issues and in addressing regional concerns. This is in response to the weakness of the rotating Presidency and, hitherto, its inability to build in continuity to key strategic policy areas. It is a problem that is expected to get worse when the EU's membership expands to 25.

Scrapping the rotating presidency of the External Relations Council would indeed bolster the FM's ability to provide continuity and strategic direction by setting the agenda and acting as a 'guardian' of key strategic policies, namely the implementation of the EU Security Strategy or in the EU's relations with key partners. A successful FM must achieve a fine balance in respecting the Member States, whilst operating in a framework that keeps them in the process and where he/she can then put forward proposals that they will accept.

The example of EU policy towards Russia illustrates such need for continuity. Each Presidency wants to have a successful summit with the former great power. This has meant that EU Presidencies have traditionally not put any serious political demands (with the noble exception of Denmark) on the Russians. Once they figured this one out, the Russians have moved to a strategy of slipping in demands towards the end of the summits, confident of achieving some concessions. You cannot negotiate effectively if your side's representative changes every six months, especially when partnered with a state like Russia that has a much longer view. A longer-term strategy *guarded* by the FM is needed in joining up all the relevant policy areas.

Mandate

Solana's success showed the potential as well as the limits of this new role. Personality matters, but it cannot substitute for a lack of resources or an ambitious mandate to shape a common policy line. Not only is the working balance between a growing range of new bodies fragile but, more fundamentally, policy-making remains essentially reactive. In times of a serious crisis, Member States simply do not call upon the HR to mediate and help form

³² To take another example, the Foreign Minister, is supposed to coordinate civilian and military aspects when carrying out Petersberg tasks. These tasks are included among provisions on European Security and Defence Policy, but the Commission plays a major role in making appropriate civilian means available.

shared objectives, e.g. during the lowest points of the Iraqi Crisis. The much-discussed ‘European reflex’ often fails to materialise, or does so against a damaging record of prolonged failure, such as in Macedonia after the tragedy of the Balkan Wars. No matter how engaged, the HR can only take over important tasks when requested to do so; the timing of his intervention is a delicate matter and he cannot force an agenda because of a risk of causing fragmentation amongst the Member States. This is why the new FM will need the full support of the Member States. This requires that he or she be endowed with a strong mandate. Such a strong remit would include:

- a mandate to identify strategic objectives for the Union’s foreign policy and the strategic planning capability to develop plans to be discussed and endorsed by the External Relations Council and adopted by the European Council;
- a mandate to ensure the implementation of those adopted proposals through access to the whole range of available instruments (including diplomatic, economic (including financial resources), and military) along with the *authority to task the relevant actors*.

8. Conclusion

A new position of EU Foreign Minister may help provide a stronger international role for the Union, but failure to do so would undermine hopes and expectations for a credible common foreign policy. The Foreign Minister has been given a broad mandate, including an important role in enhancing an open dialogue on CFSP matters with the European Parliament and national parliaments. Considerable skills have been deployed to carve out a job description for the new top diplomat of the Union, but much will depend on the first incumbent, and on developments in international security. A good deal of political courage and some idealism will be required from the prominent figure who will first take up the challenge. At the same time, the Foreign Minister would be well advised to pay due attention to establishing a smooth working relationship with his envisaged top colleagues - the President of the European Council and the President of the Commission – as well as with his national peers.

The Foreign Minister should not be seen merely from within the EU framework, since he or she should be the central (although by no means exclusive) filter between internal EU politics and the international environment. Supported by a new joint EEAS, the Foreign Minister will speak for the Union and will need to become one of the main interlocutors with world leaders, if this position is to be taken seriously internationally. This may well lead to serious confrontations when crossing the wires of traditional authority in the complicated EU machinery.

The Foreign Minister is often described as ‘double-hatted’: in other words, he or she will be both a Vice-President of the Commission and chair of the Foreign Affairs Council (FAC). In fact, the Foreign Minister is better described as standing at the cross-roads of the three branches of the fragmented European executive: the Commission, the Council of Ministers *and* the European Council, formally included in the list of EU institutions by the draft Constitutional Treaty. The Foreign Minister will wear two hats - one in the Commission and one in the Council – but will frequently require an umbrella too, when working under the authority of the European Council and of its President.

Taking it a step further, the position of the Foreign Minister as Chairman of the FAC entails a permanent working relationship with his or her 25 colleagues at the national level, both when they meet in the Council, and when they act separately in performing their tasks at home. Given the desire for more convergence between national foreign and security policies, and the potential impact of unilateral action on the progress towards a common foreign policy, the Foreign Minister will have to watch the behaviour or actions of his colleagues very closely, and intervene when appropriate by calling extraordinary meetings of the FAC.

Taken together, this is a daunting task, both more complex and risky than usually described. The role of the Foreign Minister potentially goes well beyond the mere sum of its institutional components, namely the Commissioner for External Relations and the HR for CFSP. Here lie both its constraints and opportunities.