

The EU Reform Treaty: Implications for the Common Foreign and Security Policy

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Most of the much-needed reforms for potent EU foreign policy survived the first round of negotiations on a new Reform Treaty. In a strengthened post of the High Representative for the Common Foreign and Security Policy most of the powers imbued on the Foreign Minister by the original Treaty will be kept intact. If no dramatic changes be made, the post of the External Relations Commissioner will also be merged with the High Representative for the Common Foreign and Security Policy, and he will still head the new External Action Service. In times of crisis during last few years there is nothing in the already existing treaties preventing the member states from giving the High Representative for the Common Foreign and Security Policy a stronger role.

Key words: Foreign Policy, Security Policy, EU Reforms

1. Introduction

To the relief of those who hoped for a more potent EU foreign policy, most of the much-needed reforms contained in the stranded EU Constitutional Treaty survived the first round of negotiations on a new Reform Treaty. In an eleventh-hour agreement at the Council meeting in June, Chancellor Merkel managed to secure a detailed mandate for an Inter-governmental Conference (IGC) to review the original text.¹ However, in the process of emptying the old treaty of all that tasted of national symbolism, the designation of the EU Minister for Foreign Affairs had to be sacrificed. It is to be expected that, in

a strengthened post of the High Representative for the Common Foreign and Security Policy (HR-CFSP), most of the powers and responsibilities imbued on the Foreign Minister by the original treaty will be kept intact. If no dramatic changes be made by the IGC, the post of the External Relations Commissioner will also in the new treaty framework be merged with the HR-CFSP, and he will still head the new External Action Service, which brings together the external services of the Council and the Commission in one EU diplomatic service—although they might not be called “diplomats” to avoid any confusion with national services.

Yet even if the steps taken to provide the EU with a stronger and less fragmented voice in international relations survive the upcoming revision by the IGC, having one person speak on behalf of the EU will not in itself provide it with the necessary foreign policy leadership, since the CFSP is—and

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would have remained so under the Constitutional Treaty framework—firmly in the hands of the member state governments. In fact, the relative ease with which agreement on the provisions pertaining to the CFSP was secured in the first place was partly due to the fact that the Constitutional Treaty did not touch the *de facto* veto power of each of the 27 member states: most foreign policy matters have still to be decided by unanimity. Moreover, adding another hat to the HR-CFSP does not mean that the separate foreign policy structures of the Council and the Commission are merged. In practice, the largely dysfunctional pillar structure will remain a major obstacle for a coherent EU foreign policy. Aiming to shed light on some of the shortcomings and potentials contained in the Constitutional Treaty recipe for a more efficient, coherent and cohesive EU foreign policy, this paper examines the relationship between the office of the HR-CFSP, the Commission and the member states, focusing in particular on the EU-3 (France, Germany and Britain), as it has evolved since Javier Solana took office in 1999. Before moving on to the analysis, however, the paper briefly discusses those provisions in the original treaty that relate to foreign policy.

2. The Provisions of the Constitutional Treaty

The establishment of the post of a Union Foreign Minister, as proposed by the original Constitutional Treaty, would have represented two major innovations in the foreign policy area: First, it would largely have replaced the role of the Presidency as the official driver for and voice on matters falling under the CFSP. Secondly, it would have brought together the functions of The High Representative for the CFSP (HR-CFSP) and Commissioner for External Relations, thereby, at least in theory, improving coordination between the first and the second pillar instruments. As regards the former, the current arrangement of having the Presidency rotate between the member states every six months is widely recognised as inefficient and overtly susceptible to national politicisation. It has largely outplayed the role it once had in bringing different issues to the forefront, whereas the EU's growing foreign policy portfolio makes it virtually impossible for the member state holding the Presidency to keep up. In order to reduce overload and improve consistency, each Presidency is supported by a Troika, consisting of the preceding, the sitting and the upcoming Presidencies, as well as the Council Secretariat and the HR-CFSP. Nonetheless, although some of the smaller member states would probably mourn the loss of six

months in the driver's seat every 12 years, one can hardly expect policy-makers in Washington DC or Beijing to call Lisbon one year and Vilnius the next whenever they want Europe's opinion on a foreign policy matter.

With regard to the division of labour between the Foreign Minister and the President of the European Council, the latter, who in accordance with the Constitutional Treaty was to be elected for a term of two and a half years, renewable once, "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 powers of the Union Minister for Foreign Affairs" (Art I-22).² This would have meant in practice that the day-to-day running of the CFSP would have been left to the Foreign Minister, who would have presided over the new Foreign Affairs Council (Art I-24.3). Other configurations of the Council of Ministers would have been chaired by rotating teams of three member states (Art I-24.7). As stated in the Treaty, the Foreign Minister would have been appointed by the European Council, acting by qualified majority, with the agreement of the President of the Commission (Art I-28.1). He/she would have got his/her mandate from the member states acting through the European Council, but would also have been a member of the Commission, acting as one of its Vice-Presidents. This would have meant, however, that the Foreign Minister, while reliant on gaining the trust of the member states, would have been bound by Community procedures when exercising his/her responsibilities "incumbent on it in external relations" within the Commission (Art I-28.4).

Giovanni Grevi et al. have pointed out 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*)" (Grevi, Manca, and Quille 2004: 7). In other words, the Constitutional Treaty did not fundamentally alter the institutional set-up, but went rather for the somewhat half-hearted solution of delegating responsibility for coordinating the activities of two separate foreign policy structures to *one person*. As such, it built on and expanded the powers of the HR-CFSP, which had been a marked success in terms of carrying forward the CFSP. One should note, however, that Solana himself, as did former Commissioner Chris Patten, advised against the merger of the functions of the HR-CFSP and External Relations Commissioner, arguing that gains in efficiency and coherence would be undermined by a conflict of interest, since the Foreign Minister would have to gain the trust of the member states while being bound by the collegial rules and loyalties within the

Commission. Rather than calling for a merger of the external services of the Commission and Council, he called for a clearer division of labour between them (See CONV 342/02).

Solana's warnings were, however, never heeded by the members of the Convention, who hoped that having a dedicated individual lead in foreign policy would help ensure greater visibility, efficiency, coherence and consistency in the Union's external relations. Accordingly, the Treaty granted the Foreign Minister a number of powers, in addition to his coordinative role: (1) *a right of initiative*, in that he/she "shall contribute by his or her proposals to the development of that policy [the CFSP]" (Art I-28.2); (2) *a right of representation*, as "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" (Art III-197.2); and *a responsibility for implementation*, by carrying out the CFSP "as mandated by the Council" (Art I-28.2). The Treaty built on and formalised the role that Javier Solana as the HR-CFSP had carved for himself since his appointment in 1999. Indeed, the position of Union Foreign Minister seemed tailor-made for a person of Solana's calibre, and it was more or less taken for granted that he would fill it—and retain it until the day he retired, one would assume.³

3. The HR-CFSP: From Administrator to (Almost) Foreign Minister

The decision to establish the position of a HR-CFSP back in 1996/97 followed a French proposal for the creation of a ministerial level figure that would ensure continuity, table policies and represent the Union to the outside world (Grevi, Manca, and Quille 2004: 2). In the end, however, largely because of British opposition, the role of the HR was restricted to: assisting the presidency "in matters coming within the scope of the common foreign and security policy"; contributing towards the "formulation, preparation and implementation of policy decisions"; and engaging in political dialogue "when appropriate and acting on behalf of the Council at the request of the Presidency" (TEU arts 18 & 26). The HR was to act also as Secretary General of the Council, but with emphasis on the latter function. He/she was intended to fill the role of an administrator, while the role of policy-initiator was initially played down. When the time came for choosing an individual to fill the post in 1999, however, the member states had come to recognise the need for a high-profile politician rather than a diplomatic or ambassadorial fig-

ure to provide the Union with foreign policy leadership. The choice fell on Javier Solana, a former NATO Secretary General and Spanish Foreign Minister (Crowe 2003: 538).

The HR was given few resources to begin with, but the rather loose job description left considerable wriggle room for Solana, who was also appointed Secretary General of the WEU (Western European Union). He has gradually carved a stronger role for the HR, supported by an expanding institutional apparatus. As Secretary General of the Council Secretariat he has the Policy Unit, the SitCen, and the EU Military Staff (EUMS) report directly to him; he is the head of the newly established European Defence Agency (EDA); and he is, as former NATO Secretary General, trusted and respected in most European capitals and, therefore, increasingly given considerable leeway to act on behalf of the Union. A first showcase of the added role that Solana could play came with the crisis in the FYROM (Former Yugoslav Republic of Macedonia) in 2001, which was defused with the help of the shuttle diplomacy by Solana and NATO Secretary General George Robertson, which led to the signing of the Ohrid peace agreement on 13 August 2001. Solana also played an important role, together with Chris Patten, at the time the EU External Relations Commissioner, in encouraging democratic opposition against Slobodan Milosevic in Serbia, and he later repeated the feat by extending early EU support for the peaceful revolutions in Georgia and the Ukraine. In other areas, however, Solana's impact has been dwarfed by one-upmanship and search for short-term prestige by successive holders of the rotating Presidency. As Brian Crowe points out with regard to the EU's role in the Middle East, for example, it was neither the Presidency nor the member states that pushed Solana forward, but rather a personal invitation from the Egyptian president to attend the breakthrough Sharm el Sheikh summit in 1999. This gave Solana a route into the heart of the process, but unfortunately successive presidencies have not allowed him to exploit it.⁴ It is a fair judgement by Crowe, therefore, that "Solana's role, while increasing, has been somewhat chequered, expanding incrementally and against rather than with Brussels" (Crowe 2003: 542).

On the other hand, Solana does get a lot of publicity, seemingly answering a need in the media for a recognisable EU face and voice. He is by journalists routinely referred to as the EU foreign policy chief, an exaggeration by any standards, but nonetheless contributing towards consolidating his presence and weight in the political landscape. Yet Solana's attempts to establish a more pro-active role for the HR remains constrained both by the fact that

the intergovernmental nature of the CFSP gives little leeway for him to act independently, and by the fact that he shares his competence with the Commission. In the end, it is questionable, therefore, how much impact a double-hatting of the post of The High Representative and External Relations Commissioner would have had on practical coordination, since responsibilities and institutional structures remain separate. Given the persistently sharp institutional divide, it is likely that the double-hatted HR-CFSP would also have to be "double-cabinetted". The risk is that what will be—and to some degree has been—unified at the top political level, "remains split at the lower working levels of the hierarchy" (Grevi, Manca, and Quille 2004: 13).

In the past, the blurring of lines of responsibility between the Commission and the Council has inevitably created some tension, which in turn has soured relations between the two. Some of the grudges on the Commission side may, however, be partly justified insofar as the CFSP has involved a gradual "second pillarization" of the Union's foreign and security policy. Responsibilities have shifted from the Commission to the Council, for example in the area of civil protection, which has not only caused resentment on behalf of the Commission, but also spurred some principal concerns. The removal of responsibilities away from the Commission means removing policies away from the scrutiny of the European Parliament, in addition to taking away the financial certainty that follows from inclusion in the community budget. At the same time, the ad hoc mode in which the CFSP has evolved has given little room for national parliaments to scrutinise government decisions pertaining to EU foreign policy. Looking into the EU's first military missions, operations Concordia in FYROM and Artemis in the Democratic Republic of Congo (DPRC), Giovanna Bono found that governments had informed national parliaments only after the decision to launch an operation had been made in the European Council. She also found that some governments used the pretext of lack of time and different forms of urgent procedures in order to bypass national parliaments (Bono 2005).

A foreign policy crafted in the corridors and backrooms in Brussels may in itself represent a democratic problem. Surely, it has facilitated efficiency, but at the cost of transparency, since Council minutes tell us very little about such behind the scenes policy-making, and accountability, insofar as neither the Presidency, the member states, nor Solana and his aides are made to answer for or forced to follow up on decisions made by the Council. At the same time, the collectiveness of the Union has been

strained by enlargement, such that the foreign policy leadership assumed by the bigger member states—although always a significant element—has perhaps become more visible lately.

4. What Role for the EU-3?

One response to the lack of foreign policy leadership in the EU has over the years been the tendency to form inner leadership groups. Indeed, most of the major steps in the history of the CFSP, until Maastricht known as the European Political Cooperation (EPC), have relied, more or less, on the initiative and common will of the big EU-3—France, Britain and Germany. The growing difficulties of reaching consensus within a community of 27 and the Council Presidencies' lack of resolve when dealing with important foreign policy issues, especially when held by smaller member states, together with the rise in ambitions and stakes in EU foreign policy, have only reinforced the need for the leadership provided by this group. With the notable exception of the war in Iraq, the notion of the EU-3 also seems to have become more commonplace as well as accepted by the smaller member states, to the extent that one might talk about a more or less formalised *directoire* (Hill 2004).

A move in this direction became evident as focus fell on Iran's nuclear programme, following that which at the time seemed a successful intervention in Iraq. The EU-3, wanting to avoid another war in the region, chose to act independently of the CFSP, as the British, French and German foreign ministers visited Tehran on 21 October 2003, ten days before the UN Security Council (UNSC) was to discuss the subject. This move was in line with the EU's policy of "constructive engagement", however, which since the revolution in 1979 had stood in stark contrast with the American approach. During their visit, the EU-3 upheld the EU's offer of a Trade and Cooperation Agreement (TCA) if Iran complied with the demands of the International Atomic Energy Agency (IAEA). So, even if the EU-3 acted independently of the EU, thus avoiding normal CFSP procedures, they did act within the parameters of the Union's long-standing policy towards Iran and with the implicit support of the rest of the EU member states. Solana was also soon brought onboard, and has since his first visit to Tehran in January 2004 proved an important mediator in the dialogue between the EU and Iran (See e.g. (Carbonell 2004). Through repeated visits he has kept the diplomatic channel open, although his renowned personal charm seems to have made a limited impression on Mr Ali Larijani, Iran's

chief negotiator (*International Herald Tribune*, 12 August 2006).

Nonetheless, a "3+1" model, avoiding the cumbersome procedures of the Council, yet keeping it informed through Solana, has seemed to work fine at least as long as the rest of Europe are happy with the way things are being handled (Allen and Smith 2005).⁵ Of course, recent developments show that "constructive engagement" has not curbed Iran's nuclear ambitions, but at least Europe has managed to retain communication with Tehran, as well as avoiding another US-led war in the region, if another war was or is, indeed, feasible. As has been remarked, however, with regard to the trade concessions in return for Iran abolishing its nuclear programme; it is normally not up to the EU-3 to give away what belongs to 27. The smaller member states will not approve of being reduced to passive bystanders, even if the bigger member states *de facto* control the CFSP. For example, although it has been suggested, the idea of establishing a sort of EU *Security Council* to take the lead in crises never reached the Constitutional Treaty.⁶ Also, member states such as Italy, Spain and Poland would be loath to see a formal *directoire* model established without them. The Kaczynski brothers quite clearly indicated, at the Brussels Council in June 2007, that they are ready to cause trouble if Poland's voice is not heard in the future.

As events unravelled in Lebanon during the summer of 2006, Italy was also quick to assume the leading role when President Chirac failed to deliver on his initial promise of 2,000 troops to the UN peace-keeping force. Moreover, when faced with this new peak in conflict, the unity of the EU-3 seemed to crumble again, as it did over the war in Iraq. France, with support of most of the other EU member states, was critical of Israel's offensive in South Lebanon and demanded an immediate ceasefire. Britain and Germany, on the other hand, the latter traditionally cautious over criticising Israel as well as being eager to mend its transatlantic ties, sided with Washington and refused to condemn Israel's attack. Moreover, Solana, who reportedly entered into a flurry of phone diplomacy with Middle East leaders before flying to Lebanon at the height of the crisis, found his hands tied by the Finnish Presidency which, supported by the British, refused to let him negotiate on behalf of the EU on the grounds that the Europeans could not agree on how to handle the crisis (See e.g. *Economist*, 26 August 2006; and *United Press International*, 26 August 2006).

In the end, however, the EU member states managed to act as one bloc. In an emergency meet-

ing of the European foreign ministers on 25 August 2006, the member states acknowledged the need for a strong European presence in Lebanon and promised 6,900 soldiers to the 15,000 strong UNIFIL force (United Nations Interim Force in Lebanon). Italy confirmed that it would contribute 3,000 troops, awaiting its reward as it succeeded France in command of the force in February 2007. The latter, on the other hand, managed to save face by returning to its original offer of 2,000 troops in addition to the 400 already in place in Lebanon, although only after Chirac had called the 15,000 figure "totally excessive". Interestingly, Spain is the third largest EU contributor, pledging a battalion of 1,000 to 1,200 troops, while Poland added 500 to its existing force, with promises of more to come if needed. Hence, after a virtual *coup d'état* the three aspiring EU powers, Italy, Spain and Poland, found themselves in the driver's seat in the Middle East, saving the day after the EU-3—as they did in Iraq—failed to provide the EU with foreign policy leadership as a crisis mounted in a region, which has been referred to as one of the topmost priority areas for the Union. On the one hand, the European response to these events confirmed that Europe cannot trust the EU-3 to provide it with the foreign policy leadership needed, even in a situation where the member states for the most part see eye to eye. On the other, it showed that other member states are able and willing to take the lead if and when the EU-3 fails to do so, confirming rather the notion of foreign policy leadership by *variable geometry* than a move towards a formalised *directoire* model. As *variable geometry* goes, groups of member states may choose to deepen foreign policy cooperation and move forward with *structured cooperation* (Constitutional Treaty, art. I-41.6), or they can set up more or less formalised *contact groups* (as with Poland and Lithuania in the Ukraine), which cater to individual foreign policy interests and take advantage of existing diplomatic relations and historic ties.⁷ This latter ability to appear in different configurations can be seen as an important asset of the EU. More variable geometry can also create an intra-European dynamic where different states are induced to take the lead within the stronger EU bloc rather than going it alone; and get their reward in receiving ownership of EU foreign policy. A more consistent and efficient policy could in turn be ensured by formalising a "contact group+1" model including Solana. However, Solana, seemingly "all over the place" already, cannot be expected to do everything or be everywhere at the same time.⁸ Also, as so often before last summer's events showed that once a crisis loomed and national foreign policies were at stake, the chance to let Solana take an early lead was forfeited.

Concluding Remarks

The examples show that in times of crisis, when the need for one firm and consistent voice is most needed the unity among the EU member states tends to crumble. In fact, there is nothing in the already existing treaties preventing the member states from giving the HR-CFSP a stronger role. However, the member states will not be dictated from Brussels in matters where national interests are at stake, and Solana has indicated that he will not attempt to do so, regardless of what his title is. One of the reasons why he has made such a success of his term as the HR-CFSP is that he knows that, as he puts it himself, "sometimes you have to know the limits of what you have, and sometimes that means disappearing at the right time" (Quoted in *International Herald Tribune*, 12 August 2006).

Also in terms of a more coherent EU foreign policy, the double-hatting of the Union Foreign Minister would have been of limited value. The *personal union* solution comes across as a second best, inso-

far as the institutional set up remains largely the same, and the post inevitably would have been subjected to traditional conflicts of interest, a concern that Solana himself raised. It would, however, probably be a good idea to extend Solana's role to cover the whole of the EU's external relations portfolio simply because of what he has managed so far from within the Council structures. One problem is, however, that informal and formal institutional reforms, which have included nurturing informal political ties and backroom policy making, although enhancing efficiency, has tended to remove foreign policy away from democratic scrutiny. This was also what the rejection of the EU Constitutional Treaty was arguably mainly about, a traditional scepticism towards centralising power in Brussels. Somewhat ironically then, the symbolical re-labelling of the post of Foreign Minister together with the removal of other symbols of a nation state, regardless of the practical implications of doing so, is what will probably save the Constitutional Treaty project in the end. ■

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NOTES

1 The IGC was launched on 23 July 2007 with hopes of securing an agreement on a new treaty text before the informal Lisbon Council in October 2007. If everything goes according to plan, the Reform Treaty will be ratified by all member states well in time to come into force before the European Parliament elections in June 2009.

2 The numbering of the articles refers 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.

3 The Constitutional Treaty set no specific upper limit to how long the Foreign Minister may serve, but he/she was to be appointed together with the rest of the Commission every 5 years (Art I-26.3. The European Council President was by comparison limited to two terms of two and a half years in accordance with art I-22.1). The point is that there seemed to be no obvious candidates for the post besides Solana, as remains the case for the post of the HR-CFSP.

4 Indeed, in the Quartet, established in May 2002, which was created in order to press for negotiations between the main parties to the conflict, and which consists of the US, Russia, the UN and the EU, the latter has found it necessary to have three voices speaking for it (Solana, Ferrero-Waldner and the Presidency).

5 It is, of course, hard to know the extent to which Solana has, indeed, kept other member states informed, but there has been few official objections to the way the "EU-3+1" has dealt with the Iran issue.

6 The idea of establishing an EU Security Council was put forward by members of the Convention, Hannes Farnleitner and Reinhard E. Bösch (CONV 437/02). See also Toje 2004: 10.

7 "Variable geometry" means that not every country need to take part in every policy but some can cooperate more closely (See Grant 2005; and Grant and Leonard 2006).

8 The overload issue in the EU's external relations is commented upon in Gomez and Peterson 2001.