

The Institutional Dimensions of External Action

Innovation in External Action and the Constitution for Europe



Dr. Simon Duke

Associate Professor – EIPA Maastricht

Abstract

This essay argues that the Constitution contains a number of useful and innovative recommendations. Although a number of practical challenges in implementing the recommendations can be predicted, their implementation will leave the EU a more able and coherent actor on the international stage. The passage of the Constitution through the various national referenda is not seen as a significant factor since a number of aspects are already being implemented by intergovernmental agreement and this determination will in all likelihood continue into other areas of external relations. Finally, the essay concludes by cautioning that greater efforts are required to communicate to global partners, notably the United States, what type of actor the EU wishes to become, should all of the reforms discussed below be implemented. There is a need to link strategy, institutional reform or innovation, with clearer public diplomacy.

The draft treaty establishing a Constitution for Europe contains a number of innovations which carry the potential to fundamentally change the way in which EU external relations operate.¹ It may be helpful to recap briefly why the need for fundamental change in EU external relations was felt to be necessary – aside from the stated purpose of preparing the European institutions for enlargement to twenty-five. The Convention members found early agreement that it was ‘important for the EU to be a strong, effective and efficient player on the international scene’. Many also believed that the Union’s performance in external relations ‘fell short of expectations, especially when considering its economic and financial weight’.² This reflected the common adage that the EU is an economic giant and political pygmy and, as George Robertson, then NATO Secretary-General, put it, the Union is a flabby giant.³ The Convention deliberations were also influenced by wider political considerations such as the ‘impression of living in a unipolar world where the U.S. sets the tone’.⁴ The latter point signified that the Convention was also implicitly about what type of international actor the EU wishes to be and what relations it envisages with its key international partners.

The arguments presented below do not underestimate the significance of EU enlargement, but enlargement is seen as a catalyst rather than a cause of change in the fields discussed. For instance, the initial inadequacies of the EU in addressing the successive shocks emanating from the Western Balkans in the 1990s set the backdrop for many of the debates in the Convention’s working group on defence. The appearance of the European Security and Defence Policy (ESDP) at the end of 1998, following an Anglo-French initiative, signalled not only the EU’s growing awareness of the importance of being able to fulfil a variety of peacekeeping roles (known as the

‘Petersberg tasks’), but also the importance of being able to act more autonomously in the face of apparently declining interest in Europe from across the Atlantic.

A broad and partially overlapping set of issues was also faced by the working group on external action whose chief concern related to the often incoherent image – and sometimes even incoherent policies – of the Union in its external relations. This was in part a continuation of traditional intergovernmental and *communautaire* themes in EU external relations; more importantly it marked recognition that many of the challenges facing the Union (terrorism, global poverty, access to energy resources, efforts to curtail the spread of weapons of mass destruction, post-crisis reconstruction and so forth) demand more effective inter-pillar coordination and leadership. These factors put the burden of reform principally upon the Union’s Common Foreign and Security Policy (CFSP) but also upon efforts to strengthen the consistency of external relations as a whole.

Innovation or Evolution?

The main innovations to be considered below are the introduction of the post of Union Minister for Foreign Affairs and the European External Action Service (EEAS) which assists the Minister. The Constitution also introduces a number of different forms of flexibility or cooperation, notably in the Common Security and Defence (CSDP) area. The introduction by the European Council of the ‘Solidarity Clause’ in the event of terrorist attacks (shortly after the Madrid bombings), or the launch of the European Defence Agency, reminds us that some aspects of the Constitution can proceed by intergovernmental agreement.⁵ There are, however, limitations since some changes, such as those relating to voting, are dependent upon the adoption of the

Constitution. Objections on political grounds can also be predicted if parts of the Constitution are adopted by salami tactics, regardless of the outcome of the various referenda in the Member States.

A first glance at the Constitution shows that, sensibly, external relations are now mainly grouped under a new Title V (The Union's External Action).⁶ This serves to remind the reader of the importance of consistency across the all aspects of the Union's external relations (development, humanitarian aid, commercial policy, restrictive measures, agreement with international organisations and third parties and the common foreign and security policy). It is, however, interesting to note in passing that the Union's relations with its neighbouring countries, which aim to 'establish an area of prosperity and good neighbourliness', are addressed separately.⁷ This is again sensible, since it clearly communicates the idea that the Union's neighbours enjoy a 'special relationship' which opens up the possibility of 'reciprocal rights and obligations' as well as joint activities.

In spite of the reorganization of the existing treaties and the introduction of new material, the fact that the pillars remain cannot be disguised. CFSP remains quite distinct from the *communautaire* aspects of decision-making in external relations. Yet it would be simplistic to dismiss the Constitution as a repackaging exercise or to maintain that the pillar structure is completely untouched. Whilst some aspects of external relations are evolutionary, notably those that have proven historically resistant or sensitive to change, others are innovative, such as the emergence of a Union Minister for Foreign Affairs or an European External Action Service. The challenge is therefore to find ways in which the evolutionary aspects can accommodate innovation.

The Union Minister for Foreign Affairs – A Response to Kissinger?

No less than three designs for what became the position of Union Minister for Foreign Affairs were on the table at the commencement of the Convention and, unsurprisingly, debate focused on this proposal.⁸ Although the survival of the nomenclature 'minister' is somewhat surprising, the position that resulted from the Convention debates has the potential to be extremely influential – he will undoubtedly be the main 'telephone number' to phone when, along the lines of Kissinger's apocryphal question, you wish to speak to Europe from outside.

According to the Constitution the EU Foreign Minister shall 'conduct' the Union's CFSP (and hence the Common Security and Defence Policy as well). The Union Foreign Minister shall also 'preside over' the Foreign Affairs Council (see below). In his Commission *persona*, he shall be 'responsible within the Commission

for responsibilities falling to it in external relations and for coordinating other aspects of the Union's external action'.⁹ The use of the word 'conduct' in the CFSP context and the words 'responsible for' and 'coordinating' in the Commission context signify a difference in the respective roles of the Union Foreign Minister. In effect, the Minister's role reflects the current responsibilities of the CFSP High Representative and the Commissioner for External Relations. It is clear that the most difficult adjustments in the Minister's double role will have to be made on the Commission side, which

operates as a college. One of the immediate issues is to reach a determination over who or what is to be coordinated (at a minimum the current RELEX DG and at a maximum the external relations aspects of trade, development, enlargement as well as the EuropeAid Co-

operation Office and Humanitarian Aid Office (ECHO)). Inevitably the 'double-hatted' nature of the office risks raising suspicions about whether this is fundamentally a Council person in the Commission, or vice versa.

The extensive nature of the Union Foreign Minister's duties, which also include representational duties (in the CFSP context), conducting political dialogue, consultation with the European Parliament, the supervision of a 'start-up' fund for urgent initiatives in the CFSP area, and the organization of coordination amongst the Member States in international organisations, has given rise to doubts about overload.¹⁰ Although this remains a concern that cannot be lightly dismissed, the burden depends in part upon the type and extent of assistance that the EEAS can give, as well as upon the personality of the Minister himself. The agreement that the first Union Foreign Minister should be the current High Representative for CFSP, Javier Solana, who commands widespread respect throughout the Union and beyond, has helped reassure sceptics that the post is (at least initially) in capable hands.¹¹

Solana's personal charm and tact will be required to establish good working relations with a number of other personalities who will assume significant external action responsibilities. This will apply in particular to the Commission, once the division of the external relations mandates and the respective nationalities and personalities behind them becomes clearer. It will also apply to the European Council President who shall 'at his or her level and in that capacity ensure the external representation of the Union on issues concerning the common foreign and security policy, without prejudice to the powers of the Union Minister for Foreign Affairs'.¹² Bearing in mind that the Union Foreign Minister 'shall represent the Union' for CFSP-related matters, the distinction between the representational roles rests upon a clear understanding of level and capacity.¹³ It has to be questioned though whether this distinction will always be so apparent in practice.

In spite of the reorganization of the existing treaties and the introduction of new material, the fact that the pillars remain cannot be disguised.

... and the 'Ministry'

The presence of a 'minister' in the Constitution leads to the natural assumption that there will be a quasi-ministry. The 'ministry' exists in the form of the European External Action Service (EEAS) which 'shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from the 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'.¹⁴ The precise organisation and functioning of the EEAS remains to be determined (by a European decision of the Council) and, until such time, a number of issues stand out. The EEAS assists the Union Foreign Minister but, beyond that, the place of the Service in the institutional composition of EU's external action institutions remains vague. The reference to 'relevant departments' of the General Secretariat of the Council presumably refers to DG-E, but also to the Policy Planning and Early Warning Unit (the Policy Unit) which reports directly to the High Representative for CFSP. Beyond this it is unclear how, or whether, the crisis management aspects (such as the EU Military Staff, the Police Unit or Civcom) relate to the EEAS.

The main institutional struggles are likely to be manifest on the Commission side since it is far from clear what constitutes 'relevant' departments. Until further guidelines are issued it is only possible to sketch minimalist and maximal versions of the EEAS. At the low end of the spectrum the EEAS could comprise a limited number of units from the Council Secretariat, DG RELEX and the current External Service. The possible benefit of a modest EEAS may be primarily internal since the Commission is still adjusting to reforms made in November 2000 and further dramatic upheaval could therefore be counterproductive. However, a modest reorganization, if accompanied by extended demands upon the new service, may lead to concerns that the 'foreign policy' generalists are ill-equipped to address the often technical and detailed aspects of development policy or humanitarian aid which has been the primary focus of Community external relations.¹⁵

The higher end of the spectrum is far more ambitious since it would incorporate all of the foreign policy units from the Council Secretariat, all of the External Action DGs from the Community, the Union Delegations as well as EuropeAid and ECHO. Again, there are pros and cons to such a scenario. The advantages would lie in the size of the EEAS and the possibility for specialization within the service, thus obviating fears of marginalization for one of more aspects of external policy. The disadvantages would lie in the considerable institutional

upheavals involved and the inevitable turf battles over priorities within external relations. The emergence of such a service could pose its own formidable coordination problems and it is unclear what the reaction of the Member States (notably the larger ones) to the emergence of such a service might be.

Legal Personality

A further development of relevance to the above discussion is the effect of the assumption by the Union of legal personality.¹⁶ Under the Constitution this would permit the Union to 'conclude an agreement with one or more third countries or international organisations' as well as association agreements.¹⁷ In non-CFSP areas the

Commission will submit a recommendation to the Council, which shall adopt a European decision authorizing the opening of negotiations. The Council may address directives to the negotiator or designate a special committee (such as the Article 133 Committee for agreements in the common commercial policy) and shall adopt a European decision authorising the

signing of an agreement. Prior to adopting a European decision the Council must obtain the consent of the European Parliament for a number of agreements (such as those with important budgetary implications, those addressing a specific institutional framework or in those cases where the fields are covered by the ordinary legislative process).

The procedures for drawing up international agreements remain broadly the same in the non-CFSP areas, but with enhanced powers for the European Parliament. When the envisaged agreement relates 'exclusively or principally' to CFSP, the Union Foreign Minister submits recommendations to the Council.¹⁸ Aside from again distinguishing between the 'pillars', the arrangements for reaching international agreements invest considerable powers in the Union Foreign Minister. The challenge will clearly be in distinguishing what falls 'principally' in the CFSP area.

The assumption by the Union of legal personality would also open up the possibility of the current External Service of the Commission becoming a fully-fledged *corps diplomatique* of the Union. The Community's 128 delegations would no longer be confined to Community external relations, but be fully competent (subject to addressing the issues raised above regarding staffing) to address the full range of Union external relations. This would be especially welcome since, with the involvement of seconded national diplomats, it would offer those EU Member States with smaller diplomatic services a significant multiplier effect in their representation (albeit under the EU rubric, but one

The assumption by the Union of legal personality would also open up the possibility of the current External Service of the Commission becoming a fully-fledged *corps diplomatique* of the Union.

that may be preferable to reliance upon a larger EU Member State) and enhance the ability to identify common (European) interests between the Member States. It would also be welcome on the grounds that the current *communautaire*-intergovernmental divisions within EU external relations have become increasingly artificial with, as discussed above, many issues demanding a cross-pillar approach.¹⁹

Finally, the assumption by the Union of legal personality will exacerbate the problem of how the EU represents itself in a variety of international organisations (either in 25+1 format or, very occasionally, as the EU itself). This will be of particular significance in the context of the ongoing debates about how to restructure the UN Security Council and other UN-related bodies.

Of Democratic Deficits ...

One of the consistent complaints regarding CFSP has been the lack of democratic scrutiny and thus legitimacy. The European Parliament has traditionally played a rather marginal role in CFSP and its more recent crisis management aspects. It has become increasingly difficult for the Parliament (let alone citizens) to gain access to information in the more sensitive CFSP areas. Under an interinstitutional agreement of November 2002 the President of the European Parliament and the chair of the Foreign Affairs Committee are entitled to request information from the Presidency or the High Representative.²⁰ More generally, the question of legitimacy has assumed growing prominence both in general terms related to the EU as a whole, and more specifically in the CFSP context. The expansion of the EU's activities into a variety of crisis management roles has also led to demands for improved Parliamentary participation (without wishing to be melodramatic, few things are more serious than potentially being asked to lay down your life for an EU mission).

Broadly speaking the European Parliament's powers vis-à-vis CFSP have not changed significantly since the Maastricht treaty, with the exception of the budgetary stipulations. The European Parliament has often been critical of the consultation rights they have with the Presidency and the Council, especially the latter when they submit their annual report on CFSP (the last report in October 2003 was dismissed as a 'book-keeping exercise').²¹ Relations between the High Representative for CFSP and the Commissioner for External Relations seem more positive since both appear regularly either before the Parliament or the Foreign Affairs Committee (AFET).

The European Parliament's main leverage over CFSP has traditionally been through the budget, or more specifically the operational expenditure.²² The process

of agreeing on CFSP expenditure is through a triologue procedure, involving the Parliament, the Commission and the Council. The Parliament's role in this sphere has also been strengthened in those circumstances when the CFSP budget has proven insufficient (especially in 2003 with the assumption by the Union of responsibility for a variety of different crisis management operations). In this case the Council and the Commission must find a solution with Parliament's approval. In a similar vein the increasing emphasis on civilian aspects of crisis management has given the Parliament another form of budgetary oversight.

The European Parliament's relations with ESDP remain problematic, in part since they are not the only 'Parliament' involved (the Assembly of the Western European Union, which is composed of national parliamentarians, is also active in this area) but also due to the restricted access to information in this area. The WEU Assembly proposed to link their founding treaty, the 1954 Modified Brussels Treaty, to the European Constitution by means of a protocol, and then to establish a forum consisting of the Conference of European Affairs Committees (COSAC) and the WEU Assembly. Although the details of this debate are beyond the limited confines of this piece, it nevertheless raised the important linkage between the national and European levels that are necessary for effective oversight in this area. It is also worth noting that the WEU Assembly claims to be 'the only interParliamentary body that effectively monitors ESDP, with 50 years of established experience ... the control of the European Parliament is not sufficient since it is limited to an exchange of information between the EU institutions rather than proper scrutiny and national Parliaments will remain outside the ESDP decision-making process'.²³

In spite of the presence of Parliamentary scrutiny as an item on the Convention's agenda, the actual changes that were introduced into the Constitution were relatively modest. The European Parliament shall 'be regularly

consulted' on the main aspects and basic choices of CFSP and ESDP and 'shall be kept informed of how it evolves'.²⁴ The Union Foreign Minister shall also consult and inform the European Parliament and Special Representatives may also be involved in briefing the Parliament.²⁵ The Parli-

ament also has the right to ask questions of the Council and the Minister and to make recommendations to them.

The Commission as a whole, which includes the Union Foreign Minister as a Vice-President of the Commission, is 'responsible' to the European Parliament.²⁶ The Parliament may censure the Commission and, if the motion is carried, the Commission is obliged to resign as a body. It is reasonable to anticipate that the European Parliament will use this stipulation to empha-

In spite of the presence of Parliamentary scrutiny as an item on the Convention's agenda, the actual changes that were introduced into the Constitution were relatively modest.

size the Commission's accountability to the Parliament and, as part of the college, that of the Union Foreign Minister. Although it is difficult to foresee dramatic problems at this point in time, especially with the minister's post in Solana's hands, it is easier to see potential for friction on budgetary matters. Under the Constitution, provision is made for 'rapid access to appropriations in the Union budget for urgent financing of initiatives' in the CFSP framework.²⁷ In this context the European Parliament shall be consulted – it cannot, in other words, block the Council's decision on this matter. The procedures for establishing, administering and the control of the financial procedures stem from the Union Foreign Minister. The Constitution would therefore appear to have created a separate, parallel budgetary structure outside Parliamentary scrutiny.

The second main challenge for the European Parliament in the CFSP area will be its relations with national parliaments. Under a protocol annexed to the Constitution, COSAC may 'submit any contribution it deems appropriate for the attention of the European Parliament, the Council of Ministers and the Commission. That Conference shall in addition promote the exchange of information and best practice between Member States' Parliaments and the European Parliament, including their special committees'. The Conference may also 'organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy and of common security and defence policy'.²⁸

Although it is too early to predict with any certainty how the European Parliament might operate under the terms and conditions of the Constitution, it is apparent that the potential for friction on budgetary issues exists, notably through the possibility of parallel budgets emerging in the CFSP area outside the Parliament's scrutiny. The second possibility is that the 'democratic deficit' in the CFSP area may be answered, at least partially, not by investing the European Parliament with significant extra powers of oversight or scrutiny, but rather by greater involvement of the national parliaments and other specialised bodies, such as the WEU Assembly.

Expanding Petersberg and Grappling with Capabilities

There are a number of developments that deserve brief mention with regard to the Common Security and Defence Policy (CSDP) which, the Constitution notes rather unhelpfully, is an 'integral part of the common foreign and security policy'. The Constitution updates the original Petersberg tasks to include '*joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces undertaken for crisis management, including peace-making and post-conflict stabilisation*'.²⁹ The significance of this is two-fold: first, it more accurately portrays what the EU is actually doing on the ground (based on operations conducted in 2003 and since) and; second, it places more emphasis upon the coordination of the civilian and military aspects of crisis management, which falls

to the Union Foreign Minister under the authority of the Council.

One of the key challenges with regard to the CSDP is the capability shortcomings that the EU Member States face in executing the Petersberg tasks. Although there is an arrangement with NATO whereby the EU can borrow

assets from NATO (the 'Berlin Plus' arrangements), there is still a need for substantial national effort to address the shortcomings which, given the overlapping membership of the organisations, is largely a shared problem. The solution currently being developed on the EU side (and to be completed by the end of 2004) is the creation of a European Armaments, Research and Military Capabilities Agency (mercifully just called the European Defence Agency). The key tasks of the Agency were established at the Thessaloniki European Council and adopted by the Council in a joint action include the following:³⁰

- a. to develop defence capabilities in the field of crisis management;
- b. to promote and enhance European armaments cooperation;
- c. to strengthen the European industrial and technological base;
- d. to create a competitive European defence equipment market as well as promoting research aimed at leadership in strategic technologies for future defence and security capabilities.

Although the aims of the Agency are laudable, it remains to be seen whether the key potential players (notably France and the United Kingdom) share the same view of the Agency's core competencies.³¹ The institutional relations with other similar bodies such as OCCAR, WEAG/WEAO and the LoI process,³² also have to be clarified since the Council joint action referred to above refers to 'assimilation or incorporation of relevant principles and practices as appropriate' while avoiding the issue of what type of relationship should have with these bodies or processes in the mid to longer term (especially given the predominant EU membership in each case). Relations with the non-EU members of the above-mentioned organisations (Norway and Turkey) and the agency will also have to be

One of the key challenges with regard to the CSDP is the capability shortcomings that the EU Member States face in executing the Petersberg tasks.

clarified.³³ Although it is clear that the Commission will play an important role in the Agency (it is 'fully associated', as with CFSP generally) it is vital that the Commission's growing role in this area, and in particular its influence in shaping the type of technology that may be relevant, is carefully coordinated with that of the Agency so that they may move in tandem.³⁴ It can also be pondered what reactions might be provoked from across the Atlantic to an agency that espouses the aim of leadership in strategic technologies.

Cooperation in its Many Guises

One of the frequent complaints regarding CFSP is the consensus-driven nature of the pillar. This runs the danger of either paralysing CFSP, when consensus cannot be reached, or provides incentives for the larger Member States to work outside CFSP. This has led to demands for greater use of qualified-majority voting and more flexible forms of cooperation. Progress on the former has been marginal while the Constitution introduces several new forms of cooperation.

Aside from enhanced cooperation, which applies to all pillars but with special arrangements for CFSP, the Constitution also allows for 'permanent structured cooperation' which is open to those Member States 'whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions'.³⁵ A separate protocol on Permanent Structured Cooperation notes that it is open to any Member State who may wish, to 'proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the European agency in the field of defence capabilities development, research, acquisition and armaments'.³⁶

The protocol also clarifies what is meant by 'higher capacities' which, in order to be included, obliges the Member State to 'have the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as combat formations, with support elements including transport and logistics, capable of carrying out the tasks referred in Article III-210 [now III-309 which refers to the Petersberg tasks], within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days'.³⁷

The Council may also 'entrust the execution of a [Petersberg] task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests'.³⁸ Examples of this type of arrangement already exist, such as the French led military operation in the Democratic Republic of the Congo in mid-2003. Presumably, there is a link between those who fulfil 'higher criteria' and those who are likely to be entrusted with the execution of a task. Key in this regard

are France and the United Kingdom, who have the most substantial and expansive capabilities.

... The Path to a Common Defence?

Defence has been one of the most sensitive areas of European integration and subject to frequent disagreements since the Second World War. The Treaty on European Union reflects the sensitive nature of defence when it refers to 'the progressive framing of a common defence policy... which *might* lead to a common defence, should the European Council so decide'.³⁹ By way of contrast the Constitution also refers to 'the progressive framing' of a common Union defence policy, but then states that 'this *will* lead to a common defence, when the European Council, acting unanimously, so decides'.⁴⁰

As with the original treaty there are caveats regarding the 'specific character of the security and defence policy of certain Member States' (in other words, neutrality or non-alignment) as well as the 'obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation'.⁴¹ These caveats are restated in a striking new paragraph which states that, 'If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all means in their power, in accordance with Article 51 of the United Nations Charter'.⁴² In spite of the caveats, such a clause has the potential to complicate relations with NATO (since the majority of EU members see their common defence realised through that organisation) as well as those with the WEU.

In the case of the latter, the mutual defence references in the Constitution, quoted above, are remarkably similar to those appearing in Article IV-V of the Modified Brussels Treaty establishing the WEU. However, the obligations are stronger in the latter and no specific mention is made in the former to military means, just 'aid and assistance'. The Constitution thus appears to be an exhortation rather than a specific obligation, such as that implied by the Modified Brussels Treaty. However, since all ten members of the WEU are EU members, it may well have the effect of further diluting the mutual defence obligations assumed under the Modified Brussels Treaty or, for that matter, those appearing in the Washington Treaty establishing NATO. The diluted wording of the Constitution leaves open the question of how the defence of those EU members who are not NATO members (Austria, Cyprus, Finland, Ireland, Malta and Sweden) should be guaranteed. Due to the historical and political sensitivity of this issue, the Intergovernmental Conference went as far as it could but, even in the unlikely event of territorial aggression against one or more EU Member States, the issue of how the EU should assume military responsibility for the defence of its members remains open.

Conclusions

The Constitution contains a number of innovations which together have the potential to enhance consistency in EU

external relations. Many of the changes mentioned above could be introduced by intergovernmental agreement, regardless of the actual fate of the Constitution. There is also the potential for friction which accompanies any major changes to existing practice; in this regard the European External Action Service is of particular note, as are the procedures for the rapid access to financing of CFSP initiatives. As with other aspects of external relations though, much remains to be done beyond the Constitution in terms of filling in the (considerable) blanks.

The implications of the Constitution are not solely limited to the EU and it is therefore important to consider how the adaptations and innovations discussed above might change the EU as an actor on the international scene. For instance, it is unclear whether the Constitutional changes are effectively designed to promote a European superpower and, if so, what may be in mind regarding relations with significant third parties such as China or the United States. An obvious place to start would be by placing the Constitutional innovations in the external relations area more firmly in the context of

Much remains to be done beyond the Constitution in terms of filling in the (considerable) blanks.

Solana's *A Secure Europe in a Better World: European Security Strategy* than has been done thus far.

If the Constitution is to be effective, it is apparent that more attention needs to be paid to public diplomacy and, in the case of external relations, that includes defining the EU's global role. According to the 'security strategy', the EU should be more active in pursuing its strategic objectives, more capable and more coherent. The Constitution has pointed the way forward on several of these points, but it remains true that there are few problems that the EU

can address on its own. The EU needs partners and it needs to communicate to them what kind of partner is emerging from the Constitution. Clearly, one of the biggest and most immediate challenges is to establish 'an effective and balanced partnership' with the United States.⁴³ The Convention met to consider how to make the Union more capable and coherent. The Convention and the resultant Constitution have contributed towards these goals. The rest is up to the Member States, including the very question of whether the Union has a Constitution or not.

NOTES

- ¹ In all cases the 'Constitution' that is referred to is the Treaty establishing a Constitution for Europe, CIG87/04, 6 August 2004.
- ² Summary Report of the Plenary Session, 11-12 July 2002, CONV 2002/02, Brussels, 16 July 2002. Para. 5.
- ³ The context in which Robertson used this phrase was as follows: 'This European continent...is still a flabby giant with huge military expenditure, enormous paper armies, large amounts of equipment, all of which are completely useless for dealing with tomorrow's crises'. Andrew Beatty, 'Plan for hike in defence expenditure', *EU Observer*, 17 February 2004, at <http://www.euobserver.com/index.phtml?sid=9&aid=14515>.
- ⁴ Hanner Farhleitner and Gerhard Tusek, *A Common Foreign Policy for the European Union*, Annex, Preliminary Draft Constitutional Treaty, CONV 369/02, 16 July 2002, p.1.
- ⁵ The 'Solidarity Clause' appears at Article I-43 of the Constitution but was adopted by the European Council in its Declaration on Combating Terrorism on 25 March 2004 in Brussels, while the European Defence Agency (Articles I-31 and III-311) is scheduled to be launched by the end of the Dutch Presidency.
- ⁶ CIG87/04, Part III, Title V, 'The Union's External Action'.
- ⁷ *Ibid.* Article I-57.
- ⁸ See Simon Duke, 'The Convention, The Draft Constitution and External Relations: Effects and Implications for the EU and its International Role', *Romanian Journal of European Affairs*, Vol. 3, No. 3, September 2003, p.41.
- ⁹ CIG 87/04, Article I-28.
- ¹⁰ On the emergency fund see CIG87/04, Article III-313, Para. 3.
- ¹¹ Press Release, 2595th Council Meeting, Heads of State or Government, 10995/04 (Presse 214), 29 June 2004.

¹² CIG87/04, Article I-22, Para.2.

¹³ CIG87/04 Article III-296, Para. 2.

¹⁴ *Ibid.* Article III-296, Para. 3.

¹⁵ This issue is raised in James Mackie, Heather Baser, Jonas Frederiksen and Oliver Hasse, *Ensuring that Development Cooperation Matters in the New Europe*, ECDPM, October 2003.

¹⁶ CIG 87/04, Article I-7.

¹⁷ *Ibid.* Article III-323-324.

¹⁸ *Ibid.* Article III-325, Para. 3.

¹⁹ The five key threats (terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure and organised crime) identified by Solana in his *European Security Strategy, A Secure Europe in a better world*, in December 2003 are all inherently interpillar.

²⁰ Interinstitutional Agreement of 20 November 2002 between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy, OJC 298/01, 30 November 2002.

²¹ *Seem Annual Report from the Council to the European Parliament on the main aspects and basic choices of CFSP*, Rapporteur, Elmar Brok, A-5-0348/2003, 8 October 2003, p.7.

²² Under the terms of the 1999 Interinstitutional Agreement the operational expenditure of CFSP is covered by sub-section B8 of the EC budget, while administrative expenditure falls under the Council's budget and is thus not subject to Parliamentary interference.

²³ Armand de Decker, Chairman of the Belgian Senate, President of the WEU Assembly, in *Tackling the 'Double Democracy Deficit' and Improving Accountability of ESDP*, Conference

- Report, 29 April 2004 (Brussels, European Parliament), p. 4.
- ²⁴ CIG97/04, Articles I-40, Para.8 and I-41, Para.8.
- ²⁵ Ibid. Article III-304, Para. 1.
- ²⁶ Ibid. Article I-26, Para. 8.
- ²⁷ Ibid. Article III-313, Para. 3.
- ²⁸ Protocol on the Role of National Parliaments in the European Union, Para. 10, at http://europa.eu.int/futurum/Constitution/protocol/natparl_en.htm.
- ²⁹ CIG 87/04, Article III-309, Para.1 (new tasks are shown in italics).
- ³⁰ Council Joint Action on the establishment of the European Defence Agency, Brussels, L245/17, 12 July 2004, Article 5.
- ³¹ See Daniela Manca and Gerrard Quille, 'The European Armaments Agency: A Virtual Reality', *European Security Review*, No. 20, December 2003, p.2.
- ³² OCCAR, WEAG/WEAO and the LoI are, respectively, the Organisation Conjointe de Coopération en matière d' Armement, the Western European Armaments Group/Organisation and the Letter of Intent Countries.
- ³³ A Special Consultative Committee has been suggested, but its precise functions remain unclear although it is clear that it will not have decision-making power. This may provoke complaints from Turkey who has complained of second-class status, or exclusion, from CFSP.
- ³⁴ The Commission has already produced a communication, 'Towards an EU Defence Equipment Policy', in March 2003 and has made significant progress in opening up Community research in the security and defence sector following the recommendations of the 'Group of Personalities' who underlined the importance of research in this area, in conformity with the Lisbon criteria and the Barcelona research and development target.
- ³⁵ CIG 87/04, Article I-41, Para. 6 & Article III-312, Para. 1.
- ³⁶ Protocol on permanent structured cooperation established by Articles I-40(6) and III-213 of the Constitution, at http://www.assembly-weu.org/en/documents/sessions_ordinaires/rpt/2004/1860.html, Para. 1(a). Note that the Protocol refers to CIG86/04, of 25 June 2004 and that correct Article number to which the Protocol now refers are Articles I-41(6) and III-312.
- ³⁷ Ibid. Para.1(b).
- ³⁸ Ibid. Article I-41, Para. 5 & Article III-310, Paras. 1-2.
- ³⁹ Treaty on European Union, Article 17, Para. 1 (emphasis added).
- ⁴⁰ CIG 87/04, Article I-41, Para. 2 (emphasis added).
- ⁴¹ Ibid. Loc cit.
- ⁴² Ibid., Article I-41, Para. 7.
- ⁴³ A Secure Europe in a better world: European Security Strategy (Paris: EU Institute for Security Studies, December 2003), p. 20. □