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**Role and position of the High Representative of the  
Union for Foreign Affairs and Security Policy  
under the Lisbon Treaty**

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The creation of the function of the “High Representative of the Union for Foreign Affairs and Security Policy” (the “High Representative”) in Article 18 TEU-L appears to be one of the newest aspects introduced by the Lisbon Treaty.<sup>1</sup> This new position com-

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1 Article 18 of the consolidated version of the Treaty on European Union, as it will result from the amendments introduced by the Treaty of Lisbon, signed on 13 December 2007 in Lisbon. The consolidated versions of the Treaty on European Union and of the Treaty on the Functioning of the European Union, together with the annexes and protocols thereto are published in [2008] OJ C 115/1.

binés the competences of the present High Representative for the Common Foreign and Security Policy and of the Commissioner for External Relations. In fact the Lisbon Treaty includes practically the same provisions regarding the Common Foreign and Security policy (CFSP) and the European Security and Defence Policy (ESDP) as the Treaty establishing a Constitution for Europe, with only minor changes. The “Union Minister for Foreign Affairs” is renamed “High Representative”. The change in the title is purely cosmetic or purely symbolic in the sense that it aims to dispel the fears related to the terms evoking the image of a ‘constitution’ or of a ‘state’ that led in part to the objections raised in France and in the Netherlands to the Constitutional Treaty.

Apart from the change in the title of the High Representative, two new declarations on CFSP are attached to the Lisbon Treaty (13 and 14).<sup>2</sup> They underline that the new provisions on CFSP, on the creation of the function of High Representative and on the European External Action Service “do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations”. It also recalls that the provisions on CSDP do not “prejudice the specific character of the security and defence policy of the Member States” and confirm “the primary responsibility of the Security Council and of its Members for the maintenance of international peace and security”. Declaration No. 14 stresses that the new provisions will not affect the “existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State’s membership of the Security Council of the United Nations”. It also reiterates that no new powers in this domain are given to either the Commission or the European Parliament.

The content of these two declarations is restrictive. Even if they only state the existing norms, they do however reflect the political will of the Member States to retain the existing differences

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2 Declarations No. 13 and 14 concerning the common foreign and security policy, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon signed on 13 December 2007.

between the EU pillars and to prevent the reforms from resulting in a ‘communitarisation’ of the CFSP, which could in theory be a consequence of the dual role of the High Representative.

As for the rest, the Lisbon Treaty reiterates the main changes already provided for in the Constitutional Treaty in the field of foreign policy.<sup>3</sup>

The aim of this contribution is to examine the role and position of the High Representative in the external action of the Union in order to ascertain whether the expectations for improvement have been met in respect of this area of the Lisbon Treaty. At the outset of the work of the European Convention on the Future of Europe, three primary needs were clearly expressed in relation to foreign policy: first, the need for greater coherence between different EU and EC external policies, second the need for greater co-ordination between EU / EC and Member States’ external policies and finally, the need for a stronger projection of unity abroad. After an analysis of the appointment procedure of the High Representative and of his or her functions we will then (I.) examine his or her relations with the main EU institutions as well as with the Member States (II.) before giving a general appraisal of what is considered to be one of the most striking amendments to the existing framework made by the Lisbon Treaty (III.).

### **I. Appointment and Functions of the High Representative**

The appointment procedure of the High representative involves the participation of different organs active in the field of EU external action. Examining this procedure helps us to better understand the role and position of the High Representative as they result from the Lisbon Treaty as well as the solutions that had to be found in order to respect the institutional balance established by the Treaties in the CFSP and in the other fields of external relations.

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3 On the Union Minister for Foreign Affairs, see comments on the corresponding provision in the Constitutional Treaty (Article I-28), notably *Sobrino* (2007); *Cremer* (2006); *Maddalon* (2005); *Delcourt et al.* (2005); *Ponzano* (2007); *Cremona* (2003); *Thym* (2004). For an appraisal of the European Union’s external action after the Lisbon Treaty, see *Kaddous* (2008).

*A. The Beginning and End of the High Representative's mandate*

Due to his or her 'double hat', the appointment procedure is complex. The High Representative shall be appointed by the European Council, acting by a qualified majority, with the agreement of the President of the Commission. The European Parliament also has a part in the appointment procedure. The High Representative, in being one of the Vice-Presidents of the Commission, is subject to a vote of consent by the European Parliament.<sup>4</sup>

There is no indication in the Treaty as regards the High Representative's term of office. It would however make sense to assume that he or she shall have a term of five years like the other members of the European Commission considering that the High Representative will be a member of the College.

According to Article 18 TEU-L, the High Representative's mandate may be brought to an end by a decision of the European Council taken on the basis of a qualified majority vote. At the same time, the President of the Commission may request that the High Representative resign in accordance with Article 17, paragraph 6, TEU-L. In this case, the procedure laid down in Article 18 is applicable and the decision is taken by the European Council. Furthermore, the European Parliament may vote on a motion of censure. If such a motion is carried, the members of the Commission shall resign as a body according to Article 17, paragraph 8, TEU-L and the High Representative shall then resign from the duties that he or she carries out in the Commission. Does this mean that the High Representative nonetheless retains his or her position as chairperson of the Foreign Affairs Council? The Lisbon Treaty makes no mention of this. In principle, the answer should be positive. He or she should retain the position in the Council until the appointment of the new Commission.

It appears that the involvement of different actors in the appointment procedure may explain the possible allegiance of the High Representative to different institutions. This conclusion will follow from the analysis concerning the different functions that he or she will have to fulfil.

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4 Article 17 (7) TEU-L.

*B. Double Hat and Multiple Functions*

The High Representative shall conduct the Union's common foreign and security policy under the Council's mandate<sup>5</sup> and preside over the Foreign Affairs Council.<sup>6</sup> He or she shall contribute by the making of proposals to develop the policy areas, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.<sup>7</sup> The High Representative will then combine powers of initiative, management and implementation in CFSP matters.

The Foreign Affairs Council is separate from the General Affairs Council. The presidency of the latter and COREPER will be subject to the rotating system and will change every six months.<sup>8</sup> Difficulties may occur in the field of CFSP and CSDP as the General Affairs Council will deal with a number of administrative issues, including budgetary matters relevant for CFSP and CSDP.

At the same time, he or she will be one of the Vice-presidents of the Commission.<sup>9</sup> In this capacity, he or she will ensure the consistency of the Union's external action and be responsible for handling external relations and for co-ordinating other aspects of external action.

According to the formula of 'double hat', the High Representative will combine the responsibilities currently falling to the High representative '*Javier Solana's* current role' and to the Commissioner for External Relations (*Benita Ferrero-Waldner's* current role). However, his or her actions shall be coherent and "co-ordinated". He or she shall be responsible for the co-ordination of the entirety of the Union's external action. He or she shall represent the Union in matters relating to the common foreign and security policy, without prejudice to the powers of the President of the European Council and to those attributed to the Commission in other fields of external action. In fulfilling his or her mandate, the High Representative shall be assisted by a European External Action Service.<sup>10</sup> This service shall work in co-operation with the diplo-

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5 Article 18 (2) TEU-L.

6 Article 18 (3) TEU-L.

7 Article 18 (2) TEU-L.

8 Article 16 (9) TEU-L.

9 Article 18 (4) TEU-L.

10 Article 27 (3) TEU-L.

matic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States.

In the general procedure provided for the conclusion of international agreements, the High Representative shall submit, where the agreement envisaged relates exclusively or principally to the CFSP, recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and nominating the Union's negotiator or the head of the Union's negotiating team.<sup>11</sup> Furthermore, the High Representative may jointly with the Commission propose to the Council the adoption of restrictive measures against one or more third States as well as against natural or legal persons and groups or non-State entities.<sup>12</sup>

It follows from the above comments that the institutional simplification based on the merging of the two different responsibilities of the current High Representative and of the Commissioner for External Relations does not seem to be accompanied by a simplification in the procedures and methods applicable to external action. The field is still governed by strong intergovernmental mechanisms and there is little room for the Community method. It is as though the pillars had survived the reform brought by the Lisbon Treaty.

## **II. The Relationship between the High Representative and the European Union's Institutions and with the Member States**

According to Article 13 TEU-L, the institutional framework of the Union will comprise seven institutions: the European Parliament, the European Council, the Council, the European Commission and the Court of justice of the European Union. In this section we address the relationship between the High Representative and different institutions as well as with the Member States.

### *A. Relations with the European Council*

The European Council plays a very important role in relation to the High Representative simply as a result of the appointment procedure whereby his or her appointment requires a decision adopted on

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11 Article 218 (3) TFEU.

12 Article 215 (1 and 2) TFEU.

the basis of qualified majority with the agreement of the President of the Commission.<sup>13</sup>

The very tight link between the European Council and the High Representative may also be explained by the fact that during his or her mandate, the latter shall take part in the work of the European Council. He or she will sit beside the Heads of State or Government of the Member States, together with the President and the President of the Commission.<sup>14</sup>

Under the Lisbon Treaty, the relations between the High Representative and the President of the European Council are not clear. According to Article 27, paragraph 1, TEU-L, the High Representative shall contribute through the making of proposals addressing the preparation of the CFSP and shall at the same time ensure implementation of the decisions adopted by the European Council and the Council. How will these two powers of initiative on one hand, and of implementation on the other be combined concretely on a day-to-day basis? No precise answers are given by the texts.

Furthermore as chairperson of the Foreign Affairs Council, the High Representative shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.<sup>15</sup>

According to the EU Treaty, the President of the European Council 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 High Representative.<sup>16</sup> What is the exact meaning of this? Does it mean that the President of the European Council will represent the Union in CFSP and CSDP summits, in which the Heads of third States participate and the High Representative will represent the Union in other meetings which take place at a lower level? The question remains open and only practice will give us an answer.

#### *B. Relationship with the Commission*

The appointment of the High Representative requires the agreement of the President of the Commission.<sup>17</sup> At the same time, he or she

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13 Article 18 (1) TEU-L.

14 Article 15 (2) TEU-L.

15 Article 16 (6) TEU-L.

16 Article 15 (6) TEU-L.

17 Article 18 (1) TEU-L.

may be requested by the President of the Commission to resign in accordance with Article 17, paragraph 6, TEU-L. In this case, the procedure laid down in Article 18 is applicable and a decision of the European Council is required, acting by a qualified majority. Furthermore, on application by the Commission, the High Representative, as a member of this body, may be retired by the Court of justice if he or she no longer fulfils the conditions required for the performance of his or her duties or if he or she has been guilty of serious misconduct as is provided for in Article 247 TFEU.

It is also provided that the High Representative shall be one of the Vice-Presidents of the Commission.<sup>18</sup> As such, he or she will be responsible for handling external relations and for co-ordinating other aspects of the Union's external action. The High Representative shall, and only in relation to these responsibilities, be bound by Commission procedures to the extent that this is consistent with Article 18, paragraphs 2 and 3, TEU-L.

The High Representative also shares with the Commission the task of external representation of the Union in matters other than CFSP. Indeed, the task of external representation is shared by three entities: the President of the European Council, the Commission and the High Representative. As to the idea of improving EU external representation in the world and to the question of *Henry Kissinger* joke "Europe ... what telephone number?", the Union will go from a situation with no phone number to one with at least three phone numbers. Should the new situation be considered better in terms of the projection of unity abroad?

In the field of CFSP, the High Representative, or the High Representative with the Commission's support, may refer any question relating to the CFSP to the Council and may submit to it initiatives or proposals as appropriate.<sup>19</sup> This is fundamental. As we know, the right of initiative is essential because it gives its holder a tremendous power in the definition of policy and in this way it rests mainly with the High Representative.

In the economic aspects of the external action, according to Article 215 TFEU which deals with restrictive measures that may be adopted to interrupt or reduce, in part or completely, economic or financial relations with one or more third states, the Council acts by a qualified majority on a joint proposal from the High Repre-

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18 Articles 18 (4) and 17 (4 and 5) TEU-L.

19 Article 30 (1) TEU-L.



sentative and the Commission to adopt the necessary measures. Here again, the right of proposal is attributed to the High Representative, but is systematically shared with the Commission.

In the procedure for concluding international agreements, the Commission or the High Representative where the agreement envisaged relates exclusively or principally to the CFSP shall submit recommendations to the Council which shall adopt the decision authorising the opening of the negotiations and the nominating of the Unions' negotiator or the head of the Union's negotiating team.<sup>20</sup> In the same way, it is on a proposal of the Commission or the High Representative that the Council shall adopt a decision suspending the application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement. This occurs when that body is called upon to adopt acts having legal effects with the exception of acts supplementing or amending the institutional framework of the agreement.<sup>21</sup>

Finally, the High Representative and the Commission together are responsible for the implementation of the Union's relations with international organisations, such as the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Co-operation in Europe and the Organisation for Economic Co-operation and Development.<sup>22</sup>

### *C. Relationship with the European Parliament*

The role of the European Parliament in the appointment procedure of the High Representative and of the other Commissioners is important. They are subject as a body to a vote of consent by the Parliament.<sup>23</sup> Furthermore, this institution has the right to pass a motion of censure on the activities of the Commission. If such a motion is carried, the members of the Commission shall resign as a body according to Article 17, paragraph 8, TEU-L and the High Representative shall resign from the duties that he or she carries out in the Commission.

The High Representative shall regularly consult the European Parliament on the main aspects and the basic choices of the CFSP and inform it of how those policies are evolving. He or she shall

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20 Article 218 (3) TEU-L.

21 Article 218 (9) TFEU.

22 Article 220 (2) TFEU.

23 Article 17 (7) TEU-L.

ensure that the views of the Parliament are duly taken into consideration.<sup>24</sup> At the same time, the Parliament may ask questions to the Council or make recommendations to it and to the High Representative. Twice a year the Parliament shall hold a debate on progress in implementing the CFSP as well as the CSDP.

Furthermore, the European Parliament may exercise political control through its budgetary authority with regard to the CFSP issues where an action of the Union is charged to the EU budget.<sup>25</sup> The importance of such a power should not be underestimated.

#### *D. Relationship with the Council*

Although the Council is not involved in the appointment procedure of the High Representative, it is interesting to note that according to Article 247 TFEU and on application by this institution acting by a simple majority, the High Representative, as a member of the Commission, may be retired by the Court of justice if he or she no longer fulfils the conditions required for the performance of his or her duties or if he or she has been guilty of serious misconduct.

Otherwise, the High Representative will preside over the Council for Foreign Affairs. He or she will participate in the elaboration of the Union's external action in that respect. The Council will work on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.

According to Article 21, paragraph 3, the Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative, shall ensure consistency and shall co-operate to that effect. The Council and the High Representative shall ensure compliance with the spirit of loyalty and mutual solidarity in the field of CFSP.<sup>26</sup> In the same manner, both shall ensure the unity, consistency and effectiveness of Union action.<sup>27</sup>

The High Representative, chairing the Foreign Affairs Council, shall contribute through his or her proposals towards the prepara-

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24 Article 36 (1) TEU-L.

25 Article 14 (1) TEU-L.

26 Article 24 (3) TEU-L.

27 Article 26 (2) TEU-L.

tion of the CFSP and shall ensure implementation of the decisions adopted by the European Council and the Council.<sup>28</sup>

According to Article 31, paragraph 2, in the case of a declaration by a member of the Council to the effect that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. Here, the High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. This is clearly a mediation role given to the High Representative. If he or she does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

Under the Lisbon Treaty there is the possibility, on proposal by the High Representative, for the Council to appoint a special representative with a mandate in relation to particular issues. The special representative shall carry out his or her mandate under the authority of the High Representative.<sup>29</sup>

In the field of CFSP, a Political and Security Committee shall monitor the international situation and contribute to the definition of policies by delivering opinions to the Council at the request of the Council, the High Representative or on its own initiative. This Committee shall also monitor the implementation of agreed policies, without prejudice to the powers of the High Representative. It also exercises, under the responsibility of the Council and of the High Representative, the political control and strategic direction of crisis management operations referred to in Article 43.<sup>30</sup>

The Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the CFSP, and in particular for preparatory activities for the tasks referred to Articles 42, paragraph 1 and Article 43 related to missions outside the European Union for peace-keeping, conflict prevention and strengthening international security. The preparatory activities which are not charged to the budget of the Union shall be financed by a start-up fund made up of Member States' contributions. The decisions establishing the procedures for setting up and financing the start up fund, for administering the start-up fund and

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28 Article 27 (1) TEU-L.

29 Article 33 TEU-L.

30 Article 38 TEU-L.

the financial control procedures are adopted by the Council on a proposal from the High Representative.<sup>31</sup>

Decisions relating to CSDP, including those initiating a mission as referred to in Article 42, shall be adopted by the Council acting unanimously on a proposal from the High Representative on an initiative from a Member State.<sup>32</sup>

When the European Union is to make use of civilian and military means in the tasks referred to in Article 42, paragraph 1, the Council shall adopt the relevant decisions as regards the definition of the objectives, scope and general conditions of the implementation. In that respect, the High Representative, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure co-ordination of the civilian and military aspects of the tasks.<sup>33</sup> The High Representative will then play a coordinating role in that respect.

The Member States wishing to participate in the permanent structured co-operation and which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured co-operation, shall notify their intention to the Council as well as to the High Representative.<sup>34</sup>

*E. Relationship with the Court of Justice of the European Union*

The CFSP is subject to specific rules and procedures.<sup>35</sup> The Court of justice shall have no jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 TEU-L and to review the legality of certain decisions as provided for by Article 275, paragraph 2, TFEU. So the reduced role of the Court of justice is maintained under the new Treaties.

As far as Article 40 TEU-L is concerned, the Court shall ensure that the implementation of CFSP does not affect the applica-

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31 Article 41(3) TEU-L.

32 Article 42 (4) TEU-L.

33 See Article 43 TEU-L.

34 Articles 42 (6) and 46 (1) TEU-L. See also the Protocol on the permanent structured co-operation established by Article 42 of the Treaty on European Union.

35 On the decision making rules in CFSP matters, see Article 31 TEU-L. For comments on the corresponding provision in the Constitutional Treaty (Article I-40), see e.g. *Auvret-Finck* (2007); *Cremer* (2006).

tion of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 TFEU.<sup>36</sup>

According to Article 263, the Court shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. At the same time, any natural or legal persons will be entitled to institute proceedings against a regulatory act which is of direct concern to them and does not entail implementing measures. This last mentioned possibility is important in relation to the cases of restrictive measures that may be adopted against natural or legal persons on the basis of Article 215, paragraph 2, TFEU.<sup>37</sup>

Furthermore, as provided for by Article 247 TFEU the Court of justice is the authority that may be referred to in order to retire the High Representative as a member of the Commission, on application of this institution or on application by the Council, if he or she no longer fulfils the conditions required for the performance of his or her duties or if he or she has been guilty of serious misconduct.

#### *F. Relationship with the Member States*

The Member States of the European Union do not intervene strictly speaking in the appointment procedure of the High Representative, but exert influence through their Head of State or Government sitting in the European Council. Therefore the links between these two ‘entities’ are very tight. The CFSP shall be put into effect by the

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36 The Court held that “[i]t is the task of the Court to ensure that acts which, according to the Council, fall within the scope of Title VI of the Treaty on European Union do not encroach upon the powers conferred by the EC Treaty on the Community” and it also referred to its previous case-law. See Case 176/03 *Commission v Council* [2005] ECR I-7879, para 39 as well as Case C-170/96 *Commission v Council* [1998] ECR I-2763. This case law may be applicable by analogy in the field of CFSP and in relation to the new Article 40.

37 See, eg, Case T-228/02 *Organisation des Modjahedines du peuple d’Iran v Conseil* [2006] ECR II-4665 ; Case T-306/01 *Yusuf* [2005] ECR II-3533 ; Case T-315/01 *Kadi* [2005] ECR II-3649. An appeal is pending in the last mentioned case in which the opinion of the Advocate General was rendered on 18 January 2008.

High Representative and by the Member States in accordance with the Treaties.

A Member State, the High Representative or the High Representative with the support of the Commission may refer any question relating to the CFSP to the Council and may submit to it initiatives or proposals as appropriate.<sup>38</sup> This means that the right of proposal belongs to the Member States as well as to the High Representative or to the High Representative and the Commission depending on the circumstances.

Before undertaking any action on the international scene or entering into any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity. When the European Council or the Council has defined a common approach of the Union within the above meaning, the High Representative and the Ministers of Foreign Affairs of the Member States shall coordinate their activities within the Council.<sup>39</sup>

According to Article 34 TEU-L, the Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such forums. The High Representative shall organise this co-ordination. In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.

Member States represented in international organisations or international conferences where not all the Member States participate shall keep the other Member States and the High Representative informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will consult and keep the other Member States and the High Representative fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

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38 Article 30 TEU-L.

39 Article 32 (1 and 2) TEU-L.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union's position.<sup>40</sup>

Finally, the Treaty provides for co-operation between the diplomatic and consular missions of the Member States and the Union's delegations in third countries and international conferences and their representations in international organisations in ensuring that the decisions defining Union's positions and actions adopted in the CFSP are complied with and implemented.<sup>41</sup>

According to Article 221 TFEU, Union delegations, which are placed under the authority of the High Representative, shall act in close co-operation with Member States' diplomatic and consular missions.

### III. Concluding Remarks

It is very difficult to give a general appraisal of the amendments brought about by the Lisbon Treaty in the field of CFSP and specifically in relation to the creation of the new High Representative due to the fact that it is not possible to make accurate predictions on the basis of the texts. It is practice that will determine and develop the rules and procedures. Therefore, the following comments consist of observations and questions which attempt to assess whether the felt needs for improvement in the creation of the function of High Representative have been satisfied.

*First*, it remains uncertain whether greater unity and coherence will be projected on the international scene. The task of external representation is shared by the High Representative, the President of the European Council and the Commission. Three entities! This comes out to at least three phone numbers. Much will depend on the personality of the High Representative as well as on the personalities of the President of the European Council and of the President of the Commission and on the 'chemistry' between them. This will determine whether or not they work well together. In our view, it is preferable that the question of 'unity and coherence' of external representation should be examined in terms of the credibility of the

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40 Article 34 (2), subparagraph 3, TEU-L.

41 Article 35 TEU-L.

Union on the international scene rather than on the basis of the internal allocation of powers between the entities involved.

*Second*, it is true that the High Representative with his or her double hat and dual role in the Council and in the Commission makes him or her answerable to both institutions. However, the legitimacy of the High Representative seems to be more closely linked to the Council than to the Commission as we have seen. The main question that follows from this situation is whether the High Representative will be able to play his or her role as ‘bridge builder’ in a field where the Member States are reluctant to diminish their influence as this results from the declarations Nos. 13 and 14.

*Third*, there are no major changes in the use of procedures in CFSP and CSDP fields in comparison with the present legal situation. This area of EU law is still governed by a strongly intergovernmental decision-making process. In relation to this, there are strong doubts about the influence or the extension of the Community method in these fields of external action. In that respect, the Lisbon Treaty does not bring much simplification in its maintenance of a similar situation as that prevailing today under the second pillar of the TEU-L. Clearly the merging of different functions in the High Representative does not necessarily lead to a merging of the policies. Therefore, a great deal of pragmatism will be needed in order to ensure co-ordination and coherence in external action.

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