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The new EU's External Action: A significant step forward towards the EU's single voice?

Esther Barbé

Professor of International Relations (UAB) and Director of the Observatory of European Foreign Policy

Laia Mestres

Research Fellow in IUEE

Universitat Autònoma de Barcelona
Edifici E-1
08193 Bellaterra
Barcelona (España)

Introduction*

In the wake of the difficult negotiations in the Nice European Council in December 2000 scheduled to set up a new institutional architecture for the European Union (EU), the Member States accorded to initiate a wide and long-term debate on the future of Europe. In other words, it had been demonstrated that the formula of a Intergovernmental Conference (IGC), where only representatives of the Governments were present, was an obsolete system for the reform of the EU Treaties. The debate on the future of the EU, which formally began in March 2001¹, changed the nature of the reform. Instead of attempting to reorganize the EU over the short-term, it was envisaged to formulate a long-term EU, reform with the horizon of a European Constitution and with the participation of a wider spectrum of actors in its making.

That is to say, the debate on the future of Europe tried to give an answer to all the open questions about how, where and which goals should the European Union fulfil. In order to become a wide, as well as in-depth, debate, the IGC 2003 was preceded by a Convention which was set up by the 2001 Laeken European Council. The Convention's task became to identify and forward recommendations on key issues of the Union's future development. In this sense, the European Convention² worked for fifteen months so as to reach a consensus on a draft treaty establishing a Constitution for Europe.

For the future of the EU, it was vital to reach a firm agreement on the reform of the Common Foreign and Security Policy (CFSP) and the construction of a European Security and Defence Policy (ESDP). Although these issues did not form part of the "hard core" of the Declaration 23 of the Nice Council, they became a central question in the Laeken Declaration and the key stone of the Convention on the future of Europe. Among the factors that caused a necessity to review the Union's CFSP and ESDP were, on the one hand, the international context shaped by September 11's terrorist attacks and the increasing feeling of insecurity among the European citizens. On the other hand, the horizon of the most ambitious enlargement of the EU to date foreseen for 2004, also played a role. So did also the necessity of a long-term reform of EU institutions, which in turn required a redefinition of the role of the EU. In this sense, the Laeken Declaration advanced one of the central questions for the construction of a renewed foreign security and defence policy: "What is Europe's role in this changed world?" Furthermore, the same declaration asserted that the citizens "want to see Europe more involved in foreign affairs, security and defence, in other words, [what is needed is a] greater and better coordinated action to deal with trouble spots in and around Europe and in the rest of the world". In fact, 67% of Europeans claimed to be in favour of a common foreign policy, as the last Eurobarometer of Spring 2003 showed³, even if such a desire, admittedly, has been a constant feature since 1994⁴.

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¹ In fact, the Treaty of Nice in its declaration 23 had envisaged the Debate on the future of the European Union in three phases. The first one consisted in a phase of open and national debate that lasted until the Laeken European Council. Thus, in March 2001 started the second phase, a more structured phase determined by the European Convention. The final one was, of course, the IGC.

² The European Convention was composed of the main parties involved in the debate on the future of the European Union. Apart from the Chairman, Valéry Giscard d'Estaing, and its two Vice-Chairmen, Giuliano Amato and Jean-Luc Dehaene, the Convention was composed of 15 representatives of the Heads of State or Government of the Member States (one from each Member State), 13 representatives of the Heads of State or Government of the candidate States (1 per candidate State), 30 representatives of the national parliaments of the Member States (two from each Member State), 26 representatives of the national parliaments of the candidate States (two from each candidate State), 16 members of the European Parliament and 2 representatives of the European Commission. Furthermore, the Laeken Declaration provided for the candidate States to take a full part in the proceedings without, however, being able to prevent any consensus which may emerge among the Member States.

³ Standard Eurobarometer 59, Spring 2003, page 12.

⁴ The same Eurobarometer shows that, in the 1994-2003 period, the citizenship support for a common foreign policy has remained stable from 63% to 67%.

Thus, in the second plenary session of the Convention, in April 2002, the Commissioner Michel Barnier opened with a polemical declaration claiming that the EU should deal with the matters that preoccupy the European public opinion. In this sense, the French Commissioner defined as the “new frontiers” of the Union, the real concerns of the citizens, and he stood out the Common Foreign, Security and Defence Policy of the Union as one of them⁵. Consequently, the reform of the CFSP and the boost for the construction of the ESDP became some of the most significant policies to be developed in the Convention's proposal to the IGC for the new EU Treaty⁶.

The aim of this paper is to analyse the main agreements on the EU's External Action agreed within the European Convention and the IGC taking into account why, how and who reached the consensus on them. In other words, this paper will explore the principles followed in order to improve the instruments of the EU's External Action such as authority, coherence, visibility, efficiency and credibility.

I. Authority and Coherence

In order to transform the EU into an actor with international presence, the Union needs a clear legal competence to act and a clarification of the formulation and articulation of the European Union's foreign policy. “Certainly, the success of any reform ultimately depends on the ability and will of the political actors to agree and implement a common foreign policy. But the history of European integration shows that the Treaties' institutional rules are an important framework and catalyst for the progressive realization of common policies” (Aldecoa, 2003: 5; Thym, 2003: 1-2). Until now, the lack of legal personality and the wide and dispersed range of policy instruments affecting to the EU's External Action all along the treaties, have hampered the Union ability to act with authority and coherence in its external projection.

The establishment of a legal personality for the EU and, consequently, the disappearance of the three-pillar structure introduced by the Treaty of Maastricht have perhaps been the easiest issues for the Convention to reach a consensus on. In other words, the converging opinions on the legal personality established in the Draft Treaty has been one of “the most valuable consensus of the Convention because, above all, it has been possible only a few months after the failure of the last two IGCs” (Aldecoa, 2003: 7-8). Thus, the EU will finally have formal or legal competence to act in international fora as well as the capacity to conclude international agreements with one or more states or international organisations, for matters falling under CFSP.

On the other hand, one of the most repeated demands on the Union's External Action is the need to better ensure the coherence between the different foreign policy provisions: the Common Foreign and Security Policy, the Common Security and Defence Policy, the Common Commercial Policy and the Cooperation with third Countries and the Humanitarian Aid. Indeed, this demand became clear in the first months of the European Convention⁷, when the classical cleavage intergovernmentalism *versus* the Community method reappeared. Some of the members of the Convention demanded an extension of the Community method to the CFSP, excepting, of course, in the military and defence area. Germany, Austria, Luxembourg and

⁵ “Monsieur Michel Barnier, commissaire européen responsable de la politique régionale et de la réforme des institutions. Note d'intervention –Convention Européenne Parlement Européen”, Brussels, DN: Speech/02/155, 15 April 2002.

⁶ The European Convention worked in different ways along the fifteen months of works (March 2002 – July 2003). First, the conventionists met in the monthly plenary sessions to present their general positions on the future of Europe. Second, the different working groups focused on several specific subjects. It is notable worthy the Working Group on External Action chaired by Jean-Luc Dehaene, and the Working Group on Defence chaired by Michel Barnier. Lastly, the final plenary debates started to work on the draft articles of the Constitution written by the Praesidium. All this process contributed to reach a wide consensus on the Draft Treaty, presented by Giscard d'Estaing to the Italian presidency of the European Council on 18 July 2003.

⁷ It is noteworthy the plenary session of 11-12 July 2002 where the conventionists started to debate on the EU External Action. See: EUROPEAN CONVENTION, *Summary Report of the Plenary Session*, Brussels, CONV 200/02, 16 July 2002.

Finland defended the progressively communitarization of the CFSP while others States such as France, Britain, Ireland or Sweden rejected this possibility.

With the objective of ensuring coherence, the Draft Treaty draw all the provisions of the European foreign policy in the same Title in order to simplify the treaties as it was requested in the declaration 23 of the Treaty of Nice. The Title V, the so-called 'Union's External Action' Title, is placed in the third part of the Treaty, which it includes the Policies and Functioning of the Union. However, as argued by Cameron, "bringing the articles together improves transparency, each policy area is subject to different rules and instruments which impedes transparency" (Cameron, 2003: 15). Apart from this Title, the Constitutional Part of the Draft Treaty contains a specific mention of the Union's guiding principles on external affairs as well as detailed provisions for implementing CFSP and ESDP. In addition, it is noteworthy the constitutionalization of the EU's new neighbourhood policy referring to the special nature of EU's relationship with its neighbours and proposing the implementation of specific agreements with the immediate environment⁸.

II. Visibility

It was widely agreed that one of the main improvements that the European Convention would have to face up to, was the visibility of the European External Representative. In fact, the acceptable results of the High Representative for the CFSP, post held by Javier Solana since 25 November 1999, boosted the reform of this figure into another more visible one.

As far as the reform of 'Mr. CFSP' was concerned, several options were considered all along the fifteen months of the Convention the work was undertaken. "Against the advice of both Solana and Patten, who argued that the present system, although not perfect, worked well, the Convention agreed to establish a new position of EU foreign minister with *two hats*" (Cameron, 2003: 15). Even if initially in the Working Group on External Action there had been arguments in favour of different solutions, the proposal of merging the HR for the CFSP and the Commissioner for External Relations obtained progressively larger support. It can be inferred that this idea came fundamentally from the Franco-German contribution on the new institutional architecture of the EU⁹, although it was also in the subsequent Anglo-Spanish one¹⁰. Thus, all the members of the Convention accepted the *double hatting* of the new Minister; being at the same time one of the Vice-Presidents of the European Commission in charge of handling external relations, as well as coordinating other aspects of the Union's external action such as the Council of Ministers of Foreign Affairs. Finally, the works of the IGC helped to further clarify the provisions on the new Minister for Foreign Affairs suggesting additional adjustments in order to meet some concerns from some delegations on this issue, while still maintaining the concept of double hatting¹¹. In sum, the new Foreign Minister will be able to submit proposals to the Council of Ministers relating to the common and foreign and security policy, while "the Commission loses its previous right of initiative (an initiative it hardly ever used)" (Cameron, 2003: 16).

⁸ The article "The Union and its immediate environment" is the result of a widespread debate initiated by Javier Solana and Christopher Patten with the joint letter "Wider Europe". This idea was developed by Valéry Giscard d'Estaing as well as Romano Prodi in both proposals of preliminary draft constitutional treaty. See: PRAESIDIUM, *Preliminary Draft Constitutional Treaty*, Brussels, CONV 369/02, 28 October 2002; EUROPEAN COMMISSION, *Contribution to a Preliminary Draft. Constitution of the European Union*, Brussels, 5 December 2002.

For further information see: Soler i Lecha, E. (2003), "Periferia y Vecindad: Nuevos aires en las relaciones euromediterráneas", *Agora Revista de Ciencias Sociales*, nº 9, pp. 73-86.

⁹ See: "Franco-German Contribution to the European Convention concerning the Union's institutional architecture", Contribution submitted by Mr Dominique de Villepin and Mr Joschka Fischer, members of the Convention, Brussels, CONV 489/03, CONTRIB 192, 16 January 2003.

¹⁰ The Anglo-Spanish contribution was presented as a counterbalance to the emergent Franco-German axis. See: "The Union's institutions", Contribution by Mrs Ana Palacio and Mr Peter Hain, members of the Convention, Brussels, CONV 591/03, CONTRIB 264, 28 February 2003.

¹¹ It is worth mentioning the role of the Italian Presidency (Second Semester 2003) in the works of the IGC being not a proposal maker but a "gap- filler".

In order to assist the EU Foreign Minister to perform his (or her) duties, the Draft Treaty foresees the creation of a European External Action Service¹². This Service will be composed of officials from the General Secretariat of the Council, of the Commission and from national diplomatic services. However, some academics have criticised the different staffing systems that this new Service will include. Christopher Hill thus highlights that there exists one glaring problem: "The Foreign Minister is going to be appointed without a Ministry to back him or her up, and indeed without a set of embassies in the field" (Hill, 2003: 2). Although the European Convention easily reached a consensus on turning the Commission delegations into delegations of the EU, the most critics believe that these delegations will not be able to act as active embassies. Or, in other words, the European External Action Service will not become a Foreign Affairs Ministry. On the other hand, despite the Working Group's proposal of creating an EU diplomatic academy which received the Spanish support¹³, the reluctance of some Member States, principally the United Kingdom, made this proposal impossible (Aldecoa, 2004: 11). However, the other instruments presented here might come in useful for reinforcing the 'EU diplomatic corps' and for helping the new Minister for Foreign Affairs to achieve the long-term EU goal of 'speaking with one voice' in international affairs.

III. Efficiency

One of the most discussed questions in the debate on the future of Europe was how to enhance efficiency in the enlarged EU's External Action decision-making. It was widely argued that the Union would have to change and simplify the rules of its decision-making in order not to disrupt European integration process. The very threat of a paralysis of the integration process due to the veto right of any Member State boosted the move towards the simplification of the rules of the EU. In this sense, the dilemma of extending the use of qualified majority voting (QMV) in CFSP was present all over the Convention debate.

Despite the recommendations of the Working Group VII favouring a maximum use of existing provisions for the QMV "in order to avoid CFSP inertia and encourage a pro-active CFSP"¹⁴, the plenary of the European Convention opted to maintain the rule of the unanimity in terms of CFSP. The positions of the members of the Convention regarding this matter were divergent. Not only was the Working Group on External Action in favour of the use of QMV, but also France and Germany as well as Spain supported such a move. It was again the UK's veto that would ensure the continuity of unanimity as a general rule of decision-making in CFSP provisions. Thus, the European decisions shall be adopted by the European Council and the Council of Ministers by virtue of unanimity but abstention will continue to be possible by making a formal declaration, just as set by the Treaty of Amsterdam. However, a new provision was added to the Draft Treaty. It foresees the possibility that the European Council may decide unanimously that some aspect of the CFSP can be developed by the Council of Ministers by qualified majority. Indeed, this so-called 'passerelle clause' may become a good instrument to make CFSP more flexible and less held hostage to the positions of a divergent minority.

Despite this 'passerelle clause', as Fraser Cameron affirms, the principal weakness of the new treaty is that "with 25 plus Member States, the retention of the veto in CFSP could be a recipe for indecisiveness and inaction" (Cameron, 2003: 16). If there is not the unanimity of the Member States to activate the 'passerelle clause', the veto right will prevail. Finally, we can affirm that the agreement of the Convention -far from resolving the matter of decision-making as

¹² See: "Declaration on the creation of a European External Action Service" in the General and Final Provisions of the Draft Treaty establishing a Constitution for Europe, CONV 850/03.

¹³ See: "Debate on Europe's future", Contribution submitted by Mr Gabriel Cisneros Laborda, member of the Convention, and Ms Ana Palacio and Mr Alejandro Muñoz Alonzo, alternate members of the Convention, Brussels, CONV 690/1/03, CONTRIB 306, 28 April 2003.

¹⁴ See: EUROPEAN CONVENTION, *Final Report of Working Group VII on External Action*, Brussels, CONV 459/02, 16 December 2002.

it had been tasked by the Laeken Declaration- resulted to be a cocktail of Maastricht and Amsterdam Treaties, and in fact, complicating matters even further.

IV. Credibility

The division of the EU Member States before the Iraq conflict in March 2003 showed once more the divergences between some of the members relating to a question of the international agenda. However, at the same time, these divergences did not impede that other issues of the European agenda such as the military missions in the Balkans¹⁵ prosper. Of course, the difficulties of the EU Member States to present a European position often causes that the EU's External Action loose credibility before other international actors. This has meant that there is now a crucial momentum among a majority of Member States in favour of building an autonomous European defence capacity and gain in credibility. Hence, the construction of the ESDP has become one of the questions on the IGC negotiation agenda. Due to the intergovernmental character of this policy, the converging positions of the governments of the Member States have been decisive to reach a consensus on the defence provisions of the new Treaty. The final agreement on ESDP has been the result of the IGC negotiations and not of the works of the European Convention.

Before analysing the main new features of ESDP, we must point out that "the debate revisited historical divisions between those who saw defence as primarily an issue for NATO, and those who saw the development of an autonomous defence capability as a legitimate component of European integration" (Duke, 2003: 4). Hence, the Atlanticism *versus* Europeanism cleavage continues to condition the process of construction of the European defence. This was evident from the very beginning of the Convention until the final redaction of the Constitutional Treaty within the IGC, and the end product was greatly influenced by the parallel summits held between France, Germany and Britain.

Let us examine the main progresses in the construction of the European Defence. First, the agreement among the Member States on setting up the planning cell at SHAPE -NATO's military Headquarters- symbolized the acceptance that the European Defence had to be coordinated with the North Atlantic Alliance¹⁶. This agreement were found far away from the European Convention halls and the subsequent IGC negotiations. Before accepting this agreement, France, Germany, Belgium and Luxembourg¹⁷ (the so-called chocolate summiteers) had proposed to create an autonomous defence with an EU operational planning staff at Tervuren. However, the necessity of the participation of Britain impeded this possibility and the progress on the defence project was only achieved when the three big states -France, Germany and Britain- met to agree and plan the future of the ESDP. Observing how the debate on this matter has evolved, the first conclusion we can draw is that France and Germany would not be able to build an European defence policy without the United Kingdom. Or as González Bondia affirms, "this agreement proves the hegemonic role of the three powers relating to European security" (González Bondia, 2003, 2). Meanwhile the United Kingdom accepted to commit itself to a greater EU role in defence, France and Germany acceded, instead of creating an independent military headquarter, to take part in the NATO Headquarters in Belgium. Respecting to the other Member States position, Spain insisted on the compatibility between the NATO and the idea of European defence as well as the possibility to remain the cooperation on

¹⁵ The EU took responsibility for its first military mission (Operation Concordia) in the former Yugoslav Republic of Macedonia launched on 31 March 2003. This EU-led operation followed a NATO operation and made use of the Atlantic Alliance assets and capabilities.

¹⁶ "Blair accepts European Defence deal" *The Guardian*, 29 November 2003; "Francia, Alemania y Reino Unido acuerdan una defensa europea coordinada con la OTAN", *El País*, 29 November 2003.

¹⁷ These four countries met in Brussels on 29 April 2003 with the aim of starting to design a European Defence Policy. This policy should be autonomous from the NATO operations with its own operation planners (Fernández Sola, 2003). This first proposal did receive the support of Britain neither Spain.

defence open to accept the accession of any Member State at any time¹⁸. On the other hand, it is worth noting that “the Union’s smaller members have generally been prepared to follow the lead of London, Paris and Berlin on defence, despite their general suspicion of domination by the big three” (Grant, 2004: 2008).

Second, the question of allowing a sort of enhanced cooperation on defence matters, as foreseen by the Treaty of Amsterdam reformulated by Nice, became a matter of vivid debate at the European Convention, as well as the IGC. The Treaty finally created the mechanism of the so-called ‘structured cooperation’, which consists of the possibility for the Member States that fulfil high military capabilities to enter into a more binding commitment on defence than the new ESDP foresees in the EU treaties. The final provisions on the structured cooperation are also the result of a compromise among the big three. And, moreover, for the moment, France, Germany, Britain and Italy are the only ones who fulfil the needed high military capabilities while the others will have to improve theirs if they want to get involved. Hence, instead of containing a list of state participants, the Treaty will remain open to accept the accession of any Member State to the structured cooperation at later stage if it wishes.

Finally, the new clause on ‘closer cooperation on mutual defence’, accepted by all the Member States including the neutral ones¹⁹, establishes that all the Member States will be obliged to give aid and assistance to one another if this one is victim of armed aggression on its territory. However, the last amendments adds to the European Convention’s provision that when certain Member States also are NATO members, their commitments and cooperation will be taken under this organization rules, because it remains “the foundation of their collective defence and the forum for its implementation”. In fact, this provision was only possible in exchange for the British greater compromise to the EU defence exposed in the trilateral summit already mentioned. At this point, it must be underlined that one of the main achievements of the Spanish delegation has been the inclusion of anti-terrorist measures as a primary objective of the ESDP. Since the beginnings of the European Convention that coincided with the Spanish Presidency of the EU²⁰ (first Semester 2002), the Spanish government under the leadership of José María Aznar worked for this inclusion finding a double recognition for this policy at the Seville European Council (June 2002) as well as in the European Convention.

Conclusions

The IGC did not reach an agreement on the Constitutional Treaty that would have to substitute the Treaty of Nice in the Brussels European Council on 12-13 December 2003. Thus, for the moment, the document along with all the provisions concerning the reform of the CFSP and the construction of a ESDP are paralyzed. This situation can only be remedied if the Member States reach an agreement on the vote weighting within the Council of the EU²¹, otherwise the Treaty establishing a Constitution for Europe will not be concluded.

¹⁸ See: “Schröder busca apoyo de Aznar para su plan de defensa europea” *El País*, 4 November 2003; “España se incorpora al proyecto de defensa europea con Francia, Alemania y Reino Unido”, *El País*, 7 November 2003.

¹⁹ Finland, Ireland, Austria and Sweden demanded to add to the new version of this article that the means to give aid and assistance would be military or other such as civilian ones. See: “IGC 2003: *European Security and Defence Policy*”, Letter from the Ministers of Foreign Affairs of Finland, Ireland, Austria and Sweden, Brussels, CIG 62/03 DELEG 30, 5 December 2003.

²⁰ For an extensive analysis of the 2002 Spanish Presidency see: Barbé, E. (coord) (2002), *España y la política exterior de la UE. Entre las prioridades españolas y los desafíos del contexto internacional*, Quaderns de treball nº 40, IUEE, November 2002.

²¹ The proposal of the European Convention about taking decisions by a qualified majority consisted of the majority of Member States who represents at least three fifths of the population of the Union. This proposal resulted to be the main conflict among some of the Member States in the IGC negotiations. France and Germany gave its support to this proposal meanwhile Poland and Spain refused it opting for retaining the voting system of Nice. The disagreement on the voting system in the European Council of 12-13 December 2003 caused the failure for concluding the IGC with a consensus on the Constitution for Europe. The debate has been postponed until the Irish Presidency reopen the consultations.

In spite of this lack of agreement in specific questions, we can affirm that the agreement on External Action provisions arrived on time. As far as its negotiation process is concerned, some commentators asserted that “the EU foreign policy was subject to two contradictory realities. The EU has experienced the biggest row over a major foreign policy issue in decades [Iraq crisis]. And yet a more credible EU foreign policy was slowly taking shape” (Everts and Keohane, 2003: 2). Hence, whereas some significant steps in decisive questions were done, the lack of consensus did not allow to advance in other matters.

Undoubtedly, the main symbolic steps forward in the construction of the EU's External Action are the establishment of legal personality for the EU and the conversion of the High Representative for the CFSP into the Union Minister for Foreign Affairs with more competencies. Thanks to these steps, the EU will hopefully gain in credibility, efficiency as well as visibility. In respect to the construction of “*l'Europe de la Défense*”, it is noteworthy the weight of the big three. The rest of Member States accepted the agreement of Britain, France and Germany, despite all the decisions taken previously within the European Convention or the proposals of the Italian Presidency along the IGC.

However, there are other questions that remain unsolved if the EU does not want to become institutionally paralyzed as it enlarges to include 10 more Member States. The preservation of unanimity as the basic rule of decision-making in CFSP will make it more difficult for EU-25 to establish common positions or to act promptly before an international crisis. For the moment, the decision-making in EU's External Action will depend on the willingness of the Member States to reach any agreement on any decision. Moreover, the clause on mutual defence agreed by the European Convention has been watered down in order not to undermine the North Atlantic Alliance and its article V. The European Defence has been born, however, it has been diluted by the more Atlantist partners.

To sum up, we are not sure if the EU will speak with a single voice in foreign affairs. For the moment, it seems that the new EU Minister will have one telephone number as Kissinger once demanded. However, the new Minister is likely to suffer from a lack of ability to react with speed due to his/her need to perform multiple consultations before able to act. In fact, the same problem which has impeded the High Representative from prompt action. Finally, the only thing we are sure is that the Constitutional treaty, if concluded, will be a crucial step in the European construction, and the agreements on the External Action are an important part of this step.

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