

## THE CONSTRUCTION OF THE EUROPEAN EXTERNAL ACTION SERVICE

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First draft, all comments welcome

### Introduction

In this paper, I will focus on the European External Action Service (EEAS) as an institutional novelty in the EU's institutional set-up. It will serve as an administrative substructure to the "infrastructure" of the CFSP (Denza 1999); it shall especially assist the "new" High Representative in policy-formulation, agenda-setting and policy-implementation. I am interested in two interrelated questions: *why* was the EEAS introduced as a new organization in the EU's Common Foreign and Security Policy (CFSP); and *which* particular institutional designs were preferred by the constitutional actors in order to establish the EEAS.

A new organization in CFSP is not constructed, set-up and run out of the blue. In general, the constitutional-institutional set-up of the EU as a whole has to fulfill requirements of effective and legitimate politics. Indeed, in the current state of diversity and difference among member states and their societies on the one hand (Eriksen and Fossum 2007; Landfried 2006; Zielonka 2006) and interdependence among member states and their societies on the other hand (Eriksen and Fossum 2007), the construction of new EU institutions and organizations is likely to proceed along two different paths. The polity of the EU could be constructed in a way that difference and diversity would be recognized more explicitly – leaving most of the decisions to the member states, legitimacy deriving only from democratic member state institutions and cooperation taking place only when it would serve the interest of the member states (Eriksen and Fossum 2007). On the other hand, one could also think of an EU which further integrates underlining the functional need for further common policies in a state of interdependence – finally turning into a federal multinational state with legitimacy deriving mainly from democratic European institutions (Eriksen and Fossum 2007). There is a third possible option which despite interdependence and diversity sees the EU emerging as a deliberative cosmopolitan regional power (Sjursen 2007) – serving not especially the needs of member states in terms of interdependence and diversity, but rather being guided by cosmopolitan norms and principles which are justified vis-à-vis EU citizens and citizens of third countries. I understand these different options as three different blue-prints of the institutional polity design in CFSP. Once the three models are operationalized and broken down to the level of administrative set-up in CFSP, they will provide us with categories with which we will be able to measure the institutional development of the CFSP – and especially the novelty of the EEAS.

In the particular case here, it will be my interest to answer the question why as a novelty to the administration of CFSP the EEAS was introduced and which particular set-ups of the EEAS were preferred. I argue that the EEAS' construction and institutional set-up can be measured on the background of the three above mentioned polity models, the so-called RECON models (Audit Democracy; Federal Multinational Democracy and Regional Cosmopolitan Order). The RECON models are ideal models and empirically observed reality may look different (Sjursen 2007: 3). However, by

taking the models into account, the EEAS can be analytically measured in the way that both its envisaged functions and its institutional-set-up will tell us about its potential quality.

The study of institutional set-up's is crucial to the study of CFSP. As it has become clear from recent literature, institutional innovation in CFSP can be seen as a consequence of already undergone cooperation with the consequence of furthering cooperation (Smith 2004). In this respect, the institutional innovation of EEAS can overall be understood as having an effect on CFSP. In detail, effects can be expected in several ways. First, with regard to decision-making in CFSP it has been mentioned that the role of the administrations of the Council Secretariat and the Commission as well as overall committee governance has to be taken into account in order to fully understand CFSP's output (Dijkstra 2008, Christiansen 2008, Christiansen/Vanhoonacker 2008; Duke 2007; Duke 2006; Duke/Vanhoonacker 2006; Spence/Fraser 2004). The new institution might fit into the idea that CFSP is more and more driven by administrations, rather than at all times steered by high level member state executives. The EEAS is also interesting with regard to the idea of "diplomacy beyond the state" (Sharp 2004). In addition to the changing concept of diplomacy which nowadays also includes the diplomacy of NGO's and other actors (Colsaet 2004; Sharp 2004), another transnational administrative elite might emerge which fulfills tasks similar to those of her national counterparts and those of the Commission (Bruter 2004). In which relationship will the national diplomacy, the Commission and the new transnational administrative elite be? It has often been mentioned that diplomacy still rests with the (member) states and the EU is often represented through the member states (Duke 2004) – thus, in order to be present in the world, CFSP mainly relied on the Europeanization of national diplomatic services (Hocking 1999). The EEAS is insofar central to understand the representation of CFSP abroad because not only the interior part of the external administration is reconsidered, but also the representation of the EU abroad. David Allen's question "Who speaks for Europe?" (1998) will be thus understood of being not only linked to single high-profile politicians like the High Representative, but also to administrative organization which could speak, administer and represent on behalf of the EU.

As said above, the RECON models become options or blueprints for heading into the one or the other direction of institutional set-up. While the EEAS was already mentioned in the Constitutional Draft Treaty, its final institutional-set up has not been decided upon yet. Originally, the EEAS was thought about, reflected and finally introduced in the wake of the constitutional debates during the Convention on the Future of Europe which finally proposed the Constitutional Draft Treaty in summer 2003. The Constitutional Treaty took over the proposals to implement a EEAS in 2004. In 2005, governments of EU member states, the Commission and the current High Representative started negotiations how to implement the formally introduced EEAS so that it could be set-up accordingly after constitutional ratifications. After the defeat of the Constitutional Treaty in 2005 at the French and Dutch referenda, as many other institutional novelties of the Constitutional Treaty in CFSP the EEAS was re-introduced in the Lisbon Treaty. However, as will be pointed out later, slight changes have been added with regards to the EEAS and the final decision of how the EEAS should look like when implemented, is still not taken. After yet another defeat of the Lisbon Treaty at the Irish referendum in 2008, the implementation of the EEAS came to a halt.

However, in order to answer the two questions of *why an EEAS and which particular EEAS* I will look into the constitutional debates in the Convention as well as the following debates over the EEAS, especially during the implementation phase in 2005. By looking into these debates it can be

shown for which reasons actors who were involved in the construction of EEAS argued in favor or against an EEAS in the first place. Also it can be shown, once the EEAS was decided upon, which institutional set-ups were preferred by the constitutional actors and how they relate to the three models mentioned above.

Along the three models three different hypotheses can be made: According to the first model, the administrative level of foreign policy will basically remain nationally bound and internationally dispersed – the EEAS will ultimately be reduced to some kind of secretariat wearing a name that does not live up to its actual tasks. According to the second model, which understands the Union rather as a federal multinational state, administrative tasks will be “uploaded” to a federal level of government and the external administrative representation will be unified and merging with former member states’ embassies – the EEAS becomes a “real” Foreign Service. According to the third model, the administration of foreign policy is another “layer” of administration next to those of the member states: this duplication of services, however, is a functional division, because administrations assist governmental function which address different goals in foreign policy.

The two interrelated questions of this paper will be answered by looking at what I call the constitutional debates of the EU – starting in the Convention on the Future of Europe and lasting until today through deliberations on the implementation of the treaty-changes. As argued elsewhere, constitutional-change or treaty change is made of different phases (Frisch and Landfried and Raube 2008). In the case of the EEAS, the new organization is mentioned in the treaty-changing treaties, but the actual institutional set-up is left for implementation to actors such as the member states, the High Representative, the Commission and the European Parliament. Therefore, I divide the constitutional debates into two different parts: one construction and one implementation phase. By dividing the two into two phases (construction and implementation phase), one will be able to focus if substantial changes took place with regards to the EEAS construction from one phase to the other.

I will analyze the constitutional debates in a qualitative way. I will thus focus on arguments made in favor or against the EEAS in the first place in order to answer why the EEAS was chosen; then, I concentrate on arguments about which EEAS should be chosen; overall, arguments refer to categories provided by one of the above mentioned models. I will mainly focus on those arguments which were made during the Convention on the Future of Europe. The Documentation of the Plenary Debates as well as of the Working Group on External Action offers a sufficient source of information. Things get more difficult when the constitutional debates enter the IGC. As it is often described, secrecy of the IGC leads to a lack of documentation. Since major changes did not occur during the IGC in 2003, this IGC will not be observed. However, the introduction of the Lisbon Treaty and the IGC of 2007 did bring some additional changes to the EEAS. Parallel to those last changes in the construction of the EEAS, governments, the High Representative and the Commission started trying to implement the constitutionally envisaged EEAS. A joint paper of High Representative Solana and the Commission which reported to the European Council in 2005. Also in 2005, the European Parliament initiated a Report on the EEAS and held a Plenary Session inviting Commissioner Wallström to report on the Commission’s interests in the implementation of the EEAS. It is those documents which I will mainly focus on with the regards to the implementation of the EEAS.

I will proceed as follows. First, after shortly introducing the present CFSP with a special eye on its administrative substructure in Brussels and abroad, I will analyze the initiation and the

implementation of the EEAS. Second, I will start outlining the three models and concentrate which analytical tools must be derived from them in order to analyze the construction of the EEAS (operationalization). Third follows the analysis of the constitutional debates which are divided into two phases: a construction phase and one implementation phase. I analyze how in the constitutional debates the EEAS lives up to the operationalized RECON models in those two phases. By eventually choosing one particular EEAS over another, we might see into which direction this EEAS drifts (according to the RECON models). However, as we will see, while in the construction phase a compromise was found among the constitutional-actors to set up an EEAS in the first place, which is supposed to support the “new” Foreign Minister by being set up of personal from the member states, the Commission and the Council Secretariat, the implementation phase reveals that a final decision could not been found so far on how to implement the EEAS in all its facets.

## **I. The Administrative Substructure of CFSP and the Introduction of the EEAS**

The administrative substructure of CFSP can be best understood when comparing it with the diplomatic administration of nation states in international relations.

In order to act efficiently in international relations, governments rely on their diplomatic administration which is made of an *interior* and an *external* structure. The interior structure is embedded in the foreign service and made up of different units and desks concerned with different geographical and functional tasks; the external representations of the respective state, the embassies, towards other states and international organizations are linked to the overall foreign service and to the specialized units in the interior structure respectively. The embassies fulfill mainly the tasks of a) representing the state abroad, b) extending economic relations with the third state, c) caring for their citizens in consular matters and d) reporting back to the central foreign service (Everts 2002). Thus, the interior service, which is linked to the executive process of political decision-making in the government relies on information of its external representations. In turn, the exterior part of the foreign service is executing the state`s interests on behalf of the foreign service/the government. It acts upon directives from the central foreign service. Effective government action – agenda-setting, policy-formulation and implementation – is thus linked to a two way processes between the two parts of the external service.

### *The interior structure of the EU`s external administration*

The CFSP operates under the second pillar of the European Union. The second-pillar is often called intergovernmental stressing the general unanimity requirement of the decision-making process in the Council. The High Representative is supposed to assist the Council in all matters of CFSP (Article 26 TEU). In this sense, the High Representative coordinates policies between the member states (vertical) and the other EU institutions (horizontal). The vertical coordination is necessary because the competence to conduct foreign policy still rests with the member states.<sup>1</sup> The Treaty of the European Union only states that member states will coordinate their foreign policies in the CFSP (Article 11 TEU). According to Article 16 TEU member states are obliged to work together in any

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<sup>1</sup> Indeed, this emphasizes intergovernmentalism in CFSP even more.

matter of “general interest” (Hillion and Wessels 2008: 81). This is not to be mistaken with any concurrent or even exclusive power of the European Union,<sup>2</sup> and still the member states “nonetheless remain obliged to inform and consult one another whenever issues are of general interest, in the sense that they reach beyond national interests” (Hillion and Wessels 2008: 81). Indeed, the High Representative and the administration surrounding it are crucial in identifying and representing the general interests of the European Union. As such, the High Representative has become an extremely important actor in the performance of the CFSP/ESDP. Indeed, the present High Representative Javier Solana interpreted his role as General Secretary of the Council and High Representative of CFSP purely in the latter sense, leaving other tasks than those concerning CFSP/ESDP to his deputy (Christiansen/Vanhoonacker2008).

The High Representative today relies on specific interior administrative assets within the Council Secretariat which are “reserved” for CFSP. In terms of CFSP administration, next to his private cabinet the High Representative is supported by the work of the Council Secretariat’s DG E and the Policy Unit. Other administrative sections of the Council Secretariat are mainly concerned with different operational tasks, such as policies in the first pillar, the preparation of Council meetings, European Council meetings or advice in treaty-reforms (Christiansen 2002; Dijkstra 2008). With the increase of CFSP/ESDP activity in the wake of the 1999 Balkan crisis, the Council Secretariat expanded its influence in assisting the High Representative by integrating new units such as the Policy Unit and the linked Military Staff (responsible for early warning and military analysis) and SITCEN (providing national intelligence information). While members of the DG’s are personnel directly affiliated with the Secretariat, most of the members of the Policy Unit, Military Staff and SITCEN are seconded from national administrations.

Regional desks in the DG E and tasks of the Policy Unit overlap considerably while in theory the DG E is rather meant to provide supportive administrative information and the Policy Unit rather early warning and strategic planning functions in crisis-management (Vanhoonacker 2008: 151). However, this distinction has never worked in practice (Christiansen/Vanhoonacker 2006). Indeed, the Policy Unit has never lived up to its expectations (Dijkstra 2008). According to this view, the Member states and the Commission were never really interested in providing necessary and helpful information about crisis-situations via their external services (Dijkstra 2008). As a consequence to overcome problems of interior coordination and external information, in some geographical areas such as the Middle East, the Western Balkans and the Mediterranean the Policy Unit and the DG E were merged within the Council Secretariat (Vanhoonacker 2008: 151). Thanks to different “background in administrative culture” (Vanhoonacker 2008: 151) – some were seconded, some directly working for the Secretariat – the fusion did not function as smoothly as it was meant to happen.

At the same time the European Commission has developed its own “External Service” within the different DG’s concerned with external relations (e.g. DG Development (Spence 2004: 400 ff.)). The Commission can also rely on the information provided by its external representations which constantly report to the DG’s in the different fields of external competence (Bruter 1999).

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<sup>2</sup> Indeed, this will not change through a treaty-change by the Lisbon Treaty (Metz 2007).

### *The exterior structure of the EU's external administration*

Problems of interior policy coordination within the Council Secretariat have been accompanied by the lack of an exterior counterpart abroad. Whereas despite its interior problems the Council Secretariat can be seen as an important player in the CFSP decision-making process (Christiansen 2002; Christiansen/ Vanhoonacker 2007; Dijkstra 2008), it hardly relies on its very own information basis abroad. It is thus dependent on other sources – especially from the member states and the Commission. Even though the EU acts in international relations as an international actor in the CFSP-pillar, the EU has not gained formal legal personality (de Witte 2008) and – thus – no formal representation abroad. Only the European Communities, associated with the first pillar of the EU, gain formal legal personality.

Still, and this is the paradox of the current Treaty, the EU is able to act towards third countries and explicitly required to do so in CFSP, e.g. through taking action on behalf of its Article 13 TEU (Common Principles and Strategies), 14 TEU (Common Action), Article 15 (Common Point of View) and Article 24 TEU (Agreements with third States and international organizations). Especially through taking action on behalf of Article 24 TEU, third states and organizations have recognized the EU as an international actor with legal personality (De Schouette and Andoura 2007: 240). Officially though, e.g. the Special Representatives sent by the Council abroad based on Article 18 (5) TEU (see Grevi 2007), are not part of the EU as a legal entity, but only delegated based on a Council decision. The consequence is quite far-reaching: they do not have a diplomatic status automatically (De Schouette and Andoura 2007: 241). Currently, there are 11 Special Representatives abroad.<sup>3</sup>

The Special Representatives mostly rely on the information of the Commission's delegations abroad. The EU is only "indirectly" represented by the delegations of the Commission (there are about 130 delegations world-wide).<sup>4</sup> In a few cases, a double-hatted model has been chosen to make the Special Representatives also Heads of the Commission's Delegation in the particular country or region. The Commission's external representation is a large diplomatic service with 5000 staff members working in over 130 delegations abroad.<sup>5</sup> With regards to its overall outreach the Commission has one of the widest-spread "diplomatic" services in the world (Burter 1999). Sometimes, EU delegations are larger than individual member states' overseas embassies (Burter 1999; Everts 2002), but in terms of overall numbers the Commission's network is small and to a large extent made-up by hired local staff (Burter 1999). As it has been stated elsewhere (Cameron 2007: 53-55), the Commission's delegations are very well equipped and specialized especially in those fields where the Community has some sort of competence (association agreements, trade,

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<sup>3</sup> Currently, Torben Brylle serves as Special Representative to Sudan (mandated until 28<sup>th</sup> of February 2009); Pieter Feith is Special Representative to Kosovo (mandated until 28<sup>th</sup> of February 2009); Erwan Fouréré is Special Representative to the Former Yugoslav republic of Macedonia (mandated until 28<sup>th</sup> of February); Miroslav Lajčák is Special Representative to Bosnia and Herzegovina (mandated until 28<sup>th</sup> of February 2009); Kálmán Mizsei is Special Representative to Moldova (mandate until 28<sup>th</sup> of February 2009); Pierre Morel is Special Representative to Central Asia (mandated until 28<sup>th</sup> of February 2009); Marc Otte is Special Representative to the Middle East Peace Process (mandated until 28<sup>th</sup> of February 2009); Peter Semneby is Special Representative to South Caucasus (mandated until 28<sup>th</sup> of February 2009); Ettore Francesco Sequi is Special Representative to Afghanistan (mandated until 28<sup>th</sup> of February 2009); Roeland van de Geer is Special Representative to the Great Lakes Region (mandated until 28<sup>th</sup> of February 2009); Koen Vervaeke is Special representative to the African Union (mandated until the 31<sup>st</sup> of February 2008).

<sup>4</sup> As it becomes clear from the reading of the European Parliament's report on this issue, the delegations are officially delegations of the Commission, not the European Community. Strictly, the delegations are thus responsible for providing the Commission with information, but not other institutions such as the Council or the European Parliament.

<sup>5</sup> See European Commission: Taking Europe to the World – 50 year's of the European Commission's External Service. Brussels, 2004, p. 3.



development etc.), but generally their specialization in the field of CFSP, concentrating on mainly on security issues and including civilian and military crisis-management, remains low (Cameron 2007: 55). The Commission is after all especially concerned with those policies it has formal competences in (Burter 1999).

While externally CFSP is then only represented by a “de facto diplomatic service” made of Special Representatives (De Schouette and Andoura 2007: 241), in Brussels the Council Secretariat (assisting the High Representative) becomes reliant on member states’ information from third countries. Also, as already mentioned, information can be gathered indirectly through the Commission’s external delegations which in the case of CFSP report to the Commission’s Directorate General Relex (and its CFSP directorate).<sup>6</sup> Indeed cooperation between the second and the first pillar becomes crucial because of the treaty-based obligation to look for a coherent foreign policy between the Commission and the Council. The Council must make sure that CFSP does not interfere with Community actions (Cremona 2008). If the Community has already and rightly acted in the Community pillar, CFSP is not likely to be in charge. To this end, the Commission is involved in the Council decision-making process – especially on the Working Group level.

### *“Something Missing?”*

What is lacking in the EU compared to the operation of national foreign services is (1) a united foreign service “taking” and “channelling” information from the external delegations (ideal gate-keeper-function (Spence 1999: 254)). This united foreign service would have the responsibility to serve information to its head, the foreign service minister and the government he/she is serving, which is currently not the case (Duke 2004). The EU’s external service is however divided, because of the two pillars. The administration concerned with CFSP – the Commission and the High Representative/the Council – might be called “a tandem” in positive terms (Spence/Cameron 2003), but it is far from being “a single” administration. What is also lacking compared to the operation of national foreign services is an external network of EU representations which are fully equipped to provide information to the “central” service. This could either happen to take place through an expansion of tasks provided by the Commission’s delegations or an increased overseas cooperation between member states’ embassies and the already existing delegations which are associated with the EU. Also, one option could be the introduction of an additional EU external service complementing or taking over all the representative tasks of the other delegations – either the Commission’s and/or the member states’.

Compared to member states where there normally is a parliamentary unit within the Foreign Ministries in order to inform parliament on foreign policy action, such a link is missing in CFSP. The Council Secretariat does not have a constant DG or desk concerned with relation between the European Parliament (EP) and the Council. This missing institutionalization can be easily understood by the missing formal competences of the EP to oversee CFSP (Raube 2008). However, with regards to the Commission such a contact is provided through the Commissioner responsible for

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<sup>6</sup> Whereas during the Prodi Commission it was often talked about the tandem between the High Representative of the Council, Solana, and the Commissioner for External Relations, Patten; these days especially the relationship between Solana as now-and-then High Representative and Barroso as the Commission’s President has to be stressed.

parliamentary relations (Margot Wallström). Still, in most external relations areas (including trade) the EP does not have a vital say in the first pillar either.<sup>7</sup> With regards to legitimacy and democratic control, the CFSP administration can hardly be held accountable. Indeed, the High Representative can only be held accountable by the European Council. The administration of the Council Secretariat serving the High Representative can only be held accountable through the Council or by the High Representative itself. Differently, the Commission and the Commission's external delegations can be held accountable by the European Parliament. Thus, dependent on the different pillars legitimacy derives from different sources and democratic control equally divided by the pillars.

*"A Foreign Minister! – And a Foreign Service!"*

The creation of a single institution responsible for the conduct of EU foreign policy was exactly what was the outcome of the constitutional reform following the Convention of the Future of Europe presented. The creation of a "Foreign Minister" of the European Union, which was renamed "High Representative" after the defeat of the French and Dutch Referenda in the Reform- and finally in the Lisbon Treaty, is about merging the functions of the two post of the High Representative and the Commissioner of External Affairs. Also, the new "Foreign Minister"/"new High Representative" will be Vice-President of the Commission and Chairman of the Council of External Relations. The new "Foreign Minister" will have the formal power to initiate action in the CFSP. The construction of this new institution is said to enhance the coherence between the Commission and the Council – and finally shall lead to a more effective foreign-policy of the European Union. Possible "turf wars" between the future President of the European Council (also responsible for the representation of the EU abroad) and the President of the Commission are still possible though.

Whereas today's High Representative is often referred to as "Mr CFSP", this view downplays the complexity of the policy-making machinery in the CFSP/ESDP. Indeed, the "new" High Representative will only be able to live up to the magnitude of tasks embedded in the Lisbon Treaty<sup>8</sup>, if the institution is provided with a solid administrative substructure. In the context of the double-hattedness of the "new" High Representative ideas about a new substructure blossomed. The idea of constructing a "European External Action Service" (EEAS), which assists the "new" High Representative with his/her tasks in CFSP/ESDP, dates back to the Convention debates. After all, the "new" High Representative as an institution is made of by one individual, but it will hardly be able to fulfil all the tasks he/she has received, if not a functioning organization was assisting him or her. Setting up a new service means that the High Representative as an institution will have to be assisted by a collective institution. Which loyalty should this EEAS have? Should its members be picked from member states only or rather from the Commission or perhaps from the Council Secretariat? The choice expresses an idea about possible consequences the different loyalties could have on the work of the EEAS and the assistance provided for the "new" High Representative. The Conventions' Draft Constitutional Treaty and the following treaties in the EU's constitutional (and democratic) odyssey

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<sup>7</sup> For a general overview see Vanhoonacker (2005) and also Lord (2005). With regards to trade policy, the EP influence will enhance by the introduction of the Lisbon Treaty.

<sup>8</sup> See Articles 27 TEU, Article 30 TEU, Article 31 (2) paragraph 1 TEU, Article 31 (2) paragraph 2 TEU, Article 32 (2) TEU, Article 33 TEU, Article 34 (1) TEU, Article 34 (2) TEU, Article 36 (1) TEU, Article 38 (1) TEU, Article 41 (3) TEU, Article 42 (4) TEU, Article 43 (2) TEU, Article 44 (1) TEU, Article 46 (1) TEU, Article 46 (2) TEU.



revealed that the “new” High Representative should have an administrative service assisting it. But the Draft Treaty and the Constitutional Treaty left the concrete shape to another implementation round. The latest consolidated version of the Lisbon Treaty states in accordance with the “new” High Representative and “European External Action Service” in Article 27 III:

“In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic 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. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.”<sup>9</sup>

Indeed, from the reading of the Lisbon Treaty the initial research questions actually remain unanswered. “In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service” is not an answer to the question why the EEAS was picked. Why not requiring a stronger cooperation between Council and Commission instead? Which blue-print was guiding constitution-makers by setting up the EEAS? Also it does not become entirely clear which EEAS should be chosen. Whereas the Lisbon Treaty states that the service 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” it is not said where the service shall be situated. Shall it be merged with the Commission, the Council or shall it rather become an organization of its own? Also, whereas the set-up clearly points to the officials serving the EEAS in its interior administrative structure, hardly anything is said about the “exterior” structure of the Service, the relationship with the Commission’s delegations abroad and member states embassies in third countries.

## **II. The Operationalization of RECON Models in External Affairs` Administration**

Once different statements about *why* and *which* EEAS are found, the Recon Models can offer us categories with which are able to analyze the proposals. However, in order to do this, we need to operationalize the RECON Models. The overall outline of the RECON Models has been made elsewhere (Eriksen and Fossum 2007) and its application to CFSP has already been made, too (Sjursen 2007). However, in order to analyze arguments made with regards to the EEAS, one will have to have a look at the operationalization of the RECON Models in the field of external affairs administration. I will start by operationalizing the Audit Democracy Model, continue with the Federal Multinational Democracy Model and end with the Regional Cosmopolitan Order Model.

I assume that the operationalization of the RECON Models can be made by looking into the following categories: a) overall function of the administrative structure in foreign affairs; b) the legitimacy and authority of action in the administrative structure; c) the institutional structure of the internal and external structure of the foreign relations administration and d) parliamentary control.

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<sup>9</sup> Official Journal, C 115/28, Volume 51, 9 May 2008.

The operationalized categories are thought of as being different from one model to the other. The categories can overlap. By the *overall function* of the administrative structure I understand which specific function the administration is assumed to fulfill in foreign relations according to each of the models. Related to the overall goals of the models the functions will vary according to the scope of the administration. Indeed, the functions might depend where legitimacy and authority of the structures derive from. By introducing *legitimacy and authority* it shall be answered to which constituency the administration is answerable and loyal and, thus, on which behalf the administration actually takes action. As mentioned earlier, the *institutional structure* of the external relations administration is – as an ideal deriving from empirically observable administrations in international relations – dependent on both one interior and one exterior structure, which are both interlinked. However, these structures can also vary according to which shape the polity, in which the administration is embedded, takes. Lastly, as I also mentioned earlier, the involvement of parliaments and their control of government is important to understand. *Parliamentary control* might not be self-understood when dealing with administration. But ultimately, and related to questions of function, legitimacy and authority, also the administration of foreign relations can be held answerable to the public. This, again, may vary though according to the shape of the polity.

### *The Audit Democracy*

The Audit Democracy Model is likely to form the EU as an international organization based on intergovernmental decision-making. In that sense, *the overall function* of this international organization will be the cooperation among governments. In foreign policy, the cooperation will be based on the unanimous will of the governments to cooperate in order to benefit from collective foreign policy action. The foreign policy can be delegated to the international organization when cooperation seems necessary for the governments. Ideally, any action could be taken governments are willing to cooperate on. But initially, it is likely to follow the basic needs of the member states and their governments. While two-level games are likely to occur shaped by domestic as well as international factors influencing state action, it is most likely that governments will act upon the core principles of international law guaranteeing state sovereignty.

As a consequence of this cooperation competence in foreign policy still rests with the member states. *The legitimacy* derives directly from the member states through their democratically elected governments. However, they can delegate administrative functions to the international organization so that the organization can be enabled to fulfill its overall function – to act on behalf of the member states whenever they wish so. It follows that depending on the status of the international organization in international law, this organization can be institutionalized by receiving legal personality. Also, the international organization's administration will be made of seconded officials from the member states' governments working under the roof of a Secretariat which organizes meetings among governments in the international organization. However, its tasks will rather be administrative and there is no authority delegated to the Secretariat to operate in an executive manner towards the outside world. The Secretary General's competence is referring to overseeing the administration of the Secretariat, rather than acting in a political fashion to the outside world.

*The institutional structure* of the administration remains dispersed. Any interior structure within the Secretariat is based on information provided by the national foreign services. The administration is only responsible to set up meetings and write minutes on behalf of the acting Presidency. Thus, information is actually coming from the presidency. However, thanks to limited administrative tasks, the information can be kept on a low level. Accordingly, external representation of the international organization is mainly ad-hoc (e.g. through a humanitarian mission). Otherwise, the external administration is rather dependent on the national embassies which, especially in the case of the presiding member state, also become speakers on behalf of the organization. Thus, different to the Secretariat which is institutionalized in order to coordinate governments in the international organization and cut transaction costs, the external administration remains based on ad-hocism and national representation of the international organization.

On the international organization's level there is no parliamentary control of the administration or its Secretary General. The budget of the administration will be arranged among the governments and their foreign ministries through intergovernmental negotiations. Legitimacy derives from the governments which at home are controlled by their national parliaments. Parliaments only indirectly control the budget of the international organization by controlling the national budgets and the budgets of the foreign service. The Secretary General is to be held responsible by the governments as well.

### *The Federal Multinational Democracy*

The overall function of a state is to provide security and order for and among its citizens in a fixed territory. In this sense, security has a very wide meaning – but it helps to understand that the state will ultimately defend its interests and principles towards the outside world. Through foreign policy, the federal multinational democracy communicates with other actors outside its borders. The institutional federal make-up of the polity is classically enabling the federal level to have competence in foreign affairs (Wheare 1963; Ehrenzeller et al. 2002). The sub-unit level of government will still have competence in other policies, but in external relations the federal level acts more or less exclusively.<sup>10</sup> In fact, among other instruments to conduct foreign policy, means of coercion stick out most. The federal governments can use coercive means (e.g. military force) to conduct foreign policy.

It can do so because it is legitimized to do so. In a democracy like this, the principle of sovereignty rests with the popular will. The government as executive including its administration is held responsible by being elected democratically. Parliamentary control of foreign policy is often contested for reasons of secrecy and efficiency of executive actions: The authority to act in foreign policy rests mainly with the executive: Foreign policy is a function of the executive (Bruha and Rau 2006). The Administration of the executive, preparing information and organizing the executive decision-making process, thus acts on behalf of the government in order to fulfill exactly that function.

Although multinational, the federal state will have one main centre of administrative support to the executive. Analogue to the competence to conduct foreign policy on the federal level, the administration is centrally established. Such an administrative service is likely to be called Federal

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<sup>10</sup> See as an analogy the United States of America, e.g. in: Henkin 1990.

Foreign Office (like in Germany), Department for Foreign Affairs (Switzerland) or State Department (United States), etc. Central idea is that the administration is not dispersed vertically or horizontally over other (sub-)units, but centrally organized. Likewise, this interior structure is mirrored outside the federal state. There are officially only the representations of the federal government representing the federal state abroad. In terms of institutional structure, the embassies abroad are the exterior part of the foreign affairs administration fulfilling all the tasks state embassies are required to (political and economic relations, consular assistance and information of the central service, see above). The representation abroad is a permanent network of embassies representing the federal state.

As said above, a parliamentary control of the administration is only functioning indirectly through the responsibility of the elected executive. Thus, in a parliamentary system the government can be held accountable by parliament, while the government is responsible for its administration. In presidential systems the threshold for parliamentary control is lower, while the executive is elected directly by the people and responsibility is not directly flowing through parliament.

### *Regional Cosmopolitan Order*

The Regional Cosmopolitan Order has government functions without being a state (Eriksen and Fossum 2007). If it was, the government functions have to be underpinned with a solid administration, too. As such, any such administration would differ from a pure “Secretariat” like in an international organization. By having government functions, the administration is preparing executive decisions – in doing so, it is informed through resources independent of the member states. Moreover, by having governmental functions, the regional cosmopolitan order also acts towards the outside world. The regional cosmopolitan order is not taking over governmental functions of member states in foreign policy. It rather complements them by looking after goals different of its member states. It is expected to conduct a foreign policy in its own right by focusing of the advocacy/execution of human rights as cosmopolitan norms and values.

The regional cosmopolitan order will have moral authority in its conduct of foreign policy. There are two sources for this. On the one hand, while not turning into a fully-fledged state (missing features like a common identity and overall means of coercion) it builds on legitimate procedures. The regional cosmopolitan order reaches out for legitimate procedures based on the deliberative-democratic assumption that those have to be included in the decision-making processes who are affected by the regional order’s actions (this applies to both those which are affected in and outside the polity). The order is legitimized by representative institutions (procedures) on the regional level providing for participation and communication of those which are affected by the policy (EU citizens and cosmopolitan citizens). Regional parliamentary overview over government functions (Sjursen 2007: 13-14), including the administration via the executive (Eriksen/Fossum 2007), is an appropriate procedural legitimacy; however, there might be additional forms of inclusive executive decision-making (such as a more inclusive committee governance).

Next to control on the regional level, the executive is held responsible by the global level – by the need to live up to cosmopolitan norms (Sjursen 2007: 14). “Being cosmopolitan”, its moral authority derives from higher-order laws which have to be upheld. E.g. human rights and their

warranty to stick out as leading goals of the order. The authority to act rests on moral and procedural legitimacy. The executive of the regional order, which is likely to be organized “beyond intergovernmentalism” (but without forming a democratically elected government), will derive its authority mainly by acting upon the principles of moral and procedural legitimacy. The administration of the order’s executive – as in the other two models – fulfils the task of assisting the executive to the end of achieving its policy-goals. The competence to conduct the particular (cosmopolitan) foreign policy exists beside the foreign policies of the member states (shared competence) and without running into incoherence, e.g. legal agreements (Sjursen 2007: 16).

How will the institutional structure of the external affairs administration of this polity look like? There is likely to be one external service next to those of the other (current) 27 member states, which is foremost a resource of executive action in the “cosmopolitan way”. It is thus dependent on its “own” services abroad providing information next to the member states representations. Like in the institutional set-up of state-administrations, the administration will thus be divided into one central (interior) administration and many exterior representations next to the member states. The interior part of the administration is central to the understanding that the gathering of information is directly injected in the executive decision-making process of the regional order. The necessity of a key political figure of the executive that is able to introduce the administrative resources into the actual decision-making process becomes necessary. While the regional cosmopolitan order is not taking over member states, they will remain key-players in the decision-making process; thus, a key figure representing the regional order’s position next to the member states becomes crucial.

Towards the outside world, the administration is representing the regional organization as a power in its own right without taking over member states’ representations. The representation “stands for” something else than the member states. The idea is that representation is about being present *and* symbolic (Pitkin 1967: 60ff. and 92 ff.; Sharp 2004: 60 ff.). As I mentioned above, today the EU is represented by member states and by partial institutions (like the Commission); however, the EU is not representing itself in all its “governmental” functions presently. It is represented by other representatives (like the Commission or the Member states) – only sometimes e.g. CFSP is represented through Special Representatives. Having a cosmopolitan connotation one of the most central representations will have to be installed at the global level of governance, likely at the United Nations and other organizations like the International Court of Justice (Sjursen 2007: 22). In order to act upon universal norms and thus taking responsibility to uphold those, it has to be ensured that this is actually in line with well-established norms (such as multilateralism).

### *Different Orders, different outcomes*

As Table 1 summarizes the preceding section, we can see that according to the different orders different outcomes of how the administration of foreign affairs is constructed can be expected.

Without repeating what has been said above, the table underlines that each of the models show ways of how to construct the administration of foreign affairs. While all models have in common that they aim to democratically control foreign policy in one way or the other from a normative point of view, they especially differ with regards to the overall function of the administration and the institutional set-up of the services.

Table 1: The administration of foreign affairs in different models

<div>Models</div> <div>Categories</div>	<i>Audit Democracy</i>	<i>Multinational Federal Democracy</i>	<i>Regional Cosmopolitan Order</i>
<i>Overall Function</i>	Assisting the governmental Cooperation and Execution of national Goals on the European Level	Assisting the governmental Execution of Federal Goals	Assisting the Execution of governmental Functions with Regional Goals
<i>Authority and Legitimacy</i>	Via a democratically elected Executives	Via a democratically elected Executive on the federal level	Via democratic structures, procedural and higher universal norms
<i>Institutional Set-Up</i>	Dispersed in the interior and the exterior part of administration of foreign affairs	Central interior and constant exterior network of foreign affairs administration	Additional interior and exterior part of administration in foreign affairs
<i>Parliamentary Control</i>	Directly National	Directly Federal	Regional

Also, by having a closer look at the regional-cosmopolitan model one can see that its legitimacy and authority derive from two sources. The model depends on legitimacy of procedural rules and higher norms. It follows that sources of legitimacy are ideally both top-down (higher norms and procedure like multilateralism) as well as bottom-up (procedures in the regional order). In order to actually live up to its goal to uphold the regional goals, like the warranty of human rights in the outside world, the regional order will have to establish an additional administrative service which assists executive decision-making on the regional level. This addition is important while states and their administrative services are expected to be unable to “stand for” (Pitkin 1967) these goals only.



### III. The construction and implementation of the EEAS

The idea to have a Diplomatic Service of the European Union, which would be on the one hand set up centrally in Brussels and on the other hand represent the Union abroad by embassy-like delegations, has been articulated in the literature since the late 1990's (Brute 2004; Spence 1999; Duke 2004). The idea of having a EEAS did not come out of the blue. Indeed, also in "practical" politics the European Parliament went out to propose its advocacies how the such a service should look like (2000). Indeed, its incentives cannot be disconnected from its interest in widening EU competencies in foreign policy and respective adopted resolutions (2002).

The debate lived up when the External Action Service became thought of as an necessary tool for the functioning of the newly institutionally set-up foreign policy of the Union. The EEAS was focused on in the debates in the constitutional Convention on the Future of Europe, its Laeken mandate, and a phase which was used to implement the treaty provisions. As mentioned above, I will divide the debates in one construction phase, which is about the delivery of initial ideas and decision-making, and one implementation phase, which is about the implementation of the institution as set out in the constitution.

#### 1. Construction Phase

Let us turn to the first phase of institutional change: the construction of the EEAS. Why was the EEAS chosen in the first place? And which EEAS was chosen? As I mentioned earlier, the construction phase began with the Laeken Declaration and ended with the Constitutional Treaty 2004. Let us have a look at the arguments made in this construction phase in order to understand why the EEAS was chosen and which particular EEAS was picked. The categories identified above will help to shed light on the questions.

##### a. Why EEAS? – The Overall Function

It becomes obvious that there has to be a functional need to set up an administration like the EEAS. The question "why" is thus related to the overall function of the EEAS (see also Table 1). I have introduced the category of "overall function" above and will now apply it to the construction phase. In the construction phase, the arguments varied over the functional need of the EEAS.

Almost from its beginning constitutional debates in the Convention on the Future of Europe focused on the question how the European Union's foreign policy could be improved. Thus, two catch-all terms dominated the Laeken agenda (mandate) and were picked up almost as a reflex by the Convention's constitution-makers (Raube 2007):<sup>11</sup> Overcoming the lack of *effectiveness* was believed to be achieved by tackling the question of (in-)*coherence*. The Declaration of Laeken said: "The third question concerns how we can improve the efficiency of decision-making and the workings of the institutions in a Union of some thirty member states. How could the Union set its objectives and priorities more effectively and ensure better implementation? [...] How should the

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<sup>11</sup> Ibid.

coherence of European foreign policy be enhanced? How is synergy between the High Representative and the competent Commissioner to be reinforced? Should the external representation of the Union in international fora be extended further?”<sup>12</sup>

In order to become more effective, all institutions and policy measures of the Union had to be pulled together in a coherent manner.<sup>13</sup> Indeed, a logical step of such a coherent approach would have been to communitarize the CFSP in the first place handing over to the Union concurrent competence in a new federal system.<sup>14</sup> However, the system of pillar diversity remains present until today – even after the draft of the Constitutional Treaty and the Lisbon Treaty (de Witte 2008: 14). In fact, there are two treaties with different procedures and policies serving one goal: the international presence of the European Union.<sup>15</sup> As soon as the introduction of the competence catalogue by Giscard d’Estaing in fall 2002,<sup>16</sup> the Draft Constitutional Treaty and all the following treaties excluded CFSP/ESDP from the competence catalogue and thus maintaining these policies as distinct from the others which fell under the competence catalogue.<sup>17</sup>

The vertical re-collection of competences could have ultimately meant a “state like” EU foreign policy, allocating foreign policy making powers on the federal level of the EU.<sup>18</sup> Instead of the vertical collection of powers, the debates concentrated on the horizontal separation of powers between the Commission and the Council. Bearing in mind that the CFSP would have to be more coherent, but agreeing on the fact that competences would not be altered vertically, options for institutional change were looked upon. The construction of the High Representative and, eventually, the EEAS were found as solutions to this perceived problem. The functional need of the EEAS has been linked to the overall installation of a “Foreign Minister” of the European Union. While the envisaged “Foreign Minister” – later re-named High Representative in the Lisbon Treaty – embraces executive tasks from the Commission and the Council, the EEAS was thought of as providing administrative assistance to the executive of the EU’s Foreign Policy.

In a first plenary session in July 2002, members of the Convention debated options for a move towards more effectiveness and coherence. Some already mentioned the possibility of a “new” High Representative – merging the High Representative and the Commissioner on External

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<sup>12</sup> Declaration of Laeken, Annex to the Presidency Conclusions, European Council, Laeken, 14<sup>th</sup> to 15<sup>th</sup> of December, 2001.

<sup>13</sup> Ibid.

<sup>14</sup> See the comments of Teija Tiilikainen to the preliminary draft report, WG VII, WD 32.

<sup>15</sup> Things become even more complicated if one considers that there according to the whatever new treaty there will be only one legal personality: the one of the EU. Whereas this legal personality is important for the EU to conduct international agreements or to become a member in international organizations, it does not determine which “pillar” is responsible for conducting such a move (see: de Witte 2008: 14).

<sup>16</sup> Indeed, the Competence Catalogue was introduced through a first draft of the constitution. In this competence catalogue, the CFSP was clearly mentioned outside other Union competences such as “conferred”, “exclusive”, “shared” and “supportive” competences. See: CONV 369/02, 28<sup>th</sup> of October 2002.

<sup>17</sup> De Witte (2008) mentions quite correctly that for reasons of legal unity the CFSP/ESDP could have been included in the competence catalogue, but imposing on them a series of exceptional procedures.

<sup>18</sup> According i.e. to Stein Rokkan, all federal states allocate foreign policy making powers on the federal level (2000). In this sense then, the EU as a federal political system is different. Most of the powers remain on the national level and are integrated on a cooperative basis. In some cases, powers are shared (development policy) and exclusive (trade). See also: K.C.Wheare, who states: “Indeed one of the arguments for establishing a federation is usually that it will provide for a unified foreign policy. So important is this thought to be that in most federations there is an explicit provision in the Constitution absolutely forbidding the component states from entering into obligations with foreign states, or permitting it only with the consent of the general government, in which case potentially exclusive control rests with the general government” (1963: 169).

Relations.<sup>19</sup> Almost as early as November 2002 the Convention found a solution to the problem in its Working Group on Foreign Policy (WG VII), chaired by former Belgium Prime Minister Jean-Luc Dehaene. Except for some members, the WG VII final report stated that most members of the group envisaged a merger of the two posts of the Commissioner on External Affairs and the High Representative.<sup>20</sup> However, the report also stated that at least two other options were considered: the complete integration of the High Representative into the Commission and the continuation of the status quo (accompanied with an increase of the High Representatives' capabilities).<sup>21</sup>

The latter option was connected especially to Members of the Convention from the United Kingdom. It became clear during the discussions of the Working Group and the Plenary Sessions on Foreign Policy that some members of the debates rather wanted to add minor changes or intergovernmental changes to the administrative set-up.<sup>22</sup> The High Representative would either remain in place gaining only a few additional capabilities (including a right to initiative) or it would be serving as a Minister to the new President of the European Council.<sup>23</sup> However, its administrative substructure would remain the same: The Council Secretariat and the policy unit would remain unchanged delivering necessary policy-information. There would be no fusion with administrative elements of the Commission. Also, the Commission's delegations should not be linked with those serving the High Representative in the Council. Any symbolic emphasis on any sort of a "statism" was rejected.<sup>24</sup> There would be no European embassies, no European diplomatic service. A renamed High Representative – as "Foreign Minister" – was rejected.<sup>25</sup> Overall, whereas these views advocated a further coordination among member states, they were not willing to give additional capacities and powers to the High Representative or its administrative substructure. This understanding corresponds the most with the above introduced Model 1 (audit democracy), which rather sees the function of the international organization in assisting member state interests. It would rather see the set-up of the foreign policy administration (interior and exterior) in the hands of the member states, while the function of the international organization's administration rests in coordinating the member states' interests on the international organization's level. While we know that overall the EU has transcended from such a pure international organization even in the intergovernmental pillar, the arguments made in favor of a status-quo must be judged as being very close to the first model – leaving a lot of policy leverage in the hands of the member states.

Another option mentioned in the Convention debates and the Working Group VII was the integration of the High Representative in the Commission. Those members of the Convention who were rather in favor of a more united foreign policy, advocated a larger and more integrated role of the High Representative with the Commission. Indeed, according to their views, a necessary step for

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<sup>19</sup> See e.g. the speech by Peter Glotz, German government representative to the Convention, who at 11<sup>th</sup> of July 2002 argued that the double-hat would be a good compromise between a more Commission-leaning institutional development proposed by members of the European Parliament and the approach of i.e. the British government promoting coordinated initiatives between the High Representative and the Commission on the Council.

<sup>20</sup> Final report of Working Group VII on External Action, WG VII 17, CONV 459/02, 16<sup>th</sup> December 2002.

<sup>21</sup> See *ibid.*, p. 21-22. A fourth option was considered: A foreign minister subordinated to a new President of the European Council.

<sup>22</sup> See the various contributions of Peter Hain, government representative of the United Kingdom in the Plenary debates of the Convention and the Working Group VII.

<sup>23</sup> See Report WG VII, at fn 20.

<sup>24</sup> WG VII, WD 40 by Peter Hain.

<sup>25</sup> *Ibid.*

a more effective European Union foreign policy was to integrate the High Representative into the Commission.<sup>26</sup> Thus responsibilities of the High Representative would be transferred from the Council to the Commission. In doing such a move, the High Representative would be fused with the present Commissioner on External Relations.<sup>27</sup> An administrative substructure would accordingly be integrated into the Commission. It would have been likely that present important information desks like the policy unit would have been integrated in the Commission. The Council Secretariat would have been left with tasks it provided before the introduction of the High Representative at the Treaty of Amsterdam.<sup>28</sup> Overall the accountability of the “integrated” foreign policy would have increased, while the “new Commissioner” of the Commission could have been held responsible by the European Parliament.<sup>29</sup> Indeed, a state-like model 2 solution did these arguments not envisage by only merging the High Representative with the Commission. However, some proposals added that next to this construction a concurrent competence in foreign policy was needed. By linking horizontal with vertical competences, the institutional framework of a federal state-like foreign-policy could have emerged. However, the administration was not envisaged as taking over competences from the member states. As such, it was rather thought of as being complementary, as model 3 foresees.

While both the rather intergovernmental idea and the supranational idea of a new High Representative/Commissioner and its substructure organization were meant to be opposing views about the future polity of CFSP, a third rather conciliating view entered the debates. It had been brought forward already in the first debate of the Convention on foreign policy in July 2002: The double-hatted High Representative.<sup>30</sup> Interestingly, the idea of a High Representative wearing two hats – one Council and one Commission hat – was seen as a positive institutional step into a more coherent policy-making future of the EU.<sup>31</sup> As mentioned above, this idea and compromise caused considerable confusion with regards to the administrative substructure of the new High Representative. A single person might be split up into different tasks (some people say this causes problems in terms of workload), but which organizational environment should this person have? Indeed, whereas the affiliation of the High Representative caused problems (Council or Commission), so did the question where his administrative substructure should be located: Of course it was possible that the administration remained in the Council while the High Representative served two different functions in the Council and the Commission. Others said that the High Representatives’ administration should be positioned in the Commission – personnel from the Council could thus move into the Commission.<sup>32</sup> Just like in the overall approach towards the individual tasks of the High Representative it was argued that a new body should be created, a European External Affairs Service, which composition should be made of staff from the Commission, the Council and national administrations.<sup>33</sup> Interestingly, this model was thought of being able to overcome problems of

<sup>26</sup> See below the contributions by Teija Tiilikainen and Elmar Brok, at fn 41, 42, 43.

<sup>27</sup> See e.g. below the contribution by Günther Pleuger, at fn 47.

<sup>28</sup> For an overview of functions of the Council Secretariat outside the CFSP see Christiansen 2002.

<sup>29</sup> See the contributions of Elmar Brok, who was arguing in favour of a more effective foreign policy, but enhancing the role of the Commission and the European Parliament at the same time (see i.e. the WG VII WD).

<sup>30</sup> See footnote 15.

<sup>31</sup> See the various contributions to the plenary sessions of the European Convention, but especially those on the 11th and 12th of July as on the 20<sup>th</sup> of December. Also contributions made to the Working Group VII.

<sup>32</sup> See contribution by Brok and Tiilikainen to the Working Group and the Plenary.

<sup>33</sup> It can be seen that the German government was very interested in such an administrative approach. See contributions by Pleuger and Bury to the Working Group VII of the Convention.

horizontal and vertical coherence by increasing coordination amongst the different servants.<sup>34</sup> The proposals left open which parts or desks of the Commission and the Council should be moved to the new body. Also, while creating a new organization, it was not clear where the organization should be placed. Once the new body was created it could be re-integrated in either the Commission or the Council, the arguments went. However, a new body with a new location and address was perceived as adding another layer of complexity to the EU polity.<sup>35</sup>

The final report of the Working Group on Foreign Policy was very cautiously written – looking for possible consent in the overall Convention (Raube 2007). As such, the double-hatted Foreign Minister became a viable option for consent. What became crucial was the question how this new institution of the High Representative should be sufficiently integrated in one or the other institution when merged. Coming from the Council, the High Representative was seen as being put by a “cuckoo” in the Commission’s nest. As Andrew Duff, MEP, mentioned in the Convention: “I find especially worrying the fact that the person will be a full member of the Commission with a mandate from the Council. He will be able to act without the authority or even the agreement of the Commission. It is a recipe for a fraught relationship with the President of the Commission, and he could easily be seen to be a Council cuckoo in the Commission’s nest.”<sup>36</sup> Looking from the other side, it was feared that his function as part of the Commission could “supranationalize” the CFSP in the Council because responsibilities of the High Representative would not be clear-cut any longer – with the consequence of a further push towards unity.<sup>37</sup> The Working Group’s report concluded that possibly the High Representative should become Vice-President of the Commission (being picked by the European Council and accepted by the European Parliament). Also, in the Council the High Representative should chair the “non-rotating”, new Foreign Affairs Council. It was also here where the High Representative should possibly get a right to initiate policies in CFSP. Indeed this point was rather uncontroversial in the Convention.<sup>38</sup> However, in the course of the Convention’s work one important feature of the High Representatives’ powers was abolished: the possibility of a Qualified Majority Voting, if the High Representative initiated policy action in the Council (compare the present and changed Article 31 (2) TEU). By this procedure, the High Representative could have – like the Commission in the first pillar – bargained with Member states in order to get through a rather supranational leaning policy. Without this initiative at hand, the influence of the High Representative was reduced without doubt. Also, a possibly influential Commission as administration would have had a limited influence.

In the debates we can see that initial ideas about the EU as a state-like order in its external dimension were thought of only with regards to concurrent powers. The institutional set-up would have put the Commission in a stronger position conducting foreign policy. However, as a compromise over the issue of a “Foreign Minister” had to be found, ideas about the role of the CFSP as run by governments and intergovernmental institutions like the Council as well as ideas about the

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<sup>34</sup> See Bury’s interpretation of an administrative fusion, WG VII, WD 28.

<sup>35</sup> Ibid.

<sup>36</sup> See speech by Andrew Duff in the European Convention, 20<sup>th</sup> of December 2002.

<sup>37</sup> See speech by Peter Hain in the European Convention, 11<sup>th</sup> of July 2002: “I was interested in the comments made by Mr Dini and others on the double-hatting of the Commissioner for External Relations and the High Representative. My question – and those that want to merge have to answer it – is to which body would that individual answer and be accountable: the Council or the Commission? Who is the master? That is the question. Can you have two bosses?”

<sup>38</sup> See plenary debates on the 11<sup>th</sup> and 12<sup>th</sup> of July, 2002, and the 20<sup>th</sup> of December.

Commission as a necessary player in the overall external relations of the EU gained importance. Here, we can see how Model 1 (audit democracy) and Model 3 (regional cosmopolitan power) gain power to describe the new double-hatted foreign minister. While governmental functions without a state are taken over by the Foreign Minister (who now is responsible to conduct foreign policy also in such exclusive areas such as foreign trade), the model three is quite forceful in providing us with insights. At the same time, model one is able to point to the limitations of these arrangements: Only some external competences are state-like, while others remain rather in the intergovernmental theatre.

While according to this reading debates in the Convention did move into the direction of a combination of the Models 1 and 3, it goes without saying that arguments for the administrative subsystem should have also pointed into this direction. Once the double-hatted Foreign Minister was chosen, arguments centered on the fact how administrative functions of both the Council and the Commission could be merged. A rather intergovernmental reading, in which the Council Secretariat and member states were asked to increase their assistance (voluntarily), was rather connected to a High Representative mirroring the institutional status-quo. On the other hand, a merger of the High Representative with the Commission would have implicated a move of administrative functions from the Council to the Commission. But in the argumentation of those looking for a compromise, the administration's overall function was meant to provide the Foreign Minister with additional administrative functions mirroring the construction of the Foreign Minister as double-hatted. In that sense, the Foreign Minister of the European Union can be seen as a break away from intergovernmentalism and the EU as a pure international organization, based on interest-cooperation and transaction-reduction. At the same time, the "Foreign Minister", while being occupied with governmental functions (Model 3), is by far not representing what its name stand for: the foreign minister of an elected government in a (multinational) state (like Model 2 would assume). In other words, the administration does not serve an democratically elected government (Peters 2004), but rather selected government functions. In sum then, the overall administrative function deriving from the construction of the Foreign Minister would not reproduce the administration of a state-government or some sort of international organization's secretariat, but rather a new type of administration.

#### *b. Which EEAS? – Legitimacy, Institutional Structure and Parliamentary Control*

Debates in the Convention, especially in the Working Group VII, showed that members of the Convention understood the construction of the EEAS as an important supplement to the new "Foreign Minister". In addition though, the question is which institutional design they preferred for such a service. In order to understand how far arguments made were in line with the above operationalized models, I now concentrate on the analysis of the three remaining categories – legitimacy, institutional structure and parliamentary control.

Legitimacy of the EEAS is important in order to understand on which behalf the administration has authority to act. It became clear during the Convention debates that one argument was to let legitimacy and authority of foreign policy derive from the member states only. As such, any administration assisting the High Representative, as it looks like today on the basis of the Nice Treaty, would be an administration assisting a High Representative which is legitimated only



through the member states. There would be no other source of authority than that.<sup>39</sup> While this argument, as shown above, rejected the merger of the High Representative and the RELEX-Commissioner on the basis of the argument made by the British government representative Peter Hain that the merger would just not work,<sup>40</sup> no EEAS was envisaged.

Rather than building on democratic legitimacy on the national level (and leaning to the model of audit democracy), there were mostly arguments that the EEAS would be run under the authority of the “new” Foreign Minister, which would have institutionally merged. Thoughts about legitimacy and authority differed though according to whether the Foreign Minister would become part of the Commission or a “double-hatted” Minister of both the Council and the Commission. Tika Tiilikainen, government representative of Finland, argued in the Working Group VII of the Convention that a double-hatted approach would lead to fuzzy accountability, unclear parliamentary responsibility, duplications of administrations and the likelihood of an intergovernmentalisation of communitarized policies.<sup>41</sup> Tiilikainen stressed that when becoming a compromise the double-hatted approach should be accompanied by stating that the ultimate goal was a merger under the roof of the Commission.<sup>42</sup> However, the compromise of a double-hatted Foreign Minister would be legitimated and authorized by two different sources, as Elmar Brok, EP representative in the Convention, stated: It would be legitimated by the member states (via the Council) and by the European Parliament (via the “election” of the Commission).<sup>43</sup> Accordingly, the legitimacy and authority of the EEAS derived from two different sources, the one pointing rather to legitimacy deriving from the member State and a national democratic audit, while the other is deriving from supranational institutions set up by regional integration and government functions beyond the member states.

Parliamentary Control of the Executive is linked to the question of democratic legitimacy in representative political systems. However, parliamentary control was not directly linked to the EEAS in the deliberations of the Convention. Like in the case of legitimacy, the parliamentary control EEAS was indirectly addressed by ideas about how the new Foreign Minister would have to be held accountable. It seems interesting to mention that only those, who argued in the direction of the third model of a “regional democracy”, also mentioned the need for parliamentary control of the EEAS. It was argued that parliamentary control of the Foreign Minister (either as part of the Commission or as double-hatted) would have to be ensured on a normative basis.<sup>44</sup>

Questions of legitimacy, authority and democratic control are linked to the institutional set-up. However, the institutional set-up can differ according to different views on how the administration of foreign policy should be arranged. Standing for the approach of an entirely state-based and controlled foreign policy, any further moves into the direction of EU representations abroad or the existence of a EEAS in Brussels were rejected.<sup>45</sup> Portuguese government representative Lopes argued the EU was premature of having a “EU diplomatic service”.<sup>46</sup> Cooperation of states

<sup>39</sup> See WG VII, WD16 by Bobby McDonough; WG VII, WD 40 by Peter Hain; WG VII, WD 42 by Hjelm Wallen.

<sup>40</sup> See WG VII, WD 39 by Peter Hain.

<sup>41</sup> See WG VII, WD 19 by Tika Tiilikainen.

<sup>42</sup> See WG VII, WD 61 by Tika Tiilikainen.

<sup>43</sup> See WG VII, WD 26 by Elmar Brok.

<sup>44</sup> See WG VII, WD 42 by Cushman; WG VII, WD 19 by Teija Tiilikainen.

<sup>45</sup> See WG VII, WD 40 by Peter Hain.

<sup>46</sup> See WG VII, WD 34 by Lopes.

would do. Quite the opposite, the EU as a multinational state with one foreign policy and one external service within one European government, was not thought of. Most of the thoughts concentrated on how the EEAS could actually be set-up, rather than denied or envisaged as a super-ministry. What seems obvious is that within the project of the EEAS, it was not assumed appropriate that the Council Secretariat would become the core of the EEAS, as German government representative Günther Pleuger stated.<sup>47</sup> Some institutional aspects of the Council Secretariat, however, were thought of as being valuable to be integrated in the EEAS, e.g. the Policy Unit, as Czech government representative Jan Kohout mentioned.<sup>48</sup> While the Foreign Minister would be double-hatted, some Convention members still argued that the EEAS should be integrated in the Commission only – “a diplomatic corps within the Commission.”<sup>49</sup>

As in the case of the “double-hatted” Foreign Minister, many members of the Convention and policy-makers argued in favor of another “integrative” approach. As Martin Bury, German government representative, said: It was about creating a substructure “to allow the double-hat to perform his office effectively.”<sup>50</sup> Invited to the Working Group in the Convention, Javier Solana, present High Representative, said one should pool from the resources involved in the EU’s foreign policy which all would make up to one “European Foreign Ministry”.<sup>51</sup> Klaus Hänsch, representative of the European Parliament to the Convention, became concrete and proposed that the Foreign Minister should rely on the DG E of the Commission and newly created DG of the Council Secretariat.<sup>52</sup> Several members mentioned that a diplomatic academy could be installed which would train “EU” diplomats, but which could also lead to a “Europeanization” of EU member states’ administration.<sup>53</sup> All present external services working on the European level should be merged in order to fulfill the “objective ...of a fully fledged Foreign Service”, argued Austrian government representative Tusek.<sup>54</sup> This also meant thinking about the exterior part of the EEAS – representing the EU abroad. In this respect, Bury claimed it was necessary to transform Commission delegations abroad and merge them with Council Secretariat branches like the Special Representatives.<sup>55</sup> Tusek explained that also the Liaison Offices of the EU to the United Nations should become a necessary part of the EEAS.<sup>56</sup> Elmar Brok said that in those countries where less than 4 member states actively represented in a third country, the EU representations should take over functions.<sup>57</sup>

What becomes obvious from the debates in the Convention, which finally led to the acceptance of the double-hatted Foreign Minister and the “integrative” EEAS is that arguments varied quite widely over if and – if yes – how the EEAS should be set up. By taking the three models as a starting point of analysis, we can see that all three models are represented to different degrees in the Convention debates. Whereas, as I mentioned earlier, e.g. the second model does hardly appear with regards to legitimacy, it pops up when in some cases EU external representations shall

<sup>47</sup> See WG VII, WD 17 by Günther Pleuger.

<sup>48</sup> See WG VII, WD 33 by Jan Kohout.

<sup>49</sup> See WG VII, WD 26 by Elmar Brok.

<sup>50</sup> See WG VII, WD 28 by Hans-Martin Bury.

<sup>51</sup> See WG VII, WD 8 by Javier Solana.

<sup>52</sup> See WG VII, WD 45 by Klaus Hänsch.

<sup>53</sup> See WG VII, WD 33 by Jan Kohout; WG VII, WD VII, WD 26 by Elmar Brok.

<sup>54</sup> See WG VII, WG 36 by Gerhard Tusek.

<sup>55</sup> See WG VII, WD 28 by Hans-Martin Bury.

<sup>56</sup> See WG VII, WG 36 by Gerhard Tusek.

<sup>57</sup> See WG VII, WG 26 by Elmar Brok.

not only additionally represent the EU to the world, but even take over functions from member state embassies (yes, even by replacing them). Apart from that the third Model catches our attention when it comes to understanding the additional set-up of an additional foreign policy service on the EU (regional) level, which will not carry out ad-hoc functions (like the Special Representatives) but in the future represent the EU as a whole. However, internally, this service still “suffers” from deriving its authority not only from supranational EU organs, but also from the member states as well (double-hattedness). As such, the legacy of intergovernmentalism and a flavor of audit democracy is here to stay.

## *2. Implementation Phase*

The actual compromise to the substructure of the now-called Foreign Minister was found in the Convention by delaying the issue of which administrative substructure would follow from the double-hattedness. Article III-197 of the Draft Constitutional Treaty stated: “In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the member states.” In a Declaration added to the Draft Constitutional Treaty it continues that the new “European External Action Service” should be “composed of officials from relevant departments of the General Secretariat of the Council of Ministers and of the Commission and staff seconded from national diplomatic services.”<sup>58</sup> Also the declaration continues that the Union’s staff in international delegations, as mentioned in Art. III-230 and which provide the High Representative with information from abroad, should be taken from the EEAS.<sup>59</sup>

After the adoptions by the IGC and the signing of the Constitutional Treaty in 2004, it was added in Article III-296 that the EEAS should be established after a decision of the Council. However, it was also stated that the Council would do so only after a proposal of the new High Representative, which needed to rest on the consent of the Commission and a formal consultancy of the Parliament.<sup>60</sup> The Constitutional Treaty also added a more precise outline of the process how consent on the EEAS should be found in a declaration to Article III-296: “The Conference declares that, as soon as the Treaty establishing a Constitution for Europe is signed, the Secretary-General of the Council, High Representative for the Common Foreign and Security Policy, the Commission and the member states should begin preparatory work on the European External Action Service.”<sup>61</sup> In this way the IGC took up the idea to sign those actors responsible of the implementation of the EEAS which had the obligation to submit personnel to the EEAS. In doing so, a consensual process was lying ahead in which only with the consent of the Commission and the member states the EEAS could be built up upon. The Council Secretariat itself was represented by the High Representative, who would also have a formal influence by initiating the final proposal on the EEAS.

Discussions followed which tried to find a solution to the constitutional mandate to set-up the Service. Indeed, in early 2005 the European Council assigned the High Representative, Javier Solana, and the Commission to launch further debates between Commission, Council and the

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<sup>58</sup> Declaration on the Creation of a European External Action Service, added to the Draft Constitutional Treaty.

<sup>59</sup> Ibid.

<sup>60</sup> See Article III-296 Constitutional Treaty.

<sup>61</sup> Declaration on Article III-296 annexed to the Constitutional Treaty.

member states and submit a report on the state of the construction of the EEAS. Meanwhile, the European Parliament stepped into the debate. While the Foreign Minister has to present his final proposal to set up the EEAS to the Commission and the European Council, he is held accountable by the European Parliament when becoming part of the new Commission. Thus, the European Parliament points to the fact that – according to the Treaty – it will have to be heard in the debates on the construction of the EEAS.

The European Parliament indeed started to be actively involved launching a report in its Committee on Constitutional Affairs in 2005.<sup>62</sup> While having a final debate on the Committee report in the plenary, Margot Wallström as Commissioner responsible for parliamentary relations was invited to tell the Parliament about the current state of debates on the construction of the EEAS.<sup>63</sup> The Commission was interested in a rather supranational approach of the EEAS, including setting up a desk for parliamentary relations within the EEAS: “The Commission, including the Minister/Vice-President, will seek to preserve and promote the Community method, which has proved its capacity to work and achieve good results in external relations. More generally, the Commission will be active and vigilant in safeguarding the institutional balance.”<sup>64</sup> Also she stated: “I conclude by repeating that we, in the Commission, share the objective of parliamentarians to safeguard and enhance the Community method, and the role of the Commission and Parliament in this process. At the same time, I believe that we share with you the aim of creating new structures that can really contribute to improving the effectiveness, coherence and influence of the Union’s policies and actions in the world.”<sup>65</sup> This was warmly welcomed by the Parliamentarians. On the one hand, the EP still advocated an EEAS which was financially and organizationally embedded in the Commission.<sup>66</sup> On the other hand, while the Constitutional Treaty did provide for a better institutional framework to hold the “new” High Representative accountable (Raube 2008), the installation of close relations between the EEAS and the EP would mean a direct way of gathering information from the EEAS in CFSP in general.<sup>67</sup> The democratic control of the foreign service would be enhanced by close contacts between the EEAS and the parliament, making two-way information processes between the administration and the legislative more likely. In this way and following the expectations of the regional cosmopolitan order, the EEAS could not only serve as an administration next to the those of the member states, but it would also be democratically embedded.

The earlier mentioned Report of Solana and Baroso submitted to the European Council in July 2005 (so-called “Progress Report”) still showed varying attitudes among the implementing actors.<sup>68</sup> On March 10<sup>th</sup> of 2005, in COREPER Member states debated the several issues at stake (on the basis

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<sup>62</sup> European Parliament Resolution on the institutional aspects of the European External Action Service, P6\_TA(2005)0205, 26<sup>th</sup> of May 2005.

<sup>63</sup> The initiative of the European Parliament was a way out of the “stealth approach” of the Council and the Commission.

<sup>64</sup> Margot Wallström in the European Parliament Plenary Debate, 11<sup>th</sup> of May 2005, Strasbourg, based on the oral question to the Commission by Jo Leinen, on behalf of the Committee on Constitutional Affairs on institutional aspects of the European External Action Service (B6-233/05).

<sup>65</sup> Ibid.

<sup>66</sup> See Elmar Brok, MEP, in the European Parliament Plenary Debate, 11<sup>th</sup> of May 2005, Strasbourg, based on the oral question to the Commission by Jo Leinen, on behalf of the Committee on Constitutional Affairs on institutional aspects of the European External Action Service (B6-233/05).

<sup>67</sup> However, as open as in 2005 the exchange of views between the Commission and the European Parliament seemed to be from the outside, in 2008 the European Parliament complained in its annual report on CFSP that the construction of the EEAS was made in secrecy without any information leaking through (European Parliament 2008).

<sup>68</sup> See “Joint Progress Report to the European Council by the Secretary-General/High Representative and the Commission”, Annex I to the European Council 9956/05, 9<sup>th</sup> of June 2005.

of an “Issues Paper by the High Representative and the President of the Commission”<sup>69</sup>). Especially the overall embeddedness of the EEAS showed that member states had a hard time coming to terms. However, the two authors of the report write that it is indicated that the EEAS should be “*sui generis*”, not a new institution, but with close ties to both the Council and the Commission.<sup>70</sup> All member states agreed that it should assist the Minister. It is mentioned that in order to work effectively, the Minister should rely on all “services currently dealing with with CFSP (including CSDP), together with geographical desks covering all regions of the world and thematic desks dealing with issues such as human rights, counter-terrorism, non-proliferation and relations with the UN.”<sup>71</sup> According to the “Issues Paper” also a service concerned with relations with the EP should be established.<sup>72</sup>

Already the “Issues Paper” mentioned that no duplication with services in the General Secretariat or the Commission should come into existence.<sup>73</sup> There is a consensus that trade policy should not be dealt with in the EEAS. Overall only a few member states want the EEAS to be restricted to CFSP or extended to broader fields of foreign affairs. Such as development, neighborhood policy or development.<sup>74</sup> It became however clear that the majority preferred that the EEAS shall integrate all the different regional desks of the Council Secretariat and the policy unit. Also, it is thought of that the Military Staff might become part of the EEAS. It remained open if also SITCEN was moved into the EEAS.<sup>75</sup> With regards to the Commission, all the DG Relex was being moved into the EEAS. All desks serving trade should remain in the Commission, also development and enlargement are likely to stay in the Commission without being linked to the EEAS. It was also envisaged that preparatory bodies of the Council in external relations might be chaired by members of the EEAS. In those areas with mixed competences, such a decision could be taken from time to time.<sup>76</sup>

With regards to the exterior service part of the service the Joint Progress Report mentioned that there was “broad consensus” that Commission’s delegations would become delegations of the European Union and that they<sup>77</sup> should be under the authority of the Foreign Minister (as outlined in Art. 328 CT) and the EEAS. However, it became also clear that members of the delegations do not necessarily have to members of the EEAS. In other words, staff working in the delegations could also come from different administrative background (just as in the embassies of member states where personal comes from different “home ministries”). In that sense than, the EEAS might mirror national embassies abroad (without functionally replacing them).

With regards to staff, the member states underline that although staff should be composed of the Council Secretariat, the Commission and the member states, “a sufficient number of national diplomats in the EEAS and in a range of positions at all levels” should come from the member states.<sup>78</sup> The personnel, however, should be temporary at the EEAS, which means that payment and

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<sup>69</sup> See “Issues Paper on the European External Action Service”, Annex II to the European Council 9956/05, 9<sup>th</sup> of June 2005.

<sup>70</sup> See “Joint Progress Report”, at fn 69.

<sup>71</sup> Ibid.

<sup>72</sup> See “Issues Paper”, at fn 70.

<sup>73</sup> Ibid.

<sup>74</sup> See “Joint Progress Report”, at fn 69.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

conditions of employment would be the same throughout the EEAS staff. Overall though, the responsibility of the EEAS budget was still to be settled.<sup>79</sup>

What can be seen from these developments is that the EEAS will be neither an administration working independent of the member states, nor will it be a pure intergovernmental secretariat. It would not become an institution of its own. Also, those actors afraid of any special influence beyond member state sovereignty in foreign policy introduced further limitations to the EEAS. After the constitutional failure of the Constitutional Treaty in France and the Netherlands in 2005, the Lisbon Treaty was introduced. Indeed, the constitutional bargaining that took place during the German Presidency in the European Council in the first half of 2007 leading to the “reform-treaty”, which was then called Lisbon Treaty, opened up the possibility to change some parts of the treaties. Also, aspects of the foreign policy were subject to change. The “Foreign Minister” was changed into “High Representative”. Especially, British interests were met, when the symbolic meaning of “Foreign Minister”, suggesting some sort of statehood beyond the member states was crossed out. And also, thanks to British bargains, a declaration was added to the Lisbon Treaty stating that through the work of the EEAS no competences of the Council should be questioned in CFSP at any time.<sup>80</sup>

As we can see, the implementation phase differs from the construction phase in that issues are not as broadly debated as before. Through the several treaty proposals the EEAS has by the time of implementation become a fact – a fact that moves the administration of the EU’s foreign policy beyond its status-quo. It is not independent of the member states, though. In Brussels, no new institution comes into existence – based on different institutional structures and overcoming administrative duplications. The exterior part of the EEAS will appear quite united to the outside world – establishing a constant network of EU delegations in third countries and towards international organizations. It is interesting, if we consider the cosmopolitan Model, that especially the delegations and desks dealing with the UN and the services dealing with the EP are mentioned in the debates. Indeed, these links of the EEAS might point to the principles upon which the Foreign Minister/High Representative and the EEAS are required to act, if the EU runs into the direction of a cosmopolitan order.

#### IV. Conclusion

This paper tried to analyze why the EEAS was considered as an administrative substructure in the EU’s foreign policy and which design of the EEAS was thought of as being sufficiently.

In order to understand the task of the constitutional actors and their ideas about a future administration in foreign policy serving the EU, I first described the administrative services as they occur in the context of states. Being guided by the distinction of an interior and an exterior part of foreign policy administration, I went on to describe the current and fuzzy administration of EU

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<sup>79</sup> Ibid.

<sup>80</sup> The Declaration (14) to the Lisbon Treaty sets out: “...the High Representative and the External Action Service 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 the Member State’s membership of the Security Council of the United Nations.” In: Official Journal, C 115/28, Volume 51, 9 May 2008.



foreign policy. It was in front of this background that I could introduce the idea stemming from the Laeken Mandate to make EU foreign policies more effective and coherent.

According to the three analytical models which I introduced, arguments about the future of EU administration differed during the two phases of constitutional change of the EEAS. By looking especially into the debates of the Convention on the Future of Europe, I detected different arguments of different actors in line with all three analytical models introduced. As such, the models provided helpful answers to the questions set out at the beginning of this paper. Indeed, the debates showed that most of the arguments were made in line with model 1 or model 3. Seldom, arguments linked to model 2 proved to be taken.

Keeping in mind that the models of audit democracy, multinational federal democracy and regional cosmopolitan order are ideal models, we hardly expected them to appear in their purest sense. In the end, the results of constitutional politics can be determined by consensus, compromise or something else. This means that the results of the constitutional process will likely include facets of different models. The different arguments made in terms of the overall function, legitimacy/authority, parliamentary control and institutional set-up enter final decisions. Answering why and which EEAS was thought of as being appropriate, points to overall conception of the external dimension of the EU in the arguments of the constitution-makers. The hypotheses made above in the introduction to this paper were based on ideal models. However, what we can see after having analyzed the arguments towards the construction of a EEAS in the EU is that the third model – regional cosmopolitan order – helps to analyze the arguments in favor of a EEAS which is made up in addition to the member states serving the execution of government functions. Explicit links towards the United Nations and the EP as well as the obligation to live up to cosmopolitan norms such as human rights and procedural norms (e.g. stemming from multilateralism) add to the idea that this EEAS serves a cosmopolitan order in the making. However, as I tried to show in the paper at several points, aspects of authority and legitimacy as well as the actual institutional set-up clearly show that the EEAS`construction and implementation also follows different streams of thoughts – e.g. those which are rather associated with the model of an audit democracy. But as we could see even model 2 appeared in sketches, e.g. with regards to the external representation of the EU. In the end though one has to recognize that the interior as well as the exterior part of the EEAS – as currently discussed – adds up to the established national diplomatic services and their world-wide networks. As such, the model 3 provides us with interesting insights how e.g. the EU`s exterior part of EEAS was to be understood if implemented.

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