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Foreign Affairs Committee

Foreign Policy Aspects of the Lisbon Treaty

Third Report of Session 2007–08

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written evidence*

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Foreign Affairs Committee

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Conclusions and recommendations

1. We conclude that, although we have some sympathy for the Government's stress on the EU's "delivery deficit" rather than its "democratic deficit", and for the Government's desire to bring the EU institutional reform process to a speedy conclusion, we accept that the loss of the Constitutional Treaty undermines the effort to make the EU's Treaty base more comprehensible and transparent. (Paragraph 27)
2. We recognise that the compressed timetable during which the most important decisions on the EU's new Treaty were taken, over a few days in June, was driven by the EU's Presidency-in-office. The Government could and should have provided more information to Parliament during Spring 2007 about its approach to the renewed EU Treaty reform process. It should also have pressed for a less compressed timetable in June. Parliament was entitled to expect adequate time to be consulted and to be able to make an input into the contents of the Treaty, through the Government. After the Treaty was finalised, Parliament was also entitled to have adequate time to make a thorough examination of the Treaty's detailed impact on the EU and the United Kingdom constitution. Parliament has been denied these opportunities, on both counts. We conclude that the procedure followed meant that the 2007 Intergovernmental Conference mandate was agreed with little scope for UK public or Parliamentary debate and engagement. This sets an unfortunate precedent which is in our view damaging to the credibility of the institutional reform process itself. (Paragraph 38)
3. We conclude that the Government is correct to argue that political positions and political will among the Member States are more important than institutional changes in determining the quality of EU foreign policy. We are also sympathetic to the Government's wish to see the end, for at least some years to come, of further EU institutional reform. However, we are concerned that the Government risks underestimating, and certainly is downplaying in public, the importance and potential of the new foreign policy institutions established by the Lisbon Treaty, namely the new High Representative and the European External Action Service. We recommend that the Government should publicly acknowledge the significance of the foreign policy aspects of the Lisbon Treaty. (Paragraph 67)
4. We conclude that the insertion of principles and objectives for all EU external action into the Treaty on European Union is a sensible way of encouraging greater EU policy coherence while two main EU Treaties remain in place. (Paragraph 71)
5. We conclude that the European Council's new ability under the Lisbon Treaty formally to determine "strategic interests and objectives" for all areas of EU external action represents a symbolically important assertion of Member State authority over "Community" policy areas, although it remains to be seen whether this will have any significant impact in practice. (Paragraph 81)
6. We conclude that the section of the amended Treaty on European Union giving authority to the European Council to make strategic determinations for EU external

action is unnecessarily ambiguous and should be clarified by the Government in its response to this Report. (Paragraph 84)

7. We welcome the Bill's provisions giving Parliament the right to accept or reject individual proposals to extend qualified majority voting. However, we are concerned at the implications of the provisions whereby Parliament could be invited to set aside this right in respect of "any later draft decision", as long as a Minister certifies that the decision in question is an amended version of the original decision. We see nothing on the face of the Bill that would preclude this power being invoked in circumstances where the "amended version" of the draft decision contains further transfers to qualified majority voting not found in the original decision. If this were to be the case, transfers to qualified majority voting might take place without specific Parliamentary approval. This could represent a breach of the undertaking given by the Prime Minister. We recommend that further consideration be given to procedures which would allow Parliament to decide separately on "amended versions" of initial draft decisions to transfer items to qualified majority voting. We further recommend that all amendments to the Treaty, including extensions of qualified majority voting, should be done by primary legislation and not simply by a vote of the House. (Paragraph 88)
8. We conclude that the simplification of the nomenclature for Common Foreign and Security Policy decisions introduced by the Lisbon Treaty represents an improvement on the current situation. (Paragraph 95)
9. We conclude that the Commission's loss of the right to make Common Foreign and Security Policy proposals is welcome because it represents an important assertion of the intergovernmental nature of the Common Foreign and Security Policy. (Paragraph 97)
10. We conclude that greater clarity would have been helpful in the Lisbon Treaty wording on the Council of Ministers' new ability to vote by qualified majority on proposals from the High Representative. (Paragraph 105)
11. We conclude that the Government's confirmation that any movement of further Common Foreign and Security Policy decisions from unanimity to qualified majority voting under the "passerelle" procedure would be subject to a prior vote in Parliament, even where the Lisbon Treaty itself does not provide for national Parliamentary involvement, is welcome, although we recommend elsewhere that all Treaty changes are the subject of primary legislation. However, our concerns remain about the possible use of the provision in the Government Bill which would allow "amended versions" of decisions moving items from unanimity to qualified majority voting to avoid a separate Parliamentary vote. (Paragraph 112)
12. We conclude that it seems highly likely that, under the Lisbon Treaty, the Common Foreign and Security Policy will remain an intergovernmental area, driven by the Member States. We welcome this. (Paragraph 118)
13. We conclude that the process of the EU's enlargement to now 27 Member States has been a success. (Paragraph 130)

14. We conclude that the inclusion for the first time of a Treaty reference to the EU's neighbourhood policy represents a welcome expression of the importance of the Union's relationships with states surrounding it. (Paragraph 133)
15. We conclude that the new post of High Representative of the Union for Foreign Affairs and Security Policy has the potential to give the EU a more streamlined international presence and to contribute to the more coherent development and implementation of external policy. We further conclude that it is clear that the High Representative is there to enact agreed foreign policy. (Paragraph 154)
16. We conclude that there are grounds for concern that the holder of the new post of High Representative of the Union for Foreign Affairs and Security Policy could face work overload. We recommend that the Government engages with the other Member States and—when known—the nominee for the post to ensure that the potential benefits of the new post are not jeopardised by a plethora of duties and excessive workload. (Paragraph 155)
17. We conclude that the Lisbon Treaty provision for the new High Representative to speak at the UN Security Council will make little difference to current practice. It will not undermine the position of the UK in the United Nations system nor the UK's representation and role as a Permanent Member of the Security Council. (Paragraph 157)
18. We conclude that it is regrettable that the Lisbon Treaty does not state explicitly that the new European Council President may not simultaneously hold any other office. (Paragraph 162)
19. We conclude that the reshaped role of the President of the European Council could help to generate consensus among EU leaders and lead to greater continuity in the chairing of the European Council. However, we are concerned by the current degree of uncertainty which surrounds the role and by the potential for conflict with the High Representative in representing the EU externally. This could undermine one of the main aims of the current Treaty reform process in the external field. We recommend that in its response to this Report, the Government sets out more clearly its conception of the role of the new European Council President, and its assessment of the likelihood that this will be realised. We further recommend that the Government initiates, in the course of discussions with its counterparts on the appointments to the new posts, the drawing-up of a memorandum of understanding on the respective roles which the European Council President and the High Representative are to play in the external representation of the Union. (Paragraph 170)
20. We conclude that the personal characteristics of the individuals who are appointed to the key posts of European Council President, High Representative for Foreign Affairs and Security Policy, and President of the Commission—in particular, their capacity for teamwork and hard work—will play a critical part in determining whether the new EU foreign policy arrangements work effectively. We recommend that the Government should place a high priority on working constructively with its

European partners to ensure that the right individuals are selected for these posts. (Paragraph 177)

21. We conclude that the new European External Action Service may serve a useful function as a means of reducing duplication between the Council Secretariat and the Commission and facilitating the development of more effective EU external policies, operating in parallel with rather than as a substitute for national diplomatic services. However, the Lisbon Treaty gives only a bare outline of the role of the new External Action Service, leaving most of the details of its functioning to be determined. This could well be a case of “the devil is in the detail”. We conclude that the establishment of the European External Action Service will be a highly complex and challenging exercise. Given the scale and significance of the issues that remain to be resolved, it is vitally important for the Government to be fully engaged in negotiations on these matters, in order to ensure that the European External Action Service works as effectively as possible, and in a way concomitant with UK interests. (Paragraph 189)
22. We recommend that the Government reports regularly to Parliament during 2008 and beyond on the progress of the discussions with other Member States and the EU institutions on the establishment of the European External Action Service, and on the positions it is adopting. Parliament should be kept informed of developments in resolving all the practical, organisational, legal, diplomatic status and financial issues which we have specified in paragraph 182 above. We further recommend that, in its response to this Report, the Government informs us of the arrangements which it proposes to put in place to ensure that Parliament and its committees receive the information necessary to scrutinise on an ongoing basis the work of the European External Action Service. (Paragraph 190)
23. We welcome the opportunity that the new European External Action Service will offer for a greater intermingling of national and EU personnel and careers. We conclude that it would be beneficial to the UK for national secondees to be well represented among the new Service’s staff. We recommend that the FCO encourages high-quality candidates among its staff to undertake secondments to the European External Action Service, by assuring them that they will have a “right of return” and that the experience will form a valued part of an FCO career. We recommend that the FCO should also reciprocally encourage European External Action Service staff to undertake secondments within the UK diplomatic service, in the interests of maximising the European External Action Service’s collective understanding of UK national interests and foreign policy. (Paragraph 194)
24. We conclude that the emergence in third countries of EU delegations which may be active in Common Foreign and Security Policy areas will at the least require careful management by UK Embassies on the ground. This might be of particular importance in those countries where there is no resident UK diplomatic representation. We recommend that in its response to this Report, the Government sets out its position regarding the conversion of Commission delegations into Union delegations, and informs us of the guidance which it is giving to British posts on working with the new EU bodies. (Paragraph 199)

25. We recommend that in its response to the present Report, the Government sets out its reaction to the proposals that there should be “common offices” of EU Member States in third countries and that the new EU delegations may take on consular tasks. We also recommend that the Government clarifies the role and responsibilities of EU delegations in countries where the UK has no Embassy or High Commission. (Paragraph 203)
26. We conclude that the Lisbon Treaty retains from the Constitutional Treaty a wording that on the surface at least is clumsy and ambiguous in its references to the prospect that the European Security and Defence Policy both “might” and “will” lead to a common defence. We therefore recommend that in its response to this Report the Government states whether or not it agrees that this is the case, providing such clarification as is necessary. (Paragraph 207)
27. We conclude that there is no material difference between the provisions on foreign affairs in the Constitutional Treaty which the Government made subject to approval in a referendum and those in the Lisbon Treaty on which a referendum is being denied. (Paragraph 219)
28. We conclude that the creation of the post of High Representative for Foreign Affairs and Security Policy, and of the European External Action Service, represent major innovations in the EU’s foreign policy-making machinery. We further conclude that although their establishment does not risk undermining the Common Foreign and Security Policy’s intergovernmental nature, the Government is underestimating, and certainly downplaying in public, the significance of their creation. This is unlikely to be beneficial to the UK’s position in the EU. We recommend that the Government should publicly acknowledge the significance of the foreign policy aspects of the Lisbon Treaty. (Paragraph 220)
29. We conclude that the new institutional arrangements for EU foreign policy created by the Lisbon Treaty have the potential to encourage more coherent and effective foreign policy-making and representation. However, the way in which the new arrangements will work in practice remains unclear. Much will depend on the individuals chosen to fill the new posts and how they choose to interpret their roles. We recommend that the Government engage actively with its EU partners to minimise the short-term disruption involved in the introduction of the new arrangements created by the Lisbon Treaty, and to help them contribute to the EU’s development as a more effective international entity. It is particularly important that the Government and the FCO should not neglect the critical opportunities that are likely to arise over the next 12 months to influence the detailed planning of the new foreign policy arrangements, so as to ensure that they operate in ways which are fully compatible with UK interests. (Paragraph 221)

1 Introduction

1. The Foreign Affairs Committee has maintained an ongoing Inquiry into Developments in the European Union since 2001.¹ We take evidence from the Foreign Secretary or the Minister for Europe before each six-monthly formal meeting of the European Council, the body of EU heads of state or government. We also periodically publish Reports, the last of which assessed a number of issues following the UK's Presidency of the EU in the second half of 2005, and was published in July 2006.²

2. In 2007 we took a particular interest in the process of EU Treaty reform. We questioned the then Foreign Secretary, the Rt Hon Margaret Beckett MP, on this when she gave evidence on 19 June, in advance of the June European Council.³ Under the Portuguese EU Presidency in the second half of the year, an Intergovernmental Conference (IGC) among the Member States opened in July and concluded in December with the signing of the Treaty of Lisbon. We held further evidence sessions following the launch of the IGC—with the new Minister for Europe, Mr Jim Murphy MP, on 12 September;⁴ with the new Foreign Secretary, the Rt Hon David Miliband MP, on 10 October;⁵ and with the latter again on 12 December, in advance of the December European Council.⁶ The following day, 13 December, Mr Miliband and the Prime Minister signed the Lisbon Treaty on behalf of the UK.

3. On 24 October 2007 we decided to produce a Report on foreign policy aspects of the new EU Treaty.⁷ At the informal meeting of the European Council in Lisbon on 18-19 October, the Member States had reached political agreement on a new Treaty which was expected to be signed at the formal European Council meeting in December. By this stage it was clear that the Government would be asking Parliament to consider legislation in early 2008 incorporating the provisions of the new Treaty into UK law, thereby enabling its ratification.

4. In publishing this Report, our aim is two-fold. Our primary purpose is to inform the House's consideration of the Government's Bill, which was published on 17 December as the European Union (Amendment) Bill. In addition, the Treaty sets out a bare outline of several aspects of the EU's new foreign policy arrangements, leaving the details of their implementation to be worked out. Under these circumstances, we thought it useful to identify some policy issues for the Foreign and Commonwealth Office (FCO) to address when it participates in discussions on these matters.

5. Although our focus in this Report is on foreign policy aspects of the new Treaty, we do not wish to imply that other issues are unimportant or of no interest to us. We have

1 Foreign Affairs Committee, Session 2001–02, press release No 3, 20 July 2001

2 Foreign Affairs Committee, Sixth Report of Session 2005–06, *Developments in the European Union*, HC 768

3 Qq 103-206

4 Qq 207-307

5 Qq 308-410

6 Qq 494-614

7 Minutes of the meeting on 24 October 2007, via www.parliament.uk/facom

questioned Ministers widely on a number of aspects of the new Treaty and the 2007 IGC process. Our remit is to scrutinise the “expenditure, policy and administration” of the FCO and its associated bodies.⁸ This report aims to illuminate for Parliament and the public those aspects of the Lisbon Treaty most directly relevant to the future operation of the FCO and of UK foreign policy in the EU framework. These include a number of matters which go wider than the narrow focus in the public debate on the Government’s “red lines”. We are also aware that other aspects have been looked at in detail by the European Scrutiny Committee.⁹

6. To help us prepare this Report, we took oral evidence on three occasions, in addition to the sessions on general EU issues referred to in paragraph 2 above. On 21 November 2007, we heard from Professor Christopher Hill, of the University of Cambridge; Professor Richard Whitman, of the University of Bath; and Mr Graham Avery, of St Antony’s College, University of Oxford, and until retirement in 2006 a longstanding European Commission official, whose career included service in the Directorate-General for External Relations.¹⁰ On 5 December, we heard from the Rt Hon the Lord Owen, former Foreign Secretary.¹¹ On 8 January 2008, we took evidence in Brussels from Dr Javier Solana, the EU’s High Representative for the Common Foreign and Security Policy (CFSP).¹² We are grateful to all those who gave oral evidence and made written submissions.¹³ We also wish to thank our interlocutors at a series of informal meetings during our visit to Brussels, and staff at the UK Permanent Representation to the EU who facilitated that visit.

7. In addition to the witnesses listed above, we invited serving officials of the EU Council Secretariat and European Commission to give oral evidence. However, they declined to do so before the new Treaty was signed, on the grounds that such a move would be premature. We regret that we were not able to elicit their views in a public evidence session. This has unavoidably limited the extent to which we could draw upon those views in this Report.

8. The structure of this Report is as follows. Chapter 2 briefly considers matters relating to the 2007 IGC in general, including necessary background to the rest of the Report and consideration of the involvement of Parliament in the IGC process. The rest of the Report deals with foreign policy aspects of the Lisbon Treaty. Chapter 3 briefly considers the development of the foreign policy arrangements contained in the Treaty, including the Government’s position in regard to its foreign policy “red line”. Chapters 4 to 7 deal with the Treaty’s substantive foreign policy content. In each of these chapters, we first set out the relevant provisions in the Treaty and then assess them. Chapter 8 provides several points of overall assessment. Annexes 1-4 set out in diagrammatic or tabular form many of the key

8 House of Commons, *Standing Orders of the House of Commons: Public Business 2007*, HC 405, 29 March 2007, SO No. 152

9 European Scrutiny Committee, Thirty-fifth Report of Session 2006–07, *European Union Intergovernmental Conference*, HC 1014; and Third Report of Session 2007–08, *European Union Intergovernmental Conference: Follow-up report*, HC 16-iii

10 Qq 411-457

11 Qq 458-493

12 Qq 616-630

13 Full details of the oral and written evidence are given at pp 102-103 in this volume and in the preliminary pages of the companion volume of evidence HC 120-II.

foreign policy arrangements under the Lisbon Treaty which are referred to in the text, and Annex 5 provides a glossary.

9. This Report was prepared on the basis of the final text of the Lisbon Treaty, dated 3 December 2007.¹⁴ Article numbers in the final text of the Treaty—which are referred to in the text of our Report—may vary from those in earlier drafts of the Treaty, which may be those referred to by witnesses in their evidence.

Terminology

Treaty name

10. When we decided to produce this Report, the new Treaty was commonly referred to as the “Reform Treaty”. This was the term used both by the UK Government and in the mandate for the 2007 IGC agreed by EU leaders.¹⁵ As a result, it is the name which is used in much of our evidence. However, when the final text of the new Treaty was published in December, the term adopted was the “Treaty of Lisbon”. This is the name used in the Government’s Bill, and in this Report we therefore refer throughout to the “Lisbon Treaty”.

The EU’s “Community” elements

11. The Maastricht Treaty of 1992 made formal a distinction between “Community” and “intergovernmental” elements of the EU. “Community” elements are governed according to the “Community method”, under which there may be legislation which is binding on the Member States, which only the European Commission may propose, which typically requires European Parliament approval, and which is subject to the jurisdiction of the European Court of Justice (ECJ) and to enforcement by the European Commission. Until the Maastricht Treaty, only the European Community (EC) existed, governed according to the Community method under the Treaty establishing the European Community (TEC). The Maastricht Treaty, officially called the Treaty on European Union (TEU), added to the EC two “intergovernmental” elements, namely co-operation in the field of foreign and security policy, and co-operation in the field of justice and home affairs. These two elements fell outside the Community method. The Maastricht Treaty brought all three elements together under the umbrella of the new European Union. The three elements are often referred to as to the EU’s three “pillars”, namely the Community first pillar, the intergovernmental Common Foreign and Security Policy (CFSP) comprising the second pillar, and intergovernmental cooperation on Justice and Home Affairs (JHA) comprising the third pillar.

12. The Lisbon Treaty would abolish the European Community. If the Lisbon Treaty comes into force, only the European Union will exist. However, despite this, the “Community method” and its associated institutions and procedures will continue to exist as part of the EU, governed by an amended version of the TEC, which would be renamed

¹⁴ CIG 14/07 and CIG 15/07, 3 December 2007, via www.consilium.europa.eu

¹⁵ The IGC mandate is document 11218/07, 26 June 2007, via www.consilium.europa.eu; see also FCO, *The Reform Treaty: The British Approach to the European Union Intergovernmental Conference, July 2007*, Cm 7174, July 2007; and minutes of the Committee’s meeting on 24 October 2007, via www.parliament.uk/facom

to refer to the EU instead of the EC. Compared to the *status quo*, the difference—under the Lisbon Treaty—is that these “Community” elements would legally and linguistically be subsumed into the European Union. Although the proposed formal abolition of the EC means that it is problematic to continue to refer to these elements as “Community” ones,¹⁶ it is vital to be able to continue to distinguish between “Community” and intergovernmental elements of the foreign policy aspects of the Lisbon Treaty. At the time of preparation of this Report, no new conventional terminology had emerged; we have therefore continued to refer to “Community” elements, as the wording least likely to cause confusion.

“Foreign policy” and “external action”

13. In the policy field discussed by this Report, the distinction between the EU’s “Community” and intergovernmental elements gives rise to a need for a term which encompasses both. In the title and some of the chapter headings and conclusions of this Report, we use the term “foreign policy” informally in this inclusive way. However, in the Lisbon Treaty, the official EU term encompassing both “Community” and intergovernmental elements is EU “external action”.¹⁷ Given the purposes of our Report, we felt that we should adhere as closely as possible to the terminology of the Lisbon Treaty. To refer jointly to “Community” and intergovernmental elements as “foreign policy” might in any case cause confusion with the intergovernmental Common Foreign and Security Policy (CFSP). In the main text of this Report, therefore, the term EU “external action” refers jointly to relevant “Community” areas of policy plus the intergovernmental CFSP.

“Council”

14. There are two EU bodies with the word “Council” in their title. The European Council is the grouping of Member State heads of state or government, i.e. Presidents and/or Prime Ministers. The Council of the European Union is the body of Member State Ministers. As such, the Council of the European Union has been known as the Council of Ministers. The Council of the European Union meets in different configurations of Ministers depending on the policy area under discussion—for example, Foreign Ministers meet currently in the General Affairs and External Relations Council. Along with the European Parliament, the Council of the European Union is the EU’s legislative body. By contrast, the European Council has no legislative powers, but sets the EU’s direction and strategy. In this Report, we follow conventional practice in using the shortened form “Council” to refer only to the Council of Ministers; when we mean the European Council, we use the full term.

¹⁶ See Q 457 [Mr Avery]

¹⁷ Ev 82 [Professor Whitman]

2 The 2007 IGC process

The Constitutional Treaty

15. The Lisbon Treaty is the product of an EU institutional reform process which stretches back to 2001. In that year, the European Council at Laeken declared that the recently concluded Amsterdam (1997) and Nice (2001) Treaties still left the EU with an inadequate institutional framework, particularly in the face of the EU's—probably large—forthcoming enlargement. The “Laeken Declaration” said, as regards internal matters, that “the European institutions must be brought closer to its citizens”, while, as regards external matters, that the EU “needs to shoulder its responsibilities in the governance of globalisation.”¹⁸ At Laeken, the European Council initiated a Convention on the Future of Europe—comprising representatives of the EU institutions, Member State governments and national Parliamentarians—which was to draw up a draft of a new EU Treaty.¹⁹

16. The Convention placed its “Draft Treaty establishing a Constitution for Europe” in front of Member State leaders in July 2003. The Convention's draft formed the basis for negotiations on a new EU Treaty among the Member States at a traditional Intergovernmental Conference (IGC) in 2003–04. The Member States reached agreement on the text of the Constitutional Treaty in June 2004 and signed the document that October. It was planned that the Constitutional Treaty would come into force, following its ratification by the Member States, on 1 November 2006.

17. On 20 April 2004, before the final Constitutional Treaty text had been agreed, the then Prime Minister Tony Blair announced to the House that the UK would hold a referendum on the new Treaty.²⁰ It was envisaged that the referendum would be held after Parliament had passed the necessary legislation allowing the new Treaty to take effect in the UK. The Government Bill providing for the Constitutional Treaty to pass into UK law, subject to the outcome of the referendum for which the Bill provided, was given a second reading in February 2005 by 345 votes to 130. In their 2005 general election manifestos, all three major political parties promised to hold a referendum on the Constitutional Treaty.²¹ The Government immediately reintroduced the Bill following its re-election in May 2005.

18. On 29 May and 1 June 2005 respectively, the French and Dutch electorates rejected the Constitutional Treaty in referendums, by 55% and 62% respectively. As EU Treaties can take effect only when ratified by all EU Member States, the French and Dutch “no” votes prevented the Constitutional Treaty from ever coming into force. With most of the Member States which had not yet ratified the Constitutional Treaty putting their ratification processes on hold in the wake of the French and Dutch votes, in the end the

18 “Laeken Declaration on the Future of the European Union”, Annex 1 to Laeken European Council, Presidency Conclusions, 14-15 December 2001, via www.consilium.europa.eu

19 Two Members of our Committee, the Rt Hon David Heathcoat-Amory MP and Ms Gisela Stuart MP, served as the House of Commons representatives to the Convention.

20 HC Deb, 20 April 2004, col 155

21 “Britain forward not back”, the Labour Party manifesto 2005, pp 83-84; “Are you thinking what we're thinking?”, Conservative election manifesto 2005, p 26; “Liberal Democrats: The Real Alternative”, 2005 English general election manifesto, p 14

Constitutional Treaty was ratified by 18 of the 27 Member States. The UK was one of the Member States which put its ratification process on hold.²²

19. In the wake of the French and Dutch referendums, in June 2005 the EU declared a “period of reflection” to consider the future of the institutional reform process.²³ In June 2006, the European Council extended the “period of reflection” for another year, but it requested Germany, which would hold the rotating EU Presidency in the first half of 2007, to present a report which would “serve as the basis for further decisions on how to continue the reform process”.²⁴ The same European Council emphasised the need for public involvement. Its conclusions stated, in a paragraph headed “Europe Listens”, that “reinforced dialogue with the citizens requires adequate means and commitment”.²⁵

Renewed Treaty reform: the 2007 Intergovernmental Conference

20. The German Presidency made clear from the start of 2007 its hope of resolving the EU’s institutional impasse. The first concrete sign that the German Presidency’s ambitious timetable might be becoming a serious prospect came in the “Berlin Declaration” of 25 March 2007, which announced the aim of “placing the European Union on a renewed common basis before the European Parliament elections in 2009.”²⁶ However, the Berlin Declaration was signed only in the name of the Presidents of the three EU institutions—European Council, European Commission and European Parliament—as there was no agreement among the Member States themselves.²⁷ At this time, the Member States were split between those which wished to revive the Constitutional Treaty and those, including the UK, which preferred a very different and less ambitious approach to Treaty reform.

21. The German Presidency prepared its report to the June 2007 European Council on the future of the institutional reform process by taking soundings from Member State representatives—known as “focal points” or, informally, “sherpas”—rather than by circulating draft texts for comment. The UK’s “focal points” were Mr Kim Darroch, then head of the Cabinet Office European Secretariat, and the FCO official Ms Nicola Brewer, who was replaced after she left the FCO in March by Ms Shan Morgan, EU Director there.²⁸ Most of the German Presidency’s contacts with the “focal points” occurred bilaterally; the “focal points” met as a group with the German Presidency on four occasions, on 24 January, 2 May, 15 May and 19 June.²⁹

22 See the statement of the then Foreign Secretary, the Rt Hon Jack Straw MP, at HC Deb, 6 June 2005, col 991-2

23 “Declaration by the Heads of State or Government of the Member States of the European Union on the ratification of the Treaty establishing a Constitution for Europe”, Brussels European Council, 18 June 2005, via www.consilium.europa.eu

24 Brussels European Council, Presidency Conclusions, 15-16 June 2006, via www.consilium.europa.eu, paragraph 48

25 Ibid., paragraph 3

26 Text via www.eu2007.de; on the Berlin Declaration, see also Qq 122-23 [Mrs Beckett], Ev 41 [Mr Murphy] and Ev 140 [Mr Hoon]

27 Q 123 [Mrs Beckett]

28 HC Deb, 15 January 2007, col 786W, 788W; HC Deb, 27 March 2007, col 1493W

29 Ev 41 [Mr Murphy]; Qq 113 [Mrs Beckett], 310 [Mr Murphy]; see also European Scrutiny Committee, First Special Report of Session 2007–08, *European Union Intergovernmental Conference: Government Responses to the Committee’s Thirty-fifth Report of Session 2006–07 and the Committee’s Third Report of Session 2007–08*, HC 179, pp 2-3

22. The German Presidency presented its report on the institutional reform process to the Member States on 14 June 2007.³⁰ In its report, the Presidency concluded that the way forward was to “preserve the substance of the innovations agreed upon in the 2004 IGC” while abandoning the structure of a single Constitutional Treaty and “constitutional” language and symbols. The Presidency therefore proposed “a return to the classical method of treaty change”—that is, a return to the practice of amending, rather than replacing, existing Treaties. The Presidency further proposed that an IGC be convened rapidly, with the aim of reaching agreement on a new Treaty by the end of 2007. To that end, the Presidency recommended that the European Council meeting on 21-22 June agree a detailed mandate for the IGC.

23. The German Presidency’s report was discussed by Member State Foreign Ministers meeting informally on 17 June. On 19 June, the German Presidency published a draft IGC mandate.³¹ This was the first time that Member States saw proposed Treaty terms, only two days before the opening of the European Council. This left no opportunity for Parliamentary scrutiny, and also appears unlikely to have allowed scope for extensive consultation within Government.³² A final mandate for the 2007 IGC was agreed four days after publication of the Presidency draft, in the early hours of 23 June, following intensive negotiations at the European Council.³³ The IGC mandate was to provide the “exclusive basis” for the new Treaty.³⁴ Given the detailed nature of the IGC mandate, the substantive negotiating work of a normal IGC was as a result almost wholly concluded before the IGC opened. Once the European Commission and European Parliament had issued their opinions as required,³⁵ the 2007 IGC was launched on 23 July 2007, under the EU’s new Portuguese Presidency. On the same day, the Portuguese Presidency published the first draft text of the new EU Treaty, on the basis of the IGC mandate agreed in a few days under the German Presidency.³⁶ For its part, the Government published on 23 July a White Paper setting out its approach to the 2007 IGC.³⁷

24. The 2007 IGC moved through several phases. First, the draft Treaty text of 23 July was checked by legal experts to ensure that it reflected exactly the IGC mandate agreed by the European Council in June. There was an opportunity for political-level discussion among Member State Foreign Ministers at their informal meeting on 7-8 September. On the basis of the work completed by that point, a further draft Treaty text was published, dated 5 October.³⁸ This text went before the informal European Council meeting in Lisbon of 18-

30 10659/07, 14 June 2007

31 SN 3116/2/07 REV2

32 The Government told the European Scrutiny Committee that the Cabinet discussed the IGC mandate on 21 June; European Scrutiny Committee, *European Union Intergovernmental Conference: Government Responses*, p 14

33 On these matters, see also European Scrutiny Committee, *European Union Intergovernmental Conference*, paras 5-11, and *European Union Intergovernmental Conference: Follow-up report*, paras 7-8

34 IGC mandate, document 11218/07, 26 June 2007, via www.consilium.europa.eu

35 “Reforming Europe for the 21st Century”, Opinion of the European Commission, pursuant to Article 48 of the Treaty on European Union, on the conference of representatives of the governments of the Member States convened to revise the Treaties, COM(2007)412 final, 10 July 2007; “Convening of the Intergovernmental Conference”, Opinion of the European Parliament, P6_TA(2007)0328, 11 July 2007

36 CIG 1/07 and 2/07, 23 July 2007

37 FCO, *The Reform Treaty: The British Approach to the European Union Intergovernmental Conference, July 2007*, Cm 7174, July 2007

38 CIG 1/1/07 REV 1 and CIG 2/1/07 REV 1

19 October, where EU leaders reached final political agreement on the new Treaty. A further draft Treaty text, incorporating the changes agreed at Lisbon, was published with a date of 30 October.³⁹ Following checking by lawyers and linguists, the text of the Lisbon Treaty was published on 3 December, ahead of the Treaty's signature by the Member States on 13 December.⁴⁰ The Government published the Treaty as a command paper on 17 December,⁴¹ together with the Bill to give effect to the Treaty in UK law.⁴² Summing up the 2007 IGC process on his return from the informal European Council meeting which agreed the new Treaty in October, Prime Minister Gordon Brown told the House that

not just for this Parliament but also for the next, it is the position of the Government to oppose any further institutional change in the relationship between the EU and its member states. In our view, there is also a growing consensus across Europe that there should be no more institutional change for many years.⁴³

Some have argued that the prospect of a period of institutional stability in the EU is undermined by the possibilities which the Lisbon Treaty provides for further Treaty change without the convening of a further Intergovernmental Conference.⁴⁴

Treaty transparency

25. The 2007 IGC process has given rise to concerns regarding the transparency of the new Treaty which has resulted from it. The 2001 Laeken Declaration had identified a need for the EU to become “more transparent”, and suggested that “if we are to have greater transparency, simplification [of the Treaties] is essential.”⁴⁵ Some supporters of the Constitutional Treaty argued that this document answered the perceived need for transparency by giving the EU a single main Treaty, bringing together provisions which had previously been found in repeatedly amended versions of several Treaties. In its White Paper on the Constitutional Treaty in 2004, the Government said that the new Constitutional Treaty “would make the EU simpler to understand, with the Union's main Treaties reorganised into one, more coherent Treaty”.⁴⁶

26. The format which was agreed at the June 2007 European Council is different. The Lisbon Treaty is an “amending treaty”. This means that the EU will continue to operate on the basis of two main Treaties:

- The Treaty on the Functioning of the European Union (TFEU). This will be the new version of the Treaty establishing the European Community (TEC), as

39 SN 4579/07

40 CIG 14/07

41 FCO, *The Treaty of Lisbon amending the Treaty Establishing the European Union and the Treaty Establishing the European Community*, Cm 7294, December 2007

42 European Union (Amendment) Bill [Bill 48 (2007–2008)]

43 HC Deb, 22 October 2007, col 22

44 The simplified Treaty revision procedure and CFSP “passerelle” clause are outlined in paragraphs 85-88 and 111-112 respectively in Chapter 4 below.

45 “Laeken Declaration on the Future of the European Union”, Annex 1 to Laeken European Council, Presidency Conclusions, 14-15 December 2001, via www.consilium.europa.eu

46 FCO, *White Paper on the Treaty establishing a Constitution for Europe*, Cm 6309, September 2004, p 14

amended and renamed by the Treaty of Lisbon. The TEC was itself the renamed and frequently amended version of the original Treaty of Rome.

- The Treaty on European Union (TEU), as amended by the Treaty of Lisbon. The TEU was originally the Maastricht Treaty, which again has been amended by subsequent Treaties up to and including Lisbon.

The Lisbon Treaty itself cannot be read unless in conjunction with the two Treaties which it amends. At the time we approved our present Report, no official consolidated text of the two Treaties as amended by the Lisbon Treaty was available.⁴⁷ Furthermore, and to a considerable extent as a result of the opt-ins, Protocols and Declarations inserted at the UK's request, the Lisbon Treaty—and the main Treaties as amended by it—are particularly complex. Lord Owen told us that “we have reverted to using the old Treaty, which I personally think is a good idea, but it makes it very difficult to find out exactly what has happened.”⁴⁸ Professor Whitman, of the University of Bath, said that “because it is a set of amendments to the existing Treaties [...] trying to get a handle on whether things have changed does require very close and careful reading and the referencing of one text across to the other.”⁴⁹ Professor Whitman's conclusion was that “it is impossible for a reasonably intelligent individual to sit down and read [the Lisbon Treaty], where they could read the Constitutional Treaty.”⁵⁰

27. When we asked Ministers about what appears to be a loss of transparency as a result of the Lisbon Treaty, they responded by referring to what they saw as the limited value of institutional reform in tackling the EU's so-called “democratic deficit”. The current Foreign Secretary, Mr Miliband, told us that he had “never believed that institutional reform is the route to love and respect for the European Union among the peoples of Europe [...] I believe that a delivery deficit is the fundamental barrier between the European Union and the peoples of Europe”.⁵¹ **We conclude that, although we have some sympathy for the Government's stress on the EU's “delivery deficit” rather than its “democratic deficit”, and for the Government's desire to bring the EU institutional reform process to a speedy conclusion, we accept that the loss of the Constitutional Treaty undermines the effort to make the EU's Treaty base more comprehensible and transparent.**

Parliamentary involvement

28. Serious concerns have been expressed about the lack of Parliamentary involvement in scrutinising the 2007 IGC process and the resulting Treaty. In its first Report on the 2007

47 The Government is expected to publish consolidated texts on 17 January 2008. One of our witnesses, Professor Whitman, has produced a consolidated version of the CFSP provisions in the TEU, as amended by the Treaty of Lisbon; see Ev 82.

48 Q 475

49 Q 420

50 Q 425

51 Q 498; see also Mr Murphy at Q 229. Ministers' arguments on this point were closely connected to their arguments about the limited value of institutional reform in delivering more effective EU external policies; see Chapter 3.

IGC, published in early October, the European Scrutiny Committee concluded that the process “could not have been better designed to marginalise”⁵² national Parliaments.

29. During Spring 2007, the Government’s official position regarding further EU Treaty reform was that set out in a Written Ministerial Statement of 5 December 2006.⁵³ The Statement set out six principles which would guide the Government in its discussions with the forthcoming German Presidency: “pursuing British interests”; “modernisation and effectiveness”; “consensus”; “subsidiarity”; “use of existing Treaties”; and “openness”.

30. Apart from the December 2006 document, the most important statement of Government policy regarding the EU institutional reform process came at a press conference held by the former Prime Minister Tony Blair and his visiting Dutch counterpart on 16 April 2007. At the press conference, Mr Blair announced the Government’s wish that any new EU Treaty should be “an amending treaty, but not a treaty with the characteristics of a constitution”.⁵⁴ The most significant subsequent statement of Government policy regarding further EU Treaty reform came on 18 June, three days before the European Council which was due to reach agreement on the matter. On that occasion, appearing before the Liaison Committee, Mr Blair announced the Government’s negotiating positions, in the form of four “red lines”.⁵⁵

31. In an attempt to learn about the Government’s approach to the revived institutional reform process being pursued by the German Presidency, we sought to take evidence from a Minister during the Spring. Having already agreed to appear before the Committee as normal immediately before the June European Council, the then Foreign Secretary Margaret Beckett declined to make another appearance earlier in the process. Efforts to secure an evidence session with the then Minister for Europe, the Rt Hon Geoff Hoon MP, on a mutually convenient date in May also proved unsuccessful.

32. The Chairman wrote to the Foreign Secretary on the matter, saying that “the Committee regards the refusal of the FCO to provide a Minister to give oral evidence during this crucial phase of the discussions on the future of Europe as a failure of accountability to Parliament”. The Chairman expressed the Committee’s “deep concern”.⁵⁶ In her reply, the Foreign Secretary rejected “the suggestion that the Government [had] been unco-operative” and attributed the lack of an evidence session to the difficulties of finding mutually convenient dates.⁵⁷ The then Minister for Europe also said that he had been unable to appear entirely as a result of diary commitments.⁵⁸

52 European Scrutiny Committee, *European Union Intergovernmental Conference*, para 71

53 HC Deb, 5 December 2006, cols 10-11WS

54 Transcript via www.number10.gov.uk

55 HC 300-ii Q 171; the Government’s foreign policy “red line” is discussed in Chapter 3 below at paragraphs 49-60

56 Ev 140

57 Ev 141

58 Ev 140-1

33. Throughout the Spring, Ministers consistently responded to Parliamentary questions on the EU institutional reform process by stating that there was no consensus among Member States on the way forward.⁵⁹ The former Foreign Secretary told us on 19 June that:

there have not been feverish negotiations and discussions in Europe; I wish that there had, but there have not [...] I am sure that the Committee imagined, as did we probably, that we would have had a draft document weeks ago, and that there would have been a lot of discussion and argy-bargy and all those kinds of things. You as a Committee did not want to be left out of it. I understand and sympathise. I have not seen the draft document either—nobody has. It has not been produced”.⁶⁰

The former Foreign Secretary also told us that:

when we were asked to identify two people [i.e. the “focal points”], we assumed that there would be a sustained process of dialogue and exchange together with potential draft documents and so on, but that has not happened [...] The process has not evolved in the way in which I think that most people imagined that it would when we were asked to appoint the two people.⁶¹

34. When asked to confirm that agreement both on the IGC process and on the IGC’s mandate was reached in less than a week, between 19 and 23 June, the Minister for Europe, Mr Murphy, did so unequivocally.⁶² Mrs Beckett said that the compressed timetable was “challenging”,⁶³ while her successor told us that “distinctive” would be “a diplomatic way” of describing the German Presidency’s approach.⁶⁴

35. In evidence to us on 19 June, responding to queries about the occurrence of “specific discussions about Treaty content”, Mrs Beckett told us that: “there had not been in the way that I consider to form part of a negotiating preparation and a discussion leading up to that.”⁶⁵ She went on to say: “you could probably say that there still have not been [...] discussions in Council, around the Council table, about the approach on the Treaty or its content. No such discussions have taken place.”⁶⁶ However, this appears to have been contradicted by the former Prime Minister Tony Blair when he told the House on his return from the June European Council that “We have been talking about this for two years.”⁶⁷

36. Mrs Beckett also told us in June that “our main negotiating goal in this particular process [...] has been to get acceptance that the treaty that is put forward should be an

59 See, for example, HC Deb, 1 February 2007, col 499W; 19 February 2007, col 15-6W; HC Deb, 13 March 2007, col 243W; HC Deb, 20 March 2007, col 678; HC Deb, 16 April 2007, col 35-6W; HC Deb, 1 May 2007, col 1347; HC Deb, 10 May 2007, col 391-2W; HC Deb, 16 May 2007, col 779W.

60 Q 162

61 Q 164

62 Q 233; see also Qq 212, 214, 218, 219 [Mr Murphy]

63 Qq 105, 114

64 Q 310

65 Q 127

66 Q 128

67 HC Deb, 25 June 2007, col 40

amending treaty and should have the characteristics and the likely content of an amending treaty.”⁶⁸ This was the Government position announced in mid-April. The former Foreign Secretary also said on 19 June that “we have been keeping our negotiating powder dry and so has everybody else”.⁶⁹

37. Since the IGC was launched on 23 July, FCO Ministers have appeared before us on two occasions in addition to the Foreign Secretary’s normal pre-European Council appearance in December 2007. The Minister for Europe and the Foreign Secretary both provided written follow-up information after their respective appearances in September and October 2007.⁷⁰ During the IGC, the FCO also forwarded to the House public Presidency papers, such as draft Treaty texts, although these were also available on the EU Council website.

38. We recognise that the compressed timetable during which the most important decisions on the EU’s new Treaty were taken, over a few days in June, was driven by the EU’s Presidency-in-office. The Government could and should have provided more information to Parliament during Spring 2007 about its approach to the renewed EU Treaty reform process. It should also have pressed for a less compressed timetable in June. Parliament was entitled to expect adequate time to be consulted and to be able to make an input into the contents of the Treaty, through the Government. After the Treaty was finalised, Parliament was also entitled to have adequate time to make a thorough examination of the Treaty’s detailed impact on the EU and the United Kingdom constitution. Parliament has been denied these opportunities, on both counts. We conclude that the procedure followed meant that the 2007 Intergovernmental Conference mandate was agreed with little scope for UK public or Parliamentary debate and engagement. This sets an unfortunate precedent which is in our view damaging to the credibility of the institutional reform process itself.

68 Q 132

69 Q 121

70 Ev 40-42 [Mr Murphy], 62-81 [Mr Miliband]; see also the letter to the Chairman from Mr Miliband of 11 January 2008, at the end of this volume.

3 Foreign policy in the 2007 IGC process

Foreign policy in the current Treaty reform process

39. The original European Community initially focused on internal integration, and became involved in external affairs as a result of its competence for issues such as trade and development assistance. After the early failure of the European Defence Community in the 1950s, it appeared that resistance from Member States would render the “Community” method of integration inapplicable to traditional foreign policy. In the 1970s and 1980s, Member States began gingerly to try to co-ordinate their foreign policies in an informal way, in what was known as European Political Co-operation.

40. The Maastricht Treaty (the Treaty on European Union, TEU) of 1992 established the Common Foreign and Security Policy (CFSP). The CFSP was created as an intergovernmental process, outside the EC’s “Community” method, and falling instead within the new European Union. The European Security and Defence Policy (ESDP) was added within the CFSP following the UK-French St Malo initiative of 1998.

41. Professor Hill of Cambridge University reminded us that “There has been nothing else in the history of modern diplomacy to match this attempt to provide systematic co-ordination between separate sovereign states.”⁷¹ However, events in the 1990s—primarily in the former Yugoslavia—exposed the continuing weaknesses of the fledgling CFSP, and of the EU more generally as an international entity. Such events prompted further efforts at institutional change. The Amsterdam Treaty of 1997 established the position of High Representative for the CFSP, taken by Dr Javier Solana, the former Spanish Foreign Minister and Secretary-General of NATO. The figure in Annex 2a) shows the current arrangement of EU foreign policy structures and processes, before the Lisbon Treaty.

42. According to our witnesses, much scope remains for improving the EU’s international effectiveness. Mr Donnelly told us that “almost all external commentators have concluded that movement towards the goal of a functioning CFSP [...] has been limited and patchy.”⁷² Professor Whitman told us that, in terms of implementing EU positions in relationships with third countries and in international organisations, the EU “is certainly not as good as one might expect, certainly in terms of some of the resources and energy that are put in by Member States”.⁷³ The former European Commission official Mr Avery said that the EU “is on the way towards having a foreign policy, but it is only partly on the way—maybe halfway, maybe not even halfway.”⁷⁴ Most bluntly, Sir Peter Marshall described the EU as “the world’s principal under-performing asset.”⁷⁵ Dr Solana told us that, in his years in post, he had “been frustrated by the difficulty in delivering and the rhythm with which the European Union delivers.”⁷⁶

71 Q 411

72 Ev 143

73 Q 411

74 Q 411

75 Ev 142

76 Q 616

43. The evidence is mixed as regards public opinion poll data on the EU as a foreign policy entity:

- In a poll taken in certain major states and published by the Bertelsmann Foundation during the preparation of our Report, 43% of respondents in France, 86% in Germany and 80% in the UK named the EU as among the best “frameworks for ensuring peace and stability”.⁷⁷
- In the most recent of the regular Eurobarometer polls published by the European Commission, 67% of respondents across the EU said that decisions on defence and foreign affairs should be made jointly within the EU.⁷⁸ However, the range of national responses ran from 83% supporting common decision-making in this field in Slovakia to 26% doing so in Finland. In the UK, the Eurobarometer figures gave a 54-to-40 majority in favour of defence and foreign policy decisions being taken by the national Government.
- In a Populus poll in the UK for Global Vision in June 2007, 54% of respondents thought that the Government should sign the UK up for a common European foreign and defence policy, against 43% opposing the step.⁷⁹
- In an ICM poll in the UK for Global Vision in June 2007, 34% said that the UK Government should and 55% that the Government should not sign up to a “common European foreign and defence policy decided by European Union institutions rather than agreed directly between governments”.⁸⁰
- In a November 2006 ICM poll in the UK for the Centre for Policy Studies, 60% of respondents thought that foreign affairs should be controlled by the UK Government, with 30% favouring the EU; the figures were 69% and 21% respectively for defence.⁸¹

44. In the 2001 Laeken Declaration which launched the current Treaty reform process, “Europe’s new role in a globalised world” was identified as one of the central challenges facing the EU. The Declaration asked, “Does Europe not, now that it is finally unified, have a leading role to play in a new world order, that of a power able both to play a stabilisation role worldwide and to point the way ahead for many countries and peoples?” More specifically, the Declaration asked, “How should the coherence of European foreign policy be enhanced?”⁸²

45. In the Treaty reform process launched by the Laeken Declaration, the central means of improving the “coherence” of EU foreign policy has most typically been seen as bringing together, via institutional means, the intergovernmental CFSP and the “Community” areas

77 Bertelsmann Stiftung, “Who rules the World?”, 22 October 2007, p 33, via www.bertelsmann-stiftung.de

78 Eurobarometer 68, First Results, December 2007, p 28, via www.ec.europa.eu/public_opinion

79 Populus Global Vision Poll, June 2007, via www.global-vision.net

80 ICM “Europe Poll” for Global Vision, June 2007, via www.global-vision.net

81 ICM Economy Survey for the CPS, November 2006, via www.global-vision.net

82 Laeken Declaration on the Future of the European Union”, Annex 1 to Laeken European Council, Presidency Conclusions, 14-15 December 2001, via www.consilium.europa.eu

of external policy handled by the Commission. Dr Solana told us that, in his experience “we have a High Representative who helps to define, implement and explain foreign policy, but then there is a component—the Commission—with some important resources, and the two are linked in a very loose way.”⁸³ Although, Dr Solana said, the use of Commission resources ought already to be determined according to the policies set in the Council, “in practice [this] may not be so natural”.⁸⁴ Dr Solana also noted that “the autonomy of the two decisions [made by the Commission and the Council] [...] sometimes creates problems and even contradictions”,⁸⁵ and elsewhere he suggested that bringing together the EU’s Community/Commission and Council elements would be a means of reducing “rivalry” and “friction”.⁸⁶ Dr Solana suggested that, in particularly in situations requiring rapid or changing action, it was problematic that “the priorities in the use of resources are sometimes so fixed that when a crisis comes it is very difficult to adopt the structure and deploy them rapidly.”⁸⁷

46. In terms of foreign policy posts, the Laeken Declaration asked, “How is synergy between the High Representative and the competent Commissioner to be reinforced?”⁸⁸ Ironically, support for the idea of bringing the posts of CFSP High Representative and External Relations Commissioner together was generated in part by what was seen as the productive relationship established by Dr Solana and the then External Relations Commissioner Chris Patten, working in the two posts separately. Professor Hill told us that “there is certainly a case for trying to avoid the inherent tension that there is between the Commissioner for External Relations and the Common Foreign and Security Policy.”⁸⁹ “Mr Solana and Mr Patten worked well together”, Professor Hill continued, “and the argument would be that if those different roles were put together in a single individual, the degree of coherence would be increased.”⁹⁰ Mr Avery told us that, in giving the two jobs to the same individual, the new Treaty “aims to eliminate some of the duplication that exists in Brussels and the multiplicity of voices that exist elsewhere in the world.”⁹¹

47. In the wake of the rejection of the Constitutional Treaty in 2005 by the French and Dutch electorates, attention turned to ways in which EU external action might be made more effective even within the existing institutional framework. The European Commission set out its ideas in this respect in its “Europe in the World” communication in June 2006.⁹² There have been some signs that improved co-ordination between the EU

83 Q 618

84 Q 618

85 Q 619

86 Q 627

87 Q 619

88 Laeken Declaration on the Future of the European Union”, Annex 1 to Laeken European Council, Presidency Conclusions, 14-15 December 2001, via www.consilium.europa.eu

89 Q 412

90 Q 412

91 Q 411; the new position of High Representative for Foreign Affairs and Security Policy created by the Lisbon Treaty is discussed in Chapter 5.

92 European Commission, “Europe in the World—Some Practical Proposals for Greater Coherence, Effectiveness and Visibility”, COM(2006) 278 final. On the “Europe in the World” paper, see House of Lords European Union Committee, 48th Report of Session 2005–06, *Europe in the World*, HL Paper 268. We also commented on the Commission paper in our 2006 Report: Foreign Affairs Committee, *Developments in the European Union*, paras 98-

institutions is indeed occurring within the existing Treaty framework. For example, CFSP High Representative Solana has worked jointly with the Commission in the new field of energy security policy for the EU.⁹³

48. Several of our witnesses argued that it would be in the UK's interest to see a more effective EU external policy. Mr Avery told us that "In many of the problems which are a priority for British foreign policy, acting with the European partners and trying to define a European common interest is likely to be a much more effective way also of effecting British interests."⁹⁴ Lord Owen said that an agreed position among the EU Member States on international issues can be "of value to the UK",⁹⁵ and Professor Hill said that "if the CFSP did not exist, the UK would probably want to invent something like it".⁹⁶

The Government's approach to foreign policy in the 2007 IGC: the foreign policy "red line"

49. The former Prime Minister Tony Blair set out the Government's detailed negotiating aims for the new EU Treaty in an appearance before the Liaison Committee on 18 June 2007, three days before the meeting of the European Council which was due to negotiate the IGC mandate. The Government's negotiating aims took the form of four "red lines". One of these concerned foreign policy. Mr Blair told the Committee that the Government "will not agree to something which displaces the role of British foreign policy and our foreign minister".⁹⁷ In its White Paper on the 2007 IGC, the Government reformulated its foreign policy "red line" as requiring "maintenance of the UK's independent foreign and defence policy" as a condition for signing any new Treaty.⁹⁸

50. On the basis of its public statements, it appears that the Government understands its foreign policy "red line" as meaning that the CFSP should "remain an intergovernmental process".⁹⁹ In turn, according to evidence provided by the FCO, the Government appears to understand this as meaning, more specifically, that:

unanimity in decision-making will remain the rule (i.e. the UK will hold a veto), legislative activity is excluded, and the ECJ will not have jurisdiction over CFSP except [...] on consequential questions of boundaries and sanctions.¹⁰⁰

It is possible to question whether the maintenance of an "intergovernmental" CFSP is sufficient to maintain an "independent foreign and defence policy". For example, the large

101. For a think-tank view on the same issues, see, for example, Charles Grant and Mark Leonard, "How to strengthen EU foreign policy", Centre for European Reform Policy Brief, July 2006.

93 See for example "An External Policy to serve Europe's Energy Interests", joint paper from the European Commission and the High Representative for the Common Foreign and Security Policy submitted to the June 2006 European Council, via www.consilium.europa.eu

94 Q 414

95 Q 461; see also Lord Owen at Q 460

96 Q 414

97 HC 300-ii, Q 117

98 FCO, *The Reform Treaty: The British Approach to the European Union Intergovernmental Conference, July 2007*, Cm 7174, July 2007, p 7

99 Ev 63 [Mr Miliband]

100 Ev 63 [Mr Miliband]

number of EU “common positions” which now exist on a wide range of foreign policy issues arguably represent a considerable constraint on UK foreign policy.

51. The Government claims that the Lisbon Treaty does not cross its “red line” in foreign policy (nor in the other three “red line” areas). Addressing the House on his return from the informal European Council meeting in October which agreed the new Treaty, Prime Minister Gordon Brown said that he believed it was “absolutely clear that the basis of foreign and security policy will remain intergovernmental—a matter for Governments to decide.”¹⁰¹ In the Queen’s Speech debate in November, Foreign Secretary David Miliband told the House that “in each and every area where we promised to secure our red lines, they have been secured.”¹⁰²

52. In his letter to the Chairman of 11 October, the Foreign Secretary identified four Treaty provisions on which the Government rests its claim that the Lisbon Treaty does not cross its foreign policy “red line”.¹⁰³ In the relevant Annex to the Foreign Secretary’s subsequent letter of 18 October, the FCO also provided “commentaries” to the four pieces of text, explaining how the FCO considered that they secured the Government’s foreign policy “red line”.¹⁰⁴ The four pieces of Treaty text are:

- Article 1 27) of the Lisbon Treaty, amending Article 11 of the Treaty on European Union. This inserts a new paragraph stating that the “the common foreign and security policy is subject to specific rules and procedures”, before setting out what these are.¹⁰⁵
- Article 2 223) of the Lisbon Treaty, inserting Articles 240a and 240b of the Treaty on the Functioning of the European Union. The new Article 240a states that “the Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions”, before setting out two specific exceptions, providing for ECJ jurisdiction over the boundary between the CFSP and “Community” areas, and over the imposition of sanctions.¹⁰⁶
- Declaration 13 concerning the common foreign and security policy, which states that the provisions of the Treaty on European Union concerning the common foreign and security policy “do not affect the responsibilities of the Member States [...] for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.”¹⁰⁷
- Declaration 14 concerning the common foreign and security policy, which states that the provisions of the Treaty on European Union concerning the common

101 HC Deb, 22 October 2007, cols 19-22

102 HC Deb, 12 November 2007, col 412

103 The Foreign Secretary’s letter included the four pieces of text as a set of four Annexes; see Ev 62-70

104 Ev 71-81

105 Ev 68-69 gives the text in full.

106 Ev 69 gives the text in full. The role of the ECJ is discussed further in Chapter 4 below.

107 Ev 69 gives the text in full. When the Foreign Secretary wrote to the Committee, on the basis of the 5 October draft Treaty text, the Declaration was numbered 30.

foreign and security policy “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”, and notes that “the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament.”¹⁰⁸

While the first two of the provisions on which the Government relies form part of the legally-binding body of the Lisbon Treaty, the two Declarations on the common foreign and security policy—in common with other Declarations to EU Treaties—are not legally binding.¹⁰⁹

53. In the relevant Annex to the Foreign Secretary’s letter of 18 October, the FCO also referred to “the improved provisions of Article 25” as a further means by which “the distinct character of CFSP is reinforced against encroachment by non-CFSP matters”.¹¹⁰ What in the end became Article 25b of the amended Treaty on European Union (TEU) disbars interference in the CFSP provisions of the TEU as a result of the implementation of policies governed by the Treaty on the Functioning of the European Union (the TFEU), as well as *vice versa*. In the existing TEU, the relevant Article provides only that implementation of the provisions of the TEU shall not affect the TEC.¹¹¹ According to the FCO, the new version means that “the Court [of Justice] must [...] protect the distinct character of CFSP against encroachment from non-CFSP provisions.”¹¹²

54. The Lisbon Treaty provisions which the Government claims meet its foreign policy “red line” apply to all the Member States. In this respect, they contrast with the provisions which the Government secured in order to meet its red lines on labour and social legislation, and on the legal system and police and judicial processes, where the Government pursued country-specific Protocols and opt-ins.¹¹³

55. Of the four Lisbon Treaty provisions which the Government claims secure its foreign policy “red line”, the new paragraph in Article 11 and the two Declarations are wholly new, compared both to the existing Treaties and to the Constitutional Treaty. The paragraph ruling out ECJ jurisdiction over the CFSP (except in the two specified cases) is found in the Constitutional Treaty,¹¹⁴ as is the language now in Article 25b disbaring mutual interference between the CFSP and “Community” areas of policy.¹¹⁵

56. The Government’s foreign policy “red line” raises the central issue of the current reform process in the external action field, namely the relationship between “Community”

108 Ev 69 gives the text in full. When the Foreign Secretary wrote to the Committee, on the basis of the 5 October draft Treaty text, the Declaration was numbered 31.

109 Q 277 [Mr Murphy]. The Declarations are discussed further in Chapter 4, paragraph 94.

110 Ev 79; see also the Foreign Secretary’s second letter of 18 October, at Ev 70.

111 Ev 70, 79-80 [Mr Miliband]

112 Ev 80 [Mr Miliband]

113 See Ev 62-63, 64-68, 70-79 [Mr Miliband] and European Scrutiny Committee, *European Union Intergovernmental Conference and European Union Intergovernmental Conference: Follow-up report*

114 Article III-376

115 Article III-308

and intergovernmental elements.¹¹⁶ We assess the Lisbon Treaty’s provisions on external action in the next chapter. Here we raise a number of points in connection with the Government’s “red line” negotiating approach.

57. Under its “red line” approach, the Government secured language in the Lisbon Treaty which was absent from the Constitutional Treaty, as noted above. However, going into the 2003-04 IGC which negotiated the Constitutional Treaty, the then Prime Minister Tony Blair set out the same “red line” for the UK as he did in 2007. The Foreign Secretary told us that the Government had been “clear all along that the most important red line [...] is that foreign policy should retain an area of unanimity and that each country should be able to exercise a veto.”¹¹⁷ In 2003, the then Prime Minister wrote that the UK “could only accept a final text that made it clear that issues like [...] defence and foreign policy remain the province of the nation state.”¹¹⁸ Once the Constitutional Treaty had been agreed, the Government stated that the text met its requirements on this front. The then Prime Minister wrote that the Constitutional Treaty did “not force us to [...] have our foreign policy dictated from Brussels.”¹¹⁹ Given that the Government had declared that the Constitutional Treaty met its foreign policy “red line”, the question arises as to why the Government later felt that further changes to the Constitutional Treaty provisions were necessary. On 19 June, immediately before publication of the German Presidency’s draft IGC mandate, the then Foreign Secretary told us that “what is now in the proposals for the common foreign and security policy is something that we want to look at.”¹²⁰ According to press reports, the Government sought changes to the foreign policy provisions which had been contained in the Constitutional Treaty beyond those which it in the end secured. In what the *Financial Times* called an “11th-hour attempt to water down plans for a stronger EU foreign policy”, the former Foreign Secretary Margaret Beckett reportedly “questioned the role and status of the proposed EU foreign minister and diplomatic service”.¹²¹

58. We asked Minister for Europe Jim Murphy why the Government had felt it necessary to secure further changes to a Treaty that it had agreed in 2004. He said:

in that period [...] there was a view that the solution to the disconnect—the lack of connection and affection for Europe—was simply about getting structures right and having a relatively maximalist approach to European structures. The referendums in the Netherlands and France put paid to that. They forced a rethink among politicians and the political class across Europe.”¹²²

59. Several of our witnesses said that the Government’s “red line” approach to the negotiation of foreign policy aspects of the new Treaty had been overly negative, and

116 As discussed in paragraphs 45-46 above.

117 Q 495 [Mr Miliband]

118 FCO, *A Constitutional Treaty for the EU: The British Approach to the European Union Intergovernmental Conference*, Cm 5934, September 2003, Preface

119 FCO, *White Paper on the Treaty establishing a Constitution for Europe*, CM 6309, September 2004, Preface

120 Q 159

121 “Union angry at UK’s foreign policy plans”, *Financial Times*, 19 June 2007; see also “A very British foreign policy coup”, *European Voice*, 26 July 2007. The renamed foreign minister post is considered in Chapter 5 and the “diplomatic service” in Chapter 6.

122 Q 266

damaging to the UK. Mr Avery said that the language of “red lines” “comes from the vocabulary of confrontation and demarcation, rather than co-operation, and [...] it has [not] improved the image of the United Kingdom as a partner in the European Union as a result.”¹²³ Professor Whitman told us that the way in which the Government had presented its foreign policy positions to its EU partners caused “some disquiet”,¹²⁴ while the former British diplomat Sir Peter Marshall told us that “drawing ‘red lines’ is an inadequate and atypical UK contribution to the Reform Treaty”.¹²⁵ Sir Peter went on to argue that the Government’s “role in the preparation of the Treaty was effectively reduced to a damage-limitation exercise of drawing red lines around what were judged to be key UK interests [...] [This] is a strategy which just leaves the field to others to get their way at your expense.”¹²⁶

60. The Foreign Secretary rejected the charge of negativity. He told us:

the Government have been clear and firm in setting out what we understand to be the national interest. I think that clarity is valued in the European Union, and people know where we stand on the treaty. That does not mean that people agree with us, but they understand our position: the fact that we have stuck to it is respected.¹²⁷

61. The Foreign Secretary referred to three sets of ideas to explain the Government’s approach in the 2007 IGC. He set out an argument on grounds of principle against further “Communitarisation”, including as regards foreign policy, stating that:

the site of legitimacy for citizens is the nation [...] It is [...] to the nation state that people owe and commit a significant part of their sense of identity. I think that any attempt to produce foreign policy that negates that sense of identity would be quite dangerous because it would corrode the sense of legitimacy.¹²⁸

The Foreign Secretary added that “keeping a national foreign policy is important in getting the right blend of legitimacy and efficiency”.¹²⁹

62. The Foreign Secretary was in any case—and secondly—sceptical about the ability of institutional change alone to produce greater “efficiency”. He told us that he would be “wary of believing that there are administrative [...] mechanical reforms that got us out of the fact that different countries and different people disagree about foreign policy ends and goals.”¹³⁰ The Foreign Secretary noted: “What fundamentally decides whether the European Union has a foreign policy on Kosovo is whether you can reach agreement among the 27 Members.”¹³¹

123 Q 449

124 Q 449

125 Ev 141

126 Ev 141

127 Q 497

128 Q 513. The Foreign Secretary made similar points in his Bruges speech of 15 November 2007; text via www.fco.gov.uk

129 Q 513

130 Q 513

131 Q 377

63. The limitations of institutional change alone was a theme picked up by several of our witnesses. Professor Hill told us that:

institutional change has too often been a substitute for change at the level of policy and a willingness to grasp the nettle of difficult decisions on high politics and international relations. Whenever there is a problem in European Union foreign policy, the instinct is to say, ‘Let’s invent some new procedure’.¹³²

Professor Whitman agreed that “historically a lot of effort has gone into the procedure rather than the policy”,¹³³ and Lord Owen reported that, in his experience, the EU spent too much time on “institutional development and press relations”, whereas the best way to strengthen EU foreign policy was “practical success on the ground”.¹³⁴

64. The Foreign Secretary’s scepticism about the value of institutional change alone extended beyond the foreign policy sphere to the EU in general. Both he and his predecessor cited to us the agreements on climate change targets reached by the European Council in March 2007¹³⁵ as examples of the way in which the EU could function well even with its existing institutional structures, without further Treaty reform.¹³⁶ Mr Miliband told us that the EU’s actions on this front “have done more to show the relevance of the European Union than any amount of institutional tinkering.”¹³⁷ In June, Mrs Beckett referred to what she called “comments from various quarters that if the European Union cannot get an agreement [on Treaty reform], there will be a huge crisis and [...] the EU will no longer be able to function”. The former Foreign Secretary told us that in fact “the last few months have shown that that is not actually so. The EU is functioning and has, indeed, reached some quite far-reaching decisions”.¹³⁸ Professor Whitman provided support for this view, telling us that he thought “the CFSP could carry on working quite happily without the changes that are in [the Lisbon] Treaty.”¹³⁹

65. In their evidence to us, and in their public statements in other forums, the Foreign Secretary and other Ministers have often appeared to place little emphasis on the significance of the institutional changes made by the Lisbon Treaty, preferring to argue instead—and thirdly—that the value of the new Treaty lies primarily in the fact that it brings to a close the EU’s institutional reform process and, in the Government’s view, allows the EU to “move on”. What the Government wants to see the EU “move on” to is the “delivery agenda” of policy issues which it outlined during the UK EU Presidency in 2005,¹⁴⁰ and which it has continued to take forward with the publication of the paper

132 Q 416

133 Q 417

134 Q 459

135 Brussels European Council, Presidency Conclusions, 8-9 March 2007, via www.consilium.europa.eu

136 Q 106 [Mrs Beckett], Q 498 [Mr Miliband]

137 Q 498

138 Q 106

139 Q 419

140 Q 167 [Mrs Beckett], Q 250 [Mr Murphy], Q 498 [Mr Miliband]; see “Statement of informal meeting of EU Heads of State or Government - Hampton Court, 27 October 2005”, via www.number10.gov.uk/output/Page8475.asp

“Global Europe” by the Prime Minister and the Foreign Secretary in October 2007,¹⁴¹ and the initiation of the “Declaration on Globalisation” which the European Council made in December 2007.¹⁴² The Foreign Secretary told us that “the critical point about the Reform Treaty is that it brings to an end six or seven years of institutional obsession and allows us to get on and tackle issues”.¹⁴³ While the Foreign Secretary was quick to add that “it is a twofold thing. There are good things in the Treaty, and it says ‘enough is enough, let’s get on with the real business’”,¹⁴⁴ the latter consideration has come over more strongly in Ministers’ evidence to us as regards foreign policy aspects of the Treaty.

66. The Foreign Secretary did not mention the specific new foreign policy institutions created by the Lisbon Treaty—namely, the new High Representative for Foreign Affairs and Security Policy, and the European External Action Service—in either his major speech on the EU in Bruges on 15 November 2007,¹⁴⁵ or his contribution to the debate on the Queen’s speech the same month.¹⁴⁶ Although the Prime Minister referred to these new institutions in his statement to the House following the October European Council, he drew attention to the way in which the new Declaration 14 to the Lisbon Treaty said that they would not affect national foreign policies in any way,¹⁴⁷ while in their joint “Global Europe” paper the closest that the Prime Minister and Foreign Secretary came to mentioning the Lisbon Treaty’s foreign policy provisions was to note that “recent efforts to improve the effectiveness of Europe’s Foreign and Security Policy should continue”.¹⁴⁸ Giving evidence in December, the Foreign Secretary told us that “We have a responsibility to be as clear as possible about the reality.”¹⁴⁹

67. We conclude that the Government is correct to argue that political positions and political will among the Member States are more important than institutional changes in determining the quality of EU foreign policy. We are also sympathetic to the Government’s wish to see the end, for at least some years to come, of further EU institutional reform. However, we are concerned that the Government risks underestimating, and certainly is downplaying in public, the importance and potential of the new foreign policy institutions established by the Lisbon Treaty, namely the new High Representative and the European External Action Service. We recommend that the Government should publicly acknowledge the significance of the foreign policy aspects of the Lisbon Treaty.

141 Cabinet Office/FCO, “Global Europe: Meeting the Economic and Security Challenges”, October 2007, via www.fco.gov.uk

142 “EU Declaration on Globalisation”, Annex to Brussels European Council, Presidency Conclusions, 14 December 2007, via www.consilium.europa.eu

143 Q 498

144 Q 500

145 Text via www.fco.gov.uk

146 HC Deb, 12 November 2007, col 399

147 HC Deb, 22 October 2007, cols 19-22

148 Cabinet Office/FCO, “Global Europe: Meeting the Economic and Security Challenges”, October 2007, p 26, via www.fco.gov.uk

149 Q 550

4 Foreign policy in the Lisbon Treaty

68. This chapter sets out the way in which EU external action would be governed under the Lisbon Treaty. It first establishes where provisions on external action would be located in the EU's Treaty architecture, and refers to the connected issue of the EU's single legal personality. We then discuss the provisions which govern EU external action in general—that is, those which are intended to apply both to “Community” areas of policy and to the intergovernmental CFSP. We then consider each of these in turn, briefly referring to “Community” areas before examining the provisions on the CFSP in greater detail. We consider the Treaty's provisions on “enhanced co-operation”, which may apply to policy areas which include the CFSP. Finally, we discuss several provisions in the Treaty which do not fit fully into either the “Community” or CFSP areas: the “solidarity clause”, enlargement and neighbourhood policy.¹⁵⁰

External action in the Lisbon Treaty architecture

69. If the Lisbon Treaty comes into force, provisions on EU external action will continue to be found in two separate Treaties. This is a result of the abandonment of the idea—embodied in the Constitutional Treaty—of consolidating the EU's major Treaties into a single main Treaty for the EU.¹⁵¹ Under the Lisbon Treaty, in broad terms, provisions governing the “Community” elements of EU external action would be found in the Treaty on the Functioning of the European Union (TFEU), the renamed and amended Treaty establishing the European Community (TEC).¹⁵² Provisions governing the intergovernmental Common Foreign and Security Policy (CFSP), including the European Security and Defence Policy (ESDP), would continue to be found in the amended Treaty on European Union (TEU).¹⁵³ The splitting of EU external action provisions between two Treaties, and the broad division between “Community” elements in the TEC (or its successor) and intergovernmental ones in the TEU, would be the same as at present.

70. In the field of the EU's external action, the central declared aim of the current Treaty reform process has been to achieve greater coherence between the “Community” and the intergovernmental elements of policy.¹⁵⁴ In the Constitutional Treaty, this was attempted not only by bringing all the provisions governing EU external action together in a single Treaty, but also by introducing new text on the principles and objectives of EU external action. These latter were to apply both to “Community” policy-making and to the intergovernmental CFSP.¹⁵⁵ Under the Lisbon Treaty, the Constitutional Treaty chapter which set out principles and objectives for EU external action would be inserted into the

150 The figure in Annex 2 b) presents foreign policy structures and processes under the Lisbon Treaty, including institutional arrangements discussed in Chapters 5 and 6 as well as the present Chapter.

151 As discussed in Chapter 2 above.

152 Provisions on external action in the TFEU would be gathered into a Part Five.

153 On the ESDP, see Chapter 7. In the TEU as amended by the Lisbon Treaty, provisions on EU external action, including the CFSP and ESDP, would continue to be found in Title V, as at present. Annex 1 presents the arrangement of external action provisions under the Lisbon Treaty.

154 See Chapter 3 above.

155 Part III, Title V, Chapter 1, Article III-292

amended TEU. This would constitute a new chapter of the TEU, on “General provisions on the Union’s external action”.¹⁵⁶ The TEU would then deal in a following chapter with “Specific provisions on the Common Foreign and Security Policy”.¹⁵⁷ The part of the TEU which contains both chapters (Title V) would be renamed “General provisions on the Union’s external action and specific provisions on the Common Foreign and Security Policy”.¹⁵⁸ In the current TEU, by contrast, Title V deals only with the CFSP.

71. By virtue of the new chapter which it would insert into the Treaty on European Union, the Lisbon Treaty would seek to retain from the Constitutional Treaty the single set of principles and objectives governing all of the EU’s external action, despite the fact that the EU would continue to have two main Treaties, both of which would contain external action provisions. In proceeding in this way, the Lisbon Treaty would effectively establish a hierarchy between the EU’s two main Treaties in the external action field: the amended Treaty on European Union would set out principles and objectives which would apply both to the CFSP and to “Community” external action otherwise governed by the TFEU.¹⁵⁹ Annex 1 presents these arrangements. **We conclude that the insertion of principles and objectives for all EU external action into the Treaty on European Union is a sensible way of encouraging greater EU policy coherence while two main EU Treaties remain in place.**

72. The Government has suggested that the fact that the CFSP will continue to be governed by one Treaty, and “Community” areas of EU external action by another, offers a stronger demarcation of the CFSP than would have been available under the single Constitutional Treaty. Mr Murphy told us that the new Treaty “will leave us with two Treaties—including a separate Treaty governing CFSP”.¹⁶⁰ Similarly, Mr Miliband told us that “CFSP remains distinct from other policy areas, in a separate Treaty. In effect, we have retained it in a separate pillar.”¹⁶¹ Dr Solana acknowledged that the retention of two Treaties had been “important conceptually” for the UK.¹⁶² Dr Solana said that, under the Lisbon Treaty, “the second pillar and the autonomy within that [...] is maintained”.¹⁶³

73. In terms purely of the location of Treaty provisions, under the Lisbon Treaty arrangements for the retention of two main Treaties the CFSP is clearly governed more separately from “Community” areas of policy than it would have been in the single Constitutional Treaty. However, under the Lisbon Treaty, more provisions that are relevant to the CFSP appear to be included in the Treaty on the Functioning of the European Union (TFEU) than are at present included in its predecessor, the Treaty establishing the European Community (TEC). This appears partly to result from the

156 Article 1 24) of the Lisbon Treaty, inserting new Articles 10A and 10B TEU

157 Article 1 25) of the Lisbon Treaty

158 Article 1 23) of the Lisbon Treaty

159 Under Article 2 155) of the Lisbon Treaty, the TFEU would refer (in Part Five, Title I, Article 188A) to the principles and objectives for EU external action set out in the first chapter of Title V TEU. The arrangement of external action provisions under the Lisbon Treaty is shown in Annex I.

160 Ev 41

161 Ev 63

162 Q 616

163 Q 616

abolition of the European Community. When both the EC and the EU were in place, provisions governing international agreements and “enhanced cooperation” for the two distinct entities were placed in the two separate Treaties, the TEC governing the European Community and the TEU governing the European Union. Under the Lisbon Treaty, governing the now unified European Union, detailed provisions governing these two policy areas—including provisions relevant to the CFSP—are placed in the TFEU.¹⁶⁴ Furthermore, the new “solidarity clause” is placed in the TFEU, despite the fact that it has CFSP relevance.¹⁶⁵ Detailed provisions on the imposition of sanctions under the CFSP continue to be found in the TFEU, as they are currently in the TEC.¹⁶⁶

74. Lord Owen was concerned for different reasons that the EU’s intergovernmental elements might no longer be sufficiently ring-fenced under the Lisbon Treaty. He told us that the Lisbon Treaty “dismantles the intergovernmental pillars” and is therefore a “massive step towards further integration.”¹⁶⁷ Lord Owen was also concerned that the movement of remaining areas of justice and home affairs to the “Community” method might impinge on the CFSP, because he contended that it is no longer possible to keep anti-terrorism issues separate from foreign policy.¹⁶⁸ Lord Owen urged that the Government’s Bill giving effect to the Lisbon Treaty should make it “clear at least in UK legislation that [the CFSP] retains its separate legal character.”¹⁶⁹

Single legal personality

75. The Lisbon Treaty would give the EU legal personality.¹⁷⁰ Hitherto, the EC has had this attribute, but not the EU. The attribution of legal personality to the EU is a concomitant of the abolition of the EC. It is a provision previously found in the Constitutional Treaty.¹⁷¹

76. Open Europe told us that the attribution of legal personality to the EU “would be a huge transfer of power and make the EU look more like a country than an international agreement.”¹⁷² However, Open Europe did not elaborate on this assertion.

77. At present, the EU has a degree of “functional” legal personality to conclude international agreements.¹⁷³ This legal personality is made more general by the new provision introduced by the Lisbon Treaty, but the new provision does not by itself make the Union’s legal capacity the same as that of a state. Under the Lisbon Treaty, it will

164 On international agreements, Article 2 171) of the Lisbon Treaty, inserting Article 188L of the TFEU; on enhanced cooperation, Article 2 278) of the Lisbon Treaty, inserting Articles 280A to 280I of the TFEU.

165 Article 2 176) of the Lisbon Treaty, inserting Article 188R of the TFEU. The “solidarity clause” is discussed in paragraphs 122-125 below.

166 Article 2 169) of the Lisbon Treaty, inserting Article 188K of the TFEU

167 Ev 104

168 Q 467

169 Ev 106

170 Article 1 55) of the Lisbon Treaty, inserting Article 46A TEU

171 Article I-7

172 Ev 150

173 Under Articles 24 and 38 TEU.

remain the case that the EU will be able to conclude international agreements only within the scope of the powers conferred on it by the Member States.¹⁷⁴

78. Dr Solana told us that he thought the EU's acquisition of legal personality was "not a minor issue", but that it was "important politically more than legally".¹⁷⁵ Dr Solana thought that it would be easier for third countries to understand the EU without the complication of dealing with, and sometimes signing agreements with, different entities.¹⁷⁶

General external action provisions

79. Under the Lisbon Treaty, the principles and objectives for EU external action which would be inserted into the TEU¹⁷⁷ are largely ones which are already contained separately in the existing TEU and TEC. As already noted, the list of principles and objectives would also have appeared in the Constitutional Treaty.¹⁷⁸

80. On the basis of these stated principles and objectives, the Lisbon Treaty would charge the European Council—the body of EU heads of state or government—with determining "the strategic interests and objectives of the Union" for all the EU's external action. Such determinations "may concern the relations of the Union with a specific country or region or may be thematic in approach." They would apply for a specified duration, which could presumably be prolonged. They would require unanimity. However, such "strategic" determinations by the European Council would take place on the basis of proposals from the Council of Ministers which would for their part be adopted according to the voting procedure applicable to the policy area in question—that is, by qualified majority in "Community" areas of policy.¹⁷⁹

81. The European Council's ability to make determinations of "strategic interests and objectives" for all of the EU's external action represents a change from the current Treaties. Under the current TEU, the European Council may make such "strategic" decisions only for the CFSP.¹⁸⁰ The expanded remit for the European Council contained in the Lisbon Treaty is taken over from the Constitutional Treaty.¹⁸¹ Through this provision, the Lisbon Treaty would insert a unanimity requirement at European Council level into areas of external action otherwise governed by the "Community" method. As any proposal for a "strategic" decision would have to come from the Council of Ministers, the European Council would probably be asked to make such a determination only where the Member States were united in any case (because, in policy areas governed by qualified majority voting, Member States in a majority in the Council of Ministers could prevent a proposal from going forward to the European Council if they feared it might there be rejected). The European Council also already issues conclusions and declarations—including on matters

174 On this point see also Declaration 24 concerning the legal personality of the European Union

175 Q 624

176 Q 624

177 Under Article 1 24) of the Lisbon Treaty, inserting Article 10A TEU, as discussed in paragraphs 70-71 above.

178 Part III, Title V, Chapter 1, Article III-292

179 Article 1 24) of the Lisbon Treaty, inserting Article 10B TEU

180 Article 13 TEU

181 Article III-293

which fall under “Community” competence—which, while they have no legal force, can help to shape the direction of policy.¹⁸² **We conclude that the European Council’s new ability under the Lisbon Treaty formally to determine “strategic interests and objectives” for all areas of EU external action represents a symbolically important assertion of Member State authority over “Community” policy areas, although it remains to be seen whether this will have any significant impact in practice.**

82. The Lisbon Treaty would make the European Council into an official institution of the European Union for the first time. As such, the European Council would have the duty to practise “mutual sincere cooperation” with the other official EU institutions, according to a provision which does not mention the Member States.¹⁸³

83. Under the Lisbon Treaty, the section of the amended TEU which would give the European Council authority to make “strategic” determinations for EU external action, as described above, on the basis of proposals from the Council of Ministers, would contain the following provision:

The High Representative of the Union for Foreign Affairs and Security Policy, for the area of common foreign and security policy, and the Commission, for other areas of external action, may submit joint proposals to the Council.¹⁸⁴

This provision appears to facilitate the joint working between the High Representative and the Commission which is implicit in the practice of “mutual sincere cooperation”. We welcome this. However, a subsequent provision of the Lisbon Treaty, relating to the TEU chapter dealing specifically with the CFSP, explicitly excludes the Commission on its own from making CFSP proposals to the Council of Ministers, and does not mention the possibility of “joint” Commission and High Representative proposals, only the possibility of the High Representative making proposals with Commission support.¹⁸⁵ The unclear wording is taken over directly from the Constitutional Treaty.¹⁸⁶

84. We conclude that the section of the amended Treaty on European Union giving authority to the European Council to make strategic determinations for EU external action is unnecessarily ambiguous and should be clarified by the Government in its response to this Report.

Simplified Treaty revision procedure

85. The Lisbon Treaty provides for a “simplified Treaty revision procedure”.¹⁸⁷ The procedure is taken over from the Constitutional Treaty¹⁸⁸ and does not exist under the

182 The “Declaration on Globalisation” adopted by the European Council at its meeting on 14 December 2007 is an example; see Brussels European Council, Presidency Conclusions, 14 December 2007, via www.consilium.europa.eu. On the nature of European Council conclusions, see the European Scrutiny Committee’s ongoing Inquiry into this topic, via www.parliament.uk/parliamentary_committees/european_scrutiny.cfm

183 Article 1 14) of the Lisbon Treaty, amending Article 9 TEU

184 Article 1 24) of the Lisbon Treaty, inserting Article 10B TEU

185 Article 1 33) of the Lisbon Treaty, amending Article 22 to become Article 15a TEU. This change is discussed further in paragraph 97 below.

186 Article III-293

187 Article 1 56) of the Lisbon Treaty, amending Article 48 TEU

current Treaties. Under the part of the simplified Treaty revision procedure which applies to the external action part (Title V) of the amended TEU, for an area in which Title V provides for the Council of Ministers to act by unanimity, “the European Council may adopt a decision authorising the Council to act by a qualified majority in that area”.¹⁸⁹ The European Council would have to make any such decision by unanimity. Decisions in the defence field or with military implications could not be moved to qualified majority voting (QMV) in this way. For Title V items, the European Parliament would have to consent to this form of Treaty revision. In addition, any national Parliament could block the Treaty revision by making known its opposition within six months.

86. Lord Owen urged the Government to incorporate in its Bill giving effect to the Lisbon Treaty in the UK a “Parliamentary braking mechanism” across “all the most sensitive political questions that concern the British people”. These would include any extension of QMV or of ECJ jurisdiction over the CFSP.¹⁹⁰

87. On his return from the informal European Council in Lisbon in October, the Prime Minister told the House that “we will make a provision in the Bill that any proposal to activate the mechanisms in the Treaty that provide for further moves to QMV, but which require unanimity of member states, will have to be subject to a prior vote by this House.”¹⁹¹ The European Union (Amendment) Bill, as published, contains a provision that a Minister may not support a decision adopting qualified majority voting under the simplified Treaty revision procedure without Parliamentary approval, which is defined as the agreement without amendment by each House of Parliament to a Government motion that that House “approves Her Majesty’s Government’s intention to support the adoption of a specified draft decision”.¹⁹² The Bill also provides that an approval motion brought before the House may include provision dispensing with the need for a further motion in respect of “any later draft decision”, as long as a Minister certifies that the decision in question is “an amended version of” the original draft decision.¹⁹³

88. We welcome the Bill’s provisions giving Parliament the right to accept or reject individual proposals to extend qualified majority voting. However, we are concerned at the implications of the provisions whereby Parliament could be invited to set aside this right in respect of “any later draft decision”, as long as a Minister certifies that the decision in question is an amended version of the original decision. We see nothing on the face of the Bill that would preclude this power being invoked in circumstances where the “amended version” of the draft decision contains further transfers to qualified majority voting not found in the original decision. If this were to be the case, transfers to qualified majority voting might take place without specific Parliamentary approval. This could represent a breach of the undertaking given by the Prime Minister. We recommend that further consideration be given to procedures which would allow Parliament to decide separately on “amended versions” of initial draft

188 Article IV-444

189 Article 1 56) of the Lisbon Treaty, amending Article 48 TEU

190 Ev 106; see also Qq 464-465 [Lord Owen]

191 HC Deb, 22 October 2007, cols 19-22

192 European Union (Amendment) Bill, Clause No. 6 (2)

193 Ibid., Clause No. 6 (3)

decisions to transfer items to qualified majority voting. We further recommend that all amendments to the Treaty, including extensions of qualified majority voting, should be done by primary legislation and not simply by a vote of the House.

“Community” areas of EU external action

89. Under the Lisbon Treaty, the “Community” areas of EU external action would continue to comprise trade, development assistance and other types of co-operation with third countries. Measures on humanitarian aid and on the provision of urgent macrofinancial assistance would become subject to qualified majority voting for the first time.¹⁹⁴ The EU would also gain the right to legislate by qualified majority on measures “establishing the co-ordination and co-operation measures necessary to facilitate” the diplomatic and consular protection of Member State citizens by Member States other than their own, in third countries where the relevant citizens’ own Member State has no representation.¹⁹⁵

90. Open Europe told us that the movement of civil protection policies to qualified majority voting under the Lisbon Treaty should also be seen as an incursion of QMV into foreign policy-related areas.¹⁹⁶

Common Foreign and Security Policy

General CFSP provisions

91. The Lisbon Treaty introduces four substantive changes of wording in relation to general provisions on the nature of the CFSP, compared to the existing TEU. First, under the Lisbon Treaty, the CFSP would be based on—among other things—“the achievement of an ever-increasing degree of convergence of Member States’ actions.”¹⁹⁷ Second, the Treaty would oblige Member States to “comply with the Union’s action” in the area of the CFSP.¹⁹⁸ Third, the aim of consultation among Member States would become that of “determining a common approach”.¹⁹⁹ Fourth, the Treaty would insert new text stating that:

Before undertaking any action on the international scene or entering into any commitment which could affect the Union’s interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

194 Article 2 (167) and (168) of the Lisbon Treaty, inserting Articles 188I and 188J of the TFEU; Ev 145 [Mr Donnelly], Ev 149 [Open Europe]

195 Article 2 (36) of the Lisbon Treaty, amending Article 20 TEC/TFEU. This change is referred to further in paragraph 201 in Chapter 6 below.

196 Ev 150

197 Article 1 (27) of the Lisbon Treaty, amending Article 11 TEU

198 Article 1 (27) of the Lisbon Treaty, amending Article 11 TEU

199 Article 1 (35) of the Lisbon Treaty, amending Article 16 TEU

[...] The diplomatic missions of the Member States and the delegations of the Union in third countries and at international organisations shall co-operate and shall contribute to formulating and implementing the common approach.²⁰⁰

These four sections of text were all included in the Constitutional Treaty.²⁰¹ Open Europe told us that the fourth of the new pieces of text, dealing with consultation among Member States, “has the potential to significantly restrict the freedom of the UK Government in implementing foreign policy it deems appropriate, by subjecting it to evaluation and approval [by] other EU Member States.”²⁰²

92. An FCO legal adviser pointed out that the existing TEU contains language referring to “convergent action” by the Member States in the CFSP.²⁰³ The adviser also said that general language on the CFSP had to be “applied within the framework of decision making of the Common Foreign and Security Policy. It does not undermine the unanimity checks elsewhere.”²⁰⁴ The Foreign Secretary agreed that Member States were only obliged to pursue positions that they had already agreed, by unanimity.²⁰⁵ However, we note that the existing Treaty reference to “convergent action” by the Member States occurs in the context of an Article specifically on consultation among them. Under the Lisbon Treaty, the reference to an “ever-increasing degree of convergence of Member States’ actions” occurs outside the context of Member State consultations, as part of the description of the CFSP in general.

93. Professors Hill and Whitman reminded us that, however strong its common obligations may appear to be, there are no formal enforcement mechanisms in the CFSP as there are in “Community” areas of policy.²⁰⁶ The ECJ has no powers to bring rulings against Member States which may violate CFSP acts.²⁰⁷ Under the Lisbon Treaty, the Council would continue to have responsibility for ensuring “compliance” with the principle that, in the CFSP, Member States “shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.”²⁰⁸ The Lisbon Treaty would make this a shared responsibility with the new High Representative.²⁰⁹ However, neither the Council nor the High Representative can sanction Member States in any formal way.

94. The general provisions on the CFSP in the main body of the Lisbon Treaty are supplemented by the two Declarations on the policy which were secured by the UK. These state that the CFSP will not affect Member States’ exercise of their national foreign policy

200 Article 1 35) of the Lisbon Treaty, amending Article 16 TEU

201 Respectively: Article I-40; Article I-16; Article I-40; and Article I-40 and III-301

202 Ev 152

203 Qq 573-578, referring to Article 16 TEU

204 Q 573

205 Q 571

206 Q 429 [Professor Hill]; Ev 82 [Professor Whitman]

207 The role of the ECJ in the CFSP is considered further below.

208 Article 11 TEU

209 Article 1 27) of the Lisbon Treaty, amending Article 11 TEU. The new High Representative position is discussed in Chapter 5 below.

rights and responsibilities.²¹⁰ The Government acknowledged that, like other Declarations to EU Treaties, the Declarations on the CFSP are not law.²¹¹ However, the Foreign Secretary told us that the Declarations are “worth having because they set out the views of Heads of State about the way in which CFSP should work.”²¹² The Minister for Europe told us that the Declarations “will be taken into account in the interpretation and application of the Treaty itself.”²¹³ Professor Whitman said that the Declarations were “reiterations of principles that have underpinned the common foreign and security policy over time”,²¹⁴ while Professor Hill said that the Declarations set out, “as it were, the default position”.²¹⁵

95. At present, the TEU provides for a formal system of differentiated CFSP instruments, consisting of “common strategies”, “joint actions” and “common positions”. Professor Hill told us that the system was “ludicrously elaborate” and “a nonsense”.²¹⁶ The Lisbon Treaty would effectively allow for the adoption of the same types of instruments, but it would do away with the formal linguistic differentiation, converting all CFSP acts into simple “decisions”.²¹⁷ **We conclude that the simplification of the nomenclature for Common Foreign and Security Policy decisions introduced by the Lisbon Treaty represents an improvement on the current situation.**

CFSP decision-making

96. Under the Lisbon Treaty, the European Council—of heads of state or government—would “determine the objectives of and define general guidelines for” the CFSP.²¹⁸ The Foreign Affairs Council of Ministers would “take the decisions necessary for defining and implementing” the CFSP.²¹⁹ Both the European Council and the Council of Ministers would act by unanimity except where specifically provided otherwise.²²⁰ The roles of the European Council and Council of Ministers, and the norm of unanimity, would be unchanged from the current Treaties.

97. The European Commission currently has a so-called “right of initiative” to refer CFSP matters to the Council and to make CFSP-related proposals.²²¹ Under the Lisbon Treaty, the Commission as a body would lose this right, which would pass to the new High Representative for Foreign Affairs and Security Policy, who would be Commission Vice-

210 Declarations 13 and 14. We referred to these in Chapter 3 above in the context of the Government’s foreign policy “red line”. The full text of the Declarations is at Ev 69.

211 Q 277 [Mr Murphy]

212 Q 358

213 Ev 20

214 Q 449

215 Q 428

216 Q 428

217 Article 1 28) of the Lisbon Treaty amending Article 12 TEU; Article 1 31) of the Lisbon Treaty, amending Article 14 TEU; Article 1 32) of the Lisbon Treaty, amending Article 15 TEU

218 Article 1 29) of the Lisbon Treaty, amending Article 13 TEU

219 Article 1 29) of the Lisbon Treaty, amending Article 13 TEU

220 Article 1 34) of the Lisbon Treaty, amending Article 23 to become Article 15b TEU; on qualified majority voting, see paragraphs 100-105 below.

221 Article 22 TEU

President.²²² Member States would retain their existing right to submit CFSP proposals. **We conclude that the Commission’s loss of the right to make Common Foreign and Security Policy proposals is welcome because it represents an important assertion of the intergovernmental nature of the Common Foreign and Security Policy.**

98. Under the Lisbon Treaty, Member States in the Council of Ministers would retain their existing option of “constructive abstention” in respect of both unanimous and qualified majority decisions in the CFSP. Simple abstention cannot block a Council CFSP decision. However, a Member State planning to abstain may exercise its right to “constructive abstention” by making a formal declaration. Having done so, the Member State in question would be expected to accept that the relevant CFSP decision “commits the Union”, but it would not be obliged to apply the decision itself.²²³ Under the existing TEU, if the group of “constructive abstainers” were to represent one-third of Council votes, the Council would not adopt the decision in question.²²⁴ Under the Lisbon Treaty, the group of “constructive abstainers” needed to block a decision must represent one-third of the Member States, representing one-third of the EU population.²²⁵

99. Professor Whitman told us that, in practice, QMV is “not used very much”.²²⁶ Similarly, Mr Donnelly told us that:

Experience has shown that national ministers prefer, even when majority voting is theoretically available as a decision-making procedure to proceed by consensus, with the possibility of majority voting acting essentially as a spur to compromise by minorities [...] It is difficult to believe that a large member state such as the United Kingdom in particular will often, if ever, find itself bound by majority decisions which it finds seriously damaging or unacceptable to itself.²²⁷

Discussing this point, Dr Solana used the example of the Council’s ability under the existing CFSP provisions to appoint EU Special Representatives by qualified majority vote. Dr Solana said:

Let us suppose that [...] the decision can be taken today with no need for unanimity. That would make things more efficient, but it would be stupid to make such a nomination with the opposition of, let us say, the United Kingdom [...] the possibility formally exists already, but it is not used.²²⁸

Qualified majority voting

100. Under the Lisbon Treaty, the main passage of the TEU which relates to CFSP voting would list, as exceptions to the normal unanimity rule, four types of CFSP decision which

222 Article 1 33) of the Lisbon Treaty, amending Article 22 to become Article 15a TEU. The new High Representative position is considered in Chapter 5 below.

223 Article 23 TEU

224 Article 23 TEU

225 Article 1 34) of the Lisbon Treaty, amending Article 23 TEU to become Article 15b TEU

226 Q 452

227 Ev 145

228 Q 623

the Council of Ministers would take by qualified majority. The Council would decide by qualified majority where a decision would:

- define an action or position on the basis of a European Council decision regarding the Union’s strategic interests or objectives;
- define an action or position on the basis of a proposal made by the High Representative “following a specific request from the European Council, made on its own initiative or that of the High Representative”;
- implement a decision defining an action or position; or
- appoint an EU special representative.²²⁹

The Lisbon Treaty would retain the existing ban on CFSP decisions with military or defence implications being taken by qualified majority vote.²³⁰

101. Of the four types of CFSP decision which would be taken by QMV under the Lisbon Treaty, three are provided for by the existing TEU.²³¹ The one innovation would be qualified majority voting on proposals made by the High Representative. This provision, which was introduced in the Constitutional Treaty,²³² has excited considerable comment. Open Europe told us that as a result of this provision, “EU states could [unanimously] ask the Foreign Minister to come up with a plan but then, if individual states such as the UK don’t agree with what he/she comes back with, could find themselves in a majority voting situation.”²³³ Lord Owen told us that, in light of the provision for QMV on proposals from the High Representative, “to argue that there is always a veto is wrong”.²³⁴

102. The Foreign Secretary denied that the new provision on proposals made by the High Representative altered the existing dominance of unanimity in the CFSP. He insisted that “it remains the case that implementation of an agreed policy can be done by qualified majority voting, but the policy is set by unanimity.”²³⁵ He added: “the distinction is between agreeing the policy and implementing it. That is unchanged by this;”²³⁶ and again, “QMV is triggered only once there has been unanimous agreement to do something”.²³⁷

103. The key issue in the dispute over the significance of the new majority voting case appears to be whether CFSP “actions” and “positions” are by definition “implementing” measures. If decisions defining CFSP “actions” and “positions” are by definition “implementing” decisions, the Government’s position would appear to be sustained, since it is decisions defining CFSP “actions” and “positions” for which the High Representative

229 Article 1 34) of the Lisbon Treaty, amending Article 23 TEU to become Article 15b TEU

230 Article 1 34) of the Lisbon Treaty, amending Article 23 TEU to become Article 15b TEU

231 Article 23 TEU

232 Article III-300

233 Ev 147

234 Q 463

235 Q 520

236 Q 522

237 Q 524

will be able to make proposals to be subject to QMV. However, at present, the decisions defining CFSP “actions” and “positions” which may be taken by QMV must be taken on the basis of a prior strategy determined by the European Council by unanimity. If it is this feature that makes the relevant decisions “implementing” ones, the Government’s position would appear to be undermined. Under the Lisbon Treaty, the High Representative can make proposals defining CFSP “actions” and “positions”, to be subject to QMV, without there being a prior strategic decision by unanimity in the European Council; there needs only to have been a “specific request from the European Council”. In this context, the nature of a “specific request” from the European Council, and in particular the degree of detail any such request might include, is not clear.

104. Dr Solana told us that the Lisbon Treaty provision allowing the new High Representative to make proposals which could be approved by QMV was “nothing new”,²³⁸ and that he did not think that the provision was significant.²³⁹ Dr Solana said that the High Representative could “be tasked to propose something on a particular occasion, but the basic definition will not be decided on the basis of majority voting.”²⁴⁰

105. We conclude that greater clarity would have been helpful in the Lisbon Treaty wording on the Council of Ministers’ new ability to vote by qualified majority on proposals from the High Representative.

106. We set out in the following paragraphs some further decisions relevant to the CFSP which may be taken by qualified majority voting.

107. Apart from the types of CFSP decision which are listed in the main TEU chapter on the CFSP as exceptions to the unanimity rule, the Lisbon Treaty would provide that decisions adopting measures to implement sanctions under the CFSP would also be taken by qualified majority, once an initial decision had been taken by unanimity in favour of sanctions in principle. Such sanctions might be against third countries, or individuals or non-state entities. The proposal for the specific measures to implement sanctions would be made jointly by the High Representative and the European Commission.²⁴¹ The ECJ may review the legality of decisions taken under the CFSP implementing sanctions against individuals or non-state entities.²⁴² Under these circumstances, while CFSP decisions to implement sanctions in principle are taken by unanimity, the implementation of sanctions may be seen as to a considerable extent “Communitarised”. Many of the relevant policy areas, such as trade and financial regulation, fall under “Community” competence. As already noted, under the Lisbon Treaty the provisions governing the implementation of sanctions under the CFSP would be found in the TFEU—just as, at present, the sanctions article is found in the TEC.²⁴³ Lord Owen was of the view that sanctions constituted “yet

238 Q 622

239 Q 623

240 Q 623

241 Article 2 169) of the Lisbon Treaty, inserting Article 188K TFEU to replace Article 301 TEC

242 Article 2 223) of the Lisbon Treaty, inserting Article 240a TFEU. The role of the ECJ is discussed further below.

243 At present, the sanctions article is Article 301 TEC. Under Article 2 169) of the Lisbon Treaty, this is replaced by Article 188K TFEU.

another area where there would be creep [...] if you start getting into this, there is the rationale of why you have applied sanctions, which are usually foreign policy actions”.²⁴⁴

108. The Lisbon Treaty contains a “solidarity clause”, which would oblige Member States to offer mutual assistance on terrorism and natural disasters.²⁴⁵ We give more details about this in paragraphs 122-125 below. The “solidarity clause” is not formally part of the CFSP. However, its implementation may involve or have implications for the CFSP. The “solidarity clause” would be an innovation taken over from the Constitutional Treaty.²⁴⁶ Any decision on its implementation would be taken by qualified majority, except where such a decision had defence implications. The proposal on the implementation of the “solidarity clause” would be made jointly by the High Representative and the European Commission.²⁴⁷

109. Under the Lisbon Treaty, the High Representative for Foreign Affairs and Security Policy, who shall “conduct the Union’s foreign and security policy”,²⁴⁸ would be appointed by qualified majority vote in the European Council.²⁴⁹

“Emergency brake”

110. The Lisbon Treaty would retain the “emergency brake” mechanism for CFSP decisions taken by qualified majority in the Council. Under this provision, any Member State may block the taking of a qualified majority vote in the CFSP by formally declaring its opposition and giving reasons of national policy. The Lisbon Treaty would toughen the requirement for triggering the “emergency brake”, demanding that the Member State in question have “vital” reasons of national policy at stake, rather than “important” ones as under the current TEU. The Lisbon Treaty would also insert a requirement that the High Representative “search for a solution” in a situation where a Member State has applied the “emergency brake”. However, in the event that this effort were to fail, under the Lisbon Treaty the Council would continue to have the opportunity to request, by qualified majority, that the matter be referred to the European Council for unanimous decision.²⁵⁰

“Passerelle clause”

111. Under a so-called “passerelle clause”, the Lisbon Treaty would allow the European Council to add to the list given in the TEU’s main CFSP chapter of CFSP decisions taken by qualified majority. The European Council would take any such decision by unanimity, and could not move CFSP decisions with military or defence implications to QMV under

244 Q 477

245 Article 2 176) of the Lisbon Treaty, inserting Article 188R TFEU

246 Articles 1-43 and III-329

247 Article 2 176) of the Lisbon Treaty, inserting Article 188R TFEU

248 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU. The new High Representative position is discussed in Chapter 5 below.

249 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU. The new High Representative position is discussed in Chapter 5 below.

250 Article 1 34) of the Lisbon Treaty, amending Article 23 TEU to become Article 15b TEU

this procedure.²⁵¹ The CFSP “passerelle” clause would be new compared to the current Treaties, and would be taken over from the Constitutional Treaty.²⁵²

112. In contrast to the simplified Treaty revision procedure, which would also allow the European Council to move non-defence CFSP decisions from unanimity to QMV,²⁵³ the CFSP “passerelle” would not involve national Parliaments or the European Parliament. However, as noted above, the Prime Minister told the House that the Government would provide for prior parliamentary approval of any new move to QMV.²⁵⁴ The Foreign Secretary confirmed to us that this would apply to any extension of QMV under the CFSP passerelle,²⁵⁵ and the Government’s Bill lists the CFSP passerelle as among the items which would attract a Parliamentary decision.²⁵⁶ **We conclude that the Government’s confirmation that any movement of further Common Foreign and Security Policy decisions from unanimity to qualified majority voting under the “passerelle” procedure would be subject to a prior vote in Parliament, even where the Lisbon Treaty itself does not provide for national Parliamentary involvement, is welcome, although we recommend elsewhere that all Treaty changes are the subject of primary legislation. However, our concerns remain about the possible use of the provision in the Government Bill which would allow “amended versions” of decisions moving items from unanimity to qualified majority voting to avoid a separate Parliamentary vote.**

Article 308

113. Article 308 of the current TEC allows the Council to take action, by unanimity, where the Treaties have not explicitly authorised it to do so, if such action “proves necessary to attain” an official Treaty-based objective. Under the current TEC, Article 308 by definition applies only to the European Community. The Lisbon Treaty would extend the applicability of Article 308 to the Union as a whole. However, the Lisbon Treaty would also add a provision that Article 308 “cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy”.²⁵⁷

ECJ role

114. According to the Lisbon Treaty, the ECJ has jurisdiction over the CFSP in two areas.²⁵⁸ These are:

- the legality of CFSP decisions imposing sanctions on individuals or non-state entities; and

251 Article 1 34) of the Lisbon Treaty, amending Article 23 TEU to become Article 15b TEU

252 Article III-300

253 The simplified Treaty revision procedure was discussed at paragraphs 85-88 above.

254 HC Deb, 22 October 2007, cols 19-22; see paragraphs 87-88 above.

255 Q 533

256 Clause No. 6(1)c

257 Article 2 289) of the Lisbon Treaty, amending Article 308 TEC/TFEU; on Article 308, see European Scrutiny Committee, Twenty-ninth Report of Session 2006-07, *Article 308 of the EC Treaty*, HC 41-xxlx

258 Article 2 223) of the Lisbon Treaty, inserting Article 240a TFEU

- compliance with the requirement that implementation of the CFSP shall not affect “Community” procedures and competences, and that implementation of “Community” policies shall not affect procedures and competences laid down for the CFSP. Effectively, the ECJ has authority to police the boundary between the CFSP and “Community” areas.²⁵⁹

ECJ jurisdiction in both these areas is already provided for in the existing TEC,²⁶⁰ although the Lisbon Treaty would additionally allow individuals to appeal to the ECJ to seek review of a CFSP decision listing them as a target for sanctions.²⁶¹

CFSP decision-making: overall assessment

115. As regards unanimity in the CFSP, Open Europe told us that the government’s claim that unanimity will remain the norm represents “an extraordinary distortion of the facts”.²⁶² However, Mr Donnelly said that “unanimity will remain for the foreseeable future the predominant form of decision-making within the Council” on CFSP.²⁶³ For his part, Dr Solana told us that, in foreign and security policy, “all the decisions will be taken by unanimity”.²⁶⁴

116. As regards the CFSP overall, our witnesses felt that the Lisbon Treaty would preserve its distinctive character. Mr Avery told us that “one thing that does not change in the Treaty is that there is still a clear difference at the decision-making level in the Council between the first pillar and the second—the Community mode and the intergovernmental mode. The Reform Treaty does not change that aspect.”²⁶⁵ Professor Whitman likewise told us that “the underlying principle of a distinctive decision-making regime for the [CFSP/EDSP] is retained” in the Lisbon Treaty.²⁶⁶ “The CFSP/EDSP remains a distinctive ‘pillar’ in that the role of the Commission, European Court of Justice and European Parliament are very heavily circumscribed”, Professor Whitman told us.²⁶⁷ He concluded that “the essential quality of the CFSP in terms of its ‘intergovernmentalness’, if we can call it that, remains unchanged.”²⁶⁸ Mr Donnelly told us that “at present and probably for the foreseeable future the CFSP will remain exceptional in its decision-making structures within the European Union.”²⁶⁹ He went on:

259 The Article prescribing “non-interference” between “Community” and CFSP areas is Article 25b of the TEU, as provided for by Article 1 45) of the Lisbon Treaty. This Article was referred to in Chapter 3 above in the context of the Government’s foreign policy “red line”.

260 On sanctions, in modified form under Article 230 TEC; on the “boundaries” issue, in modified form under Article 47 TEU

261 Article 2 214) of the Lisbon Treaty, amending Article 230 TEC/TFEU; Ev 70 [Foreign Secretary], Ev 80 [Foreign Secretary]

262 Ev 149

263 Ev 144

264 Q 616

265 Q 413

266 Ev 83

267 Ev 83

268 Q 413

269 Ev 146

For better or worse, the [Lisbon] Treaty essentially takes as given the ‘intergovernmentalist’ framework of the CFSP and tries to make it work better [...] Those whose general criticism of the European Union’s recent evolution is that it has moved since the Maastricht Treaty in an excessively ‘integrative’ or ‘federalist’ direction will find little comfort for their critique in the provisions of the [Lisbon] Treaty on the CFSP.²⁷⁰

Lord Owen identified “clearer guarantees of continuation of the specific character of the Common Foreign and Security Policy” in the new Treaty,²⁷¹ and gave the Government credit, saying that “in a clever way, despite getting rid of the pillars, they have almost created another pillar for foreign policy”.²⁷²

117. In line with the CFSP’s continuing distinctive character, our witnesses mostly felt that it would continue to be dominated by the Member States. Professor Hill told us that “there is still an absolute intergovernmental control of the main lines of foreign and external policy, so there is no danger of Member States being subordinate to some kind of Communitarisation”.²⁷³ Similarly, Dr Solana told us that “Member States have the last word in foreign policy and security policy”.²⁷⁴

118. We note the point made by several of our witnesses, that CFSP decision-making tends to proceed by consensus, whatever the voting arrangements formally provided for by treaty.²⁷⁵ **We conclude that it seems highly likely that, under the Lisbon Treaty, the Common Foreign and Security Policy will remain an intergovernmental area, driven by the Member States. We welcome this.**

Enhanced co-operation

119. The Lisbon Treaty continues to provide for the possibility of “enhanced co-operation”, in policy areas including the CFSP and other areas of external action which fall outside exclusive “Community” competence.²⁷⁶ “Enhanced co-operation” can be established for a specific policy area by a group of Member States “as a last resort”,²⁷⁷ when agreement cannot be reached among all Members to proceed. “Enhanced co-operation” arrangements make use of the EU institutions, operate on the basis of the EU procedures governing the relevant policy area, and can only be established in order to reach stated EU objectives. Under the Lisbon Treaty, enhanced co-operation arrangements would require the participation of nine Member States.²⁷⁸ Other Members may join subsequently.

270 Ev 144

271 Ev 105

272 Q 467

273 Q 439

274 Q 629

275 For example, Mr Donnelly at Ev 145; Q 453 [Professor Whitman]; see also paragraph 99 above.

276 Article 1 22) of the Lisbon Treaty, providing for Article 10 TEU; Article 2 278) of the Lisbon Treaty, inserting Article 280A to 280I TFEU

277 Article 1 22) of the Lisbon Treaty, providing for Article 10 TEU but retaining on this point language from Article 43a of the existing TEU

278 Article 1 22) of the Lisbon Treaty, providing for Article 10 TEU

120. Under the Lisbon Treaty, enhanced co-operation in the CFSP may be established by a unanimous decision of the Member States participating, after the High Representative and the Commission have given their opinions.²⁷⁹ The Lisbon Treaty requirement for a unanimous decision to establish enhanced co-operation in the CFSP is tougher than that in the existing Treaties, under which enhanced co-operation in the CFSP could be established by QMV.²⁸⁰ However, the Lisbon Treaty would also remove the bar on enhanced co-operation in matters with military or defence implications.²⁸¹ Once engaged in an “enhanced co-operation” group, Member States could decide, by unanimity, to move to QMV for decisions normally taken by unanimity.²⁸²

121. Professor Whitman told us that enhanced co-operation had proved to be a “device of insignificance”. He implied that this was partly because of the cumbersome procedures involved in its establishment.²⁸³

Solidarity clause

122. As we have mentioned in paragraph 108 above, the Lisbon Treaty contains a new EU “solidarity clause”. This would provide that:

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

- a) —prevent the terrorist threat in the territory of the Member States;
- protect democratic institutions and the civilian population from any terrorist attack;
- assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;

b) assist a member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its

279 Article 2 (278) of the Lisbon Treaty, inserting Article 280D TFEU

280 Article 27c TEU

281 The bar is currently in Article 27b TEU. Under Article 1 (22) of the Lisbon Treaty, providing for Article 10 TEU, Article 27b of the current TEU would appear to be replaced, without the bar on enhanced cooperation with military or defence implications being repeated in the new Article 10 TEU or Articles 280A to 280I TFEU. In his letter to the Chairman of 11 January, printed at the end of this volume, the Foreign Secretary confirmed that enhanced cooperation on the one hand, and permanent structured cooperation in the field of military capability development, on the other, are “completely different and distinct provisions”. Permanent structured cooperation is discussed in Chapter 7 below.

282 Article 2 (278) of the Lisbon Treaty, inserting Article 280H TFEU; Ev 149 [Open Europe]

283 Ev 85

political authorities. To that end, the Member States shall coordinate between themselves in the Council.²⁸⁴

The “solidarity clause” was contained in the Constitutional Treaty, albeit split into its two paragraphs, which were placed in different locations.²⁸⁵

123. As noted above, any proposal to implement the solidarity clause would be made jointly by the High Representative and the European Commission. Any decision to implement the solidarity clause would be made by qualified majority vote in the Council, except for any decision with defence implications, which would require unanimity.²⁸⁶ The implementation of the solidarity clause may involve use of a new Committee of officials set up by the Lisbon Treaty within the Council structure to deal with “operational cooperation on internal security”.²⁸⁷

124. The Foreign Secretary told us that the “solidarity clause” seemed “perfectly helpful” to the UK.²⁸⁸ However, Lord Owen told us that the inclusion of the notion of “preventing” terrorism in the new text of the “solidarity clause” provided a basis for “some serious creep” of EU involvement.²⁸⁹ Open Europe similarly told us that, in their view, that “the power to take action to ‘prevent’ rather than respond to terrorism is likely to be used by the EU to expand its role”, particularly given that the implementation of the “solidarity clause” is to be decided on by QMV.²⁹⁰

125. The solidarity clause attracts a Declaration attached to the Lisbon Treaty. The Declaration runs:

Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State [...], none of the provisions of [the solidarity clause] is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.²⁹¹

Like other Declarations, this one is interpretative rather than legally binding.

126. In its evidence, the Government drew attention to new language in the Lisbon Treaty on national security. The Treaty provides that a general Article near the start of the amended TEU, dealing with principles governing the EU’s operation, would declare that the Union:

shall respect [Member States’] essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national

284 Article 2 176) of the Lisbon Treaty, inserting Article 188R TFEU

285 Article I-43 and III-329

286 Article 2 176) of the Lisbon Treaty, inserting Article 188R TFEU

287 Article 2 64) of the Lisbon Treaty, inserting Article 61D TFEU

288 Q 539

289 Q 466

290 Ev 153

291 Declaration 37 on Article 188R of the Treaty on the Functioning of the European Union

security. In particular, national security remains the sole responsibility of each Member State.²⁹²

Enlargement

127. Enlargement is not technically an EU external policy, but an institutional event. Treaty provisions governing enlargement are traditionally located among “final provisions”, not with the CFSP or other external policies. However, following the EU’s enlargement to Central and Eastern Europe in 2004, when observers are asked about EU foreign policy “the biggest example of a successful [EU] foreign policy that most people cite is enlargement”, in Professor Hill’s words.²⁹³

128. Hitherto, the TEU has stated simply that “any European state which respects the principles [of the EU] may apply to become a member of the Union”, before going on to set out the procedures involved in an accession process.²⁹⁴ The Lisbon Treaty would toughen the Treaty language on enlargement. First, in language taken over from the Constitutional Treaty,²⁹⁵ the Lisbon Treaty would require states acceding to the EU to be “committed to promoting” the EU’s principles. Then, in wholly new text, the Lisbon Treaty would further insert a requirement that “the conditions of eligibility agreed upon by the European Council shall be taken into account”.²⁹⁶ The “conditions of eligibility” referred to are the so-called “Copenhagen criteria” set out by the European Council in 1993,²⁹⁷ plus further requirements subsequently placed on acceding states by EU leaders.

129. Mr Avery told us that the inclusion of a reference to the accession criteria in the Treaty was “significant because it demonstrates a certain determination on the part of the European Union to apply the criteria for membership rigorously. There have been some cases [...] in history in which those criteria were not applied with sufficient rigour.”²⁹⁸ Mr Avery was of the view that the change was of political rather than operational significance.²⁹⁹

130. We conclude that the process of the EU’s enlargement to now 27 Member States has been a success.

292 Article 1 5) of the Lisbon Treaty, inserting Article 3a TEU

293 Q 415

294 Article 49 TEU

295 Article I-1

296 Article 1 57) of the Lisbon Treaty, amending Article 49 TEU

297 The “Copenhagen criteria” are that states acceding to the EU “must have achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; and the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.” The European Council at Copenhagen further added that “The Union’s capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries”; Copenhagen European Council, Presidency Conclusions, 21-22 June 1993, via www.consilium.europa.eu

298 Q 455

299 Q 455

European Neighbourhood Policy

131. The EU launched its European Neighbourhood Policy (ENP) in 2004 in an attempt to mitigate some of the possible negative effects of EU enlargement, principally in Central and Eastern Europe. The EU feared that enlargement might leave the Union more exposed to the effects of low economic development and poor governance in states which were now its neighbours, while exacerbating these countries' problems by erecting new barriers to their interaction with states which were now inside the Union. Under the ENP, the EU offers intensified co-operation and integration to states surrounding the Union, in return for reform commitments. The ENP is not a new legal instrument, relying instead on long-established provisions for EU international agreements. Controversially, the ENP encompasses not only states in Eastern Europe which in principle are eligible for a future EU membership process, but also states in North Africa which have normally been regarded as ineligible for EU membership on geographical grounds. Officially, participation in the ENP does not prejudice a country's membership eligibility either way.

132. The Lisbon Treaty would insert a reference to the EU's neighbourhood policy into the EU Treaties for the first time. Under the Lisbon Treaty, a new Article would declare that:

The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.³⁰⁰

The new neighbourhood policy Article would be taken over unchanged from the Constitutional Treaty.³⁰¹

133. We conclude that the inclusion for the first time of a Treaty reference to the EU's neighbourhood policy represents a welcome expression of the importance of the Union's relationships with states surrounding it.

³⁰⁰ Article 1 10) of the Lisbon Treaty, inserting Article 7a TEU

³⁰¹ Article I-57

5 New foreign policy posts

High Representative for Foreign Affairs and Security Policy

134. The Lisbon Treaty would create a new position of High Representative of the Union for Foreign Affairs and Security Policy.³⁰² Professor Whitman told us that the changes associated with the new position were “the most significant set of changes to decision-making” made by the Treaty in the foreign policy area.³⁰³ The new High Representative would be appointed by the European Council, by qualified majority vote, with the agreement of the President of the European Commission.³⁰⁴ The key feature of the new position is that the High Representative would have responsibilities for, and an institutional home in, both the “Community” areas of EU external action and the CFSP. For this reason, the new High Representative is often referred to as being “double-hatted”. According to Professor Whitman, “the High Representative will be a personification, and the animus, of the new gathering together of all aspects of External Action”.³⁰⁵

135. The creation of the new High Representative post has arisen not only from the wish to achieve greater coherence between “Community” and intergovernmental policy areas,³⁰⁶ but also as a consequence of the abolition of the six-monthly rotating Presidency.³⁰⁷ Professor Whitman suggested that, by taking over some functions from the Presidency, the new post might eliminate “the uncertainties that come with the old system of rotation”.³⁰⁸

136. The provisions of the Lisbon Treaty regarding the new High Representative post are identical to those in the Constitutional Treaty regarding the post there designated as “Union Minister for Foreign Affairs”.³⁰⁹

137. In the CFSP, the EU has had a High Representative since the 1997 Treaty of Amsterdam came into force in 1999. Since the current CFSP High Representative post was created, it has been held by Dr Javier Solana, former Spanish Foreign Minister and Secretary-General of NATO. The current TEU provides that the CFSP High Representative “shall assist the Council in matters coming within the scope of the common foreign and security policy”.³¹⁰ Under the Lisbon Treaty, the new High Representative would gain an expanded set of CFSP responsibilities. In particular, he would gain:

- from the Commission, the right to make CFSP proposals to the Council, a right which Member States would also continue to enjoy;³¹¹

302 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU; Article 1 30) of the Lisbon Treaty, inserting Article 13a TEU
303 Ev 84

304 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU
305 Ev 84

306 As discussed in Chapter 3 above.

307 Q 436 [Professor Hill]

308 Q 436

309 Article I-28

310 Article 26 TEU

311 Article 1 33) of the Lisbon Treaty, amending Article 22 TEU to become Article 15a TEU

- from the rotating Presidency, responsibilities for ensuring the implementation of CFSP decisions, a responsibility which would now be shared only with the Council or with Member States in general;³¹²
- from the rotating Presidency, the responsibility for representing the EU externally for CFSP matters;³¹³
- from the rotating Presidency, the responsibility regularly to consult the European Parliament on CFSP matters;³¹⁴
- from the Council, the right to propose the appointment of EU Special Representatives and to manage them once appointed.³¹⁵

Overall, Professor Whitman told us that the new High Representative would “replace the Presidency as the key animating force of the CFSP”.³¹⁶

138. Under the Treaty, the new High Representative would—in addition to his CFSP responsibilities—be a member of the European Commission and have responsibilities for “Community” areas of external action. He would take over the job of the Commissioner for External Relations and European Neighbourhood Policy, which would cease to exist as a separate post.³¹⁷ He would also *ex officio* be Vice-President of the European Commission. Finally, he would be responsible for “co-ordinating” all the Commission’s activities in the external action field—i.e. those covering, most prominently, trade, development assistance and enlargement.³¹⁸

139. For advocates of the new post, its “double-hatted” nature offers the key means of achieving the greater co-ordination between “Community” and CFSP elements of EU external action which has been the central declared aim of the current Treaty reform process in this field. Under the Treaty, it would be a responsibility of the High Representative to “ensure the consistency of the Union’s external action”, a responsibility which currently accrues only—and problematically—to the Council and Commission.³¹⁹ Mr Avery suggested that the current system, under which the Council receives proposals from both the Commission and the CFSP High Representative, is “rather incoherent”.³²⁰ In his view, “when the Council sees this better preparation of policies and strategies, it will say, ‘Why didn’t we do this sooner?’”³²¹ Mr Avery highlighted enlargement and neighbourhood policy as examples of policy areas—which are important to the UK—in

312 Article 1 19) of the Lisbon Treaty, inserting Article 9e TEU; Article 1 27) of the Lisbon Treaty, amending Article 11 TEU; Article 1 29) of the Lisbon Treaty, amending Article 13 TEU; Article 1 30) of the Lisbon Treaty, inserting Article 13a TEU; compare the current Article 18 TEU

313 Article 1 30) of the Lisbon Treaty, inserting Article 13a TEU; compare the current Article 18 TEU

314 Article 1 40) of the Lisbon Treaty, amending Article 21 TEU

315 Article 1 37) of the Lisbon Treaty, amending Article 18 TEU; see Ev 84 [Professor Whitman]. Annex 3 sets out a fuller list of the new High Representative’s main tasks under the Lisbon Treaty.

316 Ev 84; on the High Representative’s new powers, see also Ev 144-145 [Mr Donnelly]

317 This post is currently held by Ms Benita Ferrero-Waldner of Austria.

318 Article 1 19) of the Lisbon Treaty, inserting Article 9e TEU

319 Article 3 TEU

320 Q 439

321 Q 439

which currently both the Commission and the Council are involved. He argued that “the two teams get along well in general, but there is a certain rivalry, competition and overlap, and it would be far more effective to combine the energy and talents in what I would call a joined-up approach to foreign policy.”³²² Similarly, Mr Donnelly told us that the changes involved in the creation of the new High Representative post “are likely to help make more coherent and effective the external actions of the European Union.”³²³

140. The Foreign Secretary told us that “the double-hatting, or the merger of the two posts into a single post, is a worthwhile reform”.³²⁴ He went on: “two people doing one job is not a very sensible way of proceeding. [The new post is] therefore [...] a sensible rationalisation.”³²⁵

141. There are sceptics about the principle of “double-hatting”. Lord Owen acknowledged that the simultaneous existence of both the External Relations Commissioner and the CFSP High Representative meant that “there are problems”.³²⁶ However, he argued that “sometimes you have to have differences of opinion, and the idea that simply merging everything will resolve the problems seems crazy to me”.³²⁷ He suggested it would be the case that, for the new High Representative, “divided loyalties to the Commission and the Council remain”.³²⁸

142. Professor Whitman suggested that—precisely because the EU’s distinct “Community” and intergovernmental elements would remain in place—the new High Representative would be presented with a job that is “extremely difficult to execute”.³²⁹ He added that “it is unclear whether one individual will be able to cope with the responsibilities of operating on both the CFSP and the Commission side”.³³⁰

143. In political terms, and in the context of the historically and legally crucial distinction between “Community” and “intergovernmental” elements of the EU, the “double-hatting” principle is controversial. Some supporters of the Commission and the “Community method” see the arrival of the new High Representative in the Commission as likely to extend the influence of intergovernmentalism.³³¹ Mr Avery told us that he thought such fears were “not very well founded”.³³² Those, on the other hand, who wish to preserve intact the EU’s intergovernmental elements tend to see the new High Representative post as an intrusion there of the Commission, and as part of an effort to establish stronger centralised EU powers and institutions. Lord Owen told us in this context that “people [...]”

322 Q 413; see also Q 436 [Mr Avery]

323 Ev 144

324 Q 504

325 Q 506

326 Q 479

327 Q 479

328 Ev 105

329 Q 346

330 Q 439

331 See Graham Avery, “Europe’s Future Foreign Service”, forthcoming in *International Spectator*, Vol 43 No 1, March 2008

332 Q 435

are continually positioning authority in the build up of the Commission. More and more they are pulling these things away from intergovernmentalism.”³³³ Open Europe similarly told us that the “double-hatting” of the High Representative “blurs the distinction between the EU’s intergovernmental and ‘supranational’ bodies”.³³⁴

144. The UK Government appears to have a strongly intergovernmentalist view of the new High Representative’s role. The Foreign Secretary told us that “the Commission role of the High Representative is quite limited. His or her primary function is to carry out the wishes of the Council of Ministers.”³³⁵ The Government drew our attention to the Lisbon Treaty provision that the High Representative will be bound by Commission procedures only “to the extent that this is consistent” with his other responsibilities.³³⁶

145. Mr Donnelly thought that the Government’s conception of the High Representative post was the one most likely to come into being: “the holder of this new post will be essentially a representative and advocate of policies established by others, namely national Foreign Ministers”.³³⁷

146. Mr Avery expressed concerns that, given his CFSP role, the new High Representative would be unable adequately also to fulfil his responsibilities in the Commission. In Mr Avery’s view, co-ordination of the Commission’s external activities was “very badly needed”.³³⁸ In the previous (1999-2004) Commission, this coordinating role was taken informally by the then External Relations Commissioner, Chris Patten. In the current Commission, the role has been undertaken by the Commission President, José Manuel Barroso. However, Mr Avery told us that, given his other responsibilities, Mr Barroso “does not have enough time to handle foreign affairs”.³³⁹

147. There are some concerns about the new High Representative’s privileged position with regard to the other Commissioners, and the possible impact that this might have on the Commission as a collegiate body. Under the Lisbon Treaty, the High Representative would be the only Commission Vice-President to hold that position *ex officio*. Other Vice-Presidents are chosen by the Commission President, from among the newly-appointed Commissioners.³⁴⁰ The High Representative would also be the only Commissioner whom the Commission President, acting alone, could not oblige to resign.³⁴¹ Given that—in his capacity as chair of the Foreign Affairs Council³⁴²—the new High Representative would have a form of authority over Member State Foreign Ministers, and that he would be

333 Q 488

334 Ev 147

335 Q 530; see also FCO, *The Reform Treaty: The British Approach to the European Union Intergovernmental Conference, July 2007*, Cm 7174, July 2007, p 9

336 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU; FCO, *The Reform Treaty: The British Approach to the European Union Intergovernmental Conference, July 2007*, Cm 7174, July 2007, p 9

337 Ev 144

338 Q 433; on this point, see also evidence from Sir Peter Marshall at Ev 142

339 Q 439

340 Article 1 18) of the Lisbon Treaty inserting Article 9D TEU

341 Under Articles 1 18) and 1 19) of the Lisbon Treaty, inserting Articles 9D and 9E TEU, even if the Commission President has asked the High Representative to resign, the European Council must approve his dismissal.

342 This function of the new High Representative is discussed in paragraphs 148-149 below.

appointed in the same way as the Commission President, by Member State leaders in the European Council, there is potential for the High Representative's role in the Commission as a subordinate to the President to require sensitive management.³⁴³

148. In addition to his CFSP and Commission roles, the new High Representative would also have a “third hat”. Under the Lisbon Treaty, he would act as permanent chair of the Foreign Affairs Council [of Ministers].³⁴⁴ As such, he would take over the Presidency's current right to convene the Foreign Affairs Council in extraordinary session, at either his own initiative or that of a Member State. The Commission, as a body, would lose its right to initiate such an extraordinary Council meeting.³⁴⁵

149. A number of witnesses expressed concerns about this “third hat”. Lord Owen said that “when there is an issue of contention between Member States and what the High Representative's office proposes, I think that it is absolutely deplorable that he or she should be in the chair”.³⁴⁶ Mr Avery argued that making proposals to a body over which one was simultaneously presiding was “psychologically and practically quite a tough proposition”.³⁴⁷ In his view, “the problem with the third hat has been underestimated”.³⁴⁸ The Foreign Secretary acknowledged that the High Representative's role in the Council was “certainly an innovation”, although he suggested that his role as chair would encourage the High Representative to pursue consensus, rather than strike out with personal initiatives.³⁴⁹ For his part, Dr Solana said that in his experience, “not only is it possible [to both chair and present proposals to the same body] but it helps sometimes”.³⁵⁰ Dr Solana referred to his experience as Secretary-General of NATO, saying that in that post, he both chaired and presented proposals to meetings at all levels. Dr Solana concluded that he did not “think that there will be a problem if things are done properly and if a person who chairs a meeting understands his role.”³⁵¹ Dr Solana added that he was “sure that the Member States will not allow him to misunderstand his role.”³⁵²

150. Given the range of the new High Representative's CFSP, Commission and Council responsibilities, a key concern of several of our witnesses was the feasibility of the role in practical and human terms.³⁵³ Professor Whitman thought that the creation of the post would “result in a breach of the working time directive”.³⁵⁴ While Mr Avery told us that the High Representative role was “a hell of a big job but [...] not [...] impossible”,³⁵⁵ Lord Owen—when asked whether he thought the job was “doable” by a single individual—

343 Appointment procedures for the High Representative are discussed at paragraphs 171-174 below.

344 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU

345 Article 1 33) of the Lisbon Treaty, amending Article 22 TEU to become Article 15a TEU

346 Q 488

347 Q 433

348 Q 433

349 Q 563

350 Q 620

351 Q 620

352 Q 620

353 Annex 3 sets out a list of the new High Representative's main tasks under the Lisbon Treaty.

354 Q 433

355 Q 433

answered that he did not.³⁵⁶ For his part, Professor Hill suggested that overload on the High Representative could make EU foreign policy “less effective over the long run”.³⁵⁷ A particular concern is whether, with his or her new additional responsibilities, the High Representative would again be able to devote intense periods to crises or negotiations away from Brussels, as Dr Solana has done in the cases of the Former Yugoslav Republic of Macedonia, Ukraine and Iran, for example.

151. Dr Solana argued that, effectively, the new post would, in terms of workload and difficulty, be less than the sum of the two existing positions. Dr Solana told us that:

It is true that the job is not easy today, but one of the reasons for that is the internal organisation and the division of hats. Simplifying political decision-making and putting all the resources into the objective that has been defined politically will make it easier. Today it is a little more difficult, because the autonomy of the two decisions, if I can call it that, sometimes creates problems and even contradictions. With the new treaty, the relationship will be simpler. The Council will take a decision and somebody will be there to apply it, and it will be easier to use the resources properly [...] A tremendous amount of time is spent solving these internal problems.³⁵⁸

Dr Solana also implied that the new High Representative would make use of deputies or other more junior officials, in order to cover the ground involved in his new position.³⁵⁹ Overall, Dr Solana judged that the new High Representative position “is not an impossible job if you organise it properly.”³⁶⁰

152. The Foreign Secretary suggested that the most important factor in avoiding an overload problem and making the new post work would be “discipline on the part of the commissioning body—the Council of Foreign Ministers—about what it wants the High Representative to do, so that it is clear that he or she is there to enact agreed foreign policy. We must be disciplined in the priorities we have and the way in which we move forward.”³⁶¹

153. Precisely because of the new High Representative’s role in carrying out policy agreed by the Council, Mr Donnelly reminded us that Member States would retain the overall responsibility for the nature of the EU’s international presence. He stated that:

[The] capacity [of the High Representative] to be a forceful representative of the European Union on the world stage depends very largely on the willingness of national foreign ministers to agree on worthwhile external policies for the European Union. The presence or absence of political commitment to the CFSP from national

356 Q 490

357 Q 412

358 Q 619

359 Q 619

360 Q 619

361 Q 561

capitals over the next decade will be at least as important in this connection as the personal qualities and institutional competences of the High Representative.³⁶²

154. **We conclude that the new post of High Representative of the Union for Foreign Affairs and Security Policy has the potential to give the EU a more streamlined international presence and to contribute to the more coherent development and implementation of external policy. We further conclude that it is clear that the High Representative is there to enact agreed foreign policy.**

155. **We conclude that there are grounds for concern that the holder of the new post of High Representative of the Union for Foreign Affairs and Security Policy could face work overload. We recommend that the Government engages with the other Member States and—when known—the nominee for the post to ensure that the potential benefits of the new post are not jeopardised by a plethora of duties and excessive workload.**

The High Representative at the UN

156. The Lisbon Treaty would provide that:

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union's position.³⁶³

This would be a new provision compared to the current Treaties, taken over from the Constitutional Treaty.³⁶⁴

157. The Foreign Secretary pointed out that “The European Union has the right to speak [in the Security Council] at the moment [...] It can speak, but it obviously cannot vote, because votes are reserved for members of the Security Council.”³⁶⁵ Professor Hill backed up this view, pointing out that, even in the absence currently of a relevant Treaty provision, “Mr Solana already speaks at the Security Council by invitation, and of course the Presidency does as well.”³⁶⁶ Dr Solana confirmed that he has spoken at the Security Council in his current capacity, always following an invitation to do so by EU Security Council members.³⁶⁷ **We conclude that the Lisbon Treaty provision for the new High Representative to speak at the UN Security Council will make little difference to current practice. It will not undermine the position of the UK in the United Nations system nor the UK's representation and role as a Permanent Member of the Security Council.**

362 Ev 144

363 Article 1 38) of the Lisbon Treaty, amending Article 19 TEU

364 Article III-305

365 Q 581

366 Q 454

367 Q 624

European Council President

158. The Lisbon Treaty would refashion the position of President of the European Council, the body of EU heads of state or government. At present, the President is the member of the European Council—that is, the head of state or government—from the Member State holding the rotating Presidency of the EU. The President therefore holds the office for only six months at a time, and does so while simultaneously heading a national administration. Under the Lisbon Treaty, the Presidency would become a longer-term and, apparently, full-time job. The European Council would elect its President, by qualified majority, for a term of two and a half years, renewable once. The Treaty further provides that the new President “shall not hold a national office”.³⁶⁸

159. According to its White Paper on the 2007 IGC, the Government “supports this reform [of the European Council Presidency]”. It argues that “[the change] will bring much greater coherence and consistency to the EU’s actions. Moreover, it will give the Member States, through the European Council, much greater capacity to give direction and momentum to the EU’s agenda.”³⁶⁹

160. Lord Owen was sceptical of the idea of a European Council President who is not a serving head of state or government. He believed it likely that “the experiment of introducing someone from outside [would] not work well”,³⁷⁰ and said that the new position “was never thought through”.³⁷¹ He would have preferred to retain a President who is also a national head of state or government, but to extend his or her term of office to 18 months or two years, by building on the already-developing system of “team Presidencies” among groups of three or four Member States holding the current six-monthly Presidency for successive terms.³⁷²

161. Lord Owen also suggested that there was a possibility that the President of the European Commission might be appointed as the new European Council President. In his view, for its advocates such a step would be driven by the same “double-hatting” logic as has driven the creation of the new High Representative post. However, he contended that “if that one single decision were to be taken, the EU would, in effect, come very close to unifying itself into a nation state”.³⁷³ Lord Owen based his view that such a step would be possible on the fact that the Lisbon Treaty would specifically bar the new President of the European Council only from holding *national* office. In support of his position, he cited a legal opinion of the Netherlands Government provided to its parliament in 2004.³⁷⁴

162. The Foreign Secretary told us that it would simply not be possible for the President of the European Commission to be appointed as European Council President.³⁷⁵ He rested his

368 Article 1 16) of the Lisbon Treaty, inserting Article 9B TEU

369 FCO, *The Reform Treaty: The British Approach to the European Union Intergovernmental Conference, July 2007*, Cm 7174, July 2007, p 13

370 Ev 105

371 Q 463

372 Qq 464, 482; Ev 119

373 Ev 105; see also Q 474

374 Ev 105

375 Qq 553-560

position on the continuing Treaty provision, first, that “Members of the Commission may not, during their term of office, engage in any other occupation”.³⁷⁶ Second, he pointed out that, under the Treaty, Commissioners “shall neither seek nor take instructions from any government or other institution, body, office or entity”.³⁷⁷ On this view, “double-hatting” a single President would require Treaty change, just as had the creation of the “double-hatted” High Representative.³⁷⁸ In the context of the Government’s position, we note that the former European Commissioner from the UK, Lord Cockfield, was able to hold that office in 1985-89 while remaining a Member of the House of Lords. **We conclude that it is regrettable that the Lisbon Treaty does not state explicitly that the new European Council President may not simultaneously hold any other office.**

163. In the external action field, the Lisbon Treaty would put the new European Council President in a position to have an impact inasmuch as the European Council is called on to determine “the strategic interests and objectives of the Union” for all its external action,³⁷⁹ and “the objectives of and [...] general guidelines for” the CFSP;³⁸⁰ and given that the President is to “provide the impetus” for the work of the European Council, “ensure the preparation and continuity” of its work and “endeavour to facilitate cohesion and consensus” within the body.³⁸¹ Furthermore, under the CFSP provisions of the Treaty, the new European Council President would gain the right to convene an extraordinary meeting of the European Council in order to define EU strategy in the face of new international developments.³⁸²

164. In addition, under the Lisbon Treaty, the new President would gain a specific external relations function. This is that he or she would:

at his or her level and in that capacity, ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy.³⁸³

Several of our witnesses argued that this provision left considerable potential for confusion or conflict between the European Council President and the High Representative as regards the EU’s external representation. Lord Owen believed that the Lisbon Treaty’s description of the European Council President’s external role was “completely inadequate”,³⁸⁴ while Mr Donnelly told us that the Lisbon Treaty left the allocation of external representative responsibilities between the European Council President and the

³⁷⁶ This remains as Article 213 of the TFEU, as in the current TEC

³⁷⁷ Article 1 18) of the Lisbon Treaty, inserting Article 9D TEU; at present, the provision is in Article 213 TEC

³⁷⁸ Qq 509-511

³⁷⁹ Article 1 24) of the Lisbon Treaty, inserting Article 10B TEU, as discussed in Chapter 4 at paragraphs 80-81 above

³⁸⁰ Article 1 29) of the Lisbon Treaty, amending Article 13 TEU, as discussed in Chapter 4 at paragraph 96 above.

³⁸¹ Article 1 16) of the Lisbon Treaty, inserting Article 9B TEU

³⁸² Article 1 29) of the Lisbon Treaty, amending Article 13 TEU

³⁸³ Article 1 16) of the Lisbon Treaty, inserting Article 9B TEU

³⁸⁴ Q 463

High Representative “unhelpfully unresolved”.³⁸⁵ “The Lisbon Treaty does not answer entirely the question ‘Who speaks for Europe?’”, he said.³⁸⁶

165. Dr Solana felt that the Lisbon Treaty provision for the external representation of the EU by the new European Council President would make for “no fundamental change in reality.”³⁸⁷ Dr Solana pointed out that, at present, the holder of the rotating Presidency of the European Council attends EU summits, along with Dr Solana and the President of the European Commission.³⁸⁸

166. Professor Hill stated that the potential for confusion or conflict in external representation might be compounded because the European Commission President might also see himself as having a role in this area. Professor Hill said: “we are going to have three [Mr Europes]—the President of the Commission, the new [...] President and the High Representative. In a way, it is a recipe for classic turf battles. That is what has not been thought through so far.”³⁸⁹

167. For some of our witnesses, concerns about the relationship between the new European Council President and the High Representative were heightened because they saw the provisions of the Lisbon Treaty which deal with the former post as being in general too vague. Professor Whitman judged that “there is virtually nothing” in the new Treaty on the role of the new European Council President.³⁹⁰ “Will they have enough to do, or will they have enough time to make mischief in the foreign policy area?”, he wondered.³⁹¹ Uncertainty surrounding the European Council President is compounded because the Lisbon Treaty says nothing about the location and size of his or her support staff, particularly in relation to the new European External Action Service (EEAS).³⁹² However, Dr Solana thought that the new European Council President was likely “to be much more inclined, on a day-to-day basis, to dealing with the internal work of the EU—to mobilising the Council.”³⁹³

168. Lord Owen outlined two possible scenarios as regards the new European Council President. On the one hand, he suggested, the EU might

appoint somebody who is so intent on their own agenda that they push it to the exclusion of all else and gets airs and graces that are way above them, and [...] the Heads of Government start to resent this character stomping around the world, claiming to be the person who talks to the President of the United States.³⁹⁴

On the other hand, the EU might appoint

385 Ev 145

386 Ev 145

387 Q 625

388 Q 625

389 Q 440; see also “Congratulations! It’s triplets!”, *The Economist*, 25 October 2007

390 Q 441

391 Q 441

392 Q 441 [Professor Whitman]; the EEAS is discussed in Chapter 6 below.

393 Q 625

394 Q 489

somebody who was very considerate of Member States, who went round genuinely trying to rally a consensus and saw themselves as purely the spokesman of the European Union where there was already unanimity and was not pushing themselves forward, was not combative in their relationship with the High Representative.³⁹⁵

169. The Government presented a picture of the new European Council President which appeared to be closer to the more modest version of the role. The Foreign Secretary told us that the President of the European Council “is appointed by 27 Heads of Government to chair meetings and have a role in setting the agenda”;³⁹⁶ that “the Chairman of the Council is there to take instructions from the 27 Heads of Government”;³⁹⁷ and that “any Chairman of the European Council who gets too big for their boots and loses touch with the people who appointed them will end up in trouble.”³⁹⁸

170. We conclude that the reshaped role of the President of the European Council could help to generate consensus among EU leaders and lead to greater continuity in the chairing of the European Council. However, we are concerned by the current degree of uncertainty which surrounds the role and by the potential for conflict with the High Representative in representing the EU externally. This could undermine one of the main aims of the current Treaty reform process in the external field. We recommend that in its response to this Report, the Government sets out more clearly its conception of the role of the new European Council President, and its assessment of the likelihood that this will be realised. We further recommend that the Government initiates, in the course of discussions with its counterparts on the appointments to the new posts, the drawing-up of a memorandum of understanding on the respective roles which the European Council President and the High Representative are to play in the external representation of the Union.

Appointment issues

171. All our witnesses agreed that the personalities of those appointed as the first holders of the new European Council President and High Representative posts would be crucial to the initial operation and longer-term development of the Lisbon Treaty’s new institutional arrangements.³⁹⁹ This is particularly the case given also the potentially delicate relationships between these two figures and the President of the European Commission.

172. If the ratification of the Lisbon Treaty proceeds as planned, all the “big three” jobs will be filled in 2009. It is planned that the Treaty will come into force on 1 January 2009. It appears to be assumed that the new President of the European Council will take office on the day that the Treaty comes into force, although this is not explicit.⁴⁰⁰ A Declaration

395 Q 489

396 Q 552

397 Q 557

398 Q 552

399 See, for example, Q 441 [Professor Whitman, Mr Avery], Q 489 [Lord Owen]; Ev 83 [Professor Whitman]

400 Declaration 8 on practical measures to be taken upon the entry into force of the Treaty of Lisbon as regards the Presidency of the European Council and of the Foreign Affairs Council

attached to the Treaty specifies explicitly that the new High Representative will take up his office on the day that the Treaty enters into force.⁴⁰¹ As long as the Treaty ratification process proceeds as planned, therefore, the European Council can be expected to name its appointee to that post, at least, in the course of 2008. However, the term of office of the Commission to which the new High Representative would be appointed comes to an end in October 2009. The same Declaration confirms that the first High Representative will be appointed only until the end of the current Commission's term of office.⁴⁰² Although Commission President Barroso has indicated that he would like another term in post,⁴⁰³ the President of the next Commission can only formally be named in light of the results of the European Parliament elections due to be held in June 2009.⁴⁰⁴ For those who hold that the three "big jobs" can only be allocated simultaneously as a "package deal", the possibility is therefore of such a package becoming available only in mid-2009. One scenario that has been floated is that the current High Representative for the CFSP, Dr Solana, be appointed as the new High Representative for the initial ten-month period from January 2009, whether or not he might then wish to take up the longer-term appointment to the new post.⁴⁰⁵ This kind of scenario, in which the new European Council President and long-term High Representative are not appointed until into 2009, appears to be supported by recent indications that the Czech Republic, which is next in line, will have an EU Presidency in the first half of 2009 under the existing system.⁴⁰⁶

173. A Declaration attached to the Lisbon Treaty states that, in allocating the "big three" jobs, "due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States".⁴⁰⁷ Mr Avery told us that this was likely to be interpreted to mean that at least one of the posts should go to a woman, and that "it would be well received if one of these big posts went to somebody from a new Member State".⁴⁰⁸

174. The European Parliament has to give its approval to a new Commission.⁴⁰⁹ However, if the Lisbon Treaty comes into force as planned, the new High Representative would be most likely to be appointed to the existing Commission. The European Parliament sought guarantees during the 2007 IGC that it would be involved in the initial appointment of the High Representative.⁴¹⁰ On his return from the 18-19 October informal European Council in Lisbon, the Prime Minister told the House that a Declaration agreed there "made it clear that the European Parliament would have no new role in the appointment to the new post

401 Declaration 12 on Article 9E of the Treaty on European Union

402 Declaration 12 on Article 9E of the Treaty on European Union. A Protocol (Article 5 of the Protocol on Transitional Provisions) confirms that the Commissioner of the same nationality as the new High Representative will leave his or her post on the day that the High Representative takes up his.

403 "First names floated for top new EU jobs", *EUobserver.com*, 22 October 2007; "Lisbon treaty delays put president's start in doubt", *Financial Times*, 15 January 2008

404 Article 1 18) of the Lisbon Treaty, inserting Article 9D TEU

405 Q 434 [Mr Avery]

406 "Lisbon Treaty faces ratification delays", *European Voice*, 10 January 2008; "Lisbon treaty delays put president's start in doubt", *Financial Times*, 15 January 2008

407 Declaration 6 on Article 9B(5) and (6), Article 9D(6) and (7) and Article 9E of the Treaty on European Union

408 Q 434

409 Article 1 18) of the Lisbon Treaty, inserting Article 9D TEU

410 "MEPs ring alarm bells over foreign policy", *European Voice*, 11 October 2007; "MEPs want high-level job appointments postponed", *European Voice*, 18 October 2007

of High Representative, which will be made by the European Council.”⁴¹¹ However, the relevant Declaration in fact states that “appropriate contacts will be made with the European Parliament”.⁴¹² The Foreign Secretary confirmed to us that “there will be contacts and discussions” with the European Parliament during the initial appointment of the High Representative, although he would not be drawn on how exactly he envisaged the process.⁴¹³

175. As to the individual who might be appointed as the new High Representative, Professor Hill told us that “there is only a small group who could be candidates for this kind of job [...] They would have to have political weight, managerial capability, experience of at least one side—one hat, as it were—and external credibility.” Professor Hill further suggested that the appointee “must be somebody who the Americans are willing to take seriously.”⁴¹⁴ The Foreign Secretary was more upbeat about the prospects of finding a suitable figure to fill the role, suggesting that “there are many people with experience.”⁴¹⁵

176. Dr Solana told us that the appointees to the EU’s new posts must not

have a sense of [their] position. The objective is to construct consensus [...] If you do not have the sentiment that it is your job to create consensus, you may run into difficulties, so perhaps the most important qualities needed by the individuals concerned are intelligence and the desire to do the job. It would not be a good post for someone wanting to retire.⁴¹⁶

177. We conclude that the personal characteristics of the individuals who are appointed to the key posts of European Council President, High Representative for Foreign Affairs and Security Policy, and President of the Commission—in particular, their capacity for teamwork and hard work—will play a critical part in determining whether the new EU foreign policy arrangements work effectively. We recommend that the Government should place a high priority on working constructively with its European partners to ensure that the right individuals are selected for these posts.

411 HC Deb, 22 October 2007, cols 19-22

412 Declaration 12 on Article 9E of the Treaty on European Union

413 Q 566

414 Q 434

415 Q 567

416 Q 626

6 European External Action Service

178. The Lisbon Treaty would provide for the creation of a European External Action Service (EEAS). The EEAS would be created to assist the new High Representative for Foreign Affairs and Security Policy and would be under his authority. Under the Lisbon Treaty, the EEAS would be constituted from “relevant departments” of the Commission and the Council’s General Secretariat, plus staff seconded from the diplomatic services of the Member States.⁴¹⁷ In bringing together personnel from the Commission and the Council, the EEAS would—like the new High Representative—straddle the EU’s “Community” and intergovernmental elements. Mr Donnelly called the new Service “the natural administrative expression of the European Union’s desire to give greater force and coherence to its external policies.”⁴¹⁸

179. The principle of creating a European External Action Service has been the subject of political controversy, along lines that parallel those in the debate over the new High Representative post. For some, the EEAS is seen as marking the birth of a European foreign service that could foster the development of a more distinctive and coherent EU external policy and international presence. For others, the EEAS will impinge on the intergovernmental CFSP and represents a threat to national foreign ministries and policies. Mr Donnelly told us that the development of the EEAS “may well enable the Representative to make a more regular and cogent case for the European Union to act in a unified fashion.”⁴¹⁹ Similarly, Mr Avery told us that “the creation of the new European External Action Service should help in defining better and more effectively what are the common interests that the Member States of the European Union can effectively pursue, particularly since the Service will consist not only of people from the European institutions but people from national diplomacy who understand very well what the national interests and national measures are.”⁴²⁰ However, commenting on the creation of the EEAS, Open Europe told us that, in their view, “the shift towards a more centralised and powerful institution would inherently result in a major shift of power from the Member States to EU establishments, likely to grow in strength over time”.⁴²¹

180. The Lisbon Treaty would specify in outline terms the composition and function of the EEAS. However, detailed provisions as to the organisation and operation of the new Service have been left to a future Council decision. That decision would need to be taken by unanimity, on a proposal from the new High Representative, with the consent of the European Commission.⁴²²

181. The EEAS is to support the new High Representative, but the new Service cannot come into being until he has made the necessary proposal to the Council and secured a favourable Council decision. Under these circumstances, a Declaration attached to the

417 Article 1 30) of the Lisbon Treaty, inserting Article 13a TEU

418 Ev 145

419 Ev 145

420 Q 429

421 Ev 149

422 Article 1 30) of the Lisbon Treaty, inserting Article 13a TEU

Lisbon Treaty provides that, rather than wait for the new Treaty to be ratified, the Commission, the Member States and the current High Representative should start preparatory work on the EEAS following the Treaty's signature.⁴²³ (In fact, this will be a restart, because some preparatory work was done following the signing of the Constitutional Treaty: see paragraphs 183-184 below.)

182. The areas of detail relating to the operation of the EEAS which remain to be filled in are many and significant. Sorting these matters out satisfactorily will be vital to the EEAS's role and effectiveness. The issues which must be resolved include:

- the departments or other organisational units of the Commission and Council General Secretariat which are to be included in the EEAS; and as a consequence, the likely size of the new Service, and the relative weights of former Commission and Council personnel;⁴²⁴
- the share of EEAS staff which is to be made up by seconded national personnel, as opposed to those coming from EU institutions;
- whether there should be national quotas for seconded national personnel, and how any requirement for national balance might sit with the need for the High Representative to have control over recruitment into his own Service;
- whether the EEAS will support the President of the European Council in his external representation responsibilities, as well as the High Representative, or whether support for the European Council President will be organised separately;
- the legal status of the EEAS—as a new EU institution, or as an agency; and whether the EEAS should somehow be organisationally attached to the Commission and/or Council, or be organisationally autonomous;
- how the EEAS is to be funded;
- the legal status of EEAS staff seconded from national diplomatic services, and terms and conditions for EEAS staff, in relation to those prevailing both at other EU institutions and—for seconded national personnel—at “home”;
- where the central EEAS staff are physically to be located in Brussels; and
- the type of diplomatic status and immunity which EEAS staff are to enjoy, if any, and how this may be made compatible with the diplomatic status of national secondees to the Service.

183. The provisions dealing with the EEAS in the Lisbon Treaty are unchanged from those in the Constitutional Treaty.⁴²⁵ Preparatory work on the organisation of the EEAS was initially undertaken after the signing of the latter Treaty in October 2004. In March 2005,

423 Declaration 15 on Article 13a of the Treaty on European Union

424 Mr Avery told us that there were currently around 350 people in the Council General Secretariat working for Dr Solana in his current capacity. At the Commission, staff of the Directorate-General for External Relations and Neighbourhood Policy number around 750; see Q 442

425 Article III-296

High Representative Solana and Commission President Barroso circulated a joint “issues paper” which was discussed with Member States. This was followed up in June of that year by a joint “progress report” formally presented to the European Council on the basis of those discussions.⁴²⁶ However, following the French and Dutch “no” votes in referendums on the Constitutional Treaty, the work on the EEAS was suspended.

184. In the wake of agreement on the Lisbon Treaty in 2007, the 2005 documents are being revisited. The discussions in 2005 led to broad consensus as to which departments from the Commission and the Council General Secretariat should be included in the EEAS, as well as on a rejection of national staff quotas, and on a wish to ensure that all EEAS staff, including national secondees, should be employed on the basis of the same terms and conditions. However, the 2005 progress report noted that financing issues, in particular, and other administrative issues “required further examination”. Sir Brian Crowe, former Director General for External and Politico-Military Affairs in the EU Council’s General Secretariat, has been quoted as saying that “putting this together is going to be a nightmare”,⁴²⁷ and Professor Whitman told us that “there is an awful lot to be done [...] there is an awful lot of detail to be worked through”.⁴²⁸

185. Dr Solana told us that he saw no prospect of a “big bang” creation of a fully-fledged EEAS ready to start operations on 1 January 2009. In Dr Solana’s view, a gradual evolution of the new Service would be preferable in any case.⁴²⁹ During our visit to Brussels, we gained the impression that other officials too were reckoning on a relatively small start and gradual development for the EEAS.

186. The scale and importance of the issues which have still to be resolved with regard to the EEAS have aroused some disquiet. For example, Lord Owen believed that “we are effectively accepting a European diplomatic service without any knowledge of how big it will be and how it will be financed”.⁴³⁰ He also questioned the extent to which the EEAS will be subject to effective scrutiny by national parliaments.⁴³¹

187. Others have raised the issue of the FCO’s involvement in the preparation of the new Service. In a lecture delivered in December 2007, Lord Wallace of Saltaire, Professor of International Relations at the London School of Economics, claimed that UK “officials are under instruction to say as little as possible about this entire initiative [i.e. the EEAS] [...] until after the Treaty has passed through both Houses of Parliament, for fear of exciting the Eurosceptic press [...] so we risk leaving the initiative to others.”⁴³² The former head of the European Commission delegation in the US, Dr Günter Burghardt, has been quoted as saying that “we have to make sure that there are no discussions taking place in the open

426 Joint Progress Report by the High Representative and the Commission to the European Council on the European External Action Service, 9956/05, 9 June 2005; the Progress Report includes the March 2005 “issues paper”. Both documents are reproduced in *The EU Foreign service: how to build a more effective common policy*, European Policy Centre Working Paper No 28, November 2007

427 “EU faces raft of open questions over diplomatic service”, *EUobserver.com*, 27 November 2007

428 Q 444

429 Q 629

430 Q 479

431 Q 480

432 “Does the Foreign Office have a future?”, Chatham House, 7 December 2007

air” before the UK Parliament has approved the Lisbon Treaty and Ireland has held its planned ratifying referendum.⁴³³ While the practical considerations militating in favour of a gradual start to the EEAS are also clearly playing a role, our discussions in Brussels tended to confirm the view that concerns about the ratification of the Lisbon Treaty are helping to keep public discussion off the agenda for the time being.

188. The Government has provided little information about its views or plans regarding the EEAS. Its July White Paper on the 2007 IGC said nothing on the topic beyond noting that the EEAS would be created by the new Treaty.⁴³⁴ In a written answer of 10 December, the Minister for Europe stated that “it is [...] too early to make an accurate assessment of [the EEAS’s] size, budget, information sharing procedures, staff training requirements, recruitment process or the funding arrangements for staff seconded from Member States’ diplomatic services into the EEAS”.⁴³⁵ Giving evidence to us in December, the Foreign Secretary simply said that “The External Action Service will bring some streamlining”.⁴³⁶

189. We conclude that the new European External Action Service may serve a useful function as a means of reducing duplication between the Council Secretariat and the Commission and facilitating the development of more effective EU external policies, operating in parallel with rather than as a substitute for national diplomatic services. However, the Lisbon Treaty gives only a bare outline of the role of the new External Action Service, leaving most of the details of its functioning to be determined. This could well be a case of “the devil is in the detail”. We conclude that the establishment of the European External Action Service will be a highly complex and challenging exercise. Given the scale and significance of the issues that remain to be resolved, it is vitally important for the Government to be fully engaged in negotiations on these matters, in order to ensure that the European External Action Service works as effectively as possible, and in a way concomitant with UK interests.

190. We recommend that the Government reports regularly to Parliament during 2008 and beyond on the progress of the discussions with other Member States and the EU institutions on the establishment of the European External Action Service, and on the positions it is adopting. Parliament should be kept informed of developments in resolving all the practical, organisational, legal, diplomatic status and financial issues which we have specified in paragraph 182 above. We further recommend that, in its response to this Report, the Government informs us of the arrangements which it proposes to put in place to ensure that Parliament and its committees receive the information necessary to scrutinise on an ongoing basis the work of the European External Action Service.

433 “EU faces raft of open questions over diplomatic service”, *EUobserver.com*, 27 November 2007

434 FCO, *The Reform Treaty: The British Approach to the European Union Intergovernmental Conference, July 2007*, Cm 7174, July 2007, p 8

435 HC Deb, 10 December 2007, col 159W

436 Q 507

Staffing the EEAS

191. In his December 2007 lecture, Lord Wallace of Saltaire said that he regarded it as “strongly in British interests” not only to shape the EEAS but also to staff it.⁴³⁷ The Foreign Secretary told us that it was “important that Britain gets proper representation”⁴³⁸ in the EEAS and that the UK “need[ed] to exploit the opportunities for secondment that are created by the new EEAS”.⁴³⁹

192. In this context it is of particular concern to learn that the FCO is, in the Foreign Secretary’s words, “struggling to get people”⁴⁴⁰ to join its European Fast Stream scheme for entrants to the diplomatic service, and that the scheme is effectively being wound down.⁴⁴¹ The Foreign Secretary told us that he did not think “that the run-down on the European Fast Stream negates our potential to have influence in the EEAS”.⁴⁴² He added that, in terms of access to the EEAS via positions in the European Commission, there is “much more scope now for people entering the Commission mid-career”. With regard to potential FCO secondees, Mr Miliband said that “as long as people are assured that they will be able to come back, that will be an attractive secondment”.⁴⁴³

193. In written follow-up evidence after his appearance before the Committee in December, the Foreign Secretary wrote:

In discussion of the detail of the EAS, the Government will be concerned to ensure that the service is indeed open to secondees from the Member States, which the Government sees as important to ensure that the EAS has the mix of skills and experience it will need to support the High Representative in the effective implementation of decisions taken by the Council. The Government will also be concerned to ensure that the UK is properly represented within the EAS so that there continues to be an effective UK presence within the EU institutions dealing with foreign policy issues.⁴⁴⁴

194. We welcome the opportunity that the new European External Action Service will offer for a greater intermingling of national and EU personnel and careers. We conclude that it would be beneficial to the UK for national secondees to be well represented among the new Service’s staff. We recommend that the FCO encourages high-quality candidates among its staff to undertake secondments to the European External Action Service, by assuring them that they will have a “right of return” and that the experience will form a valued part of an FCO career. We recommend that the FCO should also reciprocally encourage European External Action Service staff to undertake secondments within the UK diplomatic service, in the interests of

437 “Does the Foreign Office have a future?”, Chatham House, 7 December 2007

438 Q 582

439 Q 584

440 Q 583

441 See “Britain’s costly disdain”, *The Economist*, 1 November 2007

442 Q 582

443 Q 582

444 Letter to the Chairman of 11 January 2008, at the end of this volume

maximising the European External Action Service’s collective understanding of UK national interests and foreign policy.

EU delegations in third countries

195. The European Commission currently maintains delegations in third countries and at a number of international organisations. These are delegations of the Commission, not the EU as a whole. The development of this network of international delegations has been driven primarily by the Commission’s responsibilities for trade and for the disbursement of development aid and other forms of financial assistance. However, like the Commission itself, the delegations have become increasingly active and visible in other areas of external responsibility, such as enlargement and Neighbourhood Policy.⁴⁴⁵

196. Under the Lisbon Treaty, the delegations of the European Commission in third countries and at international organisations would be converted into European Union delegations.⁴⁴⁶ Although the Lisbon Treaty makes no specific provision in this regard, it seems to be assumed that, as a concomitant of this ‘rebranding’, the new EU delegations would also take on functions under the CFSP, to add to their “Community” role, and thereby also “acquire a new, double-headed status”, in Mr Avery’s words.⁴⁴⁷

197. A precedent for “double-hatting” in an external role has been set in the Former Yugoslav Republic of Macedonia, where the head of the Commission delegation is also an EU Special Representative under the CFSP.

198. Under the Lisbon Treaty, the new EU delegations would be placed under the authority of the new High Representative, in line with their assumed new position straddling “Community” and CFSP areas. The Lisbon Treaty does not say explicitly that the EU delegations in third countries and at international organisations would form part of the EEAS.⁴⁴⁸ However, the June 2005 Commission/High Representative progress report on the EEAS said that “there is broad consensus that the [...] future Union Delegations [...] should be an integral part of the EEAS.”⁴⁴⁹ This also appears to be the Foreign Secretary’s expectation, as he told us that “people working in the Commission offices in 118 countries already have the first call for the new service”.⁴⁵⁰ However, the 2005 progress report also suggested that EU delegation staff need not come exclusively from the EEAS; rather, delegations might also contain staff from Commission departments, on the model of national Embassies containing staff working for ministries other than the foreign ministry.

199. The FCO drew our attention to the fact that the Lisbon Treaty “specifies that the External Action Service will work in co-operation with—not [...] replace—the diplomatic

445 For example, when we visited Azerbaijan in 2007 as part of our Global Security: Russia inquiry, in the context of the European Neighbourhood Policy our interlocutors raised the issue of the Commission’s continuing failure to open a delegation in Baku. We took this up with the then Foreign Secretary: see Q 203 and Ev 19.

446 Article 2 (175) of the Lisbon Treaty, inserting Article 188Q TFEU

447 Q 442

448 Ev 84 [Professor Whitman]

449 Joint Progress Report by the High Representative and the Commission to the European Council on the European External Action Service, 9956/05, 9 June 2005

450 Q 582

services of the Member States.”⁴⁵¹ The Foreign Secretary also told us that he saw national and EU representations in third countries as “complementary, not substitutive”.⁴⁵² Dr Solana took a similar view. However, Dr Solana was among several officials in Brussels from whom we heard the expectation that the idea of relying on EU delegations in third countries, rather than maintaining national missions, would be attractive to smaller Member States.⁴⁵³ However, in our Report on *Developments in the European Union* in 2006, we said that “it is important that the European Commission should not develop ‘embassies’ by stealth.”⁴⁵⁴ **We conclude that the emergence in third countries of EU delegations which may be active in Common Foreign and Security Policy areas will at the least require careful management by UK Embassies on the ground. This might be of particular importance in those countries where there is no resident UK diplomatic representation. We recommend that in its response to this Report, the Government sets out its position regarding the conversion of Commission delegations into Union delegations, and informs us of the guidance which it is giving to British posts on working with the new EU bodies.**

Consular co-operation

200. Since the Maastricht Treaty established the concept of EU citizenship, a citizen of an EU Member State, when in a non-EU country where his own state has no representation, may turn for consular assistance to the representation of another Member State which does have a local presence.⁴⁵⁵ This right is currently implemented on the basis of local agreements between the missions of different EU Member States.⁴⁵⁶

201. Under the Lisbon Treaty, the EU would gain the right to adopt legislation, by qualified majority, “establishing the co-ordination and co-operation measures necessary to facilitate such protection”.⁴⁵⁷ The Treaty would further provide that the new Union delegations in third countries “shall contribute to the implementation” of any such legislation and of citizens’ right to protection in third countries from Member States other than their own.⁴⁵⁸

202. In a Green Paper of November 2006, the European Commission suggested that Member States might establish “common offices” in third countries to provide consular services to citizens of EU Member States, with Member States allocating between them the lead role in staffing such offices in different countries.⁴⁵⁹ In the June 2005 “progress report” on the EEAS, it was suggested that the new Union delegations might themselves take on

451 Ev 121, referring to Article 1 30) of the Lisbon Treaty, inserting Article 13a TEU

452 Q 585

453 For Dr Solana’s comments, see Q 629

454 Foreign Affairs Committee, *Developments in the European Union*, para 101

455 This entitlement is currently provided for under Article 20 TEC. Under Article 2 34) of the Lisbon Treaty, the entitlement would move to Article 17 TFEU with more detailed provisions remaining in an amended Article 20 TFEU.

456 Foreign Affairs Committee, First Report of Session 2007–08, *Foreign and Commonwealth Office Annual Report 2006–07*, HC 50, Ev 115[FCO]

457 Article 2 36) of the Lisbon Treaty, amending Article 20 TEC/TFEU

458 Article 1 39) of the Lisbon Treaty, amending Article 20 TEU

459 European Commission, “Diplomatic and consular protection of Union citizens in third countries”, COM(2006)712 final, 28 November 2006

consular tasks—“although it was recognised that this was a complex issue which would require some detailed examination”.⁴⁶⁰

203. We questioned the FCO about the provision of consular assistance to the nationals of other EU Member States during our Inquiry into the FCO’s Annual Report 2006–07. We subsequently recommended that the FCO inform us how it is managing the risk of increased demand for such assistance, as travel by Member State citizens continues to rise.⁴⁶¹ **We recommend that in its response to the present Report, the Government sets out its reaction to the proposals that there should be “common offices” of EU Member States in third countries and that the new EU delegations may take on consular tasks. We also recommend that the Government clarifies the role and responsibilities of EU delegations in countries where the UK has no Embassy or High Commission.**

460 Joint Progress Report by the High Representative and the Commission to the European Council on the European External Action Service, 9956/05, 9 June 2005

461 Foreign Affairs Committee, *Foreign and Commonwealth Office Annual Report 2006–07*, para 178

7 European Security and Defence Policy

204. The European Security and Defence Policy (ESDP) grew from a UK-French initiative agreed at St Malo in 1998, with the aim of developing an EU military capacity that would be in some sense autonomous of the US. The ESDP remains in its infancy, but has developed extremely rapidly. At the end of 2007, there were eight concluded, ten active and two planned ESDP missions, in Africa, Asia, the Middle East, the Western Balkans and the former Soviet Union.⁴⁶²

205. President Sarkozy of France has already made clear that, ten years after St Malo, the development of EU defence will be a priority of France's EU Presidency in the second half of 2008.⁴⁶³

206. We are aware that the Defence Select Committee is conducting a major Inquiry into NATO and European Defence, which is likely to report before NATO's Bucharest summit in April 2008, and which is likely to consider the ESDP and the impact on it of the Lisbon Treaty in some detail. The Ministry of Defence, not the FCO, is also the lead UK department for ESDP matters. In this chapter, therefore, we confine ourselves to noting the main relevant provisions of the Lisbon Treaty and reporting the comments of our witnesses.

General ESDP provisions

207. Lord Owen drew our attention to an apparent inconsistency in the language about the ESDP in the Lisbon Treaty. At the opening of the CFSP chapter, the Lisbon Treaty text makes reference to "the progressive framing of a common defence policy that *might* lead to a common defence" (emphasis added).⁴⁶⁴ However, in the subsection dealing specifically with the ESDP, the Treaty text states that "The common security and defence policy shall include the progressive framing of a common Union defence policy. This *will* lead to a common defence, when the European Council, acting unanimously, so decides" (emphasis added).⁴⁶⁵ Both versions were already contained in the Constitutional Treaty, which added the stronger language to the existing Treaty provision referring to "might".⁴⁶⁶ Lord Owen told us that "we cannot put into law two phrases which are mutually exclusive."⁴⁶⁷ However, the Foreign Secretary said that he was "not sure that there is the distinction" and referred only to the "will" version of the wording.⁴⁶⁸ We understand the argument that the apparent contradiction between the two propositions is not a real contradiction, i.e. it is not incompatible to assert (a) that something might happen and (b) that it will happen if certain circumstances obtain (in this case, that the European Council gives its unanimous

⁴⁶² *ESDP Newsletter*, No 5, December 2007, via www.consilium.europa.eu

⁴⁶³ Speech at the Fifteenth Ambassador's Conference, Paris, 27 August 2007, text via www.ambafrance-uk.org; "Sarkozy fears defensive Brown will resist push for EU military", *Financial Times*, 12 November 2007

⁴⁶⁴ Article 1 27) of the Lisbon Treaty, amending Article 11 TEU

⁴⁶⁵ Article 1 49) of the Lisbon Treaty, inserting Article 28A TEU

⁴⁶⁶ Articles I-16 and I-41; compare Article 17 of the current TEU

⁴⁶⁷ Q 466; see also Ev 152 [Open Europe]

⁴⁶⁸ Q 597

approval). **We conclude that the Lisbon Treaty retains from the Constitutional Treaty a wording that on the surface at least is clumsy and ambiguous in its references to the prospect that the European Security and Defence Policy both “might” and “will” lead to a common defence. We therefore recommend that in its response to this Report the Government states whether or not it agrees that this is the case, providing such clarification as is necessary.**

208. The Lisbon Treaty includes a form of mutual defence clause. This is as follows:

If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and co-operation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those states which are members of it, remains the foundation of their collective defence and the forum for its implementation.⁴⁶⁹

209. The Lisbon Treaty provides for the establishment of new procedures to provide “rapid access” to the EU budget and to create a “start-up fund” of Member State contributions, outside the EU budget. Both initiatives would be to finance “urgent initiatives” under the CFSP, and in particular preparatory activities for ESDP missions.⁴⁷⁰ Decisions on both proposals would be made by qualified majority vote, with the High Representative drawing up the proposal on the “start-up fund”. The High Representative would also be authorised to use the fund. According to Open Europe, the new “start-up fund” “is seen by many as the first step towards a common defence budget for the EU.”⁴⁷¹

210. Under the Lisbon Treaty, ESDP decisions—including those initiating an ESDP mission—would be taken by the Council of Ministers, acting unanimously on a proposal from the High Representative or a Member State.⁴⁷² We have noted elsewhere the way in which CFSP decisions with military or defence implications would be excluded from current or possible future qualified majority voting under the Treaty.⁴⁷³ Professor Whitman included the ESDP in his general view that the Treaty would preserve the intergovernmental nature of the CFSP.⁴⁷⁴

Lisbon Treaty changes

211. Under the Lisbon Treaty the ESDP would gain an expanded and more distinctive Treaty base. In the existing TEU, the ESDP is dealt with in a single Article, which is subsumed within the CFSP provisions and which Professor Whitman told us was “feeling

469 Article 1 49) of the Lisbon Treaty, inserting Article 28A TEU

470 Article 1 47) of the Lisbon Treaty, amending Article 28 TEU

471 Ev 150

472 Article 1 49) of the Lisbon Treaty, inserting Article 28A TEU

473 See Chapter 4, paragraphs 100, 120.

474 Ev 83

increasingly threadbare”.⁴⁷⁵ Under the Lisbon Treaty, the ESDP would have five Articles, gathered in a dedicated named subsection of the TEU’s CFSP chapter.⁴⁷⁶

212. Professor Whitman identified five substantive changes which the Lisbon Treaty would make to the existing Treaty provisions on the ESDP.⁴⁷⁷ The five changes are:

- expanded “aims and ambitions” for the policy, in particular as regards Member State military capabilities;⁴⁷⁸
- an expansion in the list of “Petersberg tasks”, i.e. the humanitarian, crisis management and peace-building tasks which the EU may undertake;⁴⁷⁹
- the introduction into an EU Treaty for the first time of reference to the European Defence Agency, a body aimed at encouraging greater and more co-ordinated defence capabilities development among Member States, which Member States may join voluntarily and which was already established in 2004 by a decision of the Member States;⁴⁸⁰
- the introduction of the possibility of what Professor Whitman called “sub-contracting” of ESDP tasks to “coalitions of the able and willing” among the Member States;⁴⁸¹ and
- the introduction of the possibility of “permanent structured co-operation”,⁴⁸² an arrangement among a group of Member States possessing greater military capabilities which could be established by a qualified majority decision of the full Council. The Foreign Secretary told us in December that the creation of “permanent structured cooperation” is about “enhancing capability for European defence; EU-led operations in respect of security in the European neighbourhood”.⁴⁸³

213. Of the ESDP changes introduced by the Lisbon Treaty, that concerning “permanent structured co-operation” has aroused most attention. Mr Donnelly noted that the provision allowing “permanent structured co-operation” to be established by qualified majority vote had “aroused some critical comment” in the UK.⁴⁸⁴ However, Mr Donnelly told us that

475 Ev 85

476 Article 1 48-50) of the Lisbon Treaty, inserting Articles 28A-28E TEU; see Ev 85 [Professor Whitman]

477 Q 456; Ev 85

478 Ev 85 [Professor Whitman]; see especially Article 1 49) of the Lisbon Treaty inserting a new first paragraph to Article 28A

479 Article 1 49) of the Lisbon Treaty, inserting Article 28B TEU

480 Article 1 50) of the Lisbon Treaty, inserting Article 28D TEU

481 Article 1 50) of the Lisbon Treaty, inserting Article 28C TEU; see Q 456, Ev 85 [Professor Whitman]

482 Article 1 50) of the Lisbon Treaty, inserting Article 28E TEU; see also the Protocol on Permanent Structured Cooperation established by Article 28A of the Treaty on European Union

483 Q 539

484 See, for example, evidence from Open Europe at Ev 149, 151-2

given the universal recognition throughout the European Union that ‘structured cooperation’, however it evolves, will have no credibility or even reality without the full engagement in it of the United Kingdom, it strains the bounds of credibility to imagine that the membership of this intergovernmental sub-set would ever be one unacceptable to the United Kingdom [...] If ‘structured co-operation’ in fact proceeds beyond its present largely aspirational nature, the United Kingdom will be more fully associated with its genesis and evolution than has been the case in any other area of the European Union’s activities. The likelihood that this sub-set of ‘structured co-operation’ might over time develop in a way inimical to the United Kingdom’s interests is remote in the extreme.⁴⁸⁵

Dr Solana similarly affirmed that “structured cooperation”

would be inconceivable without the United Kingdom, which is at the core of our security and defence capability. Structured cooperation will increase the defence capabilities and efficiency of the European Union, so [the UK’s] presence or absence will be a yes or no—it will not happen without [the UK]. That is very clear to me.⁴⁸⁶

214. In written follow-up evidence after his appearance before the Committee in December, the Foreign Secretary told us that:

Permanent Structured Cooperation [...] is a new provision that specifically addresses capability development. It provides a mechanism designed to help develop more effective military capabilities amongst EU Member States and is line with UK objective [sic] for improving the capabilities available for EU-led operations. It should be noted that PSC and Enhanced Cooperation are completely different and distinct provisions with different criteria for establishment [...] A Council decision is required to launch PSC, to accept new Members into it and to suspend membership of a Member State that no longer fulfils the membership criteria. These decisions are taken by QMV. The use of QMV for these aspects is in UK interests since it prevents an individual Member State from blocking PSC establishment, from blocking another Member State from subsequently joining or from blocking suspension of a non-performing Member State [...] Since improved capability development amongst Member States is a key UK objective, it is likely that we would look to launch PSC as soon as practicable, in cooperation with other like minded Member States.⁴⁸⁷

We advise that the suggestion for UK involvement should not overlook the requirements laid down in the Protocol on Permanent Structured Co-operation, whereby participants undertake to “bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs”, as well as “possibly reviewing their national decision-making procedures”.⁴⁸⁸

485 Ev 145-6

486 Q 616

487 Letter to the Chairman of 11 January 2008, at the end of this volume

488 Protocol on Permanent Structured Cooperation established by Article 28A of the Treaty on European Union, Article 2 (b) and (c)

215. Mr Donnelly felt that the “possibility that ‘structured co-operation’ will remain a name without substance” was “much more pertinent” than the possibility of the arrangement developing in a way opposed by the UK.⁴⁸⁹ Professor Whitman similarly suggested that, given the somewhat cumbersome procedures involved in establishing and operating “permanent structured co-operation”, it might prove to be a little-used device.⁴⁹⁰ Indeed, Professor Whitman suggested that “permanent structured co-operation” was “likely to go absolutely nowhere”.⁴⁹¹ Professor Whitman felt that the possibility of “coalitions of the able and willing” in the military field might be of greater interest because their organisation under the Lisbon Treaty was relatively “light-touch”.⁴⁹²

216. The Foreign Secretary rejected the view that the EU should develop a common military leadership for its ESDP missions, arguing that having a particular Member State in the lead for a particular ESDP mission was not the problem. According to the Foreign Secretary, “the European problem is not an institutional one, it is to do with capabilities and coordination”.⁴⁹³

217. The FCO’s overall assessment of the ESDP element in the Lisbon Treaty is as follows:

The provisions for European defence in the Reform Treaty meet UK objectives to ensure the development of a flexible, militarily robust and NATO-friendly ESDP. The Reform Treaty preserves the principle of unanimity for ESDP policy decisions and on initiating missions as well as confirming the prerogatives of Member States for defence and security issues. ‘Enhanced cooperation’ will be extended to ESDP, allowing smaller groups of Member States to pursue particular ESDP projects. The requirement for a unanimous Council decision will ensure that the mechanism cannot be used against UK interests.⁴⁹⁴

489 Ev 146

490 Ev 85

491 Q 456

492 Ev 85

493 Q 602

494 Ev 121; “enhanced cooperation” was discussed in paragraphs 119-121 in Chapter 4 above.

8 Overall assessment

218. In this Chapter we draw together a number of themes that have run through our Report to produce some further conclusions.

219. Our academic witnesses confirmed unequivocally that the change of name from “Union Minister for Foreign Affairs” to “High Representative for Foreign Affairs and Security Policy”, plus the two new, UK-inspired, non-legally binding Declarations on the Common Foreign and Security Policy, are the only differences in the foreign affairs field between the provisions of the Constitutional Treaty and those under the Lisbon Treaty.⁴⁹⁵

We conclude that there is no material difference between the provisions on foreign affairs in the Constitutional Treaty which the Government made subject to approval in a referendum and those in the Lisbon Treaty on which a referendum is being denied.

220. As regards the extent of the changes wrought by the Lisbon Treaty in the foreign policy field, Mr Avery spoke of the Lisbon Treaty being “absolutely not a fundamental reform of the structures for foreign policy”,⁴⁹⁶ while Professor Whitman told us that the Lisbon Treaty “revamps, rather than revolutionises, the existing arrangements for the CFSP/EDSP.”⁴⁹⁷ However, although the Foreign Secretary claimed that “there are very few changes from the status quo”,⁴⁹⁸ Professor Whitman told us that, by his calculation, 25 of the 62 amendments which the Lisbon Treaty would make to the TEU pertain to the CFSP and ESDP provisions of the Treaty.⁴⁹⁹ Professor Hill told us that “people who say, ‘This is all just technical innovation, it is really just rationalising what is already going on, there is nothing in it and it is just an efficiency gain,’ [...] are wrong”.⁵⁰⁰ **We conclude that the creation of the post of High Representative for Foreign Affairs and Security Policy, and of the European External Action Service, represent major innovations in the EU’s foreign policy-making machinery. We further conclude that although their establishment does not risk undermining the Common Foreign and Security Policy’s intergovernmental nature, the Government is underestimating, and certainly downplaying in public, the significance of their creation. This is unlikely to be beneficial to the UK’s position in the EU. We recommend that the Government should publicly acknowledge the significance of the foreign policy aspects of the Lisbon Treaty.**

221. As regards the likely effects of the Lisbon Treaty’s institutional innovations in the foreign policy field, Lord Owen told us that he was “very doubtful that it would make any improvements, and it may even be damaging.”⁵⁰¹ Mr Avery, on the other hand, contended that “there will be a more efficient system upstream and downstream of the decision-making—in formulating and developing the policies and presenting proposals to the Council, and in executing the policies and in representing the European Union in the rest

495 Qq 420-424

496 Q 431

497 Q 413; Ev 85

498 Q 502; see also Q 504

499 Ev 82

500 Q 416

501 Q 463

of the world.”⁵⁰² Dr Solana told us that “The steps that have been taken will be constructive, positive and beneficial: that is my honest thinking [...] They will make life easier, more efficient, more coherent and more transparent for the EU Member States”.⁵⁰³ **We conclude that the new institutional arrangements for EU foreign policy created by the Lisbon Treaty have the potential to encourage more coherent and effective foreign policy-making and representation. However, the way in which the new arrangements will work in practice remains unclear. Much will depend on the individuals chosen to fill the new posts and how they choose to interpret their roles. We recommend that the Government engage actively with its EU partners to minimise the short-term disruption involved in the introduction of the new arrangements created by the Lisbon Treaty, and to help them contribute to the EU’s development as a more effective international entity. It is particularly important that the Government and the FCO should not neglect the critical opportunities that are likely to arise over the next 12 months to influence the detailed planning of the new foreign policy arrangements, so as to ensure that they operate in ways which are fully compatible with UK interests.**

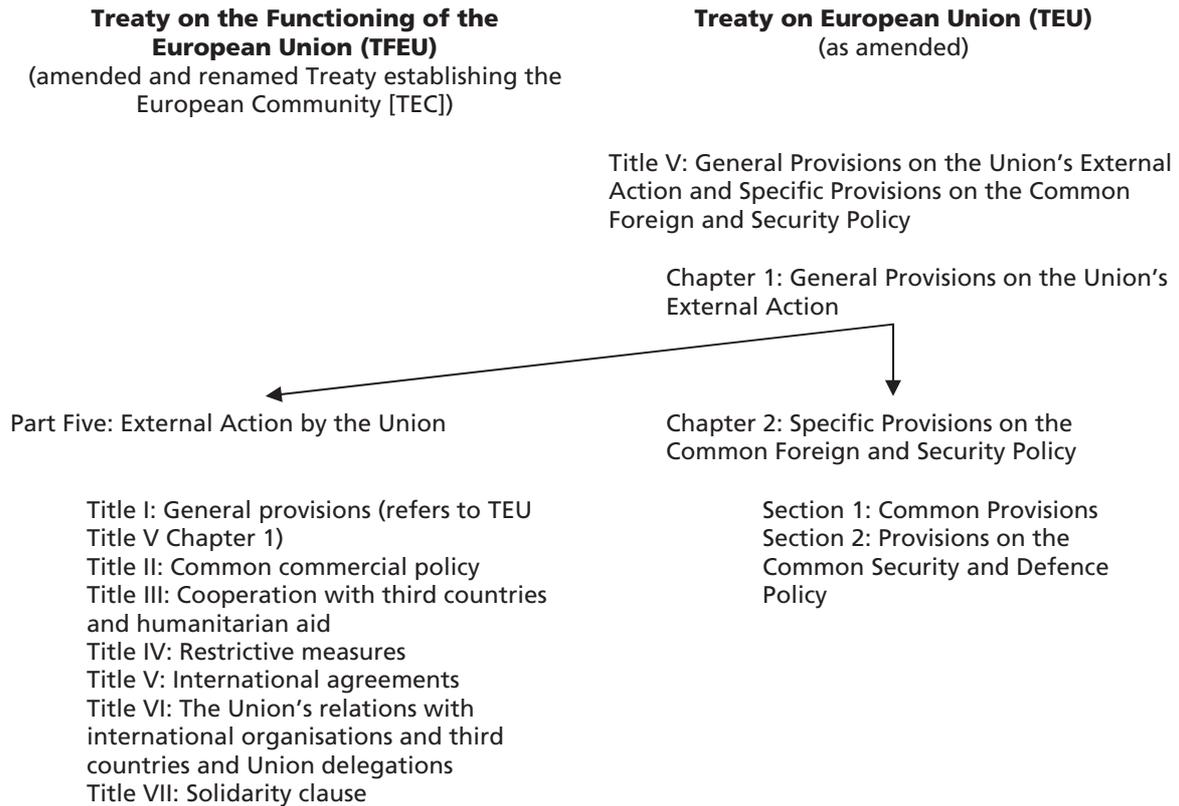
502 Q 413

503 Q 616

Annexes

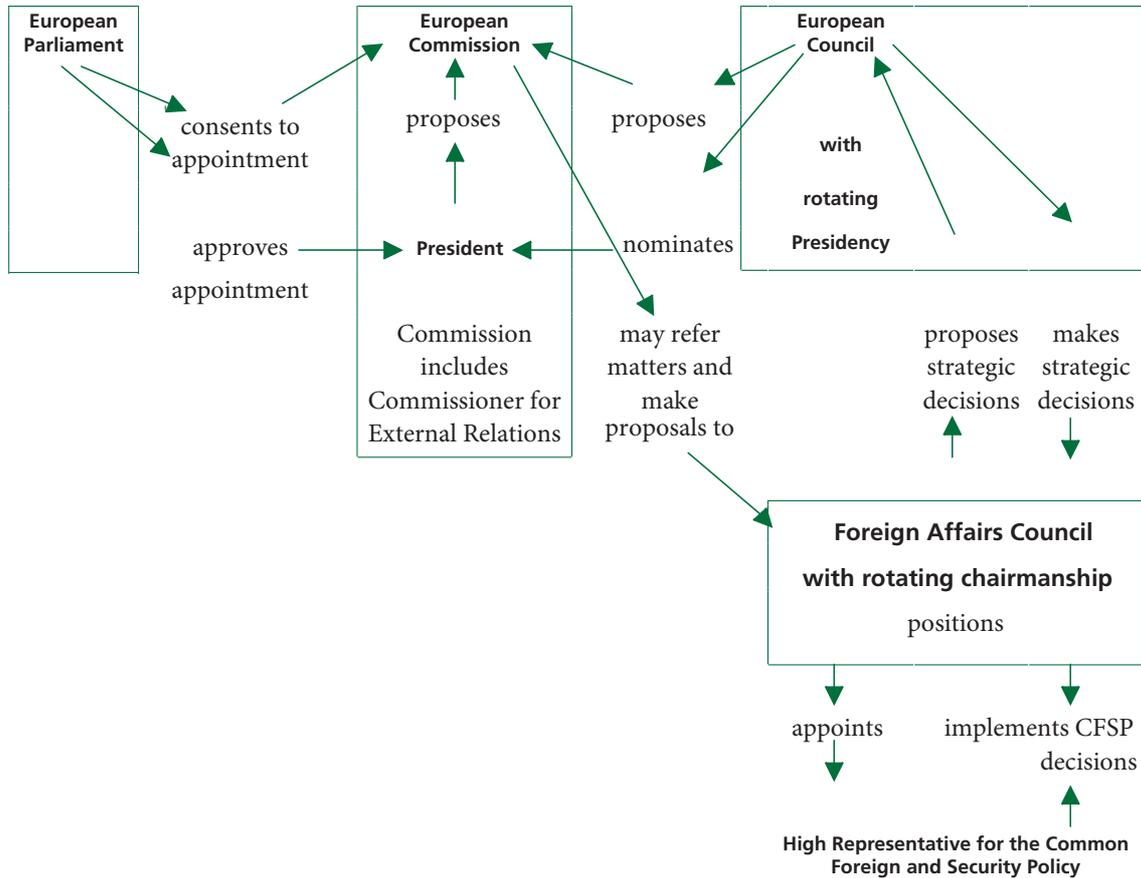
Annex 1: Foreign policy provisions in the Lisbon Treaty architecture

Under the Lisbon Treaty, foreign policy provisions will be arranged in the EU's two main Treaties as follows:



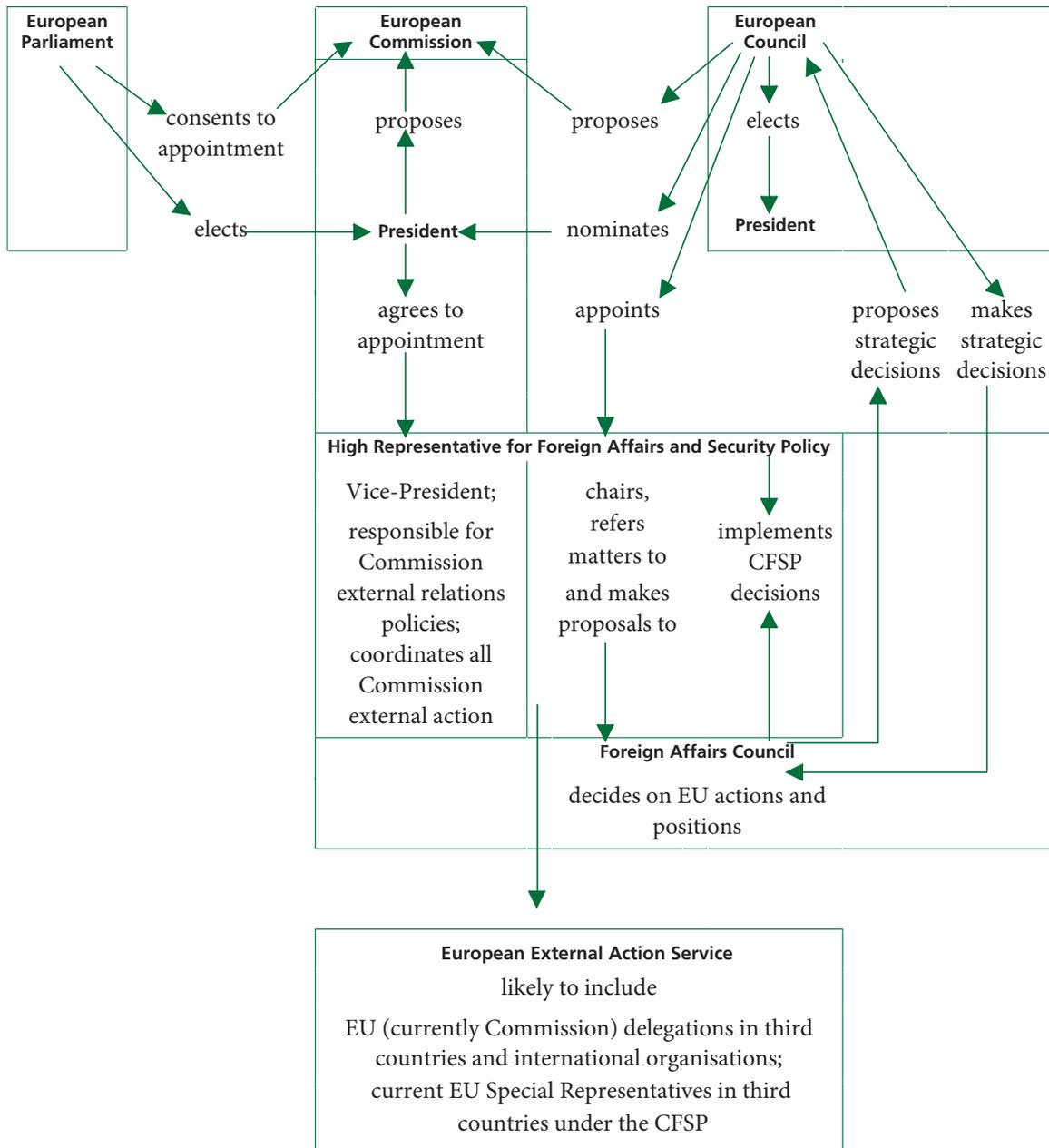
Annex 2: Foreign policy-making structures and processes under the current and Lisbon Treaties

a) Under the current Treaties



The European Council comprises the heads of state or government of the Member States. The Foreign Affairs Council comprises the Foreign Ministers of the Member States. As well as the Commission, any Member State may refer CFSP matters and make CFSP proposals to the Council.

b) Under the Lisbon Treaty



The European Council comprises the heads of state or government of the Member States. The Foreign Affairs Council comprises the Foreign Ministers of the Member States. As well as the High Representative for Foreign Affairs and Security Policy, any Member State may refer CFSP matters and make CFSP proposals to the Council.

Annex 3: Functions of the High Representative for Foreign Affairs and Security Policy under the Lisbon Treaty

“Community” policies and in the European Commission	Common Foreign and Security Policy
<i>The High Representative will:</i>	
be Vice-President of the Commission ⁵⁰⁴	“conduct” the CFSP, ⁵⁰⁵ “carry out” the CFSP, ⁵⁰⁶ put the CFSP “into effect” (with the Member States) ⁵⁰⁷
exercise Commission responsibilities in external relations ⁵⁰⁸	with the Council, ensure the “unity, consistency and effectiveness” of CFSP ⁵⁰⁹
coordinate the Commission’s external action work ⁵¹⁰	represent the EU for CFSP matters ⁵¹¹ make CFSP proposals to the Council ⁵¹² ensure implementation of European Council and Council CFSP decisions ⁵¹³ “search for a solution” when a Member State applies the “emergency brake” to a CFSP decision to be taken by QMV ⁵¹⁴ make recommendations for the opening of negotiations on international agreements falling under the CFSP ⁵¹⁵ and for the suspension of such agreements ⁵¹⁶ be invited to present the EU’s position at the UN Security Council, when the EU has a position on an issue on the Security Council agenda ⁵¹⁷ organise the coordination of Member State actions at international organisations and conferences ⁵¹⁸

504 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU

505 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU

506 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU

507 Article 1 27) of the Lisbon Treaty, amending Article 11 TEU; Article 1 29) of the Lisbon Treaty, amending Article 13 TEU

508 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU

509 Article 1 29) of the Lisbon Treaty, amending Article 13 TEU

510 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU

511 Article 1 30) of the Lisbon Treaty, inserting Article 13a TEU

512 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU; Article 1 30) of the Lisbon Treaty, inserting Article 13a TEU; Article 1 33) of the Lisbon Treaty, amending Article 22 to become Article 15a TEU

513 Article 1 30) of the Lisbon Treaty, inserting Article 13a TEU

514 Article 1 34) of the Lisbon Treaty, inserting Article 15b TEU

515 Article 2 173) of the Lisbon Treaty, inserting Article 188N TFEU to replace Article 300 TEC

516 Article 2 173) of the Lisbon Treaty, inserting Article 188N TFEU

517 Article 1 38) of the Lisbon Treaty, amending Article 19 TEU

518 Article 1 38) of the Lisbon Treaty, amending Article 19 TEU

"Community" policies and in the European Commission	Common Foreign and Security Policy
	propose the appointment of, and have authority over, EU Special Representatives ⁵¹⁹
	give an opinion on the establishment of enhanced cooperation in the CFSP ⁵²⁰ and inform the Council and European Parliament of enhanced cooperation developments ⁵²¹
	consult the European Parliament on the CFSP and ensure its views are taken into account ⁵²²
	propose ESDP missions ⁵²³
	ensure the coordination of the civilian and military aspects of ESDP missions ⁵²⁴
	appoint a representative to chair the Political and Security Committee ⁵²⁵
	jointly with the Council, have responsibility for the Political and Security Committee when that body directs crisis management operations ⁵²⁶
	request an opinion from the Political and Security Committee ⁵²⁷
	propose arrangements for the new start-up fund of Member State contributions for preparatory activities for ESDP tasks; use the fund, under Council authorisation ⁵²⁸
	give an opinion on the establishment of "permanent structured cooperation" in the defence/military field ⁵²⁹
	agree with the Member States involved on the management of "sub-contracted" ESDP tasks ⁵³⁰
	chair the Foreign Affairs Council; ⁵³¹ convene it in extraordinary session ⁵³² take part in the work of the European Council ⁵³³

519 Article 1 37) of the Lisbon Treaty, amending Article 18 TEU

520 Article 2 278) of the Lisbon Treaty, inserting Article 280D TFEU

521 Article 2 278) of the Lisbon Treaty, inserting Article 280C TFEU

522 Article 1 40) of the Lisbon Treaty, amending Article 21 TEU

523 Article 1 49) of the Lisbon Treaty, inserting Article 28A TEU

524 Article 1 50) of the Lisbon Treaty, inserting Article 28B TEU

525 Declaration 9 on Article 9 C(9) of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council

526 Article 1 44) of the Lisbon Treaty, amending Article 25 TEU

527 Article 1 44) of the Lisbon Treaty, amending Article 25 TEU

528 Article 1 47) of the Lisbon Treaty, amending Article 28 TEU

529 Article 1 50) of the Lisbon Treaty, inserting Article 28E TEU

530 Article 1 50) of the Lisbon Treaty, inserting Article 28C TEU

531 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU; Article 1 30) of the Lisbon Treaty, inserting Article 13a TEU

532 Article 1 33) of the Lisbon Treaty, inserting Article 15a TEU

**“Community” policies and in the European
Commission**

Common Foreign and Security Policy

ensure the consistency of the Union’s external action⁵³⁴ (and assist the Council and Commission in this respect)⁵³⁵

jointly with the Commission, implement the requirement that the EU establish appropriate cooperation with international organisations including the UN, Council of Europe, OSCE and OECD⁵³⁶

jointly with the Commission, propose the use of both EU and national resources in an ESDP mission⁵³⁷

jointly with the Commission, make proposals for the adoption of sanctions⁵³⁸

jointly with the Commission, make any proposal for the implementation of the “solidarity clause”⁵³⁹

have authority over EU delegations in third countries and at international organisations⁵⁴⁰

533 Article 1 16) of the Lisbon Treaty, inserting Article 9B TEU

534 Article 1 19) of the Lisbon Treaty, inserting Article 9E TEU

535 Article 1 24) of the Lisbon Treaty, inserting Article 10A TEU

536 Article 2 175) of the Lisbon Treaty, inserting Article 188P TFEU

537 Article 1 49) of the Lisbon Treaty, inserting Article 28A TEU

538 Article 2 169) of the Lisbon Treaty, inserting Article 188K TFEU to replace Article 301 TEC

539 Article 2 176) of the Lisbon Treaty, inserting Article 188R TFEU

540 Article 2 175) of the Lisbon Treaty, inserting Article 188Q TFEU

Annex 4: Foreign policy provisions of the Lisbon, current and Constitutional Treaties compared

The table is intended to show whether selected foreign policy provisions of the Lisbon Treaty are new, compared with the current and Constitutional Treaties. It is not a quantitative assessment of the extent to which the Lisbon Treaty is new.

Lisbon Treaty	In current Treaties?	In Constitutional Treaty?
<i>Institutions</i>		
EU to have legal personality (Article 1 55, inserting Article 46A TEU)	No	Yes (Article I-7)
European Council President to represent EU externally "at his level" (Article 1 16, inserting Article 9B TEU)	No	Yes (Article I-22)
Post of High Representative for Foreign Affairs and Security Policy (Article 1 19, inserting Article 9E TEU; Article 1 30, inserting Article 13a TEU)	No	Yes, but called "Union Minister for Foreign Affairs" (Article I-28)
European External Action Service (Article 1 30, inserting Article 13a TEU)	No	Yes (Article III-296)
Conversion of Commission delegations in third countries and international organisations into Union delegations (Article 2 175, inserting Article 188Q TFEU)	No	Yes (Article III-328)
<i>General external action provisions</i>		
Possibility of simplified Treaty revision procedure to move, by unanimity, Council decisions from unanimity to QMV, with possibility of national Parliament or European Parliament block (Article 1 56, amending Article 48 TEU)	No	Yes (Article IV-444)
Statement of principles and objectives for all EU external action (Article 1 24, inserting Article 10A TEU)	No, although many of the specific objectives are mentioned in various places	Yes (Article III-292)
European Council to determine by unanimity strategic interests and objectives for all EU external action, on basis of Council proposal (Article 1 24, inserting Article 10B TEU)	No: European Council to determine by unanimity strategies for CFSP only, on basis of Council proposal (Article 13 TEU)	Yes (Article III-293)
<i>CFSP</i>		
Statement of specificity of CFSP rules and procedures (Article 1 27, amending Article 11 TEU)	No	No
Declarations on the common foreign and security policy, stating that the policy has no effect on Member States' national	No	No

Lisbon Treaty	In current Treaties?	In Constitutional Treaty?
foreign policy rights and responsibilities (Declarations 13 and 14)		
Implementation of CFSP not to affect "Community" powers and procedures; implementation of "Community" policies under TFEU not to affect CFSP powers and procedures (Article 1 45, inserting Article 25b TEU)	Only half of the provision: Nothing in the TEU, including the CFSP, to affect the TEC (Article 47 TEU)	Yes (Article III-308)
Explicit exclusion of ECJ jurisdiction over CFSP except for two specified types of case (Article 2 223, inserting Article 240a TFEU)	The ECJ has a form of jurisdiction in the two areas provided for in the Lisbon Treaty, but there is no explicit statement otherwise excluding the ECJ from the CFSP	Yes (Article III-376)
Ban on using Article 308 TEC/TFEU to achieve CFSP objectives (Article 2 289, amending Article 308 TEC/TFEU)	No	No
CFSP to be based on "ever-increasing degree of convergence of Member States' actions" (Article 1 27, amending Article 11 TEU)	No, although Article 16 TEU refers to "convergent action"	Yes (Article I-40)
Member States to "comply" with EU CFSP action (Article 1 27, amending Article 11 TEU)	No	Yes (Article I-16)
Consultation among Member States in order to "determine a common approach" (Article 1 35, amending Article 16 TEU)	No: Consultation among Member States in order to exert EU influence via "convergent action" (Article 16 TEU)	Yes (Article I-40)
Member States to consult each other before undertaking any action or commitment which could affect EU interests (Article 1 35, amending Article 16 TEU)	No: Member States to consult each other on any foreign or security policy matter of general interest (Article 16 TEU); to refrain from any action which is contrary to the interests of the Union (Article 11 TEU)	Yes (Article I-40)
European Council to define strategic interests and objectives for CFSP (Article 1 29, amending Article 13 TEU)	Yes (Article 13 TEU)	Yes (Article I-40)
QMV for Council decisions on the basis of a European Council strategic decision (Article 1 34, inserting Article 15b TEU)	Yes (Article 23 TEU)	Yes (Article III-300)
QMV for Council decisions on the basis of a proposal from the High Representative following a request from the European Council (Article 1 34, inserting Article 15b TEU)	No	Yes (Article III-300)
QMV for Council appointments of EU Special Representatives; appointments to	Partially: QMV for Council appointments of EU Special	Yes (Article III-300)

Lisbon Treaty	In current Treaties?	In Constitutional Treaty?
be proposed by High Representative (Article 1 34, inserting Article 15b TEU; Article 1 37, amending Article 18 TEU)	Representatives (Article 23 TEU)	
CFSP passerelle allowing unanimous decision to move further CFSP decisions to QMV (Article 1 34, inserting Article 15b)	No	Yes (Article III-300)
On issues where the EU has a position, Member States on the UN Security Council to request that the High Representative be invited to present the EU position (Article 1 38, amending Article 19 TEU)	No, although the High Representative and the Presidency are in practice already invited to speak at the Security Council	Yes (Article III-305)
Union delegations and Member State diplomatic missions to cooperate and contribute to formulating and implementing the EU common approach (Article 1 35, amending Article 16 TEU)	No	Yes (Article III-301)
Option to establish enhanced cooperation in all of CFSP (including military decisions) by unanimity among participating Member States (Article 1 22, inserting Article 10 TEU)	Option to establish enhanced cooperation for CFSP implementing decisions (excluding military decisions) by QMV of participating Member States (Articles 27b, 27C and 44 TEU)	Yes (Article III-419)
<i>ESDP</i>		
EU competence includes both the "progressive framing of a common defence policy" that "might lead to a common defence" (Article 1 27, amending Article 11 TEU) and that "will lead to a common defence, when the European Council, acting unanimously, so decides" (Article 1 49, inserting Article 28A TEU)	No: CFSP includes the "progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide" (Article 17 TEU)	Yes (Articles I-16 and I-41)
Mutual defence clause (Article 1 49, inserting Article 28A TEU)	No	Yes (Article I-41)
Treaty mention of European Defence Agency (Article 1 50, inserting Article 28D TEU)	No	Yes (Articles I-41 and III-311)
Possibility of "subcontracting" ESDP tasks to group of Member States (Article 1 50, inserting Article 28C TEU)	No	Yes (Article III-310)
Possibility of establishing, by QMV, "permanent structured cooperation" among group of Member States in defence/military field (Article 1 50, inserting Article 28E TEU)	No	Yes (Articles I-41 and III-312)
Rapid access to EU budget for urgent CFSP initiatives, in particular preparatory activities for ESDP tasks (Article 147, amending Article 28 TEU)	No	Yes (Article III-313)

Lisbon Treaty	In current Treaties?	In Constitutional Treaty?
Start-up fund of Member State contributions for preparatory activities for ESDP tasks (Article 1 47, amending Article 28 TEU)	No	Yes (Article III-313)
<i>Other policies</i>		
Explicit statement that national security the sole responsibility of Member States (Article 1 5, inserting Article 3a TEU)	No	No
“Solidarity clause” on mutual assistance among Member States against terrorism and natural disasters (Article 2 176, inserting Article 188R TFEU)	No	Yes (Articles I-43 and III-329)
Treaty mention of “Copenhagen criteria” for enlargement (Article 1 57, amending Article 49 TEU)	No	No
Treaty mention for EU neighbourhood policy (Article 1 10, inserting Article 7a TEU)	No	Yes (Article I-57)
Macroeconomic financial assistance and humanitarian aid to be extended to third countries by QMV (humanitarian aid also by co-decision) (Articles 2 167 and 168, inserting Articles 188I and 188J TFEU)	No	Yes (Articles III-320 and III-321)
Treaty base for economic sanctions against individuals and legal persons (Article 2 169, inserting Article 188K TFEU)	No	Yes (Article III-322)
Possibility of EU legislation to implement citizens’ right to consular protection in a third country by a Member State other than their own (Article 20 TFEU)	No	Yes (Article III-127)

Annex 5: Glossary and abbreviations

Common Foreign and Security Policy (CFSP): An EU policy field established by the Treaty on European Union (Maastricht Treaty) of 1992. The Treaty on European Union established the CFSP as an area of intergovernmental cooperation, outside the European Community. After 1992, the CFSP was known as the EU's "second pillar" (with the European Community comprising the first, and intergovernmental cooperation in justice and home affairs comprising the third).

Constitutional Treaty: Officially called the Treaty establishing a Constitution for Europe, the Constitutional Treaty was signed on 29 October 2004. After the French and Dutch electorates voted against the ratification of the Constitutional Treaty in referendums in May and June 2005 respectively, and other Member States put their ratification processes on hold, the Constitutional Treaty never came into effect.

Council (of Ministers) (of the European Union): The body of Ministers from the Member States. Along with the European Parliament, the Council is the EU's legislative body. The Council meets in different configurations for different policy areas i.e. the Environment Council comprises Member State Environment Ministers, and so forth. At present, Foreign Ministers meet as the General Affairs and External Relations Council; if the Lisbon Treaty comes into force, the Foreign Affairs Council will meet separately. In this Report, the term "Council" on its own refers to the Council of Ministers.

European Commission: The supranational body of officials responsible for proposing and ensuring the implementation of EU law.

European Community (EC): The original European Economic Community, as renamed by the Treaty on European Union (Maastricht Treaty) of 1992. The EC is governed by the "Community method", as opposed to the intergovernmental elements of the EU.

European Council: The body of Member State heads of state or government. The European Council has gained increasing prominence since the 1970s and is referred to in the existing EU Treaties, but it would only become an official EU institution under the Lisbon Treaty. The European Council does not have legislative powers. The European Council currently meets twice a year informally (in March and October, in the country holding the rotating Presidency) and twice a year formally (in June and December, in Brussels).

European Court of Justice (ECJ): Under the EU Treaties, the European Court of Justice ensures that EU law is upheld, by making rulings in specific cases.

European External Action Service (EEAS): A new institution created by the Treaty of Lisbon to support the new High Representative of the Union for Foreign Affairs and Security Policy. The EEAS will be made up of staff drawn from the European Commission, the Council Secretariat and the Member States.

European Security and Defence Policy (ESDP): An element within the Common Foreign and Security Policy, encompassing crisis management, peace-keeping and the possibility of a common defence. The Treaty on European Union (Maastricht Treaty) of 1992 introduced the possibility of EU involvement in military and security matters, but the

ESDP began to develop substantively after the 1997 Treaty of Amsterdam and especially after the 1998 UK-French St Malo initiative. Rather than the European Security and Defence Policy, the Lisbon Treaty refers to the Common Security and Defence Policy.

European Union (EU): Established by the Treaty on European Union (Maastricht Treaty) of 1992. The EU originally comprised three “pillars”: the European Community (EC), and two areas of intergovernmental cooperation, namely the common foreign and security policy (CFSP) (the “second pillar”), and cooperation in justice and home affairs (JHA) (the “third pillar”).

High Representative for the Common Foreign and Security Policy: A post created by amendments to the TEU introduced by the 1997 Treaty of Amsterdam, and held since the Treaty of Amsterdam took effect in 1999 by the former Spanish Foreign Minister and NATO Secretary-General Dr Javier Solana. The post has responsibilities exclusively in the CFSP.

High Representative of the Union for Foreign Affairs and Security Policy: A new post created by the Treaty of Lisbon, replacing the existing High Representative position. The new post will take over the responsibilities of the Commissioner for External Relations, as well as having an expanded set of functions in the CFSP. Owing to its combination of Commission and Council functions, the new post is often referred to as being “double-hatted”.

Intergovernmental Conference (IGC): The process in which Member State representatives negotiate amendments to EU Treaties.

Justice and Home Affairs (JHA): An EU policy field which was established by the Treaty on European Union (Maastricht Treaty) of 1992 as one of intergovernmental cooperation. After 1992, intergovernmental cooperation in JHA was known as the EU’s “third pillar”. From the Treaty of Amsterdam of 1997, JHA has been moved increasingly from intergovernmental cooperation into the European Community, a process which would continue under the Lisbon Treaty.

Passerelle: The French word for a footbridge, a “passerelle” is a clause in an EU Treaty which allows the movement of a policy issue from intergovernmentalism to the “Community” method, or from unanimity to qualified majority voting, without an Intergovernmental Conference.

Political and Security Committee (PSC): A body of Member State officials operating below the Council in the field of the Common Foreign and Security Policy, and especially in the European Security and Defence Policy. The PSC monitors the situation in relevant third countries and the implementation of the CFSP, and contributes to CFSP decision-making. The PSC also runs EU crisis management operations under the authority of the Council. The PSC gained formal status under the 2001 Treaty of Nice. Chaired hitherto by the Member State holding the EU’s rotating Presidency, under the Lisbon Treaty the PSC will be chaired by a representative of the new High Representative for Foreign Affairs and Security Policy.

Treaty establishing the European Community (TEC): New name given to the Treaty establishing the European Economic Community by the Treaty on European Union

(Maastricht Treaty) of 1992. The Treaty establishing the European Economic Community was also known as the Treaty of Rome (1957). If the Lisbon Treaty is ratified, the Treaty establishing the European Community will itself be renamed, as the Treaty on the Functioning of the European Union (TFEU). As well as being renamed, the Treaty now to be known as the Treaty on the Functioning of the European Union has several times been amended in substance, by the Single European Act (1986), the Treaty on European Union (Maastricht Treaty) (1992), the Amsterdam Treaty (1997) and the Nice Treaty (2001).

Treaty on European Union (TEU): Signed on 2 February 1992 and also known as the Maastricht Treaty. The TEU amended and renamed—as the Treaty establishing the European Community—the Treaty establishing the European Economic Community, and added to the Community two intergovernmental “pillars”—namely cooperation in foreign policy and justice and home affairs—to create a three-pillared European Union. Since 1992, the TEU has been amended by the Treaties of Amsterdam (1997) and Nice (2001), and it will be again by the Treaty of Lisbon (2007) if that document is ratified.

Treaty on the Functioning of the European Union (TFEU): New name for the Treaty establishing the European Community. The renaming is one of the amendments to the TEC made by the Treaty of Lisbon.

Treaty of Lisbon/Lisbon Treaty: Signed on 13 December 2007. Like the Amsterdam and Nice Treaties before it, the Lisbon Treaty amends the Treaty Establishing the European Community and the Treaty on European Union.

Formal minutes

Wednesday 16 January 2008

Members present:

Mr Fabian Hamilton	Sandra Osborne
Mr David Heathcoat-Amory	Mr Greg Pope
Mr John Horam	Mr Ken Purchase
Mr Eric Illsley	Sir John Stanley
Mr Paul Keetch	Ms Gisela Stuart
Andrew Mackinlay	Mr Richard Younger-Ross
Mr Malcolm Moss	

Sir John Stanley took the Chair, pursuant to Resolution [14th January].

The Committee deliberated.

Draft Report (*Foreign Policy Aspects of the Lisbon Treaty*), proposed by the Chairman, brought up and read.

Question put, That the Chairman's draft Report be read a second time, paragraph by paragraph.

The Committee divided.

Ayes, 8

Mr David Heathcoat-Amory
Mr John Horam
Mr Paul Keetch
Andrew Mackinlay
Mr Malcolm Moss
Sandra Osborne
Ms Gisela Stuart
Richard Younger-Ross

Noes, 4

Mr Fabian Hamilton
Mr Eric Illsley
Mr Greg Pope
Mr Ken Purchase

Paragraphs 1 to 18 read and agreed to.

Paragraph 19 read, amended and agreed to.

Paragraphs 20 to 26 read and agreed to.

Paragraph 27 read, amended and agreed to.

Paragraphs 28 to 34 read and agreed to.

A paragraph —(*Richard Younger-Ross*)—brought up, read the first and second time, and inserted (now paragraph 35).

Paragraphs 35 and 36 (now paragraphs 36 and 37) read and agreed to.

Paragraph 37 read.

Amendment proposed, in line 5, to leave out from “process.” to the end of the paragraph, and add “Since the German Presidency was required to produce a report for further discussion and not a draft treaty, and in view of repeated assurances about the need for public involvement, the Government should have refused to comply with the compressed timetable whereby less than four days elapsed between first sight of the draft treaty by member states and its adoption by the June 2007 European Council.” —(*Mr David Heathcoat-Amory.*)

Question, That the Amendment be made, put and negatived.

Paragraph amended and agreed to.

A paragraph—(*Andrew Mackinlay*)—brought up and read, as follows:

As we will illustrate, due to the lack of clarity in the Treaty’s wording and the absence of adequate time for Parliament to give detailed and forensic scrutiny, line by line, to the Treaty’s wording and provisions, we can do little more than draw to Parliament’s attention the undefined meaning and unclear intention and consequences of some of the Treaty’s wording. For instance, there are the matters to which we draw attention at paragraphs 84, 105, 155, 170 and 207 below.

Question, That the paragraph be read a second time, put and negatived.

A paragraph—(*Andrew Mackinlay*)—brought up and read, as follows:

As we will illustrate, due to the lack of clarity in the Treaty’s wording and the absence of adequate time for Parliament to give detailed and forensic scrutiny, line by line, to the Treaty’s wording and provisions, we can do little more than draw to Parliament’s attention the undefined meaning and unclear intention and consequences of some of the Treaty’s wording.

Question, That the paragraph be read a second time, put and negatived.

Paragraphs 38 to 65 (now paragraphs 39 to 66) read and agreed to.

Paragraph 66 (now paragraph 67) read.

Amendment proposed, in line 3, to leave out “are also sympathetic to” and insert “understand”. —(*Richard Younger-Ross.*)

Question, That the Amendment be made, put and negatived.

Paragraph agreed to.

Paragraphs 67 to 74 (now paragraphs 68 to 75) read and agreed to.

Paragraph 75 (now paragraph 76) read.

Amendment proposed, in line 1, to leave out “told us” and insert “argued”. —(*Andrew Mackinlay.*)

Question, That the Amendment be made, put and negatived.

Paragraph amended and agreed to.

Paragraphs 76 to 81 (now paragraphs 77 to 82) read and agreed to.

Paragraphs 82 and 83 (now paragraphs 83 and 84) read, amended and agreed to.

Paragraphs 84 to 86 (now paragraphs 85 to 87) read and agreed to.

Paragraph 87 (now paragraph 88) read, amended and agreed to.

Paragraphs 88 and 89 (now paragraphs 89 and 90) read and agreed to.

Paragraph 90 (now paragraph 91) read, amended and agreed to.

Paragraphs 91 to 99 (now paragraphs 92 to 100) read and agreed to.

Paragraph 100 (now paragraph 101) read, amended and agreed to.

Paragraph 101 (now paragraph 102) read and agreed to.

Paragraph 102 (now paragraph 103) read.

Amendment proposed, in line 15, at the end to add “, though it seems very unlikely that such a request would be made without a consensus on the European Council, in line with normal practice.”.—(*Mr John Horam.*)

Question, That the Amendment be made, put and negatived.

Paragraph agreed to.

Paragraph 103 (now paragraph 104) read and agreed to.

Paragraph 104 (now paragraph 105) read, amended and agreed to.

Paragraphs 105 to 110 (now paragraphs 106 to 111) read and agreed to.

Paragraph 111 (now paragraph 112) read, amended and agreed to.

Paragraphs 112 and 113 (now paragraphs 113 and 114) read and agreed to.

Paragraph 114 (now paragraph 115) read, amended and agreed to.

Paragraphs 115 and 116 (now paragraphs 116 and 117) read and agreed to.

Paragraph 117 (now paragraph 118) read.

Amendment proposed, in line 5, at the end to add “**However this is not in itself a sufficient safeguard for the continued independence of British foreign policy given the qualified majority voting provisions and procedures in the Treaty, and the creation of the European External Action Service (see paragraphs 178 to 190 below).**”.—(*Sir John Stanley.*)

Question, That the Amendment be made, put and negatived.

Paragraph agreed to.

Paragraphs 118 to 141 (now paragraphs 119 to 142) read and agreed to.

Paragraph 142 (now paragraph 143) read, amended and agreed to.

Paragraphs 143 to 152 (now paragraphs 144 to 153) read and agreed to.

Paragraph 153 (now paragraph 154) read.

Amendment proposed, in line 4, leave out from “policy.” to the end of the paragraph.—(*Mr John Horam.*)

Question, That the Amendment be made, put and negatived.

Paragraph amended and agreed to.

Paragraph 154 (now paragraph 155) read and amended.

Another Amendment proposed, in line 2, to leave out “**could**” and insert “**will**”.—(*Richard Younger-Ross.*)

Question, That the Amendment be made, put and negatived.

Paragraph, as amended, agreed to.

Paragraph 155 (now paragraph 156) read and agreed to.

Paragraph 156 (now paragraph 157) read.

Amendment proposed, in line 8, to leave out from “**Treaty**” to the end of the paragraph and add **“does give the High Representative a more explicit right to speak at the UN Security Council and this is likely to fuel demands for the replacement of EU members of the Security Council with a permanent EU seat.”**—(*Mr David Heathcoat-Amory.*)

Question, That the Amendment be made, put and negatived.

Another Amendment proposed, in line 10, to leave out from “**practice.**” to the end of the paragraph and add **“We also conclude that in the short term it will not undermine the position of the UK in the United Nations generally nor the UK’s representation and role as a Permanent Member of the Security Council; the consequences of this provision in the longer term remain to be seen.”**—(*Sir John Stanley.*)

Question, That the Amendment be made, put and negatived.

Paragraph agreed to.

Paragraphs 157 to 168 (now paragraphs 158 to 169) read and agreed to.

Paragraph 169 (now paragraph 170) read.

Amendment proposed, to leave out from the beginning to “**Council**”, in line 3, and to insert **“We conclude that the replacement of the rotating Presidency of the European Council with a full-time supranational President will increase continuity of business but will widen the gap between the EU and the public, and do nothing to deliver the instruction in the 2001 Laeken Declaration to bring the EU ‘closer to its citizens’.**”—(*Mr David Heathcoat-Amory.*)

Question, That the Amendment be made, put and negatived.

Paragraph agreed to.

Paragraphs 170 to 186 (now paragraphs 171 to 187) read and agreed to.

Paragraph 187 (now paragraph 188) read.

Amendment proposed, at the end to add **“We recommend that the Government does nothing towards setting up the External Action Service in advance of ratification of the Lisbon Treaty, in order to counter the impression that EU projects proceed regardless of parliamentary or public decisions.”**—(*Mr David Heathcoat-Amory.*)

Question, That the Amendment be made, put and negatived.

Paragraph agreed to.

Paragraph 188 (now paragraph 189) read and agreed to.

Paragraph 189 (now paragraph 190) read and amended.

Another Amendment proposed, in line 6, to leave out from “**above**” to the end of the paragraph, and add **“Unless or until the Government has detailed its proposals to ensure that Parliament and its committees receive the information to scrutinise—on an ongoing basis—the work of the EEAS, and these have been incorporated into Standing Orders, Parliament should decline to progress the legislation necessary to give effect to the Lisbon Treaty in the UK. It is time that Parliament asserted its right to determine its machinery for ongoing scrutiny of the EEAS and the workings of the EU’s institutions and officials generally, in advance of acquiescing in further Treaty change rather than after the event.”**— (*Andrew Mackinlay.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Andrew Mackinlay

Noes, 11

Mr Fabian Hamilton
Mr David Heathcoat-Amory
Mr John Horam
Mr Eric Illsley
Mr Paul Keetch
Mr Malcolm Moss
Sandra Osborne
Mr Greg Pope
Mr Ken Purchase
Ms Gisela Stuart
Richard Younger-Ross

Another Amendment proposed, in line 6, to leave out from “**above**” to the end of the paragraph, and add “**Unless or until the Government has detailed its proposals to ensure that Parliament and its committees receive the information to scrutinise—on an ongoing basis—the work of the EEAS, and these have been incorporated into Standing Orders, Parliament should decline to progress the legislation necessary to give effect to the Lisbon Treaty in the UK.**”—(*Andrew Mackinlay.*)

Question, That the Amendment be made, put and negatived.

Paragraph , as amended, agreed to.

Paragraphs 190 to 192 (now paragraphs 191 to 193) read and agreed to.

Paragraph 193 (now paragraph 194) read.

Amendment proposed, in line 7, to leave out from “career.” to the end of the paragraph.—(*Andrew Mackinlay.*)

Question, That the Amendment be made, put and negatived.

Paragraph agreed to.

Paragraphs 194 to 205 (now paragraphs 195 to 206) read and agreed to.

Paragraph 206 (now paragraph 207) read, amended and agreed to.

Paragraphs 207 to 212 (now paragraphs 208 to 213) read and agreed to.

Paragraph 213 (now paragraph 214) read, amended and agreed to.

Paragraphs 214 to 217 (now paragraphs 215 to 218) read and agreed to.

Paragraph 218 (now paragraph 219) read, as follows:

Our academic witnesses confirmed unequivocally that the change of name from “Union Minister for Foreign Affairs” to “High Representative for Foreign Affairs and Security Policy”, plus the two new, UK-inspired, non-legally binding Declarations on the Common Foreign and Security Policy, are the only differences in the foreign affairs field between the provisions of the Constitutional Treaty and those under the

Lisbon Treaty. **We conclude that there is no material difference between the provisions of the Constitutional Treaty and those under the Lisbon Treaty in the foreign affairs field.**

Amendment proposed, in line 5, to leave out from “Treaty” to the end of the paragraph, and add “**We conclude that there is no material difference between the provisions on foreign affairs in the Constitutional Treaty which the Government made subject to approval in a referendum and those in the Lisbon Treaty on which a referendum is being denied.**” —(*Sir John Stanley.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 7

Mr David Heathcoat-Amory
Mr John Horam
Mr Paul Keetch
Andrew Mackinlay
Mr Malcolm Moss
Ms Gisela Stuart
Richard Younger-Ross

Noes, 5

Mr Fabian Hamilton
Mr Eric Illsley
Sandra Osborne
Mr Greg Pope
Mr Ken Purchase

Question put, That the paragraph, as amended, stand part of the Report.

The Committee divided.

Ayes, 7

Mr David Heathcoat-Amory
Mr John Horam
Mr Paul Keetch
Andrew Mackinlay
Mr Malcolm Moss
Ms Gisela Stuart
Richard Younger-Ross

Noes, 5

Mr Fabian Hamilton
Mr Eric Illsley
Sandra Osborne
Mr Greg Pope
Mr Ken Purchase

Paragraph 219 read, as follows:

In Chapter 3 we discussed the Government’s foreign policy “red line”, and in Chapter 4 we discussed the nature of the Common Foreign and Security Policy under the Lisbon Treaty. There, we concluded that the CFSP was likely to remain intergovernmental, and driven by the Member States. In this context, some of our witnesses discussed whether the Government had secured its foreign policy “red line” in the Lisbon Treaty. Lord Owen told us that he thought “we have reached the absolute maximum of how much we can concede on foreign policy. Any further erosion would be destructive to the concept of an independent foreign policy”. Lord Owen did not think that the Government had secured its foreign policy “red line”. However, Dr Solana told us that, given the content of the Treaty and the declarations which the UK had secured, “the issues are as safe as you can get”. **Given our conclusion that the Common Foreign and Security Policy under the Lisbon Treaty is likely to remain an intergovernmental process, we conclude that the Government has secured its foreign policy “red line”.**

Amendment proposed, in line 3, after “remain” to insert “partly”. —(*Mr David Heathcoat-Amory.*)

Question, That the Amendment be made, put and negatived.

Another Amendment proposed, in line 11, to leave out from “get” to the end of the paragraph, and add **“We conclude that the fact that the Common Foreign and Security Policy under the Lisbon Treaty is likely to remain an intergovernmental process is not in itself a sufficient safeguard for the continued independence of British foreign policy given the qualified majority voting provisions and procedures in the Treaty, and the creation of the European External Action Service. We further conclude that the Lisbon Treaty is likely over time to result in a diminution in the independence of British foreign policy, and that the Government may well therefore not have secured its foreign policy “red line”.”**—(*Sir John Stanley.*)

Question, That the Amendment be made, put and negatived.

Another Amendment proposed, in line 11, to leave out from “get” to the end of the paragraph, and add **“We conclude that although substantial elements of the intergovernmental process remain for the Commons Foreign and Security Policy, this is not the same as the retention of an independent foreign policy, which is the Government’s ‘red line’.”**—(*Mr David Heathcoat-Amory.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr David Heathcoat-Amory
Mr Malcolm Moss

Noes, 9

Mr Fabian Hamilton
Mr Eric Illsley
Mr Paul Keetch
Andrew Mackinlay
Sandra Osborne
Mr Greg Pope
Mr Ken Purchase
Ms Gisela Stuart
Richard Younger-Ross

Question put, That the paragraph stand part of the Report.

The Committee divided.

Ayes, 5

Mr Fabian Hamilton
Mr Eric Illsley
Sandra Osborne
Mr Greg Pope
Mr Ken Purchase

Noes, 7

Mr David Heathcoat-Amory
Mr John Horam
Mr Paul Keetch
Andrew Mackinlay
Mr Malcolm Moss
Ms Gisela Stuart
Richard Younger-Ross

Paragraphs 220 and 221 read and agreed to.

A paragraph—(*Andrew Mackinlay*)—brought up and read, as follows:

We cannot conclude our Report without reference to the ongoing debate in Parliament and the country as to whether or not the UK’s ratification of the Lisbon Treaty should be contingent upon an affirmative vote in a referendum. In its 2005 general election manifesto, the Labour Party said, with reference

to the Constitutional Treaty, that “It is a good treaty for Britain and for the new Europe. We will put it to the British People in a referendum”.⁵⁴¹ We note that the Government argues that, unlike the Constitutional Treaty, the Lisbon Treaty follows the classical method of altering the Union’s governance, by amending existing Treaties. The Government believes that this “gradualist” approach ensures that amendments are strictly limited to accommodating those changes in the existing Treaties that are essential as a consequence of the increasing international influence and commitments of the Union, the development of the Common Foreign and Security Policy, the enlargement of the Union to 27, and the possibility of enlargement to include further countries, namely Turkey and states in the Western Balkans. However, as we have concluded in paragraph 219 above, in the field of foreign policy the Lisbon Treaty is materially the same as the Constitutional Treaty.⁵⁴² **We conclude that it is not possible to ignore the fact that the Lisbon Treaty is of considerable constitutional importance. We also conclude that notwithstanding the Government’s arguments that this is merely an amending Treaty, and that the Lisbon Treaty does not have the features of a Constitution, we are conscious of the fact that this cannot satisfy or assuage the perception of a significant body of public opinion. For this body of public opinion, the Government is making a distinction without a difference. We therefore conclude that the Government should reflect on the fairness of relying on the distinction it draws between the Constitutional Treaty, and the “amending” nature of the Lisbon Treaty, when refusing to submit the latter document to a referendum.**

Question put, That the paragraph be read a second time.

The Committee divided.

Ayes, 2

Mr David Heathcoat-Amory
Andrew Mackinlay

Noes, 8

Mr Fabian Hamilton
Mr Eric Illsley
Mr Paul Keetch
Sandra Osborne
Mr Greg Pope
Mr Ken Purchase
Ms Gisela Stuart
Richard Younger-Ross

Another paragraph—(*Andrew Mackinlay*)—brought up and read, as follows:

We cannot conclude our Report without reference to the ongoing debate in Parliament and the country as to whether or not the UK’s ratification of the Lisbon Treaty should be contingent upon an affirmative vote in a referendum. In its 2005 general election manifesto, the Labour Party said, with reference to the Constitutional Treaty, that “It is a good treaty for Britain and for the new Europe. We will put it to the British People in a referendum”.⁵⁴³ We note that the Government argues that, unlike the Constitutional Treaty, the Lisbon Treaty follows the classical method of altering the Union’s governance, by amending existing Treaties. The Government believes that this “gradualist” approach ensures that amendments are strictly limited to accommodating those changes in the existing Treaties that are essential as a consequence of the increasing international influence and commitments of the Union, the development of the Common Foreign and Security Policy, the enlargement of the Union to 27, and the possibility of enlargement to include further countries, namely Turkey and states in the Western Balkans. However, as we have concluded in paragraph 219 above, in the field of foreign policy the Lisbon Treaty is materially the same as the Constitutional Treaty.⁵⁴⁴ **We conclude that it is not possible to ignore the fact that the Lisbon Treaty is of**

541 “Britain forward not back”, the Labour Party manifesto 2005, p 84

542 See also Annex 4.

543 “Britain forward not back”, the Labour Party manifesto 2005, p 84

544 See also Annex 4.

considerable constitutional importance. We also conclude that notwithstanding the Government's arguments that this is merely an amending Treaty, and that the Lisbon Treaty does not have the features of a Constitution, we are conscious of the fact that this cannot satisfy or assuage the perception of a significant body of public opinion. For this body of public opinion, the Government is making a distinction without a difference.

Question, That the paragraph be read a second time, put and negatived.

Another paragraph—(*Andrew Mackinlay*)—brought up and read, as follows:

We cannot conclude our Report without reference to the ongoing debate in Parliament and the country as to whether or not the UK's ratification of the Lisbon Treaty should be contingent upon an affirmative vote in a referendum. In its 2005 general election manifesto, the Labour Party said, with reference to the Constitutional Treaty, that "It is a good treaty for Britain and for the new Europe. We will put it to the British People in a referendum".⁵⁴⁵ We note that the Government argues that, unlike the Constitutional Treaty, the Lisbon Treaty follows the classical method of altering the Union's governance, by amending existing Treaties. The Government believes that this "gradualist" approach ensures that amendments are strictly limited to accommodating those changes in the existing Treaties that are essential as a consequence of the increasing international influence and commitments of the Union, the development of the Common Foreign and Security Policy, the enlargement of the Union to 27, and the possibility of enlargement to include further countries, namely Turkey and states in the Western Balkans. However, as we have concluded in paragraph 219 above, in the field of foreign policy the Lisbon Treaty is materially the same as the Constitutional Treaty.⁵⁴⁶ **We conclude that it is not possible to ignore the fact that the Lisbon Treaty is of considerable constitutional importance.**

Question, That the paragraph be read a second time, put and negatived.

Another paragraph—(*Andrew Mackinlay*)—brought up and read, as follows:

We cannot conclude our Report without reference to the ongoing debate in Parliament and the country as to whether or not the UK's ratification of the Lisbon Treaty should be contingent upon an affirmative vote in a referendum. In its 2005 general election manifesto, the Labour Party said, with reference to the Constitutional Treaty, that "It is a good treaty for Britain and for the new Europe. We will put it to the British People in a referendum".⁵⁴⁷ We note that the Government argues that, unlike the Constitutional Treaty, the Lisbon Treaty follows the classical method of altering the Union's governance, by amending existing Treaties. The Government believes that this "gradualist" approach ensures that amendments are strictly limited to accommodating those changes in the existing Treaties that are essential as a consequence of the increasing international influence and commitments of the Union, the development of the Common Foreign and Security Policy, the enlargement of the Union to 27, and the possibility of enlargement to include further countries, namely Turkey and states in the Western Balkans. However, as we have concluded in paragraph 219 above, in the field of foreign policy the Lisbon Treaty is materially the same as the Constitutional Treaty.⁵⁴⁸ **We conclude that notwithstanding the Government's arguments that this is merely an amending Treaty, and that the Lisbon Treaty does not have the features of a Constitution, we are conscious of the fact that this cannot satisfy or assuage the perception of a significant body of public opinion. For this body of public opinion, the Government is making a distinction without a difference. We therefore conclude that the Government should reflect on the fairness of relying on the distinction is draws between the Constitutional Treaty, and the "amending" nature of the Lisbon Treaty, when refusing to submit the latter document to a referendum.**

Question, That the paragraph be read a second time, put and negatived.

Another paragraph—(*Andrew Mackinlay*)—brought up and read, as follows:

545 "Britain forward not back", the Labour Party manifesto 2005, p 84

546 See also Annex 4.

547 "Britain forward not back", the Labour Party manifesto 2005, p 84

548 See also Annex 4.

We cannot conclude our Report without reference to the ongoing debate in Parliament and the country as to whether or not the UK's ratification of the Lisbon Treaty should be contingent upon an affirmative vote in a referendum. In its 2005 general election manifesto, the Labour Party said, with reference to the Constitutional Treaty, that "It is a good treaty for Britain and for the new Europe. We will put it to the British People in a referendum".⁵⁴⁹ We note that the Government argues that, unlike the Constitutional Treaty, the Lisbon Treaty follows the classical method of altering the Union's governance, by amending existing Treaties. The Government believes that this "gradualist" approach ensures that amendments are strictly limited to accommodating those changes in the existing Treaties that are essential as a consequence of the increasing international influence and commitments of the Union, the development of the Common Foreign and Security Policy, the enlargement of the Union to 27, and the possibility of enlargement to include further countries, namely Turkey and states in the Western Balkans. However, as we have concluded in paragraph 219 above, in the field of foreign policy the Lisbon Treaty is materially the same as the Constitutional Treaty.⁵⁵⁰ **We conclude that notwithstanding the Government's arguments that this is merely an amending Treaty, and that the Lisbon Treaty does not have the features of a Constitution, we are conscious of the fact that this cannot satisfy or assuage the perception of a significant body of public opinion. For this body of public opinion, the Government is making a distinction without a difference.**

Question, That the paragraph be read a second time, put and negatived.

Another paragraph—(*Andrew Mackinlay*)—brought up and read, as follows:

We are conscious that attitudes and perceptions regarding the UK's membership of the European Union are more varied, and deeper, than those which concern only the contents of the Lisbon Treaty. **We conclude that the continuing controversy which occurs as a result can in some instances be debilitating and militate against the UK's best interests, trivialise debate, and frustrate initiative and decision-making. We recommend that the Government consider whether, after more than three decades of membership, there is a case for holding, between now and 2012, a referendum reaffirming the UK's membership of the European Union.**

Question put, That the paragraph be read a second time.

The Committee divided.

Ayes, 4

Mr Eric Illsley
Mr Paul Keetch
Andrew Mackinlay
Richard Younger-Ross

Noes, 8

Mr Fabian Hamilton
Mr David Heathcoat-Amory
Mr John Horam
Mr Malcolm Moss
Sandra Osborne
Mr Greg Pope
Mr Ken Purchase
Ms Gisela Stuart

Another paragraph—(*Sir John Stanley*)—brought up and read, as follows:

We conclude that the Lisbon Treaty is likely over time to result in a diminution in the independence of British foreign policy. For this reason, coupled with the significant provisions in the Treaty on other subjects, we further conclude that the British Government should not ratify the Lisbon Treaty without the consent of the British people in a referendum.

Question put, That the paragraph be read a second time.

⁵⁴⁹ "Britain forward not back", the Labour Party manifesto 2005, p 84

⁵⁵⁰ See also Annex 4.

The Committee divided.

Ayes, 3

Mr David Heathcoat-Amory
Mr John Horam
Mr Malcolm Moss

Noes, 9

Mr Fabian Hamilton
Mr Eric Illsley
Mr Paul Keetch
Andrew Mackinlay
Sandra Osborne
Mr Greg Pope
Mr Ken Purchase
Ms Gisela Stuart
Richard Younger-Ross

Annexes 1 to 5 agreed to.

Resolved, That the Report, as amended, be the Third Report of the Committee to the House.

Ordered, That Sir John Stanley make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

The Committee further deliberated.

[Adjourned till Wednesday 23 January at 2.00 pm.]

Witnesses

Tuesday 19 June 2007

Page

Rt Hon Margaret Beckett MP, Secretary of State for Foreign and Commonwealth Affairs, **Patrick Reilly**, Head, Future of Europe Group, Foreign and Commonwealth Office and **Anthony Smith**, Director, European Union, Foreign and Commonwealth Office

Ev 2

Wednesday 12 September 2007

Mr Jim Murphy, Minister for Europe, **Ms Shan Morgan**, Director, European Union, and **Ms Shelagh Brooks**, Legal Adviser, Foreign and Commonwealth Office

Ev 21

Wednesday 10 October 2007

Rt Hon David Miliband MP, Secretary of State for Foreign and Commonwealth Affairs, **Ms Shan Morgan**, Director, European Union, and **Mr Mike Thomas**, Legal Counsellor, Europe, Foreign and Commonwealth Office

Ev 43

Wednesday 21 November 2007

Mr Graham Avery, Senior Member, St Antony's College, University of Oxford; Secretary General, Trans-European Policy Studies Association; Senior Advisor, European Policy Centre, Brussels; Honorary Director-General, European Commission; European Commission official 1973-2006; **Professor Christopher Hill**, Director of Centre of International Studies, University of Cambridge; formerly Chair, Department of International Relations, LSE and **Richard G. Whitman**, Professor of Politics, Department of European Studies and Modern Languages, University of Bath; formerly Head, European Programme, Chatham House

Ev 86

Wednesday 5 December 2007

Rt Hon the Lord Owen CH, MP for Plymouth Sutton 1966-74 and Plymouth Devonport 1974-92; Secretary of State for Foreign and Commonwealth Affairs 1977-79

Ev 107

Wednesday 12 December 2007

Rt Hon David Miliband MP, Secretary of State for Foreign and Commonwealth Affairs, **Paul Berman**, Legal Adviser, **Shan Morgan**, Director, Europe, and **Martin Shearman**, Head of CFSP, Europe Directorate, Foreign and Commonwealth Office.

Ev 121

Tuesday 8 January 2008

Dr Javier Solana, EU High Representative for the Common Foreign and Security Policy

See Vol. I

List of written evidence

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1 Memoranda from Secretary of State, Foreign and Commonwealth Affairs, Ev 1, (June 2007) Ev 120 (10 December 2007)	
2 Letter to the Clerk of the Committee from the Parliamentary Relations Devolution, Team, Foreign and Commonwealth Office	Ev 19 (2 July 2007) Ev 20 (26 July and 5 September 2007)
3 Letter to the Chairman of the Committee from Jim Murphy MP, Minister for Europe	Ev 40 (2 October 2007)
4 Letter to the Chairman of the Committee from the Secretary of State, Foreign and Commonwealth Affairs Ev 62, (11 October 2007) Ev 70 (18 October 2007), 71 (18 October 2007) Ev 139 (13 December 2007), Ev 141 (14 June 2007) Vol I (11 January 2008)	
5 Professor G Whitman, University of Bath	Ev 82 (November 2007)
6 Rt Hon Lord Owen CH	Ev 104 (27 November 2007), Ev 119 (5 December 2007)
7 Letter from Rt Hon Geoff Hoon MP, Minister of State for Europe	Ev 140 (15 March 2007)
8 Letter from the Chairman, Foreign Affairs Committee to the Secretary of State, Foreign and Commonwealth Affairs	Ev 140 (30 May 2007)
9 Sir Peter Marshall, KCMG CVO	Ev 141 (6 October 2007)
10 Sir John Weston, former UK Permanent Representative, North Atlantic Council and UK Permanent Representative to the UN	Ev 143 (8 November 2007)
11 Mr Brendan Donnelly, Director of the Federal Trust	Ev 143
12 Open Europe	Ev 146 (November 2007)

Oral evidence

Taken before the Foreign Affairs Committee

on Tuesday 8 January 2008

Members present:

Mr. Ken Purchase (in the Chair)

Rt hon. Mr. David Heathcoat-Amory
Mr. John Horam

Sandra Osborne

[Asterisks denote that part of the oral evidence which has not been reported to the House at the request of the witness and with the agreement of the Committee.]

Witness: Dr. Javier Solana, European Union High Representative for the Common Foreign and Security Policy, gave evidence.

Q616 Chairman: Dr. Solana, we greatly appreciate your help here today. You will know that later this month the British Parliament will consider the terms of the treaty in some detail. Our duty as the Foreign Affairs Committee is to produce a coherent report, with as much detail as possible, to inform our colleagues in Parliament. We understand that there may be certain things that you would prefer not to appear in our report. Your staff can clarify with mine what you are happy with and make any changes that you feel are necessary to protect the process. Can you give us a short commentary on the major points in the treaty that we should be considering? As you know, it has caused considerable debate already in the UK, and it would be most helpful if you could highlight the points that you feel are positive in terms of how we could improve operations—historic compromises usually involve some negativity. We are anxious to report to our Parliament as fully and openly as possible.

Dr. Solana: Thank you. I shall try my best to be helpful.

Let me say at the outset that I will make my comments through the prism of my personal experience, so I may not be entirely objective, because one has one's own biography, but I will try to be as frank as I can. I have often worked with you without any problem, and my relations with your Committee have been frank and constructive. That is what I did when I was with NATO, and I hope to repeat it here.

To cut a long story short, what happened with the Lisbon agreement and the revised treaty will help the European Union and therefore its member states, and I think it will help your country in the right direction. In today's globalised world, in which it is very difficult for one single country to have the weight and influence that were possible in the past, what we have done in the period running up to Lisbon is beneficial. I say this having lived through the period after Amsterdam, leading to Nice, and the period after Nice.

What are the most important things? The European Union now has a single market, moving in many directions, but it would be interesting to have

more transparency and coherence in what we can call an enlarged foreign and security policy. That will be done—that is my feeling and the way in which I have been working, under the principle that all these policies will continue to be intergovernmental: decisions will be taken by consensus, by unanimity, in both foreign policy and security policy. I have no doubt about that, and that is the understanding on which I shall work until the end of my mandate.

The steps that have been taken will be constructive, positive and beneficial: that is my honest thinking, following a period in which some ideas, suggestions and decisions have been taken and will be implemented, if ratified, after Lisbon. They will make life easier, more efficient, more coherent and more transparent for the EU member states in this field.

Two or three things have to be underlined. First, we are embarking on a period when the rotation of faces and personalities in the European Union vis-à-vis third countries, foreign policy and so on will be done in a much more effective, coherent and transparent manner. ***

Secondly, there is the beginning of the creation of what we may call an external service. I want to emphasise that that will not mean more bureaucracy—we will build on what exists already in the Commission—and that following the treaty the High Representative will be the same name with a different function. The ideas behind that are more coherence and, in particular, more efficiency. That can also be applied to the embryo European foreign service, which will have functions that are now with the Council and will have a component that comes from the member states.

In the field of security there is, first, the enhanced co-operation that is valid throughout the European Union—that is nothing new—and secondly, the structured co-operation. Those who wish can participate in the enhanced co-operation; on the structured co-operation, it is not enough to wish—it is necessary to have a commitment to go beyond. I emphasise from the outset that this structured co-operation will be taken by unanimity by the members that want to go there, and it would be

inconceivable without the United Kingdom, which is at the core of our security and defence capabilities. Structured co-operation will increase the defence capabilities and efficiency of the European Union, so your presence or absence will be a yes or no—it will not happen without you, ***. That is very clear to me.

For your country, defence has been one of your basic red lines, and I think you have achieved that. In fact, probably the most important thing, aside from the declarations, is the origin of the change. What we had before came through the convention process, but now there are two treaties that have been amended and modified. That is important conceptually for you. The distribution of pillars—in particular the second pillar and the autonomy within that—is maintained, so foreign policy and the security parts will remain under the control of the Council, and all the decisions will be taken by unanimity. Nothing will change in that.

My experience has been evolving from the moment of my arrival until today, and I can see changes, but really not so much fundamental change. The changes will not be in the field of legitimacy but in that of efficiency—delivery. Throughout this period I have been frustrated by the difficulty in delivering and the rhythm with which the European Union delivers. Whatever we can do to make delivery quicker and more efficient in foreign policy—with human development, help in crisis management and all that—will be very welcome and very good for us all collectively and individually as member states.

What has been agreed in Lisbon, and what I hope will be ratified, will be much more in that direction: more efficiency and more coherence. In today's world there are issues that we cannot tackle efficiently, with sufficient weight and influence, on an individual basis, while collectively we can really make the difference sometimes. Coherence, efficiency and good use of money are what we all want at the end of the day, because we have to serve our citizens.

That is my initial statement, and I will be happy to answer any questions that you want to put to me.

Q617 Chairman: Thank you for that. You have neatly illustrated that the current division between the community and the foreign and security policies is problematic in certain circumstances. Do you think that institutional change will be the most effective way of overcoming those difficulties and enhancing the EU's performance as an international actor? Within that scenario, how would you describe the interests of member states?

Dr. Solana: I have no doubt that the institutional changes are in the right direction for the objective that you have underlined: to be more efficient, reasonable and rational in the use of our resources—and we do have resources collectively and institutionally, which have to be used in a more co-ordinated way and, which is my obsession, in a way that is more results-oriented. Obviously, nothing is a hundred per cent., but the decisions go a significant

distance in the right direction. We will have to see how they are implemented, but I do not foresee the need for any further changes any time soon: these will be sufficient not only for my lifetime but beyond it. It will have to be done properly and in a reasonable way: I do not believe in big bangs but in evolution. We will have to see how everything evolves and steer things in the right direction as they move along.

From my point of view, all the changes that have taken place are moving in the right direction and are accommodating the way in which the world is changing, ***.

Q618 Chairman: That is extremely helpful. In the context of these proposed institutional changes, we have the semi-circus term, “double-hatting”—we hope that it will not prove as comical as its name. We wonder about the effectiveness of this double-hatting or multiple role. How do you expect the new High Representative to balance his Commission and his common foreign and security policy responsibilities?

Dr. Solana: Let us look at what we have today and what we will have tomorrow. Today we have a High Representative who helps to define, implement and explain foreign policy, but then there is a component—the Commission—with some important resources, and the two are linked in a very loose way. In the future, the High Representative will be responsible to the Council, but the policies defined in that way will also be used to define the manner in which the resources are used. If that is done properly—and there is no reason why it should not be—we will have taken an important step in the right direction to define both the political interests and the resources, in the areas of trade, humanitarian aid and so on.

In theory, that is the case today, but in practice it may not be so natural. Tomorrow, as I see it, if people are reasonable and intelligent, as I am sure they will be, that will be done in a much more coherent fashion, less bureaucratically and more efficiently. That is not a dream—it is possible to do it, and I think it will be done.

Q619 Mr. Horam: May I follow up the point about double-hatting—the rather curious title that we have for the role of the new High Representative? Do you believe that one human being can cope with all this? Is it really doable, or will there be a problem of overload? You know from your personal experience over the past five years how difficult the job is with one hat; surely it would be even more difficult with two. If there is a problem of overload, how do you deal with it?

Dr. Solana: It is true that the job is not easy today, but one of the reasons for that is the internal organisation and the division of hats. Simplifying political decision making and putting all the resources into the objective that has been defined politically will make it easier. Today it is a little more difficult, because the autonomy of the two decisions, if I can call it that, sometimes creates problems and even contradictions. With the new treaty, the

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relationship will be simpler. The Council will take a decision and somebody will be there to apply it, and it will be easier to use the resources properly.

The structures will also have to be changed, but that is a question not of the treaty but of administration. Obviously, one person cannot travel to everywhere at the same time, but you will know that very well from your own administrative structure in your Foreign Office, where you have two or three deputies, or whatever. That structure exists already, and it is a question of putting the people in the right place. We have those figures in the institution, and if they are put together, it will be much easier to distribute the load of political travelling, visiting, handling resources and so on. This is not an impossible job if you organise it properly. If it is done properly—I repeat that there is no reason why it should not be—there is an effective link between politically defined priorities and the use of the resources.

At present, the priorities in the use of resources are sometimes so fixed that when a crisis comes it is very difficult to adapt the structure and deploy them rapidly. We will have much greater fluidity under the new arrangements. A tremendous amount of time is spent solving these internal problems. ***

Q620 Mr. Horam: Double-hatting is, in effect, almost triple-hatting, because the new High Representative will also chair the Council of Foreign Ministers. There are two problems with that. First, it is another piece of work that will obviously take time, but secondly, is it possible to chair a meeting in which you present proposals? That is a rather odd situation. How do you feel about it?

Dr. Solana: I have thought a lot about that, but my experience is that not only is it possible but it helps sometimes. I have been the Secretary-General of NATO at very complicated times and I chaired summits at all levels—with Heads of State and all the way down to ambassadors. For example, I chaired the important summit on NATO's 50th anniversary, with President Clinton on my right. We discussed Kosovo and I presented proposals.

Decisions can be taken by unanimity, and it is different if we have to wait for a decision to be made by qualified majority voting. However, we will present proposals, listen to the debate and take the decision. I was a spokesman for the decisions taken by NATO and my new role will be similar. Given my previous experience, there is nothing new for me.

For four years, I was involved in decisions on enlargement, Kosovo and the deployment of troops in the Balkans. Proposals were presented formally by the Secretary-General with the advice of the committee. But as long as a decision is taken unanimously and with consensus by member states, the debate will be a bit more focused and agile. We must also remember that the United States was present on the occasion that I have described.

I do not think that there will be a problem if things are done properly and if a person who chairs a meeting understands his role. I am sure that the member states will not allow him to misunderstand his role.

Q621 Chairman: It is very common for a chief executive also to be the chairman of the board, but such a situation is quite uncommon if lines of democratic accountability are concerned.

Dr. Solana: I understand what you say, but there is a difference in the dynamism of the roles. The distinction between a chairman and president might not mean the same for you as it does for me, but one does not have a special vote. Let me explain my experience. I do not chair the meetings, but I probably have more input than could be expected without chairing the meetings. ***

Q622 Mr. Heathcoat-Amory: I would like to explore a little further how decisions may be taken if the new treaty is ratified. Obviously it is hoped that most decisions will be taken by consensus, but any real foreign policy must envisage cases of disagreement in which very difficult decisions may have to be taken and over which some people disagree. There is therefore provision in the treaty for majority voting and an important new provision whereby majority voting might not apply only to implementing decisions but to new proposals from the High Representative once the European Council has agreed to accept a proposal. Therefore the veto would apply only right at the start. Once it is accepted that you or your successor makes a proposal, majority voting will apply to those fresh proposals. How do you see that being used? Will it be used much? If that has been the legal position in your time so far, can you remember situations in which such a provision would have been useful and would have been deployed?

Dr. Solana: This is nothing new: it is already in the treaty. We have to take some decisions by unanimity and, in three cases, decisions can already be taken by majority voting—on joint action, for instance. However, they are very specific and technical issues. Let us suppose that we take a decision to go to Afghanistan on a policing mission, we can change by majority voting the number of people deployed from 120 to 250. However, nothing else changes; there are no other possibilities.

Q623 Mr. Heathcoat-Amory: But there is a new proposal in the treaty about recommendations or proposals from the High Representative at the request of the Council, and it is not simply about implementing the details of decisions. Is that new proposal significant?

Dr. Solana: No, I do not think that it is. As the High Representative, I can be tasked to propose something on a particular occasion, but the basic definition will not be decided on the basis of majority voting under the second pillar on security and foreign policy.

For instance, I can appoint by majority voting a special representative to a certain region. Let us suppose that we need someone to go to Burma—Myanmar—and that the decision can be taken today with no need for unanimity. That would make things more efficient, but it would be stupid to make such a nomination with the opposition of, let us say, the

United Kingdom ***. However, the possibility formally exists already, but it is not used because consultation takes place.

Q624 Mr. Heathcoat-Amory: May I ask you about the legal personality? We all know that the EC has a legal personality at present but that the EU, with its pillared structure, does not, so international agreements have to be mixed and include member states. Under the proposed treaty, the EU will acquire a legal personality and the ability to act on the world stage as a legal entity. Is that significant both presentationally in terms of the view that others take of the EU and in terms of its ability to act to sign agreements? Will you explore that point?

Dr. Solana: This is not a minor issue; it is important politically more than legally. Let us consider the donors conference for the Palestinians that took place in Paris just before the end of last year. I would have preferred there to not have been different EU voices. Third countries often find the position confusing, but they have to understand our internal complications. For example, if the EU decides to make a contribution to the Palestinians that includes money and the work of the police—it is important that we contribute not just money, but people on the ground—it is better to put that in a package.

The provisions on the role of international organisations is important for your country, and you have a declaration on that. There are many international organisations in which the EU and the European Commission are not present, and things will continue like that. When the European Commission is present, there will be a change and it will become the EU, but that will not change the nature of the representation. That is true for all organisations. We are not in NATO, the Organisation for Economic Co-operation and Development or many other organisations, and the legal representation to those organisations will not be from the European Commission but from the European Union. However, that will not change the EU's role in those organisations.

I know that you are very concerned about the United Nations, so let me tell you my experience on that. I have spoken at the Security Council in my current capacity, and I have spoken there almost 10 times on issues such as the Balkans, Africa or the Middle East. I was always invited by members of the Security Council, including by your country on several occasions. That will not change. For example, the Arab League speaks to the Security Council when it is invited, and I have done so already in my current capacity. Given the statement and declaration that has been made by your country, the position will not change from what it is today. You have to be invited and cannot impose yourself as representing what you do not represent. That is very clear.

On the modification of the treaties, the second pillar—to use the jargon—will be maintained as an intergovernmental body. I agree wholeheartedly with that, and that is my philosophy. It would be a mistake to do otherwise.

Q625 Sandra Osborne: The High Representative will have an external role as far as Common Foreign and Security Policy issues are concerned, but the new President will also have responsibility to represent the EU. How do you envisage that those responsibilities will be shared?

Dr. Solana: There will be no fundamental change in reality. When we go to a summit with, let us say, India, EU representation at the summit is made up of the Prime Minister of the country that is chairing the EU for six months, the President of the Commission and myself. The change is that the President will now be in the chair for two and a half years and not six months. It is my interpretation—this is said clearly in the treaty—that the President of the Council will have the role of representing the EU compatible with the functions of the High Representative, but he will probably be much more inclined, on a day-by-day basis, to dealing with the internal work of the EU—to mobilising the Council. However, as I said, there will be representation of the country that has the Presidency and I must say that I have had the privilege of working on three occasions under your country's Presidency ***.

Q626 Sandra Osborne: Given that it is two and a half years and not six months, is it likely that the status of the President will be different? It is important that the President and the High Representative get on and can work well together, so what characteristics do you think that the member states should be looking for in the nominees for the two posts, given the importance of not having a clash between them?

Dr. Solana: That is very difficult to define, but my sentiment relates to the consensus-building mentality. The role is not that of a Foreign Secretary of a country or the President of a state, so it does not have a sense of its position. The objective is to construct consensus and to move on from there.

*** If you do not have the sentiment that it is your job to create consensus, you may run into difficulties, so perhaps the most important qualities needed by the individuals concerned are intelligence and the desire to do the job. It would not be a good post for someone wanting to retire. However, I think that the ability to join people together and to create consensus are fundamental elements for anyone wanting to take on such a role.

Q627 Chairman: Do you know any likely candidates?

Dr. Solana: Not at the moment. That will probably be for the second semester of this year. There are a lot of things to be done. As you well know, the agenda is pretty crowded. We had a long session at the Political Security Committee this morning at which we were talking about Kosovo, Afghanistan, Pakistan and Kenya. If we want to do those things, we do not have time to think about the next Minister.

Chairman: David Heathcoat-Amory would like to come in again.

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Q628 Mr. Heathcoat-Amory: Yes. I am interested in the relationship between the institutions, which will, of course, still exist. During the Convention on the Future of Europe, the Parliament, the Council and the Commission each jealously guarded their own powers and responsibilities. That will, of course, continue and, to some extent, it is healthy to have friction in an organisation.

On foreign policy, how do you see that playing out? You mentioned trade, but at the moment the enlargement responsibilities are firmly in the Commission. However, they are to do with foreign policy and the new High Representative will have the External Action Service, foreign delegations and so on. Will they be shared between the Commission's foreign policy responsibilities in some way or will everything be dealt with by the new High Representative? Do you see any scope for rivalry or for more co-operation?

Dr. Solana: I think that there is more scope for rivalry today. I do not know whether it is profound. I try not to make it a friction-producing entropy, but energy-producing. I am a physicist and I like to produce energy, not entropy.

The Balkans and Turkey are two examples of enlargement. I would have liked to have more saying in respect of enlargement. *** The amount of things that could be incorporated with foreign policy cannot be done because other chapters would not permit it to happen. I am giving a personal impression. Not everyone thinks like me about such issues. I feel strongly that the ability to co-ordinate more instruments would be helpful. I see less friction in the future than is happening today. Fortunately, we are avoiding friction at present because of good personal relations, but not everything can depend on personalities. I think that matters will probably be easier to handle institutionally.

Some problems are not necessarily economic. Turkey is a very good example. It is also a member of NATO, so there are other ways in which to have relations with Turkey that are not necessarily economic. We can play in a more co-ordinated fashion all the instruments that we have at our disposal. As long as they are co-ordinated and agreed by the Council, we can play with more efficiency.

Q629 Chairman: May I change the focus a little and consider the European External Action Service? What shape will it take? You will play a role in putting it together. What do you think would provide the most useful support to the new High Representative in respect of that service? Will it happen on time?

Dr. Solana: Do you expect that ratification takes place on 1 January 2009 and by then the External Service finalised? No. That is good. We do not have to have a big bang. We must do something that can increase with the needs and with a reasonable speed. We must remember that we will not do something that is bureaucratically bigger. We now have representation of Europe in the Commission

practically everywhere, but we do not have the representation of the other component, which is beyond the competence of the Commission.

Let us consider Georgia. It is in the newspaper today. It has Commission representation and it has a Special Representative from the Council. We are not using our potential influence as member states in the most efficient manner, so three elements will converge: what exists in the Commission, what exists here, that is run by a good British director-general, Robert Cooper *** and the unit here, which is representative of member states. Those three things will come together and construct representation in different countries.

*** Without a big bang and in a manner in which the needs are shown, such things will be done. It will not be bigger bureaucratically. It will be less expensive for many countries. For some countries it will be interesting to be able to close their representation and be represented by the European Union. Collectively, we will be more effective, in the same manner as double-hatting. Things will be done more efficiently. There will be presence on the ground, and different countries will deal with matters more efficiently.

The United Kingdom will have the possibility of using the European Union when it needs it. You will continue to have your own policy and representation when you need it, too. Within this global world, you have the possibility to use the fact that we have 27 members today and the influence that that will have, as well as to maintain your own representation and specificity ***. To handle the two issues together is not a subtracting element, but an added one. We have seen that in many cases. I have spoken to you in the past when I was Foreign Minister, as a member state, not as a representative of the European Union—if you can make that distinction. Our relationship has always been one of added value. You can say that about Africa, the Middle East and other areas. For you, the relationship is better as is the collective result. I believe firmly that we must make a clear distinction when it has to be made. Member states have the last word in foreign policy and security policy.

Chairman: On that question, the British red line is respected and causes no serious infringement to a European policy?

Dr. Solana: I do not want to make a judgment, as you may have a different view. However, my view is that issues are as safe as you can get with the treaty and the declarations that you have made.

Q630 Mr. Heathcoat-Amory: May I ask a supplementary question about the External Action Service. Policies are going ahead to plan it in advance—not completely, but at least to lay the groundwork. Will those plans be made public? Will the exercise be transparent?

Dr. Solana: It will be. It is not possible to put them on the table now. It is true that the High Representative who will be elected after the treaty will have to make a proposal, but the decision will be up to member states. I cannot make a proposal now. The High Representative, under the new treaty, will

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have to make a proposal. Discussion has not yet started, but there will be some preliminary work. The first lines will not be very different from what I said. I am sure that these three elements or these three factors—what exists already, what exists here and the policy unit, which is the embryo of member states' representation—will converge. The High Representative will put a proposal on the table along those lines.

Chairman: I wish to thank you, Dr. Solana, for the generous amount of time that you have given to us this afternoon. It will make an important contribution to our report and we are grateful for the frankness with which you have spoken. We hope that we can clear 99.9% of it by Thursday. Other than that, on behalf of my colleagues and others, I thank you very much.

Dr. Solana: Thank you. We have the same objectives and are on the same boat. It has been a pleasure to have been with you. Please do not hesitate to ask me again any time. ***

Letter to the Chairman of the Committee from the Secretary of State, Foreign and Commonwealth Office

During the Evidence Session on 12 December, I undertook to get back to you on a number of issues related to the foreign policy aspects of the Lisbon Treaty.

1. THE HIGH REPRESENTATIVE

David Heathcoat-Amory MP asked about the position the Government took in the Convention on the Future of Europe on the double-hatting of the High Representative for the Common Foreign and Security Policy and the Commissioner for External Relations.

The Government's primary objective in negotiation of the Constitutional Treaty and the Lisbon Treaty was to ensure that the Common Foreign and Security Policy (CFSP) remained a discrete intergovernmental area of EU activity decided by the Member States in Council. The Government was also concerned to improve the arrangements for the implementation of CFSP decisions and to ensure better coherence across the range of EU external activity. The Government therefore supported the double-hatting of the current High Representative for CFSP and the External Relations Commissioner as a sensible measure to strengthen implementation and coherence once there was sufficient certainty that we had achieved our primary negotiating objective of preserving the intergovernmental decision-making basis of foreign and security policy.

I should draw to your attention that the Government further strengthened this position in negotiation of the Lisbon Treaty, not least by securing absolute clarity on the exclusion of the CFSP from European Court of Justice jurisdiction (save in two limited and specified areas) and explicit recognition that the CFSP is subject to specific rules and procedures in the Treaty text. I set out the details of this strengthened position in my letter to you of 18 October 2007.

2. THE EXTERNAL ACTION SERVICE

You asked how the Government intends to approach the staffing of the External Action Service (EAS).

As you will know, the Lisbon Treaty specifies that the EAS will be drawn from the relevant parts of the Commission and Council Secretariat as well as staff seconded from the diplomatic services of the Member States. It further specifies that the detailed organisation and functioning of the EAS will be decided by the Council upon the basis of a proposal from the new High Representative for Foreign Affairs and Security Policy and that the EAS will work in co-operation with the diplomatic services of the Member States. In discussion of the detail of the EAS, the Government will be concerned to ensure that the service is indeed open to secondees from the Member States, which the Government sees as important to ensure that the EAS has the mix of skills and experience it will need to support the High Representative in the effective implementation of decisions taken by the Council. The Government will also be concerned to ensure that the UK is properly represented within the EAS so that there continues to be an effective UK presence within the EU institutions dealing with foreign policy issues.

3. PERMANENT STRUCTURED CO-OPERATION (PSC)

Richard Younger-Ross MP asked about Permanent Structured Co-operation. This is a new provision that specifically addresses capability development. It provides a mechanism designed to help develop more effective military capabilities amongst EU Member States and is in line with UK objective for improving the capabilities available for EU-led operations. It should be noted that PSC and Enhanced Co-operation are completely different and distinct provisions with different criteria for establishment

The arrangements for launching, joining and leaving PSC are set out in Article 28 E of the Lisbon Treaty. A Council Decision is required to launch PSC, to accept new Members into it and to suspend membership of a Member State that no longer fulfils the membership criteria. These decisions are taken by QMV. The use of QMV for these aspects is in UK interests since it prevents an individual Member State from blocking PSC establishment, from blocking another Member State from subsequently joining or from blocking suspension of a non-performing Member State.

The criteria for launching PSC and for Member States to subsequently join, is set out in the Protocol on Permanent Structured Co-operation. There are two criteria—to agree to “proceed more intensively to develop their defence capacities . . .” including through the European Defence Agency and to make a contribution to an EU Battlegroup. The Protocol goes on to describe in more detail some of the concrete measures that Members of PSC should additionally undertake in line with the entry criteria.

Since improved capability development amongst Member States is a key UK objective, it is likely that we would look to launch PSC as soon as practicable, in co-operation with other like minded Member States. I hope this is helpful. I look forward to reading your report on the Lisbon Treaty

David Miliband

11 January 2008
