

# Open Europe parliamentary briefing #5: Foreign policy and defence

## Key points

Independent analysts say that the Foreign Policy proposals in the “Lisbon Treaty” are the same as the Constitution

- The foreign and defence policy implications of the Lisbon Treaty are near identical to those of the Constitution. As the Commons Foreign Affairs Select Committee noted in a recent report, “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.”<sup>1</sup>
- The Government is trying to play down or trivalise these important changes. However, the Select Committee’s report notes 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.”<sup>2</sup>

Other EU leaders are serious about trying to create a “European Army”

- The idea of a “European Army” might sound like a Eurosceptic scare story. But other member states really are determined to create one.
- Angela Merkel has said that “Within the EU itself, we will have to move closer to establishing a common European army.” (Bild, 23 March 2007).
- German Permanent Representative to the EU Wilhelm Schönfelder has said that “I am sure that in medium-term we will have a European army financed by the EU budget.” (Handelsblatt, 19 April 2007)
- Romano Prodi has said: “When I was talking about the European army, I was not joking.” (Independent, 4 February 2000)
- Other are less explicit but have similar ideas. Nicolas Sarkozy has said that “The basis for a European Defence exists. We must make it grow. I want Europe to be capable of ensuring its security autonomously.” (EUobserver, 16 July 2007)

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<sup>1</sup> Foreign Affairs Committee, ‘Foreign Policy Aspects of the Lisbon Treaty’ (20.01.08)

<sup>2</sup> Foreign Affairs Committee, ‘Foreign Policy Aspects of the Lisbon Treaty’ (20.01.08)

- It might be argued that this is an illusion, because they will not succeed in creating a European Army. But nonetheless it is a dangerous illusion because the effort to create a European Army could lead to a real world diversion of effort and troops away from wars we are really fighting towards what is essentially an EU vanity project.

#### “Permanent structured cooperation” - a diversion of resources?

- The Lisbon Treaty, as the Constitution did, provides for so-called “permanent structured cooperation” within the EU framework, which would allow the creation of an “inner core” of EU members interested in taking forward military integration. The group would be set up by majority vote.
- French President Nicholas Sarkozy is planning to quickly set this process in motion. The French EU Presidency (in the second half of 2008) will make proposals for a hard core of 'strengthened cooperation' involving a G6 composed of the principal European powers: France, UK, Germany, Spain, Italy and Poland. Paris envisages a minimum commitment of 2% of GDP directed to defence, 'Europeanisation' of defence infrastructure, and the contribution of each G6 nation of 10,000 troops to a “common intervention force”. Given the UK's current military overstretch, the plans would almost certainly divert vital resources away from British commitments in Afghanistan.
- According to a report in *European Voice* on 15 February,<sup>3</sup> the UK is in favour of the idea, but will not support the French plan in public until the new treaty comes into force, as the inevitable controversy could disrupt its plan to ratify Lisbon in Parliament.
- The intended use of such a force should also be questioned. The EU mission to Chad has been widely criticised as a cover for narrow French foreign policy objectives. Human Rights Watch believes that the high French contingent will mean it will not be a neutral force in the conflict.<sup>4</sup>
- *Berliner Zeitung* noted recently, “France, the former colonial power in Chad, is contributing the largest contingent. France protects the rebel, dictator and Gadhafi-sidekick Idriss Deby, both of whom launched a coordinated invasion of Darfur at the end of the '80s. President Sarkozy has used massive pressure to 'Europeanize' the deployment to Chad, though the more precise word is 'camouflage.'”
- Given the ongoing problems surrounding the commitment levels of key EU allies to the NATO mission in Afghanistan, and the apparent reluctance of some European forces to engage in combat operations in the country, it is also worth questioning the real added value the proposed force could provide, together with its utility in real-world military scenarios.

<sup>3</sup> <http://www.europeanvoice.com/current/article.asp?id=29809>

<sup>4</sup> <http://hrw.org/english/docs/2008/02/12/chad18040.htm>

## Majority voting in foreign policy for the first time

- At the start of the original negotiations on the Constitution, Peter Hain promised that “QMV is a no-go area in CFSP”. During the IGC, Jack Straw reaffirmed that the move to QMV in this area was “simply unacceptable.”
- Nonetheless, the Government has now accepted it, according to its own analysis, in ten different areas of foreign policy.<sup>5</sup> In fact there is also majority voting on at least two other aspects of foreign policy - so the veto would be given up in a dozen different areas including proposals from the EU Foreign Minister, the structure of the new EU diplomatic service (see below), and urgent financial and humanitarian aid. The last of these could provide more scope for political decisions to be made under the guise of aid policy, such as giving aid to the Palestinian Authority under Hamas - a move to which the UK Government was opposed.
- Areas where majority voting is introduced include:
  1. Proposals from the EU Foreign Minister
  2. The design of the EU diplomatic service
  3. Setting up an inner core in defence
  4. Terrorism and mutual defence
  5. Urgent financial aid
  6. Humanitarian aid
  7. The election of the EU Foreign Minister
  8. Civil protection
  9. Terrorist financing controls
  10. The new EU Foreign Policy Fund
  11. Consular issues
  12. The role and mandate of the European Defence Agency
- Having failed to block this shift to QMV, the Government now seems content to fall back on the disingenuous claim that “unanimity remains the rule” in foreign policy. Is it meaningful in practical terms to say that unanimity remains the “rule”, when there are so many exceptions?
- The introduction of QMV through the Treaty can't mean anything other than a shift from voluntary and consensual cooperation over common policies in this area being replaced with coercion through the will of the majority.

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<sup>5</sup> The UK Government lists these areas as “EU humanitarian aid operations”; “Civil protection”; “Implementation of solidarity clause”; Creation of a 'start-up fund' for urgent Common Foreign and Security Policy measures; Urgent EU aid to third countries; Membership of structured co-operation in defence; Appointment of High Representative of the Union for Foreign Affairs and Security Policy by the European Council; Role of the High Representative of the Union for Foreign Affairs and Security Policy in CFSP implementing measures; Measures to facilitate diplomatic and consular protection”

## An EU Foreign Minister

- While the title 'Union Minister for Foreign Affairs' has been replaced by the title "High Representative of the Union for Foreign Affairs and Security Policy", he or she will have exactly the same powers as proposed in the original Constitution - against the wishes of the UK. As Bertie Ahern pointed out "It's the original job as proposed but they just put on this long title... it's still going to be the same position." (Irish Independent, 24 June)
- Against the wishes of the UK, he or she will have an automatic right to speak for the UK in the UN Security Council on issues where the EU has taken a position. The UK also eventually accepted that the new minister will be a member of the Commission (the UK has resisted giving the Commission a role in Foreign Policy since 1992). He or she would also have the power to appoint EU envoys. At the end of the negotiations the UK also eventually accepted that the Foreign Minister / HRUFASP will chair meetings of the EU General Affairs and External Relations Council.
- As the Guardian noted: "Britain said the new official should not chair regular meetings of EU foreign ministers, nor take over the resources of the European Commissioner for external affairs. It lost." (26 June 2007)
- Perhaps most importantly of all, when the Council asks the Foreign Minister for a proposal on a particular subject, once he or she has made that proposal it will be subject to majority voting.

## An EU diplomatic service - but the Government don't know how it will work

- Although the Government has attempted to play down the role of the EU's External Action Service - the new EU diplomatic service which will be created by the Lisbon Treaty. However, there is simply no way to be sure what the service will look like, as that the potentially significant powers of the Service remain undefined.
- Estimates of its overall size vary from 7,000 to 20,000 people. The European Parliament's External Relations Committee has warned that if the diplomatic service was set up as an independent institution it would "take on an uncontrollable life of its own" and would result in an "independent super administration".
- Spanish Prime Minister Jose Zapatero has said: "We will undoubtedly see European embassies in the world, not ones from each country, with European diplomats and a European foreign service." (Associated Press, 17 February 2005)
- The service is quite a revolutionary change, as it will bring together national diplomats with the commissions existing staff into a single supranational service. EU leaders see it as a stepping stone to a single diplomatic service, and it will create pressure to avoid "duplication" of diplomatic postings.

- There are also questions about transparency in the operations of the High Representative and the European External Action Service, and consequently how member states and national parliaments would be able to control the new institutions.

#### Cooperation in Europe is good -

#### But shifting more foreign policy *powers* to the EU is intrinsically flawed

- The debate about what kind of foreign policy the EU should have is a good example of the difference between an EU of voluntary cooperation and one that tries to create artificial consensus by majority voting.
- The introduction of QMV in this area, together with the creation of powerful new institutions whose exact role and mandate remain unclear, marks a clear shift away from a system based on voluntarism towards one based on compulsion. Eroding voluntarism in EU foreign policy is a mistake, and not just in terms of reducing Britain's ability to retain control over important foreign policy decisions. It also risks damaging consequences in the longer term, undermining the longstanding principle of consent amongst member states concerning EU-level action in this area.
- To give a very topical example, a number of EU states remain vehemently opposed to EU recognition of Kosovo's independence, mindful of the effect this would have on their own domestic separatist movements. Does the fact these Member States are in a minority invalidate their right to pursue a policy they see as integral to their national interest?
- As recent serious splits on key EU foreign policy challenges - Iran, Lebanon, Palestine, Zimbabwe, Russia, Turkey and Kosovo - have shown, attempts to institute QMV in various foreign policy areas are misguided, possibly counterproductive, efforts to create an unrealistically seamless CFSP. No Treaty can ever address the fundamental lack of genuine agreement amongst Member States on many issues, not can it reverse the failure in political will amongst large Member States to take tough decisions necessary for a truly effective foreign policy - such as facing down domestic commercial interests to ratchet up sanctions on Iran (see below).

#### The EU should use its existing powers more wisely

- There is also a separate question as to whether a more powerful role for the EU in foreign policy, and more majority voting in this area, is in itself desirable - the oft-repeated mantra that the EU is somehow inherently inclined towards a 'moral' foreign policy is simply not borne out by the facts:
- **Uzbekistan** - The EU has begun loosening sanctions on Uzbekistan in order to gain influence in central Asia and secure access to strategic energy resources. This was despite a warning from Amnesty International and

Human Rights Watch that "the worsening human rights situation in Uzbekistan is also directly linked to the EU's soft-peddalling";

- **Darfur** - The EU has failed to enforce any meaningful sanctions against the Sudanese regime - since the conflict started in early 2003 the EU has sanctioned only four individuals;
- **Iran** - Several of the largest EU member states are resisting a tougher sanctions regime against Iran, with most large member states unwilling to follow the US lead in withdrawing export credit guarantees. Key member states clearly see their (significant) commercial interests in Iran as trumping the risks of nuclear proliferation in the country;
- **Trade policy** - one *de facto* area of foreign policy already subject to majority voting is EU trade policy. The EU, as the world's largest trading bloc wields immense power in this area. But this power has not been used responsibly. Anti-poor protectionism designed for the benefit of politically powerful European interest groups (higher EU tariffs are imposed on imports from lower income countries), and bullying of weaker developing nations to leverage greater market access (Economic Partnership Agreements) have become familiar, if unfortunate, hallmarks of EU trade policy.
- The above examples make it entirely appropriate to be sceptical over whether extending majority voting to new areas, and generally forging a more powerful EU foreign policy capacity will really lead to the EU exerting a more positive and equitable influence on global affairs. Furthermore, the Lisbon Treaty will do nothing to bring transparency to EU decision-making in foreign policy. The Treaty instead strengthens institutions that are making important decisions in secret that affect millions beyond Europe's borders.

## In detail:

### "Permanent structured cooperation" - a diversion of resources?

*"Within the EU itself, we will have to move closer to establishing a common European army."*

- German Chancellor Angela Merkel, Bild, 23 March 2007

*"When I was talking about the European army, I was not joking. If you don't want to call it a European army, don't call it a European army. You can call it 'Margaret', you can call it 'Mary Ann', you can call it any name."*

- Italian Prime Minister Romano Prodi, Independent, 4 February 2000

*"The Constitution lays the legal basis for a future European Army. It fixes a 'common defence' as an objective."*

- Former French Finance Minister Dominique Strauss-Kahn, 'Oui!, Lettre ouverte aux

enfants de l'Europe', October 2004

*"Europe must believe that it can be in 20 years the most important world power... The Constitution is an important step in this direction."*

- Spanish Prime Minister Jose Zapatero, Der Spiegel, 8 November 2004

*"I am sure that in medium-term we will have a European army financed by the EU budget."*

- German ambassador to the EU Wilhelm Schönfelder, Handelsblatt, 19 April 2007

*"The basis for a European Defence exists. We must make it grow. I want Europe to be capable of ensuring its security autonomously."*

- French President Nicolas Sarkozy, EUobserver, 16 July 2007

Articles 42 [28a] and 46 [28e] TEU of the Lisbon Treaty provide for the establishment of a special sub-group of Member States "whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions". This provision for so-called "permanent structured cooperation" within the EU framework would allow neutral countries to opt out, and create an "inner core" of EU members interested in taking forward military integration (nb. all of these provisions were in the old Constitution). The group would be set up by majority vote.

Ahead of France's six month EU presidency beginning in June, leading French politicians close to Nicolas Sarkozy have started talking about using "permanent structured cooperation" provisions to set up a European Army. Pierre Lellouche MP, the Delegate General for Defence in Sarkozy's UMP grouping, revealed the plans recently in *Le Figaro* (31 Jan 2008).<sup>6</sup>

Lellouche laid out "eight proposals for giving the EU a common defence":

1. The French Presidency in the second half of 2008 should take the lead - "The time has come for the French Presidency to seriously prepare to articulate the main lines, making them as concrete as possible, of a future European defence architecture."
2. The UK and France plus other key Member States should provide the initial core of the army - "Common defence can only move ahead around a hard core of 'strengthened cooperation', a G6 composed of the principal nations: France, UK, Germany, Spain, Italy, Poland, and the others could join the 'pioneer' group at any moment."
3. The group should adopt an objective of 2 per cent of GDP for defence budgets.
4. The EU should construct a "real common market" in armaments.
5. The EU should adopt an objective for a "common intervention force" of 60,000 men.

<sup>6</sup> See <http://www.europeanvoice.com/current/article.asp?id=29809> for the most recent story about the French plans.

6. Each of the G6 nations should contribute 10,000 troops.
7. Defence planning and infrastructure should be 'Europeanised' - Lellouche called for the "Europeanisation" of Member States' external military bases, the establishment of "a common plan for protection of populations in case of terrorist attack by means of non-conventional weapons."
8. There should be a "definition of a common European disarmament and arms control policy."

#### What has the Government said about "permanent structured cooperation" in the past?

When the old Constitution was being negotiated, the Government opposed the "permanent structured cooperation" provisions. Peter Hain argued in an amendment:

*"The UK has made clear that it cannot accept the proposed ESDP reinforced cooperation provisions. While we support Member States making higher capability commitments and co-operating with partners to this end, the approach described here - a self-selecting inner group - undermines the inclusive, flexible model of ESDP that the EU has agreed."*

However, the Government failed in its attempts to remove the provisions from the Constitution, and after the meeting between the UK, France and Germany in October 2003, the UK agreed to back the idea in return for assurances that member states could not be excluded from the group if they wanted to join.

#### What is the Government now saying about "permanent structured cooperation"?

Having lost the battle to keep the "permanent structured cooperation" provisions out of the Treaty, the Government has reversed its position.

Ministers now say: "The Treaty will introduce 'Permanent Structured Cooperation', which will provide for an inclusive process focused exclusively on the development of military capabilities, a key UK objective."<sup>7</sup>

The Government is clearly hoping that no one realises that PSC is the route to a European army, as the inevitable controversy could disrupt its plan to ratify Lisbon in Parliament. According to a report in *European Voice* on 15 February,<sup>8</sup> the UK will not support the French plan publicly until the new treaty comes into force. The possibility of forming a pioneer defence group had been included in the Constitution because "the UK and France wanted it in", an EU official said, adding that the UK saw the initiative as "a way of leveraging extra [military] capabilities" from some Member States.

<sup>7</sup> [http://www.fco.gov.uk/Files/KFile/CM7174\\_Reform\\_Treaty.pdf](http://www.fco.gov.uk/Files/KFile/CM7174_Reform_Treaty.pdf) page 9

<sup>8</sup> <http://www.europeanvoice.com/current/article.asp?id=29809>

### What would the new force mean for the UK?

In simple terms, the UK would have to earmark 10,000 frontline troops for service on EU missions. For the EU force to be viable UK troops would need to be constantly available for EU operations. The fact that the UK is one of the few EU countries to have modern combat forces is likely to mean that the UK would have to keep its 10,000 in the UK/EU. Given the UK's current military overstretch, the plans would almost certainly divert vital resources away from the British mission in Afghanistan.

### What would the 60,000 force be used for?

Judging by recent EU military interventions, the force is likely to be used for missions like the controversial Chad expedition. The *FT*'s Brussels correspondent, Tony Barber, recently reported that some EU capitals, particularly Berlin, are wondering whether the EU's mission to Chad is turning into "a prop for French foreign policy in a former African colony...The Chad conflict pits a French-supported ruler - dictator, some would say - against a rebel movement that doesn't want an EU military presence there. For the life of them, the Germans fail to see how it can be in their national interest to jump into this maelstrom."<sup>9</sup>

*Berliner Zeitung* also expressed scepticism about the stated aims of the mission: "The Chad mission is not what it seems. What, then, is it? France, the former colonial power in Chad, is contributing the largest contingent. France protects the rebel, dictator and Gadhafi-sidekick Idriss Deby, both of whom launched a coordinated invasion of Darfur at the end of the '80s. France keeps its military staging point for Africa in Chad along with the continent's longest airstrip. Now President Sarkozy has used massive pressure to 'Europeanize' the deployment to Chad, though the more precise word is 'camouflage.' So, why the big charade? Strategically speaking, Chad is one of the three most important countries in Africa, next to Djibouti and Eritrea, both of which are near the sea passage to the Gulf. Chad's neighbour Niger has vast amounts of uranium, and there are vast amounts of oil in three other neighbors - Nigeria, Libya and Sudan. So, we have to go there! Good thing Germany refused to send soldiers."<sup>10</sup>

Furthermore, given the ongoing problems surrounding the commitment levels of key EU allies to the NATO mission in Afghanistan, and the apparent reluctance of some European forces to engage in combat operations in the country, it is also worth questioning the real added value the proposed force could provide, and its utility in real-world military scenarios.

## Majority voting in twelve different areas of Foreign Policy

At the start of the original negotiations on the Constitution Peter Hain promised that "QMV is a no-go area in CFSP" [Common Foreign and Security Policy]. (Hansard, 25 March 2003)

<sup>9</sup> <http://blogs.ft.com/brusselsblog/2008/02/hanging-by-a-th.html/>

<sup>10</sup> Quoted on: <http://www.spiegel.de/international/germany/0,1518,531792,00.html>

During the IGC, Jack Straw said that the move to QMV in this area was “simply unacceptable.” (Hansard, 1 December 2003) Nonetheless, the Government has now accepted it, according to its own analysis, in nine different areas of foreign policy.<sup>11</sup> In fact, there is also majority voting on at least two other aspects of foreign policy – so the veto would in fact be given up in *two* different areas.

Areas of Foreign Policy in which the veto would be given up:

1. **Proposals from the EU Foreign Minister.** Perhaps the most important introduction of QMV relates to the new Foreign Minister. Article 31 TEU [15b](formerly Article III-300 (2) of the Constitution) stipulates that the Council shall act by qualified majority, “when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request to him or her from the European Council, made on its own initiative or that of the High Representative.”

This change could have important repercussions. 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 comes back with, could find themselves in a majority voting situation. For example, on the squabble between NATO and the EU over who will supply air transport to the African Union troops in Darfur, the UK might not be able to block the EU from pointlessly duplicating NATO – if this was proposed as part of a plan from the Foreign Minister.

“I made it clear that Article III-201, which proposes QMV on proposals made by the Union's Minister for Foreign Affairs, is simply unacceptable. I do not remember exactly how much support there was for that view in the room, but there was a great deal. Again, we made it clear that common foreign and security policy is an intergovernmental matter, and must be established unanimously.”

- Jack Straw, Standing Committee on the IGC, 1 December 2003

2. **The design of the EU diplomatic service.** The new Article 27 TEU [31a] (formerly Article III-296 of the Constitution) also allows the organisation and functioning of the new EU diplomatic service to be decided by QMV. As noted below, the tasks and even the eventual size of the service are still unclear. The Council will act on a proposal from the Foreign Minister after getting the consent of the Commission.

<sup>11</sup> The UK Government lists these areas as “EU humanitarian aid operations”; “Civil protection”; “Implementation of solidarity clause”; Creation of a 'start-up fund' for urgent Common Foreign and Security Policy measures; Urgent EU aid to third countries; Membership of structured co-operation in defence; Appointment of High Representative of the Union for Foreign Affairs and Security Policy by the European Council; Role of the High Representative of the Union for Foreign Affairs and Security Policy in CFSP implementing measures; Measures to facilitate diplomatic and consular protection”

3. **Setting up an inner core in defence.** Under Article 46 TEU [28e](Article III-312 in the Constitution), the decision to set up the “permanent structured cooperation” group would also be taken by QMV, as would subsequent decisions to expel members, or to admit new ones to the group.

*There is also the prospect of majority voting within the inner core.* Article 333 TFEU [280h](the old Article III-422 (1) of the Constitution) allows for the Council to act by qualified majority voting in the context of enhanced cooperation, if the Council, acting unanimously, so decides. This is a new article. This is not supposed to cover “defence” decisions, but will affect the common foreign and security policy.

4. **Terrorism and mutual defence.** Article 222 TFEU [188r] (Article III-329 of the Constitution) stipulates that the detail and meaning of the “terrorism solidarity clause” is to be decided by QMV.

This is important because the Government had clear reservations about this article. A proposed amendment by Peter Hain called for the key provision of the article - that “Should a Member State fall victim to a terrorist attack, the other Member States shall assist it” - to be deleted. But he was ignored. Article 222 (2) reads, “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 political authorities.” In a separate proposal, the Government asked for the new EU power to “prevent” terrorist threats to also be deleted. At a plenary session of the European Convention Hain objected that, “if it carries real military obligations to offer military assistance it is duplicating the NATO guarantee. If it does not ... it is empty rhetoric.”<sup>12</sup> However, his objection was ignored.

5. **Urgent financial aid, and**
6. **Humanitarian aid.** Two new Articles 213 [188i] and 214 [188j] TFEU(formerly III-320 and III-321 of the Constitution) set up majority voting on urgent macro-financial aid and humanitarian aid. These are important innovations - discussed further below.
7. **The election of the Foreign Minister.** New article 18 TEU [9e] (formerly I-28 of the Constitution) specifies that the Foreign Minister / High Representative is elected (and can be sacked) by qualified majority voting. Because he or she is going to be a member of the Commission, whichever country he or she is from will lose its national commissioner if it has one, when he or she is appointed.
8. **Civil protection.** New article 196 [176h] TFEU (formerly article III-284 of the Constitution) allows the EU to pass laws by majority vote on the response to natural or man-made disasters. The UK asked for this move to majority voting to be removed, arguing that it wanted to preserve “the current flexible arrangements”.<sup>13</sup> However, this request was ignored.

<sup>12</sup> See [http://www.europarl.eu.int/europe2004/textes/verbatim\\_021206.htm](http://www.europarl.eu.int/europe2004/textes/verbatim_021206.htm)

<sup>13</sup> <http://european-convention.eu.int/Docs/Treaty/pdf/857/Art%20III%20179%20Hain%20EN.pdf>

9. **Terrorist financing controls.** A new article 75 [61h] TFEU (former article III-160 of the Constitution) allows for decisions on measures to control the financing of international terrorism to be taken by QMV. The UK Government was not against this article per se, but wanted it to be changed to prevent it restricting member states' freedom to act. The UK argued that "At present, the scope of [the] article ... is certainly too wide and open-ended. Member States should retain competence to take further action consistent with the European law, for example to take immediate action to freeze assets of terrorists identified in accordance with national procedures and laws." However, the UK did not get the changes it wanted.
10. **The new EU Foreign Policy Fund.** New article 41(28) TEU (formerly article III-313 of the Constitution) creates a "start up fund" for foreign policy operations. This new fund is seen by many as the first step towards a common defence budget for the EU. Everything about the fund is to be decided by QMV - including the amounts paid by Member States. The UK Government demanded that decisions about the fund should be taken by unanimity. However, this was ignored.
11. **Consular issues.** Under the Lisbon Treaty article 23 [20] TFEU (formerly III-127 of the Constitution) is amended so that the EU can pass laws by majority vote determining rules on diplomatic and consular protection - so moves towards common consulates and embassies would be likely to accelerate.
12. **European Defence Agency.** The statute, seat and operational rules of the European Defence Agency (EDA) shall be decided by QMV.

## An EU diplomatic service - but no one knows what it would look like

Although the Government has attempted to play down the role of the EU's External Action Service which will be created by the new Treaty, the key point to make here is that there is simply no way to be sure what the service will look like. Whatever the Government claims, the fact is that all this has yet to be negotiated.

This is a point Wilhelm Schoenfelder, former German ambassador to the EU, has highlighted: "What will be the share of member states, and how will be the share among member states? I don't know. These are all open questions."<sup>14</sup> A recent leaked paper from the current EU Presidency named the formation of the EU diplomatic service as a key unanswered question yet to be settled.<sup>15</sup>

These will undoubtedly be tough discussions, and the eventual structure of the Service will be decided by majority voting, in accordance with Article 27 [13a].

Estimates of the size and composition of the service vary widely. A paper published by Javier Solana in March 2005 suggested that only a third of the staff of the service will

<sup>14</sup> EUobserver, November 27, 2007 <http://euobserver.com/9/25207>

<sup>15</sup> <http://openeurope.org.uk/research/sloveniannote.pdf>

come from member states' diplomatic services. One EU official briefed that the number of diplomats alone would be 7,000, but that it could rise to 20,000.<sup>16</sup> The European Parliament's External Relations Committee has raised concerns over the proposed EU diplomatic service, suggesting that the service would consist of between 5,000 and 7,000 diplomats,<sup>17</sup> yet funding details of the service are not specified.

It warned that if the diplomatic service was set up as an independent institution it would "take on an uncontrollable life of its own" and would result in an "independent super administration". Indeed, there are questions about transparency in the operations of the High Representative and the European External Action Service, and consequently to what degree member states will be able to control the new institutions. Former Director-General of the Council Secretariat Sir Brian Crowe, a contributor to a European Policy Centre working paper on the development of EU foreign policy, cautioned that "Member States should not expect to see all communications between the High Representative/Vice President and the EEAS, as foreign services cannot operate with 'complete transparency'. Given the delicacy of the EEAS and the HR/VP positions, they would need some 'breathing space' to get going."<sup>18</sup> This leads to questions regarding the EU's commitment to transparency and accountability, as well as who is ultimately the decision-maker or agent of foreign policy.

The form, structure and powers of the EU External Action Service pose one of the biggest unanswered questions that will need to be resolved should the Lisbon Treaty be ratified. On this issue, as with so many others, the Government are essentially expecting MPs to sign a blank cheque.

## An EU Foreign Minister

**[“High Representative of the Union for Foreign Affairs and Security Policy”]**

While the title 'Union Minister for Foreign Affairs' has been replaced by the High Representative of the Union for Foreign Affairs and Security Policy, he or she will have all the same powers as proposed in the original Constitution - against the wishes of the UK.

The new minister will have an automatic right to speak for the UK in the UN Security Council on issues where the EU has taken a position. Under Article 34 [19] (2) TEU of the Treaty, "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 asked to present the Union's position."

While concerns surrounding representation rights may seem premature based on the vague new treaty text alone, they are substantiated by leading EU and Member State officials' statements. Last October, Lord Malloch Brown, then Deputy General Secretary of the UN, told Brussels diplomats that the EU was heading towards

<sup>16</sup> European Voice, 9 November 2004

<sup>17</sup> EUobserver, 28 February 2005

<sup>18</sup> The EU Foreign Service: how to build a more effective common policy. November 26, 2007  
<http://www.epc.eu/en/er.asp?TYP=ER&LV=293&see=y&t=2&PG=ER/EN/detail&I=&AI=756>

representation by a single seat within the UN institutions. He said, "I think it will go in stages. We are going to see a growing spread of it institution by institution. It is not going to happen with a flash and a bang." He added that he hoped that it would happen "as quickly as possible. I'm a huge fan of it."<sup>19</sup> This is reaffirmed by EU officials, including the European Commissioner for External Affairs, Benita Ferrero-Waldner, who said "Europe must speak with one voice in the Security Council... I think that one should consider a special seat for the EU in the Security Council."<sup>20</sup>

Initially the UK Government (represented by Peter Hain) put down an amendment in the European Convention saying that this whole paragraph should be struck out. Peter Hain wrote: "The UK cannot accept any language which implies that it would not retain the right to speak in a national capacity on the UN Security Council." However, this was ignored, and so the UK then fell back to saying that it had to at least be changed, in order to remove the Minister's seemingly automatic right to speak. In a second amendment the UK proposed a change to say that the Minister could only *request* to speak on its behalf. But the UK's objections were ignored.

The UK also eventually accepted that the new minister will be a member (Vice-President) of the Commission (the UK has resisted giving the Commission a role in Foreign Policy since 1992). This 'double-hatting' blurs the distinction between the EU's intergovernmental and 'supranational' bodies - giving the High Representative a hand in each.

He or she would also have the power to appoint EU envoys. At the end of the negotiations the UK also eventually accepted that the High Representative will chair meetings of the EU General Affairs and External Relations Council. As the *Guardian* noted: "Britain said the new official should not chair regular meetings of EU foreign ministers, nor take over the resources of the European Commissioner for external affairs. It lost."<sup>21</sup>

Perhaps most importantly of all, when the Council asks the Foreign Minister for a proposal on a particular subject, once he or she has made that proposal it will be subject to majority voting.

The proposed Article 17(2) TEU stipulates that the Council shall act by qualified majority, "when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request to him or her from the European Council, made on its own initiative or that of the High Representative."

So not only would the High Representative be able to devise proposals, (which has raised debate regarding exclusivity on the right of initiative on military missions) but the majority voting process means the UK would be prevented from vetoing such a proposal.

This change could have important repercussions. EU states could (unanimously) ask the Foreign Minister to come up with a plan but then, if individual states such as the UK

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<sup>19</sup> The Times, 6 August 2007

<sup>20</sup> EUobserver, 25 January 2005

<sup>21</sup> 26 June 2007

don't agree with what he/she comes back with, could find themselves in a majority voting situation. For example, on the squabble between NATO and the EU over who will supply air transport to the African Union troops in Darfur, the UK might not be able to block the EU from pointlessly duplicating NATO - if this was proposed as part of a plan from the Foreign Minister.

In October 2007, *Le Monde* newspaper reported that several names have already cropped up in Brussels in discussions over who should fill the new post. These include the current High Representative for CFSP, Javier Solana, Swedish Foreign Minister Carl Bildt, Austrian External Affairs Commissioner Benita Ferrero-Waldner, ex-Polish President Aleksander Kwasniewski and former French Foreign Minister Michel Barnier.

## The Treaty allows the EU to prise open a greater foreign policy role for itself

### 1) Using the new QMV provision on urgent financial aid and humanitarian aid to make political foreign policy decisions

Two new Articles 213 [188i] and 214 [188j] (formerly III-320 and III-321 of the Constitution) set up majority voting on urgent macro-financial aid and humanitarian aid.

Although this ostensibly seems a benign change (and is cited by the Government as an "uncontroversial" example of a move to QMV), it could raise highly important questions. To give a past real-world scenario, this might have been used to decide whether the Union should continue to fund the Palestinian Authority after the 2006 elections which brought Hamas to power - the UK and other Member States disagreed about this, the UK being keen only to fund NGOs and not the Hamas-led authority.

The UK tried to have these articles deleted. The UK argued that "Macro-financial assistance has been agreed urgently when required." Both amendments were ignored.<sup>22</sup>

### 2) The Treaty creates legal uncertainty and new scope for 'competence creep'

The border between the intergovernmental Common Foreign and Security Policy (CFSP) and the existing community competences is even now hazy on certain issues - however, the new Treaty will heighten uncertainty in this respect.

If we take as an example the Small Arms and Light Weapons case (pending)<sup>23</sup> dealing with the Council's decision to give financial assistance to the Economic Community of West African States (ECOWAS) for a disarmament programme, it is easy to see how

<sup>22</sup> See <http://european-convention.eu.int/Docs/Treaty/pdf/869/Art29Hain.pdf> and <http://european-convention.eu.int/Docs/Treaty/pdf/870/Art%20III%20218%20Hain%20EN.pdf>.

NB 188j also sets up a "European Voluntary Humanitarian Aid Corps". The UK also argued against this, saying that, "The idea of establishing a European Voluntary Humanitarian Aid Corps should have no place within the EU's humanitarian action". This third amendment was also ignored.

<sup>23</sup> C-91/05 Commission vs Council

conflicts of competence can arise. The Commission claim that the action should come under development cooperation, a Community competence - but the Council maintains that this is an intergovernmental matter. Professor Marise Cremona of the European University Institute, Florence, notes that under Lisbon, Article 4 [2c] TFEU (4) refers to development and humanitarian aid aspects of the CFSP. But it does not specify what competence the CFSP comes under, whether shared, exclusive etc. "The CFSP is apparently none of these - but we're not told what. So we still have that ambiguity... By not categorising the CFSP, it leaves open this quite fundamental question of what is the relationship between Union CFSP competence and member states' competence".<sup>24</sup>

The correct legal basis for an EU measure is decided on the criteria of 1) the objective of the measure, and 2) content of the measure in question. This meant that when Advocate General Mengozzi gave his opinion on the Small Arms case<sup>25</sup>, saying that because this is essentially a security measure, it clearly falls within the objectives set out in Article 11(1) of the current Treaty on European Union. However, under Lisbon, there are no longer any objectives specific to the CSFP. As Prof Cremona points out:

*"It becomes rather difficult, as you have a single set of objectives for all external action and in terms of content the CFSP encompasses all areas of foreign policy. So if we have on the one hand all areas of foreign policy as content of the CFSP and on the other a single set of [general] objectives for all of external action that doesn't differentiate between them, it's difficult to think about how a legal base decision is going to be made... If we had the same case come up in the context of the Treaty as reformed by the Lisbon Treaty...how would we decide whether this action should be adopted under the CFSP chapter or under the chapter on development powers? ...at some point there will be an institutional battle. At some point there will be a small arms case under the new treaty and the Court will then be asked to make a judgement as to which was the proper route, and its very difficult to see how one could do that".*<sup>26</sup>

## A new mutual defence commitment

Article 42 [28a] (7) TEU states that, "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all 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."

This article is essentially a mutual defence commitment. Irish Foreign Minister Dermot Ahern has said, "The European Constitution provides for a mutual defence commitment. This establishes an obligation to assist another Member State that is the victim of armed aggression on its territory."<sup>27</sup>

<sup>24</sup> Speech to Centre of European Law, Kings College London (08.02.08)

<sup>25</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005C0091:EN:HTML>

<sup>26</sup> Speech to Centre of European Law, Kings College London (08.02.08)

<sup>27</sup> Address to the National Forum on Europe, 21 April 2005

Lord Robertson, former Secretary General of NATO, warned that it is “dangerous to introduce a mutual defence clause into the Constitution if you do not have the means to carry it through.”<sup>28</sup>

The Government wanted this entire paragraph to be deleted from the Constitution, and issued an unsuccessful amendment to this end, in which Peter Hain wrote, “Common defence, including as a form of enhanced cooperation, is divisive and a duplication of the guarantees that 19 of the 25 Member States will enjoy through NATO.” However, the UK Government abandoned this objection.<sup>29</sup>

## A commitment that the EU will move to a common defence

Article 42 [28a] (2) TEU under Lisbon 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.” Currently, the treaties state that the progressive framing of a common defence policy “might” lead to a common defence. (Article 17 TEU).

The UK objected to this change, arguing that “We believe there is no prospect of the Council taking a decision to agree common defence in the near future. It is therefore inappropriate for the text to pre-judge the decision of the Council.” However, the UK later gave way.

## A requirement to consult with other EU members on foreign policy actions

Article 32 [16] contains a requirement for a Member State to consult other Member States before taking foreign policy action: “Before undertaking any action on the international scene or 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.”

The UK opposed this provision, arguing that “We will need to ensure that we are not prevented by any provision in the Constitution from carrying out an independent foreign policy”.<sup>30</sup> This 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 other EU Member States. However this request for an amendment was ignored.

## A new terrorism solidarity clause

New Article 222 [188r] states that “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 political authorities.”

<sup>28</sup> Le Figaro, 19 November 2003

<sup>29</sup> [http://european-convention.eu.int/Docs/Treaty/pdf/30/30\\_Art%20I%2040%20Hain%20EN.pdf](http://european-convention.eu.int/Docs/Treaty/pdf/30/30_Art%20I%2040%20Hain%20EN.pdf)

<sup>30</sup> [http://european-convention.eu.int/Docs/Treaty/pdf/29/29\\_Art%20I%2039%20Hain%20EN.pdf](http://european-convention.eu.int/Docs/Treaty/pdf/29/29_Art%20I%2039%20Hain%20EN.pdf)

It states that, "The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to 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; [and to] assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster."

The UK Government wanted to delete the sentence "Should a Member State fall victim to a terrorist attack or a natural man-made disaster, the other Member States shall assist it."<sup>31</sup> In a separate amendment the Government also asked for the new EU power to "prevent" terrorist threats to be deleted.<sup>32</sup> However, both objections were later abandoned.

The political motivation behind the clause is to reinforce moves towards a mutual defence commitment (see above). The only sense in which the terrorism solidarity clause is not a mutual defence guarantee is that it is addressed to threats from "non state actors."

The power to take action to "prevent" rather than respond to terrorism is likely to be used by the EU to expand its role. Crucially, the meaning of the new article is to be defined by QMV, meaning that it could be used as a flexible basis for EU action.

## Does the EU really need the Treaty for a successful foreign policy?

Supporters of the Treaty frequently argue that the UK must sign up to greater EU foreign policy powers to retain influence.

However, it is highly questionable whether the new powers are necessary to achieve this objective. As the EU's approach to Burma has shown, where there is agreement, the EU is perfectly capable of acting under the current treaties. The EU agreed to impose a range of new sanctions on the junta, and an expanded import ban on key Burmese products like timber and gemstones.

But trying to create an artificial consensus through greater majority voting is unlikely to work, and as a principle is highly problematic. Current divisive issues such as the status of Kosovo, confronting Iran, the meeting of human rights violator Robert Mugabe at the EU-AU summit last year, Russia, Turkey, as well as past cleavages stemming from the invasion of Iraq, are only the most salient points of contention which have obstructed the development of a common foreign and security policy within the EU bloc. The attempts to institute QMV in various foreign policy issues are misguided, possibly counterproductive efforts to create an unrealistically seamless CFSP.

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<sup>31</sup> <http://european-convention.eu.int/Docs/Treaty/pdf/874/ArtXHain.pdf>

<sup>32</sup> <http://european-convention.eu.int/Docs/Treaty/pdf/9901/XHain.pdf>

To give a very topical example, a number of EU states remain vehemently opposed to EU recognition of Kosovo's independence, mindful of the effect this would have on their own domestic separatist movements. Does the fact these member states are in a minority invalidate their right to pursue a policy they see as firmly in their national interest?

There is also a separate question as to whether a more powerful role for the EU in foreign policy, and more majority voting in this area, is in itself desirable - the oft-repeated mantra that the EU is somehow inherently inclined towards a 'moral' foreign policy is simply not borne out by the facts.

The EU has failed in a number of key foreign policy challenges as a result of a lack of political will and courage among member states to take tough decisions (which would often mean facing down powerful domestic business interests) necessary to achieve important foreign policy aims:

- **Uzbekistan.** The EU has begun loosening sanctions on Uzbekistan in order to gain influence in central Asia. This was despite a warning from Amnesty International and Human Rights Watch that "the worsening human rights situation in Uzbekistan is also directly linked to the EU's soft-peddalling". The softening of stance was apparently instigated by Germany, in the belief that this will help guarantee energy security in resource-rich Central Asia. The UK wanted the EU to maintain a hard line approach: "That's the only leverage we have," a British diplomat said, arguing that lifting sanctions "would be the wrong political signal at the wrong time."<sup>33</sup>

The UK did not succeed in pushing this line on the rest of the EU, but its stance has to a large degree been vindicated by subsequent events. International Crisis Group argues that the current EU policy towards Uzbekistan "comes across embarrassingly like rewarding repression and electoral fraud. The interpretation Karimov is likely to draw from it is 'hang tough and they will buckle'."<sup>34</sup>

- **Darfur.** The EU has failed to enforce any meaningful sanctions against the Sudanese regime - since the conflict started in early 2003 the EU has sanctioned only four individuals. As ICG argues "Europe has utterly failed to take any effective steps to pressure the Sudanese regime to stop the systematic war crimes and crimes against humanity being committed by its troops and proxy Janjaweed militias in western Sudan - and during this time millions have been forced from their homes and more than 200,000 have died from the conflict."<sup>35</sup>

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<sup>33</sup>EUobserver (01.11.06)

<sup>34</sup> International Crisis Group, Political Murder in Central Asia: No Time to End Uzbekistan's Isolation Asia Briefing N° 76, Bishkek/Osh/Brussels, (14.02.08)  
[http://www.crisisgroup.org/library/documents/asia/central\\_asia/b76\\_political\\_murder\\_in\\_ca\\_no\\_time\\_to\\_end\\_uzbekistan\\_isolation.pdf](http://www.crisisgroup.org/library/documents/asia/central_asia/b76_political_murder_in_ca_no_time_to_end_uzbekistan_isolation.pdf)

<sup>35</sup> Nick Grono, "Darfur Needs More Than Words", European Voice (01.0307)

- **Iran.** Europe is resisting a tougher sanctions regime, with most large member states unwilling to follow the US lead in withdrawing export credit guarantees. Key member states clearly see their commercial interests in Iran as trumping the risks of nuclear proliferation in the country. Iran tops Germany's list of countries with the largest outstanding export guarantees, totalling €5.5 billion. France's export guarantees to Iran amount to about €1 billion. Italy's come to €4.5 billion, accounting for 20% of Rome's overall guarantee portfolio. The continuance of export guarantees to Iran mean that EU taxpayers are underwriting trade and investment that would otherwise be deterred by the risk of doing business with a rogue regime. Since most of Iranian industry is state controlled, much of this continued European investment effectively supports the regime, and by extension, its weapons programme. The failure of European governments to take a tougher line on financial sanctions towards Iran blunts the effectiveness of existing sanctions, weakening domestic pressure on the Tehran government to come to the negotiating table. Europe is in a position to impose such sanctions without international authorisation, but by placing business interests above security concerns merely allows the present regime in Iran to buy more time, making war or destabilizing nuclear proliferation ever more likely.
- **Trade policy.** The EU already has significant foreign policy powers under majority voting - the Union is the world's largest trading bloc, making its trade policy a very powerful foreign policy instrument. However, the EU has certainly not exercised these powers in an ethical or responsible manner - in fact, trade policy discriminates against the poorest countries. At the moment, rich countries, with a GDP per capita of more than £15,000 a year, pay an EU import tariff of just 1.6%. But countries with a GDP per capita of less than £5,000 a year pay an average of 5%. Malawi faces a tax equivalent to 12%. The 'small-print' of international trade agreements (or non-tariff barriers), such as that relating to 'rules of origin', is also used by the EU to protect itself from more competitive imports from the developing world. Trade economist Paul Collier argues that "the US has got its trade policy with Africa pretty well right, and Europe has got its trade policy dreadfully wrong, so for example if Somalia were to export shirts to Europe we let them in, if Kenya exports shirts to Europe we block them. Lesotho can sell shirts to America, but they can't sell shirts to Europe because they're made in the wrong way to meet European standards."<sup>36</sup>

During negotiations on the controversial Economic Partnership Agreements with developing countries, the EU continually used the threat of raising tariffs imposed on ACP exporters to strong-arm developing countries into signing up to its proposals by the December 2007 deadline. EU trade spokesman Peter Power said at the time that "If they [EPAs] are not signed by the end of the year, we will no longer be able to offer our current preferential access, and will have to move to an alternative, which will give less market access in Europe for many ACP countries."<sup>37</sup> In November,

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<sup>36</sup> BBC Today (06.06.07)

<sup>37</sup> <http://www.ft.com/cms/s/0/361451e6-785e-11dc-8e4c-0000779fd2ac.html>

Kenyan Trade and Industry Minister Dr Mukhisa Kituyi said "The impression I get is that the European Union wants to use this (deadline) to arm-twist for more concessions on market access from our countries."<sup>38</sup>

Protectionism for the benefit of politically powerful domestic interest groups and bullying of weaker states to leverage greater market access have become hallmarks of a key strand of EU foreign policy already subject to majority voting. This makes it entirely appropriate to be very sceptical over whether extending majority voting to new areas will lead to the EU exerting a more equitable influence on global affairs.

## Conclusion

To realise national interests, Britain must work through international alliances and institutions, including the EU. However, this issue is entirely separate from the debate on whether or not the UK should adopt the Lisbon Treaty. The Government opposed the introduction of majority voting in foreign policy when the original Constitution was being drawn up, clearly seeing this as conflicting with the national interest, and as an unnecessary expansion in EU powers. But having failed to block this change, the Government now seems content to fall back on the disingenuous argument that "unanimity remains the rule" in foreign policy - despite the fact that QMV will affect 12 areas. Is it meaningful in practical terms to say that unanimity remains the "rule", when there are so many exceptions?

The introduction of QMV through the Treaty necessarily means voluntary cooperation over common policies being replaced with coercion through the will of the majority, and implies the extension of Single Market-style horsetrading into foreign policy. The debate about what kind of foreign policy the EU should have is a good example of the difference between an EU of voluntary cooperation and one that tries to create artificial consensus by majority voting.

Eroding voluntarism in EU foreign policy is a mistake, and not just in terms of reducing Britain's ability to retain control over foreign policy. It would also have damaging consequences in the long term, undermining the principle of consent amongst member states concerning EU level decisions.

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<sup>38</sup> Reuters (6.11.07)