

Interparliamentary scrutiny of the CFSP: avenues for the future

Corine Caballero-Bourdot

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Summary

This report examines a number of possible future orientations with regard to the interparliamentary scrutiny of the Common Foreign and Security Policy (CFSP). To that end it sets out the democratic challenges facing European integration, and the new context surrounding the CFSP in the wake of the Lisbon Treaty, focusing in particular on the existing legal provisions with regard to interparliamentary scrutiny of the CFSP. The paper surveys previous initiatives as well as current discussions on the future interparliamentary scrutiny of the CFSP. The author analyses the various options on the table and makes a number of recommendations for the best possible organisation of such interparliamentary scrutiny in the future.

The Lisbon Treaty did not transform the European Union into a super-state. Whether the EU will be an influential player in the future international order will therefore depend on its capacity for effective action through its institutions, as well as on its Member States, which will continue to play a decisive role in the field of foreign and security policy.

That being the case, parliamentarians can play a particularly useful role in providing democratic *oversight* and *support*. Indeed, Article 10 of Protocol No.1 to the Lisbon Treaty on the role of national parliaments in the European Union, which came into force on 1 December 2009, stipulates that 'A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy [CFSP], including common security and defence policy [CSDP]. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions'.

Such a Conference will only provide real added value if the national parliaments and the European Parliament play their full part in the effort to achieve the EU's post-Lisbon global ambitions in the field of foreign policy and world governance.

The future of interparliamentary scrutiny of the CFSP – policy areas that will remain intergovernmental – is inconceivable without the involvement of the national parliaments, for they are the ones who vote defence budgets and authorise the deployment of troops abroad. It is equally inconceivable without the support of the European Parliament, whose members are also elected by universal suffrage and which has information rights as well as budgetary powers in the field of the CFSP.

Thus both national parliamentarians and MEPs have fundamental and complementary roles to play in acting jointly as a relay for European public opinion. The political engagement of parliamentarians is crucial for driving Europe forward. The members of the Conference will need to have the will to tackle the substantive issues while providing a political vision, not only in the short, but also the medium and long term. Any influence that this Conference may bring to bear will depend on the expertise acquired by its member parliamentarians and its capacity for consensus-building.

By means of a transparent debate that addresses the real challenges, this Conference could play a crucial part in monitoring and supporting the Common Foreign and Security Policy (CFSP), including the Common Security and Defence Policy (CSDP). It could help raise awareness among European citizens and win their support for Europe as a major player in a multilateral and multipolar world in the making. These interparliamentary meetings could also provide the opportunity for a dialogue with governmental bodies and the EU authorities on orientations in the area of CFSP and CSDP. The Conference would therefore play a dual role in promoting exchanges of information and providing political impetus.

Following work done by the European Parliament, the Conference of Speakers of the EU Parliaments and COSAC (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union), a number of ideas are already on the table and the discussions continue. This report aims to take stock of that ongoing project. It provides a comparative table of the different proposals put forward by the national parliaments and the European Parliament for the interparliamentary scrutiny of the CFSP. It also makes proposals for the future, taking on board the views of leading political players and experts at national and European level.

Introduction

The European Union is not a federal state, i.e. it is not a sovereign state composed of territorial entities that are not, or are no longer, states as defined by international law. The proof of this is the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which provide the legal basis for the European Union, and the difficult and necessary process of ratification by the Member States 'in accordance with their respective constitutional requirements' (Article 6). Moreover, Article 9 TEU stipulates that 'Citizenship of the Union shall be additional to national citizenship and shall not replace it'.

Among the EU's policies are the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP).

Within the European Union there are both supranational and intergovernmental policy areas. In the economic sphere the Member States have opted for strong integration and community, or supranational, action. Conversely, the Member States have reaffirmed their resolve to maintain total control over security and defence policy at national level, and to organise *intergovernmental* cooperation among themselves in this area.

Hence the CFSP, which includes defence policy, falls within the intergovernmental as opposed to the community sphere. The intergovernmental nature of the CSDP has not been called into question by the successive revisions of the Treaty on European Union since the Maastricht Treaty in 1992, which contained the first ever provisions on a Common Foreign and Security Policy.

Since 1999 the EU has considerably developed its crisis-management capabilities. It now has a range of security and defence instruments that have enabled it since 2003 to conduct numerous civil and military crisis-management missions all over the world.

As the process of European integration advances, the question of its legitimacy is becoming increasingly acute. The latest treaty revision process was long and arduous. The difficulties encountered in getting all the citizens of all Member States to ratify the Lisbon Treaty (by referendum

or through the national parliaments) brought home to national governments and the European executive alike the importance of greater and more effective involvement of national and European parliamentarians, as the citizens' representatives, in parliamentary scrutiny of all European policies, including the CFSP and CSDP, in accordance with the provisions of the Lisbon Treaty.

By *parliamentary scrutiny* or *oversight* we mean 'an exchange of information and best practice'. Such scrutiny does not impinge on the way in which the national parliaments scrutinise their own governments with regard to European Union matters, which depends entirely on the form of organisation and constitutional practices of each Member State.

Interparliamentary cooperation among the elected representatives of the national parliaments and the European Parliament remains a goal to be achieved. All the protagonists (governments, national parliaments, the European Parliament and other European institutions) recognise its importance, but opinions diverge as to the ways and means of implementing such cooperation.

Yet the stakes are high: it is a matter of ensuring transparency and winning citizens' support for the construction of a Europe that is a genuine player on the international stage. Sound interparliamentary cooperation in the areas of CFSP and CSDP will greatly contribute to consolidating a political consensus in favour of Europe as an international player capable of decisively influencing world events.

These are our reasons for looking more closely at possible future avenues for the interparliamentary scrutiny of the Common Foreign and Security Policy.

Substantive public debates on the EU's Common Foreign and Security Policy would encourage a political dialogue between governments and the people's representatives, for the benefit of citizens. Such scrutiny would, in particular, allow the major long-term orientations of that policy to be validated, while improving its mechanisms in the medium term and scrutinising its current activities, in particular the ongoing military operations and civilian missions.

What can be done to implement without further delay the possibilities offered by the Lisbon Treaty (in force since 1 December 2009) for developing interparliamentary cooperation on the CFSP, including the CSDP, in an optimum and cost-effective fashion? How can cooperation among the national parliaments and the European Parliament be organised effectively, and for the benefit of Europe's citizens?

In order to identify possible future avenues for interparliamentary scrutiny of CFSP and CSDP it is useful to recall the democratic challenges, clarify the concepts and identify the institutions involved in European integration. It is also necessary to present the new context for the CFSP following the adoption of the Lisbon Treaty, with reference in particular to the applicable legal provisions on interparliamentary scrutiny of CFSP (part 1). Previous initiatives and the ongoing debates with regard to the future of such interparliamentary scrutiny are then examined (part 2). Finally, we will endeavour to analyse the different options proposed and to make recommendations with a view to achieving the best possible organisation of such interparliamentary scrutiny in the future (part 3).



1. The democratic challenges and the new context for the CFSP following the entry into force of the Lisbon Treaty

Definition of the democratic challenges, clarification of the concepts and identification of the structures

First of all, the question must be posed: what is the relevance of organising parliamentary scrutiny of the CFSP? Why is such scrutiny important? In an interesting study, *National Parliaments: a bulwark for Europe*,¹ Hubert Haenel (at the time Senator for the Upper Rhine region and Chairman of the French Senate Delegation for the European Union) defines a clear role for the national parliaments at the service of European integration and considers possible future developments. He notes that ‘the rise in the powers of the European Parliament had not been enough to bring European institutions closer to Europe’s citizens’.²

In the first elections to the European Parliament by universal suffrage in 1979, more than a third of the electorate abstained from voting. The poor turnout was initially put down to the fact that such elections had never been held before. But since then turnout has only further declined, falling from 56.9 percent in 1994 to 49.8 percent in 1999, 45.5 percent in 2004 and 43 percent in 2009. It is true that the abstention rate has been rising in all elections since the end of the 1980s. However, the elections to the European Parliament would appear to be a particular case: the fact that they do not have any direct impact on who runs EU affairs is doubtless one of the main reasons for the low turnout. Citizens do not have the feeling that their vote will make any difference to the choice of team in charge of EU policy (contrary to what happens at national level, where a new government is appointed after a general election). The way election cam-

1. Hubert Haenel, *National Parliaments: a bulwark for Europe*, Notes N° 34, Robert Schuman Foundation, 2006. See www.robert-schuman.eu.

2. *Ibid*, p. 11.

paigns are run also shows how difficult it is to identify a general European common interest that is more than the lowest common denominator of national interests, a genuine project that has the potential to bring people together, in the sense of the *'identité-projet'* described by Elvire Fabry.³

This conclusion 'opens the way to a nuanced and pluralist conception of how to confer democratic legitimacy on European unification; and, in particular, it implies that the national Parliaments should be in a position to contribute to conferring this legitimacy'.⁴ Hubert Haenel asks pertinent questions: 'How can national parliaments acting in isolation from each other properly scrutinise governments which, for their part, work together?'. Those parliaments 'must be able to exchange their experiences and confront their viewpoints, so as to be able to identify best practice in terms of scrutiny. And they must be able to express their views collectively so as to formulate, if necessary, their common preoccupations in this area with a better chance of exercising influence. (...) A collective expression of views from the national parliaments thus appears to be the way to enable certain preoccupations present in the various public opinions to be passed on to European institutions'.⁵

The democratic challenges have also been clearly identified by EUISS Director Álvaro de Vasconcelos and by the high-level group of experts contributing under the Institute's auspices to the book *What ambitions for European Defence in 2020?*⁶ In the concluding section, among the 10 priorities defined by Álvaro de Vasconcelos in his 'CSDP roadmap to 2020', is priority no. 7 calling for the creation of a 'European Parliamentary Council for Security and Defence':

'Democratic control of ESDP is becoming an issue, as European public opinion is demanding greater accountability and transparency with regard to the full spectrum of EU decisions. This requires the engagement of national parliaments and of the European Parliament. More extensive parliamentary debate on ESDP will lead to increased public scrutiny and awareness of ESDP missions, thus enhancing their legitimacy, both at the European and national levels.'⁷

3. Elvire Fabry, 'Qui a peur de la citoyenneté européenne?', *Politique d'aujourd'hui*, Presses universitaires de France, May 2005.

4. Hubert Haenel, op. cit. in note 1, p. 15.

5. Ibid, pp. 37-38.

6. Álvaro de Vasconcelos (ed.), *What ambitions for European Defence in 2020?* (Paris: EUISS, 2010). Available at: http://www.iss.europa.eu/uploads/media/What_ambitions_for_European_defence_in_2020.pdf.

7. Ibid, p. 165.

For a detailed analysis of recent expert reflections on the democratic challenges facing the CFSP, readers may consult an annex to this report available online on the ISS website: http://www.iss.europa.eu/uploads/media/Annex-1_Challenges.pdf

The main notions referred to in this study also need to be clarified. *Scrutiny* is to be distinguished from a form of parliamentary *control* that entails the power to sanction, and the concept of *democracy* from that of *parliamentarism*. Under the Lisbon Treaty, ‘National Parliaments contribute actively to the good functioning of the Union’ (Article 12 TEU), paying attention, in particular, to the principle of subsidiarity⁸ and participating in *interparliamentary* cooperation among national parliaments and with the European Parliament. *Interparliamentary* scrutiny refers to cooperation among Member States’ parliaments. At European level, *interparliamentary cooperation* concerns the 27 national parliaments of the EU Member States (40 parliamentary chambers in all, taking into account the existence of both monocameral and bicameral systems) and the European Parliament. The distinction between *control* and *scrutiny* is partly explained in Protocol 1 to the TEU. Parliamentary *scrutiny* (or *oversight*) refers to ‘the exchange of information and best practice’⁹ among the national parliaments and the European Parliament in the framework of ‘interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy’.

In parallel, Protocol 1 in its first recital recalls that ‘the way in which national parliaments scrutinise their governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State’.¹⁰ Scrutiny is one of the essential functions of a parliament. Its role is not confined only to the (albeit important) legislative function. Parliament oversees government action, using a range of

8. See Articles 5 and 12 TEU, Protocol 1 on the role of national parliaments and Protocol 2 on application of the principles of subsidiarity and proportionality. For a definition of ‘subsidiarity’, see Article 5 paragraph 3 TEU: ‘Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.’

9. Article 10 of Protocol 1 on the role of national parliaments, appended to the Lisbon Treaty.

10. A parliament’s function is threefold: (i) adoption of the budget; (ii) drafting of legislation; and (iii) scrutiny of action by the executive. Depending on the political system, those powers are exercised in different ways. The real impact of that scrutiny is weakened by the existence of disciplined majorities and the general weakness of autonomous means of investigation. Cf. Guy Hermet, Bertrand Badie, Pierre Birnbaum and Philippe Braud, *Dictionnaire de la Science politique et des institutions politiques* (Paris: Armand Colin, 7th edition, 2010), pp. 212-13.

tools with varying degrees of force: in some cases Parliament keeps itself informed of government action, in others it provides guidance or authorisation to act. In some cases it holds the very existence of the government in its hands, this being the maximum level of control.¹¹ In the European Union it is specified that the CFSP may be subjected to interparliamentary scrutiny. For foreign, defence and security policy the British Parliament uses the even more explicit term of ‘oversight’. Such interparliamentary scrutiny or oversight is only justified if it adds value to the work that each parliament undertakes on its own to oversee these policy areas.¹²

The concept of democracy more generally speaking, which is distinct from that of parliamentarism, is derived from the work of Rousseau. It signifies that the people is sovereign and that from the people should emerge a *general will* that corresponds to universal reason, which requires strong cohesion on the part of the *nation* and, importantly, equality among citizens. Conversely, the liberal tradition, developed above all in the United Kingdom, is much less concerned about cohesion and even less so about equality, but is interested above all in citizens’ *freedoms*. It sees Parliament as a place in which there is a confrontation of interests: its job is to prevent that confrontation from turning into domination by one component of society over the others, to the detriment of those freedoms. European countries have clearly developed their institutions in the light of the particular character of their societies, and the importance attached to liberal demands is much greater in the northern European countries than in the south, where the emphasis is more on democracy. One obviously cannot ignore those differences when examining the issue of interparliamentary cooperation at European level.

Hubert Haenel is also the author of an excellent report drafted on behalf of the French Senate Foreign Affairs Committee.¹³ His analysis of the ruling by Germany’s Federal Constitutional Court is particularly interesting, because the ruling is based on 40 years’ experience of federalism and

11. Charles Debbash, Jacques Bourdon, Jean-Marie Pontier and Jean-Claude Ricci, ‘La fonction de contrôle’, in *Droit constitutionnel et institutions politiques* (Paris: Economica, 2001).

12. House of Commons Committee on Foreign Affairs, First Report of the Session 2010-11 on *Future interparliamentary scrutiny of EU foreign, defence and security policy* (HC 697) published 18 January 2011; House of Lords Committee on EU Affairs, Seventh Report of the Session 2010-11 on *Future interparliamentary scrutiny of EU foreign, defence and security policy* (HL Paper 85).

13. Information Report 119 on the 30 June 2009 ruling by Germany’s Federal Constitutional Court (Karlsruhe) on the Act Approving the Lisbon Treaty, 26 November 2009.

a process of reflection that has not taken place anywhere else in Europe. It recalls that the process of European integration results from the limited conferral of competences by the Member States, that the principle of democracy does not preclude a state joining a European community of states, provided that there is a guarantee of legitimacy and of the power to exert influence emanating from the people. In the case of the European Union, he argues that there is dual legitimacy conferred on the one hand by the national parliaments, and on the other hand, by the European Parliament. In its ruling on the Act Approving the Lisbon Treaty, the German Constitutional Court in fact sets out principles that can be extrapolated to all EU Member States: while participating in the process of European integration, Germany remains a sovereign state. For it to lose its sovereign statehood the German people themselves would have to freely and expressly renounce the very fundamentals of the Basic Law and decide no longer to fall within its framework. Hence European integration must obey the principle of conferral: it is not possible to transfer to the Union the competence to decide on its own competence (*Kompetenz-Kompetenz*). States must remain the 'masters of the treaties'. The Basic Law allows Germany to participate in the development of the European Union to the extent that the EU is a *Staatenbund*, i.e. a 'close and lasting association of sovereign states' (of the nature of a confederation).

Finally, the *Bundestag* must continue to have a substantial role and powers, failing which the fundamental right to participate in its election would be devoid of any real meaning. Democracy cannot be defined by formal characteristics: it is based on interaction between an active public opinion and a responsible executive. It is that interaction that makes elections a meaningful instrument for the shaping of political will. The ruling draws attention to a number of areas that are particularly important for a constitutional state's democratic self-determination: these include a monopoly over the use of force, internally (police) and externally (armed forces).

The European Union remains a group of states to which certain well-defined competences are conferred by a treaty. It offers an appropriate level of democracy that cannot be identical to that required of a state; the conditions for an active democracy at national level continue to be met. The European Parliament is not the representative of a sovereign European people, but a supranational body composed of representatives of the peoples of the Member States, among whom there is no electoral equality.

This situation, which would be democratically unacceptable for a state, becomes acceptable when it comes to strengthening the democratic legitimacy of a group of states with conferred competences. This continues to be the nature of the Union under the Lisbon Treaty. The Member States have the unconditional right to withdraw from the Union and EU citizenship does not replace national citizenships.

Although the Lisbon Treaty considerably increases the Union's powers, the new competences can and must be exercised by the EU bodies in such a way as to ensure that the Member States retain responsibility for a sufficient number of substantive policy areas, without which there can be no active democracy in either legal or practical terms. The Constitutional Court also examined the question of whether the Lisbon Treaty infringed the *Bundestag's* rights with regard to the deployment of troops abroad, and concluded that it did not. Decisions with military or defence implications have to be adopted by unanimity and Germany's representative in the Council would be constitutionally obliged to reject any proposal that would violate or circumvent Parliament's prerogatives in the field of defence.

It should also be recalled with regard to the right of involvement of both the *Bundestag* and *Bundesrat* in EU affairs, that a law of approval must be adopted each time the treaties make provision for a decision to be approved by the Member States 'in accordance with their respective constitutional requirements'. This would be the case, in particular, for the creation of a common European defence. All these reflections have the merit of clearly defining the scope of European integration, not just for Germany but all the Member States.

Another important question is: do governments willingly bow to parliamentary scrutiny or do they try to obtain the maximum leeway for themselves? In reality, the national parliaments are in most cases excluded from major foreign policy decisions. This was the case to begin with, for example, for the military engagements in Kosovo, Afghanistan and more recently, Libya.

Thus a key question is: what real powers do the national parliaments have, in particular in the field of foreign, security and defence policy? In practice, their role in this area is limited. Generally speaking, parliaments

scrutinise these policies without having any real powers of control. As stressed by several EUISS associate experts during a brainstorming meeting on the question of parliamentary scrutiny of the CFSP,¹⁴ national parliaments' powers of scrutiny vary considerably among the 27 EU states: indeed, sometimes national parliaments are worried about yielding to the European Parliament powers that they themselves do not in reality have. Within certain national parliaments, as in the European Parliament, there is much less discussion of defence policy than there is of industrial or budgetary matters.

Given the national parliaments' generally limited powers in the area of foreign policy, on the one hand, and the weakness of the powers that the EU Treaty gives to the European Parliament in the field of CFSP, on the other, it would be in the interests of both the national parliaments and the EP to reach a *modus vivendi* on a mechanism for interparliamentary scrutiny of the CFSP. This is not an obligation under the Treaty, but a simple possibility, which all parliamentary players should seize as an opportunity that would work to their mutual benefit, since by uniting their forces they would more easily make their voice heard in the intergovernmental and European institutions. Failure to do so would be playing into the hands of the executive (the 27 governments within the Council, and the European Commission) to the detriment of all parliamentary bodies.

Group IV of the Convention on the Future of Europe on the role of the national parliaments stressed in its final report (CONV 353/02) that there is no 'competition' between the national parliaments and the European Parliament. They have separate roles but share the common aim of bringing the EU closer to its citizens, thereby strengthening the Union's democratic legitimacy.¹⁵

Furthermore, it is necessary to examine the 'reality' of the EU policies for which we wish to organise parliamentary scrutiny.

Article 24 paragraph 1 TEU stipulates that 'The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including

14. Informal meeting of experts, EUISS, Paris, 21 September 2011.

15. Martin Gennart, 'Les Parlements nationaux dans le Traité de Lisbonne: Evolution ou révolution?', *Cahiers de droit européen*, nos. 1-2, 2010, 46th year, Brussels, pp. 17-46.

the progressive framing of a common defence policy that might lead to a common defence.’ However, when we talk about the EU’s Common Foreign and Security Policy (CFSP), which includes the Common Security and Defence Policy (CSDP), it is important to understand that these are not so much ‘policies’ as processes and structures.

The institutions of the Union include, in particular, the European Parliament, the Council and the European Commission.¹⁶ The CFSP is an ‘intergovernmental’ policy conducted by the Council on the basis of the guidelines defined by the European Council. The EP is merely consulted regularly on the main aspects and the basic choices of the CFSP and CSDP. (Article 36 TEU).¹⁷ The Member States are represented at the highest level by the European Council composed of the Heads of State and Government (plus the Council President and the President of the Commission), which gives the Union the necessary impetus for its development and defines the overall political priorities.¹⁸ The European Council, in particular, defines the Union’s strategic interests, determines the objectives of and defines general guidelines for the Common Foreign and Security Policy, including for matters with defence implications, and adopts the necessary *decisions* (Article 26 TEU).

The Council, jointly with the European Parliament, exercises legislative and budgetary functions. It carries out policy-making and coordinating functions. It consists of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote (Article 16 TEU). The Council is in charge of elaborating the CFSP and takes the necessary decisions for its implementation on the basis of the strategic guidelines laid down by the European

16. ‘The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union’s external representation (...) Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. (...)’ (Article 17 para 1 and 2, TEU).

17. ‘The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.’ (Article 14 para.1, TEU). ‘The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.’ (Article 17 para. 7.3, TEU).

18. The European Council ‘shall not exercise legislative functions.’ (Article 15 TEU). ‘The European Council shall act unanimously on a recommendation from the Council (...)’ (Article 22 TEU).

Council. The General Affairs Council (GAC) ensures coherence of the work done by the Council in its different formations. It prepares meetings of the European Council, in cooperation with the President of the European Council and the Commission. The Foreign Affairs Council elaborates the Union's external action, in accordance with the strategic guidelines defined by the European Council. In practice the CFSP is directed by the General Affairs and External Relations Council (GAERC), composed of the Member States' Foreign Affairs Ministers. A Committee of Permanent Representatives of the Member States' governments (COREPER) prepares the work of the Council. The Political and Security Committee (PSC),¹⁹ composed in principle of permanent representatives with the rank of Ambassador, monitors the international situation in areas relating to the CFSP and, under the responsibility of the Council and the High Representative and exercises the political control and strategic direction of crisis-management operations (Article 38 TEU). The PSC is assisted by the Military Committee (EUMC) and the Committee for the Civilian Aspects of Crisis Management (CIVCOM).

The High Representative of the Union for Foreign Affairs and Security Policy (HR) conducts the Common Foreign and Security Policy. The HR is also the Vice-President of the Commission, in charge of external relations. The HR contributes through his or her proposals to the elaboration of that policy and implements it on behalf of the Council. The same applies to the Common Security and Defence Policy. The HR is supported in those tasks by the European External Action Service (EEAS), which has specific crisis-management structures.²⁰

However, as demonstrated yet again by the recent Arab revolutions, the CSDP depends on a common political will on the part of the Member States in the form of a genuinely *common* foreign and security policy. As long as there is no such common position, CSDP operations will continue to be negotiated case by case, which is not conducive to efficiency and responsiveness.

19. Since the entry into force of the Lisbon Treaty the PSC has no longer had a rotating chair: it is chaired by a representative of the High Representative.

20. The CSDP structures comprise, in particular: the Crisis Management and Planning Directorate (CMPD), the EU Military Staff (EUMS) and the Civilian Planning and Conduct Capability (CPCC). In addition there are a number of Council agencies: the European Defence Agency (EDA), the EU Satellite Centre (EUSC) in Torrejón near Madrid, which gives the EU a degree of autonomy for the analysis of satellite images for intelligence purposes, and of course the EU Institute for Security Studies (EUISS), the EU's think tank for strategic research.

There are numerous political obstacles that stand in the way of a common foreign policy. A major obstacle, in this author's view, is the divergent perception of the challenges. Some academics go so far as to describe the CFSP as *virtual* or purely *declamatory*. That is doubtless an exaggeration. However, as stressed by Nicole Gnesotto, it is all very well to call for a political Europe with a Common Foreign and Security Policy, the CFSP, but this is not something that can be obtained by decree.²¹ Indeed, today there is a yawning gap between progress in the area of CSDP, on the one hand, and the *status quo* on a common foreign policy, on the other, which constitutes a major handicap. Since 2003, when the first EU operation was launched in Bosnia and Herzegovina, the Union has conducted more than 20 external military and/or civil operations all over the world. Yet Europe continues to be perceived as a marginal security player that in most cases is absent when it comes to dealing with major strategic challenges, notes Nicole Gnesotto. What, she wonders, is the point of deploying troops abroad, if this does not strengthen the Union's political influence in the resolution of crises? She notes that the CSDP is all too often used, not as a tool to serve common European objectives, but as a substitute for politics itself, concluding that the Union's political role on the international stage must remain the objective and the priority: the CSDP is only one of several possibilities, and certainly not the first or only one. Indeed, developments in the field of international security mean that growing importance is being given to non-military means of crisis management: the Union is the only organisation to possess the full range of the necessary instruments (economic, legal, humanitarian, financial, civil and military). This only makes its modernity as a strategic actor, and hence its added value as an institution for global security, the more obvious.²²

This leads us to the next question: what should be the content of interparliamentary scrutiny of the CFSP? What subjects precisely should it cover? The answer is that it should cover both the broad foreign policy orientations and the EU's CSDP missions. Questions pertaining, for example, to the Arab revolutions and EU-Russia, EU-US or EU-China relations should form part of the discussions in the interparliamentary framework. In ad-

21. A statement that is no less true today than it was when Nicole Gnesotto's book *La puissance et l'Europe* was published by Presse de Sciences Po, Paris, September 1998, p. 18.

22. See Nicole Gnesotto, 'The need for a more strategic EU', in *What ambitions for European Defence in 2020*, op. cit. in note 6, pp. 29-38. Available at: http://www.iss.europa.eu/uploads/media/What_ambitions_for_European_defence_in_2020.pdf.

dition, the EU has conducted some 20 operations and missions since 2003 in Europe, Africa, the Middle East and Asia. What the European states have accomplished together is far from negligible. In Bosnia-Herzegovina, the Democratic Republic of Congo, Chad and Moldova in particular, but also in the Palestinian Territories and Indonesia, the EU's action for peace and development, albeit modest in scale, has nonetheless been useful and in some cases decisive. A number of missions are currently being conducted under EU auspices, for example in Kosovo, Afghanistan and off the coast of Somalia. Such missions should also be subjected to parliamentary scrutiny.

In this regard, should the existing mechanisms for interparliamentary cooperation be adopted in order to scrutinise the CFSP or should a new mechanism be created? COSAC (Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union) in particular already enables a 'regular exchange of opinions' (Article 1.1 of its revised Rules of Procedure published on 4 August 2011). Its Rules describe it as 'a body for exchanging information and best practices between Parliaments of the European Union, in particular on the practical aspects of parliamentary scrutiny' (Article 5.2). According to Article 1.2 of the Rules: 'The Treaty of Lisbon empowers COSAC to submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission and to promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy.'

For the moment COSAC is a cooperation body bringing together only the European affairs committees of the national parliaments and representatives of the EP. It was set up in May 1989 at a meeting in Madrid, during which the presidents of the parliaments of the Member States decided to strengthen the role of the national parliaments in Community affairs by creating a forum for the representatives of their European affairs committees. COSAC's first meeting was held on 16 and 17 November 1989 in Paris. It received formal recognition in a protocol appended to the Amsterdam Treaty signed by the Heads of State and Government in June 1997. That protocol on the role of national parliaments in the EU entered

into force on 1 May 1999. The same provisions were included in the Nice Treaty. COSAC has among other things the power to bring to the attention of the Union institutions any contribution it deems appropriate and to examine the Union's activities, proposals and legislative initiatives.²³ However, COSAC's contributions are in no way binding on the national parliaments and do not prejudge their position.

In reality, COSAC has developed interparliamentary exchanges of information on the ways and means of scrutinising government action at European level (best practice). In 2003, a reform of the COSAC rules put an end to the general application of the consensus rule and gave COSAC the ability to adopt contributions. This turned COSAC into a 'political forum', a deliberating body with the power to formulate opinions. In practice little use is made of this possibility of resorting to majority voting, but it has altered the climate of meetings. Generally speaking, COSAC meetings in recent years have not achieved very significant results: adoption of a code of conduct on relations between parliaments and governments with regard to European questions; creation of a permanent secretariat in order to improve the preparation of meetings, facilitate an exchange of information among the participating parliaments and present a six-monthly report on 'developments in European Union procedures and practices relevant to parliamentary scrutiny'; and the scrutiny of draft legislation (selected from the European Commission's legislative programme) with regard to the principle of subsidiarity by all national parliaments. While interparliamentary cooperation within COSAC remains limited in scope, the organisation has nonetheless succeeded in emerging from its previous state of stagnation. Hubert Haenel and Herman de Croo²⁴ point out in this respect that the issue of subsidiarity has come to play a growing role in its deliberations, in response to the need for interparliamentary consultations in this area.

New Protocol 1 on the role of national parliaments, appended to the Lisbon Treaty, gives COSAC a more general task. While the previous text invited COSAC to focus on certain areas – freedom, security and justice,

23. COSAC can, in particular, submit contributions for the attention of the European Parliament, Council and Commission (Article 7.1). Each national parliament is represented by a maximum of six members of its European affairs committee(s) and the EP also has a delegation of six members (Article 3.1).

24. Hubert Haenel and Herman de Croo, 'Evolution of COSAC over the last 20 years'. Available at: www.cosac.eu.

fundamental rights, application of the subsidiarity principle – no such indication appears in the new text.

The new protocol officialises COSAC's role in the exchange of information and good practice among parliaments. It should also be noted that its role is extended to include the 'specialised committees' of the national parliaments, opening the door for it to organise conferences among the members of those committees.

The new protocol also paves the way for COSAC to organise conferences on specific themes, which presupposes that its composition would need to be adapted accordingly. Particular reference is made to foreign, security and defence policy issues. This is an essential element to be taken into consideration in the process of reflection on the future of parliamentary scrutiny of this area at European level.

Interparliamentary cooperation within the Union has considerably developed over the last 20 years and today takes a range of different forms:

- the Conference of Speakers of the EU parliaments;
- COSAC, with its six-monthly plenary sessions and meetings of committee chairmen;
- the Conventions charged with preparing amendments to treaties;
- the meetings of the relevant committees of the national parliaments on precise subjects organised under the auspices of the parliament of the Member State holding the EU Presidency;
- meetings of EP committees to which national parliamentarians may be invited;
- interparliamentary meetings organised jointly by the EP and the Member State holding the EU Presidency;

However, these different forms of cooperation are somewhat uncoordinated and often rather low-profile and are hardly able to bring any real influence to bear on the functioning of the Union. Hubert Haenel and Herman de Croo therefore conclude that 'only COSAC, by virtue of the

fact that it is recognised in the Treaties, has succeeded in playing some sort of part over the years. Rationalisation of interparliamentary cooperation based specifically on COSAC (this is what the new Protocol on National Parliaments suggests) would genuinely enable national parliaments to make a greater impact collectively'. We should add that Article 9 of Protocol 1 on the role of national parliaments in the European Union, appended to the Lisbon Treaty, stipulates that 'the European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.'

To properly assess the future possibilities as regards interparliamentary scrutiny of the CFSP, it is essential to take full measure of the institutional and legal innovations introduced by the Lisbon Treaty.

The new institutional and legal context after Lisbon

The Lisbon Treaty, amending the Treaty on European Union and the Treaty establishing the European Community, signed on 13 December 2007, entered into force on 1 December 2009. It replaces the Nice Treaty as the legal basis for the EU's activities in the field of the Common Foreign and Security Policy (CFSP). In the Lisbon Treaty the European Security and Defence Policy (ESDP) is renamed the Common Security and Defence Policy (CSDP).

The Lisbon Treaty provisions on the CFSP and CSDP

The Treaty on European Union (amended by the Lisbon Treaty) and the Treaty on the Functioning of the European Union [TFEU] (Treaty Instituting the European Community (TEC) also amended by the Lisbon Treaty) have introduced major changes in the area of CFSP.

The main provisions in this area are as follows:

- Transformation of the High Representative for the CFSP into the High Representative of the Union for Foreign Affairs and Security Policy;
- Creation of the European External Action Service;
- Extension of the Petersberg tasks;

- New cooperation procedures: permanent structured cooperation and enhanced cooperation;
- Clause on solidarity in the event of a terrorist attack or natural or manmade disaster;
- Clause on mutual assistance in the event of an armed attack on a Member State;
- Officialisation of the European Defence Agency (EDA).

Article 24, paragraph 1 of the Treaty on European Union (TEU) stipulates that:

‘The Union’s competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union’s security, including the progressive framing of a common defence policy that might lead to a common defence.

The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions (...).

It should, however, be noted that the Lisbon Treaty, while respecting the special, i.e. intergovernmental nature of the CFSP decision-making process, creates new instruments that are not totally intergovernmental. Article 27, paragraph 3 TEU stipulates, for example, that the European External Action Service (EEAS), which supports the High Representative in the fulfilment of his/her mandate, ‘shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States’. The CFSP, including the CSDP, is an integral part of the policies of the Union and one should not underestimate the links between

the CFSP and other Union actions and policies, for example European space policy and support for research and technological development (Article 189 of the Treaty on the Functioning of the Union, TFEU). Above and beyond the specific provisions pertaining to the CFSP, the Member States more than ever have a duty of *loyalty and cooperation* (see, for example, Articles 4 and 34 TEU) and the High Representative of the Union for Foreign Affairs and Security Policy who chairs the Foreign Affairs Council, ensures, together with the Council, ‘the unity, consistency and effectiveness of action by the Union’ (Article 26 paragraph 2 TEU).

Furthermore, Article 32 TEU stipulates that:

‘1. Member States shall consult one another within the European Council and the Council on any matter of foreign and security policy of general interest in order to determine a common approach. (...)

2. When the European Council or the Council has defined a common approach of the Union within the meaning of the first paragraph, the High Representative of the Union for Foreign Affairs and Security Policy and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council (...).’

New Article 42 TEU defines the CSDP.²⁵ It replaces Article 17 of the Nice Treaty.

Article 42 paragraph 1 stipulates that:

‘The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civil and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States’.

Article 42 paragraph 3 also states that ‘Member States shall make civilian and military capabilities available to the Union for the implementation of

25. Treaty on European Union (TEU), Title V: General provisions on the Union’s external action and specific provisions on the common foreign and security policy; Chapter 2: Specific provisions on the common foreign and security policy; Section 2: Provisions on the common security and defence policy.

the common security and defence policy, to contribute to the objectives defined by the Council.’ Here the Treaty explicitly acknowledges the non-existence of a European army and the fact that the CSDP relies on the armed forces of the Member States and on capabilities provided by each of them. The democratic scrutiny over those armed forces is exercised individually by the national parliament of each Member State.

Article 42 paragraph 2 specifies 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. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements’. That obligation of compliance with the respective constitutional requirements of the Member States corresponds to the obligation to ‘ratify’ through the national parliament, or where applicable, by referendum the decision taken unanimously by all the governments within the European Council.

As pointed out above, the Lisbon Treaty contains a major innovation: a new mutual assistance clause: ‘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’.

The Treaty also points out, however, that ‘Commitments and cooperation 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’ (Article 42 paragraph 7 TEU).

The Lisbon Treaty also contains a new ‘solidarity clause’ with reference to a possible terrorist attack or natural or manmade disaster, which has been included in the Treaty on the Functioning of the Union: ‘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 (...)' This clause, which reflects the current strategic realities, is also in keeping with citizens' expectations in the area of security. Doubtless it would have merited being explicitly included in Article 42 TEU.

The Lisbon Treaty also formalises the existence of the European Defence Agency (EDA) set up by a Council Joint Action in July 2004: 'Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as 'the European Defence Agency') shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities' (Article 42 paragraph 3 TEU).

The High Representative for his/her part 'shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy. The High Representative shall preside over the Foreign Affairs Council. The High Representative shall be one of the Vice-Presidents of the Commission. He shall ensure the consistency of the Union's external action. He shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action.' (Article 18 paragraphs 2, 3 and 4 TEU). He 'shall contribute through his proposals to the development of the common foreign and security policy and shall ensure implementation of the decisions adopted by the European Council and the Council.' And he 'shall represent the Union for matters relating to the common foreign and security policy. He shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences'. (Article 27 paragraphs 1 and 2 TEU).

The function of High Representative/Vice-President (HR/VP) is complementary to that of the President of the European Council. The latter 'shall, at his 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.’ (Article 15 paragraph 6 TEU).

‘In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.’ (Article 27 paragraph 3 TEU). The Treaty also establishes proper Union representations in the form of EU delegations to third countries and international organisations, under the authority of the High Representative. The creation of the European External Action Service to support the HR in the exercise of his/her mandate is another positive development in the context of the CFSP/CSDP that strengthens and lends more weight to the EU’s external action.

Missions ‘outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter’ (Article 42 paragraph 1 TEU), for which the Union may have recourse to both civilian and military means, ‘shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.’ (Article 43 paragraph 1 TEU).

Several new cooperation procedures are also foreseen by the treaties.

Permanent structured cooperation concerns ‘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 demand-

ing missions' (Article 42 paragraph 6 and Article 46 TEU).²⁶ Thus a distinction is made among Member States not wishing to move ahead at the same pace. The European Parliament has no right of say in permanent structured cooperation.

Enhanced cooperation has now become possible in the field of CFSP, which was not the case under the Nice Treaty. The Lisbon Treaty makes formal provision for such cooperation on condition that it involves at least nine Member States. While the EP's approval is normally required for such forms of cooperation, an exception is made for cooperation in the area of CFSP. The authorisation to engage in enhanced cooperation in this area is granted by the Council, deciding unanimously, and the EP is merely kept informed (Article 20 TEU and Article 329 paragraph 2 TFEU).

All these new provisions in the area of CFSP/CSDP make for a better organised and more effective and autonomous CFSP. However, in the two Declarations on the CFSP appended to the Lisbon Treaty,²⁷ the Member States make it clear that none of these provisions may go against the will of a Member State in the area of foreign policy.

Declaration No. 13 on the Common Foreign and Security Policy underlines that:

'The provisions in the Treaty on European Union covering the Common Foreign and Security Policy, including the creation of the office of High Representative of the Union for Foreign Affairs and Security Policy and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.

The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States. (...)'.

26. See also Protocol 10 on permanent structured cooperation established by Article 42 TEU.

27. Declarations appended to the Final Act of the Intergovernmental Conference which adopted the Lisbon Treaty signed on 13 December 2007.

Declaration 14 on the CFSP appended to the Treaty reiterates those statements and emphasises in particular 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’.

Some experts have described these two declarations as ‘reactionary’. They do not have legal force but nonetheless testify to the Member States’ resolve to maintain full control over the CFSP.

Treaty on European Union (TEU) provisions on the interparliamentary scrutiny of the CFSP

Under Title II of the Treaty on European Union, provisions on democratic principles, Article 12 highlights the role of the national parliaments:

‘National Parliaments shall contribute actively to the good functioning of the Union:

- (a) through being informed by the institutions of the Union and having draft European legislative acts forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;
- (b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- (c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 70 of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust’s activities in accordance with Articles 88 and 85 of that Treaty;
- (d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;
- (e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;

(f) by taking part in the interparliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union’.

Protocol No.1 on the role of national parliaments in the EU reads as follows:

THE HIGH CONTRACTING PARTIES,

[...]

DESIRING to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the Union as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community: [...].

TITLE II

INTERPARLIAMENTARY COOPERATION

ARTICLE 9

The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.

ARTICLE 10

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudice their positions.’

In order to take the full measure of the legal and institutional context after Lisbon, it is also useful to examine the role of the European Parliament in regard to the CFSP and CSDP.

Role of the European Parliament in the field of CFSP/CSDP

The role of the EP Subcommittee on Security and Defence (SEDE) has been particularly well analysed by its former Chairman Karl von Wogau,²⁸ who describes the development of its activities and influence. Notwithstanding the intergovernmental nature of the CSDP, the European Parliament and its Committee on Foreign Affairs (AFET), with its Subcommittee on Security and Defence, have succeeded in asserting a role for themselves in the inter-institutional set-up, the rules for which are defined both by the Treaty on European Union and a series of inter-institutional agreements. In addition, the European Parliament and the Council have concluded an agreement giving a restricted group of parliamentarians representing the three biggest political groups (and including the AFET and SEDE Chairmen) right of access to confidential information. Mr. von Wogau points out that the EP has also made headway in the legislative area through the Commission's 'Defence Package' proposals, since they are subject either to the rules on free competition or those on the free movement of goods within the common market.

In a recent study, Isabelle Bosse-Platière²⁹ gives a clear and detailed analysis of the growing role being played by the European Parliament in the areas of CFSP and CSDP. She notes that *de jure* the EP has no specific powers in this area. She claims that the development of European integration has been 'characterised by a continuous increase of the EP's powers and a constant upgrading of its role within the institutional triangle it forms with the Commission and Council'. She notes the 'striking contrast' between that development, confirmed by the Lisbon Treaty, and the weakness of its powers in the field of CFSP/CSDP. She points out that the EP's exclusion from the CFSP/CSDP raises a problem with the Union's mode of functioning in terms of the 'coherence' of its external action (a requirement that figures in Article 21 para. 3 of the TEU). Indeed, that

28. Sophie Dagan, Karl von Wogau, Isabelle Bosse-Platière, Corine Caballero-Bourdot, 'Le Parlement européen dans la PSDC', *Cahiers de l'IRSEM*, November 2010, No.4, Institut de Recherche stratégique de l'École Militaire, Paris.

29. *Ibid*, pp. 31-55.

dichotomy (which corresponds to the wishes of the Member States) between foreign and security policy on the one hand, and the other areas of external action of the Union, on the other, 'gives rise to great complexity in the choice of instruments and the implementation of procedures that is detrimental to the unity and effectiveness of the Union's action on the international stage and causes much tension among the Union institutions, in particular the European Parliament and the Council, thus showing how ill-adapted the current legal framework is'.

Moreover, in the Lisbon Treaty, for the first time, the provisions on the CFSP mention 'the specific roles of the European Parliament and of the Commission' (Article 24 para. 1, subpara. 2 TEU).

Article 21 of the Nice Treaty already made provision for consulting the EP and for the Presidency and the Commission to keep it regularly informed of developments in the Union's foreign and security policy. It also made provision for the European Parliament to address questions or recommendations to the Council and to hold a debate each year on the progress made with the implementation of the CFSP.

The Lisbon Treaty, which came into force on 1 December 2009, has not made any major changes to the EP's powers in the field of CFSP. The EP's right to information has been maintained and specified in somewhat more detail.

Thus Article 36 of the Lisbon Treaty maintains the passage on the EP's information and consultation rights that figured in Article 21 of the Nice Treaty with a number of amendments [*indicated in bold by the author*]:

'The High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the **common foreign and security policy** and the common security and defence policy and inform it of how those policies evolve. He or she shall ensure that the views of the European Parliament are duly taken into consideration. **Special representatives may be involved in briefing the European Parliament.**

The European Parliament may ask questions of the Council or make recommendations to it and the High Representative of the Union. Twice a year it

shall hold a debate on progress in implementing common foreign and security policy, **including the common security and defence policy.**'

Furthermore, Declaration No. 14 insists on the fact 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**'. [*Author's bold*] This Declaration, which is not legally binding, unlike the body of the Treaty and the protocols appended to it, indicates a desire on the part of the Member States to sideline both the Commission and the EP from the CFSP/CSDP. The fact that not only the EP and Commission, but also the Court of Justice,³⁰ are lumped together, is an indication of the fact that it is not the Member States' intention to sideline the EP as such, but rather to specifically reject the supranational 'integration method' as far as the CFSP is concerned. Thus, notes Isabelle Bosse-Platière, 'the institutional and legal particularism of the CFSP is reaffirmed with renewed vigour'.

All this doubtless explains what Isabelle Bosse-Platière calls the EP's 'deliberative activism'.³¹ From the various resolutions adopted by the European Parliament it is also clear that the divergences between the EP and the Council have (fortunately) more to do with the mode of functioning of the CFSP/CSDP than with the strategic orientations. Isabelle Bosse-Platière also points out that the EP exploits the procedural inconsistencies of the Treaty to the full. 'Thus, in spite of the specific nature of CFSP/CSDP, certain institutional and procedural provisions are applicable to the whole of the Union, regardless of the policies concerned; this is the case for budgetary procedure and for the right of access to institutions' documents, which gives the EP real but constantly fragmented powers'.

Under Article 41 TEU, the administrative and operational expenditure incurred by the implementation of the CFSP/CSDP, with certain exceptions, is charged to the EU budget. Accordingly, the EU budget is in principle a single document covering the funding of the Union and its actions as a whole, including the CFSP, and the regular budgetary procedure foreseen in Article 314 TFEU therefore applies. The EP is quite naturally inclined to use its budgetary powers to the full. 'Since the procedure gives it the

30. Article 24, para 1 subpara 2 TEU also contains provisions pertaining to the Court of Justice's lack of competence, in principle, for the provisions of the CFSP.

31. Isabelle Bosse-Platière, *op. cit.* in note 28, p. 40.

last word, it can, for example using its powers of amendment, influence the budget structure and create new budget lines, set the level of funding for an action, or even earmark certain amounts, which enables it to influence the way they are managed through the procedure of bank transfers. Thus its budgetary powers alone give it undeniable influence in an area in which its normative powers are non-existent’.

‘Only expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise’ (Article 41 para. 2 TEU) are not subject to the regular budget procedure.³² Thus, aside from those specific cases, the funding of the CFSP/CFSDP must be approved by the European Parliament. Isabelle Bosse-Platière points to the real inconsistency between excluding the EP from the decision-making process for a policy, on the one hand, and allowing it direct influence over the financing of that policy, on the other: ‘Seizing upon that inconsistency, the European Parliament has clearly entered into a logic of confrontation with the Council during budget debates (...). The conflict over the adoption of the 2005 budget is a good example, when the EP reduced the CFSP budget by half. This strategy finally worked, since on 17 May 2006 it led to the conclusion among the three institutions (Commission, Council and Parliament) of an inter-institutional agreement on budgetary discipline and sound financial management that replaces and supplements the previous agreement of 1997 on the funding of the CFSP. The 2006 agreement gives the EP strengthened information rights with regard to decisions incurring expenditure from the Union budget. In particular, each time it adopts a decision in the area of CFSP that incurs expenditure, the Council transmits an estimate of the envisaged costs to Parliament within five working days’.

The EP’s combativeness in endeavouring to exceed its role in the field of CFSP/CFSDP, as assigned to it by the EU Treaty *stricto sensu*, is not new. The Council, representing the Member States, is aware that it must, increasingly, accommodate the EP, including with respect to the CFSP/CFSDP.

The EP is continually calling for a revision of the existing institutional agreements (that of 23 October 2002 on access to sensitive Council infor-

32. In such cases the funding of operations comes from the budgets of the participating member states, except the common costs, which are covered by an *ad hoc* intergovernmental mechanism called Athena financed by the member states (with the exception of Denmark which does not participate in the CFSDP).

mation in the sphere of security and defence policy and that of 17 May 2006 on the budgetary procedure) and would like to negotiate a new inter-institutional agreement providing it with more information at each stage of the conclusion of international agreements by the European Union. Under the general procedure for the conclusion of such agreements defined by Article 218 TFEU, the EP must now be systematically consulted, 'except where agreements relate exclusively to the common foreign and security policy'³³. Thus the Council must call on the EP for a simple opinion when it concludes international agreements that concern the CFSP/CSDP among other things. The EP is also calling for more scrutiny over the Union's special representatives and for a say in their appointment and mandate. For all these reasons, Isabelle Bosse-Platière sees the entry into force of the Lisbon Treaty as an opportunity for 'increased activism' on the part of the European Parliament. While it might seem illusory for the EP to envisage any amendment to the Treaty provisions concerning it, current practice confirms the effectiveness of the EP's advocacy. Indeed, in accordance with Article 27 para.3 TEU it was fully consulted and involved in the debates on the setting-up of the European External Action Service and brought undeniable pressure to bear on Catherine Ashton. The EP's efforts to amend the EU financial rules to allow it to establish a budget for the EEAS and to amend the Staff Regulations of Officials in order to allow it to appoint the EEAS staff³⁴ testify to this. Neither has the EP failed to point out in a number of its resolutions that 'as a member of the College of Commissioners, the VP/HR [Vice-President/High Representative] is subject to a vote of consent by the European Parliament'.³⁵

33. But the 'Declaration by the High Representative on Political Accountability' foresees the full and immediate information of the European Parliament, just like in the Community areas, at all stages of the procedure of negotiation of international agreements, including for agreements concluded in the area of CFSP. Cf. Declaration on Political Accountability by the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security policy (VP/HR), Annex to the European Parliament legislative resolution of 8 July 2010 on the proposal for a Council decision establishing the organisation and functioning of the European External Action Service (Annex II, Doc. P7_TA(2010)0280). For more information, see also Kolja Raube, 'The emerging relationship between the European Parliament, the High Representative and the External Action Service', Working Paper no. 74, September 2011, Leuven Centre for Global Governance Studies. Available at: www.globalgovernancestudies.eu.

34. See, for example, the report drafted by Bernhard Rapkay on behalf of the Legal Affairs Committee on the Proposal for a Regulation of the European Parliament and of the Council amending the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of those communities, October 2010, as well as the reports by Ingeborg Grässle & Crescenzio Rivellini (October 2010), and by Elmar Brok (July 2010 and October 2009), as well as opinions by Guy Verhofstadt (July, September and October 2010).

35. See, for example, recital B of the European Parliament resolution of 7 July 2011 on the European Parliament's approach to implementing Articles 9 and 10 of Protocol 1 to the Lisbon Treaty as regards parliamentary cooperation in the field of CFSP/CSDP (Ref.: P7_TA(2011)0337).

In order to understand the ins and outs of previous initiatives and the ongoing discussions with regard to the parliamentary scrutiny of CFSP, one must take into account not only the Lisbon Treaty provisions and the growing role of the European Parliament in the field of CFSP/CSDP, but also the general backdrop to those discussions. Generally speaking, the situation has changed: interparliamentary scrutiny is no longer perceived by governments as the natural and unavoidable corollary to their inter-governmental activities, as it was at the time of Europe's founding fathers. Moreover, the current context of severe and lasting economic crisis is not conducive to the establishment of new large-scale structures. Furthermore, the national parliaments must finance this future new mechanism themselves and must, in order to do so, reach agreement not only at 27, or even at 40 (given the existence of both monocameral and bicameral systems), but also with the European Parliament. In such a context the national parliaments are inclined to scale down their ambitions, more than is the case for the EP (which has a comparative advantage, being a powerful single structure with an international administration (around 6,000 staff members) and a sizeable budget (€1.5 billion annual expenditure³⁶), which sets limits to what can be achieved.

36. European Parliament: Grand total of expenditure 2009 = 1 529 970 930 euros. Staff of the European Parliament (5 093 permanent posts and 988 temporary posts), compared to the Council (3 476 permanent posts and 36 temporary posts) and to the Commission (25,728 permanent posts and 481 temporary posts). See *Official Journal of the European Union*, L 69, Volume 52, 13 March 2009.

2. Previous initiatives and ongoing discussions on the interparliamentary scrutiny of the CFSP: state of play and personal analysis

An analysis of the different positions, in particular those of the national parliaments and the European Parliament, is essential in order to assess the state of play. Anyone interested can consult a 50-page working paper setting out all the positions that we have been able to collect (available online on the EUISS website: see: http://www.iss.europa.eu/uploads/media/Annexe-2_Etats-des-lieux.pdf – in French only).³⁷ This first phase in this study provided the necessary basis for the second phase: identifying the possible options (with an assessment of their pros and cons) with a view to formulating a number of recommendations on the nature of the future Interparliamentary Conference on the Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP).

A personal analysis: exploring the realm of the possible

The major previous initiatives and the ongoing debates on interparliamentary scrutiny of CFSP are examined below.

The most recent meeting of the Conference of Speakers of the EU Parliaments took place in Brussels on 4 and 5 April 2011, under Belgian Presidency. Concerning the parliamentary scrutiny of the Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP):

37. See the document 'État des lieux – recensement des initiatives passées et des discussions en cours sur le suivi interparlementaire de la PESC/PSDC', working document drafted by the author of this paper which lists all the positions to date issued by the national parliaments of the EU Member States and those of the EP in extracts from recent resolutions, October 2011.

(...) 2. The Speakers emphasised that it was essential that the diversity of opinions within the national parliaments and the European Parliament could be sufficiently expressed and that the mechanism proposed should allow the different points of view to be heard.

3. The Speakers emphasised that the goal of this new structure is to ensure the monitoring of the CFSP/CSDP from a parliamentary point of view (scrutiny) rather than truly to control it (control), which would involve a competence of sanction. The Parliamentary Conference has above all an informative function which, on the one hand, should enable the national parliaments to better scrutinize their own governments with regard to the intergovernmental dimension of the CFSP/CSDP and which, on the other, should enable the European Parliament to exercise its functions within the European institutional framework.

4. The Speakers noted that the one difference between the various parliamentary points of view was between those who wished to focus on the intergovernmental dimension of the CFSP and the CSDP and those who wished the Community dimension also to be included.

5. In view of the aforementioned considerations and given the diverging views, the Speakers did not reach an agreement on all aspects of the establishment of an interparliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP), consisting of delegations from the national parliaments of the Member States of the European Union and the European Parliament. However, the Conference agreed on the following:

a. An Inter-parliamentary Conference for the Common Foreign and Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) is set up. It is composed of delegations of the national Parliaments of the EU Member States and the European Parliament. This conference replaces the existing COFACC [Conference of Foreign Affairs Committees Chairpersons] and CODCC [Conference of Defence Committees Chairpersons] meetings.

b. Each national parliament of a candidate Member State and each European member country of NATO can participate as observers.

c. The Conference shall meet twice a year in the country that is holding the six-monthly Council Presidency or in the European Parliament in Brussels.

The Presidency shall decide the matter. Extraordinary meetings shall be held when deemed necessary or urgent.

d. The meetings shall be presided over by the national Parliament of the Member State holding the rotating Council Presidency, in close co-operation with the European Parliament.

e. The High Representative for Foreign Affairs and Security Policy of the European Union shall be invited to the meetings of the Conference in order to set out the outlines and strategies of the common foreign and defence policy of the Union.

f. The Conference may adopt non-binding conclusions by consensus.

g. The Conference shall approve its rules of procedure and working methods on the basis of the aforementioned principles.”

The main areas of disagreement are the size of the European Parliament delegation to the future Conference, the Conference secretariat and the meeting venue.

The range of options is as follows:

Structures: the options range from permanent to rotating structures, with varying degrees of stability and continuity (more or less long-term secondment of officials from the national parliaments).

Funding: the options range from government funding (unlikely) to funding provided exclusively by the national parliaments, or jointly with the European Parliament, or even total funding out of the EU budget.

Activities: the options range from simple, twice-yearly exchanges of information among parliamentarians, to reports containing concrete recommendations (drafted, for example, by groups of experts, e.g. from the EUISS) and entailing a dialogue with the EU executive and leading political personalities.

Venue of meetings: the options range from a permanent headquarters in Brussels (with all the necessary facilities, but with a lack of visibility for the Member States) or at the European Parliament (with a possible loss

of visibility for the national parliaments), or in another place (at the risk of incurring high costs) to a total lack of a permanent headquarters, with meetings being organised by the country holding the six-monthly Presidency of the EU Council.

Size of delegations: the options range from 4 to 6 delegates for each national parliament and from 6 to 54 delegates for the EP, with the possibility of weighted representation according to country size (economic weight or population size).

One positive point is that the negotiations have moved on from the major principles to the very practical organisational aspects for this new interparliamentary structure for scrutiny of the CFSP/CSDP. This was far from self-evident, since Article 10 of Protocol No.1 to the Lisbon Treaty on the role of national parliaments in the EU only raises the possibility of organising such conferences without making it an obligation, and the whole business could therefore have remained a dead letter. However, a consensus still remains to be found and the devil is in the details. There are still numerous obstacles to overcome.

Because the national parliaments are anxious to ensure that interparliamentary cooperation on the CFSP/CSDP does not impinge in any way whatsoever on their own powers of scrutiny *vis-à-vis* their governments, they all agree on setting up a mechanism for parliamentary ‘cooperation’ or ‘oversight’ and are careful to avoid use of the term ‘parliamentary control’ from which it could be inferred that there is a power to sanction. The national parliaments want a forum in which to meet, but one that does not have real powers of parliamentary scrutiny (or ‘control’) as they exist at the national level. This is why there seems to be a broad consensus on using COSAC itself, with a few modifications, or a model based on that of COSAC.

One option favoured by some national parliaments would be to incorporate the meetings of the new Conference into those of COSAC, or to hold them back-to-back. COSAC meetings generally last a day and a half (with one night on the spot). If the two meetings were held back-to-back, savings could be made on travel costs, meeting the unanimous desire for a cost-effective solution for the interparliamentary conferences on CFSP/CSDP. The best solution in our opinion would be for the interparliamen-

tary conference on CFSP/CSDP to precede the regular COSAC meeting, which would enable its conclusions to be incorporated into, or at least mentioned in, the overall conclusions of the COSAC meeting.

Another aspect to be taken on board, in order to consider all the factors having an impact on the definition of the future interparliamentary scrutiny mechanism, is that of ‘parliamentary pluralism’ within the Conference delegations. In most national parliaments the various committee chairs are shared among the different political groups with a view to striking a balance that often appears complex to an outside observer. The unwritten rule of political balance, with the attribution of one or other committee chair to the majority being ‘counter-balanced’ by giving the chair of another committee to the opposition, applies to all the committees within the national parliaments, including the foreign affairs, European affairs and defence committees. This may explain why some politicians are in favour of the inclusion or exclusion of the chairman of a particular national parliamentary committee: it may have more to do with internal political considerations than with genuinely substantive reasons that may be relevant at European level. In addition, personal affinities or rivalries may explain the individual or collective stances taken by certain parties to the debate on the future parliamentary scrutiny of CFSP/CSDP.

As regards the European Parliament, judging by our soundings of certain well-informed politicians or observers, the official or ‘collective’ position would appear to have already been watered down somewhat in comparison to the individual stances taken by certain influential politicians within their political groups or the EP governing bodies and reflected again in a recent resolution of 7 July 2011³⁸ reiterating that the EP’s ‘own representation in any new form of interparliamentary cooperation should be of a scale which reflects the range and importance of its role in scrutinising CFSP/CSDP (...)’. Some MEPs have adopted what could be described as a pragmatic or realistic approach that leaves room for manoeuvre in the ongoing negotiations with the national parliaments, while others are taking a ‘maximalist’ stance aimed at extending the EP’s prerogatives as widely and as quickly as possible, including in the field of CFSP/CSDP.

38. European Parliament resolution of 7 July 2011 on the European Parliament’s approach to implementing Articles 9 and 10 of Protocol 1 to the Lisbon Treaty as regards parliamentary cooperation in the field of CFSP/CSDP (Ref.: P7_TA(2011)0337).

Among the MEPs with a close interest in the issue of interparliamentary scrutiny of CFSP/CSDP, apart from EP President Jerzy Buzek (former Prime Minister of Poland) himself and Vice-President Miguel Angel Martínez Martínez, both of whom are well versed on the subject and are inclined to favour a more pragmatic approach, we also met Andrew Duff and Charles Goerens, both very active in this area. Details about the ideas that emerged from those discussions conducted in the framework of the author's research can be found in an annex available online on the EUISS website.³⁹ (See: http://www.iss.europa.eu/uploads/media/Annex-3_Interviews.pdf).

It should be noted that an MEP's political career may affect his or her individual attitude with regard to the other players. Some are former ministers and many are previous members of their national parliaments, which may explain why they may be less categorical in their defence of the EP's prerogatives and more open to the collective claims of the national parliaments.

Regarding the size of delegations, the majority of national parliaments favour the COSAC model, which does not accord the European Parliament a larger number of delegates than each of the national parliaments. This is a *casus belli* for the European Parliament: it does not want a system like that of COSAC, where its delegation, composed like the national parliament delegations of six members, feels somewhat outnumbered. As one of 28 (if we count 27 national parliaments) or even 41 (if we count the 40 parliamentary chambers), the EP constantly feels itself to be in the minority, even if decisions are not subjected to a majority vote but are generally adopted by consensus. MEPs consider that this fully 'egalitarian', as opposed to a weighted, system diminishes and uniformises the role of the European Parliament, whereas they would like it to be singled out as the 'principal' democratic institution representing Europe's common interests. It should be noted in passing that none of the national parliaments, with the exception of the *Bundestag*, are calling for a proportional system of representation based on countries' economic weight or population size.

In its 'Resolution of 7 July 2011 on the European Parliament's approach to implementing Articles 9 and 10 of Protocol 1 to the Lisbon Treaty as

39. Talks with Andrew Duff and Charles Goerens, European Parliament, Brussels, 6 September 2011 – Annex available in English and French on the EUISS website: www.iss.europa.eu.

regards parliamentary cooperation in the field of CFSP/CSDP' the European Parliament:

- (...) '1. Recalls that the European Parliament is a source of democratic legitimacy for the CFSP and the CSDP, over which it exercises political scrutiny;
2. Is convinced at the same time that strengthened interparliamentary cooperation in the area of CFSP and CSDP would reinforce parliamentary influence over the political choices made by the EU and its States, owing to the European Parliament's responsibilities for the common policies of the Union, including the CFSP/CSDP, and to the prerogatives each national parliament enjoys in national security and defence policy decisions;
3. Regrets the lack of agreement at the EU Speakers' Conference of 4 and 5 April 2011 and looks forward to supporting the efforts of the Polish Presidency to reach an agreement between the European Parliament and national parliaments on new forms of interparliamentary cooperation in this field;
4. Confirms its position as set out in the relevant reports, and in particular:
- that, in accordance with Article 9 of Protocol 1 of the Lisbon Treaty, 'the European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union', in order to promote co-ownership in the organisation and exercise of effective and regular interparliamentary cooperation;
 - that its own representation in any new form of interparliamentary cooperation should be of a scale which reflects the range and importance of its role in scrutinising CFSP/CSDP, recognises the common European nature of such policies and satisfies the need to reflect the political and geographic pluralism of the House;
 - that, in the pursuit of added value as well as in order to contain costs, the Secretariat and premises of the European Parliament are in principle available to support the organisation and hosting of the interparliamentary meetings;
 - that the conclusions of the interparliamentary meetings shall not be binding on the participating parties; (...)

Hence the key question is the minimum level of representation that the European Parliament would be prepared to accept as part of a global compromise so that any new form of interparliamentary cooperation ‘reflects the range and importance of its role in scrutinising CFSP/CSDP, recognises the common European nature of such policies and satisfies the need to reflect the political and geographic pluralism of the House’.

The real problem concerns the definition of the CFSP/CSDP, where there is a divergence of opinions between the EP and the national parliaments. The EP defines the CFSP, including the CSDP, in much broader terms than the national parliaments. For the EP the CFSP encompasses humanitarian aid and neighbourhood policy, for which it has unquestionable powers of scrutiny (budgetary in particular). As the EP sees it, this justifies having a larger delegation than each of the national parliaments in the new structure for scrutiny of the CFSP/CSDP. A COSAC-type system (27+1) would not, in its view, fairly reflect its real competences for CFSP according to the broader, and what it sees as the correct, definition.

Evaluation of the different options (pros and cons)

As regards the composition of delegations, we need to define a procedure for the designation of members that takes account both of nationalities and political parties. We feel it is important to point out that it does not take a large number of parliamentarians, when these are determined and charismatic, and experts on the matter, to change the course of the interparliamentary debates and to suitably represent the views of their organisation, even *vis-à-vis* large numbers of participants. This is true both for the national parliaments and the European Parliament. By sharing its valuable expertise on CFSP/CSDP with the other participants and being capable of making original contributions in the European common interest, the EP delegation in particular would have every chance of winning the support of the other delegates at the interparliamentary conferences on CFSP/CSDP. Recognition for the essential and constructive role of the EP within such a conference would be strengthened, consolidating Europe’s democratic system to everyone’s advantage. Out of all the members of the European Parliament there are around fifteen (including those mentioned above) with real expertise and enthusiasm for the CFSP/CSDP, most of whom would be prepared to become actively involved in the new structure for the interparliamentary scrutiny of this area.

In order to organise the work of this interparliamentary Conference it would be necessary to hold hearings of personalities and experts (which would seem to be the subject of a possible consensus) and to set up working groups in order to discuss (possibly also to amend and vote on) reports with recommendations. There are a sufficient number of motivated parliamentarians prepared to devote their time and energy to the study of strategic CFSP/CSDP issues and to submit political or operational recommendations that could be discussed in an open debate and, if necessary, put to the vote. The role of such a forum would be the exchange of information, political debate and consensus-building; it would act as a catalyst for ideas with a view to supporting an increasingly ambitious and effective CFSP/CSDP at the service of Europe's citizens.

A secretariat, albeit a small one, would be indispensable. The simplest and most cost-effective solution might be to reinforce the existing COSAC secretariat. Article 1.2 of the updated COSAC Rules published on 4 August 2011⁴⁰ reads as follows: 'The Treaty of Lisbon empowers COSAC to submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission and to promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy.'

The COSAC secretariat is currently composed of eight members of staff: officials from the parliaments of the presidential troika, one from the European Parliament and a permanent member to support the secretariat's activities. The troika officials are appointed by their respective parliaments for a non-renewable 18-month period. The permanent member – a national parliament official – is appointed by the COSAC presidents upon a proposal of the presidential troika. That person has a two-year mandate, renewable once. The COSAC secretariat assists the presidency and the secretariat of the host parliament in all their tasks. The members of the COSAC secretariat exercise their functions under the political responsibility of the COSAC presidency and the presidential troika, or

40. See 'Rules of Procedure of the Conference of Parliamentary Committees for the Union Affairs of Parliaments of the European Union', *Official Journal of the European Union* (2011/C 229/01), 4 August 2011. Available at: www.cosac.eu.

according to decisions taken during meetings of the COSAC. The permanent staff member coordinates the COSAC secretariat's activities under the authority of the parliament of the country holding the presidency.

The costs incurred by the secondment of the permanent staff member to Brussels and all other necessary technical expenditure are borne jointly by the parliaments willing to contribute. The amount of shared expenditure and the payment modalities are established by agreement among the participating parliaments. The permanent member's own parliament pays his or her basic salary, while the national parliaments that have volunteered to participate in the co-funding mechanism share the additional costs of maintaining that person in Brussels, as well as certain running costs of the COSAC office. To be valid, the current co-funding mechanism must involve the national parliaments of at least 14 Member States (a majority, in other words), which must declare themselves willing to participate. In the conclusions of the XLVth COSAC meeting in Budapest (29-31 May 2011), COSAC noted its satisfaction at having received letters of intent from 35 national parliaments and parliamentary chambers announcing their participation in the co-financing mechanism for the period 2012-2013. Thus it is certain that the mechanism will function for the next two years. To date, the COSAC secretariat has received 38 letters of intent.⁴¹

The COSAC plenary sessions, while they have the merit of existing, are often the occasion for a lot of speeches but no follow-up. The discussions are useful, but could doubtless be optimised. The presence of the chairmen (or failing that, specialised, influential and dynamic members) of the foreign affairs, defence and European affairs committees would be a real plus, contributing to 'horizontal' coordination in order to optimise scrutiny of common policy in the areas of foreign affairs, security and defence. As far as the EP is concerned, the Chairmen of its Committee on Foreign Affairs and Subcommittee for Security and Defence should automatically be part of the EP delegation.

A system of working groups allows the ground to be prepared for plenary sessions, as was the case, for example, during the Convention on the Future of Europe. Discussion within committees or working groups is also

41. Interview with Loreta Raulinaitytė, the Permanent Member of the COSAC Secretariat, in Brussels on 6 September 2011.

the system used within such bodies as the now defunct Assembly of the Western European Union⁴² and the NATO Parliamentary Assembly. The NATO Parliamentary Assembly holds two plenary sessions a year and has a permanent international secretariat with a staff of about 30. Its work is conducted in five committees and eight subcommittees dealing with the major political and security issues confronting the NATO states. They amend and adopt reports by a majority.⁴³ It should be recalled that most EU Member States are also members of NATO. It would make sense to organise regular exchanges of information between the NATO Parliamentary Assembly and the future EU Conference on CFSP/CSDP.

The plenary sessions of the existing interparliamentary bodies are important events that symbolise a community, but debates produce more tangible results if the groundwork is done in advance by working groups. This does not necessarily entail the creation of standing parliamentary committees. The priority topics for the coming half-year could be defined at each six-monthly meeting and the meetings could be divided into half-day thematic workshops involving a panel of experts (for example from the EUISS) in order to discuss draft recommendations supported by brief explanatory memoranda. The Conference could even have a permanent partnership with the EUISS. A second half-day could be devoted to a specialised CFSP and CSDP plenary session with reports from the different working groups and adoption of the recommendations presented, together with the Presidency conclusions. This would comply with the unanimous desire for no new institutions, maximum efficiency and minimum costs.

Regarding the place and frequency of meetings, holding them twice a year back-to-back with COSAC meetings in the country holding the rotating presidency of the EU Council would offer undeniable advantages in terms of enabling the European countries' elected representatives to get to know

42. Following the collective denunciation by the States Party to the modified Brussels Treaty, the Western European Union (WEU) and its Assembly ceased to exist on 30 June 2011. Numerous national parliaments in their official statements have deplored this as a loss that has created a gap in the interparliamentary scrutiny of the CFSP and CSDP that must be filled as soon as possible on the basis of the provisions contained in Protocol No.1 to the Lisbon Treaty on the role of national parliaments.

43. The full members of the NATO PA are the representatives of the parliaments of the 28 NATO member states. Delegation size is based on country size and the total number of members is 257. In addition, representatives of the parliaments of 14 other countries have associate status enabling them to participate in all the Assembly's activities, but they do not contribute to the Assembly's budget or have the right to vote. For further information on the NATO PA's activities please consult www.nato-pa.int.

each other. This melting pot of ideas combined with the impact and immediacy of a face-to-face encounter within one of the European states brings real added value by combating preconceived ideas and stereotypes and as a result enhancing solidarity among European citizens: for parliamentarians are excellent conveyors of the public opinion that it is their duty to represent and inform. While Brussels, which hosts the majority of European institutions, is a convenient place to meet, the EU institutions also form a select and inward-looking microcosm: there is much to be gained from direct contacts in the different countries with the nations that make up the EU.

Regarding the financial aspects, these regular interparliamentary conferences will probably be jointly funded by the national parliaments with the possible support of the European Parliament. Autonomy comes at a price: without a minimum level of funding, nothing will be done. The EP is prepared to host meetings and provide the whole secretariat for this new interparliamentary mechanism. In its 'Resolution of 7 July 2011 on the European Parliament's approach to implementing Articles 9 and 10 of Protocol No.1 to the Lisbon Treaty as regards parliamentary cooperation in the field of CFSP/CSDP', the European Parliament notes (point 4, 3rd bullet) 'that, in the pursuit of added value as well as in order to contain costs, the Secretariat and premises of the European Parliament are in principle available to support the organisation and hosting of the interparliamentary meetings'. But most national parliaments that have expressed an official position (with the exception of the Belgian and Italian Parliaments) are wary of such an offer. They fear that the secretariat, if all or most of its staff come from the EP, may be used as a tool by the EP to assert its priorities and interests to the detriment of those of the national parliaments. Nonetheless, it would be counter-productive always to cast the EP as the enemy and to exclude it entirely from the political and logistical organisation of the interparliamentary meetings. The real pitfall to be avoided is the absence of effective parliamentary scrutiny over an area that needs specific and proper interparliamentary oversight. Probably the best solution would be a strengthened 'mixed' COSAC-type secretariat (or even better the COSAC secretariat itself), with staff from both the national parliaments and the EP.

Europe is gradually being built through dialogue and the art of compromise. That exercise of consensus-building will also be continued and fur-

ther developed through the regular conferences for the interparliamentary scrutiny of CFSP/CSDP. This is why it is important not to restrict participation in them to the current EU Member States. It is necessary to involve the candidate countries⁴⁴, as well as European NATO states like Norway that are not members of the EU, and the European and partner countries that participate in the EU's crisis-management operations, like Ukraine. These should be able to participate as active observers in the debates on CFSP/CSDP.

The initial proposal by the Belgian Presidency of the Conference of Speakers of the EU Parliaments for the EP to represent a third of the conference membership, which was scaled down to one quarter in the final compromise proposal, raised strong objections from most national parliaments, which felt able and entitled to take the leadership in the new interparliamentary structure. Quite rightly, the parliamentarians elected to the national parliaments of the EU Member States do not feel any less 'European' than their EP counterparts, a claim confirmed by the Lisbon Treaty.

44. Currently Croatia, the Former Yugoslav Republic of Macedonia (FYROM), Iceland, Montenegro and Turkey.



3. The future Interparliamentary Conference on the CFSP and CSDP: conclusions and recommendations

Having taken stock of the positions of the different players, it is now necessary to explore concrete possibilities, looking at the pros and cons of the different options on the table and selecting those that look the most promising.

The key question is: is there a win-win strategy, i.e. an optimal solution that everyone can live with (without either naïve optimism or sterile intransigence on either side), and which takes due account of the competences and legitimate desires of all the players?

There is a recognised need to organise interparliamentary conferences in order to debate issues of CFSP/CSDP in compliance with the provisions of Article 10 of Protocol No.1 to the Lisbon Treaty on the role of national parliaments.

It is also agreed that ‘contributions from the conference shall not bind national Parliaments and shall not prejudice their positions’, as stated in Article 10 of Protocol No.1. Everyone agrees that the aim of those conferences should be to provide parliamentary oversight of CFSP/CSDP as opposed to any real form of control entailing the power to sanction. Those interparliamentary conferences will above all serve the purpose of providing information, making national parliamentarians more able to scrutinise their own governments with regard to the intergovernmental dimension of the CFSP/CSDP, and allowing the European Parliament to exercise its role in the European institutional framework.

Furthermore, it is clear that the EP and the national parliaments need to define together how to organise and promote ‘effective and regular interparliamentary cooperation’ as called for by Article 9 of Protocol No.1.

There is also unanimous agreement on the need to avoid creating a new body or institution for the parliamentary scrutiny of CFSP/CSDP, and to

keep the cost to a minimum.

It therefore seems reasonable that the instrument for promoting those exchanges of information and best practices among the national parliaments and the EP should be none other than *the* Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union, in other words, COSAC, even if Protocol No.1 refers strictly speaking to ‘a’ conference of Parliamentary Committees for Union Affairs.⁴⁵

COSAC has the merit of existing and its framework could easily be adapted in order to hold its regular meetings (bringing together the chairmen of the European affairs committees of the national parliaments and MEPs) back-to-back with the interparliamentary meetings on the CFSP/CSDP (bringing together the chairmen of the foreign affairs, defence and European affairs committees of the national parliaments and MEPs).

Hence it would make sense to **adapt the COSAC framework** in order to organise regular interparliamentary conferences to debate the Common Foreign and Security Policy (CFSP), including the Common Security and Defence Policy (CSDP).

This analysis brings us to the following conclusions and recommendations:

For example, a mechanism could be set up entitled **Interparliamentary Conference Specialised in Affairs of CFSP, including CSDP (COSACF-SP or COSAPESC**, to use the French acronym). That Conference would **meet at least twice a year**.

1) Composition: There would be real added value in organising conferences bringing together the chairmen of the **defence, foreign affairs and European affairs** committees of the national parliaments, plus representatives of the EP **Foreign Affairs Committee (AFET) and Subcommittee on Security and Defence (SEDE)**. Regarding the **size of delegations**, it might be a good idea to allow some time to work out the

45. When one reads the debates and the amendments tabled on the draft Protocol on the role of national parliaments during the Convention on the Future of Europe (2002-2003), there can be no doubt that it was the intention of the drafters and negotiators of the protocol to directly involve COSAC as such in the interparliamentary scrutiny described in Article 10 of the final version of the protocol that is currently in force. It therefore makes sense to us to propose that COSAC (adapted as necessary) provide the framework and logistics for such interparliamentary scrutiny of CFSP/CSDP.

best solution. For example, small meetings of the Conference could be organised without imposing specific limits on the size of delegations. The question could then be revisited after several years' experience in order to determine the best practice.

2) Aim: This forum would enable parliamentarians to **discuss issues of CFSP/CSDP and exchange information and best practices**. This new instrument for interparliamentary cooperation would be all the more effective if information on the activities in this area could be provided directly by the EU institutions.

3) Relations with the executive: One could foresee an **annual report** by the Council as the EU body responsible for security and defence, plus an oral report by the **President of the European Council**, and, where appropriate, presentations by a **political personality from the country holding the Council Presidency**,⁴⁶ and above all from the **High Representative** as the person in charge of the implementation of the EU's Common Foreign and Security Policy.

4) Questions on the agenda: The Conference would discuss the EU's **strategic objectives and interests** in the field of its external action in general; all European Council decisions in the area of **foreign, security and defence policy** would be of interest to it. Intergovernmental decisions within the European Council may concern the EU's relations with a specific country or region or else specific areas. Parliamentarians too must therefore be able to address all these issues. They must also exercise scrutiny over all the **EU's crisis-management operations and CFSP instruments** (in particular the activities of the European External Action Service and the European Defence Agency).

5) Organisation of the work of the Conference: For more efficient debates, the plenary sessions of the interparliamentary conferences on the CFSP should be prepared by thematic discussions within more restricted

46. Council formations, with the exception of the Foreign Affairs Council which is chaired by the High Representative [see Article 18 TEU, paragraph 3], are now presided over for 18 month periods by predetermined groups representing three member states. The membership of those groups rotates equally among the member states in order to strike a geographic balance. Each member of the group in turn presides over the meetings of Council formations (with the exception of the Foreign Affairs Council) for a period of six months, assisted in that task by the two other members on the basis of a common programme. The members of the group can agree on other arrangements among themselves (See Declaration on Article 16(9) of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council).

working groups, tasked, where necessary, with preparing **reports** and **recommendations** on precise aspects of the CFSP and CSDP. The Conference, meeting in **plenary session**, could formulate **opinions** and approve **conclusions**.

The Conference should be able to **conduct studies and gather information** (via, in particular the national parliaments and the EP) autonomously, and where appropriate in collaboration with the EU Institute for Security Studies (EUISS). Indeed, one could imagine a **partnership** with the **EUISS** and, in particular, the regular involvement of EUISS research staff or members of its network of experts in the bi-annual meetings of the Conference.

6) Secretariat: The **COSAC Secretariat** could also be responsible for the Conference secretariat and call on the services of different experts for the preparation of draft reports and recommendations on specific aspects of the CFSP/CSDP.

Where there is a will, there is a way! It must be hoped that the politicians in charge will show wisdom, realism and open-mindedness, but also political vision and courage, in order to make this much-needed mechanism for the collective parliamentary scrutiny of a ‘common’ policy conducted on behalf of all European citizens a reality. This is one tangible project among others which, if implemented, could help generate ‘*de facto* solidarity’, to quote the wise method advocated by Europe’s founding fathers.

The Luxembourg Prime Minister, Jean-Claude Juncker, said:

‘Those who want to see nations-states disappear are making a great mistake. Europe must reckon with the fact that nations exist. It should blunt their claws whenever necessary, so as to take away from them everything that is excessive, pernicious and directed against others. But nations are not temporary inventions of history. The citizens of Europe do not want a United States of Europe, but a sharing of all areas of national sovereignty with a view to greater efficiency. Europe cannot be built against the deepest feelings of its peoples.’⁴⁷

The organisation of interparliamentary meetings on Europe’s Common

47. *Libération*, 24 March 2006, quoted by Hubert Haenel, op. cit. in note 1.

Foreign and Security Policy, including the Common Security and Defence Policy, may appear innocuous, yet it brings to the forefront questions that are fundamental for the future of Europe, in particular that of democratic scrutiny, the legitimacy of Union action and the issue of the very nature of the Union.



Annex

Abbreviations

AFET	Committee on Foreign Affairs (European Parliament)
CFSP	Common Foreign and Security Policy
CODCC	Conference of Defence Committees Chairpersons
COFACC	Conference of Foreign Affairs Committees Chairpersons
COREPER	Committee of Permanent Representatives to the EU
COSAC	Conference of Parliamentary Committees for the Union Affairs of Parliaments of the European Union
CSDP	Common Security and Defence Policy
EDA	European Defence Agency
EEAS	European External Action Service
EP	European Parliament
EUISS	European Union Institute for Security Studies
HR	High Representative
MEP	Member of the European Parliament
PSC	Political and Security Committee
SEDE	Subcommittee on Security and Defence (European Parliament)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

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