



FACULTY OF LAW
Lund University

Ida Höckerfelt

The EU in international organisations post-Lisbon – the question of representation

Master thesis
30 credits

Supervisor
Xavier Groussot

Union law

Autumn 2011

Contents

SUMMARY	1
SAMMANFATTNING	2
ABBREVIATIONS	3
1 INTRODUCTION	5
1.1 Theme and purpose	5
1.2 Methodology and material	6
1.3 Disposition	6
1.4 Delimitations	6
2 BASIC CONCEPTS	8
2.1 The international organisation	8
2.2 Regional Integration Organisation	9
2.3 The treaty	9
2.3.1 <i>Obligations for treaty parties</i>	10
3 TREATY PROVISIONS RELATING TO EU EXTERNAL ACTION	11
3.1 Legal personality of the EU	11
3.2 Competences of the EU in external action	12
3.2.1 <i>Exclusive competences for the EU</i>	12
3.2.2 <i>Shared competence</i>	13
3.2.3 <i>Possibility to support and coordinate</i>	13
3.3 The Common Foreign and Security Policy	13
3.3.1 <i>Competence</i>	14
3.4 Coherence	15
4 THE HIGH REPRESENTATIVE	16
4.1 Function and responsibilities	16
4.1.1 <i>In international organisations</i>	17
5 THE EUROPEAN EXTERNAL ACTION SERVICE	18
5.1 Structure	18
5.2 Function	19
6 EU IN INTERNATIONAL ORGANISATIONS	21

6.1	Lisbon treaty provisions	21
6.2	Duty to cooperate	22
6.3	Particularities of membership	22
 6.3.1	<i>Full membership</i>	23
 6.3.2	<i>Observer status</i>	23
6.4	The EU in the UN	23
 6.4.1	<i>Special status</i>	24
7	REPRESENTATION OF THE EU	25
 7.1	Background	25
 7.2	Post-Lisbon	26
 7.3	Cooperation and coordination	27
 7.4	EU representation by Member States	28
8	THE MEMBER STATES AND POST-LISBON REPRESENTATION	30
 8.1	Declarations concerning the common foreign and security policy	30
 8.2	The question of the visibility of the EU Member States	31
 8.2.1	<i>The issue of the UK</i>	31
 8.3	The efficiency of one voice?	32
9	CONCLUSIONS	35
 9.1	Theory vs. practice?	35
 9.2	Coordination improved	36
 9.3	The Member States post-Lisbon – an attitude of don't-want-to?	37
 9.4	Concluding words	39
	BIBLIOGRAPHY	40
	TABLE OF CASES	44

Summary

The past century has seen a change in the global pattern of power; states are no longer the only recognized subjects of international law, also international organisations can assume that role. This has meant that the cooperation between these kinds of international actors has grown increasingly important. Also the EU is seeking to assert its identity on the international scene.

With the entry into force of the Lisbon Treaty in December 2009, two new agents in EU external affairs were introduced: the High Representative for Foreign Affairs and Security Policy, and the European External Action Service. This has brought changes to the execution of the EU Common Foreign and Security Policy, both in the actors responsible for coordinating the common EU position and how that position shall be presented at international fora across the world. The Lisbon Treaty provisions that representation of the EU in the area of Common Foreign and Security Policy shall be the responsibility of the High Representative, with the assistance of the European External Action Service. This is an effort to at the same time provide the basis for a more unified external voice of the EU and ensure the coordination of the Member States' foreign policies, to strengthen the position of the EU in international organisations.

This thesis seeks to describe the functioning of these new EU agents, as well as how these changes have been perceived by the EU Member States.

Sammanfattning

De senaste hundra åren har inneburit en förändring i det globala maktmönstret; stater är inte längre de enda internationella rättssubjekten, även internationella organisationer kan anta denna roll. Detta har betytt att samarbeten mellan internationella aktörer har blivit allt viktigare. Även EU vill hävda sin identitet som internationell aktör på den internationella scenen.

I och med ikraftträdandet av Lissabonfördraget i december 2009 introducerades två nya aktörer inom EU:s externa relationer: den höga representanten för utrikes frågor och säkerhetspolitik, och den europeiska avdelningen för ytter åtgärder. Detta innebar förändringar i utövandet av den gemensamma utrikes- och säkerhetspolitiken, både vad gäller fördelningen av ansvar över den gemensamma EU-positionen och hur denna position ska presenteras i internationella fora i världen.

Lissabonfördraget stadgar att EU-representation inom området för den gemensamma utrikes- och säkerhetspolitiken ska falla under den höga representantens ansvar, och att den europeiska avdelningen för ytter åtgärder ska vara henne behjälplig. Detta syftar både att tillhandahålla en grund som kan ge EU en mer enad ytter röst och att säkerställa en effektiv koordinering av medlemsstaternas utrikespolitik, för att stärka EU:s position i internationella organisationer.

Denna uppsats syftar till att beskriva de roller som har tilldelats de nya EU-aktörerna, samt hur dessa förändringar har tagits emot av medlemsstaterna.

Abbreviations

1969 Convention	Vienna Convention on the Law of Treaties 1969
CFSP	Common Foreign and Security Policy
Coreper	Committee of Permanent Representatives
EC	European Communities
ECJ	Court of Justice of the European Union
ECR	European Court Records
EEAS	European External Action Service
EU	European Union
FAC	Foreign Affairs Council
FAO	Food and Agriculture Organisation
HRC	Human Rights Council
ICC	International Criminal Court
ILC	International Law Commission
ILO	International Labour Organisation
REIO	Regional Economic Integration Organisation
RIO	Regional Integration Organisation
Rome Treaty/EEC	Treaty establishing the European Economic Community
SEA	Single European Act
TEU	Treaty on the European Union (as amended by the Lisbon Treaty)

TFEU

Treaty on the Functioning of the
European Union

UN

United Nations

WTO

World Trade Organisation

1 Introduction

Just short over two years ago the Lisbon Treaty entered into force, bringing more or less significant changes to the European Union (EU). Several of these changes aim to strengthen the role of the EU internationally, asserting its identity as a major global player while still retaining its character as an intergovernmental union.

Among other things, the Lisbon Treaty established the position of the High Representative for Foreign Affairs and Security Policy as well as constituting a basis for the creation of the European External Action Service (EEAS). These agents are charged with, *inter alia*, taking over the responsibility for external representation, which was earlier in large part executed by the Member State in Presidency.

This thesis will examine the external representation in international organisations, with a basis in the legal provisions of the Lisbon Treaty. It will focus on the relationship between the EU Member States and the two newly established agents in EU external action mentioned above. This is a highly current subject, with the EEAS entering into action only one year ago. Despite the fact that the Lisbon Treaty is aiming for a greater coherence in the area of external action, there have been signs that this coherence might not be easily achieved.

1.1 Theme and purpose

The questions I am aiming to answer are basically the following: *What is the mandate of the High Representative for Foreign Affairs and Security Policy in international organisations? How does it encompass also the European External Action Service? What place is there for the Member States in external representation post-Lisbon? How could or should the Union work towards an even greater coherence and cooperation in its external representation?*

External representation is a never-ending subject, and I have therefore chosen to focus on examining the sphere encompassing mainly these elements: the EU in international organisations, the policy area of the Common Foreign and Security Policy, and the High Representative and the mandate given to her. There are a multitude of other questions that alone would merit the attention of a thesis, such as the highly interesting internal division of competence between the High Representative, the President of the European Council and the Commission, as concerns external representation within their respective “portfolio”. But alas, for the sake of brevity and clarity, this is not covered in the following paper.

Even though the thesis of course builds mainly on the Lisbon Treaty itself, the incorporation of a political aspect has been inevitable during the course of writing.

1.2 Methodology and material

This thesis will take its basis in the Lisbon Treaty and its articles, which provides a solid foundation for the continued analysis through the help of secondary sources such as literature, articles and essays. The area of EU external action is, even though not newly invented, constantly evolving and this hold even more true with the rather recent entry into force of the Lisbon Treaty. Therefore, the sources available that treat this subject are often in the form of articles and essays, rather than established doctrine. I have tried to use these sources with caution, as they often present one specific point of view, but they are useful in assessing the view on the EU external action from the standpoint of actors not within the actual policy making of the EU.

1.3 Disposition

The opening chapter of this thesis will briefly present the notion of the international organisation as well as the treaty, to establish common definitions of these concepts to the benefit of the reader. In the following chapters, the thesis will look at the Lisbon Treaty and development in external action that it brought, with a focus on presenting the High Representative for Foreign Affairs and Security Policy and the European External Action Service, and their respective roles in representing the EU externally. This will be further elaborated on in chapter 6 and 7, where the function of and the representation of the EU in international organisations will be examined more closely. The thesis will close by looking at how the EU Member States have reacted to and acted in accordance with the changes brought by the Lisbon Treaty in external action, and my analysis on how these changes have been received and implemented.

1.4 Delimitations

The area of the EU external action encompasses a range of issues. As I have chosen to look closer at the specific question of representation, this thesis will not look into neither the competence to enter into treaties or to conclude agreements with other international entities, nor the mechanisms of establishing membership, even though representation relates closely to these areas. Accordingly, the concept of mixity will not elaborated in detail, as that is a part of the shared competence on concluding agreements, and a very complex issue on its own merits. There is also a distinction to make both legally and institutionally between representation on the one hand, and the work on defining EU positions and negotiating on behalf of the EU on

the other hand. For the sake of brevity, the issues of defining EU positions and the competences on negotiating will not be approached.

2 Basic concepts

At the basis of the central questions in this thesis are the notions of the obligations a treaty creates, and the international organisation. Although this thesis will not dwell on treaty law as such, it is nonetheless useful to give a brief outline of the treaty in its various functions, in order to establish a foundation that can be used as a point of departure.

2.1 The international organisation

Despite the large number of earlier and now existing international organisations, there is, rather inconsistently, no comprehensive definition of such an institution.¹ The overarching characteristics of an international organisation can be given as: principally created by states, on the basis of a treaty and with international legal personality separate from that of its members.² When an international organisation is defined in the 1969 Convention, it is a definition made for the function of the convention as such; it is not a generally applicable formula to determine the status of an organisation.³ International organisations range from the global, such as UN, via regional, e.g. the EU or the WTO, to the more narrowly focused such as the International Whaling Commission.⁴

An international organisation does not *per se* disqualify as such if another international organisation is a party, see for example the WTO with the EU as a founding member.⁵ However, looking at the issue from another angle, the founding treaty, as the statute of an international organisation, might not allow for other international organisations to become members.

Legal personality can be awarded to an international organisation through both explicit and implicit means. The constituent instrument can provide for a legal personality to be established, but it can also be deduced from the purpose of the organisation, the powers that its members have delegated or recognition by States and other international organisations.⁶

Participation in an international organisation is generally defined as relating to actual participation in the organs of the international organisation in question. This includes *inter alia* the right to attend meetings, eligibility for positions in organisation bodies, voting and speaking rights. These rights of

¹ Klabbers, *An introduction to international institutional law* (2002), p. 7

² Klabbers, pp. 9-13

³ Aust, *Modern Treaty Law and Practice* (2007), p. 399

⁴ Aust, p. 399

⁵ Klabbers, p. 9

⁶ Aust, p. 398; Eeckhout, *External Relations of the European Union: Legal and Constitutional Foundations* (2004), p. 156

the participating actor show the possibility a formal influence on the organisation and its decisions, recommendations or agreements.⁷

2.2 Regional Integration Organisation

The notions ‘Regional Integration Organisation’ (RIO) and ‘Regional Economic Integration Organisation’ (REIO) respectively, are fairly new concepts. These categories refer to the constitution by sovereign states of an organisation, to which they can confer competence in specific matters.⁸ The European Community was a classic example of a REIO, with the Association of South-East Asian Nations as another example. International organisations or treaty regimes can allow for the membership of a RIO and/or a REIO in their statutes, with the relevant article often stating the conferring of competences that would apply specifically to the subject area of the organisation, albeit worded rather generically.⁹

The admittance of a RIO or REIO creates its own implications, as the states that constitute the RIO/REIO often participate in the international organisation in their own right as state parties. The statute of the international organisation therefore also provisions rules concerning voting procedure, to ensure that there is no duplication of power. Most common is an “either-or” approach; either the RIO/REIO votes, carrying the same number of votes as the member states that are parties to the organisation or treaty regime at hand, or the member states enjoy their individual right of voting. The one option excludes the other.¹⁰ The statute can also provision for a declaration on the extent of competence in the instruments of accession of the RIO/REIO, to further clarify the division of competences between the RIO/REIO and its member states.¹¹

2.3 The treaty

The Vienna Convention on the Law of Treaties 1969 (1969 Convention) in its Art. 2(1)(a) defines a ‘treaty’ as

⁷ Wessel, "The Legal Framework for the Participation of the European Union in International Institutions" (2011), p. 623

⁸ cf. for REIO the FAO Constitution Art. XIV 3(b), the United Nations Framework Convention on Climate Change Art. 1(6), Statute of The Hague Conference on Private International Law Art. 3(2). For RIO, see the United Nations Convention on the Rights of Persons with Disabilities Art. 44.

⁹ cf. FAO Constitution Art. XIV 3(b) “matters within the purview of the conventions”, United Nations Convention on the Rights of Persons with Disabilities Art. 44(1) “matters governed by the present Convention”

¹⁰ Emerson et al., "Upgrading the EU’s role as global actor" (2011), p. 33, cf. United Nations Framework Convention on Climate Change Art. 18(2)

¹¹ For an example, see United Nations Framework Convention on Climate Change Art. 22(3)

an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

Although this definition explicitly deals with relations between states, the elements of the 1969 Convention now also represent customary international law.¹² The ‘state prerequisite’ carries the notion that a treaty can be concluded between a state and another subject of international law. The concept ‘subject of international law’ has traditionally concerned states only, but with the creation of *inter alia* international criminal tribunals, individuals can also be seen as subjects of international law, together with non-state actors, transnational corporations and terrorist groups. This means that international organisations, as non-state actors, are also possible treaty partners and not only the end result of a treaty.¹³

The prerequisite ‘governed by international law’ has been explained by the International Law Commission as embracing the element of an intention to create legal rights and obligations under international law.¹⁴

2.3.1 Obligations for treaty parties

The fundamental principle of the law of treaties is the ubiquitous *pacta sunt servanda*.¹⁵ Art. 26 1969 Convention explicitly provisions that “[e]very treaty in force is binding upon the parties to it and must be performed in good faith.” Every party to a treaty is thus bound to its provisions. A non-performance is a breach of the party’s obligation towards the other treaty parties.

A treaty party cannot invoke an internal situation, i.e. legislation process or provisions of internal law, as justification for failure to comply, Art. 27 1969 Convention. This can be seen as a general principle, and it has been explicitly expressed in Union case law as guiding the Member States’ obligations both towards individuals, as towards the Union and the other Member States.¹⁶

¹² Aust, p. 16

¹³ Aust, p. 18

¹⁴ Aust, p. 20

¹⁵ see Aust, p. 179, with reference to ILC’s Commentary on the 1969 Convention Draft

¹⁶ see *inter alia* the joined cases C-6/90 and C-9/90 Francovich and Bonifaci v. Italian Republic

3 Treaty provisions relating to EU external action

The Lisbon Treaty was signed on 13 December 2007¹⁷, and entered into force on 1 December 2009. This was after years of negotiating on Treaty reform, compromises and not least referenda across Europe that rejected first the envisaged Constitutional Treaty and then, nerve-rackingly, also an Irish referendum that rejected the Lisbon Treaty.

The Lisbon Treaty, as the full name suggests, amends the Treaty of the European Union (TEU) and the Treaty Establishing the European Community, to establish also a Treaty on the functioning of the European Union (TFEU).¹⁸ The EU is to be founded on these two treaties, which both have the same legal value, as stated in Art. 1 para 3 TEU. The same article also states that the Union replaces and succeeds the EC.

The general provisions governing the EU external action can be found in Art. 21 TEU, encompassing the guiding principles of the Union's action on the international scene, but also explicitly stating that the Union shall "seek to develop relations and build partnerships with third countries, and international, regional or global organisations..." The idea of asserting the role of the EU internationally is not new, already the Maastricht Treaty provisioned for this in its Art. 2, but a stronger emphasis has here been placed on partnership building within the external action.

The Lisbon Treaty also provisioned for the establishment of the High Representative of the Union for Foreign Affairs and Security Policy, Art. 18(2) TEU, and the European External Action Service, Art. 27(3) TEU, two new actors in the EU external relations, as elaborated on below.

3.1 Legal personality of the EU

Art. 47 TEU awards the EU legal personality, as the successor of the European Community (as stated in Art. 1 TEU). This strengthens the status of the EU in international organisations, removing legal uncertainties as to legal competence, though it does not necessarily have a practical impact on the competence of the EU as it is and has been exercised.¹⁹ With the entry into force of the Lisbon Treaty, the Member States have however opted for a reservation in the form of an appended declaration stating that the legal personality of the EU does not "authorise the Union to legislate or to act

¹⁷ Treaty of Lisbon amending the Treaty on the European Union and the Treaty Establishing the European Community, CIG 14/07, Brussels 3 December 2007, OJ C 306/1

¹⁸ Henceforth, the notions 'the Lisbon Treaty' and 'the Treaties' will be used interchangeably, both denoting the TEU and the TFEU as a whole.

¹⁹ Craig, *The Lisbon Treaty: Law, Politics, and Treaty Reform* (2010), p. 387

beyond the competences conferred upon it by the Member States in the Treaties”.²⁰ The declaration does not change the Member States’ duties as according to the Treaties, as they are binding.

This legal personality of the EU is in international law seen as separate from the legal personality its respective members enjoy on their own merits as sovereign states. It gives the EU rights and duties as an independent subject of international law within the limits of the conferred competences, which includes the ability to enter into treaties with other subjects of international law, such as its member states, third states or other international organisations.²¹

3.2 Competences of the EU in external action

As this thesis is concerned with representation, without the EU necessarily having the need or the possibility of becoming a member, the question of competences in particular areas will not be discussed at length. Nonetheless, the concept of competence is central for all actions of the EU, as the Union can only act within conferred competence, and a short overview is therefore necessary.

The provisions on EU competence established by the Lisbon Treaty can be found in both TEU and TFEU. The TEU mainly states that the use of EU competence is governed by the principles of subsidiarity and proportionality and that “[u]nder the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States”, Art. 5 TEU. The more substantive provisions are contained within the TFEU.²² The categories are essentially exclusive competence for the EU, competence shared with the Member States and competence where the coordination and support of the EU is possible.

3.2.1 Exclusive competences for the EU

Art. 3 TFEU establishes exclusive competence for the EU in matters mainly concerning the internal market. The exclusive competence here means that only the Union can legislate and adopt legally binding acts, Art. 2(1) TFEU. Art. 3(2) also provides the EU with exclusive competence to conclude an international agreement, within the scope established in that article.

Even though Art. 3 TFEU gives the EU exclusive competence on issues concerning the functioning of the internal market, there is a possibility of exception in Art. 347 TFEU. The Member States can here claim their own

²⁰ Declaration 24 concerning the legal personality of the European Union

²¹ Aust, p. 398

²² Craig, p. 158

competence in regards to wares related to maintaining peace and international security. This article is twofold, in that it also provisions that the measures taken by the Member States shall not prevent the functioning of the internal market, and thereby gives a reason for the Commission to participate to ensure the protection of the Union's interests.²³

3.2.2 Shared competence

Situations of shared competence are dealt with in Art. 4 TFEU. It can be read from this article that shared competence is generally to be seen as the default position, as it confers competence in areas not related to exclusive or supporting competence, as well as in a non-exhaustive list of principal areas.²⁴

In a Protocol annexed to the Lisbon Treaty, the notion of shared competence has been specified further.²⁵ The Protocol states that when the Union has taken action in a certain area, the “competence only covers those elements governed by the Union act in question and therefore does not cover the whole area.” This Protocol clarifies that while the Union, under the auspices of shared competence, acquires exclusive competence within the specified limits of the legal act in question, the Member States will retain their competence as to the area in general, beyond the actions of the Union.²⁶ This complements the principle of conferral as provisioned in Art. 5 TEU.

3.2.3 Possibility to support and coordinate

The EU is also allowed to support, coordinate or supplement the actions of the Member States in a specified list of areas, Art. 6 TFEU. This form of competence does not pre-empt the Member States' competence and does not entail harmonization, though the EU can pass legally binding acts as to steer the Member States towards a certain action.²⁷

3.3 The Common Foreign and Security Policy

The objectives of the Union's CFSP are defined in Art. 24 TEU, preceded by a reaffirmation that the CFSP is to be governed by the general principles for the EU external action as expressed in Art. 21 TEU. These objectives do not entail a permanent limitation of the sovereign rights of the Member States, as for example the objectives within the Common Commercial

²³ Wessel, p. 630

²⁴ Craig, p. 168

²⁵ Protocol No 25

²⁶ Lysén, *Det nya EU efter Lissabonfördraget* (2010), p. 71

²⁷ Craig, p. 173

Policy.²⁸ It is explicitly provisioned that the CFSP is subject to specific rules and procedures, to be defined and implemented by the European Council and the Council, and to be put into effect by the High Representative and by the Member States.

With the Lisbon Treaty, the pillar system established by the Maastricht Treaty had served its purpose, and the pillars have now been merged.²⁹ Despite this, the separate set of rules that relates to the CFSP sets it apart and denotes that the foreign policy is still handled within a “pillar”.³⁰ The decision-making procedures in EU external action affairs have not been significantly changed with the Lisbon Treaty; what has earlier fallen within the competence of the Community now remains the responsibility of the Commission, whilst decisions on the CFSP continue to be under the authority of the Council.³¹ This also shows that the CFSP is operated as an intergovernmental area, on the basis of unanimity.

3.3.1 Competence

As mentioned above, even though the pillars have not been retained in the Lisbon Treaty, the separate set of rules concerning the CFSP sets it apart. This has also meant that the CFSP does not evidently fall under any of the general categories of competences, as reviewed above.³² Art. 24(1) TEU constitutes the foundation of the EU competence in matters of common foreign and security policy, when stating that this competence shall “cover all areas of foreign policy and all questions relating the Union’s security”. This is being echoed and further developed in Art. 2(4) TFEU, which states that “[t]he Union shall have competence, in accordance with the provisions of the Treaty on the European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.” None of these articles explicitly specify which competence that shall apply. The Union CFSP is a *common* foreign and security policy, not to be formulated by any one party, but rather to be seen as a collaborative effort in coordination between the Member States and the Union.³³ As such, it is evident that it falls neither under the exclusive competence nor the shared competence, which has the possibility of pre-empting any other action to be taken in the area.

²⁸ Gosalbo Bono, “The organization of the external relations of the European Union in the Treaty of Lisbon” (2010), p. 24

²⁹ Craig, pp. 405, 408

³⁰ Craig, p. 27

³¹ Craig, p. 27; Lefebvre, Hillion, “The European External Action Service: towards a common diplomacy?” (2010), p. 2

³² Eeckhout, *EU External Relations Law* (2011), p. 166, with reference to Piris, *The Lisbon Treaty: A Legal and Political Analysis* (2010), p. 77

³³ Lysén, p. 71

3.4 Coherence

Vital in an effective external action is coherence both on a vertical level, between the external policies of the Member States and the EU respectively, and on a horizontal level, regarding the internal coordination within the EU. Explicit reference to coherence on a horizontal level can be seen in Art. 21(3) TEU, stating that the Union shall “ensure consistency between the different areas of its external action...”, forming a sort of codification of the principle of horizontal coherence. The Council and the Commission, together with the newly established High Representative, are to ensure this consistency. As to vertical coherence, Art. 24(3) TEU gives reference to the obligation of loyalty and solidarity of the Member States. This article can, just as with Art. 21(3) TEU, be seen as an explicit version of the principle of vertical coherence.³⁴

³⁴ Koehler, “European Policy After Lisbon: Strengthening the EU as an International Actor” (2010), pp. 58-59

4 The High Representative

The position of High Representative of the Union for Foreign Affairs and Security Policy (hereinafter High Representative) was created after the attempt in the Constitutional Treaty to establish a Union Minister for Foreign Affairs. That title proved to carry a symbolic value, and was abandoned with the development of the Lisbon Treaty.³⁵ Nonetheless, the functions as envisaged for the office of the Union Minister for Foreign Affairs have been embodied in the responsibilities of the High Representative.³⁶ This position personifies the division of executive power between the European Council and the Commission³⁷, whilst at the same time it is evidence of the will to ensure a stronger horizontal coherence between the EU institutions and the Union foreign policy, the creation of “an institutional bridge”.³⁸

As the first High Representative under the Lisbon Treaty, the European Council, as provisioned in Art. 18(1) TEU, on 1 December 2009 formally appointed Lady Catherine Ashton.

4.1 Function and responsibilities

It is explicitly stated in Art. 18(4) TEU that the High Representative is responsible for ensuring the consistency of the Union’s external action. This new position has been dubbed “double-hatted”, or triple-hatted, depending on whom you ask.³⁹ Firstly, the High Representative has the responsibility of conducting the Common Foreign and Security Policy (CFSP), Art. 24(1) TEU. The High Representative is also President of the Foreign Affairs Council (FAC), Art. 18(3) TEU, a responsibility earlier carried by the Minister for Foreign Affairs of the Member State currently in Presidency, as well as Vice-President of the Commission, Art. 18(4) TEU, where the High Representative takes on the Commission responsibilities on external action as well as coordinating other aspects of the Union’s external action. As these functions are carried out within the same office, the main purpose is to ensure a more consistent EU external action, in all areas.⁴⁰ It is clear that with the establishment of the High Representative, a stronger emphasis has been put on the EU’s external action. As the High Representative represents at the same time both the supranational Commission and the intergovernmental Council, the position is a somewhat natural continuation of the unification of the EC and the EU into one Union, and the legal personality

³⁵ Craig, p. 88

³⁶ Piris, p. 243

³⁷ Craig, pp. 89, 110

³⁸ Eeckhout (2011), pp. 491-492

³⁹ cf. Piris, p. 243; Craig, p. 89; Lysén, p. 91; Bindt, *The Foreign Policy of the European Union: assessing Europe’s role in the world* (2010), p. 44

⁴⁰ Piris, p. 245

granted to the Union. The gathering of the responsibilities under the aegis of the High Representative aims at simplifying the presentation of the Union as speaking in one voice and the implementation of a more consistent foreign policy.⁴¹ The duties of the High Representative are manifold, and as the position has been established relatively recently, the exact extent of her powers and obligations is still developing. The range of responsibilities of the High Representative is wide, which is one of the reasons why the Lisbon Treaty also envisaged the establishment of the European External Action Service, more on that subject below.

4.1.1 In international organisations

As the High Representative has been charged with the overarching responsibility of conducting the CFSP, Art. 24(1) TEU, she is also central in the representation of the EU in international organisations. The provisions regarding the relations between the EU and international organisations, and more specifically on representation, are comparably few.

Art. 220 TFEU states, as mentioned above, that the Union shall establish forms of cooperation with international organisations, and that the High Representative is to implement this article, with the aid of the Union Delegations, Art. 221 TFEU. Furthermore, the High Representative “shall express the Union’s position in international organisations and at international conferences”, Art. 27(2) TEU. She is also responsible for organising the coordination of the Member States’ actions and presentation of EU statements in these fora, Art. 34(1) TEU. This has formerly fallen within the responsibilities of the rotating Presidency.

One of the more interesting tasks given to the High Representative by the Lisbon Treaty is the possibility and right to present and defend Union positions in the UN Security Council on behalf of the Member States, Art. 34(2) TEU. One or several of the EU Member States on the UN Security Council shall request that the High Representative be invited to present the Union position, but this is of course dependent on that the UN Security Council grants this request. The enhanced observer status as awarded to the EU in May 2011, see more below, increases the likelihood of this being the case.

⁴¹ Pernice, “The Treaty of Lisbon: Multilevel Constitutionalism in Action” (2009), p. 398

5 The European External Action Service

As mentioned above, the European External Action Service (hereinafter EEAS) was established to assist the High Representative. The establishment of the action service is explicitly provisioned for in Art. 27(3) TEU.

However, the Lisbon Treaty does not develop the concept of the EEAS in detail; Art. 27(3) TEU constitutes only a legal basis on which the European Council can establish the organisation and functioning of the EEAS.⁴² The EEAS formally came into being on 1 December 2010, exactly one year after the entry into force of the Lisbon Treaty.

The basis for the EEAS was developed in the Working Group on External Action.⁴³ The more detailed set-up of the EEAS was left to the High Representative to draft, with the view of presenting a Council Decision to be adopted. In October 2009, the Swedish Presidency presented a report containing draft guidelines for the High Representative to consider.⁴⁴ Among other suggested basic principles for the EEAS, the report stated that the EEAS should be of a *sui generis* nature, separate from both the Council and the Commission and enjoying certain autonomy as regards to budget and staffing.

In March 2010, High Representative Ashton put forward her suggestion towards a decision on the EEAS. A political agreement on this text was reached at the FAC⁴⁵, after a ‘pentologue’ negotiation under the guidance of High Representative, involving the Member States’ troika, the Commission, the Council Secretariat General and the European Parliament.⁴⁶

The Council decision on the EEAS was adopted on 26 July 2010.⁴⁷

5.1 Structure

The overarching structure of the EEAS is stated in Art. 1(4) Council Decision, and is given simply as a central administration with Union delegations that are to represent the EU in third countries and international organisations. Art. 4 Council Decision elaborates further on the central administration. It shall be managed by an Executive Secretary-General (Pierre Vimont, France), who shall be assisted by two Deputy Secretaries-

⁴² Piris, p. 250

⁴³ European Convention, Final Report of Working Group VII

⁴⁴ Presidency Report 14930/09

⁴⁵ EUROPE Documents No 2533, 30 April 2010

⁴⁶ Lefebvre, Hillion, p. 4

⁴⁷ Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service

General (Helga Schmid, Germany, and Maciej Popowski, Poland). The EEAS shall be organised in directorates-general, which largely resemble the functions of a Ministry of Foreign Affairs.

The role of the Union delegations is given in Art. 5 Council Decision. It is stressed that the Union delegations shall work in close cooperation with the diplomatic services of the Member States as well as support the Member States in their diplomatic relations. This is a mirror clause, or repeat clause, of Art. 221(2) TFEU, in which it is stated that the Union delegations shall act in close cooperation with Member States' diplomatic and consular missions. Already earlier, Commission delegations had been representing what then was the EC in international organisations. These existing delegations are now substituted by the Union delegations, and have therefore been absorbed as part of the EEAS structure.

The EEAS is to be composed by staff from the General Secretariat of the Council, the Commission and seconded staff from the Member States' diplomatic missions, Art. 6(9) Council Decision and Art. 27(3) TEU.

5.2 Function

Art. 1 of the Council Decision states that the EEAS is to be a “functionally autonomous body” of the EU, separate from the Council as well as from the Commission, and be placed directly under the authority of the High Representative. Despite the EEAS being considered as an autonomous body, it is not to be considered as a new institution *per se* within the institutional framework of the EU.⁴⁸

In a literal reading of the Treaties, the EEAS emerges primarily as a coordinating factor, though of course with more responsibilities than only a middleman. The main task of the EEAS is assisting the High Representative in fulfilling her mandate, Art. 2 Council Decision in conjunction with Arts. 18 and 27 TEU. The service is also charged with cooperating with the diplomatic services of the Member States as well as the Council and the Commission, “in order to ensure consistency between the different areas of the Union’s external action”, Art. 3 Council Decision.

Art. 35 TEU provisions for cooperation between the Union delegations and the Member States in their representations to international organisations, to ensure that “decisions defining Union positions and actions adopted pursuant to this Chapter are complied with and implemented”. The EEAS is not to explicitly take lead in the further promotion of Union decisions; it is to be a joint venture, which is inherently in the core of the CFSP.

⁴⁸ The institutions are named in Art. 13(1) TEU: the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank, the Court of Auditors. Art. 13(4) TEU also mentions the Economic and Social Committee as well as the Committee of the Regions.

The cooperation in international organisations is further elaborated on in the TFEU. As mentioned above, the High Representative is instructed to establish appropriate forms of cooperation with international organisations, Art. 220 TFEU. Under the authority of the High Representative, the Union delegations are charged with representing the Union at international organisations, as well as acting as liaison and cooperating closely with the Member States' diplomatic missions, Art. 221 TFEU. That the Union delegations are charged with representing the Union is not contravening the provision in Art. 35 TEU, it is rather a development and a clarification on the actual representation. The Union position is agreed upon in the Council, the pinnacle of Union coordination, Arts. 22, 24 and 31 TEU, and EU statements are generally formulated in EU-coordination at the international organisation in question. The Lisbon Treaty has, with these articles, tried to (re-)structure the representation of the EU to, in line with the general objectives of the external action, make it more coherent.

In general, the EEAS will also fill some of the duties previously executed by the rotating Council Presidency, e.g. chairing the Council Working Groups.⁴⁹

⁴⁹ Emerson et al., "Upgrading the EU's role as global actor" (2011), p. 48

6 EU in international organisations

The framework as provisioned by the Lisbon Treaty creates the legal boundaries for EU external action. For the EU to participate in an international organisation, it is necessary to take into account both the division of competences between EU and its Member States (as elaborated on briefly above), and the statute of the international organisation.⁵⁰

In a situation where the EU should wish to become a member, however, the provisions in the Treaties matter less than the statute of the international organisation in question.⁵¹ Traditionally, only States have been permitted accession to international organisations, in their capacity of subjects of international law. This holds true for the fora within the UN system in particular.⁵² As seen above, the definition on subjects of international law is now wider, to also encompass international organisations in different varieties, and thereby making it possible to also extend membership to *inter alia* other international organisation. It can be noted that EU membership has often been achieved through the acceptance in the statute of the organisation of a RIO/REIO as member, in particular for treaty regimes or conventions within the UN system.⁵³ A RIO/REIO clause has been invoked to justify the participation of the EU in 72 agreements.⁵⁴

6.1 Lisbon treaty provisions

Whilst on the one hand there are no provisions in the Lisbon Treaty providing a concrete framework for a possible EU membership in an international organisation, there are on the other hand nor any obstacles.⁵⁵ However, Art. 220(1) TFEU contains an explicit reference to EU participation in international organisations, stating that “[t]he Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development” as well as “maintain[ing] such relations as are appropriate with other international organisations.”

⁵⁰ Wessel, pp. 621-624

⁵¹ Eeckhout (2011), pp. 222-223

⁵² Eeckhout (2004), p. 200

⁵³ Emerson et al., pp. 31-32

⁵⁴ Emerson et al., p. 32

⁵⁵ Eeckhout (2011), pp. 222-223

6.2 Duty to cooperate

In the area of ‘mixity’, where the EU and its Member States respectively enjoy the right to conclude binding agreements, one of the basic legal principles is the duty of cooperation. This principle can also, analogous, be seen as the guiding principle when addressing issues arising from the work in international organisations.⁵⁶ The ECJ has in several pronouncements elaborated on the basis of the duty of cooperation.⁵⁷ The ECJ consistently referred to the principle of loyalty⁵⁸, which stems from Art. 4(3) TEU and states that the Member States shall take all appropriate measures to ensure fulfilment of Treaty obligations, including facilitating the achievement of the Community’s tasks and abstaining from actions that could jeopardise reaching the objectives of the Treaty. The ECJ has also expressed that the duty of cooperation is a result of “the requirement of unity in the international representation of the Community”.⁵⁹ The underlying foundation of the duty of cooperation seems then to be a pairing of requirement of unity and the principle of loyalty. This does not result in only recognition of separate competences by the Member States and the Union respectively, but points towards the need of a common approach based on *joint* competence, to maintain unity.⁶⁰ This is paralleled by the special status that the CFSP has been given as regards to competence; the area does not as such “belong” to either the Union or the Member States, but is to be formulated as a common effort. The duty of cooperation and the principle of loyalty are then of course also to be respected in the common work in international organisations.

6.3 Particularities of membership

The EU has over the years obtained a formal position in a number of international institutions, either as a full member or with observer status. Both are seen as explicit legal positions, which grant legal rights and duties, albeit on different levels.⁶¹ It is not always necessary, desirable or even possible for the EU to occupy a formal position in an international organisation, i.e. as a full member; the engagement can present itself in different forms. The question of a full membership is contingent on the division of competences in that specific issue and whether the statute of the international organisation in question allows the membership of another international organisation.⁶²

⁵⁶ Eeckhout (2004), pp. 209, 215

⁵⁷ See *Ruling 1/78, Opinion 2/91, Opinion 1/94, C-25/94*

⁵⁸ These rulings refer to ‘the Community’ but as case law they are a part of the European Union jurisprudence, and therefore equally valid to ‘the Union’.

⁵⁹ *Opinion 2/91 ILO*, para 36

⁶⁰ Eeckhout (2004), p. 215

⁶¹ Wessel, p. 627

⁶² Wessel, p. 624

6.3.1 Full membership

The EU has a full membership in only a small number of international organisations: the Food and Agriculture Organisation, the European Bank for Reconstruction and Development, the World Trade Organisation, the Codex Alimentarius Commission and The Hague Conference of Private International Law.⁶³ The EU membership in the FAO was granted after the adoption of a REIO clause to the FAO constitution.⁶⁴ It should be noted that these organisations relate to the areas where the EU enjoys exclusive competence, such as trade and the internal market. The EU has also acceded to a few UN Conventions, in which case they relate to Treaty regime.⁶⁵

6.3.2 Observer status

A Party that participates under observer status generally has no voting rights, its presence at meetings can be limited and the right to speak can normally only be exercised after any interventions by full members.⁶⁶

A typical example of the observer status of the EU can be seen at the ICC, where the EU has no right to vote, but the possibility to make statements or declarations. The status of the EU is therefore relatively low, despite a strong commitment to the cooperation with the ICC.⁶⁷ Another example is the OECD, where the EU has an ordinary observer status but arrangements provide for EU participation in practise. These agreements have earlier been agreed between the rotating Presidency and the Commission delegation.⁶⁸

6.4 The EU in the UN

The UN is, as a key global institution, given a particular importance in the Lisbon Treaty.⁶⁹ There are no less than 19 explicit references to the UN in TEU and TFEU. Already Art. 3(5) TEU refers to the principles of the UN Charter as part of the strict observance of international law that is to be pursued by the EU. There is also a reference to the UN Charter in the general provisions on the Union's external action, Art. 21 TEU.

Still, with the UN principles as a guiding light, the EU has had difficulties in presenting a common position in the UN General Assembly over the years. According to commentators, the tendency of the Member States to rather

⁶³ Eeckhout (2011), p. 223

⁶⁴ Emerson et al., p. 76

⁶⁵ Wessel, pp. 627-628

⁶⁶ Wessel, pp. 629-630

⁶⁷ Emerson et al., p. 92

⁶⁸ See as an example the Belgian arrangement on coordination, “Working arrangements between the EU delegation and the Belgian Permanent Representation to the OECD”, working document 1 September 2010

⁶⁹ Wessel, p. 630

promote national interests than a common EU foreign policy together with the fact that the UN covers a large number of varied issues has left little room for a common European foreign policy.⁷⁰ It has not been an advantage for the EU to be a permanent observer, instead of a full member, as this status carries only limited privileges in the UN bodies, including the right to speak only after the ordinary UN State Parties have spoken. This has earlier been resolved by the rotating Presidency, holding the status of a full member, speaking on behalf of the EU.⁷¹ The situation is now different. As seen above, the Lisbon Treaty provisions that the presentation of EU statements falls within the responsibility of the Union delegation under the authority of the High Representative, instead of the rotating Presidency.

6.4.1 Special status

On 3 May 2011 the UN General Assembly adopted resolution 65/276 on the participation of the European Union in the work of the United Nations.⁷² Through this resolution, the EU was granted an enhanced observer status, or became a ‘super-observer’ as it is more commonly phrased. Though the Union’s formal status remains the same as before, its rights of participation in various UN bodies have been significantly strengthened. The EU can now speak in general debate and intervene together with ordinary State Parties when speaking on behalf of the EU Member States. The provisions that strengthen the status of the EU even further include the right to also present proposals and amendments, and the right to reply to a comment on a Union position.⁷³

Despite the enhancements, the EU remains an observer, which among other things means that there is no possibility of becoming a member of the UN Security Council. The Lisbon Treaty has attempted to remedy this to some extent through Art. 34(2) TEU. This article provisions that the EU Member States currently in the UN Security Council shall keep the other Member States and the High Representative fully informed, as well as stating that EU Member States in the UN Security Council shall also request the invitation of the High Representative, so that she may present the position of the Union before the Security Council.

⁷⁰ Wessel, pp. 630-631

⁷¹ Emerson et al., p. 66

⁷² A/RES/65/276. Participation of the European Union in the work of the United Nations.

⁷³ A/RES/65/276, 1(a)-(e) Annex.

7 Representation of the EU

In the relations with international organisations, there is no explicit division of competences as the EU and its Member States often participate simultaneously, albeit in different degrees and with different levels of formal attachment. There is, however, a general provision in Art. 211 TFEU, which states that “[w]ithin their respective sphere of competence, the Union and the member states shall cooperate with third countries and with the competent international organisations.”

As has been mentioned above, the EU is actively participating in a number of organisations. This is, notwithstanding the more strict rules concerning actual membership, often the product of an evolved practice rather than based on an explicit legal competence found in the Treaties. This practice thus means that participation of the EU in international organisations stems from implied competence, which is derived from the general competences awarded to the Union.⁷⁴

7.1 Background

In order to create a context, it could be instructive to first provide a short background of the EU’s history of competence in external affairs, or rather; the competence of the European Communities, as it were.

In the original Rome Treaty of 1957, the EC competence was limited to economic affairs, as the EC was created as a customs union.⁷⁵ This is not to say that there was no political cooperation among the Member States, but this was not contained within the Rome Treaty.

In 1986, with the signing of the Single European Act (SEA), this cooperation was formalised and the contracting parties established the obligation to ‘formulate and implement a European foreign policy’, Art. 30 SEA. It is important to note here that the common positions formulated here in no way bound the Member States, but rather functioned as a common point of reference. This cooperation was also placed separately from the EU Council.⁷⁶ With the Maastricht Treaty in 1993, and the subsequent creation of the European Union as such, the EU was given the power to define a Common Foreign and Security Policy as contained in the second pillar. From now on, the Council could adopt ‘common positions’ and ‘joint acts’, which were seen as legal acts and therefore also bound the Member States.⁷⁷ Six years later, the entry into force of the Amsterdam Treaty further emphasized the role of the CFSP with the introduction of the office of High

⁷⁴ Wessel, pp. 624-625

⁷⁵ Piris, p. 238

⁷⁶ Piris, p. 240

⁷⁷ Piris, p. 240

Representative for the CFSP. The High Representative was to “assist the Council [...] in particular through contributing to the formulation, preparation and implementation of policy decisions”, Art. J.16 Amsterdam Treaty. The High Representative could also, when mandated by the Council, conduct political dialogue with third parties. From 1999 to 2009, the former Secretary-General of NATO Javier Solana acted as High Representative, and the CFSP of the EU now had a face.

7.2 Post-Lisbon

The Lisbon Treaty provisions for three possible external representatives in fairly general terms, to be read in the light of the principle of conferral of powers.⁷⁸ It can also be noted that the principle of distribution of powers between institutions needs to be taken into account, that “[e]ach institution shall act within the limits of the powers conferred on it in the Treaties”, Art. 13(2) TEU. Although, as has been mentioned above, neither the High Representative nor the EEAS are seen as EU institutions on their own merits, the question of the execution of competence is still valid. The High Representative is given the responsibility of representing the EU in all matters that relate to the foreign and security policy, Arts. 17(1) and 18(2) TEU. This position can in a way be seen as complementing the role of the Commission, which is to represent the Union in all matters except the foreign and security policy, Art. 17(1) TEU. As for the third possible representative: the newly established permanent President of the European Council shall represent the EU at e.g. summit meetings, Art. 15(6) TEU.

Earlier, the Commission was responsible for maintaining relations with the UN and international organisations.⁷⁹ Through the Lisbon Treaty, this responsibility has now been placed on the High Representative together with the Commission, Art. 220 TFEU. The Union delegations that, as mentioned above, earlier were Commission delegations are now part of the EEAS under the authority of the High Representative. These Delegations represent the Union at international organisations, Art. 221(1) TFEU. However, also when reading this article one must take into account the principle of distribution of powers. Art. 221 TFEU does not confer an exclusive right of representation on the Union delegations *per se*, as they are under the authority of the High Representative. Therefore, depending on the matter discussed, both the President of the European Council, the High Representative or the Commission can call on their respective powers to represent.

⁷⁸ Gosalbo Bono, “The organization of the external relations of the European Union in the Treaty of Lisbon” (2010), p. 33

⁷⁹ Art. 229 EEC

7.3 Cooperation and coordination

The Lisbon Treaty in general emphasises the importance of coordination, both regarding the relation between the Union and the Member States, as well as in the relations between the Member States. The obligation to coordinate involves also the newly established Union delegations, as Arts. 32 and 35 TEU stating that the diplomatic missions of the Member States and the Union delegations “shall cooperate and shall contribute to formulating and implementing the common approach” in third countries and at international organisations, and Art. 221 TFEU which generally provisions for the close cooperation between the Union delegations and the Member States.

As has been mentioned above, the EU and its Member States participate parallelly in several international fora. This parallel participation means that there can be cause for uncertainties when a question falls within the category of shared competences, as to how both the interests of the Member States and the EU, should they not align completely, should be represented.⁸⁰ As the name implies, the system of cooperation allows for the exchange of information on the respective positions of the Member States and preferably, if possible, an attempt to coordinate these positions into one behind which the Member States feel that they could align. The practise of EU-coordination is firmly rooted in practise and has earlier been the responsibility of the rotating Presidency. With the establishment of the Union Delegations, the Heads of Delegation have taken over the direct coordinating role in the area of CFSP, while of course the ultimate responsibility for this coordination lies with the High Representative, Art. 34 TEU.⁸¹ The local EU-coordination at the respective international organisations is not the proper forum to define a common EU position or adapt it to new circumstances. However, necessity is the mother of innovation, and the Member States can, and do, in practice agree on minor adaptations within the coordination framework under a representative of the EEAS, or the High Representative.⁸²

As President of the FAC, the High Representative has a central political role and a mandate to influence the external action at the highest political level. More precisely, the High Representative is expected to actively shape and work towards the coherence of the Council.⁸³ Therefore, the coordination can be said to take place on two levels: at the Council, and between the Member States’ representations to international organisations and the EEAS, the former coordination obviously influencing the latter.

The system of EU coordination, even though well established, can still be an onerous arrangement, especially in issues where the EU needs to act

⁸⁰ Emerson et al., p. 5

⁸¹ Emerson et al., p. 52

⁸² Gosalbo Bono, p. 36

⁸³ Bindi, p. 45

speedily.⁸⁴ An agreement between the EU and its Member States can regulate the details of representation, as the rules on voting in virtually all cases are stated in the statute of the international organisation in question. This agreement would then be the explicit binding expression of the duty of cooperation,⁸⁵ and as such define the areas of competence divided between the Member States and the representation of the Union.

This has been done in a number of cases, with the arrangement of the Cancún summit on the Kyoto Protocol in December 2010 being a good example. In the months leading up to the summit, and after substantial debates in Coreper, the Belgian Presidency formulated arrangements for the EU representation at the summit.⁸⁶ These arrangements stipulated *inter alia* that the representatives of the Commission and of the Presidency would take the floor from behind an “EU nameplate” when speaking on behalf of the Member States, and that the internal coordination would be ensured by the Presidency.⁸⁷ The Kyoto Protocol being one of the examples where both the EU and the Member States in theory can participate independently of each other, making this arrangement an interesting precedent for areas of shared competence.

Another system of representation has emerged within the FAO. The structure is rather elaborate; the EU and the Member States respectively indicate at each meeting who has competence to handle the matter discussed and therefore also speaking and voting rights. When the matter has fallen within the sphere of shared competence, the Union position has earlier been presented by the rotating Presidency. After the entry into force of the Lisbon Treaty, Belgium spoke on behalf of the EU during its Presidency, but this was within the framework of a transitional arrangement. The Union delegation should take over this role as the structure of the EEAS is being completed.⁸⁸

7.4 EU representation by Member States

In addition to the coordination between the EU and the Member States, there are also obligations placed on the Member States to represent the Union.

Art. 34(1) TEU explicitly states that in international organisations where not all Member States participate, the Member States who do have a responsibility to uphold the Union’s position, and not only their own. This can be seen as a developing, or emphasising, the principle of loyalty as expressed in Art. 24(3) TEU. Art. 24(3) TEU also provisions that the

⁸⁴ Emerson et al., p. 38

⁸⁵ Eeckhout (2004), pp. 220-221, Emerson et al., p. 5

⁸⁶ Emerson et al., p. 83

⁸⁷ Presidency non-paper of 20 October 2010, "Practical arrangements for external representation of the EU"

⁸⁸ Emerson et al., pp. 76-77

Member States shall “refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations”, showing that the principle of loyalty does not only concern action along the lines of an agreed EU position, but also that the Member States shall not act in such a way that would be detrimental to the unified presentation of the EU.

Furthermore, Art. 34(2) TEU states that Member States shall inform the High Representative and other Member States of matters of common interests, when not all Member States can participate in an international organisation. This is valid also for the EU Member States that are in the UN Security Council, which has been mentioned above. The obligation of the EU Member States in the UN Security Council also encompasses the duty to “defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations’ Charter”. This last part of this paragraph places a fairly grand responsibility on the Member States, and also an implied obligation to set aside national interests to some degree.

8 The Member States and post-Lisbon representation

During this past year, constituting the EEAS' first year in action, there has been an on-going "struggle" as to which role the rotating Council Presidency, and in a wider sense the Member States, should play in the external representation of the EU. The Member States have approached the establishment of the High Representative and the EEAS differently; Belgium emphasised during its Presidency in the autumn of 2010 that it only acted 'on behalf' of the High Representative and the EEAS when necessary, e.g. in the UN General Assembly, whilst Hungary and Poland, the two following Member States in Presidency, have taken a more assertive stance towards the importance of the rotating Presidency.⁸⁹

There have also been discussions over details of protocol concerning nameplates, seating arrangements, and who should speak on behalf of whom.⁹⁰

8.1 Declarations concerning the common foreign and security policy

Art. 24(3) TEU is explicit in underlining the obligation of the Member States concerning the CFSP, when stating that they shall "support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area". This article expresses the principle of loyalty, which binds the Member States, although there is no real alternative to not adhering to the obligations of the Treaties. Nonetheless, the area of foreign policy is an area very closely linked to the foundations of national sovereignty, and the Member States have been reluctant to place the CFSP within the same shared competence as other areas.⁹¹ To the Treaties are therefore attached two Declarations, in which the Member States have announced what can be compared to a reservation towards the execution of the CFSP.

Declaration no. 13:

The Conference 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

⁸⁹ Emerson et al., pp. 31, 48

⁹⁰ Emerson et al., p. 31

⁹¹ Craig, p. 430

currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.

Declaration no. 14:

In addition to the specific rules and procedures referred to in paragraph 1 of Article 24 of the Treaty on European Union, the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the United Nations.

These declarations can be seen as the natural outflow of the Member States' wish to reserve internal competence in the area of foreign policy.⁹² Nonetheless, these declarations do not change the fact that the Treaty provisions on the CFSP are binding and the Member States are obliged to adhere to eventual duties arising from these articles.

8.2 The question of the visibility of the EU Member States

The representation of the EU also carries another aspect: the representation of the Member States themselves. The area of foreign policy is at the core of national sovereignty, and as such, the Member States does not always contend with "only" aligning behind an EU position. The visibility of a state on the international scene also asserts its own identity, and though the Member States largely can benefit from being a part of the EU, they can still insist on participating in their own name to avoid being "enclosed behind a supranational veil", as one commentator has put it.⁹³

8.2.1 The issue of the UK

During the fall of 2011, the UK raised the question on the formula for who speaks on behalf of whom when presenting an EU statement; 'on behalf of the EU' or 'on behalf of the EU and its Member States'. This is, evidently, a question on what can be seen as a detail of protocol, more of a technicality than a subject matter. The UK was adamant in stating that where there was a shared competence, the EU statement should be 'on behalf of EU and its

⁹² Craig, p. 421

⁹³ Hillion et al., *Mixed agreements revisited: the EU and its member states in the world* (2010), p. 81

Member States’,⁹⁴ despite the fact that these statements traditionally have been presented as ‘on behalf of the EU’. Due to the strong insistence of the UK, a large number of EU statements could not be delivered in a several international organisations, including the UN, the OECD, WHO and IAEA, as no agreement could be reached on the “signatory” of those statement.⁹⁵ The UK objection had nothing to do with the actual content of the statements, which were either on beforehand agreed common EU positions or finalised in EU coordination. The objection did not either explicitly raise the issue on *which actor* that should deliver an EU statement; there was no open discussion on the question of the role of the Presidency in the light of the Lisbon Treaty against the newly established EEAS.⁹⁶

After lengthy discussions both informally and in more formal settings, the Coreper agreed on General Arrangements with regards to EU statements, to be observed in multilateral organisations, which was officially endorsed by the Council in the end of October 2011.⁹⁷ These arrangements do not settle the issue permanently; the mode of external representation is largely to be settled on a case-by-case basis, with the Lisbon Treaty provisions to serve as guiding principles.

It is neither anything new nor a surprise that it should be the UK that insists on a focus, or at least a shared focus, on the Member States. During its Presidency in 2005, the UK promoted the view of ‘one message, many voices’ in the Human Rights Council (HRC), meaning that an agreed EU statement did not necessarily incur that it should only be conveyed by one actor. Rather, strength in numbers was emphasised, and with the Union just recently having grown by 10 Member States, the UK wanted the EU to have a proportional weighting in the HRC.⁹⁸

The High Representative is from the UK, which some have seen as a sort of compromise towards internal politics and also a sign that the UK has been “well served” by the creation of this new position.⁹⁹

8.3 The efficiency of one voice?

In the majority of all cases, it is simply not possible to negotiate with 27 Heads of States on the one side, all wanting to present their view or standpoint. This became very obvious at the UN Climate Change Conference in Copenhagen in December 2009, where the EU was simply

⁹⁴ “EU anger over British stance on UN statements”, The Guardian, 20 October 2011

⁹⁵ “UK Infuriating Partners by Obstructing EU Foreign Policy”, Der Spiegel, 5 December 2011

⁹⁶ “EU anger over British stance on UN statements”, The Guardian, 20 October 2011

⁹⁷ General Arrangements for EU statements in multilateral organisations, 15901/11

⁹⁸ Kissack, *Pursuing effective multilateralism: the European Union, international organisations and the politics of decision-making* (2010), p. 139

⁹⁹ Lefebvre, Hillion, p. 4; Donnelly, “Europe in the World: All Change or No Change in Foreign Policy After Lisbon?” (2010), p. 19

left out of the final discussions on the conference conclusions, among other reasons because of a lack of an appointed representative with the mandate to speak on behalf of the EU and its Member States.¹⁰⁰

The Lisbon Treaty is aimed at resolving this apparent confusion, but one part of the solution lies in the hands of the EU Member States. External commentators have taken note of this, and have warned that the EU Member States might “consign themselves to irrelevance in global affairs” if they do not commit strongly to the Lisbon Treaty provisions on EU external action, with the necessary adaption to a more common European diplomacy.¹⁰¹ Pascal Lamy, Director-General of the WTO, have remarked that the often occurring near-duplication of statements presented by the EU Member States, if not united behind a common representative, could lead to no one listening as it becomes an uneventful reprise or either simply not adding up to a coherent message with the power to influence.¹⁰² This has been echoed by other commentators, saying that the Member States of the EU must “be more willing than they have been until now to present a united front” if the EU is to be able to exert influence internationally.¹⁰³

However, there are also examples of the opposite reasoning. While the EU is a powerful actor, counting over 500 million as its citizens and a major player on the global market, it is not always evident that this size is equal with influence or with a powerful voice in international assemblies. More importantly, it is not always evident that speaking with one voice is the most successful means of conveying a message. Just as the 27 Member States cannot be seen as a homogenous mass, so are the international organisations different from each other. Negotiation on the diplomatic arena demands adaptability, and it has therefore been argued that the common EU statement should be evaluated against the backdrop of the environment of the organisation in question.¹⁰⁴ Subject to the organisation, the singular presenting of an EU statement, by an EU agent such as a representative of the EEAS, could mean that the message “drowns” when measured against the sheer number of other parties.¹⁰⁵ This is along the lines of the UK reasoning as seen above, but not aligned with provisions in the Treaties or the common view of the EU as now established with the Council guidelines.

As concerns the EEAS, and the efficiency of an external action service, the views have differed. Some commentators see the EEAS as more of a function that will foster a European spirit, and eventually carry the outcome of a harmonised foreign policy, rather than a formal service that will guide the foreign policy of the EU.¹⁰⁶ The hope is that the High Representative together with the EEAS will be able to initiate the emergence of an “EU

¹⁰⁰ Emerson et al., p. 84

¹⁰¹ Emerson et al., p. 15

¹⁰² Emerson et al., p. 18

¹⁰³ Donnelly, p. 20

¹⁰⁴ Kissack, p. 139

¹⁰⁵ Kissack, p. 139

¹⁰⁶ Howorth, Le Gloannec, “The institutional logic behind the EEAS” (2007), p. 34

diplomacy”.¹⁰⁷ There are however still doubts that the coordination between the EEAS and the EU Member States will suffice to “tame national ambitions”, which remains to be seen in the years to come. The sensitivity of the area of foreign policy, and its proximity to the notion of national sovereignty, means that that cooperation between the EU and the Member States needs to be evident at all levels.¹⁰⁸

¹⁰⁷ Lefebvre, Hillion, p. 2

¹⁰⁸ Lefebvre, Hillion, pp. 4, 7-8

9 Conclusions

The Lisbon Treaty was the result of a long process of negotiation on treaty reform, a process riddled with speed bumps and U-turns but eventually leading up to the entry into force of a Treaty that was hoped to unify the ever-growing Union further. The strong emphasis on external coherence in the Lisbon Treaty is evidently not coincidental; a Union consisting of 27 Member States is more heterogeneous and unpredictable in its foreign policy than a Union of six relatively similar industrial states, agreeing on trade policies and economic cooperation. The emphasis on external coherence manifests itself in the provisions on cooperation and coordination, codified in the Lisbon Treaty, and not least in the creation of the High Representative with her overarching responsibilities and “double-hatting”, as well as in the new EEAS that is to “foster a European diplomacy”.

States have lost some of their status as sole international subjects of law, as is evident in that also non-state actors are recognised to carry this notion, with the possibility of corresponding rights and obligations. International organisations are therefore playing a more central role in global events. A unified EU presence in international organisations is consequently of paramount importance, if the EU want to be seen as an important actor on the international arena. However, as some examples in the chapter above have shown, it is not always a simple task to coordinate 27 sovereign states. While their interests might align, there is also the question of the status of the individual state.

9.1 Theory vs. practice?

The thesis has shown that there is no shortage of provisions in the Lisbon Treaty on cooperation and coordination in EU external action, both concerning horizontal and vertical coherence. On the outset, the question on what mandate the EU has to represent the Member States in international organisations is easily answered: Art. 27.2 TEU states that “[t]he High Representative 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.” (emphasis added). The Lisbon Treaty is of course binding on the Member States that have joined the Union, with the basic principle of *pacta sunt servanda* underlining this obligation at its core.

However, the Union consists of sovereign states that still have the competence to execute their foreign policy. While this has been mentioned earlier, it deserves to be emphasised again: the CFSP concerns policies that traditionally and very strongly have been the exclusive right of the

individual state to develop and execute. While the harmonisation of other policy areas has been fairly uncontroversial, with a more or less smooth transition, the foreign policy of the EU is developing only step by step and with a great measure of caution from the actors involved. Apparent examples are the two declarations concerning the CFSP that are appended to the Lisbon Treaty. No matter that these declarations carry no formal reservation to the Lisbon Treaty as such and therefore no legal implications, the Member States are still bound by the Treaty provisions, there is an important political statement to be made. The Member States are anxious to state that their authority in foreign policy matters is intact. But how does this rhyme with the CFSP and the coordinated diplomatic effort that is to be embodied in the EEAS?

9.2 Coordination improved

As we have seen, the coordination before presenting an EU statement takes place on a number of levels. In any case, the Member States are bound by the Treaties and the principle of loyalty to “support the Union’s policy” “in a spirit of loyalty and mutual solidarity”, Art. 24 TEU. It is evident that effective coordination not only implies the sheep herding by the EEAS of national diplomats into a compromise common position, but a means through which the Member States should be brought genuinely closer together in their foreign policies, whether that is the primary interest of the Member States or not.

The Cancún arrangements proved to be efficient, with generally positive results and less confusion as to who spoke for whom, but it still has the disadvantage of being an ad-hoc agreement, created for that specific context and for that particular summit. When issues arise, as they will do in the context of the international arena, where topics are to be discussed, the EU will still be a slow moving apparatus, if the EU-coordination should allow for all of the 27 Member States to be heard. This is of course inevitable, and close to absolutely necessary, to retain the RIO nature of the EU and the intergovernmental aspect of the EU, instead of a supranational entity.

Despite the fact that the EU coordination in international fora now has been codified in the Lisbon Treaty, or maybe even because it is, there is a risk of added confusion as to on what level of coordination the emphasis should be placed. It is to be guided by the High Representative, with the assistance of the EEAS at the different organisations leading the coordination in a more hands-on approach. The High Representative, as President of the FAC, obviously has the position and the power to at a high level negotiate and coordinate a common official EU position, but the preparing of an EU statement for actual presentation externally is often done at a more local level. This begs the question of the role of the EEAS, and their mandate to take lead in formulating and presenting this statement.

The formal role of the EEAS in international organisations is explicitly presented in Art. 221 TFEU, which states that the Union delegations shall represent the Union and cooperate with the Member States' diplomatic missions. This role is given through the High Representative, and the competence conferred to her. However, this mandate is dependent on a number of factors, among others: that the EEAS is able to assert its leading role and that it can provide a consistency in EU external affairs that perhaps were lacking before; that the Member States will recognise the coordinating role of the EEAS and refrain from promoting individual interests, when in fora where the EU should speak as one actor; that the High Representative succeeds in her role as President of the FAC to ensure that the coordination starts at a high political level, to trickle downward to the local representations at international organisations; and, of course the willingness of the organisation in question to allow the EU representative to present the EU statement. The last prerequisite is beyond the control of the EU and the Member States, though an effort should be made towards making the EU a full member, and where not possible, at least an observer with enhanced status similar to the EU status at the UN.

9.3 The Member States post-Lisbon – an attitude of don't-want-to?

Whilst there have not been a downright defiance aimed towards the joint presentation of the EU, and in all likelihood will never be, there is at least a theoretical possibility that a Member State will see it as in their best interest to not align behind an EU position, even though this position has been negotiated on several levels. The EU is an economic and political union, an association of sovereign states, and there is no supranational institution in the area of the CFSP that has the (conferred) power to step in to "correct" a Member State straying from the agreed statement or position. What there is to fall back on are the very basics: treaty law and the principle of *pacta sunt servanda*. This principle might seem simplistic and not a powerful institution on the level of states, at the same time as a process against a Member State for an alleged breach of treaty would be the last thing the EU would want to do, as that would be the complete opposite of the image of a unified union. Nonetheless, the principle of *pacta sunt servanda* together with the principle of loyalty as provisioned for in Art. 24 TEU form the core of the Member State obligations towards the EU.

The prospect of a Member State publicly protesting against an EU statement or position in an international forum is very unlikely, and becoming even more unlikely with the more and more formalized cooperation and coordination that has been codified in the Lisbon Treaty. Not only are the Member States already cooperating amongst themselves; an EU appointee and her supporting organ has now been charged with the overarching coordination to ensure an even smoother outward image. It could be said that EU-coordination is an advanced form of peer pressure, or rather an

alternative to the explicit peer pressure. Generally, a common EU position with the statements to support it has been negotiated among the Member States' representatives; it is not something that is imposed randomly and without the consent of the Member States. As it is of this joint or common nature, there is a measure of pressure on the Member States to agree and to find compromises if need be. There are examples both of successes and cases where it have been more difficult to present a common EU position, most notably in the UN. The purpose and hope behind the creation of the High Representative and the EEAS are evidently to facilitate this coordination, and to provide a consistency to developing of the EU CFSP that might have been lacking before as the responsibility for this coordination was laid upon the rotating Presidency. The Presidency, as an individual state, could obviously have its own ideas on which direction to take and through which means the CFSP should be presented, even though no large changes could be made for the six months the Presidency lasted. As the Presidency now finds itself having lost this responsibility, and also this power, it is very important to ensure an efficient communication between the newly created agents and the Member States, in order to not risk disagreement or a sentiment of disengagement of the Member States.

The Lisbon Treaty does not present immense changes to the EU external action, compared to earlier treaties. The obligations imposed on Member States to support and comply with EU positions are basically the same. Why then, have there been examples of "non-compliance", even though only on the level of objections on technicalities? This is not an easy question to answer, and it should be mentioned that there have also been signs of difficulties in the internal cooperation between the EU institutions. This has been stated before but it merits to be brought up again: external representation is a sensitive area for both the Member States and the EU, and a matter of prestige for both sides. Larger states with a history of being more prominent and important than they currently are have had difficulties in adapting to a changing mode of politics. This is not to say that there are objections against the actual common position as negotiated, only a reminder that the States view themselves, and rightly so, as independent actors on the international arena.

To take the example of the issue that the UK raised in the autumn of 2011, concerning whether an EU statement should be presented 'on behalf of the EU' or 'on behalf of the EU and its Member States'. The question on the signatory of an EU statement is first and foremost a political issue, that is not something that will, or can, be provisioned for in the Lisbon Treaty. The "conferral of competence" to the High Representative or the EEAS to speak on behalf of the Member States is far from stripping the Member States of all power in real terms. In fact, it does not strictly imply a conferral of competence at all: if the competence is not conferred explicitly from the Member States in either the Treaties, secondary law or according to the jurisprudence of the ECJ, it stays with the Member States. Having established this, it is evident this question is of purely political concern and a way for the Member State to assert its own identity, or, as is the case here

superficially; to assert the identities of the Member States as common group.

9.4 Concluding words

However, there is no way to separate ‘politics’ from the efficient implementation of the Lisbon Treaty. It *is* politics. Just as there is no institution that has a judicial competence in the area of the CFSP, the Lisbon Treaty does not provide for a manner in which a Member State can be forced to cooperate with the EEAS. This would of course have been detrimental for any kind of cooperation, especially in the CFSP, and the EU would have lost its intergovernmental character. It is however important that the Member States realise their obligations towards the EU and each other, and also acknowledge the obligations as in the Lisbon Treaty. The binding provisions have been negotiated over a number of years, they have been reviewed and revised, and eventually signed by all Member States.

From a more political angle: I do not believe that the EU will succeed in asserting its role as the major global player it seeks to be, if there simultaneously are difficulties in uniting behind a common position. It would not matter if those differences concern substance, or if they relate solely to the technicalities of the presentation of a statement. The UK issue prevented several EU statements completely, which meant that the EU during that period and in those organisations where the UK objected did not have an external voice at all. If the Lisbon Treaty is to be a step towards strengthening the EU internationally at all, then the Member States need to fulfil their obligations according to the Lisbon Treaty.

Bibliography

Treaties

Treaty establishing the European Economic Community (the Rome Treaty),
25 March 1957

Treaty of Lisbon amending the Treaty on the European Union and the
Treaty Establishing the European Community, CIG 14/07, Brussels 3
December 2007, OJ C 306/1

Conventions

Vienna Convention on the Law of Treaties, 1969

The United Nations Framework Convention on Climate Change, United
Nations 1992

The United Nations Convention on the Rights of Persons with Disabilities,
United Nations 2007

Constituting instruments

The Constitution of the Food and Agriculture Organisation of the United
Nations, 1945

Statute of The Hague Conference on Private International Law, 1955

EU publications

Council Decision 2010/427 of 26 July 2010 establishing the organisation
and functioning of the European External Action Service, OJ L201/30

Council Note on EU Statements in multilateral organisations, 15901/11, 24
October 2011

EU-UN/01, Relations between the European Union and the United Nations.
Council of the European Union, Press Information, September 2011

European Convention, Final Report of Working Group VII CONV 459/02

Presidency Report to the European Council on the European External
Action Service, 14930/09, 23 October 2009

Presidency non-paper of 20 October 2010, “Practical arrangements for external representation of the EU at the 16th session of the Conference of Parties to the UNFCCC and the 6th session of the meeting of the Parties to the Kyoto Protocol, Cancún”

EUROPE Documents No 2533, 30 April 2010

UN

A/RES/65/276. Participation of the European Union in the work of the United Nations. Resolution adopted by the General Assembly, 3 May 2011.

Literature

- | | |
|--|--|
| Aust, Anthony | <i>Modern Treaty Law and Practice</i> (2nd ed., Cambridge University Press, Cambridge, 2007) |
| ed. Bindi, Federiga | <i>The Foreign policy of the European Union: assessing Europe's role in the world</i> (Brookings Institution Press, Washington D.C., 2010) |
| Craig, Paul | <i>The Lisbon Treaty: Law, Politics, and Treaty Reform</i> (Oxford University Press, Oxford, 2010) |
| EEckhout, Piet | <i>External Relations of the European Union: Legal and Constitutional Foundations</i> (Oxford University Press, Oxford, 2004) |
| EEckhout, Piet | <i>EU External Relations Law</i> (Oxford University Press, Oxford, 2011) |
| eds. Hillion, Christophe; Koutrakos, Panos | <i>Mixed agreements revisited: the EU and its member states in the world</i> (Hart, Oxford, 2010) |
| Kissack, Robert | <i>Pursuing effective multilateralism: the European Union, international organisations and the politics of decision-making</i> (Palgrave Macmillan, Basingstoke, 2010) |
| Klabbers, Jan | <i>An introduction to international institutional law</i> (Cambridge University Press, Cambridge, 2002) |

Lysén, Göran *Det nya EU efter Lissabonfördraget* (Iustus förlag, Uppsala, 2010)

Piris, Jean-Claude *The Lisbon Treaty: A Legal and Political Analysis* (Cambridge University Press, Cambridge, 2010)

Articles

Donnelly, Brendan “Europe in the World: All Change or No Change in Foreign Policy After Lisbon?” (2010), *The International Spectator*, vol. 45 no. 2 June 2010, pp. 17-22

Koehler, Kateryna “European Foreign Policy After Lisbon: Strengthening the EU as an International Actor” (2010), *Caucasian Review of International Affairs*, vol. 4(1), pp. 57-72

Pernice, Ingolf “The Treaty of Lisbon: Multilevel Constitutionalism in Action” (2009), *Columbia Journal of European Law*, vol. 15 3/2009, pp. 349-407

Wessel, Ramses A. “The Legal Framework for the Participation of the European Union in International Institutions” (2011), *Journal of European Integration*, vol. 33, pp. 621-635

Other sources

Emerson, Michael;
Balfour, Rosa;
Corthaut, Tim;
Wouters, Jan;
Kaczynski, Piotr Maciej;
Renard, Thomas
“Upgrading the EU’s role as global actor – Institutions, Law and the Restructuring of European Diplomacy” (2011), Centre for European Policy Studies

Gosalbo Bono, Ricardo “The organization of the external relations of the European Union in the Treaty of Lisbon” (2011), CLEER Working Papers 2011/3 *The European Union’s external relations one year after Lisbon*, ed. Koutrakos, T.M.C. Asser Institut, pp. 13-37

- Howorth, Jolyon;
Le Gloannec, Anne-Marie “The institutional logic behind the EEAS” (2007), in EPC Working Paper no. 28, *The EU Foreign Service: how to build a more effective common policy*, European policy Centre
- Lefebvre, Maxime;
Hillion, Christophe “The European External Action Service: towards a common diplomacy?” (2010), European Policy Analysis 2010:6, Swedish Institute for European Policy Studies

Internet sources

- “EU anger over British stance on UN statements”, The Guardian, 20 October 2011 (accessed 5 November 2011)
<http://www.guardian.co.uk/world/2011/oct/20/uk-eu-un-statements-wording>
- “UK Infuriating Partners by Obstructing EU Foreign Policy”, Der Spiegel, 5 December 2011 (accessed 10 December 2011)
<http://www.spiegel.de/international/europe/0,1518,801756,00.html>

Table of Cases

Ruling 1/78 re Convention on the Physical Protection of Nuclear Materials, Facilities and Transports, 1978 ECR 2151

Opinion 2/91 re Convention No 170 of the ILO, 1993 ECR I-1061

Opinion 1/94 re WTO Agreement, 1994 ECR I-5267

joined cases C-6/90 and C-9/90 *Francovich and Bonifaci v. Italian Republic*, ECR I-05357

C-25/94 *Commission v. Council*, 1994 ECR I-1469