

# Commission Versus Council Secretariat: an Analysis of Bureaucratic Rivalry in European Foreign Policy

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## **Commission Versus Council Secretariat: An Analysis of Bureaucratic Rivalry in European Foreign Policy\***

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This is a preprint of an article whose final and definitive form has been published in the *European Foreign Affairs Review* 2009, 14(3), pp. 431-450.

**Abstract** *The European Commission and the EU Council Secretariat support the Member States in the conduct of European foreign policy, yet they have not always been able to get along. This article gives an overview of their inter-institutional relations across history, foreign policy instruments (declarations, crisis management joint actions and representation) and regions. The main argument is that the relationship between both institutions is generally cooperative, but that tensions do arise in a limited number of cases where the roles of the Commission and the Council Secretariat are unclear, perceived to overlap or in competition. In these instances, they have generally found a modus vivendi and their inter-institutional relations have subsequently improved. Such informal arrangements do not address, however, the underlying structural problems – that the Council Secretariat challenges the Commission’s political and informational role in the context of foreign policy. Differences between both institutions are therefore still regularly displayed. This continues to undermine EU consistency and its effectiveness in international relations.*

### **I Introduction**

Inter-institutional relations are often complicated. Whereas institutional cooperation is regularly a prerequisite for effectiveness, the promotion of self-interest sometimes limits success. The relationship between the European Commission and Javier Solana’s Council Secretariat can be framed in these terms when it comes to European foreign policy. Both institutions are responsible for supporting the Member States, yet they have not always been able to get along. Various articles have made mention of consistency problems – if not ‘turf battles’ – with all the accompanying consequences for the position of the EU in the world.<sup>1</sup> What most scholars, however, have not provided is a systematic analysis of the relationship between both institutions.

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\* This article is based on forty interviews with (former) officials from the European Commission, the Council Secretariat and the Member States. It discusses European foreign policy rather than the Common Foreign and Security Policy, as it is often the cross-pillar dossiers that lead to tensions.

<sup>1</sup> D. Allen, ‘Who speaks for Europe?: the search for an effective and coherent external policy’ in J. Peterson and H. Sjurson (eds) *A common foreign policy for Europe? Competing visions of the CFSP* (Routledge, London, 1998); B. Crowe, ‘A common European foreign policy after Iraq?’ (2003) 79 *International Affairs*, pp. 533-46; S. Duke and S. Vanhoonaeker, ‘Administrative Governance in the CFSP: Development and Practice’ (2006) 11 *EFA Rev.*, pp. 163–182; D. Spence, ‘The Commission and the Common Foreign and Security Policy’ in D. Spence and G. Edwards (eds) *The European Commission* (John Harper, London, 2006).

This article gives a comprehensive overview of inter-institutional relations between the European Commission and the Council Secretariat in the context of European foreign policy across history, foreign policy instruments (declarations, crisis management joint actions and representation) and regions. It shows that the relations are particularly difficult in a number of cases, where the roles of both institutions are unclear, perceived to overlap, or in competition with one another. Such problems result, to some extent, from the very rationale with which the Member States have delegated tasks to both institutions. Since the appointment of Solana (1999), the Council Secretariat is pursuing to fill a vacuum left by the relative absence of the Commission in the political and informational aspects of European foreign policy.<sup>2</sup> On the way, it has naturally met the Commission, which has felt that its role was being threatened. The Council Secretariat's recent increase in standing thus took place in a divisive and competitive environment. Over time both institutions have found a *modus vivendi* and inter-institutional relations have improved.

This article will commence with a theoretical analysis connecting insights from bureaucratic politics to rationalist accounts of delegation literature. This section is not so much intended as to generate testable theory-informed hypotheses, but rather to serve as a point of reference to structure the discussion. After the theoretical analysis, the article will discuss the variation in the roles of the Commission and the Council Secretariat across history, foreign policy instruments and regions from an empirical perspective. The article concludes with the main findings and puts the relationship between both institutions in the context of a broader debate. Before going, however, to the content of the article, it is worth reiterating that the purpose of the article is to provide *an overview* of the inter-institutional relations. As such, it cannot for obvious reasons discuss individual cases at great length.

## II Overlapping Functions and the Rationale for Delegation

An analysis of the inter-institutional relations between the European Commission and the Council Secretariat fits in with the study of bureaucratic politics, which mainly focuses on the rivalry between administrative bureaus.<sup>3</sup> Bureaucratic politics has been studied in the context of comparative politics, international relations as well as the European Union.<sup>4</sup> A key concept in this perspective is the idea of 'territoriality' within a polity – be it a ministry, company or international organization.<sup>5</sup> Each bureau performs a specific function and as a result it occupies some territory somewhere in this policy space. From this basic concept it can be derived that bureaus are likely to dispute over territory (and thus over the allocation of resources), if their functions are unclear, perceived to overlap or are in competition with one another.

In the study of the European Union, the concept of territoriality clearly comes back in the basic assumption – of amongst others most scholars in the rational choice tradition – that the institutions have fixed competence-maximizing preferences *vis-à-vis* the Member States.<sup>6</sup> At the opposite of the spectrum, there exists a strong notion in bureaucratic

<sup>2</sup> H. Dijkstra, 'The Council Secretariat's Role in the Common Foreign and Security Policy' (2008) 13 EFA Rev., pp. 149–166; S. Nuttall, *European foreign policy* (Oxford University Press, Oxford, 2000); Duke and Vanhoonacker, note 6 above.

<sup>3</sup> T. Christiansen, 'Tensions of European governance: politicized bureaucracy and multiple accountability in the European Commission' (1997) 4 *Journal of European Public Policy*, pp. 73–90.

<sup>4</sup> B.G. Peters, *The Politics of Bureaucracy* (Routledge, London, 2001); G.T. Allison, *The Essence of Decision: Explaining the Cuban Missile Crisis* (Little Brown, Boston, 1971); B.G. Peters, 'Bureaucratic Politics and the Institutions of the European Community' in A.M. Sbragia (ed.) *Euro-Politics: Institutions and Policymaking in the New European Community* (Brookings Institution Press, Washington D.C., 1992).

<sup>5</sup> A. Downs, *Inside Bureaucracy* (Little Brown, Boston, 1967).

<sup>6</sup> G. Majone (ed.), *Regulating Europe* (Routledge, London, 1996); M.A. Pollack, *The Engines of European Integration: Agency, Delegation, and Agenda Setting in the EU* (Oxford University Press, Oxford, 2003).

politics on the need to defend one's perceived territory due to survival concerns. Such territory ranges from a bureau's heartland – its core *raison d'être* – to its periphery; the heartland is clearly the most worth fighting for.<sup>7</sup> With respect to defending territory, scholars of bureaucratic politics draw extensively on the discipline of economics, which has studied the entry barriers to the market entrants are likely to face resulting from fierce resistance from the incumbent monopolist.<sup>8</sup> If such resistance does not have the desired effect, the incumbent is likely to readjust its position leading to a new institutional balance of power.<sup>9</sup>

When it comes to the inter-institutional relations of the Commission and the Council Secretariat in foreign policy, the disputes over territory between both bureaus are thus likely to be higher across history, foreign policy instruments and regions, when their functions are unclear, perceived to overlap or are in competition.<sup>10</sup> It is furthermore expected that the incumbent bureaucracy – which is in this case the Commission – is likely to try to resist entrant bureaucracies, particularly when the function of the entrant bureaucracy comes too close to the heartland of the incumbent. When the entrant does succeed, it is expected that the incumbent will have to readjust. The main challenge, in short, is thus to determine the functions of the both bureaucracies. It is, in this respect, fruitful to connect the insights of bureaucratic politics with the rational choice literature on delegation, which has important things to say about the roles of the supranational institutions and is quintessentially functionalist itself.<sup>11</sup>

Rational choice institutionalism sees the creation of supranational institutions as functional solutions for the Member States to reduce their transaction costs of cooperation, resulting from the fact that they have limited cognitive skills, incomplete information and that there is generally uncertainty about the future. Oliver Williamson usefully distinguishes between *ex ante* and *ex post* transaction costs.<sup>12</sup> *Ex ante* transaction costs include the costs involved in drafting and negotiating an efficient agreement, which is close to the Pareto-optimum, while *ex post* costs relate to implementation and ensuring that the agreed distribution is actually achieved. Furthermore for an agreement to be efficient, consistency with other agreements and continuity over time is required. Rational choice institutionalists claim that supranational institutions can help to reduce these information, negotiation and compliance costs of cooperation, yet that they fulfil different roles per cost category.<sup>13</sup> These roles will now be discussed in turn.

When negotiating or implementing complex legislation, the Member States are likely to face significant information costs. In order to reach an efficient outcome, reliable unbiased information is usually required during the *ex ante* stage. An expert bureaucracy can provide such information in areas, which are technically complex and moderately divisive among Member States; an international secretariat can guarantee some continuity

<sup>7</sup> Downs, see note 5, p. 214.

<sup>8</sup> For example: Downs, see note 5; Peters (2001), see note 4.

<sup>9</sup> A.O. Hirschmann, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Harvard University Press, Cambridge, 1970).

<sup>10</sup> Cf. N. Klein, 'Conceptualising the EU as a Civil-Military Crisis Manager: Institutional Actors and Their Principals', paper presented at UACES annual conference in Edinburgh, 1-3 September 2008.

<sup>11</sup> M.A. Pollack, 'Delegation, agency, and agenda-setting in the European Community' (1997) 51 *International Organization*, pp. 99-134; The Council Secretariat is conceptualized as a supranational institution, because most observers regard it as an actor in its own right.

<sup>12</sup> O.E. Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relations, Contracting* (The Free Press, New York, 1985).

<sup>13</sup> A. Moravcsik, *The Choice for Europe: social purpose and state power from Messina to Maastricht* (Cornell University Press, Ithaca, 1998); J. Tallberg, *Leadership and Negotiation in the European Union* (Cambridge University Press, Cambridge, 2006); D. Beach, *The Dynamics of European Integration: Why and when EU institutions matter* (Palgrave Macmillan, Basingstoke, 2005); Pollack, see note 6.

and consistency through its long-term involvement.<sup>14</sup> Furthermore when the policy is relatively non-divisive, Member States can ‘outsource’ implementation and representation powers to an expert bureaucracy or international secretariat out of efficiency concerns.<sup>15</sup> Sustaining a single supranational institution is, after all, more efficient than twenty-seven and leaving the details to an executive, furthermore, relieves the Member States from over-involvement.

Apart from informational input, Member States often also fail to reach an efficient agreement due to high costs involved in the negotiation process. These costs are twofold.<sup>16</sup> Firstly, Member States have to determine their preferences, have to come to Brussels, sit in lengthy and tiresome negotiation sessions, coordinate horizontally and vertically, and translate and distribute their documents. Giving the thousands of annual meetings, these costs are substantial. Many multilateral negotiations furthermore fail as a result of an inefficient agenda and poor chairmanship. Secondly, Member States have an incentive not to reveal their bottom lines, which can lead to negotiation failure despite not necessarily conflicting preferences. International secretariats can help by substantially reducing the basic negotiation costs, helping to shape the agenda and performing neutral brokerage. Through their longer-term involvement, they are often in a good position to point the Member States at how to best make use of the game.

Lastly, due to uncertainty about the future, Member States generally face the risk of non-compliance and the problem of incomplete contracting.<sup>17</sup> Since many salient dossiers require domestic compliance, there is often a need for a neutral supranational third party, which monitors the actual implementation. Similarly, a supranational court with enforcement powers can also reduce the compliance costs. Because every complex contract is furthermore incomplete under the bounded rationality assumption, Member States are likely to demand credible commitments from other parties through structuring each other’s future domestic incentive by means of pooling and delegating sovereignty.<sup>18</sup> While not equally applicable to all policy areas, the reasons for delegation are thus diverse and the roles of the supranational institutions vary accordingly. In this respect, the Commission and the Council Secretariat are likely to dispute about territory, if they feel that these reasons for delegation overlap.

### III Historical Comparison

European Political Cooperation (EPC) – the predecessor policy of the CFSP – was created along intergovernmental lines as a coordination mechanism through which the Member States could achieve ‘politics of scale’.<sup>19</sup> By coordinating their foreign policy positions, they collectively hoped to punch above their individual weight in world affairs. The voluntary nature of these arrangements and the case-by-case basis should be noted. When the Member States agreed, Europe acted as one and all reaped the benefits; otherwise they ‘agreed to disagree’ and dealt with the issue unilaterally. Because the EPC represented a positive-sum game with often direct implementation through declarations, there was no functional need for supranational institutions to reduce possible non-compliance costs.<sup>20</sup> While incomplete contracting and uncertainty are furthermore inherent features of foreign

<sup>14</sup> Moravcsik, see note 13, p. 73; Pollack, see note 6, p. 63.

<sup>15</sup> G. Majone, ‘Two Logics of Delegation: Agency and Fiduciary Relations in EU Governance’ (2001) 2 *European Union Politics*, pp. 103-22.

<sup>16</sup> Tallberg; Beach, see note 13.

<sup>17</sup> Moravcsik, see note 13; Pollack, see note 6.

<sup>18</sup> Williamson, see note 12; Moravcsik, see note 13.

<sup>19</sup> R. Ginsberg, *Foreign Policy Actions of the European Community: The Politics of Scale* (Lynne Rienner, Boulder, 1989).

policy coordination, the Member States under EPC simply met again to fill in the details or to reformulate their policy. In other words, *ex post* transaction costs were initially not a major cause of concern.

The Member States realized, however, from the outset the importance of reducing *ex ante* transaction costs. Because of the continuous negotiations, there was a clear need for administrative support and for efficient decision-making. Yet their reluctance to give up sovereignty led them to carry the burden themselves through the Presidency.<sup>21</sup> As the decision-making costs became more pressing over the years, so was the call for administrative support. Three years after the creation of EPC, the Member States already noted that the administrative tasks presented a heavy burden for the Presidency, but little was done to alleviate it.<sup>22</sup> Some improvement came with the establishment of the Troika Secretariat (1981), in which the incoming and preceding Presidency seconded a civil servant to the Presidency-in-office. After the breakdown of the EPC machinery, as a result of the Russian invasion in Afghanistan (1979), this brought some necessary continuity between Presidencies as much as it reduced the administrative costs. When the Member States finally created a permanent secretariat under the Single European Act (1987), it was to further reduce the burden of the Presidency. During the first decades of foreign policy cooperation, they thus carefully weighted transaction costs and perceived sovereignty loss.

While the European Commission was kept at arms length in EPC, it was not completely ignored. In boundary dossiers between European Political Cooperation and the activities of the European Communities, the 'Commission [was to] be consulted'.<sup>23</sup> It was thus sitting at the table when cross-pillar issues were discussed in order to promote some consistency: it played a role when the Member States talked about sanctions; when Community instruments were required for the political aims of EPC; and during the association negotiations with, and as coordinator for international aid for, the Central and Eastern European countries after 1989. Through its Community expertise, its delegations and access to Community funding the European Commission tried to make a constructive contribution in order to further its competences in foreign policy cooperation. The strategy worked: whereas in the 1970s it had to fight for every invitation, in 1981 it became 'fully associated' with EPC, and by the end of the 1980s it was participating on major dossiers.<sup>24</sup> Cross-pillar consistency and Community input was its *raison d'être*.

The involvement of the Commission in these boundary dossiers covered part of the informational need. While its role during the negotiations on the economic basket of the CSCE/OSCE started divisively, even France recognized that the Commission's input was indispensable.<sup>25</sup> Similarly, while Kohl and Mitterrand were quarrelling over the political desirability of German unification (1990), Commission officials worked many extra hours during the summer to make the integration of the GDR into the Communities technically happen.<sup>26</sup> The scope of the Commission's input, needless to say, remained limited to boundary cases. The informational demand in non-boundary dossiers was covered by the *Correspondence Européenne* (COREU), the encrypted telex information exchange system.

<sup>20</sup> W. Wagner, 'Why the EU's Common Foreign Policy Will Remain Intergovernmental: A Rationalist Institutional Choice Analysis of European Crisis Management Policy' (2003) 10 *Journal of European Public Policy*, pp. 576-595.

<sup>21</sup> S. Nuttall, *European Political Co-operation* (Clarendon Press, Oxford, 1992).

<sup>22</sup> Copenhagen report (1973), art. 8.

<sup>23</sup> Luxembourg Report (1970), art. 5.

<sup>24</sup> Nuttall, see note 21.

<sup>25</sup> S. Nuttall, 'The Commission and foreign policy-making' in G. Edwards and D. Spence (eds) *The European Commission* (Cartermill International, London, 1997); interview with national official.

<sup>26</sup> Interview with national and Commission officials.

Since purely EPC declarations and actions lacked technical complexity, this was at the time sufficient.

The Single European Act marked a first watershed for the institutional machinery of EPC. The establishment of a modest independent Brussels-based EPC Secretariat meant that some activity – at the lower level – moved from the capitals to Brussels.<sup>27</sup> While this new Secretariat's main task was to assist the Presidency in administrative duties, it also informally became the 'guardian of the orthodoxy', the prime contact for third parties in Brussels (e.g. European Parliament; press corps), and it engaged in some limited conceptual work for the Presidency.<sup>28</sup> In a comparable fashion with the delegation of administrative duties to the Presidency at the start of EPC, tasks were now delegated from Presidency to the EPC Secretariat. On the Commission's side, the handful of individuals from its General-Secretariat, dealing with EPC, were grouped into an EPC Directorate, in charge of coordinating the input of the relevant Directorates-General. This reflected the increase in activity since the early 1980s.

As the Commission was still primarily looking after consistency and the EPC Secretariat was providing administrative support during the decision-making phase, their functions had little overlap. The Secretariat took over tasks from the Presidency and the European Correspondents, but not from the European Commission.<sup>29</sup> While there was some resentment in the Commission about the creation of the EPC Secretariat, it did not lead to bureaucratic rivalry. The division of tasks was clear and the creation of the EPC Secretariat was not a direct threat to the informational role of the Commission. If inter-institutional tensions occurred, they were at the time between the Member States and the Commission. When the latter, for example, became the coordinator of international aid to Poland and Hungary (1989) this was despite strong French resistance. These new tasks subsequently improved the Commission's standing and informational expertise in EPC.

Whereas foreign policy was not the main issue during the negotiations on the Single European Act, it took the centre stage during the Intergovernmental Conference on the European Union (1991). Pivotal was the institutional structure of the Union – i.e. whether a unified structure should combine the Community and EPC or whether they should remain separate. The Member States eventually opted for the latter. Some felt the need to constrain the Commission after it had taken a leadership role in the events of 1989.<sup>30</sup> The pillar structure implied different decision-making procedures with only limited involvement for the Community institutions in the Common Foreign and Security Policy (CFSP). In an attempt to reach out to the integrationist Member States, the Commission did gain the shared right of initiative and its 'full association' was reiterated. Its role, nonetheless, remained secondary and it had to accept that it would not be at the helm of foreign policy cooperation.

Despite the general disappointment with Maastricht, an independent Directorate-General 1A (external political relations) was established within the Commission to strengthen its position. For various reasons such as staff constraints, internal bureaucratic conflict, and ratification delay, these 'new arrangements caused more problems than they brought benefits'.<sup>31</sup> Such problems are frequently mentioned as factors hindering the Commission from making a constructive contribution under Maastricht, although this is

<sup>27</sup> Cf. 'Brusselization', Allen, see note 1.

<sup>28</sup> P.S. Da Costa Pereira, 'The Use of a Secretariat' in A. Pijpers, E. Regelsberger and W. Wessels (eds) *European Political Cooperation in the 1980s: A Common Foreign Policy for Western Europe?* (Martinus Nijhoff, Dordrecht, 1988).

<sup>29</sup> The European Correspondents coordinate the national positions in the capitals and previously also provided administrative support to the decision-making process.

<sup>30</sup> Interviews with national and Commission officials.

<sup>31</sup> Nuttall, see note 25, p. 317.

denied by various senior officials.<sup>32</sup> A related question remains its restricted use of its newly-gained shared right of initiative. Some argue that the Commission was reluctant to confront the Member States fearing that they would not take its proposals serious due to its limited foreign policy expertise; one Council Secretariat interviewee, however, goes as far as to claim that the Commission was simply obstructing the whole process, as its political leadership believed that CFSP ‘was not the right tool’.<sup>33</sup>

Whatever the reason for its limited input in the CFSP, the fact is that the European Commission was not forthcoming. The initiative after Maastricht thus remained with the Presidency. As European foreign policy grew more complex, the Presidency in turn increasingly started looking at the Council Secretariat’s CFSP unit for administrative support and informational input.<sup>34</sup> Due to their longer-term engagement, the officials from the Council Secretariat had gained a good overview of the Member States’ interests on the various dossiers. It thus became for the Presidency a modest source of ‘content expertise’ in addition to its ‘process expertise’.<sup>35</sup> While the Council Secretariat was clearly engaging in conceptual work – the Commission’s job – it was at the time still not seen as a real threat. If the Member States wanted to engage in anything more than declarations, they had to turn to the Commission, because actual implementation implied the use of first pillar instruments. As an official put it, ‘out of an inborn distaste for too much bureaucracy, we did not consider the idea that there might be a second executive’.<sup>36</sup>

#### IV Comparison of foreign policy instruments

If the Single European Act was a watershed, the Amsterdam Treaty (1999) marked a sea-change for the machinery of European foreign policy. In a reaction to the EU’s failure over the Bosnian War (1992-1995), the Member States appointed a High Representative for the CFSP supported by a Policy Unit in Brussels and by EU Special Representatives (EUSR) on the ground. Within the Council Secretariat’s DG External Relations, the CFSP unit was furthermore merged with the regional trade and development units, which led to efficiency gains. When at the midst of the Kosovo intervention (1999), the Member States finally nominated Javier Solana – a high-level politician rather than a bureaucrat – it became clear that a second foreign policy executive was in the making. The perception at the time was that these developments would lead to tensions with the Commission.<sup>37</sup> *The Economist* noted that ‘it is almost inevitable that [Javier Solana and Chris Patten] will wrangle about the content or the management of foreign policy ... friends as they may be’.<sup>38</sup> This section will discuss inter-institutional relations post-Amsterdam across foreign policy instruments. It will distinguish between declarations, crisis management (i.e. joint actions) and representation.

##### 1. *Declaratory foreign policy: the political level*

Despite only relatively little personal contact, the tensions at the political level have been surprisingly limited. Solana was mainly busy with establishing his position *vis-à-vis* the Presidency, while Patten reorganized the Commission’s aid budgets, external delegations

<sup>32</sup> S. Duke, ‘The Commission and the CFSP’, *EIPA Working Paper*, 2006; Nuttall, see note 5. For the latter part: interviews with Commission officials.

<sup>33</sup> Interviews with Commission and Council Secretariat officials.

<sup>34</sup> The EPC Secretariat (now ‘CFSP unit’) was integrated into the Council Secretariat after Maastricht.

<sup>35</sup> Beach; Tallberg, see note 13.

<sup>36</sup> Interview with Commission official.

<sup>37</sup> Crowe; Allen, see note 1.

<sup>38</sup> *The Economist*, ‘Chris Patten, Becalmed in Brussels’, 2000.



and gave at the same time some room to the new chief in town.<sup>39</sup> Patten was reluctant to confront Solana and preferred the pragmatic road: ‘If [the ministers in the Council] were obliged to choose between backing Javier Solana or me, there was only one possible outcome’.<sup>40</sup> Instead of engaging in turf battles, the overall Solana-Patten message for their civil servants was clear: differences between both institutions cannot be displayed. Desk officers also learnt that consulting each other led to increasing returns.<sup>41</sup> The Commission and the Council Secretariat furthermore often agreed on the content and they combined their strength. While it is a public secret that the relation with Ferrero-Waldner is not as good, and that she has regularly voiced her frustration, the consultative practices at the bureaucratic level have continued.

It is also worth noting that while the Amsterdam Treaty significantly strengthened the Council Secretariat, the basic functional roles in European foreign policy did not fundamentally change. The Treaty actually reiterated that the Council Secretariat and the Presidency were at the helm of the CFSP decision-making process – with more emphasis on the informational role – while the Commission continued to supply the necessary instruments for implementation under the first pillar. It was this division of labour and the system rather than Solana as such that became the target of Patten’s criticism. In a leaked discussion note for the College of Commissioners, he accused the Member States of ‘ringing political declarations, which they are subsequently reluctant to underwrite in money and staff. The Commission is left to wrestle with the contradictions, and blamed for inadequate outcomes’.<sup>42</sup> Patten intended to send a marker to the Member States, but Solana took the note very personal.<sup>43</sup>

The EU’s conduct of high-level diplomacy did change since the creation of the High Representative. Whereas before Amsterdam the Troika played a crucial role, Solana these days hardly ever travels with the Presidency and the Commission to crisis regions.<sup>44</sup> In Macedonia (2001), Ukraine (2004), and Lebanon (2006) he went alone. When third countries are not in a state of crisis, representation is divided between the Commission and the Council Secretariat on the basis of competences. Yet as stated above, the problems with regard to representation were with the Presidency rather than with the Commission. The whole range of (informal) bodies through which the EU participates in international diplomacy, such as the Contact Group, the Quint (EU4+US), the Quartet (on the Middle-East) and the EU3+3 (on Iran) is also worth mentioning. The Council Secretariat is closely involved in the work of these bodies; in case of the Western Balkans, the European Commission often works closely with the Council Secretariat.<sup>45</sup>

## *2. Second pillar instruments: civilian crisis management and its demarcation*

The political strengthening of the Council Secretariat after the Amsterdam Treaty cannot be seen separate from the simultaneous developments in the context of the European Security and Defence Policy (ESDP). In an effort to make the second pillar operational – after the EU failed to make capabilities available during the Kosovo war (1999) – the Member States decided to create bureaucratic structures with significant content expertise in the Council Secretariat in support of future military operations. Due to the sensitive

<sup>39</sup> C. Patten, *Not Quite the Diplomat: Home Truths about World Affairs* (Allen Lane, London, 2005); Crowe; Spence, see note 1; interviews with Commission and Council Secretariat officials.

<sup>40</sup> Patten, see note 39, p. 156.

<sup>41</sup> Interviews with Commission and Council Secretariat officials.

<sup>42</sup> Agence-Europe, ‘External Relations: Demands, Constraints and Priorities’, 10 June 2000.

<sup>43</sup> Interview with Commission official.

<sup>44</sup> Spence, see note 1.

<sup>45</sup> Interviews with Commission and Council Secretariat officials.

nature of such operations, the Member States kept the Commission completely at arms length, even delegating the budget management to the independent ATHENA mechanism consisting of national and Council Secretariat officials. Although the Commission is allowed to provide some input into the military deliberations, its influence remains minimal. The Commission has not considered this problematic. Military operations do not duplicate first pillar instruments and the Commission's own expertise is too limited to make a valuable contribution.<sup>46</sup>

Inter-institutional turf battles became, however, intense when the Member States added a civilian dimension to ESDP and started – from the Commission's perspective – duplicating bureaucratic structures in support of these instruments (i.e. police, rule of law, civil administration and civil protection missions). The Commission had previously, after all, trained police services in the Palestinian Territories, Guatemala, South Africa, Albania, Algeria and Macedonia, and had partially financed Kosovo's civil administration (UNMIK).<sup>47</sup> It also plays a central role in election monitoring and the Community has a legal basis in article 177(2) to 'contribute to ... developing and consolidating democracy and the rule of law' in third countries. Lastly, the Humanitarian Office and the Monitoring and Information Centre (DG Environment) already do much in the field of civil protection with crisis management missions to Turkey, Iran, Morocco and the United States.

The Commission thus saw the creation of these new expert bureaucracies in the Council Secretariat as the Member States trespassing on its territory. This was confirmed during the Aceh Monitoring Mission (2005). The Commission suggested making a substantial number of its own experts available for the mission, albeit under the political control of the Political and Security Committee. The Member States, however, refused any Commission involvement: it could pay for the mission with the CFSP budget; not participate in it. For the Commission this was an important lesson learned.<sup>48</sup> It has been emphasising the use of first pillar instruments in foreign policy ever since. The civilian crisis management services of the Council Secretariat, on the other hand, were strengthened after Aceh as part of the post-Hampton Court reforms (2005). Through its control of the CFSP budget, the Commission nonetheless remains involved and this regularly causes friction with the officials from the Council Secretariat. Particularly in the Afghanistan mission, severe delays took place, since many administrative vacancies remained unfilled, which meant that nobody on the ground was capable of fulfilling the stringent procurement rules of the European Commission.<sup>49</sup>

With the establishment of these new crisis management instruments, the question arose when to choose for first or second pillar instruments. The Commission feared that the Council would define everything as 'security' with the risk of 'second-pillarisation' at the expense of development and humanitarian assistance issues.<sup>50</sup> Its legal service therefore felt that it was necessary to draw the line between Community and CFSP competences. On its own initiative rather than on the suggestion of a relevant Directorate-General, it went to court over a Council Decision implementing the ECOWAS/small arms joint action. On the basis of article 47, the European Court of Justice recently ruled that in case of a double-objective (e.g. development and security) action must be taken under the Community. While nobody expected the Commission to go to court, this ruling did fill in a few blanks. The political effect of this ruling remains unknown, but it is fair to assume that Council Secretariat officials in the future will draft their proposals more carefully.

<sup>46</sup> Interviews with Commission officials.

<sup>47</sup> U.C. Schroeder, 'Governance of EU Crisis Management' in M. Emerson and E. Gross (eds), *Evaluating the EU's Crisis Missions in the Balkans* (Centre for European Policy Studies, Brussels, 2007).

<sup>48</sup> Interview with Commission official.

<sup>49</sup> Interviews with national, Commission and Council Secretariat officials.

<sup>50</sup> Interviews with Commission officials.

### *3. Representation on the ground: towards an External Action Service*

Two years after Amsterdam, the Member States launched the Constitutional debate. One objective was to make European foreign policy more coherent. From the very start however, the Commission and the Council Secretariat disagreed on the means to achieve this end. There was general agreement on the merger of the posts of High Representative and Commissioner for External Relations, but the secondary question where this post should be based caused problems. Even at the time of the Irish Referendum, this had not been entirely answered leaving the physical location of the offices of the new High Representative and his/her cabinet (Council or Commission buildings) an issue of debate. On the composition of the External Action Service and the European Union delegations, the Commission and the Council Secretariat also held different opinions: there was no agreement on whether the trade and the military services would be included and to what extent the Commission would take political posts in the EU delegations.

While the debates proceeded, the Council Secretariat tried to implement some interim measures. It was initially understaffed and it lacked the appropriate intelligence and representation on the ground. Increasing the number of EUSRs was one clever way of dealing with this caveat. They could represent the High Representative on the ground as well as doing some political reporting. Their support team of seconded national officials furthermore alleviated some of the staff problems in the Council Secretariat. While the Council Secretariat generally benefitted from the EUSRs, some have been perceived by the Commission as an additional layer of bureaucracy at best and as a threat to their representational function at worse. On a personal level, the Commission's Heads of Delegations have often resented the EUSRs flying in from Brussels and demanding – in line with their Director-General status – the necessary support.

These bureaucratic conflicts quickly led the Member States to intervene, suggesting the 'double-hatting' of a number of EUSRs and the Commission's Heads of Delegation. However with a view to the External Action Service, all parties have been very careful to avoid precedents. Whereas double-hatting in the Macedonia was relatively easy with the Commission taking the lead in light of the EU perspective, discussions over Addis Abeba, Afghanistan and Bosnia have been more challenging. DG Development, for example, pre-empted the negotiations on the EUSR's support staff in Addis Abeba by appointing a political advisor and only formally informing the EUSR at a later moment. Fearing for a situation in which the Commission is taking political posts, most Member States felt blindsided.<sup>51</sup> In the case of Kabul, the Member States reached a compromise on double-hatting, but the Commissioner for External Relations blocked the final agreement. She argued that it was against staff regulations to appoint other candidates than the current Head of Delegation of the Commission.<sup>52</sup> In Bosnia, both institutions were saved a debate due to the lack of progress on the ground and resistance of Russia.

In conclusion, one can thus state that while the bureaucratic rivalry increased after the Amsterdam Treaty, it was limited to only a number of areas. In the civilian crisis management, the ECOWAS case and with regard to the EUSRs, the Commission felt that the Member States and the Council Secretariat sometimes pushed it too far. When the Commission was defending its territory, the situation led to tensions. This was particularly the case on issues where it felt that the Member States were duplicating its informational role in the policy process.

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<sup>51</sup> Interviews with national, Commission and Council Secretariat officials.

<sup>52</sup> Ibid.

## V Regional Comparison

This article has so far discussed the relationship between the Commission and the Council Secretariat across history and foreign policy instruments. There is, however, also variation in their inter-institutional relations across regions. The following section discusses the division of labour between both institutions in a number of regions relevant for European foreign policy.

### *1. Western Balkans*

European foreign policy towards the Western Balkans must be analysed in light of the accession process. All countries in the region take part in the Stabilization and Association Process (SAP), which constitutes the main framework for relations with the European Union.<sup>53</sup> This process also determines to a large extent the actors on the EU's side. The SAP is a typical Commission-driven policy, where the Commission acts on a mandate of the Member States and reports back to them, before they take the decisions. There is a clear understanding that the Council Secretariat and its EUSRs do not intervene in this process.<sup>54</sup> The EUSR/HR in Bosnia thus cannot take executive decisions using the Bonn powers in fields that are covered by the SAP. The same goes for the EUSR/ICR in Kosovo. Outside the scope of the SAP, the Council Secretariat does play a role. It, for example, briefs the Member States on issues of stability or the phasing out of the ESDP operations. In general, one can state that the Council Secretariat takes the political lead as long as there are soldiers and policemen of the Member States on the ground.

It is however important to realize that the political dimension of the SAP tends to differ for the individual Western Balkans countries. The Copenhagen political criteria (i.e. democracy, human rights, rules of law, and the protection of minorities) are crucial for the candidate countries, whereas the dialogue with Kosovo is purely economic and technical. Similarly there is a difference between the countries, which have/had an ESDP presence (Macedonia, Bosnia, and Kosovo) and which have not (Croatia, Albania, Montenegro and Serbia). For Albania and Croatia the involvement of the Council Secretariat is next to none. In case of Serbia, Solana and the Council Secretariat play a political role due to the Kosovo dossier; the Commission provides much of the carrots when Serbia complies. In Montenegro, the Council Secretariat played a role with regard to the political question of the referendum (2005). The European Commission provided electoral support.

Macedonia is to some extent the casebook example for European foreign policy in the Western Balkans (from conflict to candidate status). The relationship between the Commission and the Council Secretariat is therefore interesting. During the 2001 crisis, Solana (and the NATO) intervened, partially with the incentive of the SAA, and provided an ESDP presence (2003-2005). The EUSR was at the time the main actor coordinating the work of the international Community. The European Commission initially focussed on reconstruction, coordination of international aid, and the census, but was informally consulted on most dossiers.<sup>55</sup> By the time the SAA entered into force and Macedonia prepared its membership application (2004), the Commission had taken over the driving seat. While the transition in the relations between Commission and Council Secretariat has been relatively fluid in case of Macedonia, in Bosnia such a transition is still ahead. Russia

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<sup>53</sup> Apart from Kosovo, all countries have signed a Stabilization and Association Agreement (SAA). Croatia and Macedonia are candidates for membership.

<sup>54</sup> Interviews with Commission and Council Secretariat officials.

<sup>55</sup> Interview with Commission official.

has so far blocked the phasing out of the Office of the High Representative, which forms the corner stone of the transition.

## *2. Eastern Europe and the Mediterranean*

Whereas the SAP constitutes the framework policy for relations with the Western Balkans, the European Neighbourhood Policy (ENP) and the Barcelona Process are important for the Eastern European and the Mediterranean countries. The content of these framework policies also tends to differ significantly per third country: Egypt is not Ukraine; Morocco is not Belarus. These are, however, again Commission-driven policies and they include a (modest) political dialogue. Through the Community's exclusive competence in trade and its access to first pillar financial instruments, the European Commission is thus involved in the formulation of human rights, rule of law and democratization policies towards the countries in the Mediterranean. The role of the Council Secretariat, on the other hand, is minimal and it only performs its traditional administrative functions.<sup>56</sup>

For Eastern Europe, there is an inherent tension between short-term stability and longer-term relations. In the immediate aftermath of the Orange Revolution, the positions of the Commission and the Council Secretariat have, for example, differed over Ukraine. While Solana invited Yushchenko to Brussels to talk about the membership perspective, the Commission has remained wary of such prospect.<sup>57</sup> The short-term relationship with Russia has furthermore been too complicated for the Member States. As a result neither Solana nor the Commission have recently been able to play a meaningful role, despite the fact that the Commission has a key position in the longer-term EU-Russia partnership. Solana's personal role in the Orange Revolution has furthermore complicated his relations with Russia. This can be seen as one of the reasons why he initially did not play a mediation role between Russia and Georgia after the conflict broke out in 2008. Prior to the conflict, the EU's involvement in the Caucasus was limited, despite the presence of an EUSR, with the European Commission carrying out mostly technical projects.<sup>58</sup>

Finally with regard to Turkey, the European Commission is clearly in the driving seat due to the accession negotiations and previously the Ankara association agreement. Within the Commission it is furthermore DG Enlargement rather than DG RELEX that does most of the talking. Solana has made some statements on the political situation in Turkey, but these are in line with the Commission's policy. Bilateral contacts between Solana and Turkey are often in the context of wider discussions on the Middle-East given Ankara's good contacts with Iran and Syria.

## *3. Wider Middle-East*

Throughout the wider Middle-East, there is also variation in the involvement of the Commission and the Council Secretariat. With regard to the Israeli-Palestinian conflict, Solana and the Council Secretariat play a very visible role. Solana is, on behalf of the European Union, a full member of the Quartet and the Council Secretariat has been in charge of the ESDP Rafah Border mission (2005-date). The EU's role as the 'second western voice' is significant in this context.<sup>59</sup> This is one of the reasons why, despite all the difficulties, the Palestinian Authority is still willing to talk. Equally important, though less visible, is the role of the Commission. In 2007, it committed over 550 million euro in

<sup>56</sup> Interviews with Commission and Council Secretariat officials.

<sup>57</sup> Spence, see note 1.

<sup>58</sup> Interview with Council Secretariat official.

<sup>59</sup> C. Hill, 'The Capability-Expectations Gap or Conceptualizing Europe's International Role' (1993) 31 *Journal of Common Market Studies*, pp. 305-28.

assistance to the Palestinian territories. This made the European Commission the single biggest donor. As Chris Patten states: ‘I am not sure that ... we could count many achievements for all [our] effort ... [but] without our help the [Palestinian] Authority would probably have collapsed’.<sup>60</sup>

European foreign policy towards Iraq is different. The Council Secretariat – apart from training police agents outside Iraq – only plays a very marginal political role due to disagreement amongst Member States. The European Commission, on the other hand, has provided Iraq with almost one billion euro of assistance.<sup>61</sup> This makes it the biggest donor after the United States and Japan. Due to its presence on the ground and having the longest serving EU ambassador in Iraq, it is the Commission rather than the Council Secretariat, which is involved in political questions. This does not concern security issues, but it is involved in the registration of displaced people and ensuring a representative government. Since displaced people are often not of the same ethnicity as the ruling Shia party, such governance, democratization and electoral support is important in terms of the longer-term development of the country.

At the other side of the spectrum is the EU’s relationship with Iran. The Council Secretariat and the EU3 are in the driving seat when dealing with the non-proliferation dossier. While to this date Solana’s efforts have not been particularly successful, he has been the main negotiator for the Western world and even publically for the EU3+3 (US, Russia, and China). The European Commission, on the other hand, provides most of the carrots for Iran in case it complies. It stands ready to make a whole range of instruments available, but to this date the Commission’s activities are very much on hold. With regard to sanctions, it follows the political lead of the Council Secretariat and the Member States.<sup>62</sup> The fact that the European Commission does not have a delegation in Teheran also limits the prospects for political reporting.

While in the Israeli-Palestinian conflict, the functions of the Commission and Council are complementary, and while in Iraq and Iran they do not compete, in the case of Afghanistan there is some overlap. The Commission again makes significant financial contributions (1.2 billion euro over 2002-2007) and it feels that it should have a political say as well. The Council Secretariat has recently become in charge of the Afghanistan ESDP police mission of approximately 400 police agents, despite initial problems with deployment due to procurement conflicts with the Commission and security issues with NATO. The close involvement of the Commission and the Council Secretariat on political dossiers was also the main reason why the Member States suggested double-hatting of the EUSR and the Head of Delegation.

#### *4. Sub-Saharan Africa and the Developing World*

Traditionally sub-Saharan Africa and the Developing World has been the prerogative of the Commission. Under the Lomé conventions and the Cotonou agreement, development aid (European Development Fund, EDF) was intertwined for the African, Caribbean and Pacific (ACP) states with preferential trade agreements. The only exception used to be the appointment of the EU Special Envoy/Representative to the Great Lakes Region (1996-date) after the Rwanda genocide. In recent years, however, the African continent has seen nine ESDP operations (in Chad, Congo, Guinea-Bissau, Sudan and Somalia) and the appointment of another two EU Special Representatives (Sudan and the African Union). Initially these Council Secretariat activities developed in parallel to the Commission’s

<sup>60</sup> Patten, see note 39, p. 156-157.

<sup>61</sup> Interview with Commission official.

<sup>62</sup> Interviews with national and Commission officials.

development policy, but it inevitably led to some tensions with regard to representation on the ground as well as to calls for EU consistency between security and development.

While in most countries in Africa, the Commission along with the individual Member States continues to be the most important player, the Council Secretariat has taken a leadership role in Congo and in Dafur/Chad. Whereas the first operation Artemis (2003) could be described as testing the ESDP military structures outside Europe and not as contributing too much to the political situation in Congo, the follow-up operations in Africa have been more substantial, purpose-orientated, and part of the development strategies. Yet there still remains a compartmentalisation between the first and second pillar in Africa and the developing world. The incumbent bureaucracy is furthermore defending what it considers its *domaine réservé*. Lastly, in areas which do not have an ESDP presence or a EUSR, the role of the Council Secretariat is still very limited.

In terms of the regional comparison, this article thus has shown that the roles of the Commission and the Council Secretariat in third countries depend on the foreign policy instruments, which determine the actors. In the Western Balkans and the Middle-East, there is a striking difference in the variation of foreign policy instruments. In states outside the EU's regional sphere of influence, there are differences between the first and second pillar instruments and as a result the Commission and the Council Secretariat hardly interact. Only in a limited number of instances there is some overlap between their activities, most notably during the transitional phases in Macedonia and Bosnia, in the EU's dealings with the Ukraine and in Afghanistan.

## VI Conclusion

This article has discussed the relationship between the European Commission and the Council Secretariat in European foreign policy. It has shown that inter-institutional relations become tenser when there is a lack of clarity, perceived overlap or competition in roles. Historically, the roles of both institutions were clear under the Single European Act and Maastricht. Only when the Council Secretariat started to challenge the European Commission after Amsterdam 'as an alternative centre for ideas, policy input and debate', the incumbent bureaucracy started to defend its informational role.<sup>63</sup> Over time, both institutions have found a *modus vivendi*, which has informally clarified some of the grey areas. This pragmatic approach could, however, not overcome the structural problems with regard to the roles of both institutions, as for example displayed in the Constitutional debate and the ECOWAS case.

An analysis of the foreign policy instruments shows variation in the inter-institutional relationship as well. While the creation of military expertise in the Council Secretariat was not perceived as a problem by the Commission, the informational overlap in civilian crisis management was an issue. Both institutions were clearly competing for the same resources. This article has also shown that institutional issues are at stake in external representation on the ground, because of overlapping functional roles: double-hatting remains difficult and the strict staff and budgetary regulations have been used by the Commission. In terms of the regional division of labour, the relationship very much depends on the overlap of foreign policy instruments in third states. This is particularly the case in the Western Balkans and Middle East. Despite that the relationship is instrument-driven on the ground, there has been little evolution in both regions as regards political leadership; yet in the Western Balkans such transition might still be ahead.

While the tensions between the Commission and the Council Secretariat inevitably lead to a number of inconsistencies, it is only fair to put it into perspective. At the national

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<sup>63</sup> Interview with Council Secretariat official.

level, the external relations ministries are also often split and their relationship is also sometimes notoriously difficult. Avoiding the concentration of power also has its merits (e.g. political/military split). The general fear – expressed prior to the Amsterdam – that inter-institutional relations would be difficult across the board has furthermore not materialized. That having been said, this article has pointed at a number of specific issues, which can be targeted, if political will allows it.