Approaches to Delegation in EU Foreign Policy: the Case of the Commission

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Approaches to Delegation in EU Foreign Policy:
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INTRODUCTION

One of the great untold stories of the Lisbon Treaty (2009) concerns the role of the European Commission in foreign policy. Prior to the Treaty, the Commission had considerable diplomatic resources. Its Directorate-General for External Relations (DG RELEX) employed, for example, several hundreds of officials. The Commission had political and strategic control over a sizeable development budget making it one of the world's largest donors. In addition, it had 130+ delegations in third countries at its disposal. In many ways, the Commission was thus a formidable diplomatic actor. With one paragraph in the Lisbon Treaty, however, the Member States have taken these resources away. These resources have been transferred to the new European External Action Service (EEAS), over which the Member States have considerable more control. Because European integration is often characterized as an 'ever closer union', this re-nationalisation of foreign policy is important. It merits attention.

To understand these institutional developments, this chapter takes a step back and asks why the Member States have delegated functions to the Commission in the first place. By analysing the rationale for delegation, it not only seeks to explain recent developments. It also wants to contribute to theorizing the role of the European Union (EU) institutions more broadly.[1] The role of the Commission in foreign policy has been the subject of various publications by (former) officials and think tank experts (e.g. Nuttall 1992, 1997, 2000; Duke 2006; Spence 2006). While these provide a wealth of empirical material, hardly any attempt has been made to theorize the role of the Commission in the second pillar.[2] This is surprising. The core theoretical debate in European integration, after all, constitutes the relations between the Member States and the supranational institutions (e.g. Haas 1958; Hoffmann 1966; Moravcsik 1998; Sandholtz and Stone Sweet 1998; Pollack 2003). By expanding the empirical domain of EU integration theory to the area of foreign policy, this chapter thus makes an innovative theoretical contribution.

The argument is that the Member States, at various moments in time, have delegated tasks to the Commission out of a functional need to bridge the divide between economic integration and foreign policy – e.g. the first and second pillars of the Maastricht Treaty (1993). Foreign policy coordination in the EU initially developed separately from the economic integration due to its sensitive nature. With many overlapping grey areas, however, there was a demand for consistency.

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1 This chapter is only concerned with European Political Cooperation (1970-1993) and the Common Foreign and Security Policy (1993-date). It is not interested in the wider domain of external relations.
2 Smith (2004) is a notable exception, but he does not specifically deal with the role of the Commission.

The Commission was, due to its expertise of the internal market and knowledge of the *acquis communitaire*, best placed to provide it.[3] The Member States therefore delegated, time and again, tasks to the Commission relating to consistency in order to improve the process and quality of policy-making. With the creation of the External Action Service, which key rationale was to bring the different strands of external relations together, there is no longer a purpose for the Commission in foreign policy.

In the first section of this chapter, three competing explanations of delegation are discussed – credible commitments, efficiency and mimetic isomorphism. The chapter subsequently studies the most important historical instances of the delegation and non-delegation of tasks to the Commission in the realm of foreign policy (1970-2009) in order to shed a light on the underlying rationales of the Member States. Studying non-delegation is important, as it tells us why Member States did not equip the Commission with additional powers. In terms of data, this chapter relies on official documents, preparatory reports, secondary literature, and where necessary on a limited number of semi-structured interviews.

DELEGATION TO SUPRANATIONAL INSTITUTIONS

The research agenda on delegation in the EU is substantial. Yet like in much of the rest of social science, there is an ontological split between explanations based on rationalism and constructivism. The rationalist research agenda is, needless to say, more comprehensive. This has partially to do with the fact that intentionality by definition better fits an agency perspective. There is, however, no good reason why the reasons of the Member States for delegation cannot be studied from a constructivist perspective. This chapter suggests three competing explanations based on credible commitments, efficiency and mimetic isomorphism.

Credible Commitments

The most prominent rationalist explanation behind the delegation of powers to the supranational institutions in the EU, such as the Commission, is that they improve the credibility of commitments (e.g. Moravcsik 1998; Pollack 2003; Franchino 2007). Supranational institutions can act as neutral monitors to check whether the Member States are indeed implementing their agreements. They thus increase the confidence amongst the Member States. In case of possible infringement, supranational institutions can also be given a role in enforcing the agreements. In the most extreme cases, the Member States can even delegate exclusive implementation powers to supranational institutions, if they do not trust each other – for example the European Central Bank in setting the interest rate, or the competition prerogatives of the Commission (Majone 1996). Finally, supranational institutions play a role when it comes to incomplete contracting. If the Member States sign up for a treaty, they should not be in a position of undermining or blocking that treaty when negotiating secondary legislation or interpreting the treaty. Delegating specific tasks to supranational institutions can help to prevent that (Hawkins et al. 2006).

What all these reasons for delegation have in common is that distribution is at the core of the analysis. Member States gain through cooperation, but because they have different interests, there is almost always the *ex post* risk of defection or freeridership. This may affect the distribution of gains initially agreed. By getting a relatively impartial third party involved, Member States try to institutionalize their bargain (Keohane 1984; Moravcsik 2009). The more formal power, which is delegated to supranational institutions, the bigger the chance that they can uphold the agreement (Tallberg 2002). As Member States are generally keen on their sovereignty, the amount of autonomy

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3   This argument bears resemblance with Nuttall (1992, 2000). His approach is, however, historical and he does not identify a causal relationship between the functional need for consistency, based on a careful cost-benefit analysis on the side of the Member States, and the delegation of tasks to the European Commission.

is also likely to be topic of debate. Member States with outside alternatives are least wary of defection. They may want to keep their prerogatives, while others are likely to prefer more formal autonomy for the supranational institutions. If credible commitments is indeed the main explanation for the delegation of tasks to the Commission in the CFSP, one would thus expect the negotiations to focus on how to institutionalize the distribution of gains from cooperation and how much formal autonomy it should have.

Efficiency of Policy-Making

Another reason for the delegation of tasks is to increase the efficiency of policy-making. Having a chairmanship, which presides over the deliberations is an obvious example (Tallberg 2006). Other common practices, which increase the efficiency of cooperation, include the position of an informal honest broker or outsourcing the conference centre to an international secretariat. Contrary to the institutions for the purpose of credible commitments, these institutions lower the *ex ante* costs of reaching agreements and generally do not require the transfer of substantial competences (Majone 2001; Tallberg 2002). They affect the distribution of the gains of cooperation to a lesser extent and often generate positive-sum rather than re-distributive payoffs. They can help the Member States to increase their gains from cooperation by guiding them to the Pareto optimal agreements (e.g. Beach 2005; Tallberg 2006).

Two other reasons for delegation are informational input and external representation. Due to its complexity, foreign policy requires informational input and expertise during the agenda-setting, decision-making and implementation phase (Pollack 2003; Epstein and O'Halloran 1999). This counts particularly for the joint actions in the context of the Common Security and Defence Policy (CSDP). Member States can perform information-gathering and analysis functions themselves, but in case of joint actions and decisions, it is more effective to pool their scarce diplomatic and military resources (Dijkstra and Vanhoonacker 2011). Collective representation is another functional need that makes cooperation more efficient (Tallberg 2006). It is better, after all, to speak with one clear voice – when in agreement – then with several. While Member States might like to keep external representation in their own hands, they will have a hard time determining which of them presents the collectivity. Delegating these tasks to supranational institutions is not only a way to avoid such debate; these institutions are due to their continuity also better capable of performing these functions than other sub-optimal alternatives, such as the rotating Presidency.

In line with continuity is the need for overall foreign policy consistency (e.g. Hill 2003). Payoffs of foreign policy decisions and actions are generally higher, if they are consistent with other decisions and actions. Consistency comes in different forms. Nuttall (2005) points, for example, to the need for vertical consistency between the EU and national level. In addition, he argues there is a demand for horizontal consistency between the various policy areas of the EU (e.g. development and agriculture). Finally, there is institutional consistency. This is notoriously difficult to achieve in the EU, because with its pillar structure artificially separates the external dimension of economic integration from foreign policy proper (Stetter 2007; Nuttall 2005; Zielonka 1998). To give an example, it makes no sense to train police forces in a third country, which falls under foreign policy, while neglecting the administrative capacity of the judiciary, a justice and home affairs issue. Thus, given the particular institutional structure of the EU, there is a demand for coordination. [4]

Supranational institutions can do little to improve vertical consistency, as they are by definition only part of the supranational polity, but they are often in a good position to help Member States reaching horizontal and institutional consistency. The strengths of supranational institutions are, in this respect, to be found in the continuity of their officials *vis-à-vis* the permanently rotating diplomats and in their ability to coordinate between different strands of foreign policy due to their limited size and compartmentalization, and their restricted departmental autonomy (cf. ministries in

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4   The Treaty of Lisbon has an impact on cross-pillar relations and it thus affects the demand for coordination.

the capitals). In the particular case of the EU, furthermore, there is an additional reason to delegate tasks dealing with institutional consistency to the Commission. Given that it has the exclusive right of initiative in the first pillar, it can use the information it gets in the second pillar to inform its first pillar legislation. Furthermore, the Commission has unrivalled expertise about the internal market and the *acquis communautaire*. Such first pillar expertise is in short supply with the second pillar officials of the various Member States. Thus in the particular case of the EU, the functional demand for consistency is high and the Commission is well-placed to provide it.

Mimetic isomorphism

A competing constructivist explanation for delegation – mimetic isomorphism – has its roots in metaphor of 'muddling through'. Lindblom (1959: 80) stated that while policy-makers ideally engage in extensive and comprehensive cost/benefit analyses, such approach "assumes intellectual capacities and sources of information that men simply do not possess, and it is even more absurd as an approach to policy when time and money that can be allocated to a policy problem is limited, as is always the case". Member States are therefore likely, under the condition of uncertainty, to copy the institutional arrangements of other successful well-functioning international organisations. They use institutional formats that *they* as legitimate or appropriate (Powell and DiMaggio 1983; March and Olsen 1989). This makes rationality at best historically and/or culturally grounded (McNamara 2002). The result is that supranational institutions not necessarily fit with the actual functions they are supposed to perform. This leads to sub-optimal outcomes (Pierson 2004; McNamara 2002).

According to Powell and DiMaggio (1983), there are two conditions under which mimetic behaviour is likely to occur: uncertainty between the means and ends of an organisation as well as ambiguity about the goals of an organisation. Both seem relevant in EU foreign policy. When the Member States established a new system for foreign policy coordination in the early 1970s, they did not have much of an idea how it would work and they definitely did not know where it was going to (its *finalité*). The question that remains is, however, which institutional forms were conceived as legitimate and formed the basis for the new structure of the foreign policy system and the delegation to the Commission. There were, in this respect, two important albeit competing norms. Firstly, there was the economic integration with its 'Community method' and its consensual norms (Hayes-Renshaw and Wallace 2006; Lewis 1998). If this template was also the basis for foreign policy cooperation, one would expect a significant role for the Commission. Secondly, there was the Westphalian diplomacy with the strong notion of sovereignty. A system based on such norm would hardly leave room to supranational actors. In the constructivist explanation of delegation, the Commission is thus likely to be caught in a more general debate over these norms rather than over specific functions leading to misfit.

Table 1. Competing explanations of delegation

Explanation	*Relevant questions during the negotiations*
Credible commitments	How to guarantee the agreed distribution of the gains of cooperation?
Efficiency	How to improve the process of policy-making?
Mimetic isomorphism	How to create legitimate and appropriate institutions?

Source: Compiled by the author

HISTORICAL INSTANCES OF (NON)-DELEGATION

The sovereignty concerns of the Member States have been a constant factor throughout the history of EU foreign policy coordination. The ambitious plans for a European Defence Community failed

ratification in the French National Assembly due to Gaullist opposition (Parsons 2006), while the subsequent Fouchet Plans – quintessentially Gaullist themselves – were vetoed by The Netherlands and Belgium, because these states feared that these plans would weaken their role as small Member States (Vanke 2006). When the Member States tried for the third time to create foreign policy coordination, they thus went for the lowest common denominator. The Luxembourg Report (1970), which established European Political Cooperation (EPC) only envisaged a process limited to "exchanging information and consulting regularly [and] joint action when it appears feasible and desirable". It was placed outside the Treaty framework and because previous attempts broke down over the institutional structure, EPC was "provided with a bare minimum of institutional support" (Smith 2004: 71). There were consultations at ministerial, political director and working group level and these meetings took place in the country holding the rotating Presidency. Due to disagreement about the location of a permanent secretariat, the Member States did without: administrative support was in the hands of the Presidency.

The Commission was kept at arm's length from EPC, yet it was not completely ignored. In boundaries dossiers between EPC and the activities of the European Communities, it was to "be consulted" (article 5). The Commission was thus invited when cross-pillar issues were discussed, but invitations were not automatic. Time and again it had to fight for a place at the table. Some scholars see this link with the European Communities as a concession by France in order for the integrationist Member States to sell EPC domestically as different from the Fouchet plans (Nuttall 1992; Smith 2004). Yet this ignores its specific function. The Member States also clearly required the economic expertise of Commission in many of their negotiations with third states. In one of the first foreign policy dossiers on the Helsinki Conference on Security and Cooperation in Europe (1973-1975), for example, the Commission's role started divisively, but even the French Presidency recognized that its input on negotiations about the economic basket was indispensable (Nuttall 1997; interview national official, 2008). The Commission thus provided its expertise, because there was a functional demand for consistency.

The original stalemates between the intergovernmentalists and supranationalists prevented significant further institutional development during the 1970s. It was only in the early 1980s that EPC regained institutional momentum. The failure of the EU foreign policy machinery resulting from discontinuity between two Presidencies following the Soviet invasion in Afghanistan (1979) was important in this respect. It made Member States realize that they had to improve procedures. In the London Report (1981), they introduced the Troika in order to create continuity. The Commission became furthermore 'fully associated' with the conduct of EPC, which meant in practice that it gained automatic access to all meetings and information. It undoubtedly helped that France had a new (non-Gaullist) government with Cheysson as the foreign minister. As a former Commissioner, he had experienced the problematic relationship with EPC and appreciated the specific needs of the Commission. This instance highlights the importance of past experience.

While the London Report already signalled the increased foreign policy ambition that would guide much of the 1980s, it was also the end of an epoch. Until the London Report, EPC developed outside the Treaty framework. Subsequent discussions turned to how to give EPC a formal Treaty base. This was, of course, not a neutral legalistic exercise: the integrationist Member States, in particular, saw it as an opportunity to bring the Communities and Political Cooperation closer in order to strengthen the role of the Commission. The first serious initiative, in this respect, was the draft European Act co-sponsored by the German and Italian foreign ministers Genscher and Colombo (1981). While this proposal was intergovernmental in intent, leaving the separation in decision-making procedures (including the limited powers of the Commission), it did constitute a single institutional framework. For some Member States this was still too much (Smith 2002; Nuttall 1992). The Heads of State and Government simply took note of the proposal and diplomatically invited the foreign ministers to examine it.

The ministers discussed the plan extensively, but it did not add up also in the absence of

clear functional needs. Their deliberations eventually resulted in the Solemn Declaration on the European Union (1983), which was a non-binding document that reiterated much of the already established practice. Discussions on the future status of EPC also played in the European Parliament. Under the leadership of Altiero Spinelli, it adopted the draft Treaty Establishing the European Union (1984), which brought EPC and the Communities together, albeit with different decision-making procedures. The parliamentary draft Treaty only to a limited extent enhanced the role of the Commission by giving it the shared right of initiative (article 67(1)). On foreign policy it was thus more pragmatic than ideological. Few Member States were, however, willing to work on the basis of the parliamentary draft, let alone to ratify it instantly (Nuttall 1992: 240). While all these proposals in the early 1980s thus ultimately failed, they did help to spread the idea of a possible codification of political cooperation.

Before going, however, to the negotiations of the Single European Act, which eventually led to the codification of cooperation, it is necessary to look at the development of the informal role of the Commission. Its full association of the London Report marked the conclusion of the debates in the 1970s on whether it should be invited at all. From the early 1980s, it started to make use of its access to Communities resources to yield political influence in the context of political cooperation. The use of sanctions, in this respect, stand out. Whereas over Rhodesia (1975), South Africa (1976-1977) and Iran (1979-1980) the Member States could not agree on the timely use of *Community* sanctions, they were successful in the case of Poland after the Soviet crackdown of the Solidarity movement (1982) (ibid.: 261-262). Since Greece opposed action in the context of EPC, where consensus was still the rule, the Member States resorted to Community article 113 (currently article 133), which gave them more flexibility, but it also meant that they put the Commission in the driving seat. While the Member States literally forgot to invite the Commission for discussions over Iran, it was COREPER and the Commission which looked into import restrictions against the Soviet Union (ibid.: 170 and 203)!

The pattern repeated itself over the Falkland Islands (1982) where Community sanctions, despite internal differences, were agreed upon within two weeks (Edwards 1984). Similarly in 1985, Belgium made any bilateral restrictive measures against South Africa conditional on Community implementation. When the Member States used sanctions against Iraq (1990), it had been widely accepted that article 113 was the standard operating procedure (Nuttall 1992: 264). During the 1980s, the Commission thus started to play a more important role in the context of political foreign policy through the use of sanctions in the domain of the Community (Bonvicini 1988: 65). This was, however, the result of an explicit decision by the Member States to go through the Community rather than through the EPC machinery. It subsequently led to a clear functional need for consistency between the activities of EPC (political decisions to use sanctions) and the European Communities (implementation of sanctions) and the Member States tasked the Commission to make the connections.

The Single European Act and the Maastricht Treaty

The momentum for Treaty change was generated by a speech of President Mitterrand in front of the European Parliament (23 May 1984), where he called for a new Treaty. This led to the *Ad hoc* Committee on Institutional Affairs chaired by the Irish senator James Dooge. Its report was modest on foreign policy and not much different from the Genscher-Colombo Act: the role of the Commission was not strengthened. Before the Member States were, however, in a position to comment on the report at the Milan European Council (June 1985), they were faced with a new proposal by the United Kingdom and very similar draft text of Germany and France. The British proposal was a codification of established practices – though not a formal Treaty – which included even the option of excluding the Commission from the foreign policy deliberations. It did, however, propose a permanent low-level supporting secretariat for EPC. The Franco-German proposal was a

formal Treaty with no exclusion of the Commission and with a high-level political secretariat. A combination of all these proposals finally led to the Single European Act.

The preparatory work for this draft treaty was delegated to the Political Committee and it soon became clear that the British approach was the best way forward (Nuttall 1992: 249). During the negotiations, the Commission stated its preference "at the end of the day only united institutions – one Council, one Parliament, one Commission" (Opinion on Intergovernmental Conference). It explained that this did not imply a change in the very nature of decision-making, but rather that it wanted to bring the Communities and Political Cooperation together in one legal document yet with different titles. This idea formed the basis of the French draft act (19 November). Yet whereas the Commission had pleaded for an eventual *rapprochement*, no such reference was made in the French document. This proposal on the institutional structure was finally accepted – the *Single* European Act. Apart from codification, the Single European Act brought two things. Firstly, it created a consistency requirement between the Communities and Political Cooperation after this had played so prominently in the sanctions dossiers. The Presidency and Commission were explicitly tasked to look after it. This gave the Commission an incentive to structure its bureaucracy in a way that it would be able to bridge the divide. It created an EPC Directorate in the Secretariat-General to coordinate the work of the Directorates-General (Nuttall 2000: 25). Secondly, the Single European Act established a small-scale and low-level permanent EPC secretariat.

While the Single European Act only marginally strengthened the Commission in the context of EPC, it was the international events shortly after the codification of cooperation that would have a lasting effect on its informal position in foreign policy. Particularly, the fall of the Berlin Wall (1989) was important. It had an impact on the role of the Commission in two ways. Firstly, due to its knowledge of the *acquis communautaire*, the Commission became a key actor in the discussions over German reunification. The German Democratic Republic, after all, had to be integrated into the Federal Republic, but also into the European Communities. The alignment of the Democratic Republic took place under immense time pressures and over the summer a small group of high-level Commission officials worked in close liaison with the German government to make reunification technically happen. Secondly, the Commission became the coordinator of international aid for the Central and Eastern European countries. France was not in favour, yet it was the United States that thought that the Commission would be best placed to do the job. The functional need for consistency between the activities of the Communities and Political Cooperation thus led to an active role for the Commission in the most salient EPC dossiers of the day.

Its central position during these events following 1989 was an important input for the Maastricht Treaty (1993), which aimed at upgrading foreign policy coordination. The process that led to the Treaty was similar to the Single European Act with proposals rotating from almost every member state. Already at a relatively early stage, during the Rome European Council (December 1990), the outline of the eventual agreement became visible, but it took Member States another year to reach final agreement. With regard to foreign policy coordination, the two extreme proposals were to continue the status quo in terms of institutional structure or to finally merge the structures of the Communities and EPC. While the Commission entered the negotiations with renewed confidence and urged for a qualitative leap forward, its Opinion on the Intergovernmental Conference (21 October 1990) fell short of a complete *rapprochement*. It acknowledged the "very specific nature of foreign and security policy", in which it was better to share the right of initiative with the Member States. The Commission furthermore interestingly suggested creating an expert bureaucracy for preparing foreign policy decisions consisting of the small-scale EPC Secretariat and representatives of the Commission to be located in the Council Secretariat.

After the infamous Black Monday of the Dutch Presidency (30 September 1991), however, all integrationist options were off the table. On the basis of earlier Franco-German proposals and the Luxembourg Presidency draft Treaty (18 June 1991), the pillar structure was introduced, which kept economic integration and foreign policy cooperation neatly separate. Some Member States were

clearly not satisfied with the higher profile of the Commission and wanted to put it back in its box (interview national official; Commission official). The Commission did get a shared right of initiative, but it would continue to play a secondary role. In terms of external representation, it became fully associated with the Troika. The EPC Secretariat was furthermore merged with the Council Secretariat and became known as the CFSP unit. It consisted of 26 a-grade officials and its purpose was to further support the Presidency (e.g. Nuttall 1992; Dijkstra 2008). In terms of the institutional structure, little changed and the Maastricht Treaty can be characterized as business as usual.

The Treaty did not discuss the intra-institutional politics of the Commission or the inter-institutional relations between the Commission and the Council. Despite the set-back in Maastricht, the Commission leadership thought that the Commission should become an equal player to the larger Member States (interview Commission official 2008). It therefore established the position of Commissioner for External Political Relations as well as a new Directorate-General. However for various reasons – stringent staff constraints and bureaucratic conflicts – these "new arrangements caused more problems than they brought benefits" (Nuttall 1997: 317), which hindered it from making use of the shared right of initiative (Nuttall 2000; Duke 2006; Cameron 2007; Dijkstra 2009). Interviewees from the Commission also argue that it did not make sense to come up with proposals and defend them in front of the Member States, because it did not have necessary foreign policy expertise. The Commission furthermore preferred to pursue external relations under the first pillar where it had more formal power. The initiative thus remained with the Presidency, which in turn increasingly started looking at the Council Secretariat's CFSP unit for administrative support and informational input (Dijkstra 2008).

The Amsterdam Treaty

That the institutional machinery had not much changed became obvious during the Bosnian War (1992-1995). European Member States were not able to bring this conflict to a halt and watched how the Americans negotiated the Dayton agreement. It was thus unsurprising that the Reflection Group, in charge of preparing the Amsterdam Treaty stressed in the preamble of its report "that the time has come to provide this common policy with the means to function more effectively" (Reflection Group 1995). For this purpose, it discussed how to improve the various phases of the foreign policy cycle. For the 'preparatory phase' (i.e. agenda-setting) it foresaw an analytical expert bureaucracy without formal powers. While the report was inconclusive on its location, the majority of the members of the group preferred the Council Secretariat for "the merit of abiding by the present institutional framework by not creating any new bodies" (ibid.). At the same time, "a broad majority of members point … to the need to involve the Commission in forecasting and analysis … in order to avoid inconsistency between the political dimension and the external economic dimension of the Union" (ibid.). This body became the Policy Unit of the Council Secretariat. Functions of an informational nature were thus not delegated to the Commission, yet the discussion over the specifics in terms of efficiency and consistency were striking, leading to a Commission liaison in the Policy Unit.

The Westendorp Report also discussed the 'personification of CFSP' in order for the Union "to implement its external actions with a higher profile" (ibid). While some members favoured a "Mr or Ms CFSP" to be located in the Commission, because of consistency and its resources, "for the majority, this would be someone in the Council" (ibid). The report furthermore stressed that inter-institutional tensions needed to be avoided. The Member States eventually created the position of the High Representative of the CFSP in the Council Secretariat with a strong emphasis of collective representation in addition to the rotating Presidency. The main representational function in CFSP was thus also not delegated to the Commission. It only became part of the newly formed Troika. What was more, many observers at the time foresaw problems between the new executive

tasks of the Council Secretariat and the Commission, particular after the Member States nominated the high-level candidate Javier Solana as the High Representative (e.g. Allen 1998). This raised speculations over whether the Member States would indirectly try to get back some of their prerogatives.

The creation of the post of High Representative and supporting services did indeed affect the European Commission. The expected tensions in the field of traditional foreign policy (diplomacy, representation) were, however, surprisingly limited (Crowe 2003; Patten 2005). Solana was mainly busy with establishing his position *vis-à-vis* the Presidency, while External Relations Commissioner Patten chose exit over voice and decided to reorganise the Commission's aid budgets and external delegations instead (Spence 2006). He 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" (Patten 2005: 156). While Solana and Patten thus avoided confrontation, they also avoided collaboration. An interviewee, in this respect, notes "you will be surprised by the limited number of contacts between Solana and Patten". The fact that the political leaders did not fight over turf had, however, a positive effect on cooperation between desk officers. These practices have continued despite problematic relations between External Relations Commissioner Ferrero-Waldner and Solana (Bengtsson and Allan 2011).

Whereas in traditional foreign policy the tensions were limited, the development of civilian crisis management in the second pillar in the context of the CSDP proved difficult (Schroeder 2007; Dijkstra 2009). Within the context of development policy (first pillar), the Member States had developed a whole range of security-related instruments for which the European Commission became responsible. The Commission, for example, trained police services in the Palestinian Territories, Guatemala, South Africa, Albania, Algeria and Macedonia. It supported border guards, strengthened judicial services in many of the Central and Eastern European Countries, and was in charge of tendering de-mining contracts. The Humanitarian Office and the Monitoring and Information Centre (DG Environment) also did much in the field of civil protection with crisis management missions to Turkey, Iran, Morocco and the United States. Given that these actions all took place under the first pillar, the Commission had a particularly strong position. Small wonder that when the Member States at the Feira European Council (2000) decided to make police, rule of law, civil administration and civil protection the focal points of civilian CSDP missions, it feared for its competences.

The point here is thus not that the Commission played a strong role in the second pillar as part of CSDP, but that it was doing already very similar activities under the first pillar, which is again evidence of the artificial division between the two. This debate on what constitutes the first and second pillar eventually led to the ECOWAS/Small arms case (2008), in which the Court of Justice argued that cross-pillar cases should be dealt with under first pillar decision-making rules (Hoffmeister 2008; Van Vooren 2009). The Commission thus defended its first pillar competences and the Court reiterated that the Commission has a role to play in the cross-pillar dossiers. When it however comes to pure CSDP dossiers, the role of the Commission remains very limited. Its seat in the EU Military Committee, for example, was empty for a long time (Duke 2006), despite its full association, because it felt that it could not make a useful contribution. In civilian crisis management, it plays a more active role – for example through managing the CFSP budget as part of the wider Community budget – but various interviewees pointed to the fact that the Commission is much more active in the RELEX working group, which ensures cross-pillar coordination, than in the pure second pillar Committee for Civilian Crisis Management (CIVCOM).

The Constitutional Debate (2001-2008)

Many of these discussions took place in the shadow of the Constitutional debate. Even before the Nice Treaty – which had no effect on the role of the Commission in CFSP – was ratified, the

Member States launched the European Convention in the Laeken Declaration (15 December 2001). It eventually led to the Constitution and the Lisbon Treaty. As regards foreign policy, the Convention aimed particularly at making it more consistent both at the policy and institutional level. The creation of the position of the 'double-hatted' Foreign Minister (High Representative under Lisbon) and the supporting European External Action Service stand out. By merging different strands of external relations in the EEAS, there is no longer a need for the Commission to provide horizontal and institutional consistency. Two observers, in this respect, argue that the Convention did "not extend the Commission's powers over foreign policy" (Everts and Keohane 2003: 171). For a project with some federalist pretensions in search of a *finalité* for Europe this is a rather sobering conclusion.

The rationale behind the merger of the posts of External Relations Commissioner and High Representative was to promote more consistency between Communities' and CFSP policies, on the one hand, and to decrease the number of political external representatives as well as related turf battles. Giving one person the power over diplomacy and the aid budgets would lead to more robust foreign policy action. The Member States, however, refused to locate this new position in the Commission. They remain the formal principals of the High Representative and thus have additional control. A slight qualification is that the Commission has ensured that the High Representative did not get a privileged status amongst other the external relations Commissioners. Lady Ashton, for example, does not coordinate the trade and development Commissioners, despite her Vice-Presidency seat. The merger of the High Representative position with the External Relations Commissioner was not to strengthen the Commission, but rather as a half-hearted attempt to do something about consistency.

A similar rationale applies to the European External Action Service and the European Union External Delegations. These bodies bring together the officials from the Commission, the Council Secretariat and the Member States. Apart from the improvements in consistency between the bureaucracies, this should also lead to economies of scale when it comes to foreign policy expertise. Yet at the same time, the negotiations over the institutional structure of the External Action Service have shown the Commission being reluctant to pool its trade and even its development experts. It is furthermore an important observation that rather than making the External Action Service and the Union Delegations part of the Commission, they became independent, consisting *also* rather than solely of officials from the Commission. To conclude, there has thus been a strong functional pressure for more consistency resulting from the expected problems between the Commission and the Council Secretariat following the Amsterdam Treaty and this is why the Member States delegated tasks. They delegate those however to the EEAS, for which they used the Commission resources.

CONCLUSION

This chapter has given an overview of the historical instances of the (non-)delegation of tasks to the Commission in the area of foreign policy. The purpose was to understand why Member States have delegated tasks in the sensitive area of foreign policy. The chapter has offered three competing theoretical explanations. The first explanation about credible commitments, which is the rationalist mainstream explanation in European integration theory, does not seem to be of much relevance in foreign policy coordination. Second-order concerns, such as defection and freeridership, do not block cooperation and they are not the subject of discussion. That the CFSP developed slowly and often fails to yield results has to do with first-order problems: different policy preferences of the Member States leading to *ex ante* rather than *ex post* failure. That credible commitments are not at the centre of the institutional debates in the various instances of (non-)delegation in EU foreign policy supports the proposition that the CFSP can be best conceptualized as a coordination rather than a collaboration game and that the integration logics of economic integration and foreign policy

coordination differ (Wagner 2003).

The constructivist explanation of mimetic isomorphism, in contrast, holds more explanatory power. Throughout the institutional development of the CFSP, there has been a vivid debate between the proponents of the Community method and the guardians of national sovereignty. This debate did not only play in the very beginning, but also in the period leading up to the Single European Act as well as the Maastricht and the Amsterdam Treaty. There is furthermore the continuous and persistent belief in certain ideas: that the *rapprochement* between the Community and foreign policy coordination would be the end goal of institutional development. Other non-calculative reasons also played a role. The French foreign minister Cheysson was, for example, more receptive of the needs of the Commission, as he had been a Commissioner himself. Finally post-delegation, the self-restraint within the Commission on the extent to which it should play a role in the foreign policy proper is interesting. It did not use its shared right of initiative after the Maastricht Treaty or its seat in the EU Military Committee, because it thought that the Member States would not take its proposals seriously. The Commission, due to its lack of foreign policy expertise, had no legitimacy to play such role.

And yet mimetic isomorphism fails to explain why *specific* functions were delegated to the Commission in the CFSP at *particular* moments in time. Of all the possible roles that the Commission could play, the Member States choose to delegate the task of consistency and rejected other proposals. To portray the consistency debate just as a political norm to empower the Commission furthermore conflicts with the evidence. Even two proposals by some of the most supranational actors – Spinelli (1984) and the Commission (1990) – recognized the specific nature of foreign policy requiring specific tasks for the Commission. This does not fit in with the expectation that the Member States would be discussing legitimate internalized formats. Mimetic isomorphism also has problems to explain the failures of the Member States to delegate tasks (e.g. the Genscher-Colombo Plan, Spinelli draft Treaty, Dutch Presidency Black Monday draft Treaty) or cases of non-delegation (e.g. Single European Act, Amsterdam Treaty). In fact it has little to say about the timing of delegation or to which actor tasks are delegated.

The functionalist argument of the need for consistency, combined with a strong sense of sovereignty, is more convincing. From the very start, the Member States recognized that economic integration and foreign policy coordination could not function as two completely separate entities. When the functional need to connect both arrived with the sanction dossiers, the Commission was tasked to provide the bridge. The moment that the German Democratic Republic had to be included in the Community, the officials of the Commission were again in lead. In the preparatory talks over the Amsterdam Treaty, the relationship with the Commission was explicitly stressed when empowering the Council Secretariat. Finally, the Court of Justice recognized that the Commission was in charged of cross-pillar dossiers during the ECOWAS case. What is more, the efficiency explanation is also powerful when analysing instances of non-delegation. Grandiose plans for institutional development (e.g. the Dutch draft of the Maastricht Treaty) that did not take the pragmatic route and stressed functionalism generally failed in the context of foreign policy coordination. Rationalists argue that cost-benefit analyses inform decisions. Only when the Member States could benefit from the expertise of the Commission they delegated tasks in the sensitive field of foreign policy. This was only the case in cross-pillar dossiers. The function of the Commission is to provide consistency.

The Lisbon Treaty was quite ambitious in terms of foreign policy by bring external relations in the first pillar together with foreign policy. The Member States, however, explicitly chose to give the resources to the EEAS, over which they have more control. As the External Action Service is geared toward bringing more horizontal and institutional consistency, the underlying rationale that had empowered the Commission over the decades disappeared. As a result, the Member States could once again keep the Commission at arm's length. The need for consistency explains the demand for the services of the Commission. It helps us to understand its rise and fall.

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