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The European External Action Service one year on: First signs of strengths and weaknesses

Steven Blockmans



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CENTRE FOR THE LAW OF EU EXTERNAL RELATIONS

**THE EUROPEAN EXTERNAL ACTION SERVICE ONE YEAR ON:
FIRST SIGNS OF STRENGTHS AND WEAKNESSES**

STEVEN BLOCKMANS*

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* Head of Research at the T.M.C. Asser Instituut (The Hague), Special Visiting Professor at the University of Leuven and member of the Governing Board of the Centre for the Law of EU External Relations (CLEER). A leaner and more prescriptive version of this essay has been published under the title 'Fit for purpose? The European External Action Service One Year On', 159 *Oxfam Briefing Paper*, 23 January 2012. The author wishes to thank Natalia Alonso, Tidhar Wald and Christophe Hillion for their insightful comments on earlier drafts of the paper. The views expressed in this working paper are purely personal.

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T.M.C. Asser Institute
P.O. Box 30461
2500 GL The Hague
The Netherlands
www.cleer.eu

ABSTRACT

One year after the official launch of the European External Action Service (EEAS), the first phase in setting up the bureaucratic structure of the European Union's new diplomatic service has been completed. The EEAS brings together different strands of the Union's external policies and has changed the way the EU conducts foreign policy. The EEAS has been learning by doing, in response to, e.g., revolutionary change brought about by the Arab Spring, humanitarian crises in Pakistan and Japan, backsliding on the rule of law in Belarus and Ukraine, threats posed by piracy and famine in the Horn of Africa, and much more, all in the face of a financial crisis that has imposed severe pressure on Member States' governments and tested the limits of European solidarity. Slowly but surely, the Service has been taking a more pro-active stance to foreign policy-making by starting to develop regional and thematic strategies (e.g. for the Sahel and the Horn of Africa, and on human rights and democracy) and coordinating positions and policies of the Member States (e.g. on Palestine's application for UN membership and joint development programming). Arguably, it is early days to draw firm conclusions on the functioning of the EEAS. The future shape of the Service and the external policies it crafts are likely to be determined by decisions made over the coming years. The devil is in the detail. Nevertheless, the EEAS is already showing the first signs of its strengths and weaknesses. This paper presents an assessment of the first year of activities of the EEAS. The findings are based on a series of 50 interviews conducted in the period from September to December 2011 with a cross-section of EU officials (working for the EEAS (headquarters and EU Delegations), the Council's General Secretariat, external policy DGs of the Commission and the European Parliament), civil servants at permanent representations of Member States to the EU, academics, and representatives from think tanks and civil society.

1. INTRODUCTION

The first anniversary of the European External Action Service (EEAS) finds the European Union in the midst of one of the worst economic, financial, and identity crises in its history, defined by German Chancellor Angela Merkel as 'Europe's toughest hour since World War Two'.¹ The economic difficulties of the past year have sharpened an already long-term decline in the EU's standing in the world, in the face of emerging economic and political actors on the global scene.² To a certain extent, the challenges and opportunities which the EU faces have been outlined in the European Security Strategy of 2003.³ However, in a rapidly changing global landscape, the success of the Union's institutions in effectively addressing challenges and seizing opportunities is defined by the constant revision of EU strategies, as well as the focused support and provision of resources by the Member States. Arguably, when these elements are absent, EU external action flounders. In its first-ever evaluation of the European Union's performance in pursuing its interests and promoting its values in the world, the European Council on Foreign Relations found that, while 2010 was not a great year for EU foreign policy, the performance of EU institutions and Member States was 'not uniformly mediocre'.⁴

In 2011, the multifaceted challenges posed by the 'Arab Spring', the humanitarian crises in Haiti, Pakistan and Japan, piracy off the coast of the Horn of Africa, and backsliding on the rule of law in Belarus and Ukraine, to name just a few, have illustrated the importance of the institutional innovations provided for by the Lisbon Treaty.⁵ The Treaty was intended to create tools for the EU to develop a more coherent, effective and visible foreign policy.⁶ Merging foreign policy objectives in

¹ M. Price, 'Merkel: Europe's toughest hour since WWII', *BBC News* (London, 14 November 2011).

² See, e.g., J. O'Neill, 'Building Better Global Economic BRICs', 66 *Global Economics Paper* (2001); P. Khanna, *The Second World: Empires and Influence in the New Global Order* (London: Allen Lane 2008); and F. Zakaria, *The Post-American World* (London, Allan Lane 2008). A recent US survey suggested that Europe's perceived importance in international affairs is in decline, as the centre of gravity of international affairs moves from the Atlantic to the Pacific. See German Marshall Fund of the United States, *Transatlantic Trends: Key Findings 2011*, available at <http://www.gmfus.org/publications_TT/TT2011_final_web.pdf>.

³ *European Security Strategy: A Secure Europe in a Better World*, Brussels, 12 December 2003, as complemented by the High Representative's *Report on the Implementation of the European Security Strategy – Providing Security in a Changing World*, doc. 17104/08 (S407/08), Brussels, 11 December 2008, endorsed by the European Council, Presidency Conclusions, doc. 17271/08 (CONCL 5), 12 December 2008, pt. 30.

⁴ See J. Vaisse and H. Kundhani (eds.), *European Foreign Policy Scorecard 2010* (London, ECFR 2011). N.B.: Their assessment is of the collective performance of all EU actors rather than the action of any particular institution or country – either the High Representative, the European Council, the European Commission, a group of states like the EU3 (France, Germany and the UK), or an individual Member State.

⁵ For another view, see K. Mahhubani, 'Europe's Errors', *TIME Magazine* (New York, 8 March 2010): 'Europe's obsession with restructuring its internal arrangements is akin to rearranging the deck chairs of a sinking Titanic. The focus on internal challenges when the real threats are external is the first of three strategic errors Europe is making.'

⁶ See Commission Communication, *Europe in the World – Some Practical Proposals for Greater Coherence, Effectiveness and Visibility*, COM(2006) 278 final, Brussels, 8 June 2006; the pre-Lisbon Draft IGC Mandate, annexed to the Presidency Conclusions of 22-23 June 2007; and the Annual

a single constitutional provision and creating the position of a multi-hatted 'HR/VP' (see below) are two prominent innovations which were intended to bridge the dualism between the Council and the Commission and to coordinate action along the different strands of the European Union's external policies: diplomacy, political engagement, development assistance, humanitarian aid, economic cooperation, and civil and military crisis management. The Lisbon Treaty also foresaw the creation of a brand-new diplomatic service which was tasked to serve the HR/VP in carrying out his/her functions as High Representative of the Union for Foreign Affairs and Security Policy (HR), Vice-President of the European Commission (VP) and Permanent Chair of the Foreign Affairs Council (FAC),⁷ and in connecting the dots – in policy and decision-making terms – by promoting coherence and consistency in EU external action.

One year on from the operationalisation of the EEAS, it would be unfair to deliver a full-blown value judgment of the Service's role in rendering EU foreign policy more coherent, consistent and effective. The dust still needs to settle on the Union's new diplomatic service and some open institutional issues remain. The High Representative is expected to provide the first deep and comprehensive review of the EEAS' organisation and functioning only by mid-2013.⁸ This paper presents an appraisal of the first year of activities of the EEAS with the aim of exposing the first signs of the strengths and weaknesses that characterise the Action Service.⁹ The paper will start with an analysis of the EEAS' main business in 2011, i.e. assembling its own diplomatic structures (section 2). Then, a quick-scan will be given of its parallel activities in the operational sphere (section 3). This section does not pretend to provide an exhaustive list of EEAS actions in 2011 but rather wishes to present a series of operations which have been indicative for the way in which the EEAS has been learning by doing. The core of the paper will deal with

Report from the Council to the European Parliament on the Main Aspects and Basic Choices of the CFSP (2008).

⁷ See P.J. Kuijper, 'Of "Mixity" and "Double-hatting", *EU External Relations Law Explained*' (Amsterdam: Vossiuspers UvA 2008), at 14. According to Jean-Claude Piris the HR is 'triple-hatted'. See J.-C. Piris, *The Lisbon Treaty: A Legal and Political Analysis* (Cambridge: Cambridge University Press 2010), at 243. Because the HR/VP also presides over the Defence Ministers' Council and the Development Ministers' meetings, and because s/he is also President of the European Defence Agency and Chairperson of the board of the EU Institute for Security Studies, it is better to use the term 'multi-hatting'.

⁸ See Art. 13(3) of Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, OJ 2010 L 201/30 (hereinafter: EEAS Council Decision): '(...) The review shall, if necessary, be accompanied by appropriate proposals for the revision of this Decision. In that case, the Council shall, in accordance with Article 27(3) TEU, revise this Decision in the light of the review by the beginning of 2014'. In December 2011, Ashton reported in a rather fragmented way to the European Parliament on the first year of functioning of the EEAS. See, *inter alia*, the Remarks by High Representative Catherine Ashton at the AFET Committee in European Parliament in Strasbourg, 12 December 2011, Press release A 511/11, Brussels, 13 December 2011; and the Speech by High Representative Catherine Ashton on the Common Security and Defence Policy in the European Parliament in Strasbourg, Press release A 512/11, Brussels, 13 December 2011. This was followed by the report called for in Art. 13(1) EEAS Council: EEAS, *Report by the High Representative to the European Parliament, the Council and the Commission*, 22 December 2011, made available to the public on 5 January 2012. Before that, MEPs had already given a mixed verdict on the first year of the European External Action Service. See E. Brok, 'One Year On', *The Parliament Magazine*, 10 October 2011, at 46; C. Tannock, 'Providing a service', *Ibid.*, at 49 and other MEPs in the box on page 45.

⁹ See also P. Quin (ed.), 'Making European Diplomacy Work: Can the EEAS Deliver?', 8 *College d'Europe EU Diplomacy Papers* (2011); and S. Hemra, T. Raines and R. Whitman, 'A Diplomatic Entrepreneur: Making the Most of the European External Action Service', *Chatham House Report* (December 2011).

the efforts of the EEAS to devise new strategies to promote EU values in external action (section 4). Attention will be paid to the need to draft a more comprehensive global strategy than one premised only on security (section 4.2) and the work carried out in 2011 to adapt the Union's neighbourhood policy to the demands for democratisation spurred by the Arab Spring (section 4.3), to come up with a comprehensive approach to deal with the separation of Sudan (section 4.4), to endorse a strategy for security and development in the Sahel region (section 4.5), to adopt a strategy for the Horn of Africa (section 4.6), and to formulate a new direction for the EU on human rights and democracy (section 4.7). Subsequently, two new trends in EU external action will be discussed, namely the quest for more joint development programming (section 5) and the setting up of effective EU crisis response capabilities (section 6). The paper will come full circle with an assessment of inter-institutional politics prior to and since the creation of the EEAS (section 7). Concluding remarks will wrap up the essay (section 8).

2. A NEW STRUCTURE FOR A MORE PROGRESSIVE EU FOREIGN POLICY

In order to develop a more coherent, effective and visible EU foreign policy, the Lisbon Treaty has introduced changes at two levels. Firstly, the objectives of the Union's external policies, from security over development to trade and environment, were merged in Article 21 of the Treaty on European Union (TEU).¹⁰ Arguably, this should cater for a more integrated approach to EU foreign policy-making. Secondly, the institutional architecture and procedural frameworks for EU external action were fundamentally amended. The most relevant institutional changes in the area of EU external relations relate to the position of the High Representative of the Union for Foreign Affairs and Security Policy, who 'conducts' the Union's foreign, security and defence policies, contributes proposals to the development of those policies, and – together with the Council – ensures compliance by the Member States with their CFSP obligations. Primary authority for policy choice in these areas continues to reside with the European Council (which has been formally institutionalised and is now permanently chaired by a President) and the Council of Ministers. The Commission remains responsible for policy initiation, implementation *and* external representation in the other domains of EU external action.

To enhance coordination, the HR has been tasked to, *inter alia*, take part in the work of the European Council, preside over the Foreign Affairs Council and hold the post of Vice-President of the European Commission. As such, the HR/VP is in a unique position to assist the Council and the Commission in ensuring consistency between the different areas of the Union's external action and between these and the EU's other policies. When properly carried out, the upgraded position of HR/VP ought – at least in theory – to allow for a stronger and more integrated development and implementation of the EU's foreign, security and defence policy. Unless there is a clear vision and an agreed framework strategy on the EU's road map, backed by a strong determination and support from EU institutions and Member

¹⁰ For a comparative analysis of the constitutionalisation of foreign policy objectives, see J. Larik, 'Shaping the international order as a Union objective and the dynamic internationalisation of constitutional law', 5 *CLEER Working Papers* (2011).

States alike, the HR/VP's Lisbon mandate is too big to handle. It might well be so that the post of UN Secretary General is no longer 'the most difficult job in the world'.¹¹ The combination of three full-time and a number of side-jobs, each requiring different political allegiances, results in strains on physical presence, juggling of conflicting interests and the delays brought about by the search for the lowest common denominator, for all of which Ashton has been – and will no doubt continue to be – criticised.¹²

To assist the HR/VP in making the best of this mission impossible, the Lisbon Treaty foresees the creation of a new diplomatic service of the EU, for which the idea originated during the European Convention in the Working Group on External Action.¹³ A single general procedural rule in Article 27(3) TEU was provided for the establishment of the EEAS, i.e. the adoption of a Council Decision, proposed by the High Representative, with the consent of the Commission, after having heard the opinion of the European Parliament. In fact, most of the questions regarding the establishment of the EEAS were left open by the Treaty. It was up to the negotiators of the different parties involved to reach agreement on principles and technical issues.¹⁴ The High Representative's initial proposal for a Council Decision on the set-up and functioning of the EEAS was drawn up in March 2010 and became subject to intense debates with Member States and, notably, the European Parliament. Much to her credit, the HR managed to navigate the high seas of inter-institutional politics and swiftly moved the legislative process towards the adoption of the constituent Council Decision of 26 July 2010.¹⁵ This was followed by the adoption of three parallel legislative acts, which changed the EU's financial and staff regulations and established a start-up budget for the EEAS.¹⁶ The completion of this complex process in barely six months triggered one insider to call it a 'Guinness record for speed'.¹⁷ But as noted above, the speedy compromise has come at a price: EU institutions and Member States have made sure to keep their influence over the contraption. This is perhaps most visible when reading Article 2(2) of the EEAS Council Decision, which states that the 'EEAS shall assist the

¹¹ According to Trygve Lie, the first incumbent. See <<http://www.norway-un.org/NorwayandUN/The-Legacy-of-Trygve-Lie/Trygve-Lie-first-UN-Secretary-General/>>.

¹² Ashton has been criticised – so far most vocally by the Belgian Minister of Foreign Affairs – for not proposing a well-thought-out medium and long-term analytical approach for the Union's foreign and security policy. See L. Maroun, 'Steven Vanackere dit ses quatre vérités à Cathy Ashton', *Le Soir* (Brussels, 4 May 2011).

¹³ *Final Report of Working Group VII on External Action*, CONV 459/02, Brussels, 16 December 2002, at 6-7.

¹⁴ For an analysis of those negotiations, see L. Erkelens and S. Blockmans, 'Setting Up the European External Action Service: An Institutional Act of Balance', 1 *CLEER Working Papers* (2012).

¹⁵ Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, *OJ* 2010 L 201/30.

¹⁶ Regulation No 1081/2010 of the European Parliament and of the Council of 24 November 2010 amending Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as regards the European External Action Service, *OJ* 2010 L 311/9; Regulation No 1080/2010 of the European Parliament and of the Council of 24 November 2010 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities, *OJ* 2010 L 311/1; and European Parliament resolution of 20 October 2010 on Council's position on Draft amending budget No 6/2010 of the European Union for the financial year 2010, Section II – European Council and Council; Section III – Commission; Section X – European External Action Service (13475/2010 – C7-0262/2010 – 2010/2094(BUD)).

¹⁷ P. Skytte Christoffersen, 'A Guinness Record for Speed', in E. Drieskens and L. Van Schaik (eds.), *The European External Action Service: Preparing for Success*, 1 Clingendael Paper (2010).

President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations'. Thus, the EEAS is expected to serve several political masters.

The EEAS was launched on 1 December 2010 and became operational a month later when entire administrative entities were transferred¹⁸ from the General Secretariat of the Council,¹⁹ the European Commission's DG RELEX²⁰ and parts of DG DEV.²¹ In numerical terms this means that on 1 January 2011 2,805 agents (of which 1,084 local) were transferred from the Commission (establishment plan figures: 585 administrator (AD) posts from DG RELEX, 93 from DG DEV, and 436 from the Delegations) and 675 posts were transferred to the EEAS from the Council Secretariat (establishment plan figures: 411).²² 118 new posts will be created in the period 2011-2013 to establish the management structures in headquarters and to add staff in EU Delegations to perform the new tasks under the Lisbon Treaty.²³ Whereas 'the biggest part of the heavy lifting is done' and the organisation is well on its way in establishing itself on a firm footing,²⁴ it will take a while before the EEAS is fully staffed.²⁵

¹⁸ See the Annex to the Council Decision of 26 July 2010 establishing the EEAS, and Press Release IP/10/1769, Brussels, 21 December 2010.

¹⁹ CSDP and crisis management bodies, DG E and officials on secondment to European Union Special Representatives and CSDP missions.

²⁰ With the notable exceptions of staff responsible for the management and implementation of financial instruments, and staff responsible for the payment of salaries and allowances to staff in Delegations.

²¹ Directorate D (ACP II – West and Central Africa, Caribbean and OCT), Directorate E (Horn of Africa, East and Southern Africa, Indian Ocean and Pacific), Unit CI (ACP I: Aid programming and management) and Unit C2 (Pan-African issues and institutions, governance and migration).

²² See EEAS, *Report by the High Representative to the European Parliament, the Council and the Commission*, 22 December 2011, pt. 21.

²³ See C. Tannock, 'Providing a Service', *The Parliament Magazine*, 10 October 2011, at 49: 'Post Lisbon, a key responsibility for parliament's committee on foreign affairs (AFET) is, after agreement by Ashton, to conduct hearings examining nominated senior EAS officials prior to taking up their key postings in third countries. Almost without exception, the quality of the nominees she has proposed has been impressive. These candidates for heads of mission and EU special representatives presented before AFET count senior ambassadors and former national foreign ministers among their ranks, and represent the elite of the member state diplomatic corps and ex-commission RELEX officials.'

²⁴ Catherine Ashton, 'Aiming High', *The Parliament Magazine*, 10 October 2011, at 44: 'Since the EEAS was launched in January, we have successfully brought together staff from different institutions, adopted common IT, security and human resources procedures and set about meeting our target that a third of our staff should come from national diplomatic services. The biggest part of the heavy lifting is done. That no "millennium bugs" happened is already a major achievement.'

²⁵ D. O'Sullivan, 'Setting up the European External Action Service: part II', Speech at the IIEA, Dublin, 6 October 2011, available at <<http://www.iiea.com>>. O'Sullivan discussed the challenges of making the (embryonic) EEAS operational, since its launch in January 2011 on a 'shoestring'. He pointed to successes on this front which include: the creation of a provisional organisational structure incorporating three different institutional cultures (the Commission, the Council of the EU and the national diplomatic services); the negotiation of a deal for what will become the EEAS' Brussels headquarters; and the launch of a major recruitment drive which has put the EEAS well on the way to achieving its targets for national diplomats to comprise one third of the EEAS staff by 2013. O'Sullivan pointed out that the EEAS processed 8,800 applications for 181 vacant positions, of which 66 managing posts either in HQ or in EU Delegations; 66% of those posts were filled by SNEs – well underway to reaching the 2013 target of one third of the EEAS contingent of the EEAS consisting of national diplomats. Incidentally, it is worth observing that the EEAS is not a giant diplomatic service. At full capacity, the EEAS will employ a total staff of almost 4,000 people, with approximately 1,600 staff in Brussels and the remainder based at 140 overseas posts. The service's annual operating budget for the 2011 financial year stood at €464 million (€184 million in HQ and €280 in Delegations). As such, the EEAS compares to the diplomatic service of a small to medium EU Member State (e.g. the Netherlands), whereas the big three Member States employ thousands (e.g. approximately 13,500 for the UK and 12,000 each for France and Germany).

The configuration of the initial transfer of civil servants (in headquarters and in Delegations) suggests that the organisational *ethos* will – at first – be predominantly based on the administrative routines inherited from the European Commission.²⁶ In the short term, this will require an adaptation in working methods from the experts transferred from the Council General Secretariat's DG-E (i.e. the geographical and global and multilateral elements). However, the prevalence of Council Secretariat routines is required by the EEAS Council Decision in some areas, most notably in crisis management. In the longer term, however, it will be interesting to see how the diversity in national diplomatic cultures among temporarily seconded national experts will impact on the development of an *esprit de corps* within the EEAS.²⁷ Arguably, politicising parts of the external action brief previously shaped by way of the so-called 'Community method' is well underway.²⁸

One of most precious assets of the EEAS, the centre of activity of the new Service, is the network of EU Delegations on the ground.²⁹ Delegations in third countries have successfully made the transition from Commission to EU Delegations and now pack a political section (EEAS staff) and an operations section (Commission staff). Provided they are appropriately staffed, the strengthened Delegations can have a crucial threefold role: (i) they can provide services at headquarters in Brussels with information and analysis of developments on the ground, contacts with local actors and a reinforced outreach; (ii) they can coordinate the work of Member States' embassies (formerly a task performed by the rotating Presidency), helping Europeans 'sing from the same hymn sheet';³⁰ and (iii) they can represent an authoritative interlocutor to third country governments and societies in all areas of cooperation, with positive consequences on the EU's image abroad.³¹ As to the first point, the challenge in 2011 has been to radically transform the cooperation between HQ and Delegations in order to get a genuine two-way interaction right, both in terms of policy-shaping and policy execution.³² In taking up the permanent presidency to coordinate positions between Member States' embassies (point (ii) above), the EEAS has been particularly effective in bilateral settings. A case in point

See S. Hemra, T. Raines and R. Whitman, *supra* note 9, at 4 (figures 1 and 2). For another point of reference, the US Embassy in Beijing packs around 1,000 personnel.

²⁶ D. O'Sullivan, 'Setting up the European External Action Service', Speech at the IIEA, Dublin, 14 January 2011, available at <<http://www.iiea.com>>. See also C. Carta, *The European Diplomatic Service: Ideas, Preferences and Identities* (London: Routledge 2011).

²⁷ The EEAS Council Decision stipulates that the members of the staff of the EEAS are subject to a high degree of mobility, in particular between the central administration and the Delegations. Because of this, all EEAS staff will in principle serve periodically in EU Delegations. This rotation is essential for staff to acquire experience on the ground and also to avoid an excessive identification with the interests of the states in which they are posted. Likewise, it is stated that civil servants serving in the EEAS will have the right to apply for posts in their institution of origin under the same conditions as internal candidates. It is by no means impossible that in the long term the existing links between the Action Service and the staff's institutions of origin should be weakened, thus reinforcing the institutional autonomy of the EEAS.

²⁸ Countertrends can also be observed, i.e. the 'judicialisation' of EU foreign policy and the 'developmentalisation' of security policy. I am grateful to Christophe Hillion for pointing this out to me.

²⁹ Currently, there are 140 EU Delegations, including the ones recently opened in Libya and South Sudan. See EEAS, *EU diplomatic representation in third countries – Second half of 2011*, doc. 11808/2/11, REV 2, PESC 805, RELEX 676, COCO_3.

³⁰ Dixit Michael Mann, Catherine Ashton's spokesman. See A. Rettmann, 'Van Rompuy: EU should take credit for Libya', *EU Observer* (Brussels, 5 April 2011).

³¹ See R. Balfour and H. Ojanen, 'Does the European External Action Service Represent a Model for the Challenges of Global Diplomacy?', 1117 *IAI Working Papers* (2011).

³² See *infra*, sections 5 and 7 of this essay.

is the EEAS' civilian operational coordination in response to crises like the ones in Egypt, Fukushima and Libya.³³ In multilateral settings, however, there have been quite a lot of problems, not caused by EEAS itself, but by those Member States insisting on a strict reading of the attribution of (shared) competences under the Lisbon Treaty.³⁴ Finally, on the third point, one could expect the EU Head of Mission, who brings together all aspects of EU external policies, to become the most important Ambassador around in many capitals of the world because s/he has most cards up his/her sleeve.

According to Article 4(3) of the Council Decision, full internal coordination, i.e. between all the structures of the EEAS, shall be ensured. How this principle of internal coherence will be operationalised, however, is not entirely clear. It did not help that, in its first year of activities, the Service was not yet in a single headquarters; its people scattered over different buildings.³⁵ But aside from the logistics, there is a more fundamental problem of disconnect between a top heavy management and the expert desk officers down the chain. On paper, the EEAS is there to provide expert analysis to the HR. On-the-ground presence and knowledge should beef up the Union's foreign policy aims. This is supposed to provide bottom-up coherence to EU external action, even if coherence at the very top is still missing at times. The problems that are reported concern the difficulties of communication and cooperation between the HR and her Cabinet, on the one hand, and core services of the EEAS (esp. geographic divisions), on the other. By several accounts, both from within and outside of the EEAS, the Service is suffering from a 'lack of morale, damaging infighting and a hazy chain of command',³⁶ as well as blurred boundaries between certain portfolios (e.g. between the EEAS and DG DEVCO), and feedback from the top sometimes late or lacking. These disconnects would be due to a combination of Catherine Ashton's style of leadership and insistence that there is no place for the Community method within the EEAS; the alleged lack of ownership by the cabinet (due to a composition which hardly reflects any Commission experience); and the differences in political agenda-setting.³⁷ These and other problems have led several experienced staff to leave the Service.³⁸

The problems mentioned above are compounded by some structural deficiencies. For instance, the institutional changes provided for by the Lisbon Treaty were introduced without the simultaneous streamlining of the distribution of competences or decision-making procedures. The Lisbon Treaty has not ended the first/second pillar dichotomy of late: Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP) remain located in the Treaty on European Union, separate from the Union's other external relations policies in the Treaty on the Functioning of the EU (TFEU): trade, development, cooperation with third countries, humanitarian aid, relations with international organisations. Arguably, this legal and procedural partition will complicate the inter-institutional quest for an

³³ See *infra*, section 6 of this essay.

³⁴ See *infra*, section 7.1 of this essay.

³⁵ The move into the new headquarters of the EEAS on the Rond Point Schuman in Brussels, rather symbolically located in-between the European Commission's Berlaymont building and the Council's Justus Lipsius building, is foreseen to be executed between December 2011 and May 2012.

³⁶ See H. Mahony, 'Diplomatic Service Blues', *EU Observer* (Brussels, 29 June 2011).

³⁷ Interviews with EU officials.

³⁸ See A. Rettmann, 'Staff leaving EU diplomatic service amid bad working conditions', *EU Observer* (Brussels, 30 September 2011).

integrated approach to EU external action encompassing a security dimension. This is not helped by the fact that the organisational chart of the EEAS incorporates the split: the crisis management structures (EUMS, CMPD, CPCC) are set apart from the directorate on global and multilateral issues and do not formally link up with the divisions on conflict prevention and security policy. Relying on informal work processes is not the most transparent, effective and durable way of coordinating and mainstreaming policy issues which once coloured everything what the EEAS was supposed to be about (cf. the tagline accompanying an earlier version of the organigramme: 'The EEAS: a service for conflict prevention, security + stability').³⁹ It is the Corporate Board's task to ensure internal coherence and coordination and to make sure that the global and multilateral issues are reflected in the geographical and regional concerns and *vice versa*. The idea is thus to 'mainstream' thematic – usually very technical – issues on a systematic basis to the geographic directorates, and that the geographic directorates treat the thematic directorates as resource bases. All the while, the Corporate Board – most notably the Deputy Secretary-General for Political Affairs – offers 'guidance' towards an integrated policy approach.

Of course, coordination within the Service is one thing. But the real litmus test is whether the EEAS will be able to provide the kind of assistance to the various political masters that it is supposed to serve and coordinate external policies in such a way so as to attain a higher level of coherence in EU external action.⁴⁰ I will return to this issue in section 7 of this paper.

3. AN INDICATIVE OVERVIEW OF EEAS OPERATIONS IN 2011

In operational terms, the most important test for the EEAS, as indeed the EU as a whole, is how the EU deals with its neighbouring countries. According to Ashton: 'I said from the beginning that I thought how we operate in our neighbourhood, the effectiveness of what we did, would define the European Union into the future. And I still believe that.'⁴¹ The EU's slow and timid response to the momentous change brought about in Tunisia and other 'Arab Spring' countries put the spotlight on the birth pains of the EEAS, which had only just become operational on 1 January 2011.⁴² This was compounded by a frustration about the lack of leadership at the highest institutional levels.⁴³ However, after some initial hesitations and setbacks,⁴⁴

³⁹ The High Representative's draft of 23 July 2010.

⁴⁰ For the EU as a whole, the external litmus test is the extent to which international partners find the EU to be more effective and visible.

⁴¹ See Press release A 511/11, *supra* note 8, at 2.

⁴² Compare, e.g., Statement by EU High Representative Catherine Ashton and European Commissioner for Enlargement Štefan Füle on the situation in Tunisia, Press release A 010/11, Brussels, 10 January 2011; 'EEAS senior officials' mission to Tunisia', Press Release A 029/11, Brussels, 26 January 2011; and Statement by the EU High Representative Catherine Ashton on Tunisia, Press Release A 034/11, Brussels, 28 January 2011. See also T. Garton Ash, 'If this is young Arabs' 1989, Europe must be ready with a bold response', *The Guardian* (London, 2 February 2011): 'What happens across the Mediterranean matters more to the EU than the US. Yet so far its voice has been inaudible'.

⁴³ See R. Balfour and H. Ojanen, *supra* note 31, at 2.

⁴⁴ See D. O'Sullivan, *supra* note 25, referring to the up and downs of the EU-Tunisia Task Force and the failure of the recipients to show up at an international donor conference organised by the EEAS: 'we had to fix the car while the engine was running'. The Task Force eventually took place at the end of September and brought together the instruments of the EU and support from the EIB, the EBRD, the

and faced with a military intervention by Member States outside of the EU framework in Libya, the EEAS reacted to events and played its role as both a policy and donor coordinator. It provided added value in terms of crisis response, democratic transformation and economic development, responding to the specific needs of each country, rather than viewing them all through the same policy lens.⁴⁵ Also, it supported wider international efforts through the use of sanctions against the Gaddafi regime in Libya and the Assad regime in Syria.⁴⁶

In the wider Muslim world, one can point to a number of other small successes achieved by the High Representative and the EEAS which illustrate the added value of the Lisbon structures.⁴⁷ In 2011, the EU has taken a more central role in the Quartet efforts to get the Middle East Peace process unstuck. Of course, being a 'player' as well as a 'payer'⁴⁸ also means a heightened risk of mediatized failure. Still, the HR, supported by the EEAS and the Union's international partners, is occupying a policy space otherwise left to other members of the Quartet. Also, the High Representative and the EEAS managed to prevent a complete fall-out of Member States over Palestine's application for UN membership in September. However, the EEAS cannot take applause for having forged a more constructive common approach to the issue of statehood of Palestine. In fact, the agreement to disagree collapsed at the end of October when Member States voted differently over the admission of Palestine to UNESCO. On a more positive note, the EU, by way of the HR and the EEAS, continues to lead on behalf of the international community (E3+3) to engage with Iran on its nuclear programme.

Though the Southern Neighbourhood and the Muslim world have come into much sharper focus due to events unfolding in 2011, the EU has tried hard not to neglect its other neighbourhoods. The Eastern neighbours were taken up in the drive forward pushed by the reviewed strategy for the ENP in May 2011. Despite some regrettable steps backward in the transition to democracy in Belarus (political prisoners) and an independent judiciary in Ukraine (sentencing of Yulia Tymoshenko), the strategic importance of the Eastern Partnership was reinforced at the September 2011 summit at Warsaw⁴⁹ and underlined at the EU-Ukraine summit of December 2011. However, the EU's half-hearted calls for respect of common values in return for closer relations ring hollow in the scramble for influence in the neighbourhood shared with Russia.

In the Western Balkans, the EEAS has helped to maintain stability, defuse tension and push forward a pro-EU agenda. Under the leadership of Ashton's Counsellor Robert Cooper, the EEAS is facilitating an ongoing dialogue between Serbia and

African Bank, the World Bank and others. EUR 4 billion of support were pledged over three years to the economy of Tunisia.

⁴⁵ See *infra*, section 4.3. Coordination, both inside the EU and with international partners, is a key element in the mandate of the new EUSR for the Southern Mediterranean.

⁴⁶ For the EEAS' own appraisal, see 'One year on from the Arab Spring – A Summary of the EU's Action – 17/12/11', available at: <http://eeas.europa.eu/top_stories/2011/171211_arabsprin_en.htm> and 'The EU's response to the 'Arab Spring'', MEMO/11/918, Brussels, 16 December 2011.

⁴⁷ For a review of the EU's performance in Yemen, see S. Blockmans, 'Fit for purpose? The European External Action Service One Year On', 159 *Oxfam Briefing Paper*, 23 January 2012.

⁴⁸ See Remarks by High Representative Catherine Ashton at the AFET Committee in European Parliament in Strasbourg, 12 December 2011, Press release A 511/11, 13 December 2011, at 4. Ashton actually said: '(...) we have moved from payer to player'.

⁴⁹ See Council of the EU, 'Joint Declaration of the Eastern Partnership Summit', Press release 14983/11 (PRESSE 341), Warsaw, 30 September 2011.

Kosovo aimed at establishing relations and creating lasting stability and prosperity. Ashton herself has staved off an independence referendum in Republika Srpska and thus contributed to (short-term) stability in Bosnia and Herzegovina.⁵⁰

Further afield, the EU has been fighting piracy and famine in the Horn of Africa, through a series of actions off the coast of Somalia and on land. A 'more integrated' EU approach to crisis response that brings together humanitarian, disaster relief, crisis management capabilities, peacebuilding and development cooperation has been hammered out in a strategy for the region.⁵¹ A similar strategy, but more focused on security issues, has been developed for the Sahel region.⁵² A more comprehensive approach, albeit on workable for only a limited period of time, was endorsed for Sudan and South Sudan.⁵³ What transpires from the development of these (sub-)regional strategies is the effort which the EEAS, as single coordinator of all activity, has put into making the different parts of the EU *famille* act in a more joined up way.

In the wake of the September 2010 European Council Summit on strategic partnerships, the EEAS has intensified its ties with strategic partners, including China, the US, Russia, India, Brazil and South Africa, whose support and close cooperation is essential to bring forward on global issues like security, trade or climate change. 'The driving force of this exercise is to beef up the way [the EU conducts its] diplomacy, by focusing more on core priorities seeking greater policy and institutional coherence and focusing on delivering more results.'⁵⁴ Arguably, the postponement of the EU-China Summit in October 2011 shows that the EU has not fully implemented the lessons it learnt after having been snubbed by President Obama's decision not to attend the EU-US Summit of May 2010.

At the multilateral level, the EEAS did score a small victory with the adoption on 3 May of UN General Assembly resolution 65/275 on the participation of the European Union in the work of the UN.⁵⁵ The resolution, which was adopted by 180 out of 197 votes in favour after a failed attempt in September 2010,⁵⁶ sets out working modalities that allow the Union's external representatives to present the positions of the EU and its Member States at the UN. However, this does not alter the EU's observer status in the UN General Assembly. Also, the resolution does not give the EU a right to vote or to co-sponsor draft resolutions or decisions in writing. The resolution does give the EU the ability to speak early among other major groups, when speaking on behalf of the 27 EU states, and invites the EU – i.e. the President of the European Council and the HR/VP – to intervene in the general debate at the opening of the General Assembly. Previously, Palestine and the Holy See were the only observers that could take the floor in that debate. In addition, the EU has obtained the right to orally present proposals and amendments, a possibility that no other observer has at its disposal, and the right to reply once to a speech regard-

⁵⁰ See L. Smiljanic, 'Dodik cancels referendum after talks with Ashton', *Southeast European Times* (Banja Luka, 16 May 2011).

⁵¹ See *infra*, section 4.5.

⁵² See *infra*, section 4.4.

⁵³ See *infra*, section 4.3.

⁵⁴ D. O'Sullivan, *supra* note 25.

⁵⁵ For a critical appraisal of the EU's 'success' in pushing for the resolution, see J. Wouters, J. Odermatt and T. Ramopoulos, 'The Status of the European Union at the United Nations After the General Assembly Resolution of 3 May 2011', *GGG Opinions* (July 2011).

⁵⁶ See M. Emerson and J. Wouters, 'The EU's Diplomatic Debacle at the UN. What else and what next?', *CEPS Commentary* (October 2010).

ing EU positions. What is more, the resolution also applies to the participation of the EU – i.e. the EEAS and the Commission – in the sessions and work of the UN General Assembly, its committees and working groups, in international meetings and conferences convened under the auspices of the General Assembly, and in UN conferences. However, the resolution has no direct implications for the EU's participation in the work of other bodies or multilateral fora. Thus, the resolution does not apply generally in the UN system. Nevertheless, the EEAS has already proved its added value in some of the UNGA sub-committees and in the negotiations for a future Arms Trade Treaty.⁵⁷

What transpires from the above is that after a series of somewhat shaky performances, the EEAS has started to perform consistently better in the Brussels arena, in the countries in which it represents the European Union, alongside the HR/VP's international counterparts, including in multilateral fora. It is especially by joining up the different strands of EU external policies and instruments that the EEAS can show its added value. One particular way of doing this is by entrusting its vision to paper.

4. PROMOTING EU VALUES THROUGH NEWLY STYLED STRATEGIES

4.1. Introduction

In its first year of activities, the EEAS has been working on the development of a number of comprehensive strategies: the March 2011 Partnership for Democracy and Shared Prosperity with the Southern Mediterranean and the May 2011 Review of the European Neighbourhood Policy, both prepared in cooperation with the Commission and published as joint communications of the Commission and the High Representative; the March 2011 strategy for the Sahel; the June 2011 'Comprehensive Approach' to Sudan; and the November 2011 Strategy for the Horn of Africa. Whereas most of these strategies were long in the making (i.e. by the European Commission), they were given a final spin by the EEAS and adopted or endorsed under headings reflecting the post-Lisbon institutional architecture. Once the EEAS gets more established, one may expect the Service to take a more proactive and bottom-up approach to strategy-making, just like it has done with the preparation of the new strategy on human rights and democracy which will be adopted in the first half of 2012, and like it should do to revise the Union's overarching strategy (now embodied in the European Security Strategy of 2003). In separate sub-sections, attention will be paid to all these issues. The potential and limits of the role which the EU can play in crafting global strategies in multilateral settings, notably that of the United Nations, will also be touched upon. A case in point concerns the way the EEAS used the enhanced observer status in the UN General Assembly, to influence negotiations on an Arms Trade Treaty.

4.2. Towards a more comprehensive overarching strategy

It is a self-proclaimed objective of the European Union to increase its strategic

⁵⁷ See *infra*, section 4.8.

approach to tackling global challenges.⁵⁸ In fact, there is no shortage of strategic aims that guide the Union's external action. Apart from 134 individual country strategies and a number of 'strategic partnerships', the EU has strategies for most regions (Central Asia, the Andes, etc.), thematic issues (counterterrorism, non-proliferation, etc.), even continents (Asia, Africa, Antarctica).⁵⁹ The problem is not just the sheer number of EU strategies but also the fact that they are developed by different institutions and scattered over so many policy documents that the EU 'begins to look rather rudderless'.⁶⁰ The Council's European Security Strategy, the joint European Consensus for Development,⁶¹ the Commission's EU Strategy for Sustainable Development⁶² and 'Trade, Growth and World Affairs'⁶³ are just a few examples. Their contents are often closely connected, as the challenges posed by the security-development nexus have taught us.⁶⁴ Tackling the coordination issue therefore calls not only for better institutional coordination but also for more strategic decision-making. Illustrative in this respect is the Commission's report 'Towards a new Energy Strategy for Europe 2011-2020', adopted by the Council in 2010.⁶⁵ Elements thereof made it on to the strategic agenda of the European Council and were then bounced back to both Commission and the High Representative.⁶⁶

Since the entry into force of the Lisbon Treaty, the onus has been on the European Council, which, according to Article 22(1) TEU, 'shall identify the strategic interests and objectives of the Union' that relate to the CFSP and to other areas of EU ex-

⁵⁸ See the High Representative's *Report on the Implementation of the European Security Strategy – Providing Security in a Changing World*, *supra* note 3. More recently, see *European Council Conclusions of 16 September 2010*, EUCO 21/10, CO EUR 16, CONCL 3.

⁵⁹ EU strategy papers are available at <http://www.eeas.europa.eu/sp/index_en.htm>.

⁶⁰ S. Duke, 'Parameters for Success', in E. Drieskens and L. Van Schaik (eds), *The European External Action Service: Preparing for Success*, 1 *Clingendael Paper* (2010) at 35.

⁶¹ See Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus', OJ 2006 C 46/1.

⁶² See the European Commission's 2009 review of the 2001 EU Strategy for Sustainable Development, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0400:FIN:EN:PDF>>.

⁶³ DG TRADE's *Trade Policy as a Core Component of the EU's 2020 Strategy*, available at <http://trade.ec.europa.eu/doclib/docs/2010/november/tradoc_146955.pdf>. The strategy aims to enhance the position of EU economy by getting new opportunities for trade and investment, deepening the existing trade and investment links, helping EU businesses access global markets, gaining foreign investment, implementing enforcement measures, and enhancing the 'spirit of multilateralism and partnership' in trade. These aims, no doubt, entail political consequences.

⁶⁴ See C. Ashton, 'Foreword', in S. Blockmans, J. Wouters & T. Ruys (eds.), *The European Union and Peacebuilding: Policy and Legal Aspects* (The Hague: T.M.C. Asser Press 2010), at V. See also *ESS 2008*, at 8-9; and ECJ, Case C-91/05 *Commission v Council* (Small Arms and Light Weapons/ECOWAS) [2008] ECR I-03651.

⁶⁵ *Council Conclusions on Digital Agenda for Europe* of the 3017th Transport, Telecommunications and Energy Council meeting, Brussels, 31 May 2010.

⁶⁶ *European Council Conclusions on Energy*, Press Release PCE 026-11, 4 February 2011, pt. 11: 'There is a need for better coordination of EU and Member States' activities with a view to ensuring consistency and coherence in the EU's external relations with key producer, transit, and consumer countries. The Commission is invited to submit by June 2011 a communication on security of supply and international cooperation aimed at further improving the consistency and coherence of the EU's external action in the field of energy. The Member States are invited to inform from 1 January 2012 the Commission on all their new and existing bilateral energy agreements with third countries; the Commission will make this information available to all other Member States in an appropriate form, having regard to the need for protection of commercially sensitive information. The High Representative is invited to take fully account of the energy security dimension in her work. Energy security should also be fully reflected in the EU's neighbourhood policy.'

ternal action and take decisions which 'may concern the relations with a specific country or region or may be thematic in approach.' Whereas the President of the European Council, Herman van Rompuy, has started off a long-overdue and necessary debate on the EU's strategic priorities, the first European Council Summit to that effect was unfortunately not a great success. It amounted to not much more than a general brainstorming exercise in which not even the term 'strategic partner' was defined.⁶⁷ The analyses prepared by Ashton's team at the time (September 2010) have been described as 'rather disappointing'.⁶⁸ It is here that a fully-fledged EEAS could prove instrumental in taking a leadership role to review the EU's thematic and geographic policies and supporting the HR and the President of the European Council with a well-thought-out medium and long-term analytical approach for the Union's foreign and security policy.⁶⁹ Previously, one of the successes of Javier Solana's team was the development of the 2003 European Security Strategy (ESS) as an overarching strategic concept. One of the weaknesses of the Commission in external relations was its lack of overall planning capacity. In this constellation, the hybrid HR/VP position, supported by the EEAS (composed of Commission and Council staff plus seconded national experts from the Member States), is expected to make a difference. A new overarching strategy produced by the EEAS 'could both improve the internal atmosphere within the body (by strengthening its sense of purpose and clarifying its role) and renew the EEAS's legitimacy [and that of HR/VP Ashton] *vis-à-vis* the member states'.⁷⁰ In the wake of the historical changes in parts of the Arab World, and against the wider background of the rise of the BRICs, the ESS is an obvious candidate for a thorough revision. If and when the EEAS puts itself to the task, the overarching strategy should, in line with the Lisbon Treaty's rearrangements, adopt a more comprehensive approach to EU external action than the security prism through which the Union's grand strategy was developed during the Solana years. As a blueprint for EU diplomacy of the 21st century, it should elaborate a comprehensive set of positions on major international issues and match ends, ways and means.⁷¹ A different title would then also make sense.⁷²

A crucial task for the EEAS in achieving greater coherence in EU external action is to identify the policy areas between which coordination is necessary. Virtually every EU policy has to it an external dimension that fits into the grander scheme of EU presence in the world and could therefore also fall within the ambit of the EEAS' activities. These policy areas include those with a clear, chiefly external

⁶⁷ *European Council Conclusions* of 16 September 2010, Press Release EUCO 21/10, CO EUR 16, CONCL 3.

⁶⁸ See A. Rettmann, 'Ashton designates six new "strategic partners"', *EU Observer* (Brussels, 16 September 2010).

⁶⁹ See S. Hemra, T. Raines and R. Whitman, *supra* note 9, at 8: 'The single biggest challenge for the next phase of the EEAS is to set a clear and coherent course for the medium and long term and to ensure that the main stakeholders of European diplomacy – the EU's 27 member governments and the EU institutions, including the EEAS itself – share this vision and are prepared to support it politically, diplomatically and with the right resources.'

⁷⁰ See R. Balfour and H. Ojanen, *supra* note 31.

⁷¹ To create such a strategic framework, S. Hemra, T. Raines and R. Whitman propose a process in two parallel steps: first, the HR should initiate a review of the ESS. Then, the review of the EEAS in 2013 should be utilised to identify the specific ways in which the EEAS can contribute to the overall priorities outlined in the ESS and how it can be equipped for that purpose.

⁷² Biscop suggests to call it a 'European Global Strategy'. See S. Biscop, 'A New External Action Service Needs a New European Security Strategy', 29 *EGMONT Security Policy Brief* (2011) at 3.

character – CFSP, CSDP, common commercial policy, development cooperation, humanitarian aid, enlargement, and the ENP – as well as those usually classified as internal Union policies – the Area of Freedom Security and Justice, agriculture and fisheries, public health, environment, energy, transport and tourism. The added value of the EEAS' involvement in strategic planning certainly lies at the crossroads of external policies, as has been shown by the nexus between development cooperation and security policy. With the eradication of poverty as *the* overarching development goal in the Lisbon Treaty, the alignment of aims between the foreign and security policy goals – a task specifically entrusted to the EEAS⁷³ – entails a degree of joint planning and programming, not just between the institutions but also with the Member States, as indeed integrated forms of implementation (see below, section 5).

4.3. Reviewing the ENP

Since its inception in 2003/4, the European Neighbourhood Policy (ENP) has been criticized for its half-hearted promises, weak institutional and legal frameworks, sums for aid and technical assistance too small to affect real transformation, restrictive measures too soft to inspire political change, and competing visions oscillating between a one-size fits all, a south versus east and an 'own merits'-based approach for the common policy.⁷⁴ The weaknesses of the ENP had been recognized by the European Commission itself in several of its annual strategy papers published before the entry into force of the Treaty of Lisbon.⁷⁵ Efforts to establish closer ties at the sub-regional level have not lived up to expectations either. The Union for the Mediterranean (UfM),⁷⁶ which has been troubled by controversy since it followed on from the Barcelona Process in 2008, was dealt a severe blow by Israel's war

⁷³ See the fourth recital of the preamble of the EEAS Council Decision; Art. 21(2)(d) TEU and Art. 208 TFEU.

⁷⁴ See, e.g., M. Emerson, 'The European Neighbourhood Policy: Strategy or Placebo?', 215 *CEPS Working Document* (2004); M. Cremona and C. Hillion, 'L'Union fait la force? Potential and Limitations of the European Neighbourhood Policy as an Integrated EU Foreign and Security Policy', 39 *EU Working Papers* (2006); S. Blockmans and A. Łazowski, 'Conclusions: Squaring the Ring of Friends', in S. Blockmans and A. Łazowski (eds.), *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration* (The Hague: T.M.C. Asser Press 2006), 613-639; R. Balfour and A. Missiroli, 'Reassessing the European Neighbourhood Policy', 54 *EPC Issue Paper* (2007); G. Edwards, 'The Construction of Ambiguity and the Limits of Attraction: Europe and its Neighbourhood Policy', 30 *Journal of European Integration* (2008) 45-62.

⁷⁵ See, e.g., Communication from the Commission to the Council and the European Parliament, *On strengthening the European Neighbourhood Policy*, COM (2006) 726 final, Brussels, 4 December 2006; Communication from the Commission to the Council and the European Parliament, *A Strong European Neighbourhood Policy*, COM(2007) 774 final, Brussels, 5 December 2007, at 2: '(...) a great deal remains to be done.' In May 2010, the Commission published a rather sobering evaluation of ambitions and activities during the first five years of the ENP. See Communication from the Commission to the European Parliament and the Council, *Taking stock of the European Neighbourhood Policy*, COM(2010) 207 final, Brussels, 15 May 2010.

⁷⁶ See Joint Declaration of the Paris Summit for the Mediterranean, adopted under the co-presidency of the President of the French Republic and the President of the Arab Republic of Egypt, in the presence of, *inter alia*, the EU, the UN, the Gulf Cooperation Council, the Arab League, the African Union, the Arab Maghreb Union, the Organisation of the Islamic Conference, and the World Bank, Paris, 13 July 2008. The Joint declaration is based on the Communication from the Commission to the European Parliament and the Council, *Barcelona Process: Union for the Mediterranean*, COM(2008) 319 final, Brussels, 20 May 2008.

on Gaza in December of that year and has been virtually dead since the Arab uprisings of early 2011.⁷⁷ The Eastern Partnership (EaP) has fared a little better since its creation in May 2009,⁷⁸ but it has certainly not (yet) lead to 'a step change in relations with our Eastern neighbours, with a significant upgrading of political, economic and trade relations'.⁷⁹

In reaction to the momentous change brought about by the Arab Spring, the Commission and the High Representative, supported by the EEAS, on 8 March 2011 published a joint communication proposing 'A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean',⁸⁰ which was complemented shortly afterwards by the (regular) Review of the ENP, also prepared by the services of the Commission and the High Representative. In its 2011 strategy paper on the ENP, the EU declared its intent on seizing a new momentum to reinforce the policy and to recalibrate relations with each of its neighbours:

The Lisbon Treaty has allowed the EU to strengthen the delivery of its foreign policy: co-operation with neighbouring countries can now be broadened to cover the full range of issues in an integrated and more effective manner. This was a key driver for initiating a review, in consultation with partner countries and other stakeholders, of the European Neighbourhood Policy (ENP) in summer 2010. Recent events throughout the Southern Mediterranean have made the case for this review even more compelling. The EU needs to rise to the historical challenges in our neighbourhood.⁸¹

Unlike trade, development or the CFSP, the European Neighbourhood Policy did not have a specific Treaty basis prior to Lisbon. Different policy instruments from across all three Union pillars were brought together in an attempt to develop an integrated structure for broad policy objectives. The Treaty of Lisbon has now introduced a specific provision on the relations between the EU and its neighbours: Article 8 stands among the Common Provisions in Title 1 of the Treaty on European Union, so right up there with the values and objectives of the Union. Whereas Article 8 TEU is a specific provision on relations with neighbouring countries, it also reflects a general provision in the TEU which gives the Union a mandate to seek to develop relations and build partnerships with third countries that share its principles and values (cf. Article 21 TEU).⁸² Paragraph 1 of Article 8 prescribes that the Union

⁷⁷ The resignation of the UfM's Secretary General highlighted the organisation's shaky foundations and apparent inability to tackle key issues in the region. See A. Willis, 'Mediterranean Union chief resigns as Egypt unrest continues', *EU Observer* (Brussels, 27 January 2011).

⁷⁸ Communication from the Commission to the European Parliament and the Council, *Eastern Partnership*, COM(2008) 823/4 final, Brussels, 3 December 2008 and the accompanying Commission Staff Working Document, SEC (2008) 2974/3. Under the Polish presidency, an effort was made to give the EaP a new boost. See Joint Declaration of the Eastern Partnership Summit, Warsaw, 29-30 September 2011, Press release 14983/11 (PRESSE 341), *supra* note 49.

⁷⁹ See the High Representative's 'Report on the Implementation of the European Security Strategy – Providing Security in a Changing World', see *supra* note 3, at 10.

⁸⁰ COM(2011) 200 final, Brussels, 8 March 2011.

⁸¹ European Commission and High Representative of the European Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *A new response to a changing Neighbourhood*, COM (2011) 303 final, Brussels, 25 May 2011.

⁸² For an analysis of the May 2011 review of the ENP, as seen in the light of Art. 8 TEU, the new neighbourhood clause in the Lisbon Treaty, see S. Blockmans, 'Friend or Foe? Reviewing EU Relations with its Neighbours Post Lisbon', in P. Koutrakos (ed.), *The European Union's External Relations A Year After Lisbon*, 3 *CLEER Working Papers* (2011) 113-124.

develop a 'special relationship' with neighbouring countries. Arguably, this Treaty language sets EU relations with neighbouring countries apart from relations between the EU and countries farther afield, however strategic such alliances may be. As such, the Treaty of Lisbon sends a strong signal to countries with which the EU shares its external borders: (i) the Union is obliged to ('shall') develop a relationship with its neighbours.⁸³ Moreover, (ii) this relationship will be of a 'special' nature. The TEU gives clues as to what is to be understood by the notion of a 'special relationship'. Article 8(1) prescribes (i) the establishment of an area of prosperity and good neighbourliness, (ii) founded on the values of the Union, (iii) characterised by close and peaceful relations based on cooperation.

Like the creation of a 'ring of friends', the establishment of an area of prosperity and good neighbourliness, an area characterised by close and peaceful relations based on cooperation, sounds somewhat utopian. The Union's neighbourhood is littered with actual and potential flash points for conflicts between both (*de jure*) states and secessionist entities c.q. *de facto* states,⁸⁴ as well as between large swaths of countries' populations and the undemocratic and repressive regimes that govern them. These and other realities continue to negatively influence bilateral relations among neighbouring countries and between the EU and certain neighbouring states (e.g. Belarus and Syria),⁸⁵ and stand in the way of the creation of the single area of peace, love and understanding that the Treaty calls for.

Of more practical relevance is the reference in Article 8 TEU to the values of the Union, reflecting Article 2 TEU which states that the Union 'is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights'. These are the values listed in the Council Conclusions of June 2003 and underpinning the 2011 – revised – strategy for the ENP. As well as being based on the claim of existing shared values, a noticeable element of the ENP is the EU's encouragement of the partner countries to embrace international norms and standards, notably by signing up to international and regional human rights agreements.⁸⁶ This is in line with the Union's own objectives to promote international law in its relations with the wider world (cf. Articles 2(5) and 21(1) TEU). In fact, all this attention paid to sharing the Union's values is a sign of the political conditionality that underpins the 'special relationship' with the neighbours. The Commission, in its May 2011 strategy on the ENP, has made explicit the conditionality attached to shared values:

⁸³ *Ibid.* The use of the singular 'relationship' in the Treaty provision could – *a contrario* – be implied to mean that the EU is not obliged to develop (special) relations with all its neighbours, for instance not with those that do not share the Union's values. A relationship embodied by a comprehensive policy – such as the ENP – seems sufficient to satisfy the Treaty obligation resting on the Union's shoulders.

⁸⁴ See S. Blockmans and R.A. Wessel, 'The European Union and Peaceful Settlement of Disputes in its Neighbourhood: The Emergence of A New Regional Security Actor?', in A. Antoniadis, R. Schütze and E. Spaventa (eds.), *The European Union and Global Emergencies: Law and Policy Aspects* (Oxford: Hart Publishing 2011), 73-103.

⁸⁵ The recent sanctions imposed by the EU on Belarus and Syria are symptomatic in this respect. See, e.g., Council Implementing Regulation (EU) No 505/2011 of 23 May 2011 implementing Regulation (EC) No 765/2006 concerning restrictive measures against President Lukashenko and certain officials of Belarus, *OJ* 2011 L 136/48 (as amended); and Council Regulation (EU) No 442/2011 of 9 May 2011 concerning restrictive measures in view of the situation in Syria, *OJ* 2011 L 121/1 (as amended).

⁸⁶ *A new response to a changing Neighbourhood*, COM(2011) 303 final, Brussels, 25 May 2011, at 5: 'Commitment to human rights and fundamental freedoms through multilateral treaties and bilateral agreements is essential. But these commitments are not always matched by action. Ratification of all the relevant international and regional instruments and full compliance with their provisions, should underpin our partnership.'

The new approach must be based on mutual accountability and a shared commitment to the universal values of human rights, democracy and the rule of law. It will involve a much higher level of differentiation allowing each partner country to develop its links with the EU as far as its own aspirations, needs and capacities allow. (...) Increased EU support to its neighbours is conditional. It will depend on progress in building and consolidating democracy and respect for the rule of law. The more and the faster a country progresses in its internal reforms, the more support it will get from the EU.⁸⁷

This approach aims to provide greater support to partners engaged in building 'deep democracy – the kind that lasts'.⁸⁸ As such, the EU does not seek to impose a model or a ready-made recipe for political reform, but will insist that each partner country's reform process reflect a clear commitment to the universal values that form the basis of the 'special relationship'. And while the two regional dimensions of the ENP, covering the Eastern Partnership countries and the Southern Mediterranean, will be strengthened 'so that the EU can work out consistent regional initiatives in areas such as trade, energy, transport or migration and mobility', the ENP will push – much more than before – towards an 'own merits'-based approach whereby it is easier to differentiate between friends and foes: the partnership will develop with each neighbour individually, on the basis of its needs, capacities and reform objectives. The initiative thus lies with the partner country and EU support, in the form preferential commitments, will be tailored accordingly.⁸⁹ Some partners may want to move further in their integration effort, which will entail a greater degree of alignment with EU policies and rules leading progressively to economic integration in the EU Internal Market. For countries where reform has not taken place, the EU will reconsider or even reduce funding. It is questionable whether this approach is fully in line with the obligation resting upon the Union's

⁸⁷ Ibid., at 2 and 3. Conversely, '[t]he EU will uphold its policy of curtailing relations with governments engaged in violations of human rights and democracy standards, including by making use of targeted sanctions and other policy measures. Where it takes such measures, it will not only uphold but strengthen further its support to civil society. In applying this more differentiated approach, the EU will keep channels of dialogue open with governments, civil society and other stakeholders. At the same time and in line with the principle of mutual accountability, the EU will ensure that its resources are used in support of the central objectives of the ENP.'

⁸⁸ Ibid., at 2: '(...) because the right to vote is accompanied by rights to exercise free speech, form competing political parties, receive impartial justice from independent judges, security from accountable police and army forces, access to a competent and non-corrupt civil service.' Incidentally, the revised ENP, for all the welcome focus on democratic reform, makes life more difficult for the governments of post-revolutionary Tunisia and Egypt. 'In effect, we are using more conditionality on the transitional governments than on the dictators who preceded them,' according to R. Balfour, cited in T. Vogel, 'A reflection on old, failed neighbourhood policies', *European Voice* (Brussels, 26 May 2011). See further K. Raik, 'Between Conditionality and Engagement: Revisiting the EU's Democracy Promotion in the Eastern Neighbourhood', 80 *FIIA Briefing Paper* (2011).

⁸⁹ *A new response to a changing Neighbourhood*, COM(2011) 303 final, Brussels, 25 May 2011, at 3: 'This enhanced support will come in various forms, including increased funding for social and economic development, larger programmes for comprehensive institution-building (CIB), greater market access, increased EIB financing in support of investments; and greater facilitation of mobility. These preferential commitments will be tailored to the needs of each country and to the regional context.' See also page 20: the new European Neighbourhood Instrument 'should be increasingly policy-driven and provide for increased differentiation, more flexibility, stricter conditionality and incentives for best performers, reflecting the ambition of each partnership'. See further the Conclusions of the 3130th Foreign Affairs Council meeting of 30 November and 1 December 2011, Press release 17720/11 (Presse 458), PR CO 74, at 14-16.

shoulders in Article 8(1). After all, the European Union seems to have turned the tables by moving from the Brussels-centred development of a one-size-fits-all ENP to the variable geometry of a set of differentiated relationships largely defined by the neighbouring countries themselves. More than before the entry into force of the Treaty of Lisbon, the Union is thereby relying on its power of attraction, which has inspired candidate countries to adhere to the conditions of EU membership. Arguably, the Union's 'softer' power in the neighbourhood – one that is premised on a stake in the internal market but not the institutions, and the below average sizes of the EU's financial envelopes destined to rebuild and transform the societies destroyed by years of dictatorial rule and recent internal conflict, are unlikely to inspire the reforms that will one day form the basis for the kind of cooperation on which a single area of prosperity and good neighbourliness can be established.

4.4. Comprehensive Approach to Sudan

In the run-up to the declaration of independence of South Sudan on 9 July 2011, the EU was involved in the implementation of the 2005 Comprehensive Peace Agreement through the preparation of the referendum on independence (9-15 January 2011).⁹⁰ The still volatile security situation kept Sudan on the Foreign Affairs Council agenda from November 2010 to January 2011. The HR/VP created an inter-service task force for Sudan, bringing together the EEAS' geographic desk, CMPD and CPCC (on one occasion also the Managing Director for Crisis Response and Operational Coordination), the Commission's DGs ECHO and DEVCO, with video links to Juba, Khartoum, New York and Addis Ababa, all under the baton of EU Special Representative Rosalind Marsden (the former UK Ambassador to Sudan who started on 1 September 2010). The aim of the task force is to exchange information; it does not have decision-making capacity. The EUSR, supported by the EEAS, sets the agenda and draws up the minutes. But the task force went further: it rubber stamped the EUSR-EEAS' draft 'Comprehensive Approach to Sudan' before it was sent to the PSC and subsequently 'endorsed' by the Foreign Affairs Council in its Conclusions of 20 June 2011.⁹¹ The Comprehensive Approach was neither 'adopted' nor made public for fear of backfiring on the EU and/or negatively influencing Khartoum's position towards South Sudan ahead of the latter's independence day.⁹² As the name suggests, the document represents an integrated model to political, diplomatic, security, stability, trade, aid, humanitarian, development, and governance issues.

The Comprehensive Approach only provided for a short-term strategy. As a consequence of the split of Sudan, the EU Special Representative's initial mandate was changed over the summer of 2011 so as to cover both North and South Sudan, as well as the transnational threats posed by the Lord Resistance Army.⁹³ In the

⁹⁰ For a pre- and post-Lisbon comparison of the different EU actors' involvement with Sudan, see J.J. Piernas Lopez, 'La Unión Europea en Sudan Antes Y Después del Tratado de Lisboa: Coherencia "Sin Perjuicio De"', forthcoming in *Revista de Derecho Comunitario Europeo*.

⁹¹ See 3101st Foreign Affairs Council meeting, Press release 11824/11 (PRESSE 181), Luxembourg, 20 June 2011, at 8, pt. 8.

⁹² Interviews with EU officials.

⁹³ This was a consequence of Ashton's decision to get rid of the EUSR for the Great Lakes region.

wake of the South Sudanese independence,⁹⁴ the parameters of the Comprehensive Approach have changed due to renewed fighting in the region. It is highly unlikely that EU Member States would still support incentives for Khartoum while the regime of Omar al-Bashir, who is already indicted by the International Criminal Court on counts of genocide and crimes against humanity over the crisis in Darfur, is attacking its own people in Blue Nile State and South Kordofan.

4.5. Strategy for Security and Development in the Sahel

The March 2011 EU Strategy for Security and Development in the Sahel region is one of the first integrated geographic strategies put forward under the new institutional setup, and may as such be read as a good indicator of how things are going for strategic planning in the field of EU external action.⁹⁵ It has been pointed out that, four years in the making, the birthing of the Sahel strategy came after 'some skilful diplomacy and drafting midwifery from the EEAS'.⁹⁶ The Sahel strategy is noteworthy for three reasons, of which two will be brought to the fore here.⁹⁷ The first is the merging of security and development concerns in a geographic strategy. Although the nexus between the two policy areas is not new (cf. ESS 2003, the 2005 European Consensus on Development, the 2007 Joint Africa-EU Strategy, and every revision of the Cotonou Agreement since 2000), the specific dedication to 'security and development' in a strategy for a particular sub-region is. It is not certain, however, whether the alleged presence of Al Qaeda in the region merits so much attention.⁹⁸ One could query whether the more prominent linking of security and development is perhaps indicative of a growing trend of the securitisation of development, one that is now spurred in EU external action by the new EEAS. Arguably, the real indicator to assess this trend will be how much of it will make its way into the next round of country and regional strategies. The next strategies will be prepared by the EEAS (no doubt in cooperation with the Commission's DG DEVCO) and are supposed to be ready in 2014. What is certain already now, is that the EEAS will place its mark by politicising the development agenda.⁹⁹

The second noteworthy issue is the question to what extent the Sahel Strategy represents what NGOs like to call a 'whole-of-EU' approach:

Generally, there is a common game played with EU strategies in external action: EU member states view them somewhat as a vehicle to influence the EU institutions, while EU institutions perceive them as a way of bringing its member states more into a coherent EU approach. The Sahel Strategy would seem to place EU institutions front and centre. But is the EEAS going to be able to 'lead', or more likely 'facilitate' a more coher-

⁹⁴ The EU, by way of the EEAS' Chief Operating Officer D. O'Sullivan, recognised South Sudan as an independent and sovereign state. See EEAS Press release, 'Establishment Agreement signed between the European Union and the Republic of South Sudan_09/12/11', 9 December 2011.

⁹⁵ The Sahel strategy is available at the website of the EEAS: <http://www.eeas.europa.eu/africa/docs/sahel_strategy_en.pdf>.

⁹⁶ A. Sherriff, 'The EU Strategy for Security and Development in the Sahel – An indicator for the future of EU External Action?', ECPDM-talkingpoints.org (23 September 2011).

⁹⁷ The third dimension mentioned by Sherriff resonates a more general point made by NGOs, i.e. the need for external consultation in the drafting process of documents, especially strategies.

⁹⁸ Interviews with EU officials.

⁹⁹ See S. Choi, 'Whose Aid is it Anyway? Politicizing Aid in Conflicts and Crises', 145 *Oxfam Briefing Paper*, 10 February 2011.

ent 'follow-through' of implementation by the various EU actors on the ground, particularly those member states with interests in the Sahel region? This is a tough issue and success or failure should not all be laid at the EEAS's door, as it is up to the member states as well.'¹⁰⁰

The task to 'lead' or 'facilitate' an integrated, whole-of-EU approach will be a common challenge for the EEAS in most areas of EU external action.

4.6. Horn of Africa Strategy

Like the Sahel strategy, the Horn of Africa Strategy came out of a messy four-year long process initiated by the Commission.¹⁰¹ After the draft was tabled before the Council and the EP, the Commission went back to the drawing board with the intention of developing a more integrated EU Strategy. The output resembled more of an academic document than a strategy paper. Hence, the HR/VP demanded an Action Plan with the Strategy, but the combination of the two documents was lost on the Member States. Back to the drawing board, a short nine-page 'framework' strategy was hammered out, which provides a chapeau for a series of strategies still to be developed – hopefully in a coherent manner – for the region (security, food security, cooperation in justice and home affairs, etc.). This approach was welcomed by the Council but the adoption of the strategy was upheld by the UK, which needed parliamentary clearance for it to pass.¹⁰² In spite of this little hiccup at the end of the lengthy inception process, the adoption of the Horn of Africa Strategy, annexed to the Foreign Affairs Conclusions of 14 November 2011,¹⁰³ and the appointment of an EU Special Representative for the region can be seen as one of the achievements of the EEAS in 2011 to lead/facilitate a collaborative effort by the European Commission's Secretariat-General (which coordinated activities between the Commission's DGs DEVCO, ECHO, TRADE, ENV, and JUST) and the geographic desks and crisis management bodies within the EEAS. Whereas the Sahel strategy mainly tackled the – fairly straightforward – security problems of trafficking and Al Qaeda in the West of Africa, the Horn of Africa Strategy represents a very different kind of strategy. The latter amounts to the first comprehensive and longer-term strategy on which the EEAS took the lead, driven by Ashton's desire to link up the Union's counter-piracy effort (Operation Atalanta) to the other strands of EU external action around.¹⁰⁴ Admittedly, it is difficult to explain the different challenges the region faces (stability, governance, food security, etc.) in isolation of each other.

¹⁰⁰ See A. Sherriff, *supra* note 96. For recommendations on the 'whole-of-EU' approach in the area of peacebuilding, see the statements on the EEAS by the European Peacebuilding Liaison Office, available at <<http://www.eplo.org>>, including 'The EU as a Global Force for Good: Peace at the Heart of the European External Action Service (EEAS)' (October 2009); 'Towards A Peacebuilding Strategy for the European External Action Service' (August 2010); 'Conflict prevention and peacebuilding inside the EEAS', Statement (February 2011); and 'Strengthening EU Policy and Guidance on Conflict Prevention' (June 2011).

¹⁰¹ Interviews with EU officials.

¹⁰² Another expression of the more general trend whereby the UK tries to avoid 'competence creep'.

¹⁰³ Foreign Affairs Council meeting conclusions of 14 November 2011, Press release 16756/11 (PRESSE 422), PR CO 68. Brussels, 14 November 2011.

¹⁰⁴ Interviews with EU officials.

4.7. A New Direction on Human Rights and Democracy in EU external action

True to the EU's 'constitutional' role as a value promoter, the Union is in need of a strong, yet balanced human rights strategy. The strategy should move away from the sometimes petty human rights priorities previously put forward by EU presidencies, mainstreamed throughout the Commission's DGs for six months and then abandoned. The document should not be unworkably big but at the same time comprehensive enough to fall in line with the legal objectives of EU foreign policy set forth in Article 21 TEU. Also, with the rise of the BRICs and the changing distribution of economic and political power globally, the focus ought – realistically – to move away from upholding the EU as the best example of a value-based community towards a human rights dialogue based more on similarities, one that stresses the adherence by the EU and its partners to universally binding human rights and fundamental freedoms. Ashton has been said to want the new strategy to be 'tailor-made', 'efficient' and 'universal', so that the protection and promotion of human rights runs as a 'silver thread' through all EU action both at home and abroad.¹⁰⁵

After having wasted months in defining the EEAS' own organisation on human rights (i.e. deciding on whether or not a separate human rights directorate is the best way to mainstream human rights issues) and choosing a methodology (with valuable input from the Council General Secretariat), work on the strategy commenced. Whereas the inception process within the EEAS has been slow to materialise, the Division on Human Rights Policy Guidelines has taken the lead in coordinating an integrated effort to develop the strategy, in cooperation with, among others, the Commission's DG JUST. The methodology is based on a thorough, inductive and bottom-up approach: all 140 EU Delegations (incl. the newly opened missions in Libya and South Sudan) have been tasked to analyse – in cooperation with the Member States' embassies – the human rights situation in their respective countries and to draft a human rights country strategy for the next three years, drawing in all the instruments from the EEAS' toolbox. Those drafts were then presented to the Council's Working Party on Human Rights (COHOM is now permanently chaired by the EEAS), which met with the geographical committees to discuss and validate the country strategies. On this basis, a short 18-page framework Human Rights Strategy has been drafted. It was adopted on 12 December 2011 by the European Commission and the High Representative as a Joint Communication to the European Parliament and the Council entitled 'Human Rights and Democracy at the heart of the EU External Action – Towards a more effective approach'.¹⁰⁶ With a view to producing a step change in the EU's effectiveness, it sets out a vision of how the EU will broaden, deepen and streamline its action on the international scene to make a real difference to people's lives. The strategy proposes action in four areas – delivery mechanisms, integrating policies, building partnerships, and speaking with one voice. The Joint Communication seeks the views of the European Parliament and the Council on how opportunities can be

¹⁰⁵ See 'Speech by Catherine Ashton, EU High Representative for Foreign Affairs and Security Policy and Vice President of the European Commission, on the Annual Human Rights Report, at the European Parliament', SP11-100EN, Strasbourg, 13 December 2011.

¹⁰⁶ COM(2011) 866 final, Brussels, 8 December 2011.

exploited and challenges can be addressed. It provides an orientation around which to gather views and evidence, including from other interested parties, so as to strengthen the EU's external human rights strategy. The strategy will in all likelihood be put to the Council in early 2012. Again, the UK has already indicated that it wants to pass the strategy before parliament before it can approve the document.¹⁰⁷

4.8. Arms control

Finally, it is worth devoting some attention to the role played by the EU on the issue of global arms control. Currently, negotiations on an Arms Trade Treaty (ATT) are underway at the United Nations. During the past three EU presidencies (Belgium, Hungary and Poland), the High Representative's Personal Representative on Non-proliferation of Weapons of Mass Destruction (Annelisa Giannella) was allowed to chair EU coordination meetings in New York and to take the lead in writing the official interventions made by the EU in the ATT prepcom. This external representation of the Union followed on from the preparatory work conducted in the framework of the Council under the EEAS' permanent chairmanship of the Working Party on Conventional Arms Export (COARM). These arrangements allowed the EU to take a leadership role in the international negotiations on the ATT.

Due to the EU's failed attempt to secure enhanced observer status in UNGA in September 2010, the Hungarian EU presidency still had to lend its voice to the Union's message by simply reading out the speeches in the prepcom and the UNGA's First Committee (Disarmament and International Security), even if the COARM of Giannella was leading the Union's internal efforts. From May 2011 onwards, when EU speaking rights in the UNGA had been secured, the HR's Personal Representative also read out the speeches on behalf of the EU. Apart from this formal change, the Lisbon Treaty arrangements did not change much in the field of the ATT. Unfortunately, this picture has been marred by the UK's impromptu and contradictory interventions from the floor after EU interventions had been made.¹⁰⁸ Also, if a comparison is made with the efforts of Giannella's team to take a leading role on the Non-Proliferation Treaty review conference of 2010, one observes a much lower coordination role for the EU, due to the raised interests of the nuclear powers within the Union. Still, it is fair to say that thanks to the matching of expertise, political clout and permanency at chairing meetings, the EEAS serves both the continuity at policy-making level and a better visibility of the EU in the UNGA. The effectiveness of EU external action in the field of arms control has probably also enhanced in the First Committee, at least going by preliminary observations: the EU is getting its message across on all aspects of the negotiations, which appreciated by the chair of the First Committee. The downside of having the EEAS taking the lead and speaking on behalf of the EU has been that, certainly in the context of ATT negotiations, there has been a drop-off in terms of participation by less interested Member States.¹⁰⁹ Overall, however, there is still a lot of poten-

¹⁰⁷ Interviews with EU officials.

¹⁰⁸ Interviews with EU officials.

¹⁰⁹ *Id.* It has been said that in the July 2011 prepcom, only 11 EU Member States made one single intervention. None of them were 'newish' Member States, which is a pity seeing that their recent history and radical transformation of import and export arms controls gives them an experience from which others can learn.

tial to be achieved. For instance, the EEAS and COARM could be more pro-active in the assessment of or reporting on measures taken by Member States to bring their legislation in conformity with the EU *acquis* on, e.g., defence procurement and arms exports. Also, the EEAS could stimulate Member States to share intelligence and analysis on sensitive issues (e.g. Libya, Chad). The latter could, e.g., be done in-country, by the EU delegation in cooperation with Member States' embassies.¹¹⁰

5. JOINT (DEVELOPMENT) PROGRAMMING

In terms of programming and implementation of development cooperation, the new division of tasks between the services of the EU institutions have become clear over the past year.¹¹¹ According to Article 9(2) of the Council Decision establishing the EEAS, the High Representative 'shall ensure overall political coordination of the Union's external action, ensuring the unity, consistency and effectiveness of the Union's external action, in particular through [a number of thematic and geographic] external assistance instruments'. These instruments include the Development and Cooperation Initiative (DCI), European Development Fund (EDF), the European Neighbourhood and Partnership Instrument (ENPI), the European Instrument for Democracy and Human Rights (EIDHR), the Instrument for Cooperation with Industrialised Countries, the Instrument for Nuclear Safety Cooperation, and part of the Instrument for Stability (IfS). The relevant article in the EEAS Council Decision states that

(...) throughout the whole cycle of programming, planning and implementation of the instruments referred to in paragraph 2, the High Representative and the EEAS shall work with the relevant members and services of the Commission without prejudice to Article 1(3). All proposals for decision will be prepared by following the Commission's procedures and will be submitted to the Commission for adoption.¹¹²

Thus, the EEAS Council Decision entrusts the Action Service with co-responsibility for preparing the Commission decisions on the strategic, multi-annual steps within the programming cycle.¹¹³ More specifically, this covers the first three multi-annual steps within the programming cycle: country and regional allocations; country and regional strategic papers; and national and regional indicative programmes. The objection that the EDF and DCI, which in budget terms represent

¹¹⁰ Here, the eight criterion of Council Joint Action 2008/230/CFSP of 17 March 2008 on support for EU activities in order to promote the control of arms exports and the principles and criteria of the EU Code of Conduct on Arms Exports among third countries, OJ 2008 L 75/81 (the criterion which links the economic capacity of arms importing countries to their state of development) could be better monitored. The EEAS could mobilise expertise from DG DEVCO to make expert analyses and risk impact assessments and share that with Member States.

¹¹¹ On aid to the neighbourhood – where Füle has the portfolio but not the staff – this division of tasks is far less clear.

¹¹² Art. 9(3) EEAS Council Decision.

¹¹³ To be sure, actions undertaken under: the CFSP budget; the Instrument for Stability (other than the part referred to in Art. 9(2) EEAS Council Decision); the Instrument for Cooperation with Industrialised Countries; communication and public Diplomacy actions, and election observation missions, are under the responsibility of the HR/EEAS. The Commission is responsible for their financial implementation under the authority of the HR in his/her capacity as Vice-President of the Commission. The Commission department responsible for this implementation shall be co-located with the EEAS. See Art. 9(6) EEAS Council Decision.

the largest portion of the overall external action budget, imply a different and essentially long-term approach to programming while much of the programming in other aspects of EU external action is annual or shorter-term appears to have been accommodated by the EEAS Council Decision. In both cases, any proposals 'shall be prepared jointly by the relevant services in the EEAS and in the Commission under the direct supervision and guidance of the Commissioner responsible for Development Policy and shall be submitted jointly with the High Representative for adoption by the Commission'.¹¹⁴ Similar stipulations apply in the ENPI context with reference to the Commissioner for Enlargement and Neighbourhood Policy.¹¹⁵

In short, the EEAS Council Decision does not *prima facie* remove the Commission's 'management functions', nor its rights of initiative or those of implementation (cf. Article 17(1) TEU). Article 210(2) of the TFEU, which permits the Commission 'to take any useful initiative' to promote coordination between the Union and the Member States on development cooperation is seen as further proof that the Commission should continue as the implementer of development policy. However, there is nothing in the *travaux préparatoires* of the EEAS Council Decision to suggest that any such transferral of implementation of development cooperation instruments to the EEAS has been seriously entertained.

Based upon the EEAS Council Decision, substantial management and implementation tasks are retained by the Commission with the EEAS playing a role in the programming aspects. Programming can be conceived of as relating to the political level where strategic goals are connected with more specific policy-making towards a country or region, while the actual management of projects (especially their financial aspects) and their execution will be tasks retained by the Commission, which oversees work performed at country-level by the EU Delegations. The latter issue has led to a row between the EEAS and the DG DEVCO on the assumption of managerial responsibility over staff in EU Delegations.¹¹⁶ A final outcome on this dispute may take account of the fact that a genuine two-way interaction between the policy-shaping and policy execution levels is instrumental in the adoption of a comprehensive approach to EU external action.

'Joint Development Programming' is an example of how the EEAS can lead the Union in setting up and implementing a coordinated policy for the EU *vis-à-vis* its external partners. As an experiment in the post-Lisbon context, a programming group with EU and Member State representatives developed, in close cooperation with the authorities in South Sudan's capital Juba, a joint country strategy paper for the new country in an effort to better identify priorities, programme funds, avoid overlaps and create synergies.¹¹⁷ On the side of the EEAS, CPCC and CMPD moved in parallel, driven by their own security agenda (demobilisation, reform of

¹¹⁴ Art. 9(4) EEAS Council Decision (emphasis added).

¹¹⁵ Art. 9(5) EEAS Council Decision.

¹¹⁶ See *infra*, section 7 of this paper. The Commission and the EEAS still need to agree on detailed arrangements relating to the issuing of instructions from the Commission to Delegations. Pursuant to Art. 5(3) of the EEAS Council Decision, the Commission has been claiming leadership over the technical expertise packed by what was previously 'its' staff, whereas the EEAS (notably its Executive Secretary-General) has been arguing on the basis of Arts. 1(4) and 4 of the Decision that it has been granted overall command responsibility for staff in Delegations, and thus the power to (re-)allocate tasks where necessary.

¹¹⁷ Interviews with EU officials. See also R. Barber, 'Getting it Right from the Start: Priorities for Action in the New Republic of South Sudan', *Oxfam Joint Briefing Paper*, 6 September 2011, a report

the army, training of police, etc.). As such, the security component was added to the strategy paper for South Sudan.

In an effort to broaden this positive experience, which was still rather ad hoc and did not follow a fixed template, DG DEVCO and the EEAS are currently in the process of identifying a set of countries (all over the world) where the initial success of joint programming could be replicated.¹¹⁸ It is Commissioner Piebalgs' ambition to see all of the EU's development aid programming being jointly coordinated with Member States by 2014. If all Member States buy into this approach, then this date could be a realistic target. In this respect, the EEAS is a driver for success. While cooperation between DG DEVCO and the EEAS has overall been good so far, the decision on who takes the lead has led to 'cordial rivalry'. For Joint Development Programming to become the norm, however, the process will need to become more structured over time. Here, the EEAS can prove instrumental.

6. CRISIS RESPONSE CAPABILITIES

It is common knowledge that in emergency situations one cannot establish a lasting crisis response coordination system with clear lines of command and control; this is better done in peace time. To this end, and in an effort to increase both the coordination capacity within the EU and the external visibility of the Union's crisis response missions, Catherine Ashton appointed Agostino Miozzo one day after the EEAS was formally launched.¹¹⁹ His first task at the job as Managing Director was to establish an internal coordination platform to manage crises. Building on Solana's Crisis Response and Coordination Team (which only focused on ESDP), a 'Crisis Management Board' (chaired by the High Representative or by the Executive Secretary General) was established to coordinate measures related to crisis prevention, preparedness and response capabilities to crises of all types. In response to specific crises, as necessary, the Crisis Management Board will establish so-called 'Crisis Platforms' to bring together all relevant EEAS services as well as services of the Commission and the Council Secretariat. The first Crisis Platforms were developed and tested in Tunisia (January 2011 onwards) and Egypt (February 2011 onwards), before they were more or less officialised during the Libyan crisis (Benghazi, March-May 2011). By now, the Crisis Platform has become a quasi-institutionalised inter-service structure which meets at director level (chaired by the EEAS' MD for crisis response and operational coordination). Its primary aim is the sharing of information among key EU actors (see figure below¹²⁰), so as to create coherence in EU external crisis action. The frequency with which it convenes depends on the crisis but it can meet daily, if necessary.¹²¹

which presents the views of 38 aid agencies working on peacebuilding, development and humanitarian assistance in South Sudan.

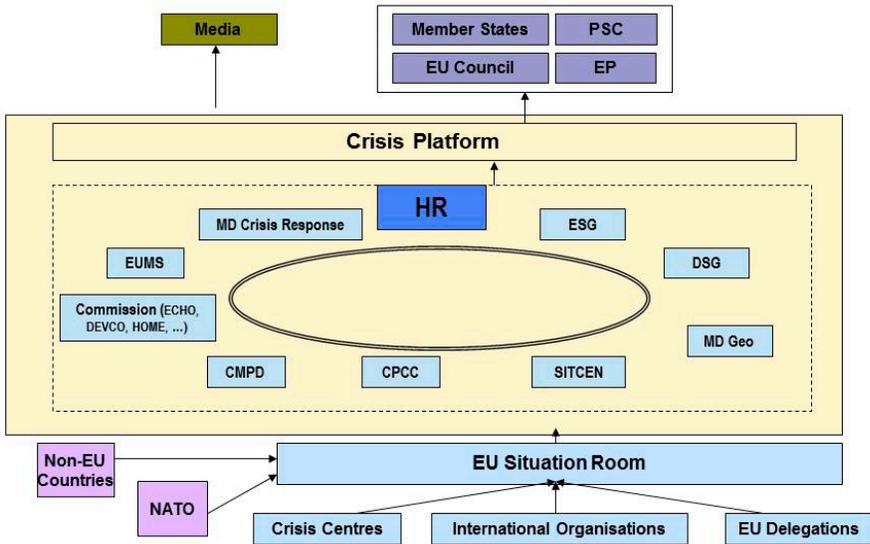
¹¹⁸ Interviews with EU officials.

¹¹⁹ Miozzo has direct – horizontal – lines with the EEAS' crisis management structures. According to the organigramme, the Managing Director stands in a direct hierarchical relationship to the HR.

¹²⁰ Kindly provided by and reproduced with the approval of the MD for crisis response and operational coordination.

¹²¹ The EEAS sets the agenda and draws up the minutes but policy and action follow the discussion.

The EEAS Crisis Platform



Arguably, the fact that this system works and allows for better planning and coordination (e.g. between the EEAS’ MDs for crisis response and Africa and DG ECHO in Côte d’Ivoire and the Horn of Africa) is not necessarily something to take applause for; after all, this is what the Treaty prescribes and the EEAS has materialised.¹²² Miozzo built up a team of more than a dozen people and helped create a brand-new 35-strong EU Situation Room,¹²³ so as to be able to rely (24/7) on real-time information and analysis provided by it when (i) deciding to activate the Crisis Platform, and (ii) cooperating with EU Special Representative, CSDP operations and/or EU Delegations, each within their own realm of competences and mandates, to offer, e.g., consular protection in a crisis situation (i.e. repatriate EU citizens).

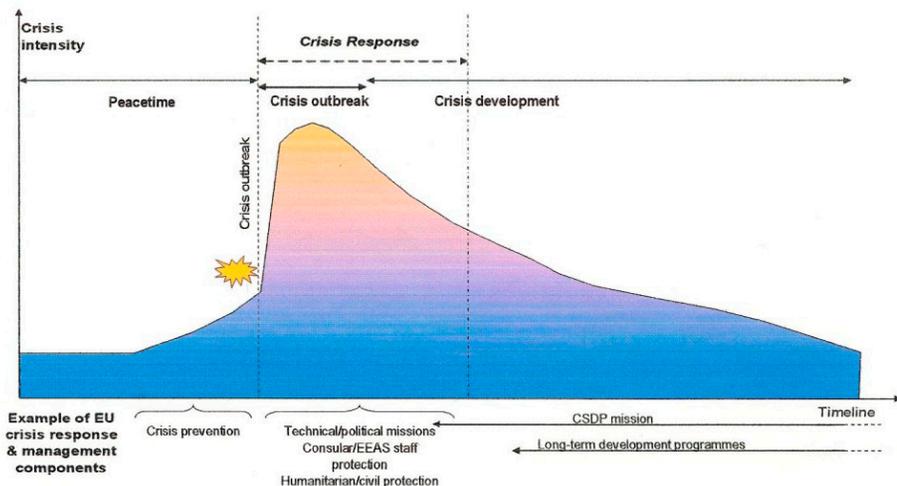
Now, a clear chain of command for ‘major emergencies’, i.e. crisis situations where the humanitarian component (ECHO) is not the only one to be activated, but where there is also a need for the provision of, e.g., military security and/or consular support. The acuteness of an emergency situation is defined politically within the EEAS (i.e. no more delays due to haggling over ‘terms of reference’ for missions to be dispatched – as was the case in the pre-Lisbon Solana era) and then put to

¹²² ‘Speech by High Representative Catherine Ashton on the Common Security and Defence Policy in the European Parliament in Strasbourg’, Press release A 512/11, 13 December 2011, at 2.

¹²³ The EU Situation Room is part of the EEAS Crisis Response Department. It is operational since 15 July 2011. The main tasks of the EU Situation Room are the following: to lead, manage and develop all EEAS permanence and situational awareness capabilities; to staff and support the EEAS Crisis Platform; to ensure that all EEAS services can continuously have access to accurate and updated situational awareness as regards the political situation worldwide, the particular situations affecting EU Delegations and EU CSDP Missions/Operations as well as events and situations potentially affecting EEAS staff from a duty-of-care perspective; to manage and develop relations with similar crisis mechanisms in certain international organisations and a number of third countries. See ‘High Representative Catherine Ashton visits the new EU Situation Room’, Press release A 286/11, Brussels, 18 July 2011.

the Political and Security Committee for political backing.¹²⁴ No action is undertaken without the Member States sanctioning it. The work of the crisis response directorate in the EEAS continues until the management of the operation can be handed over to the geographical desks of EEAS. This too constitutes a striking difference with the pre-Lisbon situation: the EU is now able to carry on with crisis response operations throughout an armed conflict (cf. Libya).¹²⁵ The graph below shows where crisis response operations normally start and end.¹²⁶

The Crisis Platform in the Crisis Response Cycle



The *Alleingang* of certain EU Member States (e.g. France and the UK) in the Libya crisis has painfully shown that the EEAS has to further operationalise its comprehensive approach to EU external action, by better linking the Union’s conflict prevention, mediation, development and conflict resolution activities.¹²⁷ CSDP has a vital role to play in addressing forms of organised crime, such as trafficking of drugs, weapons and human beings. These are directly linked to conflict. For example, the security threats in Sahel also relate to the influx of weapons and militias as a result

¹²⁴ E.g. in the protracted situation of the famine in the Horn of Africa, the new system was triggered when there was a problem for Operation Atalanta to escort transports by the World Food Programme.

¹²⁵ EEAS, ‘Emerging from the shadows, Libya takes its future in its own hands’, available at <<http://www.eeas.europa.eu>>, last accessed 28 October 2011. Between February and November 2011, the EU and its Member States gave humanitarian assistance, with emergency stocks of relief aid for refugees inside the country and for exiles outside it who could not return. During her visit to Benghazi in late May 2011 Catherine Ashton opened an EU Liaison Office which has since acted as a clearing house to coordinate European assistance. The EU continues to provide emergency help in the form of medical supplies, aid and fuel. Longer-term, the EU helps to build a new political space and prepare for free and fair elections, to create an effective administration and judiciary and a lively and responsible civil society and media, and to design economic policies for growth, development and jobs.

¹²⁶ Kindly provided by and reproduced with the approval of the MD for crisis response and operational coordination.

¹²⁷ E. Brok, ‘One Year On’, *The Parliament Magazine*, 10 October 2011, at 46: ‘The main problem still lies in defining roles. Examples of conflict areas can be found in the tension between Member States, national egotisms and the need for closer coordination and “one voice policy”. A prominent example is Libya. Ashton initiated some measures, but Member States reacted differently in the UN Security Council.’

of developments in Libya. On this the combination of all EU tools in a coherent strategy is essential.

To improve the early warning capacity of the EU, the model of the Crisis Platform was replicated to set up a so-called 'Conflict Prevention Group', which met for the first time in November 2011. The EEAS is thus effectively trying to turn a comprehensive approach into comprehensive action: by joining up all EU instruments it covers conflict prevention, development and conflict resolution. The EEAS is putting this to the test in the Horn of Africa and in the Southern Neighbourhood.

7. INTER-SERVICE AND INTER-INSTITUTIONAL RELATIONS

7.1. Cooperation with Member States

In its first year of activities, the EEAS has had to navigate the sometimes choppy waters of post-Lisbon inter-institutionalism in order to join up external relations policies in one comprehensive approach.¹²⁸ According to David O'Sullivan, Chief Operating Officer of the EEAS, the single biggest challenge in this respect was learning how to support the High Representative in her role as chair of the Foreign Affairs Council (also in its composition as Defence Council and Development Council), a role previously fulfilled by the Rotating Presidency.¹²⁹ As has been mentioned above,¹³⁰ the HR/VP swiftly took up this function, supported by the EEAS at lower levels of the FAC configuration: within the Political and Security Committee (permanently presided over by Olof Skoog), and at the level of 16 working groups (CONUN, COHOM, COARM, etc.). This represented a huge change, especially at these lower levels, in the sense that since 1 January 2011 the necessary continuity is provided to personal networking and information trading – the bread and butter of diplomats.¹³¹ At the level of the FAC itself, however, O'Sullivan's admission relates to some of the EEAS' supporting activities, which have been less successful, in particular with respect to the preparation of the meetings, agenda-setting, the time management of the meetings and the adoption of newsworthy conclusions.¹³²

¹²⁸ For an analysis of inter-institutional relations in the first year after the entry into force of the Lisbon Treaty, see L. Erkelens and S. Blockmans, *supra* note 14.

¹²⁹ D. O'Sullivan, *supra* note 25: 'The EEAS does everything, from agenda-setting to press conferences at the end. We have set a tentative agenda, through an internal planning process through to mid-2012. (...) Delegations in third countries have also successfully made the transition from Commission to EU Delegations, with huge cooperation from Member States in their national capitals and on the ground in third countries, taking over Presidency's role.'

¹³⁰ See *supra*, sections 2, 4.7 and 4.8 of this paper.

¹³¹ Conversely, what has been lost is the six-month burst of enthusiasm, energy and involvement of political leaders, previously spurred by the Ministry of Foreign Affairs of the country assuming the rotating EU Presidency.

¹³² Interviews with diplomats from permanent representations of Member States to the EU. In a letter addressed to Catherine Ashton in mid-December 2011, the Ministers of Foreign Affairs of Germany, France, Poland and nine other Member States asked the HR to improve the functioning of the EEAS. They notably suggested improvements to the preparation of the monthly FAC meetings by 'optimising the identification of political priorities'. See N. Gros-Verheyde, 'La lettre des Douze sur le service diplomatique européen. Que des «suggestions»!', *Bruxelles2* (Brussels, 18 December 2011), available at: <<http://www.bruxelles2.eu/politique-etrangere/service-diplomatique/la-lettre-des-douze-sur-le-service-diplomatique-europeen.html>>.

Other problems have surfaced though. Some of these problems are inherent to the Council Decision of 26 July 2010, which made the EEAS a turf for battles for power and influence among the institutions and the Member States, revealing deeper trends which could undermine the EEAS' ability to meet expectations. Symptomatic of the latter are the tensions and mistrust among the Member States. On the one hand, smaller members like Austria and the Benelux countries have been pleading to expand the 'supporting role' of EU Delegations in consular protection and crisis management.¹³³ On the other hand, big Member States have been warning against 'competence creep', opposing Ashton's proposed 5.8% increase of the EEAS' budget (e.g. France and the UK)¹³⁴ and blocking the adoption of more than 70 statements to be issued 'on behalf of the EU' (United Kingdom).¹³⁵ The restrictive interpretation of 'budget neutrality', whereby the EEAS should not raise EU costs for external relations, has made the High Representative's request for a budgetary increase unlikely to be approved at a time of national austerity.¹³⁶

A more physiological consequence of the Council Decision on the establishment of the EEAS results from merging administrative entities and staff from different institutional backgrounds (Commission, Council General Secretariat and the 27 diplomatic services of the Member States). Habits are engrained and loyalties are divided. A close reading of the Council Decision establishing the EEAS suggests that the Service may also internalise bureaucratic conflicts in the future, rather than do away with them.¹³⁷ The clash of working cultures coming together in the same house – metaphorically speaking, as the EEAS did not start moving into its new premises on Rond Point Schuman until the end of 2011 – have been a matter of grievance and have raised questions over how former Council and Commission officials will be able to work together within the EEAS. Staffing decisions continued to be made during the first year of the EEAS's existence, creating uncertainties about the internal division of portfolios and responsibilities as well as reporting

¹³³ See A. Willis, 'Ashton faces tough questions from EU ministers', *EU Observer* (Brussels, 23 May 2011).

¹³⁴ See A. Rettmann, 'UK attacks Ashton over "ludicrous" budget proposal', *EU Observer* (Brussels, 24 May 2011).

¹³⁵ See A. Rettmann, 'UK champions own diplomacy over EU "action service"', *EU Observer* (Brussels, 5 May 2011); T. Vogel, 'Split emerges over remit of the EU's diplomatic service', *European Voice* (Brussels, 26 May 2011); and J. Borger, 'EU anger over British stance on UN statements', *The Guardian* (London, 20 October 2011). The issue was supposedly resolved at the FAC meeting of 22 October 2011, when the Council endorsed the 'General Arrangements for EU Statements in multilateral organisations', 15901/11, Brussels, 24 October 2011. Arguably, this statement of the obvious (underlying the adherence to the principles of coherence and sincere cooperation), will not resolve anything unless the UK adopts a more relaxed attitude to the powers attributed to the HR in the Lisbon Treaty. If anything, these General Arrangements will probably lead the HR to play it safe and favour the adoption of statements *motu proprio* or on behalf of the EU and Member States.

¹³⁶ As R. Balfour and H. Ojanen, *supra* note 31, explain, '[a]t a time of austerity, there is also a strong functional and economic argument for taking advantage of the EEAS to rationalize the European foreign policy system as a whole. With cuts to national ministries of up 25%, Member States could create synergies with the EEAS to ensure that the downsizing of their national diplomacies is compensated by strengthening the European one, which could take on some of the currently duplicated functions they carry out. Certain consular services (such as granting Schengen visas), political and economic reporting and intelligence, coordination of humanitarian aid, evacuation of EU citizens at times of crisis or disasters could all be undertaken by EU Delegations around the world, enriched also by the knowledge and experience of national diplomats and officials who should compose one third of the EEAS.'

¹³⁷ See M. Lefebvre and C. Hillion, 'The European External Action Service: towards a common diplomacy?', 6 *SIEPS European Analysis* (2010) at 7.

lines.¹³⁸ An internal screening exercise in headquarters was recently conducted to see if human resources could be allocated more wisely and working methods of different parts of the Service could be improved so that the EEAS can deliver on its policy priorities. The conclusions of the screening should be implemented while the EEAS moves into the new building (Spring 2012). Thus, the organigramme will continue to be adjusted on the basis of practical experiences and new needs. Part of the streamlining exercise aimed at improving internal coordination, communication and the allocation of responsibilities should also be aimed at reducing disproportioned internal working processes (e.g. the duplicated servicing by scarce EEAS staff of the EU's external action heroes, most notably in the preparation of briefings) and at entrusting direct responsibilities to middle management to reach out to bi- and multilateral partners. What may seem as rather mundane issues or teething problems are in fact – as has been noted above – structural deficiencies and ought to be addressed sooner rather than later.¹³⁹ Of course, it should be kept in mind that the establishment of a common EU diplomatic service is a long-term project. The EEAS will need time to establish trust and smooth working relations with Member States who feel strongly that foreign affairs will remain a key part of their sovereign identity – of which the EU is only one part, an important but not an exclusive dimension.

7.2. Cooperation with the European Commission

The real challenge to join up external relations policies and instruments is exposed by the sometimes acrimonious inter-service cooperation between the European Commission, on the one hand, and the HR/VP and the EEAS, on the other.¹⁴⁰ These tensions put at risk the Union's ability to improve the coherence and consistency of its external action – one of the fundamental drivers of the Lisbon Treaty.

In part, these tensions too are structural, as they are the result of the pre-Lisbon negotiations by Commission President designate Barroso.¹⁴¹ In composing his second Commission (Barroso II), he detached the responsibility for the European Neighbourhood Policy from DG RELEX and moved it together with DG Enlargement. Moreover, he managed to secure that humanitarian and external assistance, enlargement, trade and development would remain within the Commission's remit, though requiring his designate Commissioners to closely cooperate with the HR/

¹³⁸ The organisation reports both to an Executive Secretary-General and to a Chief Operating Officer, serving directly under the High Representative on an equal footing. This arrangement had led to a fragmented line of command. Interviews with EU officials.

¹³⁹ Preferably during the review of the EEAS scheduled for mid-2013.

¹⁴⁰ D. O'Sullivan, *supra* note 25, argued that, while working relations with the Commission 'are good', the 'occasional bureaucratic hargy bargy will come as no surprise'. See also EEAS, 'Report by the High Representative to the European Parliament, the Council and the Commission', *supra* note 8, pt. 31: '[T]he implementation of [service level agreements] SLAs has encountered some difficulties in some cases. For example the service has limited autonomy in designing specific personnel policies different from the standard service on offer from DG Human Resources in the Commission. There has been a consistent problem in reflecting the specific needs of delegation staff in Commission-wide IT systems which were not designed for this purpose and now need to be adapted. Finally, in a number of cases the services offered by other institutions are digressive or time-limited, creating obvious resource issues for the EEAS in taking up the burden (particular problems of this type occurred in the area of security for the building housing the military staff and crisis management departments).'

¹⁴¹ See L. Erkelens and S. Blockmans, *supra* note 14.

VP.¹⁴² There is no doubt though that these actions have curtailed Ashton's responsibilities as entrusted to the HR/VP by the Treaty. This finding is reinforced if one considers that the requirement of close coordination on external relations within the Commission was later structured by Barroso under his own ultimate leadership.¹⁴³ On 22 April 2010, the President issued an Information Note entitled 'Commissioners groups' in which the VP was tasked to chair the group of Commissioners responsible for 'External relations', a group composed of the Commissioners for development cooperation, humanitarian aid, enlargement & ENP, trade and economic and monetary affairs.¹⁴⁴ Strikingly, the Note states that 'the President can decide to attend any meeting, which he will then chair'. Whereas the Commissioners Group for External Relations used to meet on a monthly basis under Barroso I, respondents have pointed out that the Group was only convened twice in the first two years of Barroso II, and that both meetings were presided by Barroso. From the foregoing, it becomes clear that Barroso's actions pre- and post-Lisbon have curtailed the HR/VP's responsibilities as entrusted to him/her by the Treaty. At the same time, it seems that Ashton – for the time being – has accepted a limitation of her function as Vice-President.¹⁴⁵ The 'normal tasks' of the Commission are therefore more expansive than a close reading of the Lisbon Treaty would lead one to believe.¹⁴⁶ This is crucial when one considers that the EEAS Council Decision provides that the Service supports the HR in his/her capacity as VP in fulfilling the external relations' responsibilities incumbent on the Commission and coordinating other aspects of the Union's external action '(...) without prejudice to the normal tasks of the services of the Commission'.¹⁴⁷ Barroso's manoeuvring illustrates that – in reality – he does not consider it to be a 'normal' task of the EEAS to provide support to a Vice-President of the Commission endowed with a Treaty-based mandate to ensure the coherence and consistency of the external action of the Union. Yet, VP Ashton ought to be the one to rely on the new structure of more than a dozen of staff which was set up within the Secretariat-General of the Commission in order to coordinate action between the external relations Directorates-General and with the EU Delegations abroad, as well as to represent the Commission in certain Council configurations.¹⁴⁸ Ashton's choice not to challenge Barroso's moves has not been helped by the fact that, for the better part of 2011, her own cabinet suffered from a serious under-representation of members with Commission experience. Seen in this light, both the question of 'normality' of tasks to be performed

¹⁴² See, e.g. Mission Letters of 27 November 2009 from Barroso (II) to Andris Piebalgs and Štefan Füle, and of 27 January 2010 to Kristalina Georgieva, available at <http://www.ec.europa.eu/commission_2010-2014/mission_letters/index_en.htm>.

¹⁴³ See Art. 17(6)(b) TEU, which states that the President of the Commission shall 'decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body'.

¹⁴⁴ SEC(2010) 475 final.

¹⁴⁵ See L. Erkelens and S. Blockmans, *supra* note 14.

¹⁴⁶ For a further analysis of the 'normal tasks' of both the Commission and the Council, see S. Blockmans and M.L. Laatsit, 'The European External Action Service: enhancing coherence in EU external action?', in P. Cardwell (ed.), *EU External Relations Law and Policy in the Post-Lisbon Era* (The Hague: T.M.C. Asser Press 2012), 135-159.

¹⁴⁷ Art. 3(1) third indent. This provision figured already in the original EEAS proposal of 25 March 2010 and was therefore well-known within the Commission at the time of discussions on this matter.

¹⁴⁸ Strikingly, some respondents added that the decision to erect this structure within the SecGen had already taken before negotiations on the EEAS had started.

by the Commission services and the composition of the High Representative's cabinet should – in the nearby future – be reviewed.¹⁴⁹

As noted above,¹⁵⁰ one problematic (shared competence) area for inter-service coordination is that of development cooperation. Throughout most of 2011, the new DG DEVCO was trying to find its own feet as result of the transfer of entire directorates from the previous DG DEV to the EEAS and the merger of the DG with that of Aid Cooperation.¹⁵¹ This re-organisation in itself made the inter-relationship with the EEAS difficult at headquarters level. However, the problem was compounded by an argument over the split in EU Delegations between the operations section (DEVCO focused) and the political section (EEAS focused), and which of the central services is to assume managerial responsibility over them. The Commission and the EEAS still need to agree on detailed arrangements relating to the issuing of instructions from the Commission to Delegations. Pursuant to Article 5(3) of the EEAS Council Decision, DG DEVCO has been claiming leadership over the technical expertise packed by what was previously 'its' staff, whereas the EEAS (notably its Chief Operating Officer) has been arguing on the basis of Articles 1(4) and 4 of the Decision that the Service has been granted overall command responsibility for staff in EU Delegations and thus the power to (re-)allocate tasks where necessary. Arguably, this is another issue to be resolved in the mid-2013 review. In the meantime it is best to find practical solutions to streamline the work flow, heeding the words of MEP Elmar Brok that 'dividing lines between Commission and EEAS staff in the EU delegations [go] against the idea of coherence' and must thus be erased.¹⁵² As the EEAS itself has indicated,

[t]he important principle here is that all staff in delegation work under the authority of the Head of Delegation, who can refer issues back to headquarters for further discussion if necessary (e.g. in the case of conflicting instructions from the EEAS and the Commission). Equally it is important that any instructions from Commission services are routinely copied to the responsible geographical desk in the EEAS, given their responsibility to have an overview of relations with the country in question. These arrangements have not given rise to any systemic problems, even in the relatively special case of the delegation in Geneva to the WTO where, for example, the relevant EEAS services have been able to follow closely the recent debates between Russia and Georgia on Russian accession. More detailed guidance for handling instructions to Delegations is contained in a text on working arrangements between the EEAS and the Commission services that is currently under discussion (in line with the requirement of Recital 13 in the EEAS Decision).¹⁵³

It is not exaggerated to say that the EEAS provides a unique opportunity to create a new type of service that cuts across traditional divisions between foreign and

¹⁴⁹ The EEAS, in its 'Report by the High Representative to the European Parliament, the Council and the Commission', *supra* note 8, glosses over these issues by simply stating, in pt. 13: 'Within the Commission, the EEAS is fully integrated into the inter-service consultation machinery within the Commission and therefore is able to contribute to discussions on any policy with external relations implications. Since the creation of the EEAS, both the Commission and, to a larger extent, the Council Secretariat have strengthened their central services responsible for co-ordination of external relations issues.'

¹⁵⁰ See *supra*, section 6.

¹⁵¹ See the Annex to the EEAS Council Decision.

¹⁵² E. Brok, 'One Year On', *The Parliament Magazine*, 10 October 2011, at 46.

¹⁵³ EEAS, 'Report by the High Representative to the European Parliament, the Council and the Commission', *supra* note 8, pt. 18. See further pts. 33-36.

other policies. Its most immediate potential lies in its role in merging the broad toolbox of EU external action (former Common Foreign and Security Policy, Common Security and Defence Policy, and the broad range of external relations managed by the Commission). The stronger political leadership the EEAS is supposed to provide (i.e. intellectual leadership, calculated risk taking and overseeing creative policy execution) could improve the coherence in the management of the Union's external relations policies and consistency in the use of the available external action instruments, leading to a more holistic approach in EU foreign policy.

8. CONCLUSION

In a speech in July 2010, Catherine Ashton outlined three main goals for the immediate to mid-term future: 1) building the EEAS; 2) supporting democratisation, stability and prosperity in the EU's neighbourhood; and 3) building relations with the EU's strategic partners.¹⁵⁴ 2011 has been absorbed by exactly that: the physical creation of the EEAS; the response to challenges posed by the Arab Spring; and attempts to forge strategic alliances.

One year on from the operationalisation of the EEAS, the 'plumbing' phase of setting up and jump starting a provisional apparatus which incorporates three different institutional cultures has nearly been completed. However, establishing a firm and effective EU diplomatic service which is able to join up the different strands of EU external action is a long-term project. The EEAS needs time to establish trust and smooth working relations with both Member States – which feel strongly that foreign affairs will remain a key part of their sovereign identity – and EU institutions – some of which are trying to find their own feet in the post-Lisbon context. Turf battles continue to be fought;¹⁵⁵ suggestions continue to be made;¹⁵⁶ new priorities have been set;¹⁵⁷ and a full-scale review of the EEAS is only scheduled for mid-2013. The devil is in the details. It is therefore premature to draw any firm conclusions on the organisation and functioning of the Service.

In operational terms, the EEAS has been learning by doing. The Arab Spring has been a watershed for the EEAS. The EU's slow and timid response to the

¹⁵⁴ See Catherine Ashton, 'Europe and the world', SPEECH/10/378, Athens, 8 July 2010, available at <<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/378&format=HTML&aged=0&language=EN&guiLanguage=en>>.

¹⁵⁵ The outcome of the negotiations on the creation of a Foreign Policy Instruments Service has delivered a bloody nose to the EEAS as the management of financial instruments is kept within the Commission. If Ashton plays her VP-hat well, then the EEAS could get a better political grip on the spending of external action funds. But these battles will be fought in the nearby future, for instance in the discussions over the Multi-Annual Financial Framework 2014-2020. In the EEAS' own words, in its 'Report by the High Representative to the European Parliament, the Council and the Commission', see *supra* note 8, pt. 15: 'Taking account of the constraints, the cooperation between this service and the relevant EEAS departments is satisfactory, but there remain challenges in ensuring sufficient flexibility and responsiveness in implementing urgent measures in crisis situations given the constraints of the financial regulation. This service will be co-located with the EEAS when the service moves into the new headquarters building.'

¹⁵⁶ See N. Gros-Verheyde, *op. cit. supra* note 132. While the Ministers of Foreign Affairs of Germany, France, Poland and nine other Member States admit that the introduction of the EEAS is a complex process that needs time, they wonder, *inter alia*, whether the service is 'structured correctly' for an effective cooperation with the European Commission's services.

¹⁵⁷ EEAS, 'Report by the High Representative to the European Parliament, the Council and the Commission', *supra* note 8, pt. 38.

momentous changes brought about in its outer periphery put the spotlight on the birth pains of the Action Service, which had only just become operational. This was compounded by a frustration about the lack of leadership at the highest institutional levels. However, after a series of somewhat shaky performances, the HR/VP – supported by the EEAS – has started to perform consistently better in the Brussels arena and alongside her international counterparts. With respect to the Middle East Peace process, the EU is occupying a policy space otherwise left to other members of the Quartet. In the EU's southern neighbourhood, the EEAS has provided added value in terms of crisis response, democratic transformation and economic development, responding to the specific needs of each country, rather than viewing them all through the same policy lens (as set down in two Joint Communications). A more holistic EU approach to crisis response which brings together humanitarian and disaster relief, crisis management capabilities, peace-building and development cooperation has also been hammered out in strategies for other regions (Sahel, Horn of Africa). Joining up the different strands of EU external policies and instruments is one way in which the EEAS can show its added value. In its own words, the EU can be 'increasingly present and active in all major foreign policy arenas. Many of these go well beyond the boundaries of traditional diplomacy, drawing more and more on policies that are managed at EU level or have important EU dimensions, including global financial regulation, climate change and energy security, migration and poverty reduction, non-proliferation and disarmament, the fight against terrorism, and the promotion of human rights and democracy.'¹⁵⁸

Nevertheless, the procedural problems and structural weaknesses that hinder an integrated approach to EU external action are not yet fully addressed. Even if the EEAS has intensified its ties with strategic partners, the postponement of the EU-China Summit in October 2011 shows that the EU has not fully implemented the lessons of the botched EU-US Summit of May 2010. In order to remain influential in the eyes of the partners it deems strategic in a changing global landscape, the EU is not so much in need of having a single voice but rather passing a single message, in partnership with the Member States¹⁵⁹ and based on a substantial agenda. During its first year of existence, the EEAS has had to grapple with certain EU Member States, in particular the larger ones, which persistently refuse to concede to the HR/VP and EEAS the very responsibilities they assigned to these bodies in the treaties. The big challenge is to ensure that EU institutions and Member States alike 'sing from the same hymn sheet', also in bilateral contacts. At the multilateral level, the enhanced status in the UN General Assembly gives the EU, including the High Representative and the EEAS, the possibility to play a more comprehensive role in the UN, especially with respect to the formal presentation of positions.

At the end of its first year of activities, the EEAS moved into the second, more challenging phase of its creation, a phase in which it will have to manage its own budget, take effective responsibility for its staff and fine tune the organisation so that it can deliver on its policy priorities. The single biggest challenge which the

¹⁵⁸ Ibid., pt. 6.

¹⁵⁹ See N. Wescott, 'International Justice, Peace and Crisis Management: the European Union and Africa', speech delivered at a conference organised by the Swedish Embassy to the Netherlands on 'International Justice, Peace and Crisis Management. Experiences and Reflections 50 Years after Dag Hammarskjöld' (The Hague, 9 November 2011).

EEAS now faces is to formulate a vision on how the EU should conduct its foreign policy in the medium to long term, with a comprehensive strategy of how to get there, and to ensure that the EU institutions and Member States are prepared to back it up politically, diplomatically and with the necessary resources. In order to make the most of its role and its capabilities, the EEAS will need to cultivate what other commentators have called ‘the virtues of entrepreneurship: being ahead of the market by emphasizing intellectual leadership and innovative policy development; using a clear strategy to guide the allocation of its resources; seeking new opportunities to advance the EU’s common agenda and being prepared to take calculated risks for that purpose; and building the confidence of its ‘shareholders’ – the EU’s 27 member governments and the EU institutions – by taking advantage of the leverage that comes with the EU’s unity while exploring the opportunities that lie in its diversity.’¹⁶⁰ The Lisbon Treaty’s foreign policy ambitions would be defeated if the EEAS and its main stakeholders would not work in tandem on the EU’s external policies, whether underpinned by exclusive or shared competences.

¹⁶⁰ S. Hemra, T. Raines and R. Whitman, op. cit. *supra* note 9, at vi.

