

# The Union Minister for Foreign Affairs: Europe's Single Voice or Trojan Horse?

Jan Wouters\*

*"L'Europe verra ses institutions renforcées avec un président stable du Conseil européen, avec un ministre des affaires étrangères de l'Union qui amplifiera le rôle de chacune de nos nations."*<sup>1</sup>

This is one of the statements with which the French President Jacques Chirac illustrated on 19 June 2004 the 'historic' nature of the deal struck at the Brussels European Council the previous day, in which the European Heads of State and Government, after many months of protracted negotiations, reached agreement on the Draft Treaty Establishing a Constitution for Europe (hereafter 'the Constitution').<sup>2</sup> The present contribution takes a brief look at the provisions of the Constitution concerning the Union Minister of Foreign Affairs (hereafter usually referred to as 'the Minister') and tries to find out a bit more of the idea's origins and the nature and tasks of the Minister. Will the establishment of the Minister's function lead to a Europe speaking with one voice in the world, or could he/she be a Trojan horse for the Community method in the EU's external relations?

## 1. The origins of the Union Minister for Foreign Affairs

The idea of creating the function of Minister emanates from the Convention's Working Group VII on 'external action'. One finds it floated for the first time in November 2002 in a note by Mr. Gunter Pleuger, an alternate member of the Convention, with the telling title "Double hat".<sup>3</sup> The note makes a good diagnosis of the current institutional imbroglio and the challenges ahead, which speaks for itself:

*"Greater demands will be placed on an enlarged Union, especially in the field of external relations. The Union must enhance its capability to act in this area in order to meet these increased demands. For this it is vital that the Union speaks with one voice to the outside world on external relations issues. Moreover, the Union must strive for greater coherence in the formulation and implementation of foreign policy decisions. The relationship between the External Relations Commissioner and the High Representative for the CFSP is a key issue here. The current good cooperation due to the personal qualities of the present office holders should not blind us to the rivalry inherent in the current system. We must overcome these structural weaknesses."*

Since the maintenance of the status quo was untenable and a full merger of the two offices not realistic, the note proposed a "necessarily less perfect compromise which would generate the maximum degree of synergy possible at present", this being "the exercise of the two offices by one person (so-called "double hat"). The apparatuses would remain separate, also the different decision-making procedures for the different competences would remain unchanged."

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\* Professor of International Law and the Law of International Organizations, Leuven University; *Of Counsel*, Linklaters De Bandt, Brussels.

<sup>1</sup> *Le Monde*, 19 June 2004.

<sup>2</sup> The text of the Constitution to which reference will be made in this contribution is the one laid down in CIG 86/04 of 25 June 2004, i.e. the provisional consolidated version of the draft Treaty establishing a Constitution for Europe.

<sup>3</sup> Working Document 17 of 5 November 2002.

This idea did not fall on deaf ears. In the final report of the 'external action' Working Group of 16 December 2002<sup>4</sup>, one finds the following passage in paragraph 5 on 'Enhancing coherence and efficiency between institutions and actors':

*"In order to ensure better coherence between foreign policy decisions on the one hand, and deployment of instruments in the field of external relations on the other hand, the Group was of the opinion that the current roles of the HR for CFSP and the Commissioner responsible for external relations should be reconsidered. ... Notwithstanding the different positions, a large trend emerged in favour of a solution which would provide for the exercise of both offices by a "European External Representative".*

*This person, who would combine the functions of HR and Relex Commissioner, would*

- be appointed by the Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, with the approval of the President of the Commission and endorsement by the European Parliament;*
- receive direct mandates from, and be accountable to, the Council for issues relating to CFSP. In his/her capacity as HR, he/she would have the formal, but not exclusive, right of initiative. When he/she exercised his/her right of initiative on CFSP, the Commission will abstain from taking a competing initiative. His/her initiatives on CFSP and decisions to put them into effect would not be subject to prior approval by the College of Commissioners. Decisions on CFSP matters would continue to be taken in the Council according to relevant procedures. He/she would not have the right to vote in the Council;*
- be a full member of the Commission and preferably its Vice-President. In his/her capacity as External Relations Commissioner, he/she would put proposals to the College and fully participate in its decisions for matters falling under current Community competence, which would follow the normal procedures;*
- ensure the external representation of the Union, replacing the current Troika.*

*A number of members made their agreement on this suggestion dependent on a satisfactory solution on the whole institutional setting. The Group agreed that this issue has important institutional implications, and thus has to be examined in the wider context."*

When re-reading this passage one cannot help being struck by the level of detail of the proposal and by the fact that the Constitution's final text does not deviate terribly much from this original blueprint.

It is worth mentioning that to the notion "European External Representative" the aforementioned final report added a footnote, which reads: *"Other titles have also been put forward in the course of discussion, notably "EU Minister of Foreign Affairs" and "EU Foreign Secretary". The prevailing view was that the title of "European External Representative" had the advantage of not corresponding to a title used at national level."* The Convention's final text is, in this respect, more audacious than the one of the Working Group. That the name issue was not yet resolved at the time the intergovernmental conference (hereafter 'IGC') took off, follows *inter alia* from the UK Government's report "A Constitutional Treaty for Europe" of September 2003, which mentions not just as outstanding points the

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<sup>4</sup> CONV 459/02 of 16 December 2002.

question “*how to ensure that the new post is properly accountable to Member States in the Council, and its relationship with the Commission*”, but also “*an issue as to how exactly he is described*”.<sup>5</sup>

## 2. The Union Minister for Foreign Affairs in the Constitution

Only a combined reading of a great number of provisions of the Constitution, scattered over its Part I and Part III, enables one to obtain a fair view of the Minister’s role and position.

In the context of Part I of the Constitution, the Minister appears for the first time in Article I-20, which deals with the European Council. Paragraph 2 *in fine* of this article states that the Minister “*shall take part in its [i.e. the European Council’s] work*”. This provision indicates, on the one hand, that the Minister shall always be there and take fully part in the European Council meetings; he or she therefore enjoys a more privileged position than the ministers or European Commissioner which, pursuant to Article I-20(3), *may* assist the European Council when the agenda so requires and the members of the Council decide that way. On the other hand, the provision makes clear that, unlike the Heads of State or Government, the President of the European Council and the President of the Commission, the Minister is not a “member” of the European Council. He or she therefore does not take part in the actual decision-making of the latter.

Article I-21, on the European Council President, immediately raises the problem of the demarcation of tasks between the newly-created function of President of the European Council and the Minister, and thereby the more general problem of coherent external representation of the Union. As follows from Article I-21(2), second paragraph, the President of the European Council is *inter alia* given the task to “*at his or her level and in that capacity ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the Union Minister for Foreign Affairs*”. Like the Minister, the President of the European Council is a new function provided for by the Constitution; unlike the Minister though, this function was not proposed by the Convention’s Working Group ‘external action’ but by France and Germany in January 2003.<sup>6</sup> It is interesting to reflect on the relationship between the Minister and the European Council President: one may indeed wonder whether, now the “*rivalry inherent in the current system*” (*supra*, 1.) has been dealt with pragmatically by introducing the “double hat”, the Constitution has not created a new type of rivalry. For what does external representation by the President of the European Council “*at his or her level and in that capacity*” mean other than that it is this person who is supposed to meet with Heads of State and Government of non-EU countries and do business with them? As the European Parliament has stressed, the election of the President of the European Council “*could entail unforeseeable consequences for the institutional balance of the Union*”. For that reason the Parliament recommended that “*the role of the President must be strictly limited to that of a chairperson in order to avoid possible conflicts with the President of the Commission or the Union Minister for Foreign Affairs and not endanger their status*”.<sup>7</sup>

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<sup>5</sup> Secretary of State for Foreign and Commonwealth Affairs, *A Constitutional Treaty for the EU. The British Approach to the European Union Intergovernmental Conference 2003*, September 2003, p. 29, para. 52.

<sup>6</sup> See R. H. Lauwaars, “The President of the European Council: the beginning of a European Government?”, in *Liber Amicorum Fred Kellermann* (Asser Press, 2004, forthcoming).

<sup>7</sup> European Parliament resolution of 24 September 2003 on the draft Treaty establishing a Constitution for Europe and on the convening of the Intergovernmental Conference (11047/2003 - C5-0340/2003 - 2003/0902(CNS)), para. 20.

A following article in which the Minister appears, deals with the definition of qualified majority within the European Council and the Council. Pursuant to Article I-24(2) - one of the provisions on which there has been tough bargaining until the last moment - when the Council is not acting on a proposal from the Commission or from the Minister, the qualified majority shall be defined as 72 % of the members of the Council, representing Member States comprising at least 65 % of the population of the Union. This provision also applies to the European Council when it is acting by qualified majority.<sup>8</sup> However, as unanimity remains the general rule in the area of the common foreign and security policy (hereafter 'CFSP') and the common security and defence policy (hereafter 'CSDP'), this provision does obviously not imply that each time the Minister makes a proposal, the Council shall adopt a decision by qualified majority voting (hereafter 'QMV'). To be fair, the Constitution provides, by way of derogation to the unanimity rule for European decisions in the chapter on CFSP, that the Council shall act by qualified majority *"when adopting a European decision defining a Union action or position, on a proposal which the Union Minister for Foreign Affairs has presented following a specific request to him or her from the European Council made on its own initiative or that of the Minister"* (Article III-201(2), first para., sub b).<sup>9</sup> This being said, the non-suppression in general of the unanimity requirement in case of a proposal by the Minister with the Commission's support has been criticized by the European Parliament.<sup>10</sup>

Article I-25 of the Constitution, which deals with the European Commission, mentions the Minister as one of the Vice-Presidents of the Commission<sup>11</sup> and stipulates that, if a censure motion on the Commission is carried by the European Parliament, *"the Members of the Commission shall resign as a body and the Union Minister for Foreign Affairs shall resign from the Commission"*<sup>12</sup> (see also *infra*, 3.). The Minister also appears in Article I-26, which deals with the President of the Commission. This article makes clear that the President of the Commission, the Minister and the other Members of the Commission *"shall be subject as a body to a vote of approval by the European Parliament"*<sup>13</sup> and, importantly, that the Minister *"shall resign, in accordance with the procedure set out in Article I-27(1), if the President so requests"*.<sup>14</sup> It is interesting to note that this provision uses the term *"resign"* and not *"resign from the Commission"*, as in Article I-25(8) (*supra*). The reference to Article I-27(1) (reproduced *infra*) seems to imply that although the President of the Commission can force the resignation of the Minister – like he or she can also veto the latter's appointment<sup>15</sup> - , the actual decision on ending the latter's term of office is taken by the European Council, acting by qualified majority.

The cornerstone provision on the Minister is Article I-27 of the Constitution, which merits a quotation in full:

*"1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs. The European Council may end his or her term of office by the same procedure.*

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<sup>8</sup> Article I-24(2a.).

<sup>9</sup> The Minister also has a role to play in case a Member State intends to oppose the adoption of a European decision based on QMV: he or she *"will, in close consultation with the Member State involved, search for a solution acceptable to it"*. If he or she does not succeed, the Council may, by QMV, request the matter to be referred to the European Council (Article III-201(2), para. 2).

<sup>10</sup> European Parliament resolution of 24 September 2003, para. 29, last indent.

<sup>11</sup> Article I-25(5) Constitution.

<sup>12</sup> Article I-25(8) Constitution. This provision is further elaborated in Article III-243 of the Constitution.

<sup>13</sup> Article I-26(2), second paragraph, Constitution.

<sup>14</sup> Article I-26(3), second paragraph, Constitution.

<sup>15</sup> See Article I-27(1) Constitution (*"with the agreement of the President of the Commission"*).

2. *The Union Minister for Foreign Affairs shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.*

3. *The Union Minister for Foreign Affairs shall preside over the Foreign Affairs Council.*

4. *The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He or she shall ensure the consistency of the Union's external action. He or she shall be responsible within the Commission for responsibilities falling to it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the Union Minister for Foreign Affairs shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3."*

Further down in Part I of the Constitution, it is worth pointing to Articles I-39 and I-40, which contain specific provisions relating to CFSP and CSDP, respectively. Pursuant to Article I-39(4) *"[t]he common foreign and security policy shall be put into effect by the Union Minister for Foreign Affairs and by the Member States, using national and Union resources."* Article I-39(7) states that in the field of CFSP the European Council and the Council *"shall act on an initiative from a Member State, on a proposal from the Union Minister of Foreign Affairs or on a proposal from that Minister with the Commission's support"*. Article I-40(4) makes clear that European decisions on the implementation of the CSDP, including those initiating a mission within the meaning of that Article (i.e. missions outside the Union for peace-keeping, conflict prevention and strengthening international security<sup>16</sup>), shall be adopted by the Council acting unanimously *"on a proposal from the Union Minister for Foreign Affairs or an initiative from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate."*

In Part III, Title V, which concerns the Union's external action, references to the Minister are obviously rife and we will not go through all of the provisions concerned. However, the core provision, Article III-197, merits to be quoted in full:

*"1. The Union Minister for Foreign Affairs, who shall chair the Council for Foreign Affairs, shall contribute through his or her proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the European decisions adopted by the European Council and the Council.*

*2. The Minister for Foreign Affairs shall represent the Union for matters relating to the common foreign and security policy. He or she shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.*

*3. In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States.*

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<sup>16</sup> See Article I-40(1) Constitution.

*The organisation and functioning of the European External Action Service shall be established by a European decision of the Council. The Council shall act on a proposal from the Union Minister for Foreign Affairs after consulting the European Parliament and after obtaining the consent of the Commission.*<sup>17</sup>

### 3. Nature and functions of the Minister

The provisions quoted above make it possible to develop a number of reflections on the nature and functions of the Minister. The *functions* are very important and comprehensive, ranging from the preparation – through the right of initiative<sup>18</sup> -, management and implementation (including, to some extent, the oversight of Member States' implementation<sup>19</sup>) of the EU's external relations policies, to the chairing of the Council of Foreign Affairs and the external representation of the EU with third countries, in international organisations and at international conferences.

What is the *nature* of the beast? It has to be said that the 'double-hat' nature of the Minister makes it a rather peculiar animal within the EU's institutional architecture. On the one hand, he or she is fully part of the Commission, is one of the Vice-Presidents of this institution and is responsible within the latter for external relations and coordination of other aspects of the EU's external action. The Commission's President can force him or her to resign. But the "communitarian" flank of the Minister is, all in all, conditioned in rather express terms: the restrictive wording of Article I-27(4) (*supra*, 2.) makes very clear that Commission procedures will only be binding for him or her when exercising responsibilities within the Commission, and even then only to the extent this is compatible with his or her CFSP and Council-related functions.<sup>20</sup> The Minister's institutional position and tasks appear to make him or her much more a Council-person: he or she presides over the Foreign Affairs Council, conducts the CFSP and CSDP, prepares and implements it and receives Council mandates in that respect. All of this raises important questions of institutional loyalty, but also of accountability and checks and balances. As far as the loyalty issue is concerned, it is interesting to point to the Minister's important duty of ensuring the consistency of the EU's external action. This does not only apply to his or her position within the Commission (Article I-27(4), *supra*): the Minister is more generally required to assist the Council and the Commission to ensure consistency between the different areas of the EU's external action and between these and its other policies (Article III-193(3), para. 2).

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<sup>17</sup> A declaration will be incorporated in the Final Act on this Article, in which the IGC declares that, as soon as the Constitution is signed, the Secretary-General of the Council, High Representative for the common foreign and security policy, the Commission and the Member States, should begin preparatory work on the European External Action Service.

<sup>18</sup> Any Member State, the Minister, or the Minister with the Commission's support, may refer to the Council any question relating to the CFSP and may submit to it initiatives or proposals as appropriate. In cases requiring a rapid decision, the Minister, of his or her own motion or at the request of a Member State, shall convene an extraordinary meeting of the Council within 48 hours or, in an emergency, within a shorter period (Article III-200(1) and (2)). In some cases the Minister even has an exclusive right of initiative: e.g. the appointment of a special representative (Article III-203 Constitution).

<sup>19</sup> See Article III-195(2) para. 3, Constitution, pursuant to which the Council and the Minister shall ensure that the Member States comply with the principles of active and unreserved support for CFSP in a spirit of loyalty and mutual solidarity, of cooperation to enhance and develop mutual political solidarity between Member States and of refraining from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

<sup>20</sup> It is interesting to read this provision together with the rather strict wording of Article III-209 Constitution.

To whom is the Minister accountable? It is interesting to note European Parliament President Cox's statement in his speech to the European Council in Thessaloniki on 19 June 2003. Referring to one of the improvements contained in the Constitution, Mr. Cox mentioned the fact that *"it provides for a unified Foreign Affairs structure under a Minister responsible to the European Council, but accountable to Parliament"*.<sup>21</sup> However, the accountability to the Parliament is apparently only meant for the one part of the hat, namely the Minister in his or her capacity of Member/Vice-President of the Commission. This is also clear from Articles I-25 and III-243 of the Constitution, which demonstrate that there is life for the Minister after the Commission: if a motion of censure were to be carried out in the Parliament, *"the Members of the Commission shall resign as a body and the Union Minister for Foreign Affairs shall resign from the Commission."* Despite his or her two-hatness, the Minister is strongly linked to the Council and the intergovernmental approach therefore seems to prevail: there will in any event be accountability vis-à-vis the European Council, which has appointed the Minister and may end his or her term.<sup>22</sup> One could therefore imagine that some see in the Minister a Trojan horse for the Commission and, more generally, for the Community method as far as the EU's external relations are concerned. This being said, it could also be argued that the power of the President of the Commission to request the resignation of the Minister is – at least in theory – a powerful weapon to prevent this "Trojan effect" from happening, or at least from derailing too much. However this may be, the ambivalence of the Minister's status appears to find an extension in the status of the to-be-created European External Action Service. If anything, the wording of Article III-197(3) quoted above (*supra*, 2.), seems to indicate that this Service will not be *"a joint administration within the Commission"* as the European Parliament had proposed.<sup>23</sup>

Finally what is clear by now, is that the appointment of the President of the Commission, the President of the European Council and the Minister will be part of one integrated political exercise and balancing act. The IGC indeed decided to add a declaration to the Final Act regarding Articles I-21, I-26 and I-27 in which it is stated that, *"[i]n choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and Union Minister for Foreign Affairs, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States."*

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<sup>21</sup> Quoted in the Opinion of the European Parliament's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy of 9 July 2003, attached to the Report on the Constitution of the EP's Committee on Constitutional Affairs of 10 September 2003 (A5-0299/2003), p. 24.

<sup>22</sup> *Ibid.*

<sup>23</sup> European Parliament resolution of 24 September 2003, *supra* note 7, para. 23. Note that the opinion of the European Parliament's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy of 9 July 2003, attached to the Report on the Constitution of the EP's Committee on Constitutional Affairs of 10 September 2003 (A5-0299/2003), p. 24, favoured a *"single administration within the Commission"* (emphasis added) and adds that *"the current wording of the Draft Constitutional Treaty brings a greater risk of confusion"*. See also the conclusions of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy at p. 26, para. 4.

#### **4. Concluding remarks**

The Minister is an interesting innovation of the Constitution. The function may lead to the EU speaking more with one single voice in the world, and in that sense, to a further strengthening of the EU as a global actor. The present contribution has indicated, however, that the new function raises many issues, especially in terms of institutional loyalty, accountability and checks and balances. The Minister is not a panacea for a lack of political will, and the creation of the function does, of course, not as such lead to a more coherent and forceful foreign policy. In that respect, the instruments and decision-making procedures of the CFSP and CSDP may still need further revision and fine-tuning. A Minister with hands tied behind his or her back due to a lack of consensus among Member States does not make for a powerful foreign policy either.

It will be interesting to see how the Minister will prevail through the upcoming ratification and referenda debates. It has already been argued by some that the creation of a Minister of Foreign Affairs is tantamount to a European “super State”. It will also be interesting to see how the creation of the Minister and of the President of the European Council will contribute to the debate on a “European government”. It has already been deplored in the European Parliament that the Convention and IGC did not create a Minister for Economic Affairs in order to make the economic dimension of EMU work better and implement the Lisbon strategy.<sup>24</sup> Europe has challenging times ahead.

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<sup>24</sup> See the Opinion of the EP's Committee on Economic and Monetary Affairs of 2 September 2003, attached to the Report on the Constitution of the EP's Committee on Constitutional Affairs of 10 September 2003 (A5-0299/2003), p. 40, para. 5.