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A Mere Irrelevance?

Assessing the EU's Foreign and Security Policy

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Abstract

In this paper I delineate two ways to examine the EU's foreign and security policy. The first focuses on the internal aspects of the CFSP, that is, the degree and form of integration. The second takes what the EU *does* as its starting point, and addresses the substance of foreign policy. I argue that there is evidence of a large scale transformation in the processes of European foreign policy making and in the interaction between national and EU levels of decision-making. This transformation challenges deep seated ideas of foreign policy as the exclusive domain of the state. However, turning to the substance of foreign policy, the evidence of transformation, is more uncertain. There is a need for further conceptual and theoretical work, developing appropriate analytical tools to assess if the substance of EU foreign policy is different from that of states. Finally, in the last part of the paper I discuss the implications of the ongoing transformations for the democratic legitimacy of European foreign policy.

Keywords

Common Foreign and Security Policy – Democracy – Humanitarian Power – Integration – Intergovernmentalism – Normative Power

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Introduction[1]

In the sphere of global politics, the European Union (EU) is perhaps best known for its failures. It is described as an inefficient foreign policy actor, incapable of pulling its weight without the support of third parties. In situations of international crisis, member states never manage to agree on what to do, it is argued. And when they occasionally do agree on something, they depend on the military capabilities of the United States to get it done.

None of the above is surprising. International politics is assumed to be governed by power rather than law. In an anarchical world, only actors with strong capabilities and the ability and willingness to use them may succeed in forwarding their interests and values. A group of nation states tied together only through a voluntary scheme of cooperation, such as the Common Foreign and Security Policy (CFSP), will by necessity fail.

Yet, an increasing number of studies claim that the EU is no longer a mere irrelevance in global affairs. It may, in fact, count a number of achievements. According to these studies, the EU does produce a foreign policy of some kind, and sovereignty is giving way to integration. Is this really so? And if it is, what are the challenges entailed in this slow but large scale transformation? These are the questions addressed in this paper. More specifically, I assess to what extent one may substantiate the claim of a move beyond intergovernmental cooperation in the CFSP. Further, I discuss what kind of foreign policy an entity which is neither a state nor an international organisation may actually deliver, and from where it might it draw its legitimacy.

Investigating such fundamental changes as those implied in the claim of an emerging autonomous EU foreign and security policy is of relevance not only to CFSP-specialists but to the wider community of EU scholars. This is particularly so if, as a move beyond intergovernmentalism might imply, the member states' monopoly of violence is being partly uploaded to the EU level. This would affect the nature of the polity as well as the status of its constituent parts – the member states. It would further raise questions regarding democratic legitimacy. But the issue is also of relevance to scholars of international relations. The very possibility of an actor without the traditional instruments of power impacting on global affairs, as the EU did for example in negotiations with Iran in 2013, challenges established conceptions of who and what matters in international politics. Observations of member states voluntarily surrendering sovereignty to common European institutions

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[1] Many thanks to Mai'a K. Davis Cross for comments on this paper.

challenge deep-seated ideas and conceptions of foreign and security policy as the exclusive domain of the state. They bring us to question our understanding of the nature of foreign policy, its underlying mechanisms and purpose.

The paper starts with a brief overview of the background and early developments in foreign and security cooperation within the EU. Subsequently, I outline two ways to analyse the EU's foreign and security policy. The first focuses on the internal aspects of the CFSP, that is, the degree and form of integration. The second takes what the EU *does* as its starting point, and addresses the substance of foreign policy. Thus in the second part of the paper I analyse the institutional structures and decision-making processes that regulate the domain of foreign and security policy, as they function in the context of the Treaty of Lisbon. I argue that power and authority has become more dispersed than what one would expect in an intergovernmental system. Subsequently, in the third part of the paper, I suggest that the concept of humanitarian power may be a useful analytical device to comprehend the foreign policy output of the CFSP. This concept also points to a critical standard against which the EU's foreign policy may be assessed. In the fourth and last part of the paper, I discuss the implications of the changes to EU foreign and security policy for democracy. The transfer of executive power to the EU level may enhance the efficiency and coherence of EU foreign policy, but it also makes it difficult to trace decisions back to a democratic mandate from national political systems. The democratic credentials of the EU's foreign policy are still unsettled.

Context and Background

Integration in the domain of foreign and security policy has taken a different path from that of other policy domains within the EU. As a key element of political union, the idea of establishing a single European foreign policy has been undesirable for many member states. In particular those that see the EU mainly as an economic entity have been reluctant to relinquish national sovereignty in foreign and security policy. After the failure of the European Defence Community and the ambitions of a European Political Community in the 1950s, the issue of integration in foreign and security policy was left untouched by the EC for nearly 15 years. Foreign policy only returned to the agenda of the EC in the late 1960s. This time ambitions were much reduced. The member states agreed to establish a voluntary system of foreign policy *cooperation*, European Political Cooperation (EPC), outside the Treaty framework. This system aimed only to ensure consultation amongst member states of the then European Community (EC) on issues of common concern.

There was no mention of integrating national foreign policies into a single policy. It was only with the Single European Act (1986) that foreign policy was brought into the Treaty framework, and consultation on matters of foreign policy became a legal obligation.

With the end of the Cold War the so-called 'widened' concept of security rose to the fore. Many considered the EU particularly well suited to handle this new security agenda. Replacing EPC, a Common Foreign and Security Policy (CFSP) was launched with the Treaty of Maastricht (1991). The restrictions on which issues member states were allowed to discuss were removed. Now, the EU was not only to discuss foreign policy matters but to develop a common defence policy and perhaps also a common defence.

Yet the new Common Foreign and Security Policy was established on a contradiction. It was supposed to ensure that the external sovereignty of the member states remain intact, while at the same producing a common policy. Developments within the EU were slow, and the ambitions laid down in the Treaty looked mostly as pious hopes. In the autumn of 1998 things changed. British Prime Minister Tony Blair unexpectedly abandoned his country's usual reservations and declared his support for an autonomous EU security policy. This puzzling change in the British position is often linked to Blair's efforts to present himself as a 'true' European. As a result of this British move, the major hindrances to the realisation of the objectives of the Maastricht Treaty were removed. In the Treaty of Amsterdam member states introduced a new actor: a so-called High Representative of foreign and security policy (HR). [2] A planning unit (Policy Unit) was also established, to assist the HR. This was the first permanent institution in the domain of foreign and security policy to be established in Brussels. Subsequently, a Political and Security Committee (PSC), a Military Committee (EUMC) and an EU Military Staff were established and started working in 2000.

In parallel, the EU began reviewing the basic principles and aims of its security policy. This took place against the backdrop of the terrorist attack of 11 September 2001 and the wars in Iraq and Afghanistan. The EU's security strategy 'A Secure Europe in a Better World' was established in December 2003. It identified a list of key threats. It further committed the EU to develop a security policy resting on international law and multilateral cooperation. Gradually the EU's visibility and impact in global affairs increased. Between 2003 and 2012, it conducted 23 military and civilian crisis management operations.

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[2] Javier Solana, who was previously Secretary General of NATO, was nominated to this post in 1999. He was replaced by British Catherine Ashton in 2009.

The built-in contractions of the CFSP remained, however, and became even more pronounced with the Treaty of Lisbon. Foreign and security policy remains subject to specific rules and procedures for decision-making, which limits the influence of the supranational institutions. At the same time, the distinction between the aims and objectives of the EU and those of its foreign policy was removed together with the pillar structure. The intergovernmental institutions of the CFSP thus serve the same aims and objectives as the supranational ones.

Key European policy makers, such as France's former Prime Minister Francois Fillon and his Spanish counterpart former Foreign Minister Miguel Moratinos, maintain that it is the member states that decide in European foreign and security policy (European Parliament 2010). At the same time, the establishment of permanent institutions have changed the dynamics of foreign policy making. Since the late 1990s, a number of authors have referred to a shift in the locus of national decision-making to Brussels-based institutional structures. These institutions are considered to gain the advantage compared to national foreign ministries, amongst other things due to easy and daily access to information and dialogue with partner states. Further, and despite the well-known solo initiatives in particular the larger member states, it is increasingly difficult for them to escape expectations of consistency between national foreign policy and the foreign policy positions of the EU.

In order to assess the significance of such observations for the claims made by national representatives such as Fillon and Moratinos, that national sovereignty remains unaffected, we need to define and operationalise democratic intergovernmentalism. How do we know it when we see it? What might be considered a departure from its key principles? If there is evidence of such a departure, it might imply that in real terms, the contradictory demands of national sovereignty and European unity are being resolved in favour of the latter.

Still Intergovernmental?

Drawing on established conceptions (Majone 2001; Pollack 2003; Frankenberg 2000), four key features of intergovernmentalism may be identified. These pertain to: i) the nature of the actors involved in making decisions; ii) the procedures through which decisions are made; iii) the scope and type of powers that member states delegate; and iv) the raison d'être of the cooperative endeavour.[3]

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[3] This draws on Sjursen (2011).

Intergovernmentalism is a system akin to a contract (Frankenberg 2000) or international treaty between sovereign parties. Each party retains jurisdiction within its own territory and remains free to organise its institutions and policy processes in accordance with its own preferences. With regard to the first feature of intergovernmentalism, this means that only sovereign states can be actors with decision-making powers. The establishment of supranational institutions with a self-standing constitutional basis would thus clearly represent a departure from intergovernmentalism. However, one might also imagine that other actors representing interests and perspectives beyond the member states achieve decision-shaping powers. If non-governmental organisations, private corporations, agencies or institutions of some kind wield influence, this would also challenge this first feature of the intergovernmental edifice. Further, even if these various actors were not able to lay down the law to member states, they might influence decisions, and thus at least chip off important elements of their autonomy.

The right of each member state to veto any decision with which it disagrees is the most decisive element of the decision-making procedure of an intergovernmental system. Abandoning this right and introducing decision making by some form of majority vote would be a clear indication of a departure from intergovernmental principles. However, the veto power of the contracting parties might also be constrained in less formal ways. One might imagine, for example, the hands of the contracting parties being tied due to constraints on time. (Normative) expectations of non-use of the veto might also develop for other reasons. Finally, it might also be that, due to differences in power and authority, the ability to block a decision is more real for some than for others. This would suggest that intergovernmentalism, to the extent that it should give one vote to each party, and thus provide equal protection of their sovereign right to determine own policies, would be under pressure.

The powers of any central public authority in an intergovernmental system are closely limited. The central authority is obligated to observe the rights and competences of each member government and it only has the power to decide on clearly delimited tasks. With regard to the third premise, the key element is that tasks are delegated to a central authority and it is assumed that these powers may be revoked or renegotiated. Further, most national constitutions assume that the executive will be party to the decisions on how the delegated authority should be exercised. If the delegated tasks were not clearly delimited, it would be difficult to ensure national control over the exercise of power, or indeed to bring a task back into the 'national fold'. This would thus constitute a departure from intergovernmentalism. Also, if delegated powers are associated with a degree of discretion, this would probably alter the fundamental premise of delegation. There might also be a de facto difference

between the freedoms of action of different member states in this regard. Some, more powerful, states might more easily be able to revoke delegated powers than others.

With regard to the fourth premise, pertaining to the purpose or raison d'être of intergovernmental cooperation, an intergovernmental system is established to serve the member states and to assist them in forwarding, or protecting, their interests, preferences and values. A unit infused with interests or values of its own would represent a departure from this fourth feature. Such a purpose might also in turn constrain the ability of member states freely to define their policies in accordance with their own preferences.

What does existing knowledge regarding the institutions and decision-making procedures within CFSP/CSDP tell us about the status of these four constituent pillars?

Fragmentation of Executive Power

In formal terms, the answer to the question of 'who decides?' is simple, and in line with the first premise of intergovernmentalism: it is the member states. That is, decisions are taken by the Foreign Ministers of all the member states in the Foreign Affairs Committee (FAC), or by the Heads of State and Government in the European Council. However, the range of actors involved in CFSP/CSDP is much wider than this. It involves both supranational and intergovernmental actors.

Permanent Intergovernmental Institutions

Most important are the permanent intergovernmental institutions in Brussels. While they were established in order to facilitate decision making in the FAC and the European Council, they have gained considerable autonomy. It is to a large extent due to their role that the first premise of intergovernmentalism is being undermined.

At the centre of the intergovernmental institutional nexus is the Political and Security Committee (PSC). Composed of national ambassadors permanently based in Brussels, it has been described as the 'linchpin' of the system of foreign and security policy (Duke 2004) and as the 'executive board' of the CFSP (Thym 2011). Its mandate is to 'monitor the international situation and contribute to the definition of policies' (Art. 38.1 TEU). The PSC also delivers opinions to the Council and exercises political control over and strategic direction of crisis-management operations. Also of importance are the various working groups (Juncos and Pomorska 2011), as well as the EU military

committee (EUMC) and the Committee for Civilian Aspects of Crisis Management (CIVCOM) (Cross 2011).

Research suggests that, over time, these institutions have gained considerable autonomy from the governments that they are meant to serve (Tonra 2000, 2003; Howorth 2003; Meyer 2006; Vanhoonacker *et al.* 2010). They do not merely fulfil support functions for the FAC, or act as coordinating mechanisms for the member states. Already in 2006, Duke and Vanhoonacker found that the 'question whether the administrative level matters in the foreign policy field should definitely be answered affirmatively' (2006: 380). As already noted, the PSC is particularly important in this regard. It is here that common positions are identified and the methods to realise them are developed. Juncos and Reynolds (2007) have described the PSC as *governing in the shadow*. Howorth (2010) refers to the PSC as the 'script writer' for the CFSP, in the sense that its members '[…] come up with policies, missions and operations for the EU which will allow it to demonstrate both its usefulness and its importance' (Howorth 2010: 18).

These observations of a shift in decision-making power from national capitals to the institutional machinery in Brussels suggest a fragmentation of the executive power of national governments. As the agents of national governments in Brussels have a hand on the steering wheel it is more difficult to identify who really decides.

Supranational Institutions and the Boundary Problem

The 'fuzziness' concerning where responsibility actually lies is reinforced by the difficulty in establishing clear distinctions between foreign and security policy on the one hand and all other aspects of EU global activities on the other (Smith 2001; 2004: 7-8). While (in principle) the former are supposed to be under the control of national governments (CFSP), the latter are subject to supranational procedures.

Thus in the domain of foreign and security policy, the Commission is 'fully associated' with the work carried out. It is represented in all the intergovernmental CFSP institutions. It also has the right of initiative, but it is not an exclusive right. As for the European Parliament (EP), it was given the right to be consulted on the main aspects and basic choices of the CFSP in the Maastricht Treaty. It also has the right to ask questions and make recommendations to the Council in this domain. With the Lisbon Treaty, the interactions between the Council and the EP have intensified, however the nature of the relationship remains unchanged. As for the European Court of

Justice, it has no jurisdiction in CFSP.[4] The problem is that the boundaries between external economic relations and external political relations are not always self-evident. Further, it is not always possible to separate 'foreign policy' or 'security' issues, for example, from 'development', which is controlled by the Commission. A number of issues are of so-called mixed competence. This led to double-headed missions and ad hoc solutions in which the Commission and representatives of the Council have both been involved. Also, the implementation of CFSP decisions often requires the use of EC instruments, or financing over the EU budget. In such situations, the Commission and the EP are able to flex their muscles. Due to this fuzziness the supranational institutions have successfully encroached on what might originally have been considered within the realm of national government. We see this for example in the inter-institutional agreements between the EP and Council in foreign and security policy. Also, in the area of defence procurement, the Commission has successfully introduced common legislation in a domain formally controlled by the intergovernmental EDA.

The High Representative

In order to ensure greater coherence in all aspects of the EU's external activities the Lisbon Treaty introduced the double hatted post of High Representative for Foreign Affairs and Security Policy and Vice President of the Commission (HR). Catherine Ashton, the new HR, took over from the Presidency the responsibility of chairing the meetings within the CFSP, including those of the Foreign Affairs Council (FAC). She also has the right to put forward policy proposals and serves as head of the European Defence Agency (EDA). This reinforced HR is thus a key institutional position within the CFSP (Vanhoonacker and Pomorska 2013). However, this new actor perpetuates the unresolved tension between the protection of national sovereignty and the aim of a single policy, as the authority of the High Representative is derived from the member states, while she is also part of the Commission.

The establishment of a ministry of foreign affairs – the European External Action Service (EEAS) – constituted the second major institutional innovation in the Lisbon Treaty. This institution, a merger of various branches of the Commission and the General Secretariat with an additional influx of new staff, was setup to assist the HR. Consequently, in the EEAS, supranationalism and intergovernmentalism live together under the same roof. Its logic of recruitment contrasts with intergovernmental principles: 60 per cent of staff in the EEAS's staff are permanent, and all staff are appointed 'on merit' rather than with reference to their geographical/national origin. As an institution it is

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[4] Yet, see Hillion (forthcoming 2014).

address issues that must be decided according to the procedures of the CFSP, as well as some of the issues that are subject to the Community method.

The main challenge to the first premise of intergovernmentalism comes from within the intergovernmental structures. However, through the new HR and the EEAS, there is also increased evidence of a mixity of supranational and intergovernmental actors influencing policy. The real impact of these institutions can nevertheless only be assessed after some time. But what about the second feature of intergovernmentalism? How real is the right of member states to veto decisions with which they disagree?

Sidestepping the veto

Many studies point to significant changes to the way in which policy is made within the institutions dealing with foreign and security policy (Tonra 2003; Meyer 2006; Vanhoonacker *et al.* 2010). Juncos and Pomorska (2006) and Juncos and Reynolds (2007) find strong evidence of compliance with specific codes of conduct referred to as 'consensus building' as well as with the often-mentioned reflex of coordination. Thus, they echo much of what Simon Nuttall argued in 2000 (Nuttall 2000). Howorth similarly finds that '[…] a significant measure of socialisation ensures that the dominant mode of interaction is consensus-seeking rather than bargaining around fixed national positions' (Howorth 2010: 16).

However, this literature is often shrouded in a certain conceptual and theoretical vagueness, which makes it difficult to know precisely what has changed, and what it might tell us about the member states' right to veto. One important aspect to the claim of socialisation is that the positions of the member states over time are becoming more similar. However, the fact that perspectives or policy-positions of member states are becoming more alike does not necessarily signify that the CFSP is no longer intergovernmental. Such transformations may decrease the likelihood of the use of the veto and hence facilitate policy making, but this does not mean the right to veto has disappeared. Likewise, observations made regarding actors as 'consensus-seeking' may be compatible with the right to veto. As consensus seeking implies that all must agree to a decision (or at least agree not to overtly disagree), such consensus seeking may well take place 'in the shadow of the veto'.

On the other hand, in so far as this literature represents a critique of rational-choice, intergovernmentalist assumptions of actors' preferences as exogenous and of the outcome of decisions as the lowest common denominator of such predefined preferences, it does indirectly question the centrality of the veto.

The argument is that, rather than being exogenous to the process of decision making, preferences are shaped through a collective, cross-border decision-making process. If member states routinely, as the reflex of coordination suggests, postpone defining their preferences on foreign-policy issues until they have spoken to their European partners, or if they define their position in a process of exchange with their partners, this would mean that the veto is de facto no longer relevant, even though it does not question its existence.

This decreasing centrality of the veto also emerges from the fact that member states often do not have clearly defined preferences. In such cases they often simply go along with the collective position (Juncos and Reynolds 2007; Howorth 2010: 17–18). However, as these are not examples of member states *changing* positions, but of *developing* a position, neither these observations, nor those of a collective, cross-border decision-making process, are irreconcilable with the right to veto. We can only really claim that this right is challenged if we find that states refrain from using it. This question is addressed more directly in a study of the EU's work on preparing its positions and policies during the negotiations concerning the International Labour Organization's (ILO) Maritime Convention. In this case member states were willing to forego their right to veto in order to develop a common policy (Riddervold and Sjursen 2012). This was also true for states with strong economic interests that ran counter to the proposed common positions. While this is not a classic CFSP issue, it is an example of EU member states deliberately choosing to act together rather than separately in an international setting. As such it is certainly an issue of foreign policy (Jørgensen 2009) and it constitutes a challenge to the assumption that a change in the norms that guide decision making – away from a practice where the threat of a veto is constantly present – is unrealistic.

Several observations of interaction within the PSC point in this same direction. Participants here describe processes in which they routinely succeed in convincing state representatives to change from their initial position: 'If we have a wave of consensus and you are the only obstacle, then you have to have exceptionally good arguments to turn the tide. Sometimes, colleagues have to say: '"Yes I understand everybody else, and I would love to agree but I simply have to call home." Then everybody will agree to let him/her call home. Very, very often, I would say, it is also the case that the colleague will come back and say: "Yes, OK, we agree!"' (quoted in Howorth 2010: 16). Likewise, Christoph Meyer finds that agreement has been achieved 'even in areas where national strategic norms would initially indicate incompatibility' (Meyer 2006: 136).

The veto (or its shadow) remains, even though it is often sidestepped. However, and contrary to conventional wisdom, there are several examples of situations in which, for the sake of the 'common good, member states have changed their initial position, rather than veto a decision,. While there are not yet sufficient systematic empirical studies to claim that these examples represent a trend, they are significant enough to suggest that the ground below the feet of the veto is not entirely solid.

A Permanent Delegation of Powers

The third feature of intergovernmentalism concerns the delegation of power and the right of member states to revoke it – or to renegotiate its terms. There is little to draw on in terms of actual practice with regard to this premise. We do not know what would happen if a state sought to withdraw powers that had been delegated, as no one state has so far sought to do so. Thus a different kind of analysis is required. I focus on what may be considered the best interpretation of the idea of the delegation of power and examine the extent to which this fits the formal arrangements that are in place. On this basis, some questions arise.

First, rather than delegating a limited set of tasks, the Treaties indicate a general delegation of competence in all matters relating to foreign policy and the Union's security. They also identify the aim of a common defence. Certainly, this general delegation is limited by the fact that within this overall frame, each decision to act is made by the member states 'acting unanimously' (Art.11.1-2). Nevertheless, this generalised delegation raises some doubts with regard to the reality of the right to revoke powers that have already been delegated. Presumably it is easier to 'take back' into the national fold specific tasks that are limited in time. There is a sense of permanence to the delegation of general competence, which is reinforced by the establishment of instruments and capabilities at the EU level. As already discussed, the EU is developing its own apparatus of external representation (via the EEAS). It may also deploy troops, using the concept of the battle group, amongst others, and it may sign treaties, as it has obtained legal personality in the Lisbon Treaty. This permanent ability to act within what may be seen as core dimensions of foreign and security policy seems to be at odds with the temporariness associated with delegation.

While doubts are often raised with regard to the prospects for further expansion of tasks at the EU level, there are no expectations of a reduction or a pulling back in the domain of foreign and security policy. The assumption seems to be that a decision to delegate is rather definite. In fact, observers even point to a 'ratchet effect' in the way the CFSP has been designed in the Treaties:

'Right from the beginning, each constitutive report contained within it the seeds of its successor […]' (Hill 1993a: 275). Also daily decision-making processes are often considered to have a cumulative effect. As Nuttall argues the accumulation of previous stances on foreign-policy issues provides a common framework for action and decision (Nuttall 2000; also Smith 2004: 141). These observations not only underline the definitive nature of the act of delegation but also suggest that it carries with it the potential for further commitments. The practice is different from that entailed by the idea of powers which are delegated and which may subsequently be withdrawn. Incidentally, on this issue, the right to veto might actually have adverse effects: if a state wants to dismantle this system, it would in all likelihood require the support of all the member states, or it would mean that the state in question leaves the EU altogether.

Finally, and perhaps most importantly, this generalised delegation opens zones, or pockets, of discretion for the institutions at the EU level. Amongst other things, it widens the scope of initiatives that may be taken by the now semi-autonomous institutions and bodies in Brussels, such as the EEAS and the PSC. In their search for possible common policies, they are authorised to look along the entire spectrum from foreign policy to defence. Further, within the scope of a particular task, there may be considerable room for discretion. This is particularly so with regard to the CSDP and military missions where the powers delegated to the PSC are considerable, although in foreign policy more generally there is also room for autonomous action (Art. 38(2) TEU).

In sum, then the fragmentation of European foreign and security policy is also noticeable when this third premise of intergovernmentalism is analysed. Although member states maintain their legal competences in all matters of foreign and security policy, such competences are not exclusive to them. Two parallel but interwoven systems of foreign policy are emerging – that of the nation states and that of the EU.

European Interests and Values

The fourth and final feature of intergovernmentalism identified in the analytical framework concerns the purpose, or raison d'être, of the intergovernmental endeavour.

An intergovernmental entity is there to serve the member states, to assist them in solving concrete problems, to ensure the protection of their interests and values and to enforce their preferences. However, in the case of the EU, there has been a conscious effort to go beyond this, to define *European* interests, as well as *European* values. The most coherent definition of these interests and

values may be found in the European Security Strategy, adopted by the European Council in December 2003. The Security Strategy '[…] established principles and set clear objectives for advancing the EU's security interests based on our core values' (Council of the European Union 2008). It set out three strategic objectives for European security: 'tackling key threats, building security in our neighbourhood and promoting an international order based on effective multilateralism' (Council of the European Union 2003). The conception of the EU as an actor with a purpose of its own, beyond that of serving the interests and preferences of the member states also comes through in the Treaty texts. Thus, one may read in the Lisbon Treaty: '*the Union* shall […] assert *its identity* on the international scene' (Title I, art. 2). This then seems to constitute a definite departure from the fourth premise of intergovernmentalism.

Through such definitions of the interests and values of the EU, constraints are also put on the actions of individual member states. These are partly of a legal nature. The member states are, according to Article 11(2) of the Treaty of Lisbon, legally bound to support the Union's external and security policy 'actively and unreservedly in a spirit of loyalty and mutual solidarity'. In fact, according to Cremona, 'the most important element of the Treaty of Lisbon from the perspective of foreign policy coherence is the clear external mandate given to the Union as a whole in both substantive and instrumental terms' (Cremona 2008: 35). However, equally important is the binding force of norms and institutions established prior to the Lisbon Treaty. In fact, despite the well-known solo initiatives of some of the EU's member states in situations of crisis, it is increasingly difficult for member states to escape expectations of consistency between national foreign policy and the foreign-policy positions of the EU (Sjursen 2003).

The development of an overarching normative frame constrains, in turn, the member states' ability freely to define national foreign and security policy, as the idea of intergovernmentalism assumes they should. Participation in the CFSP has led to a re-orientation of the foreign policies of member states. Alfred Pijpers noted this already in 1996 (Pijpers 1996: 252), as did Torreblanca with regard to Spain (Torreblanca 2001: 11–12). Also, the largest member states, France, Germany and the UK, display evidence of such transformations as a result of membership of the CFSP (Aggestam 2004). The requirement to consult, under which national positions would have to be justified in a manner that makes it acceptable to all, might contribute to make member states seek a certain consistency between their claims and the underlying constitutive principles of the EU (Sjursen 2003).

The definition of a common purpose beyond the individual preferences and values of the member states is reinforced through the unity of the legal order, which was established with the Treaty of Lisbon. In discussions of the abolition of the pillar structure, the focus is most often on the limitations to this change, due to the fact that the CFSP is still subject to specific rules and procedures (House of Commons 2008). However, with regard to the overall purpose of the CFSP, and the principles to which it is bound, the unity of the legal order does make a difference. With the abolition of the pillar structure the CFSP is subject to the same constitutional control standards as the rest of the EU. The Charter of Rights is binding for the EU as a whole, hence also for foreign, security and defence policy. This thus raises the stakes to some extent with regard to expectations of consistency, as it introduces an element of legal accountability. It remains the case, however, that the EU does not have formal mechanisms to sanction those who do not comply with the collectively agreed policy, or indeed with any of the constraints introduced in the Treaties.

A particular conception of European interests and values has been developed. Thus we are some way towards the establishment of institutions devoted to the Union itself, rather than to the member states. This suggests that when the EU acts, it does so on behalf of something more than the mere sum of member states' interests; it does more than act on the delegated authority of the member states. What the EU does must be consistent with the Treaties and the overarching normative framework of the EU, not only with the interests of the member states. Further, the identification of such values impacts on the formulation of the member states' own foreign policies.

In sum, power and authority within the domain of foreign and security policy is distributed in a manner that is not consistent with intergovernmentalism as it has been operationalised here. The CFSP has continued to move in the direction of transgovernmentalism, and even beyond this (Smith 2004). I now turn to address the second way in which the CFSP may be analysed, that is, through a focus on the substance of its foreign policy. I examine the significance of the ongoing processes of reconfiguration of national and European foreign policy for the content of the EU's foreign policy. This raises the question of what kind of foreign policy actor the EU is?

Conceptualising the EU's Global Role

Rather than taking the nature of the polity, and the key characteristics of the institutions and decision-making processes as their starting point, a number of authors have suggested that what is important if one is to conceptualise the EU's global role is to focus on what the EU does. The EU is the world's largest

trading power. It is also a major donor of humanitarian assistance and development aid. In fact, it has the largest total development budget in the world. if we look at the combined GDP and the foreign investments of the EU's member states, these are both comparable with those of the United States. But the EU is not only a global economic power. It is also an influential diplomatic player, and it is developing a capacity for united action in the domain of security. It has so far engaged in 24 civilian/military actions around the world.

Against this backdrop it has become fashionable to claim that the EU is a distinctive foreign policy actor: that the EU 'acts in a normative way'. Further, these scholars consider the EU capable of shaping understandings of what is 'normal' in global politics (Manners 2002). On this basis, they have suggested that the EU should be conceived as a *normative, civilising* or *ethical* power within the international system (Rosencrance 1998; Smith 2000 Aggestam 2004; Manners 2002; Whitman 1998; Diez 2005). This literature builds on Francois Duchêne's (1972) conception of the European Union as a 'civilian' power. According to Duchêne, the EU's novelty as an international actor is due to its focus on ensuring stability and security through economic and political rather than military means. The claim of 'normative power' also taps into a broader theoretical discussion of what matters in foreign policy and international relations (Risse 2000, Linklater 2005). It is assumed that it is possible for a non-state actor that does not dispose of the traditional means of power to make its mark in global politics. The argument of the EU as a normative power is thus a slightly different one to Christopher Hill's famous dictum of the EU's capabilities –expectations gap (Hill 1993b). His claim is that because the EU does not have the capabilities of a state in foreign policy it is not able to live up to the expectations it has created regarding its role and influence in global politics. A potentially dangerous capabilities expectations gap has developed between what it has been talked up to do and what it is capable of delivering. In the context of the IR literature, to claim instead a different measurement for a global actor could potentially be a radical proposal. It should also point to the broader debate about the role and place of norms in IR and the assumption of international 'anarchy' (Wendt 1999, Zürn 2005, Bohman 1999), although these links are rarely explored.

The literature on normative power also purports to say something about the EU as a polity and its legitimacy basis. It is these characteristics that are assumed to 'predispose it to act in a normative way' (Manners 2002: 242. See also Duchêne 1972; Whitman 1998). Three features are usually identified as important: the EU's historical context; its characteristic as a hybrid polity; and its political–legal constitution (Manners 2002: 240). More specifically, references are made to the fact that in the post-war context Europeans were

committed to pool sovereignty in order to curb nationalism; that the EU is a new type of entity that combines supranationalism and international forms of governance; and finally that its constitutional norms, which embody the principles of democracy, rule of law, social justice and respect for human rights condition its international identity.

It may be true that there is something distinctive to the EU's foreign policy. Observers often highlight the EU's policy of democracy promotion, its introduction of human rights clauses in all trade agreements, the emphasis on encouraging regional cooperation as well as the focus on building international institutions as representative examples of such distinctiveness in foreign affairs (Risse and Börzel 2007). Nevertheless, the conception of the EU as 'normative power' is intuitive rather than analytical: It fails to disentangle empirical and normative claims, and lacks theoretical underpinnings (Sjursen 2006a and b). As such it provides a problematic answer to the question of how to conceptualise the EU as a global actor. It can neither account for the empirical claim, not justify its normative assessment.

The Normative Claim

With regard to the normative claim, the argument presented in the literature implies that if the EU pursues norms that means it is 'doing good' in the international system. Likewise, the message implied in the image of the EU as a 'civilian power' is that such power is by definition positive (Smith 2000).

The problem with making such assumptions is that as long as there is no explicit critical standard against which these claims to 'goodness' may be assessed, there is no way of knowing if they are correct. Norms are a variety of different things, and all of them do not necessarily lead to good things. And as for the use of economic instruments, it may be coercive and have fatal consequences for those at the receiving end. For example, it could very well be that the EU's pursuit of norms or efforts to define what is considered 'normal' (Manners 2002) are expressions of Eurocentric cultural imperialism. The literature implies that this is not the case, but if no distinction is made between different types of norms and their validity and legitimacy basis, we cannot really tell. We are required to trust the analyst's personal assessment of what is 'good', without being provided with clear reasons and critical standards.

A first important step to rectify this weakness would be to establish what kind of standard for 'goodness' is being used and further to clarify its legitimacy basis. Surprisingly, there are few efforts to do so in the existing literature. As a result, the 'normative power' literature may simply end up being apologetic and uncritical. Not only do scholars referring to such concepts risk appearing

as naïve moralists, as Realists will argue with Morgenthau or Kissinger that the purpose of a foreign policy is to pursue state interests and keep well away from morality. The conception of the EU as a 'normative', 'ethical' and particularly a 'civilising', power is also very similar to that used by EU officials when describing the EU's international role. This leaves scholars vulnerable to the charge of being unable to distinguish between their own sympathy for the European project and their academic role as critical analysts. As already noted, such conceptualisations also easily conjure up images of European imperialists or missionaries, who set out to shape the world in their image, convinced that their values and way of life was superior (Diez 2005, 2012). Alternatively, such claims could be mere hypocrisy, a simple cover for the promotion of particular interests. In sum it is only if we are clear regarding the basis on which such claims are made, that they may be critically assessed and vindicated – or rejected.[5]

The Empirical Claim

In order to assess if a conceptualisation of the EU as a 'normative power' for example is simply co-optation of the agenda of those in power, it would also be important to investigate its empirical relevance. However, a second challenge with the conception of the EU as a normative power is that while it does make empirical claims; it does not provide any analytical tools that would allow us to verify them. In fact, it collapses theory and empirics into one. Normative power is at the same time an analytical concept and an empirical claim.

A further difficulty is that if we consider the concept to be an analytical tool, it is not sufficiently nuanced to be useful in empirical analysis. After all, most actors pursue norms; most preferences also reflect a normative position and many foreign policy actors have some kind of normative influence or agenda. Both the United States and the former Soviet Union have in different respects pursued norms in the international system and sought to define the[ir] conception of normal. Thus they might also fit the definition of 'normative' power. The concept does not enable us to distinguish the EU's normative foreign policy from that of other normative foreign policies. Neither is there anything to tell us why the pursuit of norms is presumed to be a particular trait of the EU's foreign policy.

Thus, the problem is not really that the claims of the EU's particularity are contested. Scholars such as Richard Youngs (2010), Adrian Hyde Price (2006), claim that, on the whole, EU foreign policy does not differ much from the

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[5] For a more detailed analysis of the 'normative' power literature see Sjursen (2006a and b).

foreign policy of states. But these critics do not necessarily fare any better than the normative power literature. They are equally unspecific terms when it comes to defining what is *not* a normative power. Most importantly, they do not have a theory that would allow them to account for normative behaviour as a 'rational' choice (Sjursen 2006a and b; Eriksen and Wiegård 1997). They have no theoretical tools that would allow them to take the claims of 'normative power' seriously. Their analyses are predetermined to conclude that such claims are simply, as Lundestad (1990) argues a cover for particular interests, or an expression of particularistic values. From a realist perspective a 'normative' power cannot be any but a hypocrite.

In order to assess the putative particularity of the EU's foreign policy, at the least, we need to know what kind of normative power it is. We must be able to discriminate between different types of norms and their legitimacy and validity (as we cannot *de facto* assume that 'acting in a normative way' is necessarily a good thing).

 But if the 'normative power' concept is problematic, what are the alternatives?

Humanitarian Power as a Critical Standard

As noted, a key problem with regard to the claims of normative power Europe is the lack of an explicit critical standard, as well as a means to assess if the pursuit of norms is legitimate. Such a standard may be derived from a cosmopolitan perspective. This perspective presupposes the possibility of a community based on certain universal principles, and depicts an international order constrained by a higher ranking law, and not by a balance of power.[6] An emphasis on law is important, as a foreign policy that claims to be 'doing good' –to act in the name of 'humanity' must be held accountable. Unchecked power, exercised in the name of 'humanity' as such, in the name of human rights alone, may easily lead to totalitarianism (Eriksen 2009). Further, the law would alleviate suspicions of hypocrisy and ensure consistency in the application and pursuit of norms. There is always a risk that actors will follow their own interests even if they know that this may harm others, or suspect that others do so, even if they say the opposite. In order to avoid such risks, common rules are necessary. The law functions as a system of action that makes it possible to implement moral duties as common commitments.[7] A distinction is

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[6] There are a number of different 'cosmopolitanisms' Brown (1992). What is presented here can only be a sketchy outline, pointing to some core components. It draws in particular on the papers contained in Bohman and Lutz-Bachman (1997), Habermas (2001) and Eriksen and Weigård (2003).

[7] The argument is based on the assumption that modern law is premised on human rights. For further discussions of the relationship between law and morality see Apel (1997) and Habermas (1997).

made, then, between traditional international law and multilateralism on the one hand and a cosmopolitan law of the people on the other hand. While the rights of states to external sovereignty is a core principle in international law and multilateralism, cosmopolitanism refers to the rights of individuals and prioritises this above the rights of states.[8]

Such a critical standard would be consistent with the idea of a foreign policy actor that breaks with what we understand by the 'traditional' foreign policy practice of great powers. The core feature of such a *humanitarian power* would be that it acts externally in order to transform the parameters of power politics through a focus on the international legal system, rather than to write itself into the existing international system through an emphasis on multilateralism or with the aim of establishing a (new) balance of power. It would be one that seeks to overcome power politics through a strengthening of cosmopolitan law, emphasising the rights of individuals and not only the rights of states to sovereign equality, the purpose being to establish a global law of citizens. Further, a humanitarian power would be a power that is willing to bind itself, and not only others, to such common rules. Nevertheless, what is suggested here is a thin version of cosmopolitanism, where few functions are considered "up loadable" to the global level. It is based on a narrow conception of justice, where the cosmopolitan level would focus on human rights and security.

Legal procedures for protecting human rights in international affairs are still weak. Thus, a question for empirical research would be to what extent the EU's arguments for human rights were presented only with regard to particular actors or cases. If such arguments were also part of a broader effort to transform the legal status of these rights in international law this would be consistent with the concept of humanitarian power. An example of such efforts would be to support the establishment of the International Criminal Court (ICC). Furthermore, one might expect that a humanitarian power would develop standards, mechanisms and policy instruments that would ensure that its own policies were consistent with such principles. The confirmation of the Charter of Rights as legally binding for the EU and its member states might be one such indicator, as the Charter would ensure greater consistency between internal and externally projected standards.

What Kind of Norms?

A second challenge is to be able to discriminate between different types of norms. As noted, a cosmopolitan perspective presupposes the possibility of

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[8] For analyses of the legitimacy of cosmopolitan law see Habermas (1996), Rawls (1999), Beitz (1979), Forst (2001).

agreement on certain universal principles. Hence it rests on the analytical distinction between moral and ethical norms. Moral norms refer to questions that may be settled with reference to justice and concern deontological principles such as human rights, democracy and rule of law. Ethical norms, or values, refer to questions of what is conceived of as the common good and thus revolve on what can be justified in a context-bound ethical-political discourse (Habermas 1996: 255). While ethical norms and the concept of values are connected to the characteristics of a specific community and to the identity of the members of that community, understood as collective representations of the good that vary according to cultural and social context; moral norms or rights – referring to justice – are universal in the sense that they pertain to humanity as such, independently of particular identities and belongings (ibid.: 259).[9]

The distinction becomes central for example if what we have in mind is a conception of the EU as an actor that promotes norms, but does so without following down the path of European imperialism. Values or conceptions of what is good may vary according to cultural or social contexts. They are particular for example to a specific community or a specific collective identity. If the EU defines itself, and thinks of itself, as a 'force for the good' then, as already noted, this could be a subjective definition linked to a particular European understanding and defined in a particular European cultural context. It may not match what is defined as good or valuable in other parts of the world, conditioned by other cultural or social norms. So 'normative power' Europe could be true to its own norms, yet be perceived as acting in the same way as 'historical empires' (Sjursen 2006b). This basic analytical distinction is important but lacking in the literature on the EU as a 'normative power'. The suggestion here is that a critical standard for a humanitarian power be linked to an emphasis on moral norms, seeking to establish what is right, fair or just, and which can be kept separate from ethical norms. Whereas it would not be reasonable to expect transcultural agreement about values, the same is not necessarily the case with regard to higher order norms such as 'equality, freedom, solidarity, self-realisation and human dignity' (Eriksen and Weigård 2003: 138).

The concept humanitarian power may allow us to capture the putative distinctiveness of the EU as a foreign policy actor. As an analytical tool, and an ideal type, it does not carry any empirical claims. Rather, it is a working hypothesis that should allow analysts to further investigate the argument of the distinctiveness (or lack of such) of the EU's foreign policy. At the same

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[9] The distinction is connected to that often drawn in debates on international relations theory between cosmopolitan and communitarian perspectives (Brown 1992).

time, it provides a critical standard against which any implicit claims of a "better" foreign policy may be assessed and criticised (or vindicated). A weakness of this concept may however be that it puts too much emphasis on law and does not take sufficient heed of the democratic requirement of citizens' right to make the laws that they are to abide by.[10]

Whether the EU is a humanitarian power in the making or rather an actor that would fit with the traditional realist notion of great power (Morgenthau 1993), both claims would imply that there is something at the EU level that requires legitimation. Where does this democratic legitimacy reside?

The Challenge of Democracy

As suggested in the first part of the paper, most of the literature on the CFSP suggests that power and authority within the domain of foreign and security policy is distributed in a manner that is not entirely consistent with c intergovernmentalism, as defined in this paper. A particularly striking feature is the fragmentation of the (executive) foreign-policy apparatus. National foreign and security policies are integrated in a semi-autonomous institutional structure, which has developed a 'higher order' conception of *European* interests and values.

A key challenge is to identify 'who decides' within this foreign policy system. It is often difficult to know, or predict, where responsibility for decisions actually lies. Foreign and security policy is made through interactions and exchanges primarily between the executive branches of the member states. They make their decisions collectively, coming to a common understanding of what is feasible and desirable for the EU as a whole. Often, states refrain from vetoing decisions, or change their position, in order to facilitate common policies. This makes it difficult to disaggregate decisions and trace them back to individual ministers or governments. Key actors are the representatives of the member states in Brussels, whose autonomy and room for discretion is considerable. The supranational institutions also wield influence. More importantly, however, policy is shaped with reference to values and principles that are defined as particular to the Union, and not with exclusive reference to the interests and values of the member states.

On the one hand, there is a democratising and 'civilising' element to this system. The requirement for national executives to justify their positions and actions is much more intense than in traditional international settings

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[10] For further discussions of the theoretical underpinnings of this perspective see Eriksen (2009)

(Keohane *et al.* 2009). The expectation that national governments justify their policies was fortified by the legal obligations resulting from the unified legal framework established by the Lisbon Treaty. It entails some formal legal obligations, such as the Charter of Rights, to which governments must refer when justifying their policies, in addition to the informal normative ethos of CFSP. The expectation that member states' justifications for their foreign policy stance be consistent with the overall objectives of the EU thus has a legal dimension since the Lisbon Treaty.

What member states say and do has to be considered acceptable and reasonable from the perspective of their European partners. This in itself may lead to a certain taming of national foreign policies. A communicative perspective provides us with the theoretical tools that would allow us to account for why it might make sense to expect, that member states would be required to demonstrate consistency between such internal and their external policy. In a communicative process, or a process of reason-giving:

> Verbal statements raise expectations of consistency between claims and their correctness and between words and actions. In certain situations double standards and cognitive dissonance will be problematic. Under certain conditions deliberation compels actors to explain and justify their preferences to critical interlocutors and revise them when criticised.
>
> (Eriksen *et al.* 2005: 238)

As the EU's constitutional norms embody the principles of democracy, rule of law and respect for human rights, some of these conditions are in place in the EU. Consequently, living by double standards becomes a problem. The point is that the CFSP may form a sphere in which deliberation about foreign policy takes place in a manner where the member states have to justify their positions and viewpoints to each other (Mitzen 2006). Further, the EU may also create expectations from third parties that it lives up to the standards it has, itself, identified.

On the other hand, these justifications of foreign policies take place between and among executives. To the extent that accountability plays a part, it is a matter of legal accountability (through national courts) and not accountability to elected representatives. Also, as mechanisms for ensuring compliance are not in place, those in power may simply 'talk the talk' and act in disregard. Consequently, this form of collective, cross-national decision making seems difficult to reconcile with the democratic requirement that it should be possible to trace decisions back to a form of authorisation by the citizens. Such authorisation would probably require institutions and procedures beyond the

individual nation states that would allow citizens access to information about what goes on amongst the executives and to have an informed opinion.

Given that developments beyond intergovernmentalism so far are the result mainly of informal practice, however, it is difficult to establish procedures that may compensate for their effects on citizens' status as authors of the policies. Also, there is a sense of contingency or haphazardness about which issues are brought outside the intergovernmental mode of decision making, which makes it difficult to ensure proper channels and mechanisms of authorisation. To the extent that there is a general pattern, it is that of segmented policy making and the coexistence and overlapping of parallel systems of foreign policy. The institutions established in Brussels are part of the national executives, but their semi-autonomy contributes to a fragmentation of these same executives. The fragmentation of European foreign and security policy is also notable in that although member states maintain their legal competences in all matters of foreign and security policy, it is not exclusive to them. Incidentally, this fragmentation stands in contrast to the aspiration to coherence contained within the Lisbon Treaty.

There are of course exceptions. In the most dramatic international events or crises, it is much easier to trace the lines of authority back to national executives. What become most visible in such situations are the difficulties in coming to agreement, and the distinctiveness of national foreign policies. This was visible for example in the intervention in Libya in 2012, as well as during the war in Iraq (Lehne 2012). Also, when it comes to implementation the EU must rely mostly on the national system. However, this does not solve the challenges involved in tracing those responsible and holding them to account.

As it is difficult to find out where decisions are actually made, it is also unclear who should be accountable. The EP has, through active pressure, gradually extended its influence (Barbé 2004; Maurer *et al.* 2005; Crum 2009). The general rule is, however, that it is only consulted on the main aspects and basic choices made in the field of foreign and security policy and is kept informed of how those policies evolve. As noted, with the establishment of the EEAS it has succeeded in strengthening its position a little further, as the High Representative is subject to Parliamentary questioning on the same basis as the Commissioners. Further, its role in deciding on the budget of the EEAS is important. And finally, its active involvement in the discussion concerning the establishment and design of the EEAS suggests that it may in future be a more influential actor. However, it is widely acknowledged that it neither authorises decisions, nor is able to hold those that make decisions accountable (Bono 2006; Peters *et al.* 2008; Crum 2009). Moreover, the powers of national parliaments

are limited due to these very departures from the core premises of intergovernmentalism.

Simply strengthening the powers of the EP may, in any case, be an insufficient solution to the democratic challenges of the CFSP. It is the fuzziness with regard to where authority and power actually lie that is the greatest challenge. What might be required, then, is a thorough (re-)constitutionalisation of foreign and security policy, in order to clarify lines of authority and power.

Conclusion

In this paper I have suggested that contrary to expectations, much of the literature on the EU's foreign and security policy implies that the EU has achieved a certain degree of integration, and developed an autonomous governing capacity in the domain of foreign and security policy. However, this achievement entails new challenges, in particular in the form of a possible weakening of the democratic anchoring of the EU's foreign and security policy.

In theoretical terms, such developments challenge deep-seated ideas and conceptions of foreign and security policy as the exclusive domain of the state. These changes demonstrate the need for a theoretical account of why and how such a relinquishing of power has taken place; they also challenge standard conceptions of foreign policy actors. It is also reasonable to expect such developments to affect patterns of policy formation, cooperation and conflict not only within the EU but also in Europe as a whole, and globally. They would influence established working methods, strategies and alliances of the member states. Finally, they raise important questions regarding the normative basis of foreign policy. Further research might thus assess to what extent this system of foreign policy represents a democratic surplus, due to the constraints established on national foreign policies, or rather a democratic deficit, as the location of power and authority has become more diffuse.

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