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# Parliamentarization of the CFSP through informal institution-making? The fifth European Parliament and the EU High Representative

Ben Crum

**ABSTRACT** This article examines whether the European Parliament has been able to use the institution of the High Representative as a lever to increase its powers in the EU's common foreign and security policy. Since it is found that the EP's strategy towards the HR has neither brought it any informal powers nor been instrumental in forcing the proposal of an EU Foreign Minister, a formal inter-governmentalist position appears to be vindicated. Yet from an institutionalist perspective it may be retorted that the few attainments of the EP so far are a consequence of it having a far higher sensitivity to failure on CFSP-related issues than on well-institutionalized European Community policies. As a future Foreign Minister will be better able than the HR to secure some degree of political independence from the Council, this may well lead the European Parliament to reassess its strategy and to adopt a more assertive stance.

**KEY WORDS** Common foreign and security policy; European Parliament; EU Constitution; EU High Representative; EU Minister for Foreign Affairs; informal governance; institutional change.

## INTRODUCTION

The powers of the European Parliament (EP) have steadily expanded in the course of the series of European Treaty revisions of the past twenty years. While originally assigned little more than a consultative role in the European legislative process, in many domains Parliament has come to act as a full co-legislator on a par with the Council of Ministers (cf. Farrell and Héritier 2003). Similarly, Parliament's right to be consulted on the choice of the Commission President, as it was provided by the 1992 Treaty of Maastricht, has been turned into an actual veto right (Hix 2002) and its powers to scrutinize the members of the Commission have steadily increased.

The question is why such powers have been granted to the European Parliament. In fact, one would expect the European Union (EU) member governments, 'the masters of the Treaties', to have little interest in transferring powers to a supranational institution as the European Parliament that they

are unlikely to keep under their control. In seeking to account for the concessions that have been made towards the European Parliament, recent research has turned away from the 'history-making' formal moments of Treaty (re-)negotiations to the day-to-day informal interactions between European organizational actors (*JEPP* 2003; Farrell and Héritier 2003; Hix 2002). Coming from different starting points, these authors highlight the incomplete character of the formal Treaty provisions and the European Parliament's distinctive ability to exploit the loopholes that are left. Given its role in the decision-making process and its willingness to instrumentalize substantive issues, the EP can bring other European actors to concede certain 'informal' powers to it. What is more, powers that are initially conceded informally can at a later stage be formalized in subsequent Treaty revisions.

Departing from these theories of informal institution-making in the EU, this article examines whether the European Parliament has been able to use the institution of the High Representative (HR) that was established in the Treaty of Amsterdam as a lever to increase its powers in the EU's common foreign and security policy (CFSP). For sure, the CFSP is a rather different policy domain from the traditional European competences that are directly related to the single market. At the same time, the precedents of Community decision-making and the accountability of the Commission suggest that once policies acquire a permanent Brussels extension, Parliament will try to exploit it to increase its own leverage on the EU decision-making process. What is more, the negotiations on a Constitutional Treaty foreshadow the abolition of the HR by merging it with the position of Union Minister for Foreign Affairs. This raises the question to what extent the EP has been instrumental in this Treaty change and whether it stands to benefit from it.

Hence this article addresses two questions:

- 1 Has the European Parliament wrested any informal powers from its interaction with the HR?
- 2 Is the formal succession of the HR by a Union Minister for Foreign Affairs a victory for the European Parliament?

Basically, this analysis seeks to apply the claims of recent theories of informal institution-making between EU actors to the case of the relationship between the EP and the HR. However, as it moves outside the domain of European Community powers, this analysis also provides a critical test for these theories that may help to specify their limits or, more specifically, the conditions under which they apply.

With this aim in mind, the first section revisits the main findings of informal institution-making in the EU so far and proposes to broaden the analytical framework by complementing the predominant institutionalist approach with two alternative perspectives. The second section introduces the case of the relationship between the EP and the HR and sets up the hypotheses that would follow from the three theoretical approaches. The remaining two sections then examine the two questions posed on the basis of a systematic analysis of

documentation and EP reports concerning the EP-HR relationship, and interviews with representatives from both the Parliament and the Council secretariat.

## 1. THEORIES OF INFORMAL INSTITUTION-MAKING

Recent research has highlighted how European institutions are also developed and transformed in the day-to-day interactions of European actors as they evolve in between the ‘history-making’ Treaty revision moments. In contrast to the formal institutions enshrined in the treaties and the legal acts directly deriving from them, these institutions are called ‘informal institutions’ and may be defined as ‘all the rules that lack both a formal foundation and third-party oversight’ (Stacey and Rittberger 2003: 859). Informal institutions can emerge due to the inherently incomplete character of the formal rules of the European Treaties. They arise when actors confront situations to which the formal rules do not provide an unequivocal response.

Of particular interest are those situations that bear upon the relationships between EU organizational actors, most notably the Council, the Commission and the Parliament, and where their respective organizational interests suggest conflicting interpretations of the appropriate line of action. While such conflicts may be resolved on a case-by-case basis, when similar situations keep recurring and none of the actors involved can simply impose its view unilaterally, they may allow for the emergence of informal institutions to ease the handling of these situations. Actors that have not been fully involved in the creation of the formal Treaty rules (like the European Parliament) and regard them as unsatisfactory have a distinctive interest in seeking to exploit such equivocal situations against actors that have co-authored the formal rules (like the member governments in the Council) (Rittberger and Stacey 2003: 1027).

Accounts so far broadly agree on the factors that determine the ability of actors to shape informal institutions. Hix (2002: 271) focuses on the European Parliament’s credible threat to the Council of non-co-operation that is based on its willingness ‘to lose in the short term in return for [formal and informal] constitutional reforms that guarantee its interests in the long term’. Outlining a somewhat more extensive theoretical framework, Farrell and Héritier (2003) list the EP’s willingness to instrumentalize substantive issues and its low sensitivity to failure besides three other factors: the formal institutional framework, differing time horizons, and differing levels of resources. Notably, they find that – apart from the formal institutional framework – these factors generally tend to work in favour of the European Parliament’s bargaining position in upholding its preferred informal arrangements.

Perspectives diverge somewhat when it comes to the relation between informal and formal institutions. Hix (2002) argues that EU governments may formalize informal institutions if – given the operation of the informal institution – they no longer involve a *de facto* shift of power and if the governments recognize collective benefits in terms of efficiency, simplicity, transparency and legitimacy in formalizing these changes. Stacey and Rittberger

(2003) and Farrell and Héritier (2003) move beyond Hix's position by underlining the iterative, recursive character of institutional interactions. They argue that the iterative character of institutional interactions greatly influences actors' assessments of the costs and benefits of committing to certain formal or informal institutions. What is more, any formalization of previously informal institutions does not necessarily conclude the process of informal institution-building but may rather open up new prospects for it.

Notably, all these accounts of informal institution-making rely heavily on institutionalist analysis, more specifically of the historical kind (cf. Hall and Taylor 1996). Regardless of the different emphases, the unifying institutionalist argument underlying all of them may be summarized in the following five theses:

- 1 Faced with indeterminacies in the formal Treaties, actors mobilize different resources to impose their preferred interpretation.
- 2 From the confrontation of the different cost–benefit functions of the actors, an equilibrium solution emerges.
- 3 Through iterative interactions over time, the actors involved may come to recognize this solution as an informal institution given the general merits of increasing the efficiency and transparency of their interactions.
- 4 Informal institutions may even be formalized once the *de facto* disadvantages of formalization become negligible.
- 5 With the adoption of new or amended formal institutions, the parameters for informal institution-making are changed rather than that the process is closed.

Underlying this theoretical model is the assumption that EU governments, given their substantive goals, will be willing to concede (informally and formally) procedural powers to supranational institutions if the efficiency and transparency of working towards their goals will be greater than if these concessions are not made.

Given the similarities among the different accounts thus far, there has been little systematic testing of this institutionalist theory against alternative explanations. Stacey and Rittberger (2003) contrast different institutionalist accounts, but their hypotheses derive mainly from their preferred position of 'rational choice historical institutionalism' (RCHI). To discriminate more clearly between alternative explanations, the institutionalist account can be contrasted with two alternative approaches to informal institutions in the EU.

The first of these we may label *intergovernmental formalism*. This perspective insists on the primacy of the formal Treaty texts and of the EU governments as its masters. In this light the indeterminacy of the formal treaties appears of little relevance, as do informal institutions. To the extent that informal institutions emerge, they are expected to remain firmly bound by the letter and the spirit of the formal Treaty texts, and thus to remain safely under the control of the EU governments.

As a second alternative to the institutionalist approach, one can outline a *constructivist* position (cf. Checkel 1999). Rather than going along with the inter-

governmentalist assumption that the actors' preference functions are basically fixed, constructivists argue that the way actors define their interests and how they project them may well be transformed in the course of the integration process. Informal institutions can be rather well accommodated in this perspective. In particular this perspective throws a different light on those instances where the European Parliament succeeds in getting other actors to accept its preferred interpretation of the inter-institutional rules. Whereas the mainstream institutionalist explanations seek to account for this in terms of efficiency gains within a given cost–benefit calculus, the constructivist perspective suggests that the other actors may in fact be persuaded to recognize the Parliament's claims to democratic legitimacy.

Thus set up, these three perspectives are really ideal-types (Table 1). As is also illustrated by the research on informal institutions so far, most empirical analyses will mix elements from all three approaches. Thus, by employing rational choice elements, Hix and Stacey and Rittberger (but less so Farrell and Héritier) in a way try to reconcile their institutionalist approach with some basic insights from intergovernmental formalism. Stacey and Rittberger also acknowledge the value that more constructivist (or 'sociological institutionalist') explanations may have, even though they choose to treat these as only secondary to institutionalist and rational choice explanations. As the three perspectives can thus to some extent coexist, the theoretical challenge becomes to specify the empirical conditions under which each perspective will prevail.

## 2. THE CASE OF EXECUTIVE ACCOUNTABILITY IN THE CFSP

The relationship between the High Representative for the CFSP and the European Parliament is a rather distinctive setting within the European institutional architecture. For a start, there is the particular saliency of the domain in which the HR operates, namely the common foreign and security policy. The CFSP is generally distinguished from the traditional areas of European co-operation as a domain of distinctively 'high politics'. As a consequence, co-operation in this domain has been slow to evolve and has remained tied to particularly demanding procedures. The case of the HR thus allows us to explore the CFSP domain in contrast to earlier studies of informal institution-making that have looked mostly at the more institutionalized Community competences.

A further singularity of foreign policy is that it is administered mostly through executive decisions rather than through legal acts. In many ways the most notable example of informal institution-making and its subsequent formalization is probably the way Parliament has been able to extend its powers to hold the European Commission accountable (Hix 2002). The question then arises whether the EP will be able to employ a similar strategy with regard to the (pseudo-)executive institution of the HR. In fact, since acquiring legislative powers in this domain is of rather limited relevance, maintaining certain controls over the HR constitutes the most important inroad the EP has on the CFSP.

Table 1 Three alternative approaches to informal institution-making in the EU

	<i>Institutionalism</i>	<i>Intergovernmental formalism</i>	<i>Constructivism</i>
<i>States' preference function</i>	Fixed, but open to changes in the parameters	Fixed	Malleable
<i>Mechanism of political dynamics</i>	(Incremental) reduction of inefficiencies	New optimal solutions and changes in negotiation setting	Learning and socialization
<i>Emergence of informal institutions</i>	Exploitation of indeterminacies in Treaty texts	Epiphenomenon to clarify Treaty texts	Accommodation and transformation of formal provisions to actual practice
<i>Main resources to shape informal institutions</i>	Blocking power and sensitivity to failure	Control over Treaty texts	Persuading power backed up by appeals to public legitimacy
<i>Formalization of informal institutions</i>	Possible when <i>de facto</i> impact becomes negligible and efficiency and transparency gains can be secured	Unlikely	Likely as a way of enshrining new insights
<i>Relevance of informal institutions for the process of European integration</i>	Conditional	Negligible	Symptomatic

Cf. Stacey and Rittberger (2003: 869, Table 1).

From the three theoretical perspectives outlined, different hypotheses may be derived with regard to each of the two questions posed in this article:

- 1 Has the European Parliament wrested any informal powers from its interaction with the HR?
- 2 Is the formal succession of the HR by a Union Minister for Foreign Affairs a victory for the European Parliament?

## Intergovernmental formalism

The predictions of the perspective of intergovernmental formalism are premised on the formal Treaty provisions. The Treaty of Amsterdam positioned the HR as an administrative agent of the Council. Paragraph 18.3 TEU assigns the function of HR to the Secretary-General of the Council secretariat. Article 26 then provides that the HR

shall assist the Council in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.

Furthermore, the Treaty of Amsterdam reaffirmed the intergovernmental character of the CFSP as a separate pillar besides the European Community (Monar 1997). The CFSP is carried out by the EU member states acting together through the European Council and the Council. Contrary to decision-making concerning, for instance, the internal market, decisions in the CFSP generally require unanimity among the member states. As a consequence, it falls upon the national parliaments to ensure democratic control of the CFSP by scrutinizing the positions taken by their governments.

As a complement to this, the EP is assigned no more than a marginal role in the CFSP. Article 21 TEU provides that Parliament shall be informed and consulted by the EU Presidency on the basic choices and the progress in the CFSP. Parliament further has the rights to ask questions and to make recommendations to the Council. All in all, the EP is acknowledged in the CFSP and allowed the right to express its views but it is not given any genuine powers. Thus it is in the end little more than a matter of courtesy if the Presidency and the HR involve the Parliament in the CFSP. Hence, we can define hypothesis F1 as follows:

*F1: The interaction between the EP and the HR will not lead to the concession of any informal powers to the European Parliament.*

As no significant informal institutions are likely to emerge, there is little reason to expect that the EP's strategy towards the HR will successfully translate into subsequent formal Treaty revisions. In fact, in line with the insistence on the role of the member governments as the masters of the Treaties, the intergovernmental formalist position also suggests a negative hypothesis to the second question:

*F2: The proposal of a EU Foreign Minister cannot be attributed to the successful intervention of the EP.*

Instead Treaty (re-)negotiations will be determined by the preferences of the EU governments as they always are.



## Institutionalism

Alternatively, the institutionalist perspective would allow for the possibility of informal institutions developing between the High Representative and the European Parliament. Of course, institutionalists recognize that the formal institutional framework grants the EP very little power in the sphere of the CFSP and no formal claims on the HR whatsoever. However, there are two openings in the formal framework that the EP may seek to exploit in reshaping its relationship with the HR: the EP's budgetary power and the importance of ensuring consistency in the EU's institutions' actions towards the outside world.

The HR relies on the European Community budget, which is prepared each year by the Commission and adopted by the Parliament together with the Council (Art. 28 TEU; cf. Missiroli 2003). Over time a special CFSP chapter has been inserted in the budget for the financing of CFSP actions that do not have military or defence implications. However, the costs of any substantial (crisis) action easily exceed the limited size of the CFSP budget (€62.6 million in 2004) and thus require additional funding being made available on an *ad hoc* basis. While in principle member states can provide the budget for missions by sharing the costs between them, the more practicable alternative is to finance non-military CFSP actions by re-allocating money from the Community's budget for External Action that, with an overall size of €5 billion yearly, provides considerable leeway. This is where Parliament comes in, since such re-allocations require its approval, which it may use to wrest concessions.

The other potential lever the EP has on the CFSP is by taking initiatives that undermine the unity of the stance of the EU *vis-à-vis* third countries. In general, its lack of formal powers does not keep the EP from taking a stance on issues of world politics, and the majority of Parliament is generally inclined to adopt a rather principled stance, in contrast to the more diplomatic approach of the HR. More specifically the EP can fuel its political opinions by withholding its approval to international agreements of the European Community with third countries and thus preventing them from entering into force.<sup>1</sup> As Parliament is thus able to jeopardize diplomatic initiatives, the HR has an interest in maintaining a good relationship with it so as to induce it to behave 'responsibly'; even though Parliament's concrete powers are limited, it can potentially act as a major 'nuisance factor'.<sup>2</sup>

To sum up, with regard to the possible emergence of informal institutions between the HR and the EP, the institutionalist perspective hypothesizes:

*11: The HR will concede informal powers to the EP only to the extent that it has the ability to frustrate CFSP initiatives.*

What is more, we have seen that from an institutionalist perspective it is in fact conceivable that by securing informal institutions the EP can even exert its power over formal Treaty negotiations in which these informal institutions

can become formalized. Thus with regard to the second question the institutional position suggests that:

*I2: To the extent that informal institutions have developed between the EP and the HR, they will be incorporated into the proposal of an EU Foreign Minister if their formalization constitutes an improvement in terms of efficiency and transparency without, however, amounting to any significant de facto power losses of the member states.*

The conditions indicated here reflect the conditions that have been identified in the earlier research on informal institution-making.

### **Constructivism**

One thing that catches the eye from a constructivist perspective is that the HR, regardless of his formal positioning as an agent of the Council, represents the first full-time personal political embodiment of the CFSP in Brussels. Much more than the diplomatic delegations of the member states, the HR is thus part of 'the Brussels complex' and involved in daily, formal and informal, interactions with the supranational institutions of the Commission and the Parliament. In particular in his interactions with the Parliament, the HR will be exposed to its claims to democratic legitimacy for it being the only directly representative institution at the European level. Over time, the constructivist perspective would expect the HR to position itself increasingly beyond the sphere of control of the Council and simultaneously to gradually concede to claims of the Parliament to hold him accountable:

*C1: The HR will come to concede informal powers to the EP as a natural consequence of their regular interaction.*

Furthermore, when it comes to the formalization of informal institutions, constructivists will argue that relationships that have emerged informally in daily practice will indeed inform formal revisions. However, contrary to the institutionalist perspective, constructivists would suggest that these formal changes result not from an assessment by the masters of the Treaty of the costs of EP non-co-operation but rather from them coming to recognize its legitimate role in the European decision-making process.

*C2: The proposal of a EU Foreign Minister will incorporate the informal practices that have emerged in the day-to-day interaction between the HR and the EP so as to formally validate their legitimacy.*

Thus this section issues two sets of three competing hypotheses that may be tested in the light of the actual events as they have taken place since the establishment of the HR in 1999. Basically, the formal intergovernmentalist position

does not allow for the EP to acquire any informal powers as a result of the establishment of the HR, let alone for the formalization of such powers. The constructivist position, on the contrary, suggests that it is only all too likely that the interaction between the EP and the HR will provide the former with new, informal powers that will also lay the basis for new, formal powers. The institutionalist perspective takes the middle ground by tying the acquirement of informal powers by the EP, as well as their subsequent formalization, to some rather specific conditions.

### **3. HAS THE 1999 TO 2004 EP WRESTED ANY INFORMAL POWERS FROM ITS INTERACTION WITH THE HR?**

Having initially opposed the establishment of the High Representative, insisting that his duties were better entrusted to an External Action Commissioner, once the Treaty of Amsterdam had been agreed, the European Parliament started to prepare for the first HR even before he was appointed. Parliament raised a number of claims seeking to acquire informal powers *vis-à-vis* the HR that were not recognized as such in the Treaty. These claims concerned, respectively, the appointment procedure of the HR, the formal interaction between the HR and Parliament, and the substantive involvement of the EP in CFSP policy-making.

#### **Appointment procedure**

As was widely recognized, the HR's role was 'likely to be very much defined by the first individual to hold the post' (Peterson and Sjusen 1998: 176; cf. Monar 1997: 425). Even if the Treaty did not provide any role for it in the appointment procedure, Parliament clearly communicated its preference. It called for the appointment of 'an eminent person with a clear political profile', adding that 'the High Representative should be a politician, rather than an administrator' (EP 1999a: 7, 9). Shortly before the first HR was to be appointed, Parliament became more specific as it 'insists on a confirmation hearing of the Foreign Affairs Committee prior to the take up of formal duties of the High Representative; considers such a confirmation hearing as a precondition for developing a close and constructive relationship between Parliament and the High Representative' (EP 1999b: 10). Parliament even amended its rules of procedures (Rule 99) for this purpose.

However, Parliament's bluff was quickly called. Even if the decision of the European Council of June 1999 to designate Javier Solana as the first High Representative met the EP's wish for 'an eminent person with a clear political profile', there was not a single gesture by which the European Council or Solana himself recognized any role for Parliament in the appointment procedure. Parliament's offer to lend its endorsement to the appointment was not taken up. As the parliamentarians were themselves occupied with their election campaigns, no effort was made to press for the idea of a confirmation hearing.

## Formal interaction

Shortly before Solana entered office, Parliament set out its ideas for the formal interaction with the High Representative. Departing from the premise that ‘the future High Representative will develop a permanent and structured working relationship with Parliament’, it stipulated that the HR ‘will inform [the European Parliament] at least on a quarterly basis on topical issues of the CFSP’ (EP 1999b: 10). As to the format of these interactions, Parliament indicates that its Committee on Foreign Affairs (AFET) is to play a vital role (EP 1999b: 15). Moreover, the EP suggests holding ‘an EP External Relations “Plenary” . . . after meetings of the General Affairs Council that would allow a more open and continuous dialogue with Council by all committees of Parliament concerned with external relations’ (EP 1999b: 19). Thus Parliament seeks to establish a clear position for itself within the CFSP policy routines by using the HR as a go-between.

As it turned out, from his appointment until the dissolution of the fifth European Parliament in June 2004, Solana attended on average four or five EP meetings a year (see Table 2). Thus he appears to have honoured Parliament’s claim to meet on a quarterly basis. However, some qualifications are in order before inferring that an informal institution has been established. Parliament is keen for Solana to attend its meetings and thus basically extends an open invitation to him. On the other side, Solana’s office is also committed to maintaining some kind of frequency, if only to prevent the emergence of bad blood on the side of Parliament at (crisis) moments where it would be least desirable.<sup>3</sup> Still, his actual coming to Parliament is one obligation that has to compete with many others (often (far) beyond Brussels and Strasbourg) that often prevent him from being available. Thus, in practice, it is very much Solana who determines the

Table 2 Presence of the HR at sessions of the fifth European Parliament (1999–2004)

Year	<i>Number of meetings (Plenary/AFET(+) Committee)</i>	<i>Main topics addressed</i>
1999 (Autumn)	2 (1/1)	General introduction
2000	4 (1/3)	Western Balkans, ESDP
2001	5 (2/3)	Western Balkans (Macedonia), Middle East, 9/11
2002	5 (4/1)	Middle East, Western Balkans, Afghanistan
2003	4 (3/1)	Middle East, European Security Strategy, Iraq, Western Balkans
2004 (first half)	–	
Total	20 (11/9)	

pace of their formal interactions with his office checking his availability against the pre-scheduled meetings of the EP.

Parliament's initial suggestion of 'an EP External Relations "Plenary"' never really materialized. Twice, however, the meetings have taken the extraordinary format of a joint meeting of the EP's Foreign Affairs Committee together with the committees on foreign affairs and defence policy of the EU national parliaments: once to discuss the Stability Pact for Southeast Europe (September 2001) and once to discuss the European Security Strategy (September 2003). Notably, by adopting this format, Parliament acknowledges the distinctively intergovernmental character of the CFSP, while at the same time underlining the need for complementarity between parliamentary controls at the national and the European level.

In light of the earlier remarks of Parliament underlining the pivotal role of its Foreign Affairs Committee in monitoring the HR, actual practice displays a notable shift from HR attendance of the committee to the EP plenary. This shift may be accounted for by the banal reason of scheduling problems.<sup>4</sup> However, there are notable differences between the two settings. Exchanges in the EP plenary tend to be rather ritualistic and contain few surprises. Typically, Solana will start with an introductory statement, and in the subsequent questions and answers session the presidents of the political groups get to take the lead. By contrast, the Foreign Affairs Committee puts its meetings with the HR on its agenda as an 'exchange of views' (pursuant to Article 103 of the EP's Rules of Procedure). While Solana also tends to open the session on these occasions, the smaller size and the higher degree of expertise of the membership allow for a more penetrating debate.

All in all, then, it appears that Solana has the upper hand in deciding when to see Parliament and in setting the agenda of their interactions. Parliament has acquired little to no control in determining the format of the encounters, or in setting their substantive focus. True to the expectations of intergovernmental formalism, the HR's relations with the EP appear more motivated by a sense of courtesy than by a sense of obligation. One further point to be noted in this context is that Solana has a distinct preference to use informal meetings to brief parliamentarians on the more controversial issues, since political considerations often prevent him from being too outspoken in public.<sup>5</sup> Thus he holds regular informal exchanges with the EP President, the Presidents of the party groups and the political co-ordinators in the Foreign Affairs Committee. Parliamentarians are generally happy to oblige on such informal occasions, even if they realize that these encounters are of limited political use and may actually undermine the effectiveness of formal exchanges.<sup>6</sup>

### **Substantive policy involvement of the EP**

As concerns its substantive involvement, Parliament's vision is well captured by its claim, submitted in 1998, to an 'oversight function' *vis-à-vis* the High Representative 'which would enhance democratic control of and popular support for

the CFSP' (EP 1998: 11). From his side, Solana expressed his views in his first address to the EP plenary:

It is of course important that I keep you informed about what I am doing and the initiatives I take. Equally necessary is for me to hear your opinions and views. The people expect us to react swiftly and effectively in the event of a crisis, and rightly expect their concerns to be taken into account. As democratically elected representatives, you have a key role to play in reflecting these views and in contributing to the development of a common foreign and security policy, which is more effective, more coherent and closer to the concerns of citizens and which reflects the values and principles which have forged our identity as Europeans.

(Solana 1999)

Notably, Solana acknowledges Parliament's distinctive role in representing the people's expectations. However, rather than allowing Parliament any normative claim over his actions, he presents their relationship as one of equals with a mutual interest in keeping each other fully informed about their actions and views. In fact, all niceties apart, the bottom line of Solana's stance is 'to keep the EP happy but also distant'.<sup>7</sup>

EP–HR interaction in the period 1999 to 2004 was dominated by two topics. First, there was the situation in the Western Balkans, in particular the attempt to contain the crisis in Macedonia that erupted in March 2001. Then from 2002 onwards, the ongoing crisis in the Middle East came to the fore and in particular the drafting of the 'Roadmap' to a solution of the Israeli–Palestinian Conflict in which Solana was involved as the EU representative. Besides these two main topics, the HR and the EP exchanged views over wider strategic issues, such as the development of the European Security and Defence Policy and the European Security Strategy that was drafted in 2003. Then, of course, the HR and EP could not ignore the international agenda after 9/11. However, apart from a swift initial response, disagreements among the EU governments prevented Solana from taking much initiative in the following debates concerning Afghanistan and Iraq (Hill 2004).

Generally, Parliament has come to look with much appreciation at Solana's initiatives and his ability to develop his office. In the EP's 2001 Progress Report of the CFSP, Foreign Affairs Committee Chairman Elmar Brok observes 'that, perhaps for the first time in the history of the CFSP, an EU foreign and security concept, which can be summed up by the terms "conflict prevention and crisis management" and is founded on the common political will to act at the operational level, is visibly in evidence' (EP 2001: 12).

However, there have also been some differences in orientation between Parliament and Solana. Following the institutionalist line of argument, we should focus in particular on issues where Parliament can credibly threaten to frustrate the HR's initiatives. Such potential is, for instance, present in Parliament's more forthcoming attitude towards Taiwan that sometimes threatens to complicate the Council's ambitions to improve relations with the People's Republic of

China (cf. Lan 2004), and in Parliament's wilful neglect of the Co-operation Agreement that the Commission agreed in 2001 with the Pakistani government and which Solana would like to have ratified. Typically, however, Solana has carefully avoided playing these disagreements out in any outright confrontation with Parliament. To the extent that it is found desirable to put pressure on Parliament, Solana tends to rely on his staff in the Council secretariat and on informal contacts between Council members and their national MEPs. Similar practices are used on those occasions when the EP's Budget Committee has challenged budget reappropriation requests from the Council for the sake of financing CFSP actions. Lobbying through the presidency of the Budget Committee, the HR's office has generally succeeded in overcoming such resistance and prevented a direct confrontation between the HR and Parliament.

Overall there is little evidence that Parliament has been able to sway the HR's policy on any particular issue. In the light of its informal potential highlighted by the institutionalist perspective, Parliament has clearly renounced pulling its full political weight. The main reason for this lies in the way MEPs assess the potential costs of non-co-operation in the domain of the CFSP. Consider, for example, what both Council secretariat and the EP recognize as the 'nuclear option': if the EP were to publicly retract its confidence in the HR by adopting a resolution to that effect, both sides recognize that it would be very difficult, if not impossible, for the HR to stay in office, even if formally no effect needs to be attached to such a resolution. From an institutionalist perspective one would expect Parliament to use this option as a veiled threat whenever it runs into conflict with the HR. Two reasons explain why this is not the case however. First, the 'nuclear option' only becomes a credible threat if Parliament can make a genuine case for the HR falling short and so far Solana has managed to steer clear of any such situation. The crux of the matter lies, however, in Parliament's high sensitivity to failure in that by voting the HR down it might well vote down the most promising instrument for seeing a CFSP emerge altogether. Even if the HR is positioned outside the Community structure, Parliament recognizes him as representing the most supranational element of the CFSP. Challenging the HR's position may well provoke the retraction of all supranational elements of the CFSP by the Council, leaving little to nothing for the EP in this domain.

Thus also in terms of substantive engagement the fifth European Parliament has not succeeded in acquiring any informal powers. Instead the HR's office has been quite successful in its intention 'to keep the EP happy but also distant'.<sup>8</sup> It has strictly limited Parliament's incursions and avoided any political confrontation. At the same time, members of the EP have acquiesced in having the HR operate at a certain distance, even if they recognize that 'the relationship with the HR has lacked in coherence and completeness'.<sup>9</sup> Clearly, the limited formal powers of the EP to oblige the HR do impose a handicap. Ultimately, however, it is Parliament's distinct sensitivity to losing the few inroads into the CFSP that the HR provides it with, which it also considers to be the most important stepping stone towards a more mature

and parliamentarized CFSP, which explains why it has not wrested any substantial concessions from him.

#### 4. IS THE EU FOREIGN MINISTER A VICTORY FOR THE EP?

As we find that the fifth European Parliament has acquired little to no informal powers *vis-à-vis* the High Representative, there would appear to be little point in examining whether the informal interaction between these two institutions has fed into the reform of the HR in the proposed EU Constitutional Treaty. However, the Constitutional Treaty suggests quite a fundamental overhaul in which the function of the HR is replaced by the new institution of a Union Minister for Foreign Affairs. The question may still be asked to what extent this reform has been informed by the misgivings of the EP with the HR. An additional question is whether, in the light of the experience with the HR, these reforms affect some parameters that may indeed make the future evolution of informal institutions between the EP and the Foreign Minister more likely.

Throughout the institutional debates from the Treaty of Amsterdam to the Constitutional Treaty, the European Parliament has consistently called for the communautarization of the CFSP by merging the HR with the Commission (cf. EP 2000). Yet, when faced with the figure of the HR, Parliament has signalled some willingness to recognize the distinctive character of the CFSP: '[t]here can be no doubt that the cohesiveness of the system demands that the High Representative "return to port" i.e., be part of the Commission, whether as its President or as Vice-President in charge of coordinating international action *under a special procedure for his appointment and his answerability to the European Council*' (EP 1999a: 16, emphasis added).

The proposal of an EU Minister for Foreign Affairs that was included in the proposed EU Constitutional Treaty (Article 28) foresees indeed that the executive responsibilities for the Union's external action will be concentrated in a single person. Notably, however, this Foreign Minister is to operate under two decision-making regimes: in the field of CFSP/ESDP his or her activities will fall under a mandate of the Council, while activities within the external action competences will be exercised under the principle of collegiality pertaining to the Commission (in which the Minister will indeed serve as a Vice-President).

The main contours of this 'double-hatted' Foreign Minister were drawn by the Working Group on External Action of the European Convention that paved the way for the Constitutional Treaty. Contrary to what the constructivist perspective suggests, the proposals of this Working Group were not informed by the actual experiences with the HR. The proposal of a double-hatted EU Minister for Foreign Affairs rather emerged as a political compromise between, on the one hand, those (some prominent government representatives, most notably from the UK, Sweden and Spain) who wanted to keep the two positions separate and, on the other hand, a large group of European and national



parliamentarians plus some odd government representatives (e.g. Finland) who advocated the full merger of the HR with the Commission.

Notably, the introduction of the EU Foreign Minister is not accompanied by any substantial revision of the EP's role in the CFSP. In fact, the Convention Working Group on External Action concluded that the current powers of the EP in the CFSP 'were satisfactory'. Notwithstanding the request of many MEPs, the EP is not given a right of assent to the appointment of the Foreign Minister. The Minister shall be appointed by the European Council acting by qualified majority and with the agreement of the President of the Commission. However, Parliament does get an indirect say in the appointment procedure as the Foreign Minister is included among the nominees for the College of Commissioners, which as a whole needs to pass a vote of consent of Parliament (Art. I-27.2). To the extent that the Foreign Minister acts as a member of the Commission, his actions are implicated in all general Commission obligations *vis-à-vis* the European Parliament (Art. I-26.8). However, to the extent that the Foreign Minister acts within the competences of the CFSP, the powers of the EP are significantly more limited. Most notably, while a censure vote of the Commission as a whole will imply the resignation of the Foreign Minister in his or her duties as a Commissioner, he or she will remain in charge of the tasks outside the Commission's domain.

Uncertainties about the workability of the inherently ambiguous double-hatted position are widespread. National representatives have expressed fears that it opens the door for the Commission (and the EP in its slipstream) to interfere with the Council's responsibility over the CFSP. Also on the side of the EP it is appreciated that it will not always be self-evident in practice how to delineate the CFSP and the Community competences from each other. While this may indeed create openings for the EP, there is also the fear that the Foreign Minister may use this ambiguity to roll back the powers that Parliament currently enjoys with regard to the external competences of the Commission.<sup>10</sup>

In the end, the introduction of the Foreign Minister changes little to the basic logic in which the EP relies on the HR/Foreign Minister for its involvement in the CFSP rather than the other way around. Hence, the implications of the change from HR to Foreign Minister for the emergence of informal institutions in this domain should not be overestimated. However, more so than the HR, the Foreign Minister, especially due to his responsibilities and instruments within the Commission, will be able to move outside the Council's sphere of control and may even have an interest in asserting his or her autonomy. Indeed, as one Council official observes: 'the overall logic of the draft Constitutional Treaty is that the Foreign Minister and his office, rather than towards the Council, will in the long run lean towards the Commission.'<sup>11</sup> If the Foreign Minister will effectively secure some degree of political independence from the Council, this may well lead the European Parliament to reassess its strategic options and to adopt a more assertive stance in their relationship.

## CONCLUSION

There is little evidence that the European Parliament has been able to use the institution of the High Representative as a lever to increase its powers in the common foreign and security policy. Despite its intentions, the fifth European Parliament has failed to wrest any substantial informal powers from the HR. Council and HR have refused Parliament any role in the HR's appointment. Parliament and the HR have come to meet on a rather regular basis, but the initiative in these contacts is firmly on the side of the HR who has prevented the development of any procedural rights on the side of the EP. Also in substantive terms, Parliament has been unable to gather any influence in the CFSP beyond its formal right to remain regularly informed.

*Prima facie* this state of affairs may be considered as a vindication of the formal intergovernmental position which predicts that no informal institutions are to emerge between the EP and the HR. While there is no support whatsoever for the constructivist hypothesis that EP–HR interaction leads naturally to informal institutions between them, the analysis does suggest an important qualification by which the institutionalist perspective can be salvaged. In contrast to the well-institutionalized European Community policies, the EP's sensitivity to failure is much higher in the CFSP. Parliament recognizes the HR as its best bet for seeing a CFSP develop and in due course acquiring parliamentary influence over it. Imposing parliamentary pressure on the HR risks the retraction of all supranational elements of the CFSP by the Council.

On the second question – whether the formal succession of the HR by a Union Minister for Foreign Affairs is a victory for the European Parliament – the intergovernmental formalist explanation clearly prevails, as the actual interaction between EP and HR has played no role in the conception of the Foreign Minister proposal. There are however two qualifications. First, contrary to earlier Treaty revisions, the drafting of the Constitutional Treaty, including the provisions on the Foreign Minister, was not a wholly intergovernmental affair. As the European Convention allowed a prominent role to parliamentarians in the drafting of the Constitutional Treaty, the Foreign Minister proposal emerged as a political compromise between Parliament's preferred option of full communautarization of the HR's responsibilities and the adherents of the existing situation. Second, regardless of its origins, the proposal of a double-hatted Foreign Minister carries many indeterminacies with it. Given that, compared to the HR, the Foreign Minister emerges much more as a political figure of its own with considerably more status and resources, and given the EP's proven ability to wrest concessions, the EP may well be able to exploit the indeterminacies to its advantage.

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## NOTES

- 1 At least if they establish a special institutional framework, have important budgetary implications or involve competences where the EP enjoys full legislative powers (Art. 300.4 ECT).
- 2 As put by an official in the Council secretariat, interview, 30 July 2003.
- 3 Interview with senior official of the Council Legal Service, 27 August 2003.
- 4 As is indeed suggested by people in the Council secretariat and conceded by people in the EP.
- 5 Interviews with senior officials of the Council secretariat, 30 July and 27 August 2003.
- 6 Various interviews with MEPs and EP staff, 2003 to 2004.
- 7 Interview with senior official of the Council Legal Service, 27 August 2003.
- 8 Interview with senior official of the Council Legal Service, 27 August 2003.
- 9 Interview with a member of the EP Foreign Affairs Committee, 1 September 2003 and confirmed in other interviews with MEPs and EP staff, 2003 to 2004.
- 10 Interviews with a member of the EP Foreign Affairs Committee (8 July 2003) and with a member of the secretariat of the EP's Foreign Affairs Committee (10 July 2003).
- 11 Interview with official of the Council secretariat, 29 August 2003.

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