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The Legitimacy of the Common European Foreign and Security Policy

Dodona Gashi

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Supervisor: Patricia Fragoso Martins

I. Introduction

The Common Foreign and Security Policy (hereinafter CFSP) has been developed through different stages. All those stages had one thing in common; this policy was legal, foreseen by the treaties and aiming to establish a new chapter in the “fairytale” of the European Union. However in this paper another aspect of this policy will be discussed, how legitimate this policy is. Without a deep analysis one could say that if it’s legal then it’s legitimate as well, but it has been proved through the history of international law that legitimacy means something more than foreseen in treaties, more than being legally correct. After all, laws are made to serve the people because “*when laws serve only themselves, there is a lack of legitimacy*”¹. Therefore legitimacy goes to another level; it makes sure that the laws serve their purpose, which is to improve the life of the people.

So when talking about legitimacy, another criterion comes into the scene, morality, the common good, what people that those laws govern want. “*Legitimacy serves to support and, when necessary, to correct legality*” since after all, laws remain how they are in paper and legitimacy is fluid and changing.² CFSP is a legal policy, foreseen by the treaties and with a regulated framework; however it remains to be seen if the whole process is any legitimate considering that “*legitimate decisions are based in democratic participation whereby affected persons have the opportunity to raise their voices.*”³ The process of decision making in CFSP leaves place for improvement. The voice of the people is barely heard, considering that it is a basic rule of democracy that through parliamentary procedures people shall be part of the decision making process. But when it comes to the EU, especially to CFSP, the procedures are quite complicated and lack that piece of a democratic process.

Considering the importance of Parliaments on the abovementioned democratic processes, the EU Parliament should be understood as a key institution that will introduce the possibility of turning the EU system into an ordinary democratic system.⁴ However the low turnout of the election in the European Parliament should not come as a surprise. “*Low levels of attention*

¹ Popovski, V., and Turner. N. "Legality and Legitimacy in International Order." 2008. Retrieved from : <<http://www.ony.unu.edu/events/unu-Legality%20and%20Legitimacy%20in%20International%20Order.pdf>>

² Ibid.

³ Ibid.

⁴ Mittag, Jurgen. “The Parliamentary Dimension of CFSP/ESDP Options for the European Convention”.2002. study submitted for the EUROPEAN PARLIAMENT *Directorate-General for Research*. p.12

within political parties and by the media, in part due to institutional factors, generally reduce the popularity of what are often called 'second-order elections'."⁵

The EU has started as a different organizational structure but historical developments have had an impact on the importance of the EU as an active actor in the international scene. Its role should be enhanced and EU should not rely anymore in powers of the USA in cases of international crisis but take its own steps. However, the role of the 28 Member States when it comes to deciding in engaging in these crises is not very substantive. After all what is the EU fighting for, world peace? Is it turning in a Don Quixote fighting the wind mills, fighting for *"its commitment to the defense of causes in which it rarely has a direct stake?"*⁶

In this paper I will attempt to describe the background of the CFSP, including a brief historical overview, and afterwards I will try to describe the decision making procedures and the role of each of the EU actors in the foreign policy making of the EU, which will lead us to the point of how participating this policy is, how is developed in practice and its external difficulties such as the overlap of powers with NATO and the relation with the US.

II. Historical background of CFSP

The idea of establishing cooperation on the field of foreign and security policy emerged as a matter of political changes of the time. After the bloody events of the Second World War, EU had to make sure that this kind of conflicts would not be repeated in the heart of Europe and the upcoming Cold War was not helping these fears.

The first attempt to create common positions between the main European states on the field of defense and security was noted with the European Defense Community (hereinafter EDC). This came as a result of a "French initiative to make German rearmament acceptable within the framework of an integrated European military force."⁷ The proposal of involving the German military power in an integrated European army under supranational control brought

⁵ Follesdal, Andreas, "EU Legitimacy and Normative Political Theory". PALGRAVE ADVANCES IN EUROPEAN STUDIES, pp. 151-173, M. Cini and A. Bourne, eds., Houndmills: Palgrave, 2006. <http://ssrn.com/abstract=1682006> p. 153

⁶ Simma, Bruno. "NATO, the UN and the (Harst, 2011) Use of Force: Legal Aspects." European Journal of International Law (1999).[Http://ejil.oxfordjournals.org/content/10/1/1.full.pdf](http://ejil.oxfordjournals.org/content/10/1/1.full.pdf).

⁷ Der Harst, Jan . "Chapter 7. The European Defence Community and NATO. A Classic Case of Franco-Dutch Controversy." *NATO's Retirement?: Essays in Honour of Peter Volten*. Groningen: Centre of European Security Studies (CESS), 2011. P. 84.

the idea of creating the EDC.⁸ Nevertheless the idea of rearming Germany was quite frightening for the rest of Europe and especially for France but after all this seemed like a better idea since having under control German soldiers would be much better than leaving them out of sight. In October 1950, the French proposed the Pleven Plan under which military forces from all the Member States would be integrated into a European army, which would be managed by a European Minister for Defense, who would be controlled by the Council of Member States.⁹ The EDC was signed in Paris on 27 May 1952 by the six founding members with the aim of setting a common foreign policy. However, the EDC project was unsuccessful after the French National Assembly failed to ratify it in 1954.¹⁰

On the other hand there was a positive outcome from the failed EDC. In 1954, the Western European Union was created hence a European Defense Organization was born. “Thus the unofficial intention connected with the creation of the WEU was to take over the envisioned role of the failed EDC and to control a rearmed Germany”.¹¹

It was certainly within the common interest of the six founding Member States to have common standings regarding different issues tackled by foreign policy. Therefore in 1972, in the Hague summit, a system of cooperation in foreign affairs or so called “the European Political Cooperation” (hereinafter EPC) was established. This was a quasi-institutional mechanism governed by rules of international law and it was aiming to facilitate “the economic integration objectives laid down in the EC treaties”.¹² EPC was considered as a “*deliberately vague name that both masked that EPC was about foreign policy cooperation and also symbolized the political sensitivities attached to moving into a policy area so associated with national identities and sovereignties*”¹³ However this system of cooperation

⁸ Alecu de Flers, Nicole, “The Provisions on CFSP and CSDP in the Lisbon Reform Treaty: Stumbling Blocks or Milestones?” (2008). Hebrew University International Law Research Paper No. 08-08. Available at SSRN: <http://ssrn.com/abstract=1262921> or <http://dx.doi.org/10.2139/ssrn.1262921>

⁹ Keukeleire, S., and MacNaughtan J.. The foreign policy of the European Union. Basingstoke: Palgrave Macmillan, (2008). p.41

¹⁰ Supra 7.

¹¹ Peters, S., & (Giessen), K. W.. The CFSP/ESDP: from the Tail Light to the Future Motor of European Integration? Forthcoming as: Module for a Study Guide on European Integration. (2004)Deakin University Australia. P. 4

¹² Gosalbo Bono, Ricardo. Some Reflections on the CFSP Legal Order. Common Market Law Review, Kluwer Law International (2006)., 337-394. P. 338

had no legal background and it developed through traditional diplomatic and economic actions.¹⁴

Historical dynamics brought the need for a stronger voice of Europe either within its territory or in the international scene. The urge to reconsider the EPC provisions emerged since a European Community without a common defense policy was seen as incomplete.¹⁵

A treaty base for these matters was provided after the entry into force of the Single European Act in February of 1986. In Title III of this act “Treaty provisions on European co-operation in the sphere of foreign policy were provided”. Even that there is a lack of an obligatory vocabulary towards the Member States in this title, a progress still might be noticed and as an innovation, a secretariat was located. The contracting parties were encouraged to follow an informal cooperation consisting of consultations and take into consideration the position of each other when taking an attitude. Another important novelty that came out of this act was an institutional one, the European Council was formally involved in the institutional system of the treaties, a Presidency for the European Political Cooperation was established, and a Secretariat was created with the aim of assisting the European Political Cooperation to prepare and implement its activities.¹⁶

The attempt to create a foreign policy through the European Political Cooperation seemed irrelevant next to the North Atlantic Treaty Organization (hereinafter NATO), since it was NATO that was tackling the main issues of the foreign policy at the time. Furthermore, the success or the initiatives of an EU foreign policy were not always dependent only on its forces to survive but also on the appropriateness of these initiatives and their impact on transatlantic relations.¹⁷

When talking about the historical dimension of CFSP one should look in the beginning of the 90’s when the Treaty of Maastricht was signed. The Treaty of Maastricht has an utmost importance on the whole chronological story of the European Union; it was by this treaty that the contracting parties established what we call nowadays the European Union. Furthermore, with the Treaty of Maastricht (Treaty on the European Union - TEU) a new milestone was set

¹³ Buonanno, L., and Neill N. "13." Policies and policy processes of the European Union. Basingstoke, Hampshire, England: Palgrave Macmillan, 2013. p .275.

¹⁴ Supra 12, p.338

¹⁵ Regelsberger E., Wessels W., “The CFSP Institutions and Procedures: A Third Way for the Second Pillar” (1996) 1 *European Foreign Affairs Review*, Issue 1, pp. 29–54, P.33

¹⁶ Supra 12, p.340

¹⁷ Supra 9, p. 10

on the EU as an active player in the field of Foreign and Security Policy.¹⁸ By this Treaty a single institutional framework comprised of three pillars was determined: first pillar or the European Communities, the second pillar or the Common Security and Defense Policy and the third pillar Police and Judicial Co-operation in Criminal Matters. Another important stepping stone were the (legally binding) provisions in Title V of the Treaty where a Common Foreign and Security Policy was established. The aims of the common foreign and security policy might be seen from two perspectives: safeguarding the common values of the Union, preserving peace, promoting cooperation, consultation and implementing joint actions in areas of common interest for Member States,- meanwhile a commitment to respect international law is also noted with the objectives of preserving and strengthening international security, encouraging international cooperation, respecting and enhancing democracy, rule of law and fundamental freedoms.¹⁹

Beside setting the legal basis for developing a common foreign and security policy, the Treaty of Maastricht also defined the competences of each of the institutions regarding this field. Article J8 of the Treaty provides the European Council with the power of defining and implementing the common foreign and security policy meanwhile the Council shall take the necessary decisions for defining and implementing the common foreign and security policy while ensuring unity, consistency and effectiveness of action by the Union. At the same time the Commission shall be fully associated with the work carried out in the field. The European Parliament was defined more as a consultative body and the Presidency needs to ensure that its views are taken duly into consideration; also the Parliament might ask questions to the Council or make recommendations.

Considering that the role of the European Commission, the European Parliament and the European Court of Justice are quite limited, in one way or another Member States insisted to keep their powers regarding this field in an intergovernmental approach.

Even that in the Treaty of Maastricht a commitment was shown by the Member States to develop a common security and defense policy and the “treaty basis” was provided; many

¹⁸ Jochen R., Weisserth H.B., Ashton C., and Darabos N., Handbook on CSDP: The common security and defence policy of the European Union. (2012). Vienna: Directorate for Security Policy of the Federal Ministry of Defence and Sports of the Republic of Austria, .P.54

¹⁹ Supra 12, p.342

challenges had to be prevailed in order to have an effective policy. *“Dubious states such as Great Britain wished to deny the EU a significant role in the security and defense field.”*²⁰

With the purpose of improving consistency and coordination on the field of foreign policy, in 1997 the Amsterdam Treaty was signed and even that it produced a number of important changes, *“it still saved the pillar structure set in Maastricht”*.²¹ These changes consisted mostly of procedural ones but also a new post of the High Representative for the Common Foreign and Security Policy was created and headed by Javier Solana, who already had been experienced as a Secretary General of NATO. This answered the *“who is in charge problem”* or as Henry Kissinger had supposedly put it- *“who do I call if I want to call Europe?”*²². As regards procedural changes, three voting procedures were envisaged for the Council: unanimity, qualified majority voting and majority. Furthermore, the Council was provided with a new instrument, the task of laying down guidelines and adopting “common strategies” that will be used to implement foreign policy goals (who can be taken by qualified majority voting). Also, the Amsterdam Treaty introduced enhanced cooperation “that allowed groups to advance in a specific area without the consensus of all EU members”.²³ Moreover worth’s mentioning that just like its predecessor, the Treaty of Amsterdam also did not contain provisions regarding legal remedies that would allow the Court of Justice to review the legality of CFSP measures, except when they affected the EC Treaties.²⁴

“Article J. 7 of the Amsterdam Treaty, which amends the Treaty on European Union, establishes that the Western European Union shall provide the European Union with access to an operational capability for 'humanitarian and rescue tasks, peace-keeping tasks and tasks of combat forces in crisis management, including peacemaking’”.²⁵ Meaning that with the effort to enhance operational capabilities of EU, operational tasks were delegated to a newly establishment organization: Western European Union. These tasks are commonly known as Petersberg operations deriving from the Petersberg declaration and involve humanitarian and rescue tasks, peacekeeping and peacemaking tasks and tasks of combat

²⁰ De Flers, Nicole Alecu. "EU policies in the Lisbon Treaty: A comparative analysis." Institute for European Integration Research (2009): 19. <<http://eif.univie.ac.at/downloads/workingpapers/wp2008-03.pdf>>.

²¹ Supra 11, p.12

²² Supra 13, p. 277

²³ Supra 11, p. 12

²⁴ Supra 12, p.347

²⁵ Pagani, Fabrizio. "A new great in the CFSP machinery: Intergration of the Petersberg tasks in the Treaty on European Union." European Journal of International Law 9 (1998): 737-49. <http://www.ejil.org/pdfs/9/4/695.pdf>>.

forces in crisis.” The mechanism for decision-making as regards Petersberg tasks involves cooperation between the European Council, the Council and WEU Council of Ministers.²⁶

The foundations of what we perceive nowadays as a Common Security and Defense Policy were laid in December 1998 when the British Prime Minister Tony Blair agreed in a meeting with President Jacques Chirac in St. Malo that “*the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them and a readiness to do so, in order to respond to international crises*”.²⁷

The Saint Malo declaration was a stepping stone on the CFSP policy. It was this moment when France and UK decided to leave behind their contradictions and unite in this policy, making its development possible. This declaration initiated a new political process and it contained the following key points:

I. *The EU needs to be in a position to play its full role on the international stage... making sure of achieving full and rapid implementation of the Amsterdam provisions on CFSP;*

II. *To this end the Union must have the capacity for autonomous action, backed up by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises;*

III. *Setting the rules of CFSP relations with NATO thus stating that the different situations of countries in relation to NATO must be respected and in order for the European Union to take decisions and approve military action where the Alliance as a whole is not engaged, the Union must be given appropriate structures and a capacity for analysis of situations, sources of intelligence, and a capability for relevant strategic planning, without unnecessary duplication...*

IV. *Europe needs strengthened armed forces that can react rapidly to the new risks and for this purpose the states readiness to unite in our efforts to enable the European Union to give concrete expression to these objectives.*

²⁶ Ibid

²⁷ Supra 20, p.19

Further amendments to the provisions of CFSP were achieved by the Treaty of Nice in 2001. Some of the main changes were the possibility of the Member States to establish among them enhanced cooperation, with the aim of safeguarding values and interests of the Union as a whole. Furthermore, the rule of qualified majority voting now was reinforced, also being part of the procedures for the appointment of the special representatives. The Western European Union was abolished and consequently EU had been given the direct responsibility to frame the defense aspects of CFSP and providing access to an operational capacity.²⁸ However, until the end of the century there was a lack of concrete provisions that would grant the EU a solid framework of crisis management capabilities.

As it can be seen, *“the creation of the foreign policy of EU, just like the creation of the EU as a whole, is not a single event out of the blue, but a result of different interrelated historical developments such as a political European trend to complement economic power with military power, dissatisfaction with the political relations with the Transatlantic Alliance and the failure of the EU to adequately prevent control, and solve the conflicts in Yugoslavia.”*²⁹

It was the bloody wars that occurred within the natural borders of Europe that pushed these events further and further, and raised the awareness for the need to have a proper defense plan within the European Union. Throughout the years the EU was trying to develop a standing role as a global actor, and it has managed to do so, even that maybe not so much on the field of military interventions and foreign policies but more in trade, development and humanitarian assistance as a civilian actor. *“The EU relies primarily on its soft power on the global stage”* but with the continuous developments on the field of CFSP, it has managed to be seen with a different eye.³⁰

After the Constitutional Treaty was abandoned by the EU, the constant story of reforming the structures of the foreign and security policy within the Union was crowned with the Treaty of Lisbon. This was a major step towards the establishment of a tough EU global identity, which despite its complexity has strengthened its international identity as an “actor with increased military capacities for implementation of its aims and objectives”. All this with the purpose

²⁸ Supra 12, p.353

²⁹ Reimund Seidelmann, Problems and Prospects of the Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (CESDP): A German View, http://www.desk.c.u-tokyo.ac.jp/download/es_1_Seidelmann.pdf

³⁰ Craig, P. P., and Búrca G. De. "10." EU law: Text, cases, and materials. Oxford: Oxford UP, 2011. 303.

of enhancing the coherence of the EU as an actor on the international scene and strengthening its role on the field of CFSP.³¹

One of the main changes brought by the reform treaty is that it gives the *EU* “a legal personality, therefore a formal status when it comes to enter in international agreements.”³² Furthermore the pillar structure of EU is dissolved, even that the status of CFSP will still be different from other policies of the EU, because of the way decisions are taken and the level of involvement of states in this policy. Most importantly, two new institutions directly related to CFSP are created in the structure of the EU, the office of High representative of the Union for Foreign Affairs and Security Policy and the European External Action Service.

This treaty completed the evolution of treaties on this field; the creation of the two new structures symbolized the abolishment of the pillars structure set in the Maastricht Treaty.³³ A new title is introduced (Title V) called Area of Freedom Security and Justice and thoroughly covers these matters. The new section 2 introduced provisions related to the common security and defense policy, with the specific aim of reforming this area. A special attention goes to supplying the Union with operational capacities “*drawing on civilian and military assets provided by the Member States. This with the purpose of using them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security*” Furthermore, Member States are obliged to *make civilian and military capabilities available to the Union*, but at the same time enhance their own military capacities.

A further innovation brought by the reform treaty was the introduction of a *mutual defense* clause that was put within the text of the treaty (Art. 28 A (7) ToL). In this clause it is stated that if a Member State is victim of an armed aggression on its territory, “*the other Member States shall have towards it an obligation of aid and assistance by all the means in their power.*” Additionally, a ‘Solidarity Clause’ (Art. 222 TFEU) was added, obliging Member States to mutual solidarity in cases of terrorist attacks or natural and man-made disasters. “A similar commitment to mutual assistance even in the case of an armed aggression on the

³¹ Wessels, W. and Bopp, F. The Institutional Architecture of CFSP after the Lisbon Treaty: Constitutional breakthrough or challenges ahead? CEPS Challenge Paper No. 10, 23 June 2008. [Working Paper] p. 3

³² Supra 30, p.79

³³ Supra 13, p. 220

territory of one of the Member States can be found in Art. 42 (7) TEU, in the framework of CSDP articles.”³⁴

Changes occurred also regarding the Petersburg tasks which were finally recognized and now they include the “joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking and post- conflict stabilization (art. 28b/ Article 43 (1) TEU). “*These tasks may contribute to the fight against terrorism including supporting third states in combating terrorism. Finally political and military solidarity among EU Member States is in the Treaty via the inclusion of mutual assistance clause and solidarity clause.*”³⁵

This kind of reform can be seen with different views. Even with the effort that EU is making with these reforms in order to create a military and civilian structure within the EU and enhanced military capacities, it is uncertain how necessary this reform is. Even that clearly the Union needs to enhance its role on the international scene, and not be recognized only as a soft power, the readiness of the Member States to work as one in this field might not be a strong one. At the same time, an organization such as NATO serves more or less for the same purpose, just in a different scale, so how much can EU have an impact on these issues when it has USA and NATO on its side. A European identity is still not very strong within the people of Europe and most probably the nationals of EU Member States won’t be willing to die for a European ideal.

III. The Institutional Structure of CFSP

When looking at the legal basis of the institutional framework of the Union, Art. 3 of TEU states that the Union is endowed with a “single institutional framework”, “*and underlines the principle of consistency in its external policies, for which the Commission and the Council bear responsibility.*” According to Article 11 TEU, the goal of CFSP is to embrace the safeguarding of the “*common values, fundamental interests, independence and integrity of the Union*” as well as the development and consolidation of “*democracy and the rule of law,*

³⁴ Supra 31

³⁵ Supra 18, p.13

respect for human rights and fundamental freedoms". "They serve as points of reference and guidelines for CFSP, to which all institutions are committed."³⁶

The institutional structure of CFSP is a very complex one. This "institutional tree" that tackles this policy is comprised of four main European institutions and further smaller ones, who also play a very important role on defining and implementing CFSP. Four key institutions involved in CFSP are: the European Council, the Foreign Affairs Council, the High Representative for Foreign Affairs and Security Policy, and the Commission. Another European institution with an impact on CFSP is the European Parliament however its role remains limited. As regards the European Court of Justice, its role remains the same; it still has no jurisdiction on CFSP matters, with some exceptions.

The European Council

As regards the role of the European Council it is quite dominant, generally in identifying policy goals and tackling particularly intractable issues.³⁷ The European Council and its rotating presidency have always attracted the attention of media and the people. Its role has been identified as the voice of Europe and its decisions have been related to major developments in the international scene.³⁸

Considering the fact that the European Council consists of the Heads of the State and Governments of the Member States, foreign ministers of the Member States, the President of the Commission, one Commissioner, and the High Representative, is obvious that the role this institution has is quite significant. "*The European Council is the locus of power within the European Union, if not legally then at least politically and symbolically.*"³⁹

As set on Article 4 of the TEU, the European Council has to provide the Union with the necessary impetus for its development, and define the guidelines of its policies. Same applies as regards CFSP, the European Council has to define the principles and guidelines and decide on common strategies that will be implemented by the Union, and therefore no strategic

³⁶ Diedrichs, Udo. "The European Parliament in CFSP: More than a Marginal Player?" *The International Spectator* 2/2004 (2004): 32. Istituto Affari Internazionali. Web. <<http://www.iai.it/pdf/articles/diedrichs.pdf>>.

³⁷ *Supra* 13, p.279.

³⁸ *Supra* 31, p.15

³⁹ *Supra* 9, p. 68

decision can be adopted without its consent.⁴⁰ As it can be seen, its role has not been modified compared to previous treaties.

Even that from a political aspect, the meetings of the European Council are quite important, they can drive processes from a higher level and support decision-making directly from the Member States governmental levels, the European Council does not have a very substantial role when it comes to policy making. Usually the European Council endorses, confirms or welcomes most decisions on different issues taken by the Commission, the High Representative or the Presidency.⁴¹

As any other politically composed body, the European Council makes vague declaration and its approaches are broad and general, so they can be understood from different angles on the future. Usually the members tend to keep a united opinion on different issues by trying to demonstrate the European spirit. However, in many other occasions it is here where the divergences between states are mostly shown, taking into consideration that the high state representatives defend their state views on sensitive issues more than in any other occasions, at the same time trying to win points within their states as well.⁴²

The Foreign Affairs Council

After the Treaty of Lisbon, the General Affairs and External Relations Council is divided into two separate bodies, the General Affairs Council and the Foreign Affairs Council (Art. 16 (6) TEU). The General Affairs Council prepares the meetings of the European Council and is involved in foreign policy only in issues that are on the agenda of the European Council. Meanwhile, the Foreign Affairs Council (the Council) shall frame the CFSP and take the necessary decisions on operational action by the Union where the situation requires, thus binding Member States to commit those decisions.⁴³ The work of the Council is closely related to other line institutions such as the Political and Security Committee, COREPER and also the European Defense Agency. These implement and monitor the execution of concrete decisions and policies taken in higher levels in practice.

⁴⁰Supra 9, p. 68

⁴¹ Supra 9, p. 68

⁴² Supra 9, p. 68

⁴³ Supra 31, p.17

The European Commission

The Commission is the main institution of EU involved in all stages of policy making. This comes from its exclusive right of initiative (the Council and the EP can adopt legislative acts only on the basis of a formal proposal from the Commission). Furthermore, the Commission's exclusive power of 'compiling soft law' gives it an important role.⁴⁴

The Commissioners most directly involved in foreign policy rely on five Directorate Generals and an Agency. Those Directorate Generals have their own set of objectives and instruments, and a legal basis in order to develop initiatives. The Directorates General involved in foreign policy making are the following: Directorate General for External Relations (DG RELEX), Directorate General for Trade, Directorate General for Development, Directorate General for Enlargement, and Directorate General for Humanitarian Aid and the European Aid Cooperation Office. Their role varies from "*general coordination of external relations within the Commission*" to the involvement in world trade issues and defending EUs position on these issues, helping developing countries and offering humanitarian aid when needed. However, the inevitable competition between those Directorates might be blamed for the difficulties of the Commission in defining and shaping the role of the Union on external relations.

As regards CFSP issues, the Directorate A of the DG Relex deals with Commissions coordination and contribution, Community aspects of the CFSP Joint Actions, sanctions, counter-terrorism, non-proliferation, disarmament, conflict prevention, Community contribution to crisis managements and any other CFSP aspects.⁴⁵ Furthermore, the role of the Commission enhances when looking at the extensive network of delegations that it has throughout the world. Those 'embassies without a state' are the connection between the Commission and different states where they are located.⁴⁶

In the area of foreign policy, the Commission has played a very important role. "*Although its role on CFSP is quite distinct from its role in the EC, it is not as powerless as it might seem*

⁴⁴ Supra 9, p. 89

⁴⁵ Dr. Simon Duke, The Commission and the CFSP₂, European Institute of Public Administration, Working paper 2006/W/01, (http://www.eipa.eu/files/repository/product/20070815141210_CFSP_0601e.pdf) p. 11

⁴⁶ Supra 9, p. 88

on the first site when looking at the intergovernmental structure of the EU.”⁴⁷ Considering that the EU budget falls within the scope of the competences of the Commission, its cooperation is needed when aiming to implement a CFSP policy. Both, the Commission and the Parliament want to impact this policy area when using their budgetary powers.⁴⁸ However, the budgeting of the EU foreign policy is a complex field that involves different procedures and mechanisms depending on the nature of the missions.⁴⁹

The European Parliament

The decision-making process within the EU and specifically within CFSP remains a very complex process and still an ‘intergovernmental’ one, even after the abolition of the pillar structure with the Lisbon Treaty.⁵⁰ The limited role of the European Parliament and national parliaments can be easily grasped in the Lisbon Treaty. “*A critical reading of the Lisbon Treaty suggests that CFSP remains largely out of parliamentary reach at the European level. The Lisbon Treaty kept CFSP a non-parliamentary field and refrained it from establishing a clear institutional understanding of inter-parliamentary cooperation.*”⁵¹

In general, the field of security and defense is a sensitive one. Within national states there is a hesitation when facing the challenge to allow or grant competences of this field to supranational bodies. But at the same time, when looking at developments within national parliaments of the Member States or even any other state, the power over this policy belongs to the executive. “*It is widely accepted that national parliaments are the prime institutions for controlling and legitimizing decision-making; but even in the national setting, foreign and security policy belongs to the executive sphere of action in which governments enjoy a comparatively high degree of autonomy and discretion.*”⁵²

“*While the European Parliament can to some extent scrutinize the High Representative of the Union for Foreign Affairs and Security Policy (‘High Representative’), it does not have any*

⁴⁷ Supra 9, p. 92

⁴⁸ Supra 9, p.115

⁴⁹ Supra 9, p. 90

⁵⁰ Wouters, Jan, and Kolja Raube. EUROPE’S COMMON SECURITY AND DEFENCE POLICY: THE CASE FOR INTER-PARLIAMENTARY SCRUTINY. Leuven Centre for Global Governance Studies (Working Paper No. 90, April 2012).

⁵¹ Ibid.

⁵² Supra 36.

*real possibilities to actually control the High Representative, let alone the Council.”*⁵³ . However, the European Parliament has an extended liability when it comes to controlling the budget of EEAS and the parts of nonmilitary budget of CFSP.⁵⁴ Nevertheless the impact of the European Parliament on CFSP leaves much to be desired. It might be considered that the Parliament has some sort of a significant role only over budget of non-military CFSP missions, however considering that Member States can supply additional funds to cover their own costs, the European Parliament cannot set a ceiling of expenditure. Considering all what is said above, the impact that the European Parliament has on CFSP is hard to be considered as any power.

To sum up, the European Parliament can manage to influence foreign policies of EU through having the chance of blocking the budget, since the budget for CFSP has to go through regular budgetary procedures of the EC, that being a long and complicated procedure. On the other hand, a different financial mechanism applies to CFSP operations with military or defense implications. These operations are financed by the Member States, and mainly the ones that participate in the military operation in question.⁵⁵

The High Representative of the Union for Foreign Affairs and Security Policy

The newly most important institutional arrangement brought by the Lisbon Treaty is the High Representative of the Union for Foreign Affairs and Security Policy (Art. 18 TEU). The role of the High Representative is to “ensure the consistency of the Union’s external action” (Art. 18 (4) TEU) in giving it a ‘single voice’ and ‘face’.⁵⁶ The High Representative is appointed by the European Council, acting by a qualified majority, with the consent of the President of the Commission. Important to notice is the fact that she is also subject to a vote of consent by the European Parliament. This position is being held by Baroness Catherine Ashton, and it “combines the three hats of “[conducting] the Union’s common foreign and security policy”, “[presiding] over the Foreign Affairs Council” and as “one of the Vice-Presidents of the Commission” she is “responsible within the Commission for the responsibilities incumbent on it in external relations and for coordinating other aspects of the Union’s external action”.⁵⁷

⁵³ Supra 50, P.7

⁵⁴ Supra 50, P.7

⁵⁵ Supra 9, p.120

⁵⁶ Supra 31, p.19

⁵⁷ Supra 31, p.19

Despite the similarity of titles between the previous high representative and after the Lisbon Treaty high representative, the new position was designed with the purpose of improving EUs foreign policy and external security policy co-ordination by merging the existing post of the Commissioner for External Relations and the Council's High Representative.⁵⁸

Based on Articles 18 and 27 of the TEU, the High Representative has the following main duties: conducting the Union's CFSP and contributing to the development of such policy, and at the same time ensuring the implementation of the decisions adopted in this field.⁵⁹ When talking about her roles, one cannot hide the envy to their importance and power. She presides over the Foreign Affairs Council; she is one of the Vice-Presidents of the Commission and ensures the consistency of the Union's external action. She represents the Union in CFSP matters and conducts political dialogue with third parties on the Union's behalf and expresses the Union's position in international organizations. Furthermore, her role is equal of a foreign minister of a state considering that she exercises authority over the European External Action Service and over the Union delegations in third countries and at international organizations.⁶⁰ The new High Representative had quite a challenge when taking this post. Considering that EUs foreign policy was a weak one, thus when the big calls needed to be made it was the big powers that set the agenda. *"Britain and France used their military power - with a lot of help from America - to oust Libya's Colonel Gaddafi. When it comes to Russia it is the Germans who have the special relationship. And on matters which relate to their export markets - like China - the Germans scarcely cast a glance at Brussels."*⁶¹ Even with all the challenges and the taken criticism it is worthy to mention that Ms. Ashton is one of the most highly paid women's in the world, "as a Commissions' vice-president Baroness Ashton receives a basic annual salary of about 265,470 euros - and on top of that various EU allowances. In contrast, the UK prime minister gets about £142,500 (167,500 euros)."⁶² This being in contradiction with the budget that the institution she directs receives. Certainly the new post answered the famous question of Henry Kissinger.

⁵⁸ Supra 13, p .281

⁵⁹ Press release of the "GENERAL SECRETARIAT OF THE COUNCIL OF THE EU ~BACKGROUND~ the High Representative for Foreign Affairs and Security Policy / The European External Action Service, November 2009, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111301.pdf

⁶⁰ Ibid

⁶¹ Hewitt, Gavin. "Catherine Ashton's EU soft power" BBC News, 31 July 2013, <http://www.bbc.co.uk/news/world-europe-23514483>.

⁶² Profile: EU foreign minister Baroness Ashton. BBC News, 06 December 2010. <http://www.bbc.co.uk/news/mobile/world-europe-11926764>

Ashton is also trying to fill the gaps of the ESPD, with the aim of making up the deficiencies and changing the perception of the people for this policy through her work. As it has been mentioned, one of the main points where this policy lacks legitimacy it's the relation with the European Parliament. Ashton has been trying to build a stronger relationship by responding to the queries and recommendations of the European Parliament. At the same time she has been taking into consideration parliamentarians in initiatives of improving relations in the neighborhood countries, therefore the Parliament will also pay off this inclusion by helping in increasing the funding for the EEAS.⁶³

On the other hand, she has been receiving a lot of criticism since the beginning of her work. The new post of High Representative includes many tasks such as chairing the FAC for CFSP and CFSP, leading the foreign policy of EU, managing EU's aid budget and heading EEAS. As the first High Representative, Ashton had to deal with troubles of the commencement such as setting the staff and functioning of EEAS and create open arrangements for policy areas overlapping with areas of foreign policy where the Commission also has a powerful role (such as development, energy, climate change and enlargement policies).⁶⁴ Ashton has been criticized for her poor chairing of FAC and not being involved sufficiently in security matters, or for not participating in enough meetings of the College of Commissioners, or traveling to world troubled spots.⁶⁵ However, Ashton has been highly engaged when it comes to political dialogue, she has been chairing the negotiations between Kosovo and Serbia, a task which could also be her redemption and a chance to leave a mark on the history.

European External Action Service

The European External Action Service (hereinafter EEAS) was established by the Treaty of Lisbon and was formally launched on 1st of December 2010. Its legal basis can be found in Article 27 of TEU, where it is mentioned for the first time. The main task of EEAS is to assist the High Representative to fulfill his or her mandate, and that it shall work 'in cooperation' with the diplomatic services of the Member States'.⁶⁶ So the EEAs can be seen as a complementary body to the High Representative, set out very elegantly on the legal framework. Moreover, once again can be seen the intergovernmental and multilevel structure

⁶³ Edward Burke. Europe's External Action Service: Ten steps towards a credible EU foreign policy. Center for European Reform. July 2012.

http://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2012/pb_eeas_4july12-5377.pdf

⁶⁴ Supra 13, p.281

⁶⁵ Supra 13, p.281

⁶⁶ Supra 59

of EU institutions, when considering that the staff of the EEAS compiles of staff from the General Secretariat of the Council, of the Commission and of national diplomatic services of the Member States. The EEAS is a *sui generis* institution and has also the privilege of having its own budget section within the EU budget⁶⁷

During 2012, the administrative budget of EEAS was €489 million, or a measly 0.31 per cent of the total EU budget of €147.2 billion (around one per cent of EU GDP). The EEAS has asked for an increase of €27.9 million in 2013, bringing it to €516.9 million, from a total budget of €150 billion (of which €9.5 billion is spent on foreign policy). Considering that its role resembles to the one of a foreign ministry, if we compare its budget to other foreign ministries it can be noted that in 2012 the EEAS budget was around “*half that of the UK FCO, the Quai d’Orsay or the Auswärtiges Amt, and 6.6 per cent of what the EU-27 collectively spent on their foreign ministries in 2009 (€7.5 billion). Looking across the Atlantic, the US State Department spends twelve times more than the EEAS.*”⁶⁸ Apparently, if EU wants to compete with strong powers of the world in the field of defense and security, it has to invest more on its capacities.

This sort of a consular and diplomatic body that serves a *sui generis* institutional building system like the European one resembles to a *sui generis* organization. The perception for the EEAS remains weak and in my opinion, it seems more like a body that tries to be perceived as a common diplomatic body of the Union, however it is unrealistic the belief that Member States like UK or France will delegate their diplomatic powers and privileges to such a young body.

Even that EEAS can be considered as a recently created institution, it has already started to show its success but at the same time its deficiencies. EEAS has a role in 2011 in the aftermath of the Arab Spring, where it assisted the establishment of a new neighborhood policy under “*which access to EU markets, visas and money would depend on evidence of a commitment to democratic reforms (the ‘more for more’ approach)*”.⁶⁹

This sort of reaction and plan to a crisis was welcomed and it was considered as a change on the EU’s politics of ‘Arab exceptionalism’ ” *which had previously seen repressive regimes such as Ben Ali’s in Tunisia gain extensive access to EU funds and markets. A new concept*

⁶⁷ Supra 59

⁶⁸ Daniel Keohane. The EU’s “ludicrous” foreign service budget. The FRIDE blog (2012), <http://fride.org/blog/the-eus-ludicrous-foreign-service-budget/>

⁶⁹ Supra 63.

*for the neighborhood was widely welcomed, even if some complain that its implementation lacked consistency.”*⁷⁰

Understandably the large Member States for a long time have been unwilling to share their powers or “*delegate responsibility to the EU for most of their diplomatic relations with major powers such as the United States or the BRIC countries (Brazil, Russia, India or China).*”⁷¹ The big European Member States enjoy a great relationship with these countries and they hesitate to sacrifice their reputation or their privileges for the common foreign policy of the Union. Especially this comes into the scene in cases of France and the UK, who enjoy a permanent membership status at the UN Security Council, a privilege that not many countries have and it would be non-sense to give up for the status of a single EU representation.⁷² More seats mean a stronger voice, either for the EU as a whole, and either for these countries as neighbors. “*Even Germany prefers to lobby for its own seat on an expanded Security Council than for a single EU seat.*”⁷³

IV. Internal difficulties in CFSP

Being a policy area comprised by a system of intergovernmental decision making but at the same time tangled in a trans-governmental network of multiply levels, CFSP remains an uncertain one. Member States are responsible for the final decisions on this policy area; they coordinate their actions taking into consideration views and interest of third countries and within the framework of UN.⁷⁴ Meanwhile the role of the European Parliament in the decision making process related to this policy remains vague. In this chapter, two main points will be explained, on one hand, how the Member States control CFSP through the decision making procedures, and on the other hand, what is the main impact that the Parliament has on this policy. Even that in a democratic society decisions should be taken with a high impact of the will of people of that society that is not the case in CFSP. It has already been stated that EU is a *sui generis* organization, the decision making procedures differ from the ones that states have, or even procedures that are used in other policies. The role of the EP will be analyzed as regards the decision making procedures on CFSP.

⁷⁰ Supra 63, p.2

⁷¹ Supra 63, p.4

⁷² Supra 63, p.4

⁷³ Supra 63, p.4

⁷⁴ Supra 50.

Provisions regarding CFSP are foreseen on Title V of the TEU. The competences are mainly divided by the European Council and the Council, where depending on the situation the decisions can be taken either unanimously or with qualified majority voting (hereinafter QMV). In cases of operational action, decisions are adopted by the Council (Article 28/ ex Article 14 TEU). Furthermore, in Article 31 (ex Article 23 TEU) it is set that the decisions regarding this policy shall be taken by the European Council and the Council acting unanimously, except where is provided otherwise. The treaty provisions on decision making procedures are quite complex. *“The refusal to extend QMV to decisions over war and peace is consistent with a version of realism emphasizing autonomy but if states seek to increase their collective power and influence in international politics, then the unwillingness of some EU member states to give up external sovereignty in foreign and security affairs is outright self-defeating.”*⁷⁵

Beside, the basic rules of decision making with QMV or unanimity, the treaties have foreseen two additional procedures: Constructive abstention or limitations to QMV derogations.⁷⁶ In the constructive abstention procedure (second paragraph of the Article) an ‘escape from responsibility’ is foreseen. In this provision is stated that if a member of the Council is abstaining a vote, it may qualify its abstention by making a formal declaration ...and it shall not be obliged to apply the decision and shall refrain from any action likely to conflict with or impede Unions action based on that decision. Taking into consideration the powers of the big Member States and the ones of the small ones, this provision is a way a state could escape from the responsibility of a CFSP decision. Without prejudging, sometimes the small states want to agree and at the same time be neutral to different issues, so this is a perfect chance for them to simply abstain from a decision, not apply it but at the same time not contradict the main powers of the Union. Even that another provision in the same article gives a more ‘democratic’ sense to the whole issue (*“If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted”*) (Article 23, TEU), it would be useful to know if this is a provision that has ever been applied in real.

⁷⁵ Risse, T. Identity Matters: Exploring the Ambivalence of EU Foreign Policy. *Global Policy*, 3: 87–95. doi: 10.1111/1758-5899.12019, (2012), (<http://www.lse.ac.uk/IDEAS/publications/reports/pdf/SR013/SR013-Eu-risse.pdf>) p.2

⁷⁶ *Supra* 9, p. 108

The other complex procedure has to do with limitations to QMV derogations meaning that QMV does not apply to decisions with military or defense implications. In this sense, Member States can block decisions with military or defense implications however; there is another procedure that facilitates the policy making in cases where EU cannot act as a whole: enhanced cooperation.⁷⁷ *“Article 27 TEU states that Member States which wish to establish enhanced cooperation between themselves within the framework of the Union’s non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, however even in this case, matters with military or defense implications are excluded.”*⁷⁸

From what is explained above and including the “the absence of parliamentary control of the executive bodies at the EU level; and, the fact that, increasingly, since the 1986 Single European Act, government representatives could be outvoted by a qualified majority in the Council of Ministers; “a lack of legitimacy is present on the EU decision making procedures. Furthermore, considering that the integration process creates a democratic deficit within the Member States since they will no longer be able to answer to their popular demands, there is a mismatch between the requests of their citizens and what their state is able to give them.”⁷⁹

Certainly the treaties foresee a number of different procedures regarding the decision-making/policy-making in the CFSP, thus Member States can use different instruments either in favor of the aim they want to reach, either against that aim. The procedures foreseen by the treaties seem to regulate very well different situations of decision making, however these treaty provisions can be misleading. Some of these procedures are foreseen in the text of the treaties but because of their complexity they have never been put in practice or are irrelevant for the decision making procedures. Such is the case with enhanced cooperation or constructive abstention.⁸⁰

⁷⁷ Supra 9, p. 108

⁷⁸ Art 27 TEU

⁷⁹ Supra 5, p. 154

⁸⁰ Supra 9, p. 109

The limited powers of the European Parliament

In the context of this paper, the main issue would be how legitimate this policy is. In the preface of this paper it was stated that legitimacy is directly related to the power of the people, so how much the people of Europe in any way have any impact on this policy.

For a Parliament in order to exercise its rights of legitimacy it should have the possibility to formulate its positions on different proposals and be able to approve or reject what the executive has proposed. In the case of the European Parliament there are currently five main legal procedures: simple procedure, (where the parliament is not involved at all), consultation, co-operation, co-decision and assent. However, in the case of CFSP the EU Parliament cannot make use of any of these options, since CFSP is primarily intergovernmental and it is characterized by a specific nature.⁸¹ Article 36 (ex Article 21 TEU) sets the ‘consulting’ procedures with the European Parliament and it ensures that the views of the European Parliament are duly taken into consideration. Therefore the impact of the European Parliament on CFSP leaves much to be desired. It might be considered that the Parliament has some sort of a significant role only over budget of non-military CFSP missions, yet considering that Member States can supply additional funds to cover their own costs, the Parliament cannot set a ceiling of expenditure. Considering all what is said above, the impact that the European Parliament has on CFSP is hard to be considered as any power.

The main role that the European Parliament has on CFSP *“is some control over the budget of non-military CFSP missions. But while the Parliament monitors the CFSP budget for civilian missions, Member States may choose to supply additional funding to cover their own personnel costs, so in fact the European Parliament cannot set the ceiling on expenditure even for a civilian mission. Military operations are financed by the Athena mechanism whereby a fund of contributions proportional to gross national income meets core costs, and the contributing member states pay for operational expenditure on the basis of ‘costs lie where they fall’, a mechanism which is widely criticized as inadequate.”* Athena might be considered as a sui generis mechanism that administers the financing of the EU military or defence operations, the so called common costs. This mechanism was established by the Council of the EU on 1st of March 2004 and it is based on Councils Decision 2011/871/CFSP of 19 December 2011 to administer the financing of the common costs of European Union operations having military or defence implications (Athena). It is set on article 41.2 of the

⁸¹ Supra 4, p. 26

TEU that, Member States' contributions to ATHENA should be based on the Gross National Income scale. *“Concretely, Member States pay their annual share based on the size of their economy.”*⁸²

Even though, when it comes to expenditures the importance of the role of the European Parliament relatively changes. The expenditures of this policy are charged to the Union budget, except for the ones that rise from operations having military or defense implications and cases where the Council acting unanimously decides otherwise.⁸³ *“In cases where expenditure is not charged to the Union budget it shall be charged to the Member States in accordance with the gross national product scale, unless the Council decides otherwise. As for expenditure arising from operations having military or defense implications, Member States whose representatives in the Council have made a formal declaration under Article III-300(1), second subparagraph, shall not be obliged to contribute to the financing thereof.”*⁸⁴

Certainly might be gloomy the fact that the only way the representative of the people can affect such an important policy for the Union is through the ‘money’. To sum up, we might conclude that the European Parliament can manage to “manipulate” policies of EU through having the chance of blocking the budget since the budget for CFSP has to go through regular budgetary procedures of the EC, that being a long and complicated procedure. On the other hand a different financial mechanism applies to CFSP operations with military or defense implications. These operations are financed by the Member States, and mainly the ones that participate in the military operation in question.⁸⁵

As it can be seen the whole decision making procedure on CFSP is a complex one. There are a lot of actors involved, some with stronger voices and some with weaker ones. This might be seen in a positive sense; the ability to have a lot of voices might bring different perspectives and assist in taking the right decisions. However in practice this is not how things always happen. It is left to the future to be seen how much of a common foreign policy 28 Member States can develop.

⁸² [http://www.consilium.europa.eu/policies/common-security-and-defence-policy-\(CFSP\)/financing-of-CFSP-military-operations](http://www.consilium.europa.eu/policies/common-security-and-defence-policy-(CFSP)/financing-of-CFSP-military-operations)

⁸³ Article 41 (ex Article 28 TEU)

⁸⁴ Frederik Naert, *European security and defence in the EU constitutional treaty*, (Journal of Conflict & Security Law 2005) p. 9

⁸⁵ *Supra* 9, p.120

V. The External Difficulties of CFSP

When acting on the global scene, either as a soft power or a military one, EU faces various challenges. During different events through the last century, EU has been considered as a political dwarf in times of crisis, especially military ones. The main roles on areas of civilian or military crisis remain to the US or NATO. Therefore, besides facing internal difficulties, EU continues to have external ones as well. The main issues are its duplication of powers with NATO and the ongoing competition with the US. Even nowadays, the role of NATO is getting smaller and smaller and the US remains the biggest actor in this field.

As regards the duplication of roles with NATO, various arguments can go on favor of a stronger European CFSP. Within EU there was a range of opinions and views as regarding the relationship between the CFSP and NATO. Naturally, when looking at their tasks, they kind of overlap each other, and this brought the EU Member States in dubious situations. From one side there were extreme cases of countries such as Denmark that believes that the only structure that should deal with this sort of issues is NATO, however on the other side there are countries like Finland or Ireland that traditionally have refused to be associated with NATO.⁸⁶ The United Kingdom is considered to be one of the most Atlanticist states, however Germany, the Netherlands or Portugal also are not left behind. *Therefore “NATO remains a fundamental reference for these countries, all of which continue to do battle to keep the Alliance as alive and relevant as possible.”*⁸⁷

*“Safeguarding NATO as the forum for implementing the collective defense of its Member States appears to aim at avoiding duplication.”*⁸⁸ This once again sets a way for EU to escape from military implications, considering that most of EU Member States are also member states of NATO. Furthermore, with the Lisbon reforms there were innovations in these areas. A mutual defense clause was introduced, giving states the chance to intervene in order to assist each other. However, there are no arrangements provided for the implementation of the aforementioned mutual assistance clause, therefore *“assuming that the neutral Member States are exempted from the mutual assistance clause (see above), this leaves Malta and Cyprus in*

⁸⁶ Howorth, Jolyon. Security and defence policy in the European Union. Basingstoke: Palgrave Macmillan, 2007 p.147

⁸⁷ Ibid

⁸⁸ Supra_83, p.5

*a peculiar position: if they are attacked, an ad hoc implementation of the mutual assistance clause would appear as the only solution available. Likewise, their assistance to EU Member States which are also Members of NATO and which are attacked would have to be arranged on an ad hoc basis*⁸⁹

Nevertheless it is obvious that there was a dose of skepticism of the Member States regarding a common security policy that was much related with the role of NATO as well. After all, why duplicate the roles and spend money and energy in structures that already exist in a different level. This question is easily answered, first because if EU wants to be a global actor, it should have more than words to put on the table. Recently NATO “*is losing relevance and has ceased to preserve its traditional function of serving as a framing structure that keeps the allies on track.*”⁹⁰ Second because EU cannot allow situations like the ones in Kosovo or Bosnia ever to be repeated. Third, because EU already has a legislative framework that regulates these structures, and even that there is a lack of legitimacy within the structures of this policy, that can be regulated through reforms increasing the parliamentary involvement within the decision-making process.

On the other hand, ideas and points of view during the last decade of the last century started to change. It was certainly the “*crisis in Bosnia that marked the most damning commentary on the lack of European solidarity and their ability to formulate common approaches on foreign and security related issues. Ironically, it was on major transatlantic differences that the Europeans appeared to find most solidarity, such as the maintenance of the Bosnian arms embargo in the face of Congressional opposition. The crisis also illustrated how dependent the European allies are upon U.S. initiative and leadership and, when it comes to military action, NATO remains the only serious actor.*”⁹¹ The wars on Yugoslavia were described by “*the German chancellor Helmut Kohl as “Europe’s shame” because the EU failed to respond appropriately to end the fighting and crimes against humanity. The EU had neither political nor military capacities to react to a problem of such proportions.*”⁹²

The same continues with the current situations. NATO’s days are numbered and that Kosovo was the last American war in Europe, furthermore it is obvious that the US are willing and have the capability to fight (like in Afghanistan and Iraq) without support of the NATO. “*The*

⁸⁹ Supra 83, p.5

⁹⁰ Supra 11, p. 29

⁹¹ Simon Duke. NATO and the CFSP: Help or Hindrance?., June 1997 (<http://www.nato.int/acad/fellow/95-97/duke.pdf>)

⁹² Supra 11, p.15

bon mot of the hour is that the US has started to view NATO as being not more than a “toolbox”⁹³, or to use another metaphor: NATO comes in as the “cleaning lady” for the Americans, after the US army has engaged in the real important job of high intensity combat.”⁹⁴ If this statement really stands, than it might be considered necessary for the EU as well to have its own role on the world and not rely on a second based world power that NATO is becoming.

Even that the cooperation with NATO is not specifically mentioned on the Treaties, this does not preclude the fact that there is a close cooperation between EU and NATO. Furthermore, the relationship between the EU and NATO is a key element on EUs foreign policy given the growing perseverance to deploy military forces and the need for hi-tech military equipment and transportation capacities.⁹⁵ At the same time, even if NATO is not mentioned by name in the treaties, there is a provision stating that *‘[t]he Union shall also maintain such relations as are appropriate with other international organizations’*. Moreover, NATO presumably qualifies as an organization which shares the principles on which the EU is based and with which the EU shall, by virtue of article III-292(1), *‘seek to develop relations and build partnerships’*.⁹⁶ From the institutional point of view there is also a link between the European Parliament and NATO. Ten parliamentarians of the European Parliament represent the Delegation for the relations with the Parliamentary Assembly of the NATO.⁹⁷

Though, this abovementioned relationship might be more theoretical than practical. Issues between EU and NATO on the area of foreign policy continue even after the 2002 Berlin plus agreement *“which regulates the cooperation between both organizations and which essentially declares the EU to be NATO’s junior partner in all matters security, the EU could potentially use NATO military assets if not vetoed by any NATO member.”⁹⁸ But in this matter, Turkey continues to be a problem. Most of the attempts of cooperation between NATO and EU are vetoed by Turkey *“which does not diplomatically recognize the Republic**

⁹³ Wayne Merry, “We can’t be partners with an obsolete alliance”, *International Herald Tribune*, February 4, 2004.

⁹⁴ Supra 11, p.30

⁹⁵ Supra 4, p. 43

⁹⁶ Supra 83, p. 10

⁹⁷ Supra 4, p. 99

⁹⁸ http://www.kas.de/upload/dokumente/2010/06/PolDi-Asien_Panorama_02-2010/Panorama_2-2010_SecurityPolitics_Techau.pdf p.84

*of Cyprus (an EU member) and will thus not accept any EU-NATO cooperation of which that country is part of.”*⁹⁹

As regards this “external difficulty”, to sum up we can conclude that it is essential that EU develops its own security policy. The same argument goes for another issue that EU deals with, its role on the global stage *vis-a-vi* US. It is important to note that US has always been one of the most active players on the international scene when it comes to crisis intervention. However, it should be given importance to the fact that not necessarily the EU will always agree with the US opinion regarding these crises. EU should continue to improve its capacities, either military or civilian if it still wants to have a say on the global stage. If these kinds of ideas and decision will be legitimate, that does not seem to bring much debate nowadays. For instance, the attack of NATO on the Kosovo war in 1999 was ‘illegal, but legitimate’ and it was treated like that because of compelling moral reasons such as *imminent threat of humanitarian catastrophe; regional European consensus; overwhelming Kosovar political consensus—except a small Serbian minority—relating to self-determination; Serb record of criminality in Bosnia and Kosovo*¹⁰⁰.

EU has always been recognized as a soft power and US dealt with the military parts. “*While this kind of division of labor would have the advantage for the Europeans of being released from the obligation of building up an effective and costly European army, the Europeans would be well advised not to give up on this project: a strong Europe is urgently needed to act as a counterweight to the United States and as a constraint to its uncontrolled use of military power.*”¹⁰¹ EU has been always considered as a model of a stable and peaceful zone, always taking most of her interest towards global initiatives and challenges that are not of a less importance but let’s say do not require military capacities to deal with, such as climate change. The EU remains as the main provider of soft security in the global area and plays an important stabilizing role. This was foreseen by the treaties and conventions and it was seen as a value that defined the European foreign policy. Its principles involved

⁹⁹ http://www.kas.de/upload/dokumente/2010/06/PolDi-Asien_Panorama_02-2010/Panorama_2-2010_SecurityPolitics_Techau.pdf p.83

¹⁰⁰ Contra Syria Attack, 30 August 2013, <http://richardfalk.wordpress.com/2013/08/30/contra-syria-attack/>

¹⁰¹ Supra 11, p. 35

institutional sets and civil institutions such as human rights, representative democracy and the rule of law.¹⁰²

This might be understood considering the fact that the EU *lacks an internal foreign policy consensus which also affects the definition of the EU's global role.*¹⁰³ This lack of consensus and common standings within the 28 Member States is also reflected when it comes to common decisions in foreign policy, especially ones with military implications. *“The lacks of consensus among the Member States plays into the US strategy of a “Europe of the grand nations” (according to President Bush) and undermines the Europeans’ strive for a global role to balance US influence. The Iraq crisis has revealed already that the cohesion in foreign policy (in its three dimensions) will be more difficult with 25 members than with 15 members”.*¹⁰⁴

These arguments suggest that in general, the internal issues of CFSP most of the time are reflected on its external action. Therefore, EU keeps facing internal and external issues when attempting to emerge with a stronger foreign and security policy. However the main argument remains the same, it is essential for EU to develop a stronger CFSP and go beyond these difficulties if it wants to have a stronger power on the global stage.

VI. CFSP Mission or Missing in Action

The external difficulties that EU faces on the area of security have also been proofed in practice. A case that has been intertwined with CFSP throughout all the phases of its development is the case of Kosovo. Worth mentioning that it is not the only case where EU has failed to give support, even within the broader European borders, however it is a good one considering the continuity of events. The role of EU in crisis that happened within its natural borders was minor and that left place for concerns. It is important to note the efforts that EU made after these crises in the Balkans to improve its role on the field of defense and security.

Just like in Bosnia, the role of EU was minor during Kosovo crisis. A Community Monitoring Mission was established (ECMM) and since 1996 twenty-two declarations,

¹⁰² Supra 11, p. 33

¹⁰³ Supra 11, p.34

¹⁰⁴ Supra 11, p.34

decisions or Joint Actions have been passed within the CFSP framework relating to Kosovo.¹⁰⁵ Another measure by the EU was the economic sanctions towards Serbian assets overseas and also an embargo was putted on the export of arms to former Yugoslavia.

In general, the case of Bosnia from 1991 and the one of Kosovo are quite similar. In both cases diplomacy was largely unsuccessful and military capabilities had to intervene. This fact reduced dramatically the effectiveness of the powers of an EU Member States in an armed conflict since in both cases it was the US, the only power who could do something about the situation, something over diplomacy. All that EU could offer were statements of Heads of States and Government enhancing “the necessity of an active role for the European Union in overcoming the crisis” and looking toward the role they could have on post-conflict settlements.¹⁰⁶

In spring 1999, it was the NATO's air campaign raged over Serbia that forced Milosevic to agree with a peace settlement that was offered to him by the allies. *“To compensate for the Europeans’ lack of aircraft and missiles, the US had to take the lion’s share of the burden and flew over 60% of the total missions, accounting for more than 80% of the weapons delivered.”*¹⁰⁷ However, the Europeans disagreed with this kind of strategy that relied on air power with the reasoning that it involved too many risks on hitting civilian buildings and that this kind of strategy was “wrong” because it targeted civilian buildings in order to threaten and weaken Milosevic. *“Consequently the United States concluded from this war episode that never again would they wage a war in collaboration with the Europeans, who had nothing to contribute other than complicating the decision-making process on how to wage the war.”*¹⁰⁸ These kinds of strategic disagreements made Europeans to think again over their policies and urged the need to build up a European security structure which would enable them to solve the next European crisis without US interference. *“Thus, it seems the war in Kosovo served as a catalyst for the eventual creation of an autonomous European defense structure.”*¹⁰⁹

Kosovo’s case is certainly a stepping stone on the history of CFSP. This is a close example of how much a European army is needed, and it should be the reasoning behind the people who

¹⁰⁵ Dr Simon Duke. “From Amsterdam to Kosovo: Lessons for the future of CFSP”. Eipascope 99/2. http://aei.pitt.edu/805/1/scop99_2_1.pdf. p.5

¹⁰⁶ Ibid, p.2

¹⁰⁷ Supra 11, p.21

¹⁰⁸ Supra 11, p.22

¹⁰⁹ Supra 11, p.22

refuse military capabilities, or hesitate to invest on them. If we already have the legal basis, why not try to invest on them and go beyond the soft power. But the same questions keep arising, is it what the people of Europe really want? How democratic it is to just decide over these issues, investing in military capabilities or even deciding to get involved in a military mission if the decisions will be taken in a high level of government, away from the voices of the people, when there is a lack of legitimacy and democratic processes regarding this issue. If we compare with US, then most probably there as well will be found negative voices regarding war there as well, however the attachment that the Americans have to their state is nowhere close the one that a European citizen has to Europe.

Maybe the case of Kosovo was the lesson learned for EU and for the negative voices towards common military capabilities. Even that Member States hesitate to create a common European army, it was obvious that there are still cases when that would be necessary and that soft power is not sufficient. The truth is that the EU leaders held their word regarding interventions after the armed conflict, the largest ESDP civilian mission ever launched is in Kosovo. When comparing the budget allocated to different CFSP missions with EULEX, its importance is quite clear. For the EUFOR mission in Bosnia, EU has allocated € 23 million, for the one in Lybia €7.9 million, meanwhile for EULEX it has allocated €165 million.

EULEX, as the largest civilian mission of EU, has as a main aim to assist and support Kosovo authorities in the area of rule of law, and specifically on the judiciary. By the end of 2011 EULEX had a staff of 1550 international members and 1176 of local ones. On its mandate it is defined that it “*shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and a multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognized standards and European best practices.*”¹¹⁰

Its overall budget and the large number of staff have increased expectations both among the local population and among the policy makers in Brussels and the EU Member States.”¹¹¹ The ambitious aims of the mission to fight corruption and organized crime in Kosovo have increased the expectations of the peoples within the country that EULEX will deal with issues

¹¹⁰ Council of the European Union Joint Action, 2008/124/CFSP O.J. (L42) 92. Article 2.

¹¹¹ Shpend Kursani. A Comprehensive Analysis of Eulex: What Next?. KIPRED POLICY PAPER No. 1/13 - JANUARY 2013

that local institutions are not trusted to deal with anymore.¹¹² However these expectations are failing to be met, these sorts of problems remain in a very high scale in the country and it is still unclear if the expectations were too high or once again EU is failing to comply with its missions.

Nevertheless, when talking about EULEX legitimacy, within Kosovo there is not much space for doubt. EULEX's presence is legally and practically justified by referring to the Declaration of Independence of the Republic of Kosovo, the Ahtisaari and the Constitution of the Republic of Kosovo. Furthermore EULEX operates based on the initial Joint Action which too was endorsed by Kosovo's President in her invitation to the High Representative.¹¹³ Deciding on what to look for when analyzing legitimacy is a challenging undertaking due to the concept's elusive nature. To guide the analysis in this paper, local legitimacy is understood as "*an institutional attribute through which actors accept the authority of an institution as justified because it conforms to their individually and collectively held norms and value*".¹¹⁴

Even that the EULEX mission can be considered as legitimate, there is a lack of democratic accountability of this mission. It can be understood that being a foreign mission, it does not have to give accountability to institutions of a state, however considering that Kosovo is already an independent state, and the issues that EULEX is involved with are state issues, then some kind of parliamentary control should have been available. Even that in the beginning this mission was expected with a huge enthusiasm, either because it came from "outside" as a way of salvation, or because of the impact it had as an ESDP mission, those hopes and expectations are getting every day and smaller. EULEX "*in many cases has managed to prevent political pressure being waged on judicial and other independent institutions, challenging local impunity and these kind of cases are the only ones when and where the mission personnel were present.*"¹¹⁵ However, there have been cases of pressure coming from EULEX itself, so if there is a lack of control or any kind of accountability from this mission, the famous question comes into the scene, who guards the guardians?

¹¹² Ibid

¹¹³ Ibid

¹¹⁴ Birte Julia Gippert. Local Views of Legitimacy towards EULEX – Police Reform in Kosovo, Graduate Institute of Politics and International Studies, University of Reading, UK, http://www.academia.edu/2449538/Local_Legitimacy_Perceptions_of_EULEX_in_Kosovo

¹¹⁵ Supra 111, p.26

In general the work of this mission is evaluated as one that leaves a lot to be desired. EULEX's staff presence in all the necessary institutions and cases has been weak and its mandate on ensuring rule of law has stagnated on its way.

As for the Kosovo-Serbia dialogue, needless to say it had to be postponed until a government was formed and it could only be initiated as from 8th March 2011. *"The aim was to normalise relations between the two countries, both of which aspire to EU membership, in the context of Serbia's continued refusal to recognize Kosovo's independence"*.¹¹⁶ Ms. Ashton mediated more than 12 rounds of talks between the two countries.

*"It was on April 19, 2013 when an agreement was reached that some coined historic while others called it a huge breakthrough."*¹¹⁷ This agreement came as a result of long negotiations, processes and debates. Even that it certainly was an important moment on their history, this agreement is the first of many more to come, a pessimist would read that "this is a first agreement on principles, not on a given matter"¹¹⁸ Nevertheless, both states have strong incentives to continue sealing the deal, Serbia is every day and closer to European integration and Kosovo needs a lot of support and acceptance in the international sphere.

In the sense of CFSP, this might be considered a success story for Ms. Ashton, who is facilitating the negotiations between the two countries. She has been working with a great dedication towards this reconciliation, and following 13 hours long meetings between prime ministers of two countries. The reasoning might be a clear one, just like Serbia and Kosovo can benefit on their integration to EU from these negotiations; they might be a salvation for Ms. Ashton as well. Considering its long history and all that has been invested in the new structures of CFSP, a sign of success is needed and apparently Ms. Ashton has decided this to be the political momentum of her success and her mark on the history. "I've heard the word historic," stated she to the BBC. "And maybe, looking back, that is how people will view it."¹¹⁹ If these negotiations succeed, once again it would be a proof that EU can succeed with

¹¹⁶ Kosovo and Serbia Reach Historic Deal in Brussels. Balkan Insight. 19 April 2013.

<http://www.balkaninsight.com/en/article/kosovo-and-serbia-may-seal-eu-deal>

¹¹⁷ Ernst M. Felberbauer, Predrag Jureković (Eds.). Regional Co-operation and Reconciliation in the Aftermath of the ICTY Verdicts: Continuation or Stalemate? 26th Workshop of the PfP Consortium Study Group "Regional Stability in South East Europe". Republic of Austria / Federal Ministry of Defence and Sports. Vienna, August 2013 p.118

¹¹⁸ Ibid p.119

¹¹⁹ EU's Ashton sees 'brave' Kosovo deal as breakthrough, BBC News, 24 April 2013,

<http://www.bbc.co.uk/news/world-europe-22278542>

soft power, but well, let's hope history won't bring chances so that EU can "try" their military capabilities (even that crises in different parts of the world keep arising).

VII. Conclusion

Considering all that was mentioned above, two points shall be concluded in this paper. First of all, since EU is a sui generis political order, this has profound implications for its legitimacy and it should be considered whether the standards of legitimacy that apply to liberal democratic states should be applied in the case of the EU as well.¹²⁰ Second, it should be considered whether CFSP is one of the cases where *the goal justifies the means*. The importance of strengthening the (military) role of EU on the global scene will be the second point elaborated.

Legitimacy is directly related to whether citizens have trust in "*the future compliance of other citizens and authorities with institutions they believe to be normatively deserving of obedience. Indeed, trustworthiness seems crucial for the long-term support of the EU's multilevel political order, and for the authorities' ability to govern.*"¹²¹ Furthermore, bearing in mind that parliaments should have an essential political importance since they are directly elected by the people and they are the core of legitimacy in democratic systems¹²², in the case of CFSP the role of the Parliament can hardly be considered power. There is clearly a lack of democratic legitimacy in CFSP.

On the other hand, with regard to the second point, taking into consideration the importance of strengthening the role of EU in the international scene on the area of defense and security policies, a check and balances analysis would tell if it is worth it. One of these points is the analysis on, whether EU should continue relying on its soft power, or should develop and intervene with military capacities. At the same time, this relates with the "strong" role of the US on these matters, how much EU should continue to rely on US when it comes to taking standings on the field of foreign policy.

¹²⁰ Supra 5, p. 158

¹²¹ Supra 5, p. 172

¹²² Supra 4, p.18

The need to develop a common foreign and security policy and the will of the Member States to intervene in crisis around the world should be taken into consideration. As regards the EU as a soft power, its role is already established in the global scene, meanwhile as regards the military implications, it is still uncertain. However, this kind of soft power cannot be seen as a “useless one”. As it has been seen in the cases of Western Balkans, Middle East and Afghanistan, the civilian aspect of a crisis management mission also has a crucial role, since a naked military power can often lead to failure. The civilian crisis management is a new developed concept that involves a broad range of instruments and a great degree of institutional flexibility considering that it involves all the three agencies of the pillars of TEU.¹²³ It will always be more useful to have a combination of both, the civilian and the military aspect. But in the case of EU it is harder to define and compel a military aspect, considering EU as a sui generis “organization”.

Probably most of the EU Member States prefer to be involved in civilian management mission than in military ones. Even that they continue and try to invest in a military aspect of CFSP, is it really on the "nature" of EU to answer things by violence? This might be a very naive approach however in the territory of hundred and thousand years of evolution from wars and reconciliation, most probably a peaceful approach would be the "voice" of the people. And once again we go back to the point of leaving the tough "dirty" parts to the USA.

Though to the question rising, if illegal but legitimate (and the other way around) attacks should be used as precedent on the future, there are multiply answers. This was aiming to be used as a precedent on the case of Syria, however there are a lot of circumstances that should be double checked before taking such a decision. This is where the global powers will always have their clashes, which brings us back to the point. EU should enhance its foreign and defense capabilities in order to have a say when it comes to intervening on troubled zones. Humanitarian catastrophes should not be allowed to happen ever again but at the same time, military actions cannot be used to fulfill the interests of a state, no matter if they are legal or legitimate.

¹²³ Supra 86, p.93

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