



Universiteit
Leiden
The Netherlands

European Union representation at the United Nations towards more coherence after the Treaty of Lisbon

Jin, X.

Citation

Jin, X. (2014, January 9). *European Union representation at the United Nations towards more coherence after the Treaty of Lisbon*. Smart Printing Solutions. Retrieved from <https://hdl.handle.net/1887/22977>

Version: Corrected Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/22977>

Note: To cite this publication please use the final published version (if applicable).

Cover Page



Universiteit Leiden



The handle <http://hdl.handle.net/1887/22977> holds various files of this Leiden University dissertation

Author: Jin, Xi

Title: European Union representation at the United Nations : towards more coherence after the treaty of Lisbon

Issue Date: 2014-01-09

Chapter 4 EU Representation at the UN: Principal-Agent Explanation

EU representation at the UN is complicated because it is not only affected by the rules of participation in different UN bodies but also by the delegation structures designed by the Union. This chapter attempts to explain these varieties and complexities from the perspective of the principal-agent theory. The Union and its entire membership are considered collective principals, whereas agents of the EU and the representation structures are different at the UNGA and the UNSC. In each context, the EU's representation has experienced different stages of development. Whether the ToL has contributed to increased EU representation coherence remains to be seen. This chapter will describe the evolution of EU representation at these two UN organs while placing a particular emphasis on the implications of the ToL.

4.1 The EU in the Context of the UN General Assembly

4.1.1 The UN General Assembly at a Glance

The UNGA is the chief deliberative, policymaking and representative organ of the UN (Marin-Bosch 1998). Currently comprising 193 Members, it provides a significant forum for multilateral discussions of the full spectrum of international issues. The functions and powers of the UNGA include, *inter alia*, discussing and making recommendations on any question relevant to international peace and security, except when the issue is being discussed by the UNSC;³⁶ giving recommendations to promote international political cooperation and peaceful settlements; considering reports from the UNSC; deciding on UN budgetary matters; electing the non-permanent members of the UNSC, the members of other UN councils and organs, as well as appointing the Secretary-General on the recommendation of the UNSC (Baehr and Gordenker 2005; Franda 2006). The Assembly normally gathers under its president or the Secretary-General in a regular session, which lasts from mid-September to December every year. Special sessions can be convened in case of emergency by the Secretary-General, at the request of the UNSC or of a majority of the UN members (Article 20 UN Charter).

³⁶ However, through its “Uniting for Peace resolution” in November 1950, in a case where there appears to be a threat to the peace, breach of the peace or act of aggression, the UNGA may consider the matter immediately and issue any recommendations it deems necessary in order to restore international peace and security, if the UNSC fails to act due to a lack of unanimity among its permanent members.

UN membership is only open to peace-loving states which accept and are willing to carry out the obligations under the UN Charter (Article 3 and 4 UN Charter). This requirement also applies to the UNGA. Member states of the UNGA are equally represented and each member has one vote. Non-member states, entities and organizations can be invited to participate as observers in the work of the UNGA (Weiss 2010). The UN Charter does not provide clear procedures for observer status. Generally, observers have access to most UNGA meetings and relevant documentation. But they are not allowed to vote. On 3 May 2011, the EU secured an enhanced observer status at the Assembly by UNGA Resolution 65/276. Since then, EU representatives have obtained the rights to speak in general debates, to make interventions, oral proposals and amendments, and to exercise the right of reply regarding positions of the Union. However, the EU cannot vote or challenge resolutions and decisions. Enhanced observer status is open to other IOs out of request. So far, the EU is the only entity that has been granted such a status.

The UNGA can establish Committees and other subsidiary organs as it deems necessary for the performance of its functions (Article 22 UN Charter).³⁷ There are six Main Committees.³⁸ Each committee consists of all UNGA members. The Main Committees discuss the items referred to them by the UNGA within their respective specialties and seek to harmonize the various approaches of states. After the relevant Committee has duly considered its content, a draft resolution or decision for consideration will be presented to a plenary meeting of the Assembly.³⁹

Although not legally binding,⁴⁰ decisions of UNGA resolutions carry significant moral or political weight (Petersen 2006). Decisions can be made with or without a vote. The president of the UNGA can propose a resolution to be adopted by consensus after having consulted with all delegations. If a vote is decided to be necessary, decisions on important questions – such as peace and security, admission of new

³⁷ UNGA subsidiary organs include committees, boards, commissions, councils and panels, working groups and others.

³⁸ These main committees are the Disarmament and International Security Committee (First Committee), the Economic and Finance Committee (Second Committee), the Social, Humanitarian, and Cultural Committee (Third Committee), the Special Political and Decolonisation Committee (Fourth Committee), the Administrative and Budgetary Committee (Fifth Committee) and the Legal Committee (Sixth Committee).

³⁹ According to Rule 65 of UNGA Rules of Procedure, the UNGA “shall not, unless it decides otherwise, make a final decision upon any item on the agenda until it has received a report of a committee on that item”. On issues such as Palestine and the situation in the Middle East, the Assembly acts directly in its plenary meetings without a report from any of the Committees.

⁴⁰ Decisions of UNGA resolutions have no binding power, except on internal UN affairs, such as budgetary issues.

members and budgetary matters – are made by a two thirds majority of the members present and voting.⁴¹ Decisions on other matters should be made by simple majority. Resolutions adopted by a vote can be documented either as roll call votes if so requested in advance or merely with a summary of the result. Recorded resolutions only take a small portion of all UNGA resolutions. Under exceptional circumstances, some meetings of the UNGA and its Main Committees are held in private without official records (Hurwitz 1976; Kim and Russet 1996; Hug 2012).

4.1.2 Developments of EU representation at the UN General Assembly

The EU's presence at the UN can be traced back to the information office created by the Commission in New York. It became an official delegation in 1974 when the UNGA decided to grant the Commission observer status, which allowed a representative of the Commission to take the floor on behalf of the European Community on matters within its exclusive competences as a nonvoter. The Community could only address UNGA meetings after all the member states had done so. Strictly speaking, at that time the Community had no agent to defend its common interests coming within foreign policy. In practice, its opinion was expressed on official occasions by the member state holding the revolving Presidency.

Aiming to further promote cooperation and better protect the Union's common interests, EU member states agreed in the Maastricht Treaty (signed in February 1992, in force in November 1993) to launch the CFSP and to entrust the responsibility of representing the EU in this field to the Presidency in legal terms. The Maastricht Treaty itself was a result of the growing political solidarity and preference homogeneity among member states since the introduction of the EPC in 1970. The Amsterdam Treaty (signed in October 1997, in force in May 1999) created the position of the HR/SG to assist the Presidency. While the Nice Treaty (signed in February 2001, in force in February 2003) did not make any significant changes to the delegation structure of the EU, it provided a treaty basis for the Political and Security Committee (PSC), which had been made a permanent body of the EU in January 2001 to formally replace the Political Committee (PoCo).⁴² The PSC retains the PoCo's function to monitor the international situation falling in

⁴¹ "Members present and voting" refers to members casting affirmative or negative votes. Members that abstain from voting are considered non-voters.

⁴² Council Decision (2001/78/CFSP) of 22 January 2001.

the area of the CFSP, to contribute to the definition of policies, and to monitor the implementation of agreed policies. It exercises political control and strategic direction of crisis management operations and can take relevant decisions under the authorization of the Council. In this sense, the Nice Treaty delegated a function that had been normally reserved for the Council to the PSC (Duke 2005).⁴³

Before the adoption of the ToL, the Presidency had been the leading agent in the CFSP field. The Presidency represented the Union by delivering presidential statements on official UN occasions,⁴⁴ and by negotiating on behalf of the EU toward a wider UN membership in *troika* meetings, along with the representatives from the Commission delegation, the Liaison Office of the Council Secretariat, and if necessary, the next Presidency (Keukeleire and MacNaughtan 2008). EU *troika* meetings at the UN were held at different hierarchical levels. At the ministerial level, the EU was co-represented by the foreign minister of the Presidency, the Commissioner for External Relations and the HR/SG. The Presidency was also responsible for informing other EU members about UN activities and organizing internal coordination meetings over UN affairs. The workload of the Presidency was heavy, given that there were over 1,000 meetings in New York every year. On rare occasions, the HR/SG or a Commissioner could take the floor behind the plate “European Community”. But their role, along with the Council Secretariat’s Liaison Office, was mainly to support the Presidency (Bengtsson and Allen 2011: 114).

The delegation relationship during this period was initially problematic. First, each Presidency was conditioned by its domestic, historical and geographical preferences, which were not necessarily consistent with the collective interests of the EU. For the Presidency, representing the EU was an option rather than an obligation (Drieskens 2008: 612). Second, the Presidency rotated every six months among EU member states. Given that the time horizon of delegation was rather short, and that EU member states had no concerns for cancellation of delegation, there were fewer incentives for the Presidencies to avoid agent shirking or slippage. Each rotation was accompanied by a shift of political priorities, diplomatic reputation and global influence, which would cause discontinuity in the agents’ representative capacities (Dijkstra

⁴³ For an overview of the developments from the Maastricht Treaty to post-Lisbon, see Griller and Ziller 2008; Piris 2010; Regelsberger 2011; Dosenrode 2012.

⁴⁴ The declarations and statements by the Presidency had to be formally approved by all member states and were revised via the COREU network (Smith 2006). For a more detailed analysis of the COREU network, see Bicchi 2011.

2011).⁴⁵ The *troika* formation was introduced to mitigate this problem, but its role in bridging the continuity gap was limited, not to mention the added confusion due to increased number of agents (Bengtsson and Allen op.cit. 109). Third, the fragmented pillar structure led to internal rivalries among the Presidency, the Commission and the HR/SG. Fourth, the requirement of unanimity for CFSP decision-making gave the Presidency more leeway to manipulate coordination meetings towards its own advantage. Finally, control system was inadequate in terms of both *ex ante* and *ex post* mechanisms. The Union did not have an option in agent selection in the sense that each member state had an equal chance of being the agent in turns and the EP was not involved in the appointment of the HR/SG. It was difficult to control the Presidency by limiting its discretion because the Presidency itself, as an EU member, participated in designing the extent of agent discretion. The supervisory power of the EP over the Presidency was relatively superficial. The Presidency was only required to keep the EP regularly informed of the development of the CFSP and consulted on relevant decisions. The EP could call the Presidency to answer questions but could not bring it to court in case of violation of EU treaties since the ECJ had no jurisdiction in the CFSP remit (Greco 2003; Hinarejos 2009). Altogether the European Council under the leadership of the rotating Presidency performed sub-optimally (Dosenrode 2012: 161).

The ToL re-delegated the task of representing the EU on CFSP matters to two separate agents: the President, which has replaced the Presidency to chair the European Council and the HR, which was created by combining the former HR/SG and the Commissioner for External Relations. The conflicting preferences within the EU led to the appointments of two centrist and pragmatic agents of relatively low profile in November 2009, namely Herman Van Rompuy as the President and Catharine Ashton as the HR. Early contestants for the President had included, *inter alia*, former British Prime Minister Tony Blair, who had been a charismatic global figure in the foreign policy domain. His candidacy was rejected because of his failure to lead the UK to adopt euro and to sign the Schengen Agreement, and because of his decision to engage British soldiers in the US-led invasion of Iraq in 2003, which had seriously split the Union (MacCormick 2011: 128). Mainly due to the joint support from Nicolas Sarkozy and Angela Merkel, the

⁴⁵ For a detailed analysis of the discontinuity between different rotating Presidencies, see Bengtsson and Allen 2011; Dijkstra 2011.

European Council eventually chose Van Rompuy, a lesser known centre-right technocrat who had served as the 66th Prime Minister of Belgium. The appointment of Ashton was largely a compromise between the UK and the Franco-Germany axis. It was reported that Gordon Brown dropped Blair's bid for the President so that a centre-left British Labour politician could inherit the office of the foreign policy chief (Barber 2010:61).

The risk of shirking is reduced since both the President and the HR are full-time agents that focus exclusively on EU business rather than the interests of a particular member state. Compared to the Presidency, they are less likely to be diverted by national politics.⁴⁶ The agents are no longer subject to semiannual rotation. The President is elected for a term of two and a half years, renewable once, while the HR's term of office is five years. Relatively stable yet limited time horizons of delegation provide fewer incentives for slippage. The termination of rotation also increases the continuity of agent capacities. Representative capacities have much to do with the two officeholders' personalities, e.g., their characters, expertises, resources, experiences as well as leadership styles. The incumbent President is described as a shrewd, introverted, self-effacing and mild-mannered politician (Barber 2010; Dinan 2012). Van Rompuy is highly regarded in EU political and policy circles for his coalition-building skills, economic expertise and multilingual abilities. His leadership style is open and pragmatic with a problem-solving orientation. He tends to respect constraints and is less likely to force an agreement if there is no general consensus (Van Assche 2009: 18). As for the new HR, those who have been working with Ashton portray her as an intelligent, cautious, hard-working official and a quick learner. As a trained economist and the former Trade Commissioner of the EU, she has developed rich knowledge of economic issues and good negotiation skills. Ashton is also known as a people person who works in a relatively flexible and practical style (Howorth 2011; Helwig 2013).

Though agent capacities are subject to change when different personalities assume the offices, the ToL has provided the President and the HR with stronger administrative and professional assistance to overcome capacity deficit. It established the EEAS, which, under the authority of the HR, works in cooperation with

⁴⁶ Article 15 TEU prescribes that the President cannot simultaneously hold a national office.

the diplomatic services of EU member states and contains officials from relevant departments of the Commission and the Council as well as staff seconded from national diplomatic services (Article 27 TEU).⁴⁷ The delegations of the Commission around the world have been transformed into EU delegations, which form an integral part of the EEAS. EU delegations contain both regular EEAS staff and staff from relevant Commission services, who work under the authority of the Heads of Delegations. The delegations are the operational focus of the service and cover issues of the entire range of EU competences (Van Elsuwege and Merket 2012: 42). At the UNGA, the Commission Delegation and the Council's Liaison Office have merged into the Delegation of the EU, which has progressively assumed the role of the national delegation of the rotating Presidency. Moreover, the new agents are less vulnerable to exogenous factors than national governments. Take the eurozone crisis as an example, if the Spanish Presidency had been leading the European Council in the first half of 2010, its capabilities of representing the Union would have been weakened due to its wobbly financial situation. On the contrary, owing to his expertise in economic and financial issues, Van Rompuy was able to, in an authoritative and reassuring manner, comprehend the developments of the crisis and effectively lead the Union by establishing a Task Force to seek for the solutions (Dinan 2012).

The EU has gained more power in agent selection. According to the ToL, the President shall be elected by the European Council by a qualified majority (Article 15.5 TEU) while the HR shall be appointed by the European Council through a qualified majority with the agreement of the President of the Commission (Article 18.1 TEU). Meanwhile, the EP has an indirect say over the appointment of the HR since the latter, as a Vice-President of the Commission, shall be subject to a vote of consent by the EP as a body together with other members of the Commission (Article 17.7 TEU). In practice, the EP holds a series of public hearings with the candidate Commissioners before the voting.

In this new "contract", the President is entrusted with the tasks to provide strategic leadership, coordinate the Commission and the GAC, facilitate consensus within the European Council, and represent the EU toward the outside world (Article 15 TEU) and of European Council towards other EU institutions

⁴⁷ For discussions of how seconded national experts influence EU decision making, see Yannick 2012.

(Dosenrode 2012). In comparison, the mandates conferred upon the HR by the ToL are far more extensive: first and foremost, the HR acts as the EU's representative in the CFSP remit. As the head of the EEAS and the European Defence Agency (EDA), the HR conducts and implements the CFSP, including the CSDP.⁴⁸ The HR has the right to submit proposals or initiatives regarding these policies to the Council, either on its own initiative or jointly with the Commission (Article 22.2 TEU). Acting in contact with the PSC, the HR shall ensure coordination of CSDP tasks (Article 43 TEU). Moreover, the HR chairs the FAC, and can convene extraordinary Council meetings on emergency matters (Article 30 TEU).⁴⁹ Simultaneously as a Vice-President of the Commission, the HR is in charge of coordinating different aspects of the Union's external action and ensuring its consistency (Article 18.4 TEU). This innovation is supposed to bridge the competence gap and encourage information flow between the Council and Commission (Marangoni 2012; J. Schmidt 2012). Inside the College of Commissioners, the HR is the chair of the Group on External Relations Commissioners.⁵⁰ The HR also participates in the work of the European Council (Article 15.2 TEU). In international conferences and organizations, the HR and EU delegations have progressively replaced the former *troika* in conducting political dialogue with third parties on the Union's behalf and in organising the coordination of EU member states and ensure their compliance with the principles of "loyalty and mutual solidarity" (Article 24 and 27 TEU). Take the UNGA as an example, the HR, together with the President, supported by the EU delegation to the UN, have taken over the EU's representation from the Presidency. In international platforms where not all EU member states participate, such as the UNSC, the HR shall be kept informed by those members that are represented. At the UNSC in particular, the HR can be invited to present the Union's common position (Article 34 TEU).

Parliamentary oversight over the agents is somewhat extended. The President is required by the ToL to submit a report to the EP after each European Council meeting (Article 15.6 TEU), while the HR needs to keep the EP regularly informed and consulted on issues concerning the CFSP and the CSDP. In addition, the

⁴⁸ The explicit mention of the CSDP corresponds to the fact that it is declared an "integral part" of the CFSP (Article 42 TEU).

⁴⁹ The HR may, where necessary, ask to be replaced by a member of the rotating Presidency, e.g., when the FAC is convened to discuss common commercial policy issues.

⁵⁰ A commissioner group set up by President Barroso in April 2010, including the Commissioner responsible for Development, Enlargement and Neighbourhood Policy, International Cooperation, Humanitarian Aid and Crisis Response, Trade, and Economic and Monetary Affairs. The President of the Commission can chair the meetings of this group if he chooses to.

EP has the right to refer questions or make recommendations to the HR. The EP also holds semiannual debates – rather than “an annual debate” stipulated in the preceding treaties – on progress in implementing CFSP and CSDP policies (Article 36 TEU). The budgetary power – shared with the Council – over the operational expenditure of the EEAS allows the EP to exert indirect influence (Bickerton 2011). The Union has gained additional strength in sanctions as well since the European Council can terminate the President and the HR’s terms of office in case of an impediment or serious misconduct.

The Union obtained legal personality through the ToL (Article 47 TEU). It means that the EU, which has replaced and succeeded the European Community, thereafter has got the ability to conclude and negotiate international agreements, join international conventions and become a member of international organizations. Such an improvement made it possible for the Union to pursue an advanced status at the UN. According to UNGA Resolution 65/276, the EU can be invited to participate in the General Debate, to make interventions, to exercise the right of reply concerning EU positions, and to present proposals or amendments as agreed by EU member states. This resolution permitted EU representatives to rank among the first speakers in UN discussions.⁵¹ But EU representatives can neither vote nor challenge UN resolutions. Nor can they raise a point of order or put forward candidates in the UNGA. A precondition for them to take the floor to present the Union’s positions is a pre-defined agreement among EU members. Nevertheless, this resolution has promoted the EU’s status at the UN and aligned the modalities of EU participation in the UNGA to the new arrangements of the ToL.

However, EU representation in the post-Lisbon era is far from flawless. The ToL does not contain any provision relating to the nomination process for the President or the HR. Candidates for both posts in practice are nominated by national governments and then appointed by the European Council via qualified majority voting (QMV). The EP has no formal control whatsoever over agent selection. It risks making the process into an intergovernmental horse-trading and thus depriving the collective principals of a full range of candidates from which to choose. For example, the appointments of Van Rompuy and Ashton were considered to be a trade-off among the powerful member states. Member states’ firm attachment to national

⁵¹ For example, at the General Debate of the 67th Session, the EU was put between Australia and Egypt on the list of speakers.

sovereignty in foreign policy and their reluctance to give great powers to Brussels resulted in appointing two moderate and pragmatic agents who were unlikely to upstage the leaders of larger member states. The need to reach power balance brought about a centre-right male President from a small member state and a centre-left female HR from a big member state. It seemed that these concerns were put before candidates' actual qualifications for the jobs. The fact that Van Rompuy was backed by Merkel and Sarkozy while Ashton was championed by Brown suggests that big members within the EU are more influential on agent selection. The lack of treaty base and transparency for the method of appointment has led to accusations of "Soviet-style secrecy" from Central and Eastern member states. But the last-minute appeal from Poland to hold "job interviews" for the candidates in front of EU leaders was in the event quickly brushed aside (Barber 2010:65).

Neither Van Rompuy nor Ashton could be counted as political heavyweights (Regelsberger 2011: 32). Nor could they be regarded as foreign policy specialists. This might be problematic since the first incumbents are especially influential in shaping the positions. It was speculated that they would become followers rather than leaders in EU foreign policy, that they would act as internal negotiators instead of representatives of the EU towards the outside world, and that they would be too much of moderators rather than enterprising initiators (Dinan 2012; Marangoni 2012). Assessments of their performance to date draw mixed responses. Admirers insist that they have basically filled the job-descriptions in difficult times while critics accuse them of lacking judgement and leadership.⁵²

In respect of contract design, the ToL puts the President in charge of presiding over the European Council, but the former close link with the Council of Ministers does not go automatically with the job. The rotating presidency continues to chair various Council formations, where the President has no ability to direct or control their agenda-setting and legislative processes. Within the European Council, the President does not enjoy the right to vote as other leaders of national governments do. On one hand, it prevents the President from manipulating decision-making based on individual preferences. On the other, it limits the President's role as the consensus builder. Moreover, the creation of the President could add an extra layer of

⁵² For assessments of both the President and the HR's performance, see Howorth 2011; Marangoni 2012 and Helwig 2013. For the evaluation of the HR's performance in particular, see Rieger 2011.

multiplicity to EU representation, as it increases the number of agents and places the President in competitions with the HR and the Commission President. The ToL prescribes that the President shall conduct representation without prejudice to the powers of the HR (Article 27 TEU), whereas the Commission shall ensure the Union's external representation, with the exception of the CFSP, and other cases provided for in the Treaties (Article 17 TEU). These provisions imply that the designers of the ToL – in despite of foreseeing the potential of conflicts cross EU institutions – did not clarify in the treaty the distribution of representation responsibilities or the possible resolutions to these problems. A reading between the lines seems to suggest that the President and the HR represent the Union on matters regarding the CFSP, respectively at the level of heads of state and government and the level of ministers, while the Commission represents the EU on non-CFSP issues. Although so far the picture of EU representation in IOs emerged from practice has been mixed (as illustrated in Chapter 3), this “formula” generally applies to the UNGA. Take the 67th UNGA as an example, the EU was represented by President Van Rompuy in General Debate, by Commission President Barroso at the High-level Meeting on the Rule of Law, and by HR Ashton in the meetings of Foreign Affairs Ministers. Three Commissioners also travelled to New York and represented the EU at various bilateral and multilateral meetings in their respective fields (EU@UN 2012).⁵³

The Presidency remains relevant in the Union's external affairs after Lisbon, though it is no longer seen as an EU agent in external representation. It is required that the President submits draft agenda to the GAC and prepares regular meetings of the European Council “in close cooperation” with the rotating Presidency, which still chairs most of Council formations and preparatory bodies (including working parties and committees).⁵⁴ Especially as it is in charge of the GAC and COREPER II, which respectively prepares the meetings of the European Council and the FAC, the Presidency is able to exert influence on the strategic planning and agenda-setting of the CFSP. One can assume that the bigger the member state holding the Presidency, the greater influence it possesses and thus the greater the potential for friction (Rüger 2011: 227). Moreover, the ToL affirmed the *trio* Presidency system, where three Presidencies work together under an 18-month common programme (Batory and Puetter 2012). All these arrangements lead to a higher risk of

⁵³ The three Commissioners are Kristalina Georgieva (International Cooperation, Humanitarian Aid and Crisis Response), Connie Hedegaard (Climate Action) and Andris Piebalgs (Development).

⁵⁴ European Council Decision (2009/882/EU) of 1 December 2009 adopting its Rules of Procedure.

conflicts between the *trio* Presidencies and the President or risk of competitions between the *trio* and the HR. It appeared that EU member states, at least some of them, were not prepared for a swift end to the extensive power of the rotating Presidency in external affairs: e.g., the Spanish Presidency insisted on hosting the EU-US summit in 2010 (Allen and Smith 2011: 211),⁵⁵ while the Hungarian Presidency rejected the EEAS pledge to chair Council meetings, not until the service became more firmly established (Vanhoonacker and Pomorska 2013: 1325). Therefore, horizontal coherence of EU representation to a certain degree depends on the interplay between these EU actors, including the HR, the President, the Commission and the rotating Presidency, on whether they can coordinate with each other to minimize inter-institutional tensions. The resistance from the member states with respect to the transference of competence to supranational agents of the EU is also an indicator of their divergent preferences in the matter of external representation, which is a main source of vertical incoherence.

As introduced earlier in this section, the ToL gives the HR a broad and cross-institutional mandate regarding the EU's external representation. It represents an attempt to combine different aspects of external relations and to bridge the institutional divide between the Council and the Commission. Yet, this "all-encompassing" mandate does not cover trade, development cooperation and humanitarian aid, despite their obvious connections to the CFSP. As a matter of fact, the HR does not even chair the FAC when these issues are under discussion, which poses the question of the extent to which she can influence the policy making in that configuration (Marangoni 2012). Perhaps this problem sounds less serious when it is compared to the relentless workload of the HR. The demanding mandate almost makes this job an "impossible mission" (Rüger 2011: 220). It is hard to imagine that one individual "wearing so many hats" can get all the work done while simultaneously maintaining high quality standards. No wonder the timing of Ashton's proposals and the quality of her discussion papers have often been criticised (Kaczyński 2011). Although the HR was designed to be a full-time agent, in reality she can only be a part-time leader at best in any of the EU institutions. Ashton was repeatedly criticised for her lack of visibility at hotspots, e.g., Haiti after the earthquake, and for not attending important gatherings, e.g., the first Defence Ministers meeting

⁵⁵ The dispute was to a degree solved by President Obama's rejection to attend the summit originally scheduled in Madrid. The EU-US Summit in 2010 was in the end held on 20 November in Lisbon, by when the rotating Presidency had passed to Belgium.

since her assumption of the Office (Howorth 2011). Being constantly questioned and criticised weakens the HR's role as one of the leading representatives for the EU. To do her justice, it is simply impossible for her to attend different occasions at the same time. The ToL does not provide deputies for the HR. The current arrangements for other actors, e.g., Commissioners, ministers from the rotating Presidency, senior EEAS officials or European Union Special Representatives (EUSRs), to deputise for the HR are still ad-hoc. In the 2013 EEAS review, Ashton calls for the formalization of these arrangements, or alternatively, the creation of formal deputy HR position(s), to provide the HR with stronger support (see Ashton 2013).

The EEAS was established with the purpose of assisting the HR in fulfilling her multiple mandates. But by scholars' accounts on the performance of the EEAS in the early days (e.g., Blockmans and Laatsit 2012; Vanhoonaeker and Pomoska 2013), it suffered from the diversity in its members' backgrounds, the absence of standard operating procedures, and the lack of an *esprit de corps*. This intra-institutional incoherence within the EEAS can be partially explained by how the Service was set up. As noted in the previous section, the EEAS contains officials from the Commission, the Council Secretariat and national diplomatic services, which before the transition were subject to different institutional rules, regulations, working cultures, management styles and fields of expertise. Blending these differences between branches of the EEAS and clarifying the allocation of responsibilities has not been easy. In fact, the process started with difficulties simply due to the physical dispersion of EEAS officials in different locations of Brussels (Marangoni 2012). As an integral part of the EEAS, EU delegations have encountered a similar problem since delegation employees are divided between the EEAS and the Commission. Different backgrounds and working approaches may cause miscommunications, even disharmony between the two categories of staff. This split of EU delegations staff between two institutions also raises concerns about loyalty. Legally speaking, the Head of Delegation, who is appointed by and accountable to the HR, has authority over all staff in the delegation, irrespective of their status and origins.⁵⁶ It is unclear where the loyalties of the Commission staff lie, with the Head of Delegation and the HR, the Commission or their country of origin, especially when the

⁵⁶ Council Decision 2010/427/EU of 26 July 2010 establishing the organization and functioning of the European External Action Service.

Commission, like the HR and the EEAS, can issue instructions to the delegation as well.⁵⁷ The uncertainty is further amplified if these instructions from different institutions are inconsistent or even conflicting. In January 2012, the EEAS and the Commission agreed detailed working arrangements covering cooperation on instructions and management of work in EU delegations. The arrangements were considered well functioning in the 2013 EEAS Review, but the HR noted that the Development Cooperation coordination would still need to be strengthened in order to raise the profile of the EEAS (Ashton 2013).

The “loyalty” issue within EU delegations reflects a deeper leadership rivalry between the HR and the Commission President. An early example of the competition between these two EU representatives is that in March 2010 President Barroso unilaterally appointed the Head of the EU Delegation in Washington without consulting Ashton in advance. It triggered a controversy as Commission delegations had become EU delegations following the ToL’s entry into force, meaning the right to appoint Heads of Delegations had fallen on the HR. But the Commission argued that the appointment was still within its competence since the EEAS were not yet in place (Allen and Smith 2011: 210).

Challenges to horizontal coherence exist not only within the EEAS but also between the EEAS and other EU institutions that have external or international dimensions, notably the Commission and the Council. According to the Council Decision establishing the EEAS, the Service shall support the HR, as Vice-President of the Commission, in her responsibilities in the EU’s external relations and in coordinating different aspects of the Union’s external action, without prejudice to the normal tasks of the Commission services.⁵⁸ However, there is no clear delineation of the contents of the “normal tasks”. Many Commission Directorates-Generals (DGs), especially External Relations DGs, have been working on external action for many years.⁵⁹ It is difficult for them to accept being coordinated by a new structure established outside the Commission. Some Commissioners fear that the EEAS represents a dangerous development of national governments interfering in Community competences (Helwig et al. 2013: 31). For these reasons, the EEAS’s attempt to coordinate some of the Commission DGs was generally unwelcome. Even before the

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ The Directorates-Generals inside the Commission are divided into four groups: Policy DGs, External relations DGs, General Service DGs and Internal Service DGs. For a comprehensive guide to the way the Commission is organised, see Spence and Edwards 2006; Wille 2013.

establishment of the Service, the Commission had transferred several units from the Directorate-General for External Relations (DG RELEX) to newly created DGs to prevent them being merged into the EEAS. Another manifestation of this concern is the transference of the European Neighborhood Policy (ENP) from the External Relations portfolio to Trade and then to Enlargement (Blockmans and Laatsit 2012: 144). Apart from the turf wars between the two institutions, EEAS officials often complain about the hesitations of Commission officials in information sharing (Helwig et al. 2013).

Meanwhile, the EEAS is required to support the HR in her capacity as President of the FAC, without prejudice to the normal tasks of the General Secretariat of the Council.⁶⁰ Although the “normal tasks” were left undefined, they should include the administrative tasks of preparing and holding Council meetings (Blockmans and Laatsit 2012: 145). After the ToL went into effect, all the preparatory bodies with a fixed chair are either chaired by an EEAS official, acting as a representative of the HR, or by the General Secretariat of the Council.⁶¹ In all working parties preparing the PSC and FAC, the chairperson is flanked by a representative of the EEAS and a representative of the General-Secretariat of the Council (Helwig et al. 2013: 16). There has been evidence indicating that the General Secretariat of the Council would have preferred to retain its supportive role to the HR (Marangoni 2012: 14). Allowing the EEAS, instead of the rotating Presidency, to take over chairing the PSC and the thematic (or geographical) working groups connecting to the CFSP adds to more continuity in agenda planning in the EU’s external action. But as explained earlier in this section, the Presidency – by keeping its power over other preparatory bodies, especially COREPER II, which prepares decisions to be taken by the FAC – has found its way into intervening in the “business” of the EEAS.

The inter-institutional divide is further embodied in the service the EEAS provides its different “masters” with (Blockmans and Laatsit 2012). According to the Council Decision,⁶² the EEAS is required to support the HR in her various capacities. The EEAS also assists the President of the European Council, the Commission President and Commissioners in the exercise of their respective functions in the rear of external relations. Furthermore, the EEAS is obliged to support, and work in cooperation with, EU member

⁶⁰ Council Decision 2010/427/EU.

⁶¹ For a list of the two categories of preparatory bodies, see Council (11903/11) of 22 June 2011, List of Council preparatory bodies.

⁶² Council Decision (2010/427/EU).

states' diplomatic services, the Council General Secretariat, as well as Commission services, in order to ensure horizontal coherence of the Union's external action. Finally, it is required that the EEAS extends appropriate support and cooperation to the EP and other relevant institutions of the Union. It remains to be seen the extent to which the EEAS can fulfill its obligations of serving multiple political masters.

The ToL has hardly made any advancement in the "design" of decision rules on CFSP matters since unanimity continues to prevail (Article 31.1 TEU). Among the rare exceptions where the Council decides by QMV, the one relating to the HR stipulates that the Council can do so when adopting a decision defining a Union action or position, based on a proposal presented by the HR "following a specific request of the European Council" (Article 31.2 TEU). Apparently, whether to make that request depends on the European Council, where national leaders of the member states continue to hold decisive power. Another innovation of the ToL is its introduction of *passerelle* clauses into CFSP decision-making, which allows the European Council, acting by unanimity, to replace unanimous voting in the Council with QMV, or transform a special legislative procedure to the ordinary legislative procedure after receiving the EP's consent (Article 31.3 and 48.7 TEU).⁶³ Whether to take that initiative, likewise, is up to the European Council. For the adoption of such decisions, the European Council needs to seek the agreements of the national parliaments beforehand, implying that domestic politics of the member states may come into play.

The agents' abilities to facilitate effective policy-making are rather confined. Despite limited progress made in agent control, the EP remains in nature a consultative and advisory assembly when it comes to the CFSP. The Council can ignore the EP's suggestions or even reach an agreement before the EP gives its opinion. The ECJ, the body that is tasked with interpreting EU law and ensuring its equal application across all EU member states, has not yet obtained jurisdiction with respect to CFSP issues (Article 24.1 TEU).⁶⁴ It means neither the Council nor the HR, which are entrusted with the responsibility to ensure "CFSP-specific principle of loyalty" prescribed in Article 24.3 TEU can appeal to the ECJ to impose sanctions for cases of non-compliance with CFSP obligations (Van Elsuwege and Merket 2012). However "beautiful" the spirit of

⁶³ These provisions do not apply to decisions having military or defence implications (Article 31.4 TEU).

⁶⁴ There are two important exceptions to this non-jurisdiction rule of the ECJ provided by the ToL: the possibility to police the borderline between CFSP and non-CFSP competences of the Union and to review the legality of decisions adopted by the Council on restrictive measures against natural or legal persons (Article 24 TEU; Article 275 TFEU).

“loyalty and mutual solidarity” may sound, the CFSP has not become a policy area that is readily amenable to enforcement.

This weakness of EU representation in *ex post* control mechanisms questions the HR’s capabilities of promoting vertical coherence within and outside the Council, that is, to harmonize the different preferences of EU member states and forge common EU positions. The HR, and by analogy other EU agents, in spite of enjoying some level of autonomy, are largely confined within the discretion scope that was agreed by their collective principals, i.e., EU member states. After all, EU representatives are able to deliver and defend a common approach on the premise that the member states acknowledge the existence of such an approach. At the end of the day, the realization of vertical coherence in EU representation depends on the extent to which EU member states are willing to overcome the preference heterogeneity, and the degree to which they are willing to accept the transfer of competences, allowing EU agents to fully perform the representation and coordination functions. Considering the remaining differences of foreign policy culture, experiences and expectations among EU member states (Cameron 2011), and the fact that EU representatives have to compete with national leaders for centre stage in the Union’s external relations, one can only imagine that the “journey” to coherent EU representation will not be easy.

This predicament also applies to the EEAS and EU delegations. So far, national views on the new EU agents are mixed. Although it is difficult to make generalizations about all EU member states, some patterns in the perceptions of foreign policy elites can be identified. A recent edited special issue by Balfour and Raik (2013) represents such an effort to provide a systematic research on this subject based on case studies of fourteen EU member states, taking account of a broad range of features: size, duration of membership and geographic distribution. To summarize some of their key findings: in general, foreign policy elites see the new EU agents as added value but not replacements to national Ministries of Foreign Affairs (MFAs), whereas some member states show concerns with national visibility declines (e.g., Spain, the Netherlands and Greece) and suggest reservations about competence transfer for specific areas (e.g., France and Italy). Britain and the Czech Republic rank the most sceptical countries on the enhanced status of the EEAS with the former emphasizing clear boundaries between national and EU competences while the latter being

vigilant against the EEAS as a tool of domination by larger members. In comparison, the UK government is more pragmatic since it considers the EEAS beneficial wherever national strategic interests are met, whereas Czech officials see the EEAS at best ancillary and oppose further integration of the CFSP. Both countries view a leading role of EU delegations in IOs as problematic. The British government even sent around instructions to its national embassies warning of a “competence creep” of the EEAS (Ibid. 144). France advocates a bigger role for EU delegations in IOs, with the exception of the UNSC. Against the background of eurozone crisis and economic recession, the majority of EU member states are not interested in expanding the EEAS budget. Estonia is one of few countries willing to consider an increase in the budget for the EEAS. France on the other hand stresses the importance of burden-sharing and the supports the establishment of a European fund to ensure credible commitments. When it comes to the transfer of diplomatic tasks from national to EU level, EU member states are mainly split into three groups: Estonia, Finland, the Netherlands and Greece welcome a potential takeover of consular services by Union delegations; Germany, Sweden, Portugal and Slovenia are either open-minded or ambiguous about the competence transfer; Italy, Spain, Poland, Britain and the Czech Republic are strong opponents of EEAS involvement in consular affairs. But the Czech Republic would like to see the EEAS to play an important part in Eastern Europe and the Balkans. France does not quite fit in any the groups because it supports the coordination role of the EEAS in providing consular protection and evacuation in cases of emergency, but has not yet prepared to go as far as surrender its right of visa issuance.⁶⁵ It appears that smaller members within the EU tend to be less antagonistic to supranational agents of the EU. Within the “Big three” (i.e., France, Germany and the UK), Germany is most friendly to joint representation in IOs insofar as it does not cut down German diplomatic networks. It may have something to do with its long-standing pro-integration tradition (D éz Medrano 2003; Harmsen and Spiering 2005). On the contrary, both Britain (D éz Medrano 2003) and the Czech Republic (Taggart and Szczerbiak 2004), which are most conservative about the empowerment of the EEAS and EU delegations, are conventionally considered Eurosceptical countries.⁶⁶

⁶⁵ For more detailed descriptions, see Balfour and Raik 2013.

⁶⁶ Notice that this divide between pro-integration and Euroscepticism risks oversimplifying EU member states’ attitudes towards European integration, given that recent years have witnessed a rise of Euroscepticism in the regions that were traditionally regarded as Euroenthusiastic (Verney 2011).

Long story short, EU member states generally accept that there is a complementary role for the new EU actors to play regarding the Union's external representation in third countries and multilateral organizations. But when it comes to "paying the bills" and task transfer, they are reluctant to let go of national competences and to make genuine commitments. This prevailing mistrust of EU member states have for the EEAS leads to limited information-sharing between EU delegations and national embassies (Helwig et al. 2013). It also results in ambiguity in the status of EU delegations overseas, which has been illustrated in Chapter 3, where many EU delegations to IOs are currently operating under transitional arrangements. It implies that the success of the EEAS and EU delegations in contributing to greater vertical coherence largely depends on whether they can coordinate the divergent priorities of EU member states and whether they can win EU member states' trust to take the lead on matters concerning common EU interests. Meanwhile, the EEAS is still developing and adapting, which is expected to have an incremental socialization effect on the EU's policy convergence at the vertical level over time, in the form of day-to-day interplay with national diplomatic services and of seconding and training national diplomats during the participation of EU decision-making structures.

Lastly, the ToL extended the application of enhanced cooperation to military and defence policy by allowing the EU member states which fulfil higher criteria and have made more commitments on military capabilities to establish Permanent Structured Cooperation (PESCO) (Article 42.6 TEU). Creating this type of enhanced cooperation has even fewer restrictions. There is no minimum threshold for the number of participants required. Its authorisation is determined by the Council via QMV instead of unanimity (Article 46 TEU). Such a mechanism facilitates the optimization of resource distribution within the Union and enables those willing and able member states to organise deeper cooperation in CSDP missions with greater interoperability (Dyson and Konstadinides 2013: 72). Nevertheless, its negative effects are non-neglectable in the long run. PESCO may create an exclusive club which smaller members feel either reluctant or difficult to join, thus risks generating a multi-speed EU with greater asymmetrical power balance within the collective principals (Cremona 2009; Cantore 2011). It also means that it will be easier for the groups of more powerful EU states to bypass EU foreign policy actors. In fact, both the HR and the EP are sidelined in

this context in the sense that the role of the HR is restricted to giving opinions and launching these programmes does not require the consent from the EP, whose powers are confined to giving information and being regularly informed (Article 328.2 and 329.2 TFEU). However, in the four years since the entry into force of the ToL, PESCO has yet to be used.

In a word, the ToL has succeeded in making progress in some aspects of EU representation but failed in others. Given that the ToL has solved some agency problems in EU representation but meanwhile created new institutional tensions risks for further fragmentation, interpreting the institutional developments alone may not answer the question whether the ToL has made a difference in EU representation coherence. Statistical analyses are thus necessary for assessing the variation of EU coherence, which is measured by the voting cohesion of EU member states in the UNGA.

Drawing on the theoretical insights of the principal-agent theory and the new institutionalisms outlined in Chapter 3, a series of hypotheses are formulated and about to be tested in Chapter 5:

In parallel with the development of the CFSP regime, including the recent progress following the ToL's implementation, EU representation should have been gradually improved, that is to say, agency losses caused by agent slack and information asymmetry should have been lowered, agent autonomy and capabilities should have been strengthened and the overall delegation system should have become more stable and streamlined. The reformed representation structure in turn reshapes the policy preferences of both the agents (EU representatives) and the collective principals (EU member states). Moreover, the cumulative effects of these institutional developments and years of socialization process should have led to greater "Europeanization" in the field of foreign policy. At the vertical level, there should be an incremental convergence of policy preferences among EU member states based on shared values and norms, resulting in closer coordination among themselves and with EU institutions. National governments should have found it more acceptable to support common EU positions and to be represented by supranational agents. At the horizontal level, the establishment of new institutions, the EEAS in particular, is expected to facilitate – while potentially slowly – the cultivation of shared organizational culture and working methods. Intense contacts and regular cooperation between EU agents should have become a pattern in foreign policy making,

which would ultimately promote the representation consistency and coherence of the Union. In terms of evidence, we expect to observe greater EU representation coherence, reflected by increased EU voting cohesion at the UNGA over time.

Hypothesis 1(H₁): EU voting cohesion at the UNGA has been increasing over time.

Following the same logic, an increase in EU voting cohesion is conceivable after the ToL took effect. However, the reverse argument can be equally true, given the counterproductive impact of the unsolved control problems and newly-created institutional complexities: e.g., the risk of political trades in the nomination process of the President and the HR may lead to the appointments of suboptimal agents, which are more likely to be sidelined; the cross-institutional collision among the President, the HR, the Commission President as well as the rotating Presidency, and the intra-institutional clash within the EEAS and EU delegations may cause inconsistency and decreased coherence in EU representation; the HR may become semi-functional due to the overloaded responsibilities and absence of formalised deputies; the sustained weakness in control mechanisms, i.e., the marginalized role of the EP and the ECJ may not be able to ensure vertical coherence between EU institutions and the member states. Therefore, a non-directional hypothesis is formulated.

Hypothesis 2 (H₂): EU voting cohesion would vary after the ToL entered into force.

According to the principal-agent theory, preference heterogeneity, *ceteris paribus*, tends to be higher within a group with a larger membership. The UNGA has 193 members representing a wide range of ideologies, political systems, religious and cultural backgrounds, as well as different stages of socio-economic development. All EU member states are democracies with functioning market economies, and share relatively similar values and cultures. Compared to the entire UNGA membership, EU member states have more resemblances in policy perspectives and economic interests, and therefore should show a higher degree of coherence, in terms of a higher degree of voting cohesion. This pattern shall not be affected by the implementation of the ToL.

Hypothesis 3 (H₃): EU voting cohesion is higher and remains to be higher than that of the entire UNGA membership after the implementation of the ToL.

Analogously, EU representation coherence is assumed to decrease after each round of enlargement. Increased membership often links to higher transaction costs and preference heterogeneity with regard to decision-making. An EU that contains more collective principals with augmented economic and political diversities means that establishing coherent representation will be more difficult and time-consuming. The two recent enlargements saw the Union took in the former communist states of Central and Eastern Europe. These newcomers were remarkably poorer in wealth compared to the “old” members. They would have different priorities and interests in CFSP policies, which might trigger more splits within the Union over sensitive issues and intensify the existing tensions, e.g., between Europeanists and Atlanticists or Euroenthusiasts and Eurosceptics. Therefore, a decrease in EU voting cohesion should be observed at the UNGA right after the enlargement. However, the other side of the coin is that enlargement elevates the EU’s strategic weight in IOs. The negative effects caused by enlargement could also be offset by socialization process and institutional adaption, such as the reformative arrangements brought by the ToL. As a result of constant participation in EU decision-making, the new entrants would become more familiar and experienced with the decision rules and working methods of the Union. Their policy preferences would be reconstructed through their daily interactions with EU institutions. A convergence of interests is likely to emerge. If EU member states can act in concert after enlargements, the Union should be more coherently represented at the UNGA.

Hypothesis 4 (H₄): After an enlargement, EU voting cohesion first decreases but then recovers to its previous level or even steps up a higher level. Overall, enlargements should be positively related to the degree of EU voting cohesion.

Voting cohesion of EU member states can be expected to differ across policy areas. Generally, preference homogeneity or heterogeneity inside the collective principals on different issues is likely to influence their policy choices. After the ToL started to take effect, with additional facilitation by the new instruments, the autonomy of EU representatives may have increased and the coordination among EU member states should be promoted, even in areas where policy preferences have traditionally been conflicting. Hence, even higher voting cohesion shall be observed in such areas since the ToL.

Hypothesis 5 (H₅): EU voting cohesion varies across different issue areas. After the adoption of the ToL, cohesion in the conventionally conflicting issue areas is improved.

Based on a similar logic that formulates H₃, regional organizations with larger memberships, other things being equal, should exhibit lower degrees of coherence due to the higher risk of preference conflicts. However, there is a common notion that the EU is more integrated compared to other regional organizations (Rasch 2008; Drieskens 2010; Wunderlich 2012). So far the EU is the only regional organization that has been granted an advanced observer status at the UNGA. The existing extent of institutionalisation and the recent efforts made by the ToL aiming at more coherent representation are likely to imply that the EU should act more cohesively than other regional integration schemes. As a result, EU cohesion, in the framework of the UNGA, can be expected to be higher compared to that of other regional organizations for the periods both pre- and post-Lisbon, regardless of their different organizations sizes.

Hypothesis 6 (H₆): Compared to other regional organizations, the EU has higher voting cohesion at the UNGA for both the pre- and post-Lisbon era, regardless of its size of membership.

These hypotheses, while only exploring part of potential effects of the ToL on EU voting cohesion at the UNGA, can reveal some interesting developments as to the extent of EU representation coherence in global politics over time, and notably after the adoption of the ToL. They also present the opportunities to examine the effects of some alternative variables, such as time (as a proxy for institutional developments and socialization), membership size, enlargement, issue areas and the degree of regional integration, on the coherence of the EU and of regional organizations in general.

4.2 EU Representation at the UN Security Council

4.2.1 UN Security Council Structure, Working Methods and Procedure

The UNSC bears great importance at the UN. Its predominance mainly roots in its “primary responsibility for the maintenance of international peace and security” and its exclusive power of authorizing the use of force. Starting from the 1990s, the UNSC has recovered from the paralysis during the Cold War and reactivated the willingness to shoulder its responsibilities (Hannay 2012). According to the principal-agent theory, institutional structures, including decision-making rules, voting procedures and

working methods, construct and condition agent preferences and behaviour. EU representation on this stage is difficult to understand because it is co-determined by the rules of the Union and the *sui generis* nature of the UNSC (Hoffmeister and Kuijper 2006).

Only sovereign states that are UN members can be selected to serve on the UNSC. Apart from five pre-defined permanent members (also known as the P5), ten non-permanent members are elected by the UNGA based on “equitable geographical distribution” and their contributions to the purposes of the UNSC, for a term of two years without the possibility of immediate re-election (Article 23 UN Charter). In practice, the ten rotating seats are distributed to five Regional Groups of the UN, i.e., the Group of African States (GAFS) with two seats; the Group of Asian States (GASS) with two seats; the Group of Latin American and Caribbean States (GRULAC) with two seats; the Group of Western European and Other States (WEOG) with two seats; and the Group of Eastern European States (EEG) with one seat. The last one seat, also known as the “Arab swing seat” is reserved for an Arab country, for which the GAFS and GASS take turns every two years to provide a suitable candidate.⁶⁷ With great privilege comes great responsibility. All UNSC members are required to fulfil the obligations prescribed in the UN Charter in good faith (Article 2 UN Charter). These obligations shall prevail over the ones under any other international agreements (Article 103 UN Charter).

Decisions of the UNSC include resolutions and presidential statements. UNSC resolutions are legally binding and can be adopted either by a vote or by consensus.⁶⁸ Each member has one vote. Decisions on procedural matters require an affirmative vote of nine members while decisions on other matters have to be made by an affirmative vote of nine members including the concurring votes of the P5 (Article 27 UN Charter). Through this provision, the P5 are practically endowed with exclusive veto power upon all nonprocedural issues. Initially, the veto was designed to ensure the great powers’ commitments so that the failure of the League of Nations would not be repeated. However, its existence caused nonfeasance of the UNSC during the Cold War. Nowadays, exercises of vetoes are very rare. Without actually blocking the resolutions, states with veto power often abstain or just threaten to use veto to express their discontent (Voeten

⁶⁷ It has become an informal agreement since 1968 between the Asian and African Groups that a seat should go to an Arab country.

⁶⁸ Voting is the most frequently used method by which the UNSC makes a decision. But recent years have witnessed a trend toward more consensus decision-making in the UNSC (Hulton 2004).

2001). But the threat itself could prevent a serious matter from coming to a vote, which to a large degree allows the P5 to dominate the UNSC's agenda (Franda 2006; Ronzitti 2012). Another example of power imbalance within the UNSC is that standing and temporary members have different terms of service. Given that the UNSC often works by referring to precedents, the elected members are inherently at a disadvantage because they have suffered from a lack of both continuity and institutional memory (Bosco 2009).

If the UNSC cannot reach consensus or a passing vote on a resolution, the decision can be taken in the form of a non-binding presidential statement (Hulton 2004). Both types of decisions are made in formal meetings of the UNSC, which can be attended by non-UNSC countries without the right to vote, if the council considers that their interests are specially affected or if they are parties to a dispute (Article 31 and 32 UN Charter). The UNSC's Provisional Rules of Procedure refer to participation of non-members. States are invited to attend UNSC meetings on the basis of Rule 37:

“Any Member of the United Nations which is not a member of the Security Council may be invited, as the result of a decision of the Security Council, to participate, without vote, in the discussion of any question brought before the Security Council when the Security Council considers that the interests of that Member are specially affected, or when a Member brings a matter to the attention of the Security Council in accordance with Article 35 (1) of the Charter.”⁶⁹

Individuals, e.g. experts or representatives of IOs, are invited under Rule 39:

“The Security Council may invite members of the Secretariat or other persons, whom it considers competent for the purpose, to supply it with information or to give other assistance in examining matters within its competence.”⁷⁰

Nevertheless, the majority of deliberate negotiations actually take place on informal occasions, such as private consultations or working lunches, which are not officially recorded or open to non- members of the UNSC, unless they are invited (Hurd 2007; Malone 2012).

⁶⁹ Provisional Rules of Procedure of the UNSC (electronic version): <http://www.un.org/docs/sc/scrules.htm>.

⁷⁰ Ibid.

4.2.2 EU Representation in the Context of the UN Security Council

Not all EU member states are represented in the UNSC as they are in the UNGA. Theoretically speaking, the Union could obtain six seats in total – including the two permanent ones held by Britain and France – since EU member states are spread out across three Regional Groups: sixteen in the WEOG, ten in the EEG, and one (Cyprus) in the GASS. Albeit this ambition has never been realized, the Union has managed to secure at least four seats about half the time during the period of 1993-2012 (as shown in Table 3). At first sight, it appeared that the EU was well-represented, at times even over-represented. However, EU member states have to compete with each other for nominations in their respective geographical groups (Götz 2008). It is often more difficult for smaller countries to get elected since they have fewer financial and diplomatic resources, let alone serve on the UNSC twice. There are four EU members that have never been elected to the UNSC.⁷¹

Table 3: EU Member States Elected to the UN Security Council (1993-2012)

Year	Number	States	Year	Number	States
1993	1	Spain	2003	2	Germany, Spain
1994	1	Spain	2004	2	Germany, Spain
1995	2	Germany, Italy	2005	2	Denmark, Greece
1996	2	Germany, Italy	2006	3	Denmark, Greece, Slovakia
1997	2	Portugal, Sweden	2007	3	Belgium, Italy, Slovakia
1998	2	Portugal, Sweden	2008	2	Belgium, Italy
1999	1	Netherlands	2009	1	Austria
2000	1	Netherlands	2010	1	Austria
2001	1	Ireland	2011	2	Germany, Portugal
2002	1	Ireland	2012	2	Germany, Portugal

Table established based on data collected from: <http://www.un.org/en/sc/members/search.shtml>

According to the UN Charter, the EU, as a regional organization, cannot procure UNSC membership. A formal collective presence of the EU is only possible after a profound reform of the UNSC on its membership. Since UNSC reform remains stagnant, to date, no official EU representation is envisaged in this body (Pirozzi 2012: 95). The Maastricht Treaty assigned the task of ensuring the defence of the EU's common positions and interests to the permanent EU member states sitting on the UNSC, i.e., Britain and France. The rotating Presidency was unable to represent the EU, unless it was simultaneously holding a

⁷¹ The four EU members are Cyprus, Estonia, Latvia and Lithuania.

UNSC seat or it was invited to attend UNSC meetings under Rule 37. On even rarer occasions, the voice of the EU could be heard from the representatives of the Commission or other EU institutions on specific topics according to Rule 39. For example, the HR/SG, Javier Solana had made speeches or interventions at the UNSC six times in total.⁷² Suffice it to say that EU representation during the pre-Lisbon period was generally defective in almost every aspect of horizontal coherence: there was no formal collective EU presence at this body; the role of traditional EU representatives, namely the Presidency and the HR/SG were marginalized, where as the two agents sitting on the UNSC, as permanent member states with veto power, enjoyed a high degree of independence to engage in “shirking” and “slippage” because they saw their national interests and their responsibilities to the UNSC taking precedence, and because they had no concerns about termination of agency. The prerogative of France and the UK as the sole agents of the Union at the UNSC had stayed intact in the subsequent treaty amendments until the ToL went into force.

The ToL required the HR to be fully informed by the EU member sitting on the UNSC and granted an opportunity for the HR to present the Union’s joint position (Article 34.2 TEU). Since early 2010, the UNSC has started to invite the HR or the Head of the EU Delegation in New York to participate in its open debates. As of February 2013, Ashton has addressed the UNSC three times since her assumption of office.⁷³ But the “multi-hatted” job of the HR makes her frequent appearance at the UNSC impossible. More often, it is the Head of the EU Delegation to the UN that delivers coordinated statements on behalf of the Union and its member states. The appearance of the HR or the Head of EU Delegation may be fruitfully exploited to raise the profile of the EU in general on UNSC matters (Pirozzi op.cit. 97) and to create a *de facto* EU presence at this supreme UN organ. The ToL also extended the obligation to defend the position and interests of the EU to all EU member states serving on the UNSC. They are also obliged to concert and keep the other member states informed. By introducing more agents into play, the EU may gain more power in

⁷² Solana made two interventions at the UNSC in January and March 2002 on the situations of Africa and of Bosnia and Herzegovina respectively. In July 2003, he made an intervention at the UNSC on the Democratic Republic of Congo (DRC). Again in September 2004, Solana intervened at the UNSC debate on “Civilian Crisis Management”. In January 2007, he made a presentation at the UNSC on DRC/EUFOR. Finally in September 2008 Solana addressed the UNSC about the EU’s mid-term review of its EUFOR operation in Eastern Chad and North Eastern Central African Republic.

⁷³ Ashton addressed the UNSC for the first time on 4 May 2010 about EU–UN cooperation on peace and security. On 8 February 2011, she made a speech at the UNSC on the issue of cooperation between the UN and regional and subregional organizations. Again on 13 February 2013, she addressed the UNSC with respect to the same topic.

agent control since the non-permanent EU members can exert a certain degree of restriction over France and Britain, although the monitoring effect will be limited and the risk of agency losses resulted by multiple agents is unavoidable. Another innovation of the ToL that contributes to the enhancement of the EU's representation at the UNSC is the transformed EU delegation to the UN, which combines the former Commission delegation in New York and the Council Secretariat's Liaison Office under the authority of the Head of the Delegation of the Union. It is now charged with the responsibility to chair the coordination meetings among EU member states. The added value of the Union delegation not only lies in providing a higher degree of continuity and institutional memory in the EU's diplomacy but also facilitating the vertical coherence of EU representation, which will be further explored in the next section. In this sense, EU representation coherence at the horizontal level is somewhat improved. However limited the progress is, it represents a step that the EU and its member states were willing to take to improve the coherence of EU representation on CFSP matters at this state-centric forum.

However, the ToL has not fundamentally altered the status of the Union in the UNSC. It is partially determined by the institutional structure of this UN body itself, where the UK and France keep holding dominant power in EU representation as long as they are the only two EU member states holding permanent seats at the UNSC. It is only natural for them to prioritise national interests and act independently whenever necessary, especially if EU members fail to agree a common position. Compared to the P2, non-permanent EU countries are considered secondary agents, not only because they have no veto privilege, but also because they are less familiar with UNSC decision-making. As a result, they may not have adequate power to constrain the agent slack of France and Britain, or worse, they may commit agent slack themselves. The past twenty years have witnessed behavioural inconsistencies of these EU countries: even those belonging to the "Europeanist Camp" tended to adjust their policies to develop distinctive national positions once they became UNSC members. Speaking from this perspective, the ToL may have added more confusion in EU representation by assigning the task to more agents. The "free-rider" problem that is embedded in multiple agents is also likely to emerge. Due to lack of interests or resources, some EU members sitting on the UNSC tend to be passive followers rather than active participants on particular issues. There is little continuity in

agent capacities since the composition of the group of elected members in the UNSC changes constantly. The inequality of representative capabilities and the impermanence in structural rules at the UNSC create more incentives for the agents, especially the privileged ones, to engage in slippage. Information asymmetry has not been meaningfully ameliorated, if not worsened, given that the number of agents has increased. Although the ToL requires those EU countries on the UNSC to keep other members and the HR fully informed, it is up to the providers to determine the contents and qualities of information sharing. It remains to be seen whether the EU delegation can minimize information withholding and fill in the information gap among EU members on UNSC matters.

A peculiar problem of “dual loyalty” exists within the framework of the UNSC since EU members serving on this body have to bear extra responsibilities regarding the maintenance of international peace and security. Moreover, their actions are heavily influenced by other non-EU countries in the “club”. For instance, Britain for long has linked its foreign policy closely with the position of the US, sometimes even closer than other EU member states. The ToL confirmed their “double agent” identities by saying that these countries should defend the Union’s interests “without prejudice” to their accountabilities under the UN Charter (Article 34.2 TEU). Under the insistence of the P2, Declarations 13 and 14 that were attached to the ToL further emphasized that the ToL’s implementation would not affect the competencies of EU members in foreign policy or their participation in the UNSC. These two declarations demonstrated the obstinate attachment to national prerogatives and deep mutual mistrust among EU member states (Verola 2010).

Control mechanisms in the EU’s representation remain to be weak within the UNSC. The Union has little say about agent selection. It can neither decide which member states to sit on the UNSC nor terminate their terms of service in case of “malpractice”. The autonomy of the HR is narrow since its presence in this body to a great extent depends on the willingness of those EU members sitting on the UNSC. It also depends on whether a common position has been formulated. Controlling four to five agents is apparently more difficult and costly than controlling two. As long as EU decision-making rules over the CFSP and the ECJ’s marginalization in this field stay unchanged, the Union lacks the means to enforce member state’s compliance with CFSP obligations.

Still it is argued that the ToL has exhibited its potential to improve the EU's horizontal coherence, if the presence of the HR or the Head of EU Delegation can be made from an *ad hoc* basis to a routine. Eventually it is possible for the Union to establish a *de facto* EU collective representation in the UNSC by upgrading the visibility of the new EU foreign policy actors, notably the HR. It is crucial that the EU delegation can provide strong assistance to the HR and other EU representatives to ensure active diplomatic actions in New York. It also requires a convergence of national policies performed by EU member states and their readiness to allow the HR or the EU delegation to play a bigger role so that the coordinated approach can be promoted consistently and coherently by EU representatives. The second requirement leads to the importance of ensuring inter-state coherence and the coherence between the member states and EU foreign policy actors. This search of vertical coherence needs to be addressed by looking at the concertation of the member states sitting within the UNSC at New York and the overall coordination within the EU in Brussels, including the coordination among EU member states and the interplay between EU member states and EU institutions.

4.2.3 EU Coordination on UN Matters: From Brussels to New York

EU coordination on UN matters has a long history. Informal intergovernmental consultations had been taking place since 1970s within the framework of the EPC. The Council established the United Nations Working Party (CONUN) to study UN business and the relationship between the two organizations and identify the Community's objectives at the UNGA (Luif 2003). Back then there seemed to be a consensus that member states of the Community should synchronize their positions prior to UNGA sessions. Cooperation at that stage was mostly informal, consultative and informative. There was no agreement for uniform voting in any sort or any codified obligations of information sharing. Most of the time the Community was able to avoid casting opposing votes against each other at the UNGA. Abstentions were often used as a moderate way to express disagreements. But such acquiescence could not be observed at the UNSC. The Maastricht Treaty for the first time made clear references on the UNSC, demanding those serving members to concert and to keep the other EU members fully informed. The Amsterdam Treaty did not amend the substance of the provisions regarding the CFSP but compiled them into one place as Article 19. It remained unchanged in the Nice Treaty and later revised by the ToL into Article 34, which serves as

the pivotal guidance for current EU coordination at the UNSC. A radical amendment is that Article 34 highlights the role of the HR and the EEAS in organizing EU coordination in international conferences and organizations, presumably including the UN and its main bodies.

Through many years of practice, the EU has built a relatively systematic *ex ante* coordination mechanism concerning UN matters. Internal coordination for the upcoming UNGA session in September begins with the preparation of the EU's priorities paper. A wide range of issues on the UN's agenda is debated in a number of Council working groups in Brussels, most frequently in the CONUN, which is now chaired by an EEAS official appointed by the HR to add greater continuity to its function. The CONUN consists of highly specialized officials from all EU member states, who meet on a monthly basis to discuss recent developments at the UN and provide strategic guidelines for the EU's participation in the work of the UN (Degrand-Guillaud 2009). It is responsible for drafting the priorities and overall positions of the EU ahead of UNGA meetings. The draft document is sent to the PSC for examination, and then to the FAC to be approved. For example, the FAC approved the EU's priorities for the 67th UNGA Session on 23 July 2012 according to this procedure.⁷⁴ However, the resolutions adopted in Brussels usually reflect the lowest common denominator, of which the contents are too general to be operational at the UNSC (Helwig et al. 2013). More elaborated targeted meetings are held in EU capitals comprising officials of EU members' delegations to the UN (Pirozzi 2012). Still a position pre-agreed in Brussels may have to be reviewed by UN-based delegates in order to adapt to the up-to-the-minute situation on the ground.

Over 1,000 EU coordination meetings on average are taking place every year in New York. Starting from 26 September 2012, these meetings can be held at the new premises of the EU Delegation to the UN. The Delegation has become the information communicator for EU member states and the contact centre connecting the two organizations. It coordinates regular internal briefings and interactions with international media. Under the HR's authority, it has assumed the job of the former Presidency in organizing EU coordination at the UN.

⁷⁴ Press Release of the Council, Press 345, Nr. 12800/1/12 REV 1 (English), on 23 July 2012.

Based in New York, formal EU coordination on UN issues, including those on the UNSC agenda, are held at three levels. The highest-level meetings are the weekly gatherings of the Heads of Missions (HoMs) of EU member states to the UN, normally on Tuesday mornings. Outside Tuesdays, *ad hoc* HoMs meetings are held to deal with special issues. These meetings used to be chaired by the Presidency and continued to be chaired by the Presidency after the ToL's entry into force until June 2010, when the EEAS was ready to take over. Currently the meetings of the HoMs are chaired by the Head of EU Delegation to the UN. In the discussions a great deal of time is spent on UNSC matters. There is no particular order of contributions but often the EU member holding the monthly UNSC Presidency starts the session. Later other members can add inputs, make comments, raise questions and exchange their views on a certain subject (Rasch 2008). Without any clearly defined obligations, the HoMs meetings are mainly retrospective and informative in nature. Non-UNSC EU members are more receptive rather than informative of opinions. But the latest developments suggest that the HoMs meetings are taking the most important decisions (Kaczyński 2011).

More expert-level meetings are the so called Article 34 briefing meetings based on the ToL, which prescribes an obligation of concertation and information sharing between EU member states serving on the UNSC. The mechanism was first created by the Amsterdam Treaty, but had been long ignored. Only until early the 2000s, these meetings were made a routine under the joint efforts of the Swedish and Spanish Presidency. The Permanent Representative of Spain to the UN once suggested extending the obligation of concertation to cover the entire EU membership (Rasch 2008). But the ToL stops at the point of expanding the obligation of defending the Union to include non-permanent member states. On one hand, it elevates the status of these countries in interfering UNSC decisions and to a certain degree balances the mandates between permanent and non-permanent EU states. What needs to be clarified is that this arrangement does not transform them into first-class agents as France and the UK since they do not possess the right of veto. On the other hand, in view of the risk of agent *shirking*, it may actually create an even larger group of EU countries that are willing to deviate from predefined positions back in Brussels or EU capitals. Article 34 meetings take place on Thursday afternoons and begin with a report from the "briefer of the month", usually a representative from the EU member state holding the UNSC Presidency of that month. If no EU country is

holding the Presidency of the UNSC, then the briefer shall be a representative from EU member states sitting in the UNSC and the position rotates every month. Like in the HoMs meetings, non-permanent EU members merely absorb what their superior colleagues decide to share and do not often make comments or add more inputs to the report. Hardly do they have any effective means to influence the decision-making within the UNSC.

A comparison of the HoMs meetings and Article 34 briefings finds that both meetings consider UNSC matters a top priority in their weekly agenda. Both types of meetings are intergovernmental in nature, informative and retrospective focusing on factual matters rather than creative and proactive, although the HoMs meetings are considered relatively more fruitful since participants are permitted to provide the information that is not allowed in Article 34 briefings. On the other side, information shared in Article 34 meetings is first-hand and timelier (Rasch 2008). Moreover, since one meeting follows the other, there comes a problem of duplication. But the central problem lies in these mechanisms is that concertation among those EU members serving on the UNSC is only possible when their national interests coincide.

Coordination at a mid-level is the Deputy Permanent Representative (DPR) meetings attended by deputy chiefs of EU member state Missions to the UN. These meetings handle issues that are raised at the HoMs sessions but require further exploration, or issues that are too time-consuming to be discussed at the highest level, e.g. issues regarding UNSC reform, and issues that do not fall into a specific thematic field and are inappropriate to be processed by Article 34 meetings (Pirozzi 2012:96).⁷⁵ Compared to the two types of meetings introduced above, DPR meetings take place less frequently.

Additional coordination instruments of the EU in New York include working lunches held by EU member states toward third parties, consultations at the chamber next to the UNSC chamber and monthly gatherings of the HoMs and their respective UNSC Coordinators (Ronzitti 2012). These informal meetings are untraceable in record and are closed to non-members. Ironically, it is in these meetings that the actual preparatory work is done so that a certain resolution or action has been agreed upon before it is put before a formal session of the UNSC.

⁷⁵ Its status is comparable to that of COREPER I in the Council of the EU.

The ToL does not change the fact that EU members of the UNSC, especially the two with permanent seats, enjoy a high degree of independence to forward national policies and pursue domestic interests. They prefer to take orders from their national capitals rather than the FAC or the PSC and mainly rely on their national delegations to the UN to deal with UN matters rather than on EU-level concertation instruments. France and the UK appear to be more senior and specialized agents compared to their elected peers for not only do they own veto power, but also more resources, both economically and politically, and more institutional experiences with UNSC policy-making. Their deviation behaviour has a negative impact upon the elected EU members in the UNSC and will undermine the atmosphere of concertation within the group (Drieskens 2008). The capacity of the PSC to supervise and steer the actions of EU member states at the UN is tempered by the physical distance and by the fact that the ambassadors appointed by EU member states for the PSC are often inferior to their colleagues sent to New York. This agency problem cannot be ameliorated at least institutionally as long as CFSP decision-making continues to require unanimity and as long as the UNSC structure remains the same without a reform.

However, the ToL managed, from certain perspectives, to improve the vertical coherence EU representation at both the UNGA and the UNSC. Regarding the coordination among EU member states back in Brussels, the ToL replaced the rotating Presidency with EEAS officials in chairing the Council working groups or committees that concern the EU's representation and participation in the work of the UN, such as the PSC and CONUN (Marchesi 2008). It made a similar arrangement for the coordination among EU member states in New York by appointing the Head of EU Delegation as the chair the meetings of the HoMs. In this way, the ToL stressed the role of the EEAS and the EU delegation as an organiser and consensus-builder in the EU's external representation at the UN. When it comes to the concertation among the EU member states sitting on the UNSC, the ToL narrowed the competence gap between permanent and non-permanent member states in defending the EU's interests, and in a way strengthened the control mechanism by monitoring the P2 through non-permanent EU members in the UNSC. Moreover, in light of the principal-agent theory, policy preferences of EU member states should gradually converge through the

day-to-day participation in EU agenda-setting and decision-making as these institutions become more and more mature.

Combining the analyses in the previous section on the ToL's implications on the horizontal coherence of EU representation at the UNSC, it is expected that the ToL has somewhat increased EU representation at both horizontal and vertical levels, regardless of the remaining delegation problems. A closer look at these shortcomings suggest that they are either explained by the institutional restrictions of the UNSC, e.g., the lack of formal EU representation, the predominant role of France and Britain as EU agents, the absence of control over agent selection, or the unsolved puzzles left by the ToL, e.g., the risk of agent slack due to the unanimity rule in the CFSP and the absence of enforceable instruments. Considering that the reform of the UNSC is currently locked in stalemate and that another treaty reform of the EU is unlikely in the foreseeable future, the agency problems caused by these two factors would apply consistently in the periods both before and after Lisbon that are investigated in this dissertation. Therefore, it is hypothesized that even the limited reform introduced by the ToL on EU delegation structure should contribute to an increase in the coherence of EU representation at the UNSC in the post-Lisbon era. This hypothesis will be tested by comparing the degrees of EU representation coherence in two cases, namely the Iraq war and the Libya conflict, which respectively represent the contexts before and after the adoption of the ToL.

4.3 UN Security Council Reform: Toward A Single EU Representation?

Recall the constitutive role of institutions emphasized by the principal-agent theory and new institutionalisms in Chapter 3, the format of EU representation and its coherence at the UNSC are affected by the institutional rules of both organizations. A change of the landscape at this forum would not only have significant repercussions on the existing coordination and representation structure of the EU but also on the future development of the CFSP (Hill 2005; Marchesi 2008). UNSC reform is of radical importance to EU members states as well, not only because the status of the EU states that already have become a member of the council would subject to change, but also because EU member states are at strongly involved in the heated debate. Most EU countries agree that a reform toward more representativeness and effectiveness is not only inevitable but also necessary for the UNSC to tackle complex global challenges in the 21st century

(Hannay 2012: 46). The consensus stops at how to carry out the reform (Hill 2006; Martini 2010). Until today, efforts to undertake a fundamental UNSC reform have yielded few results due to the deep divisions in national perspectives. A timeline of UNSC reform will be first laid out before prospecting an EU dimension in this contentious issue.

A profound reform implies a modification of substance of the present UN Charter, which is only possible if it is adopted by a vote of two-thirds of UNGA member states and ratified by two-thirds of the members, including the five permanent members of the UNSC (Article 108 UN Charter). Regardless of the procedural difficulties, in 1963 the UNGA successfully pushed through a membership increase of the UNSC. Since then almost all attempts for another reform have ended in vain, e.g., the endeavours devoted by the then UN Secretary-General Boutros-Ghali and the explorations made by the Open-Ended Working Group in the 1990s. Neither the “Quick Fix Formula”, which advocated Germany and Japan’s permanent candidacy (Hill 2005) nor the “Razali Plan”, which suggested a “Two (Germany and Japan as new permanent members) plus Three (non-permanent rotating seats allocated to the under-represented regional groupings)” received substantial follow-up in order to push the progress forward (Marchesi 2008).

The momentum of reform was picked up again in 2005. Based on the report of the High Level Panel on Threats, Challenges and Change, Secretary-General Kofi Annan proposed two reform models: Model A presented the plan to add six new permanent seats without veto and three two-year non-renewable seats while Model B created a new category of non-permanent members with eight four-year renewable seats and one non-renewable seat (Ronzitti 2012: 81). These two models could have served as a concrete basis for future reform at the 2005 Millennium Summit. Disappointingly, the Summit reached few positive results except for the establishments of the Peace-building Commission and the Human Rights Council. Realizing that UNSC reform had once again reached a deadlock, in September 2008, UNGA Decision 62/557 moved discussions from the level of working groups to intergovernmental negotiations (Martini 2010). Since May 2010, it has been decided that the negotiations should move toward a text-based solution. In December 2011, the chair of the intergovernmental negotiations, Ambassador Zahir Tanin from Afghanistan, announced that subsequent meetings would be dedicated to the major initiatives submitted by member states and interest

groups (Hansen 2012). Until 10 April 2012, at the fifth meeting of the eighth round of intergovernmental negotiations, there was still little agreement among states, except on increasing the amount of African representation (Schlosser 2012).

Stalemate is indeed frustrating but not without reason. It is the lack of a common approach among UN members coupled with the aversion of the P5 for reform that has been preventing the negotiations from making a breakthrough. The cleavage within the EU has heavily contributed to this end. EU members mainly split over two lines. Starting from the mid-1990s, Germany has aligned itself with Brazil, India and Japan (known as the G4), bidding for a permanent seat. Opposing Germany's candidature, Italy, Spain and Malta, along with other countries, forged the United for consensus (UfC), also known as the "Coffee Club". On 18 February 2009, the President of the UNGA, Miguel D'Escoto Brockmann identified five key issues related to UNSC reform: categories of membership; the question of the veto; regional representation; size of an enlarged Council and working methods of the UNSC; and the relationship between the UNSC and the UNGA. The paragraphs below compare the central viewpoints of EU members over the two camps on these five issues.

The G4 seek a UNSC enlargement in both permanent and none-permanent terms. The standards for membership selection should take into account the contribution of a country to maintaining international peace and security while ensuring better representation of the developing world, especially African countries. In regard to the veto, the G4 in principle insist on the veto power for their national candidacy. But in order to secure more support, they have agreed to postpone the use of a veto for no more than fifteen years until further review. For instance, Germany has showed its willingness to accept an intermediary arrangement, i.e., a temporary seat for longer terms with the possibility to transform to permanent member with the right of veto. That no reference of veto was included in their latest report sent to Ambassador Tanin is an indicator of this trend toward compromise. The G4 advocate a "mid-twenties" UNSC with six new permanent members having no veto plus four non-permanent members allocated to the four regional group, namely, the GAFS, the GASS, the GRULAC and the EEG. The G4 have given their approval in reforming the working methods of the UNSC, with the condition that it should be made after the expansion. On the

issue of the relationship between the two UN bodies, the G4 propose that the UNGA shall provide political guidance to the reform of the UNSC. Germany as a sponsor of the G4 and meanwhile an EU member has to constantly struggle between national aspirations and EU commitments. Germany considers a single EU seat a long-term target. But as long as this goal is not realistic, Berlin will continue to appeal for a national seat in the UNSC. Given its Europeanist tradition, Germany could become active agent of the EU. However, its willingness to pursue its own path at the UNSC should not be underestimated.⁷⁶

The UfC insist that enlargement should only occur in the category of non-permanent seats. On 21 February 2012, the Italy/Colombia proposal suggested creating a new group of non-permanent members with longer terms and an increase in the number of regular non-permanent seats. The new seats would be assigned to UN regional groups and subject to a term either of three to five years without the possibility of immediate re-election or two years with up to two immediate re-elections. The regular seats would be given to small and medium-sized states. Candidates for the additional seats would be left to respective Regional Groups to decide and later submitted to the UNGA for election.⁷⁷ The UfC refer to Africa as a “special case” and should be granted two to three of the new seats. The UfC’s attitude toward the veto is that it should be abolished or at least limited. On the issue of reforming UNSC working methods, the UfC emphasize that it must be an integral part of the overall reform pack. The major motivation of Italy’s participation in the UfC is to prevent Germany from gaining a permanent seat. It is considered that an elevation of Berlin’s profile in the UNSC would alter the balance within the EU and undermine Rome’s influence in the international community. Italy once had campaigned for a consolidated EU seat, but it was removed from the agenda due to its impracticality. Overall, its actions on UNSC reform are more national-based strategic rather than Europeanized.⁷⁸

Although members of the G4 and the UfC openly criticize each other for blocking the reform progress, their proposals are identical in many terms. Both groups propose a “mid-twenties” UNSC; both agree that a reform of the UNSC’s working methods is necessary; both advocate a better representation for developing countries and appeal for the support of African Union (AU). As EU member states, both Germany and Italy

⁷⁶ For detailed discussions of the views of the G4 on UNSC reform, see Martini 2010; Okhovat 2011.

⁷⁷ A/64/CRP.1. The document can be downloaded from the website: <http://www.centerforunreform.org/node/470>.

⁷⁸ For a detailed discussion of the proposals of the UfC, see Martini 2010.

consider a European seat an ultimate objective in the long run. There might be a chance of cooperation or compromise at least between these two countries, especially if the HR could play a bigger role in harmonizing their policies on this issue.

France and Britain have consistently expressed their support for the G4's campaign, including Germany's request for a permanent seat. As far as they are concerned, Germany probably would give up the idea of an EU seat if its ambition were satisfied. The inequality of participation in the UNSC has induced these two privileged members to obstruct reforms in favour of a joint representation (Gstohl 2012: 147). Like other permanent members of the UNSC, France and Britain are rather conservative about the UNGA's meddling with UNSC working methods.⁷⁹ Their argument is that the UNSC shall decide its own rules and procedure as provided by the UN Charter (Article 30 UN Charter). They certainly reject any reform that will endanger the current veto system. In July 2009, the P2 jointly put forward an intermediate solution to create a group of new semi-permanent seats that would become permanent at the final phase after a review. Germany welcomed this temporary method as long as the possibility for transformation would be ensured. Both France and the UK advocate for an increase in African representation. But Paris also calls for a presence of the Arab world at the UNSC. Other EU members, such as Belgium, the Netherlands, Slovenia and Hungary have agreed to consider the G4's proposal (Hansen 2012). The rest of EU members either have not publicly taken any side or have rather ambiguous opinions about this matter.

Whether the EU should have a unified seat in the UNSC has been a perennial and contentious question for EU member states since UNSC reform was reconsidered in the mid-1990s. Although some researchers argue that the EU is more influential with multiple spokesmen rather than having one representative in the UNSC (e.g., Verbeke 2006; Gstohl 2012), advocates of a single EU seat exist both in Brussels and in national capitals of the EU. At the initial phase of the reform, both Germany and Italy had been proponents of a single EU representation. The two countries later adjusted their strategies and set a single EU seat as a long-term objective when regional representation was proven inoperable in the UNSC due to the severe resistance from the P5. But efforts keep going on to incorporate the dispersive EU representation into the

⁷⁹ The overall negativism of the other three permanent members on the UNSC reform can be reflected by the fact that during the negotiations they often present relatively short statements with little substance, except repeating their commitments to the reform in general.

CFSP mechanism. During their mandates at the UNSC in 2003 and 2004, Germany and Spain suggested to establish a “European laboratory” to include in their delegation one representative of the Presidency and one representative of the HR/SG. This idea was blocked by France and Britain and never came into existence. During Italy’s mandate from 2007 to 2008, it appointed a “focal point” within its own mission to liaise permanently with the Presidency, the Council Secretariat and national representatives of other EU members (Pirozzi 2012). At the supranational level, the Parliament reiterated in its resolution on 11 May 2011 that an EU seat would remain a central, long-term goal of the EU and called, in the interim, for the seeking of coordinated EU positions at the UNSC (European Parliament 2011a). Other well-known supporters include the former HR/SG, Javier Solana and the former Commissioner of External Relations, Benita Ferrero-Waldner. But what is striking is that Ashton, as the newly appointed HR, once said that she had no opinion about an eventual EU seat in the UNSC during her audition in front of the EP (Martini 2010).

After the ToL’s entry into force, it seems more sensible to “Europeanize” the seats that EU members have at the UNSC. By granting legal personality to the EU, the ToL has removed one of the obstacles for an official EU representation in this body, at least from a legal perspective. However, as Solana once pointed out, “as long as France and Britain are the only EU members with permanent seats on the UNSC, the EU does not have a chance for its common foreign policy to work” (Franda 2006). The ideal situation of a common seat in the UNSC is unlikely to be feasible as long as the P2 see themselves as free agents and keep blocking any assumptions that may endanger their special status in the UNSC.

To sum up, the attitudes of EU members toward this particular issue are hardly consistent. The UNSC is still perceived as a state-centric arena to defend national interests rather than a multilateral framework to uphold common positions of the EU. Analogous to the case of the EU, it is the commitments of UNSC member states – particularly the commitments of the P5 – that matter for deciding the structure of the UNSC in the years to come. The adoption of the ToL could be a turning point for EU external representation in the sense that it gave the Union a legal personality and demanded for better concertation among EU member states in the UNSC. It is imaginable to establish a high-level coordination mechanism and eventually a *de facto* EU collective presence in the UNSC. In other words, the ToL offers a possibility for change but

leaves the major determining power to the EU member states which sit on the UNSC. Based on this political reality, the EU should focus on improving coordination and concertation mechanisms at the UN in a pragmatic way rather than blindly strive for a single EU seat or seek the increase of numerical representation.

It needs to be clarified that, although the reform of the UNSC has significant influence on EU representation coherence, this factor is not taken into account in the hypothesis formulated in the previous section. As the reform is still pending, it is unclear which model will finally be agreed by UN member states, therefore, the effects of the would-be reformed structure on the coherence of EU representation cannot be examined in real-life cases.