

EU Actorness at the UN Security Council: A Principal-Agent Comparison of the Legal Situation Before and After Lisbon

Edith Drieskens*

Abstract

This article focuses on the external implications of the Lisbon Treaty and explores the opportunities for an increased EU actorness at the UN Security Council. The Lisbon Treaty is expected to increase the international profile of the EU, by improving the coherence and visibility of its external representation. However, a Principal-Agent theory inspired analysis of the modifications brought to Article 19 of the EU Treaty demonstrates that this conclusion does not apply to the UNSC: the opportunities for an increased EU actorness remain here dependent upon the representation behaviour of the EU Member States and their willingness to act as agents of the EU.

A. Introduction

This article focuses on the external implications of the Lisbon Treaty (TOL). It seeks to explore the opportunities for an increased EU *actorness* at the UN Security Council (UNSC). The TOL is said to increase the international profile of the EU, by improving the coherence and visibility of its external representation. However, a Principal-Agent (PA) theory inspired analysis of the modifications brought to Article 19 of the EU Treaty (TEU) demonstrates that this conclusion does not apply to the UNSC. The opportunities for an increased EU actorness remain here dependent upon the representation behaviour of the EU Member States (EUMS) and their willingness to act as agents of the EU. In what follows, we develop our explanation by drawing on the language provided by Nicolaidis and the notions of *flexibility*, *autonomy* and *authority* in particular.¹ We demonstrate

* Edith Drieskens works at the Institute for International and European Policy at Leuven University, Belgium. A central question in her research is to what degree PA theory can explain the representation and coordination behavior of the EUMS in the UNSC, especially for sanctions decisions. From September through December 2007, she assisted the Belgian UNSC Team, interning at the Permanent Representation of Belgium to the UN. From September 2007 through February 2008, she was also in residence at the *Center on International Organization* at Columbia University. This article is a revised version of a paper which was presented at the Hebrew University (Jerusalem) on 14 July 2008 at the conference on 'The Lisbon Reform Treaty: Internal and External Implications', organized by the Leonard Davis Institute for International Relations, the Hebrew University of Jerusalem, the Israeli Association for the Study of European Integration and the Czech Association of European Studies. The author would like to thank the participants as well as Tom Delreux, Bart Kerremans and Stephan Keukeleire for their comments on the original text.

that the entry into force of the TOL will homogenize the EU mandate of the EUMS serving here on permanent and non-permanent basis. However, it will not end the structural difference between them, because the decisive factor here is not their mandate or authority, but the different degree of *autonomy* they enjoy when acting as EU agents. As this variable degree follows directly from the UNSC's membership and working methods, New York rather than Brussels is the starting point for fundamental change. We start our analysis with operationalizing the notion of actorness in terms of PA theory.

B. Theorizing EU Actorness

It is a widespread assumption, both in academic literature and policy circles, that a uniform EU representation will increase the (bargaining) power of the EU(MS) in international settings. Also advocates of a single seat for the EU in the UNSC argue that such form of representation will increase the EU's international *presence*, or its 'ability to exert influence, to shape the perceptions and expectations of others'.² In recent years, scholars have often enclosed this notion in a broader framework, applying the concept of *actorness* to describe and evaluate the EU as an international actor. In accordance with Sjöstedt's definition of 'actor capacity', most of them have operationalized this concept in terms of 'the capacity to behave actively and deliberately in relation to others in the international system'.³ Conceptualizing actorness as *the capacity to act* implies that EU actorness varies not only across time, but also across policy sectors.⁴ However, while recognizing this variation, most authors relying on this concept seem to argue that direct and single representation – meaning: representation through one of the institutions of the EU – is a necessary precondition for EU actorness. Going against the grain, in this article, we argue that such form of representation is not a *conditio sine qua non*: in international fora in which the EU is not directly represented, this actorness may also be the indirect result of the representation behaviour of the EUMS. In what follows, we build our argument upon the work of Jupille and Caporaso, which can be seen as one of the first attempts to transfer the often-used concept of actorness into a workable research instrument.⁵

¹ K. Nicolaïdis, *Minimizing Agency Costs in Two-Level Games. Lessons From the Trade Authority Controversies in the United States and the European Union*, in R. Mnookin & L. Susskind (Eds.), *Negotiating on Behalf of Others*, 87 (1999).

² D. Allen & M. Smith, *Western Europe's Presence in the Contemporary International Arena*, 16 *Review of International Studies* 19 (1990).

³ G. Sjöstedt, *The External Role of the European Community* 16 (1977).

⁴ See, *inter alia*, J. Reiter, *The European Union as Actor in International Relations: The Role of the External Environment for EU Institutional Design*, in O. Elgström & C. Jönsson (Eds.), *European Union Negotiations. Processes, Networks and Institutions* 148 (2005); C. Bretherton & J. Vogler, *The European Union as a Global Actor* 23-33 (2003); K. E. Jorgensen, *A Multilateralist Role for the EU?*, in O. Elgström & M. Smith (Eds.), *European Union's Roles in International Politics. Concepts and Analysis* 30 (2006).

⁵ J. Jupille & J. A. Caporaso, *States, Agency, and Rules: The European Union in Global Environmental Politics*, in C. Rhodes (Ed.), *The European Union in the World Community* 213 (1998).

Building upon the notion of presence and studying the participation of the EC in the 1992 Rio Earth Summit, Jupille and Caporaso unpack the EU as an international actor by introducing four actor capacity criteria. In their view, the EU's capacity to act is a function of its recognition (meaning acceptance of and interaction with the EU by others), authority (understood as the legal competence to act externally), autonomy (defined as institutional distinctiveness and independence from others, meaning the EUMS) and cohesion (conceived as the degree to which the EU is able to formulate internally consistent policy preferences). In our opinion, these criteria are helpful for conceptualizing the EU as an international actor, including within the framework of the UNSC.⁶ However, as they are strongly interrelated – Jupille and Caporaso write that they form a 'coherent ensemble' depending on one another for full meaning – we consider them to be less suited for guiding empirical research and theory building.⁷

C. On Principals and Agents

In terms of Hill, students of EU foreign policy have argued that there is a gap between what the EU has been talked up to do and what it is able to deliver, i.e. between the expectations of EU foreign policy and the capabilities of the EU to meet these expectations.⁸ Some of them have argued that there is a similar problem with the outcomes of EU foreign policy and their explanations.⁹ Like the operational capability-expectations gap, the theoretical gap has begun to narrow in the 1990s, with scholars moving from establishing the existence of the EU as an important international presence to testing its effectiveness as an important international actor. According to Ginsberg, scholars have developed more sophisticated explanatory concepts and have transcended the debate over the appropriateness of realist and liberal approaches, bridging different levels of analysis and achieving a more rounded understanding of foreign policy cooperation within the context of the EU. However, to close the gap, an 'inductive approach' is required, inducing middle range theories from explanatory concepts.¹⁰ As a first attempt hereto, in what follows, we build on the notion of actorness and the actor capacity criteria developed by Jupille and Caporaso and link them to the overall theoretical model that PA theory offers, conceptualizing the EUMS serving on the UNSC as *EU agents*.¹¹

⁶ S. Biscop & E. Drieskens, *Effective Multilateralism and Collective Security: Empowering the UN*, in K. Verlin Laatikainen & K. E. Smith (Eds.), *Intersecting Multilateralisms: The European Union and the United Nations* 115 (2006).

⁷ J. Jupille & J. A. Caporaso, *supra* note 5, at 220.

⁸ C. Hill, *The Capability-Expectations Gap, or Conceptualizing Europe's International Role*, 31 *Journal of Common Market Studies* 305, at 315 (1993); A. Toje, *The Consensus-Expectations Gap: Explaining Europe's Ineffective Foreign Policy*, 39 *Security Dialogue* 121, at 121 (1998).

⁹ R. Ginsberg, *Conceptualizing the European Union as an International Actor: Narrowing the Theoretical Capability-Expectations Gap*, 37 *Journal of Common Market Studies* 429, at 433 (1999).

¹⁰ R. Ginsberg, *supra* note 9, at 450.

¹¹ Jupille & Caporaso hint vaguely to the use of PA theory, but limit their analysis to

To put it simply, in a PA relationship one actor (the agent) acts on behalf of another (the principal), following an act of delegation. The relationship between them is governed by a contract, even if this is implicit or informal. It is a misunderstanding that the PA theory would assume that agents represent their principals in a loyal way. Even quite the contrary: it recognizes that the agents can be opportunistic and pursue their own interests, as a result of which there is a potential gap between what the principals want and the agents do. For this reason, this relationship between the holders and servants of constituent power is usually seen as a problematic one.¹² Political scientists, and rational choice institutionalist in particular, have applied, extended and adapted the generic PA model, which originated in the new economics literature in the early 1970s to describe business relations, to explore the delegation of power in political settings. They did so by relaxing its core assumptions, including e.g. the assumption of a solitary principal and agent by introducing multiple ones.¹³ Whereas the contours of the agency paradigm in political science are thus similar to those in the new economics version, namely that principals delegate to agents the authority to carry out their policy preferences, the details are rather different.¹⁴

Within the framework of political science, PA insights were first applied to explain the delegation of powers from US Congress to executive agencies and committees and the delegation of monetary policy to the Central Bank.¹⁵ More recently, PA insights have been used to explain the delegation of powers to (financial) international organizations, as well as to conceptualize and explain the delegation of negotiating authority from the EUMS to the supranational institutions, with most scholars focusing on the dynamics of the EU's external trade policy and the Commission's role herein as EU negotiator.¹⁶ In this article,

conceptualization. When discussing the criterion of 'authority', they refer to PA pioneer Terry M. Moe, stating that

(...) to speak of the EU's authority is to think of authority delegated to EU institutions by nation states. Legal authority or competence to act in such situations is given by a contract under which principals empower agents to act in their interests. Such contract at one limit the actions of principals and constrain the scope of agents' competence to that which principals will accept.

See Jupille & Caporaso, *supra* note 5, at 216.

¹² A. Stone Sweet & J. A. Caporaso, *From Free Trade to Supranational Polity: The European Court and Integration*, in W. Sandholtz & A. Stone Sweet (Eds.), *European Integration and Supranational Governance* 92, at 92-94 (1998).

¹³ S. Shapiro, *Agency Theory*, 31 *Annual Review of Sociology* 263, at 266-267 (2005); J. Tallberg, *European Governance and Supranational Institutions. Making States Comply* 24-25 (2003); R. W. Waterman & K. J. Meier, *Principal-Agent Models: An Expansion?*, 8 *Journal of Public Administration Research and Theory* 173, at 178-183 (1998).

¹⁴ Shapiro, *supra* note 13, at 271.

¹⁵ M. A. Pollack, *International Relations Theory and European Integration*, 39 *Journal of Common Market Studies* 221, at 227-231 (2001); M. A. Pollack, *The New Institutionalisms and European Integration*, in A. Wiener & T. Diez (Eds.), *European Integration Theory* 137, at 138-139 (2004).

¹⁶ See, *inter alia*, A. Ballmann, D. Epstein & S. O'Halloran, *Delegation, Comitology, and the Separation of Powers in the European Union*, 56 *International Organization* 551 (2002); H. Kassim

we take PA theory *beyond* the first pillar so to say. As noted, we start exploring the possibility of building up an analytical model, inspired by PA theory, to explain the representation behaviour of the EUMS at the UNSC and the potential impact of the TOL in particular. While recognizing that the PA model originated and flourished within the rational choice tradition of neo-institutionalism, we approach it in a more *abstract* and *heuristic* way, using it as a *theoretical template* to structure the relations between the EUMS at the level of the EU and those serving on the UNSC.

More specifically, we conceptualize the relationship between the EUMS at the level of the Council of Ministers and the EUMS who are members of the UNSC in terms of principals and agents, with their relationship being governed by the representation rules included in article 19 TEU. Unlike most scholars, we explore the agent side of the PA relationship. Browsing through the literature reveals that a general feeling of uneasiness seems to shadow any attempt to give CFSP a theoretical underpinning.¹⁷ Scepticism about the extent to which insights from the study of the first pillar can be applied to the EU at large also seems to be widespread.¹⁸ However, PA theory, and Nicolaïdis' operationalization in particular, proves to be a powerful tool for operationalizing the notion of EU actorness, in particular for presenting theoretical evidence to the structural difference that most authors observe between the EUMS serving on a permanent and non-permanent basis at the UNSC and for nuancing the changes that the TOL will make in this regard.

Point of reference are the provisions on the UNSC that were included in the Maastricht Treaty, which established that the EUMS that are also members of the UNSC should concert and keep the others fully informed (*ex* article J.5.(4) TEU). EUMS serving on a permanent basis should ensure the defence of the positions and interests of the EU, though without prejudice to their responsibilities flowing from the UN Charter (UNCH). Most authors see these references as a clear confirmation of the UNSC lying in the *domaine réservé* of France and the UK. However, the negotiating history reveals that they were only included at the eleventh hour. On 12 April 1991, the Luxembourg Presidency submitted a non-paper, including also a number of provisions on cooperation in international

& A. Menon, *The Principal-Agent Approach and the Study of the European Union: Promise Unfulfilled?*, 10 *Journal of European Public Policy* 121 (2003); S. Meunier, *What Single Voice? European Institutions and EU-US Trade Negotiations*, 54 *International Organization* 103 (2000); Nicolaïdis, *supra* note 1; M. A. Pollack, *The Engines of European Integration. Delegation, Agency and Agenda-Setting in the EU* (2003).

¹⁷ See, *inter alia*, B. Tonra & T. Christiansen, *The Study of EU Foreign Policy: Between International Relations and European studies*, in B. Tonra & T. Christiansen (Eds.), *Rethinking European Foreign Policy* 1 (2004); F. Andreatta, *Theory and the European Union's International Relations*, in C. Hill & M. Smith (Eds.), *International Relations and the European Union* 18 (2005); K. E. Jorgensen, *Theorising the European Union's Foreign Policy*, in B. Tonra & T. Christiansen (Eds.), *Rethinking European Foreign Policy* 10 (2004); K. E. Jorgensen, *European Foreign Policy: Conceptualising the Domain*, in W. Carlsnaes, H. Sjursen & B. White (Eds.), *Contemporary European Foreign Policy* 32 (2004).

¹⁸ S. Stetter, *EU Foreign and Interior Policies. Cross-pillar Politics and the Social Construction of Sovereignty* 25 (2007).

Table 1: Towards Article J.5(4) TEU

<i>SEA (1986/1987)</i>	<i>Luxembourg Presidency (Spring 1991)</i>
<p>Title III Article 30(7):</p> <p>(a) In international institutions and at international conferences which they attend, the High Contracting Parties shall endeavour to adopt common positions on the subjects covered by this Title.</p> <p>(b) In international institutions and at international conferences in which not all the High Contracting Parties participate, those who do participate shall take full account of the positions agreed in European Political Co-operation.</p>	<p>Article I:</p> <p>1. Member States shall coordinate their action and, when necessary, define common positions in international organisations and at international conferences.</p> <p>2. In international organisations and at international conferences where not all the Member States participate, those who do take part shall comply with the common positions agreed on and ...</p>
	<p>... shall keep the other Member States informed of any matter of general interest.</p>

organizations and at international conferences.¹⁹ As Table 1 shows (see above), the drafters decided to have recourse to the Single European Act (SEA) and updated the existing provisions by inserting an information requirement reflecting the developing policy practice. The *Draft Treaty on the Union* reproduced these amendments on 18 June 1991.²⁰ As known, the Dutch Presidency decided to ignore this compromise and put forward its own draft. When the vast majority of the EUMS rejected this text on 30 September 1991, the Luxembourg draft became again the basis for the negotiations.

As for the future Article 19 TEU, the *Dutch Presidency Draft Union Treaty* of 8 November 1991 removed the amendment on information sharing and added a footnote about the IGC adopting a declaration in the *Final Act* saying that "(t)he term 'international organizations' would cover all the bodies of such organizations."²¹ In our view, this footnote might also explain the inclusion of an

¹⁹ Luxembourg Presidency, Non-paper, Draft Treaty articles with a view to achieving political union, 12 April 1991, Articles G, H, I.

²⁰ Luxembourg Presidency, Draft Treaty on the Union, 18 June 1991, Articles G, H, I.

²¹ Dutch Presidency Draft Union Treaty, Working Document, 8 November 1991; Brückner writes

<i>Dutch Presidency (Autumn 1991)</i>	<i>Maastricht (1991/1992)</i>
<p>Article B(3): Member States shall coordinate their action in international organisations* and at international conferences. They shall uphold the common positions in such for a.</p> <p>In international organisations* and at international conferences where not all the Member States participate, those who do take part shall uphold the common positions.</p>	<p>Article J.2(3) TEU: Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such forums.</p> <p>In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.</p>
<p>[* Declaration in the Final Act: “The term ‘in international organisations’ covers all the bodies of such organisations.”]</p>	<p>Article J.5(4) TEU: Without prejudice to paragraph 1 and Article 14(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.</p> <p>Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nation Charter.</p>

explicit reference to the UNSC. As it would have allowed the EU to enter what they considered to be their private field, we assume that France and the UK decided to ink the bounds of EU foreign policy cooperation, consolidating policy practice by way of Article J.5(4) TEU and giving their global mandate a regional interpretation. This was done at the final preparatory meeting of the foreign ministers in Brussels on 2 and 3 December 1991, following a tour of the capitals by a small negotiating team headed by then Dutch Prime Minister Lubbers.²² In other words, it seems to be the case that a misjudgement of the Dutch Presidency team has resulted in the inclusion of a direct reference to the UNSC in the European

in this regard that France and the UK have stated categorically during the negotiations leading to the SEA that the provision on the coordination in international organizations would not apply to the UNSC. See P. Brückner, *The European Community and the United Nations*, 1 *European Journal of International Law* 174 (1990).

²² The drafters may have found inspiration in article 103 UNCH, which reads as follows:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Table 2: Reforming Article 19 TEU

<i>SEA (1986/1987)</i>	<i>Maastricht (1991/1992)</i>
<p>Title III Article 30(7):</p> <p>(a) In international institutions and at international conferences which they attend, the High Contracting Parties shall endeavour to adopt common positions on the subjects covered by this Title.</p> <p>(b) In international institutions and at international conferences in which not all the High Contracting Parties participate, those who do participate shall take full account of the positions agreed in European Political Co-operation.</p>	<p>Article J.2(3) TEU:</p> <p>Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the common positions in such forums.</p> <p>In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.</p>
	<p>Article j.5(4) TEU:</p> <p>Without prejudice to paragraph 1 and Article 14(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter informed of any matter of common interest.</p> <p>Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.</p>

Treaties. The provisions in question were reproduced by the Amsterdam Treaty and replaced by Article 19 TEU. While the Nice Treaty did not change their content or the wording, the TOL will do so, as we explain in what follows.

D. Article 19 TEU After Lisbon

Table 2 (see below) shows that while the text of the first paragraph of the new Article 19 TEU corresponds largely to its predecessor, the same cannot be said for the second one. A detailed reading of these provisions shows that the TOL introduces two novelties that are directly relevant for the way the EU is represented at the UNSC. First, in the event that the EU has defined a position on an agenda

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Article 19(1) TEU:

Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such forums. The High Representative of the Union for Foreign Affairs and Security Policy shall organize this coordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's positions.

Article 19(2) TEU:

In accordance with *Article 11(3)*, the Member States represented in international organisations or international conferences where not all the Member States participate shall keep the other Member States and the High Representative informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States *and the High Representative* fully informed. Member States which are members of the Security Council will, in the execution of their functions, *defend* the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be invited to present the Union's position.

item of the UNSC, the EUMS serving have to ask that the new foreign policy representative is invited to present it. Secondly, when the TOL enters into force, also the EUMS with a non-permanent seat will have to defend the EU positions proceedings in New York should not be overestimated. Like we do not expect the EU's actorness in the UNSC to improve substantially as a result of the reform proposals that are at the table of the UN General Assembly (UNGA), we neither expect the TOL to bring the necessary changes, especially not the modified Article 19 TEU.²³

²³ We refer here to the numbering of the text that was signed on 13 December 2007 and published in the *Official Journal of the European Union* on 17 December 2007. The new Article 19 TEU will probably be renumbered Article 34 TEU. See E. Drieskens, D. Marchesi & B. Kerremans, *In Search of a European Dimension in the UN Security Council*, XLII *The International Spectator* 421 (2007).

It is nevertheless a general expectation that the new *High Representative of the Union for Foreign Affairs* will improve the EU's external impact, and the consistency and visibility of its external representation in particular. He/she will bring together the current functions of the CFSP High Representative and the External Relations Commissioner. Being a Vice-President of the Commission, in addition, he/she will chair the meetings of the EU's External Relations Council and take over the external representation role from the EU Presidency, including in international organizations. In this context, he/she will also be responsible for the coordination between the EUMS. This task was not defined before, but *de facto* performed by the country holding the Presidency. However, the EUMS will continue to run the show, not only when such a position does not exist, but also when it does because a common position has to be adopted by unanimity and therefore approved by all. Moreover, for the actual invitation of the new representative, UN rules apply. So far, Javier Solana has addressed the UNSC four times; the Commission only once. And as they are invited under different Rules of Procedure (Rules 37 and 39 of the UNSC's Provisional Rules of Procedure respectively), the double-hatting of this person raises questions from a UN perspective as well.

The TOL will not change the difference in league between the EUMS serving on a permanent and elected basis either. Caution is thus also needed with the second novelty, and more specifically with the extension of the obligations included in the second paragraph of Article 19(2) TEU to the countries with a non-permanent seat.²⁴ As noted, once the TOL enters into force, not only the EUMS serving on a permanent basis, but also those who are serving for a two-year term will have to defend the EU positions and interests in the execution of their functions, albeit without prejudice to their responsibilities under the provisions of the UNCH.²⁵ A handful of scholars have discussed this amendment so far, though only in passing. Wessel writes that this 'minor difference' opens the possibility of a larger group of countries deviating from earlier EU positions once related issues are on the UNSC agenda during their mandate as non-permanent members.²⁶ Whereas Fassbender writes that the special status of France and the United Kingdom was not meant to be changed by this amendment, Verbeke argues that it will end an 'anomaly', considering it 'somewhat surprising' that the obligations imposed upon the permanent members went further than those upon the elected ones, as no distinction was made between these categories in the UN

²⁴ This amendment was included in the *Treaty establishing a Constitution for Europe* (article III-305(2) TCE; October 2004), but not confirmed by the *Draft Reform Treaty* (July 2007), in which the second sub-paragraph of the new article 19 referred to the permanent members only (OD22: para. 37). Since the draft Reform Treaty had not properly reflected the wording of the TCE, this discrepancy was raised in an expert group of legal revisers in the summer of 2007. As the TCE was to be taken as a blueprint for the ToL unless the IGC had decided expressly otherwise, the adjective 'permanent' was deleted again upon the request of the Hungarian delegation.

²⁵ The new formulation is thus stronger, as the serving EUMS will have to defend the positions and interests of the EU, rather than merely ensuring their defence.

²⁶ R. Wessel, *Differentiation in EU Foreign, Security and Defence Policy: Between Coherence and Flexibility*, in M. Trybus & N.D. White (Eds.), *European Security Law 225*, at 243 (2007).

Charter (UNCH).²⁷ By relying on PA theory and Nicolaïdis' work in particular, in what follows, we demonstrate that the dropping of the word 'permanent' might end the structural difference between the EUMS serving on an elected and permanent basis on paper, but not in practice. Moreover, the explanatory notes of the Convention demonstrate that the drafters never intended so. Indeed, while also this amendment was to increase the EU's profile, it would not entail any consequences for the 'status' or 'position' of the EUMS serving.²⁸

E. The Convention Proceedings

I. General Considerations

While thinking about the practical implications of the new provisions on CFSP and external action has only started in Brussels and New York, it was clear right from the start that some EUMS want to limit their impact. The fact that, upon the urging of the UK, the Intergovernmental Conference (IGC) was mandated to adopt a declaration stating that the new provisions on CFSP will not 'affect' the participation of the EUMS in international organizations, including their membership of the UNSC is here probably the most visible illustration.²⁹ It also confirms Thym's belief that, while the UK has been especially active in searching for a new external representation model within the Convention framework – mainly because it was convinced that the inefficiency of the Council's working methods and especially the problems linked to the rotating Presidency – could undermine the influence of intergovernmental cooperation *vis-à-vis* the supranational institutions, it was probably not 'its original intention'

²⁷ B. Fassbender, *The Better Peoples of the United Nations? Europe's Practice and the United Nations*, 15 *European Journal of International Law* 857, at 881 (2004); J. Verbeke, *EU-Coordination on UN Security Council Matters*, in J. Wouters, H. Hoffmeister & T. Ruys (Eds.), *The United Nations and the European Union: An Ever Stronger Partnership* 49, at 50-51 (2006).

²⁸ CONV 685/03, Draft Articles on external action in the Constitutional Treaty, 23 April 2003.

²⁹

In addition to the specific rules and procedures referred to in paragraph 1 of Article 11 of the Treaty on European Union, the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organizations, including a Member State's membership of the Security Council of the UN. The Conference also notes that the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament. The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States.

that the UNSC would be handed over to the new foreign policy representative under certain circumstances.³⁰

Interestingly, the *Working Group on External Action* did not exclude diversity in EU representation, even though its members concluded that the arrangements regarding the external representation of the EU in multilateral fora lacked clarity and that a single representation would improve the EU's capacity to act effectively and convincingly on the global stage.³¹ They agreed that in case there is an agreed EU position, the EU should have, 'when appropriate', a single spokesperson. They also agreed that EUMS should enhance the coordination of their positions in international organizations and conferences with a view to agreeing on EU positions and a strategy to promote them. Also for the representation of the EU at the UNSC, they touched the spot again, by stating that coordination could be improved. Within the Convention, also the *Working Group on Legal Personality* concluded that the EU's external political action would be 'effective' and 'credible' only if the EU would speak with a single voice.³² According to the members of this group, it would be advisable to establish mechanisms to ensure that the EU expresses a single position and is represented by a single delegation.³³

In its report on the draft articles on external action of May 2003, the European Union Committee of the House of Lords argued that there were 'serious questions' about the new Article 19 TEU. Who appears for the UNSC was first of all 'a matter for them to decide', not for the EU. Also, the requirement that the EUMS serving on the UNSC had to defend the positions of the EU seemed to ignore the fact that the discussions within this setting are 'organic', meaning that the positions of the EUMS within this framework develop during the course of discussion and debate, making it "inconceivable that one player would be expected to do no more than defend the pre-agreed position which they had no mechanism to adapt."³⁴ In their opinion, especially the EUMS with a permanent status should remain free to act independently in the UNSC. They also indicated that EUMS who dissent from decisions taken within the EU context couldn't be under an obligation to support and defend this position here.³⁵

The Committee also considered the proposal to give a special status to the foreign minister – referring to his/her "automatic right to speak"³⁶ – "impracticable." Then Minister for Europe, Peter Hain, who represented the British government in the Convention, requested the deletion of the new third sub-paragraph, arguing, as the amendment form reveals, that the UK could not accept "any language" which

³⁰ D. Thym, *Reforming Europe's Common Foreign and Security Policy*, 10 *European Law Journal* 5, at 20 (2004).

³¹ CONV 459/02, Final Report of Working Group VII on External Action, 16 December 2002, para. 15.

³² WG III – WD 15, Final Report Working Group III on Legal Personality, 17 September 2002, para. 17.

³³ *Supra* note 32, para 21.

³⁴ CONV 741/03 (Annex), The Future of Europe: Constitutional Treaty – Draft Articles on External Action, House of Lords, Select Committee on the European Union, Session 2002-03, 23rd report, 15 May 2003, para. 20.

³⁵ *Supra* note 34, para. 21.

³⁶ Open Europe, *A Guide to the Constitutional Treaty* 10 (2007).

implies that it would not retain the right to speak in its national capacity in the UNSC.³⁷ As he was forced to back down, a new amendment was tabled, bringing the provision, as was argued by the government, into line with the UNSC's Provisional Rules of Procedure, supporting the "continuation of the current practice whereby the Presidency speaks at open meetings of the Council."³⁸ This amendment was reading as follows: "When the Security Council holds a meeting at which non-members of the Council are permitted to speak, and when the Union has defined a common position on the subject of the meeting, the Minister of Foreign Affairs may request an opportunity to present the Union's position."

As indicated above, a reading of the last sentence of the second paragraph of the new Article 19 TEU shows that the UK had to eat the dust a second time, as the mandatory character of the foreign minister's right to speak in the UNSC was maintained ultimately. But the issue remains sensitive, especially because of the public opinion. This also appears from the fact that 'The UK will lose or have to vacate its seat on the UN Security Council' and 'An 'EU Foreign Minister' will control Britain's foreign policy' were listed at the top – first and second, respectively – on the list of myths that the UK government published on the website of its Foreign and Commonwealth Office.³⁹ Internet users can find a hyperlink to a similar statement at the website of the UK Mission to the UN, including the following quote of Hain's predecessor, i.e. Jim Murphy: "The UK is proud of its seat in the Security Council, and voice in the UN. We will continue to make our voice heard and exercise our influence in the UN. Nothing would make us relinquish that voice, or our seat at the table. The new EU Treaty does not make us give up our seat or defer to the EU in UN meetings."⁴⁰ An analysis of the other 14 amendments formulated to the changes suggested by the Convention Presidium in relation to Article 19 TEU (i.e. first in relation to Article 14 of Part II, Title B, and later Article III-201) indicates that the British government was not completely isolated.

Indeed, some of Hain's fellow Convention members supported his call for deleting the references to the Foreign Minister (Bonde, Gormley, Svensson).⁴¹ Others suggested toning down the language on the promotion of the common positions (Lequiller, Heathcoat-Amory, Svensson), even to delete this provision entirely (Kirkhope). But the majority held a different opinion and suggested strengthening the language proposed (Duff and nine others, Fini/Speroni, Voggenhuber Lichtenberger, Wagener, de Vries de Bruijn, and Farnleiter), deleting the disclaimer clause (Fini, Farnleiter, de Vries de Bruijn), allowing the foreign minister to participate in the meetings of UNSC instead of just addressing them (Michel et al.), making him/her responsible for the channelling of information (Brok et al.), even including a provision stipulating that the EU "shall aim and act to obtain a seat on the UNSC" (Voggenhuber Lichtenberger/Wagener). Also a provision on what to do in case it was not possible or practical for the foreign

³⁷ Suggestion for amendment of Article: Part II, Title B, Art. 14, by Mr Hain.

³⁸ Suggestion for amendment of Article: Part III, Title V, Article 201 (ex. Art.14), by Mr Hain.

³⁹ The EU Reform Treaty: 10 Myths, Foreign and Commonwealth Office.

⁴⁰ This list is available at <http://www.ukun.org>.

⁴¹ The various amendments are available at <http://www.european-convention.eu.int>.

minister to present the EU position was suggested (Roch). Remarkably, a large group of Convention members also advocated the inclusion of a reference to the Commission in the new Article 19 TEU, considering it the only EU interlocutor at the international level, except for CFSP (Brok et al.).

Finally, while nobody questioned the removal of the distinction between the permanent and non-permanent members in the second sub-paragraph of Article 19(2) TEU, one member suggested replacing the reference to the UNSC here by a reference to the UN as such (Heatcoat-Amory). Heat-Amory argues that this way the cooperation could be opened up to all UN ‘components’, while keeping it voluntary. Like some of his colleagues, he also suggested not to include the new third paragraph, as this would grant the EU “equivalence to statehood” and “further remove independent action and silence national voices.” However, a PA inspired comparison between the old and new Article 19 TEU demonstrates that the possible impact of the new provisions on the room for manoeuvre of the EUMS at the UNSC is rather limited.

F. Delegation is an Option, Representation Not

I. Introduction

PA insights have been used most often in cases of Treaty-based delegation, though this is not a *conditio sine qua non*. Like Tallberg, we are convinced that the rationalist perspective on delegation may also generate important insights when delegation does *not* take place or only gradually.⁴² In the previous section, we argued that when defining the relationship between the EU membership at large and the EUMS serving on the UNSC, as embodied by Article 19 TEU, in terms of principals and agents, one has to take into account that the delegation between principals and agents is an *option*. This act of delegation is thus fundamentally different from the one in which the European Commission represents the EUMS – acting as their agent – on the basis of Article 300 TEC in e.g. external trade negotiations. Here, Article 300 TEC appoints the Commission as EU negotiator for international negotiations dealing with issues falling exclusively under the EC’s competence or for the EC part of so-called mixed negotiations.⁴³ It specifies that the Council shall authorize the Commission to negotiate on behalf of the EC (“to open the necessary negotiations”). By comparison, the authorization stage for international agreements dealing with CFSP (i.e. agreements with one or more States or international organizations) is rather different, both in its obligatory character and the actors involved.

Indeed, Article 24 TEU specifies that the Council may authorize the Presidency, assisted by the Commission as appropriate, to open such negotiations. In the

⁴² J. Tallberg, *Delegation to Supranational Institutions: Why, How and with What Consequences?*, 25 *West European Politics* 23, at 41-42 (2002).

⁴³ T. Delreux, *The European Union in International Environmental Negotiations: A Legal Perspective on the Internal Decision-making Process*, 6 *International Environmental Agreements* 231, at 237-248 (2006).

opening weeks of the IGC that resulted in the Maastricht Treaty, the Commission had put forward a draft text on the development of a common external policy, taking an approach very similar to what the Dutch Presidency would do in the second semester of 1991. This draft stipulated not only that in CFSP matters the EU would be represented by the Presidency and the Commission in relations with non-member countries, international organizations and international conferences, but also that the Council may entrust one or more Member States with the task of presenting the EU's position in specific instances, including before the UNSC.⁴⁴ Here, the Council would act on a proposal from the Commission or one of the EUMS. Both Article 18 TEU and Article 19 TEU indicate that the Commission had to back down. Under the current Treaties, the EUMS cannot be forced to represent the EU in international fora, including the UNSC, in CFSP matters or have to be authorized by the Council to do so. In what follows, we demonstrate that notwithstanding the fundamental differences in the authorization mechanisms embodied by Articles 300 TEC and 19 TEU, insights from the way the Council uses mandates to guide the Commission's behaviour in external negotiations on first pillar issues are also useful for understanding the relationship between the EUMS with a seat on the UNSC and those without.

II. Representation Guidelines as Mandate

When defining the notion of 'delegation', Hawkins, Hake, Nielson and Tierney write that principals and agents are mutually constitutive, defined by their relationship to each other only: without principals there are no agents and without agents there are no principals, it is that clear.⁴⁵ However, while the relationship between a principal and agent is always governed by a contract, their narrow definition does not require that this contract is *explicit* or *formal*. It may also be *implicit* – i.e. never formally acknowledged – or *informal* – i.e. based on an unwritten agreement. Such contracts usually specify the scope of the authority delegated, the instruments by which the agent is permitted to carry out its task and the procedures to be followed.⁴⁶ Scholars relying on PA theory describe these agreements as varying between *rule-based* and *discretion-based* delegation.⁴⁷

Under the first form of delegation, principals instruct their agents on precisely how they have to do their job. By contrast, under the second form of delegation, the principal specifies its goals, but leaves it to the agent how best to reach this. As discretion-based delegation enhances the policy-making role of the agent, it enhances also the opportunities for opportunistic behaviour by the latter. This form of delegation also brings us again to the relationship between the EU Membership at large and the EUMS serving on the UNSC and the scope of the Council's mandate for these countries as defined by Article 19 TEU. In our reading of Article

⁴⁴ *Common External Policy*, 17 March 1991, Article Y7.

⁴⁵ D. G. Hawkins *et al.*, *Delegation Under Anarchy: States, International Organizations, and Principal-agent Theory*, in Hawkins *et al.* (Eds.), *Delegation and Agency in International Organizations* 3, at 7 (2005).

⁴⁶ *Id.*, at 27.

⁴⁷ *Id.*, *supra* note 45, at 27-28.

19 TEU, delegation is an option. However, when looking from the perspective of the agents, the default condition is not one of non-representation. A careful reading of Article 19 TEU reveals a number of rules on the (representation) behaviour of the EUMS serving on the UNSC on a permanent basis in case there is no common position. In other words: delegation is an option, representation not.

Article 19 TEU does not stipulate that the EUMS should formulate common positions on the dossiers on the agenda of the UNSC. It only requires that if such positions exist, the EUMS serving should uphold them within this forum. Being permanent members, France and the UK have to ensure the defence of the positions and interests of the EU, though without prejudice to their responsibilities flowing from the UNCH, which are not spelled out in detail. We already explained how France and the UK have given their global mandate a regional interpretation in Maastricht, by way of Article 19 TEU. Moreover, being part of the CFSP framework, this provision is not legally enforceable. Accordingly, we argue that their EU mandate boils down to a *legally non-binding advice on desirable representation behaviour*.⁴⁸ Their mandate given by the Council is vague, reflecting a situation of *doing the best you can*, though, if you wish so. While they merely have to ‘ensure the defence’ of the positions and interests of the Union, their non-permanent colleagues have to ‘uphold’ the common positions. While the contours of the mandate of the non-permanent agents are formulated in more affirmative terms, the scope of the mandate of the permanent members is broader, as it includes ensuring the interests of the EU as well. But these interests are only vaguely defined, especially in comparison to the national *domains réservés*.

As the very notion of delegate illustrates, the policy officials of both countries operate in the UNSC under instructions, acting thus as agents. But they seem to act here first of all as national agents, since their instructions come from London and Paris, even though they may run parallel with the wishes in and from Brussels. The difference in mandate of the EUMS serving on a permanent and non-permanent basis will disappear in writing once the TOL enters into force. What will, in our opinion, not change soon is their different presence in the UNSC system, and more specifically the omnipresence of the EUMS serving on a permanent basis within this framework. As a result of the UNSC’s ‘corporate culture’, and more specifically of the pivotal role played by the P5 and P3 and the voting arrangements applied – their difference in league will remain, a difference that can be explained by the different levels of autonomy between the EUMS serving on a permanent and elected basis.⁴⁹

⁴⁸ Winkelmann has formulated it as follows: “In total, the legal framework of the CFSP at the United Nations provides for a somewhat intergovernmental and ‘soft’ style of cooperation, leaving a large degree of flexibility and margin of manoeuvre to EU partners.” See I. Winkelmann, *Europäische und mitgliedstaatliche Interessenvertretung in den Vereinten Nationen*, 2000 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 413, at 443.

⁴⁹ K. Mahbubani, *The Permanent and Elected Council Members*, in D. M. Malone (Ed.), *The UN Security Council: From the Cold War to the 21st Century* 253, at 253 (2004).

III. Similar Levels of Authority, Different Levels of Autonomy

In her seminal work on the external representation of the EU in international trade negotiations, Nicolaïdis established a useful distinction between ‘flexibility’, ‘autonomy’ and ‘authority’ as attributes of what she refers to as the “delegation of competence.”⁵⁰ Each of them is linked to a different *negotiation* stage. First, in the *authorization stage*, principals can give their agents a flexible or restricted mandate. They can give them a flexible, vague or broad mandate by instructing them to do ‘the best they can’. But they can also give them more restricted or narrow instructions and specify the concessions that are acceptable. Secondly, principals can grant their representatives a high or low degree of autonomy as regards the *representation stage*, depending on their actual involvement in the negotiation process. At one extreme, principals can sit at the negotiation table alongside their agents and share in their activities. At the other extreme, they can leave their delegate completely free, at least until the ratification stage. This also influences the degree to which an agent can monopolize the external contacts. Thirdly, principals can give their agents little or much authority in order to make promises and concessions on their behalf, depending on the procedures used in the final stage of the negotiations, i.e. the *ratification stage*. In what follows, we demonstrate that Nicolaïdis’ attributes are also powerful instruments for explaining the different room for manoeuvre that the permanent and non-permanent agents in this research enjoy and for evaluating the modifications that the TOL bring, as Tables 3 and 4 show.

On the basis of the representation guidelines that are included in Article 19 TEU, one could argue that the EUMS serving on the UNSC are only guided by a weak EU mandate, with those serving on a permanent basis facing somewhat stronger rules, even though, as indicated above, they are allowed to ignore them in case this would conflict with their global mandate. As noted, the entry into force of the TOL will end this difference by dropping the word ‘permanent’ in the second paragraph of Article 19(2) TEU. As it will homogenize the EU mandate of the EUMS at the UNSC, it seems logical to conclude that Brussels is the starting point for those who want to increase the EU’s actorness at the UNSC. To anticipate the UNSC’s proceedings, one could think about giving substantial input through the definition of common positions and interests about the issues under discussion so as to guide the EUMS serving here. However, one should not forget that such positions are adopted by unanimity. Moreover, PA theory shows that while such input is crucial, it is only one side of the story. In what follows, we argue that the opportunities for an increased EU actorness at the UNSC remain dependent upon actual representation behaviour of the EUMS serving, because the TOL does not influence the autonomy or authority they enjoy as EU agents.

Although the entry into force of the TOL will end this difference in mandate on paper, it will not end the fundamental difference between the permanent and non-permanent agents, as the decisive factor is here not their EU mandate or authority, but the different degree of *autonomy* they enjoy during the *representation* stage,

⁵⁰ K. Nicolaïdis, *supra* note 1, at 94-98; S. Meunier, *supra* note 16, at 111.

Table 3: A PA-inspired comparison between the permanent and elected EU agents before Lisbon

	<i>Permanent EU agents</i>	<i>Elected EU agents</i>
<i>Mandate</i> (authorization stage)	Article 19(2) TEU (ensure the defence of the positions and interests of the Union)	Article 19(1) TEU (uphold the common positions)
<i>Autonomy</i> (representation stage)	Membership P3/P5	Membership UNSC
<i>Authority</i> (ratification stage)	Articles 24, 103 UNCH ¹	

¹ Article 24 UNCH reads as follows: “In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.”

Table 4: A PA-inspired comparison between the permanent and elected EU agents after Lisbon

	<i>Permanent EU agents</i>	<i>Elected EU agents</i>
<i>Mandate</i> (authorization stage)	Article 19 TEU (defend the positions and interests of the Union)	
<i>Autonomy</i> (representation stage)	Membership P3/P5	Membership UNSC
<i>Authority</i> (ratification stage)	Articles 24, 103 UNCH	

which follows directly from the UNSC’s membership and working methods. Analyzing the more realistic options that circulate in New York from a PA perspective, one could argue that neither the authority, nor the autonomy of these agents will change soon. Indeed, it is not very likely that the binding character of the decisions of the UNSC (*authority*; see Arts. 24 and 103 UNCH) or its staged decision-making practice (*autonomy*) will be touched upon, even if only because of the reform procedures that have to be followed and the approval of the permanent members such reform entails.⁵¹

Being permanent members, it is very unlikely that France and the UK would be excluded from the negotiation process in the UNSC, even in the very early stages of discussion. Even if they would, for one reason or another, have been excluded these stages, they will join their colleagues around the horseshoe table, both in the formal and informal meetings. Moreover, their final approval remains necessary, as decisions in the UNSC (with the exception of procedural ones) are taken by the affirmative vote of nine votes, including the concurrent ones of

⁵¹ Even though Russia and China have been emerging as global (economic) powers on the international scene, the reality is that also today, representatives of France, the UK and the US (the so-called ‘Western’ permanent members; P3) usually sit together to talk things over before consultations are organized between the five permanent members (P5). Generally speaking, the non-permanent members only come into the picture in a later stage.

the five permanent members. This gives them a right to veto decisions taken in their absence, both in formal meetings and closed consultations. Indeed, while a veto occurs only rarely in open settings, the reality is that none of the permanent members hesitates to take a firm stand, also for drawing up the UNSC's agenda, which they consider to be a substantive and not a procedural issue.⁵²

While we argue that they enjoy the same degree of authority as their elected colleagues, and this because of the binding character of the decisions of the UNSC, the same cannot be said for their levels of autonomy, quite the contrary. The policy and decision-making practice in the UNSC shows that the room for manoeuvre of the EUMS serving on a non-permanent basis is limited, also because of the omnipresence of France and the UK. France and the UK can thus not only be seen as EU agents with (1) weak mandates, (2) a high degree of authority and (3) a high degree of autonomy, but also with (4) a high degree of control over the autonomy and action of their colleagues who do not have the privilege of serving on a permanent basis. As Table 4 illustrated, once the TOL enters into force, the representation guidelines that apply now only to France and the UK as permanent members, will also apply for them. Given the secondary position of the elected members in the UNSC system and the lower degree of autonomy this entails, they will nevertheless not be able to exploit their agent role to the same extent as France and the UK can. Indeed, not only the optional character of delegation and a lack of sanctions mechanisms, but also a high degree of information asymmetry make that these two countries can exploit their EU agent role to a maximum, while remaining, as explained in the following section, the most attractive agents for the EU(MS).

IV. Specialized Agents

PA theorists would argue here that delegation is premised upon the division of labour and gains from specialization.⁵³ In comparison to their principals, *specialized agents* have the expertise, time, political ability and resources to perform a certain task. These criteria, in combination with the knowledge that gains from specialization are likely to be the greatest when the task to be performed is frequent, repetitive, and requires specific expertise or knowledge, as is the case with the UNSC, make France and the UK specialized agents *par excellence*. In comparison to their elected colleagues, they not only have (permanent) access to the UNSC's inner circle, but also more resources, expertise and knowledge to perform their tasks. This expertise and knowledge is also a result of their permanent membership and the fact that their membership of this body has been an inherent part of their foreign policies for more than six decades, even before their memberships of the European constructions were, especially for the UK, which only joined in 1973. While countries like Germany and Italy have been

⁵² S. Bailey & S. Daws, *The Procedures of the UN Security Council* 240-249 (1998).

⁵³ D. G. Hawkins & W. Jacoby, *How Agents Matter*, in D. G. Hawkins *et al.* (Eds.), *Delegation and Agency in International Organizations* 199 (2006).

present on a regular basis, for most small EUMS, a seat on the UNSC is a rare occurrence.⁵⁴

As their terms are often more than 20 years apart, their delegations have little institutional memory to rely on, also because, as Loj explains, both the agenda and working atmosphere change significantly over such period of time. In comparison to their permanent colleagues, this makes them less attractive as agents, even though, as is known, ‘longstanding agents’ are more likely to openly interpret their mandate and other rules in ways that are inconsistent with the preferences of the principals. PA theorists would argue there that specialization allows agents to provide services that principals are unable or unwilling to provide.⁵⁵ Simplifying considerably: the greater the needs, the larger the gain from specialization and the more likely delegation is. And as Hill has observed correctly, while few EUMS are happy with the special status of France and the UK, most of them are happy that these countries contribute their bit – both in financial and personal terms – to the maintenance of international peace and security, so that they can stay out of the spotlight.⁵⁶

The non-permanent members of the UNSC are traditionally seen as second-class members who play a supporting role at best; the leading roles are reserved for their colleagues with a permanent seat. Mahbubani summarizes this dual reality in this way: the permanent members have been given “power without responsibility”; their elected colleagues “responsibility without power.”⁵⁷ While there might be a ‘warm sense of camaraderie’ between the various permanent representatives, so he writes, non-permanent members experience an “extreme advantage” from a structural point of view. In the literature, this difference is usually explained in realist terms, i.e. the presence and absence of decision-making powers and veto powers in particular. Going against the grain, in this article we did not look at the representation behaviour of the EU Member States serving on the UNSC through the theoretical lens of realism, but suggested a PA perspective for doing so. More specifically, we started exploring the possibility of building up an analytical model, inspired by PA theory so as to explain their representation behaviour within this setting.

G. Concluding Remarks

Building on the work of Nicolaïdis, we have theorized the fundamental difference that most authors observe between the permanent and non-permanent members of the UNSC, focusing on the EU Member States serving here. By looking at their mandate, autonomy and authority, we pointed out what makes the EU Member

⁵⁴ E. M. Loj, *Denmark’s Membership of the UN Security Council: What Came Out of It?*, 2007 Danish Foreign Policy Yearbook 31, at 33-34 (2007).

⁵⁵ Hawkins *et al.*, *supra* note 45, at 12-20.

⁵⁶ C. Hill, *The European Powers in the Security Council: Differing Interests, Differing Arenas*, in K. Verlin Laatikainen & K. E. Smith (Eds.), *Intersecting Multilateralisms: The European Union and the United Nations* 49, at 59 (2006).

⁵⁷ Mahbubani, *supra* note 49, at 256-261.

States serving here on a permanent and non-permanent basis so fundamentally different: not their mandate or authority, but the different degree of autonomy they enjoy when acting here as EU agents. The fact that this variable degree results directly from the membership and working methods of the UNSC makes us conclude that New York is the starting point for fundamental reform, not Brussels. The discussions that we had last Summer with policy officials in Brussels and New York on this reform revealed that even if everything goes according to plan and the TOL enters into force on 1 January 2009, there is only a small chance that the new provisions on external representation will be operational in New York on day one. As the implementation of these provisions requires a number of issues to be cleared, both at the level of the EU and UN, a transition period seems to be more likely. In anticipation, for instance, Slovenia decided to organise during its EU Presidency an informal exchange of views in New York, to provide input for the decision-makers in Brussels about the issues to be considered. That the main focus of these discussions was the implementation of the TOL in the context of the UNGA illustrates our point that the manifestation of EU actorness at the UNSC will not improve soon. As it remains dependent upon the willingness of the EUMS to act as agents of the EU, we argue that the TOL will only have little impact on the way Article 19 TEU is operationalized in New York in relation to the UNSC. *Mutatis mutandis*, the impact of the ‘Irish no’ should not be overestimated either.