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## Informal Elite Dialogue and Democratic Control in EU Foreign and Security Policy

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## **Abstract**

As an academic artefact constitutionalism offers a reference frame for research on constitutional quality beyond the nation-state. The challenge for this research is to *avoid* methodological nationalism while *acknowledging* the institutions, principles and norms as the derivatives of 'stateness' which are enduring cosmopolitan elements of constitutionalism at the same time. The paper advances two arguments. First, if we are to 'reconstruct democracy in Europe', it is important to find out whether core elements of constitutionalism are still shared. Second, if we are to understand the quality of 'European' constitutionalism from a pluralist cosmopolitan perspective, it matters how the normative structure of meaning-in-use is enacted in 21<sup>st</sup> century Europe. The empirical access point for this research is *social practices* in inter-national relations. The paper therefore investigates social practices in the area of foreign and security policy, it elaborates on the concept of constitutionalism as a reference frame for studies of constitutional quality beyond the state, and turns to the CFSP setting, proposing that transnationalisation needs to be demonstrated with reference to shared normative baggage or cultural validation of norms. In sum findings and implications for research on democratic constitutionalism are explicated.

## **Keywords**

Constitutionalism - Dialogue - Democracy - Elites - Foreign and Security Policy - International Relations - Practices



## Introduction

The European Union's (EU) evolving Common Foreign and Security Policy (CFSP) raises a number of questions regarding the democratic control of joint decision-making structures.<sup>1</sup> Identifying alternative institutional options for improved democratic control of CFSP procedures and decisions is, however, not an easy task. At present the area of foreign and security policy is dealt with very differently in the various EU member states. Foreign and security policy has always been associated with a strong role of executive elites. Moreover, in many countries this policy domain has been the prerogative of governments and heads of state for a very long time. In this sense the case of CFSP is not different from established models of national foreign policy-making. However, there is one key feature of the CFSP framework which even further strengthens the role of executive elites in foreign policy decision-making at the European level.<sup>2</sup> Political authority is highly dispersed as CFSP is not a Community competence. Ultimate decision-making power still rests with the member states. Although the EU now has the procedural instruments to agree common policy guidelines and objectives and even to launch joint missions the results of these collective decisions are legally not binding in the strict sense of Community law. This means that despite their formal character they can be considered as soft law. Thus, non-compliance by individual member states cannot be sanctioned by the European Court of Justice (ECJ) or any other EU institution. Successful policy implementation in the CFSP framework therefore depends on the voluntary commitment of member state governments to common policy decisions. This dependence on voluntary self-commitment enhances the relevance of consensus formation among the core executive elites involved in the process. Moreover, the importance of informal arrangements and processes which are not easily identifiable for the outside observer and largely escape democratic scrutiny procedures flourish in such a context as consensus formation among elites requires room for frank and open exchanges which typically do evolve in public debates. This dynamic can best be conceptualised as a form of deliberative intergovernmentalism (Puetter and Wiener 2009; Puetter 2006).

This paper is based on the assumption that the CFSP framework will for the foreseeable future continue to operate within the boundaries of intergovernmental policy coordination and that the fundamental allocation of decision-making competences will not change. We therefore hold that the question of democratic control of CFSP processes cannot escape the dilemma that on the one hand CFSP relies on the strong role of executive elites and their strengthened interaction and that, on the other hand, this very process makes democratic control more difficult. In order to better understand this dynamic we have highlighted that the CFSP setting is characterised by two different notions of legitimacy (Puetter and Wiener 2009: 19). The first notion of legitimacy is elite-focused and relates to how executive decision-makers as representatives of national governments perceive EU level decisions in the foreign and security policy field as a legitimate constraint on national policy decisions and, thus, ready to follow through with implementation. The second notion of legitimacy is citizen oriented and relates to how citizens in the member states perceive EU foreign and security policy objectives and actions. These two perspectives may or may not at times overlap, i.e. citizens might see themselves in agreement or disagreements with the decisions of executive elites at the EU and/or national level.

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<sup>1</sup> For a recent review of normative approaches to CFSP see Manners (forthcoming).

<sup>2</sup> On the relevance and scope of executive decision-making in EU politics, see Curtin (2009).

In the following the paper seeks to enhance the conceptual understanding of this relation. Most importantly, we hold that there are no established common benchmarks and normative criteria for assessing foreign and security policy practice – neither within the group of executive elites nor on part of the citizens. This makes the CFSP framework a fuzzy setting when it comes to the issue of democratic control, as there are no straightforward institutional solutions to this dilemma. This situation is enhanced by a layer of cultural differentiation that remains largely invisible to political scientists and students of international relations theory (IR). Accordingly, there is not only significant divergence among the domestic arenas of the 27 EU member states. But, in addition, there is also divergence in the way fundamental norms of democratic constitutionalism are culturally validated between domestic and transnational political arenas (Wiener 2008). Subsequently, and contrary to assumptions about a liberal community (Schimmelfennig 2000), Europeanisation cannot be conceptualised as an encompassing phenomenon which would allow a shared reference frame when studying the democratic quality of foreign and security policy in the EU. In addition, traditionally the role of member states has differed considerably according to size, thus CFSP research has demonstrated distinct positions of smaller and larger member states (Manners forthcoming). The issue of democratic control of CFSP decision-making also arises at the supranational level with the European Parliament (EP) as the main interlocutor for the Commission and the Council. Although the field of CFSP is formally an exclusive competence of national governments deciding in the Council the growing importance of the EP in EU decision-making in general as well as the importance of the Commission in the CFSP process it is not inconceivable that the EP will be able to gradually increase its influence in this policy area in the long run.

In light of this cultural layer of diversity which adds to the complexity of the current CFSP field, e.g. its organisation based on a decentralised system of political responsibility, this paper refrains from reviewing blueprint options of a desired future constitutional order for CFSP decision-making. Instead it stresses the importance of diversity which is distinguished with regard to the type of political arena, and especially the diversity among the range of domestic political arenas, on the one hand, and relatedly, with regard to the social practice of decision-making, on the other. The interplay between both is considered as providing key information for studying the democratic quality of the CFSP field. As outlined above, the entry point to the following discussion of the democratic control of CFSP activity is the focus on the crucial role of elite-level policy dialogue. We consider civil servants who participate on a daily basis in the work of the main CFSP coordination forums for political decision-making such as the Political and Security Committee (PSC), the External Relations Council and the network of Political Directors as part of this group of executive elites.<sup>3</sup> Except for the foreign ministers and deputy ministers who participate in the meetings of the External Relations Council, this group is made up of career civil servants of varying seniority. This group includes the PSC ambassadors and their deputies, as well as the so-called European Correspondents and their deputies in the national foreign ministries who are in charge of channelling

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<sup>3</sup> The network of Political Directors does not constitute a specific formal decision-mechanism but is listed here as relevant to core CFSP decisions. Both the regular informal meetings of Political Directors at the occasion of External Relations Council meetings (luncheons, dinners) and their regular bilateral contacts can be seen as a crucial forum for determining CFSP decisions as well as the overall strategic orientation of EU policies in this field.

communication and instructions between Brussels based decision-making and the work of national administrations. In addition, we include members of the Council Secretariat (including the so-called Policy Unit) and the Directorate A of the European Commission's Directorate General for External Relations in this group. Finally, we consider members of cabinets in charge of preparing ministers, the relevant Commissioner as well as the High Representative for meetings of the External Relations Council as part of this group.

While the key role of elites in foreign and security policy decision-making is a familiar assumption of CFSP research, taking a praxeological approach to inter-national relations, we hold that social practices in context enact structures of meaning-in-use. Therefore the range of social practices within this field matters. Subsequently, it can be argued that studying the democratic quality of this field requires applying a more encompassing perspective on social practices. In this context, constitutionalism offers as an academic artefact (Weiler 1999) a particularly useful reference frame for research on the changing constitutional quality of the CFSP setting and of institutions, principles and norms in settings beyond the nation-state more generally. In light of the increasing spread of such settings, including the World Trade Organisation (WTO), the United Nations (UN), the EU and other institutional contexts in global politics, the academic artefact of constitutionalism now has to cater for global analytical demand. In the process, the challenge for research about constitutional quality has been to *avoid* methodological nationalism (Zürn 2000; Beck and Grande 2004) while *acknowledging* the institutions, principles and norms as the derivatives of 'stateness' (Shaw and Wiener 2001; Albert 2005) which are enduring cosmopolitan elements of constitutionalism at the same time. These elements have been constituted through diffused experience with predominantly European constitutional roots in the modern era (McIlwain 1947; Tully 1995).

If we are to 'reconstruct democracy in Europe' (Eriksen and Fossum 2009) it is important to find out whether and if so when and how, the core elements of constitutionalism are still shared. If, in addition, we are to understand the quality of 'European' constitutionalism from a pluralist perspective that is critical of the universal norms promoted by cosmopolitan universalist positions, then we need to establish how the existing 'normative structure of meaning-in-use' (Weldes and Saco 1996; Milliken 1999) is enacted in 21<sup>st</sup> century Europe. As an analytical reference frame, the normative structure of meaning-in-use is constituted and enacted through discursive interventions. It is therefore neither agency- nor structure-based, but expresses the interactive element between both and reflexive of time and place. The best empirical access point for pluralist research on constitutional representations is social practices in inter-national relations.<sup>4</sup> We therefore turn to investigate social practices, as they are conducted in everyday circumstances and with reference to specific policy issues in the area of foreign and security policy.

The paper is organised in four sections. The following *second section* elaborates on the concept of 'constitutionalism' as a reference frame for studies of constitutional quality beyond the state. The *third section* turns to the CFSP setting more specifically. As

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<sup>4</sup> Note that inter-national relations are understood as interaction between actors of all type and stripe that are of different national origin. On practice oriented research on norms in IR theory see Weldes and Saco (1996), Guzzini (2000), Wiener (2004), Adler (2005), Pouliot (2008, 2010), Friedrichs and Kratochwil (2009) among others.

previous research has demonstrated, contrary to assumptions of Europeanization or globalisation, transnationalisation is not a necessary consequence of inter-national encounters. Following this research we define inter-national encounters as encounters between both state and/or non-state actors of different national background and transnationalisation as an activity-based rather than an actor-based concept. As consequential change of iterated interaction in context transnationalisation therefore cannot be assumed *a priori* but must be demonstrated empirically (Wiener 2008: 8) e.g. with reference to 'background information' that is revealed through 'cultural validation' of norms (Adler 2007; Pouliot 2010; Wiener 2009). Whether this context is described as one 'community of practice' (Adler 2005, 2007), or whether these are, in fact, 'pockets' of shared practices (Wiener 2008) remains to be demonstrated. The *fourth section* summarises the preliminary findings and explicates the implication for research on democratic constitutionalism that follows the two guidelines of avoiding methodological nationalism and acknowledging the derivatives of stateness while identifying the specific democratic quality of 'European' constitutionalism in the 21<sup>st</sup> century (Weiler and Wind 2003).

## **Constitutionalism as a reference frame**

Defined as an analytical and a normative reference frame constitutionalism allows for an assessment of democratic substance and its diffusion in the global realm of inter-national relations (Weiler 1999; Maduro 2003; Tully et al. 2009). Some would argue that the process of moving constitutional elements beyond the limits of modern nation-states by setting up institutions in the inter-national realm has led to spreading constitutional elements far too thinly or unevenly in the global political realm. While thin constitutionalism is often used with reference to the EU as the most far-reaching model of regional integration (Wiener and Diez 2009; Dunoff and Trachtman 2009; Neyer and Wiener forthcoming), the uneven spread of constitutional elements is most often related to changing international institutions within the UN system (Ikenberry and Slaughter 2006; Zürn et al. 2007; Cohen 2004, 2008). The thin and uneven spreads of constitutional elements, respectively, cause hurdles for practicing democracy beyond the state. One can therefore summarise that as social practices of constitutionalism move beyond national borders, the key question about democracy must be raised anew. In the case of CFSP this challenge is reflected in the diversity of the policy setting but also – as outline in the beginning of this paper – in the specific procedural dynamics which emanate from a framework of decentralised decision-making. In other words, the concentration on consensus generation among executive elites and the respective normative baggage these actors bring to the process makes its democratic control even more challenging. However, this dilemma is inevitable in a setting which tries to preserve the competence of the nation state to have ultimate decision-making powers in this policy field while at the same time institutionalises the push for collective action beyond nationally defined foreign policy objectives.

Taking a Giddensian approach to the social construction of democratic constitutionalism (Giddens 1979, 1985), we note that over time the experience of inter-national agents with derivatives of stateness involves ancient, pre-modern, modern and contemporary elements of constitutionalism. The sum of these experiences has been constitutive for the emergence and crystallisation of fundamental norms and practices of international law over the past four centuries (Koskenniemi 2005; Koh 1997). Its



modern, predominantly regulatory practices have been manifested by the formal validity of the UN Charter in 1948 as well as within the regional limitations of the EU since 1957. These norms have subsequently been diffused through predominantly state practices within the United Nations as well as, separately yet not altogether unrelatedly, in the EU environment. Noting Emanuel Adler's concept of 'communities of practice' as guidance (Adler 2008), we observe that within the global realm the experience of stateness and, most significantly so, experiences with modern nation-states in the 19<sup>th</sup> and 20<sup>th</sup> centuries, has been constitutive for shared standards of democratic constitutionalism (Reus-Smit 1997, 1999; Tully 1995, 2002). Notwithstanding the difference in time and place, these standards prevail in the current discussion about constitutional quality beyond the state. They often lead to the opposite of what normatively derived standards of democratic constitutionalism would require, namely, and most importantly so, guaranteeing the '*premordiality* of constitutionalism and democracy' (Tully 2002, 2008). This core principle of democratic constitutionalism depends on contextualised social practices, both cultural (what is customary) and organisational (what is agreed to). For an inquiry about the – democratic – quality of constitutionalism beyond the state, it is therefore useful as a yard-stick. This article therefore proposes to further elaborate on the assessment of this quality based on a study of social practices in foreign and security policy in Europe.<sup>5</sup>

RECON's framework sets out to 'test three different options for the reconstitution of democracy in the European context following the questions of first, can democracy in Europe be reconstituted at the national level, with a concomitant reframing of the EU as a *functional regulatory regime*, second, can democracy be reconstituted through establishing the EU as a *federal state* based on a collective identity, and third, can democracy in Europe be reconstituted through developing a *post-national Union* with an explicit cosmopolitan imprint?'<sup>6</sup> In contrast, the Hamburg based project offers a distinct perspective. Drawing on Tully's critical approach to public philosophy (Tully 2002, 2008a, b) it takes a pluralist cosmopolitan perspective. This perspective offers a 'form of critical reflection on and test of the habitual and regulative assumptions, or, more accurately, 'limits' of the present, including the limits that Kant and other Enlightenment thinkers claim to have established as beyond doubt' (Tully 2008b: 18). This approach scrutinises assumptions about the appropriateness of the Kantian ideal for Europe based on a critical distance from it (Tully 2008, Ch. 4; see also Wiener 2008, Ch. 9). Accordingly, it is not interested in a prescriptive analytical perspective but applies a practice-based research framework that allows reconstituting individual social practices with a view to establish empirically how normative meaning-in-use is enacted in a specific context. Consequently, and in distinction from prescriptive studies, it does not seek to establish which of three models should be adopted in order to reconstruct cosmopolitan democracy in Europe. Instead, it proposes studying social practices to establish patterns, principles and norms of contemporary constitutionalism in Europe, and then assess them with reference to standards of democratic constitutionalism.

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<sup>5</sup> The case study is currently being carried out within the framework of Work Package 6 on Foreign and Security Policy of the EU 6<sup>th</sup> Framework Project, RECON (Reconstituting Democracy in Europe) by the Hamburg team. For research assistance we would like to thank Hannes Hansen-Magnusson, Maren Hofius and Tomas Adell.

<sup>6</sup> Cited from RECON, Reconstructing Democracy in Europe, Directed by Erik O. Eriksen, University of Oslo, 2007-2012, <<http://www.reconproject.eu/projectweb/portalproject/Research.html>>, (accessed on 30 April 2010, emphases in original text).

We propose to distinguish the type of constitutional model according to the social practices – both cultural and organisational – that were constitutive for the type of constitutionalism established in relation with specific time/place conditions (Walker 2008). While the three ideal-type models suggested by Erikson and Fossum all essentially take their normative cue from the specific realisation of constitutionalism of the modern nation-state, i.e. working with assumptions in democratic politics that are central to the predominantly regulative social practices of modern stateness, a critical approach seeks to identify the quality of constitutionalism based on the interrelation between social practices and normative substance at a specific time. A pluralist cosmopolitan perspective is sensitive to temporality, without rejecting contingency or historical trajectory (Kleingeld 1999; Walker 2008). Taking a pluralist cosmopolitan approach that is open to potential changes within normative substance, and constituted through the enacting of normative meaning that is already in use, we expect to uncover elements of constitutionalism that are key to the way politics are constituted in contemporary Europe.

In other words, in contradistinction to the Deutschian expectation of harmonisation that underlies much of the Europeanisation (or even globalisation) literature, the transnationalisation of normative meaning remains exclusive. It must therefore be understood as an element of the new diversity in world politics as it adds new arenas rather than interpenetrating existing arenas (Wiener 2008). The paradox of this type of transnationalisation lies in the enhanced intersubjectivity and the newly emerging shared reference to the changing normative structure of meaning in use by those involved in the process. While foreign policy officials and European foreign and security policy makers do not benefit the expectation of the concept of the individual citizen as the defender of democratic constitutionalism,<sup>7</sup> we hold that through their interaction at the EU level and the transnationalisation of reference frames that is constituted by this interaction, they themselves represent the most important access points for the assessment of constitutional quality beyond the state. The increasing interaction of executive elites thus constitutes both the most prominent test case for the evolution and viability of constitutional reference frames as well as in itself yet another obstacle to democratic control.

## **The CFSP setting and the challenge of democratic control**

The area of CFSP has not been transnationalised<sup>8</sup> to the degree of other policy areas, where democratic control is increasingly constitutionalised. Instead, CFSP remains a policy area that falls under intergovernmental premises. This intergovernmental framework has been modified through subsequent Treaty changes ever since the establishment of CFSP in the Maastricht Treaty. These changes at the formal level did neither change the formal allocation of ultimate decision-making competences nor did they lead to a formal constitutionalisation of democratic control mechanisms. What

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<sup>7</sup> See for example Rawlsian and/or Habermasian perspectives which have been elaborated on in the work of Forst (2007) and Benhabib (2007) among many others; see also RECON WP 2.

<sup>8</sup> Note that we work with an activity-oriented concept of transnationalisation. Different from an actor-oriented concept according to which transnationalisation is identified with reference to the type of actor i.e. state or non-state, involved in an international interaction, an activity-oriented definition of the concept is focused in the type of activity that leads to the blurring of national differences among a given set of actors (see for details Wiener 2008: 8).

these changes, however, provoked was the gradual strengthening of the interactive dimension of CFSP decision-making. The latter dynamic implies that elite level dialogue is significantly enhanced and evolves in a number of forums.

Together with the increased level of collective activity under the CFSP framework this development implies a central role for policy practice in establishing normative reference frameworks for policy-makers. Like all social practices in inter-national relations, policy practice in the CFSP setting constantly enacts the meaning that is in use (Weldes and Saco 1996; Milliken 1999; Wiener 2008, 2009). In terms of the challenges for democratic control of CFSP activity this means that the formal institutional framework does not represent a solid basis for scrutinising policy substance. In other words, the formal institutional framework of CFSP as established by the Treaty concentrates on providing procedures for elite dialogue but does not reveal much about policy orientation. This makes it almost impossible to assess CFSP activity against an internally provided reference framework. At the same time the emphasis on practice implies that those processes which actually define these reference frames remain largely hidden to an outside observer. A few examples from current CFSP practice should help to illustrate this claim and to further develop our understanding of these dynamics. It is beyond the scope of this paper to provide a comprehensive empirical assessment of CFSP practices.

The vast majority of our interviews<sup>9</sup> with CFSP policy makers show that written policy documents specifying broad policy guidelines and core CFSP objectives are barely conceived as a source informing actual decision-making when it comes to specific policy responses to foreign policy events.<sup>10</sup> This reveals an interesting constitutional quality of the CFSP setting, namely its strong emphasis on practice when it comes to substantive decisions over policy. This quality of the CFSP setting, we contend, should not be ignored when reflecting on the democratic quality of current decision-making procedures. Such an emphasis on practice is all the more important as there is no lack of formal sources which could function as a reference frame for CFSP policy makers and, thus, could be understood as a formal quasi-constitutional reference frame. For example, the Lisbon Treaty lists a number of CFSP policy objectives. Notably, Article 21.1 (TEU Lisbon) states:

The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms,

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<sup>9</sup> We have conducted anonymous interviews with CFSP policy-makers in Berlin, Brussels, London, Stockholm and Warsaw in 2009. This paper is based on a preliminary evaluation of a first set of over 30 elite interviews. All interviewees are/were part of the group of core CFSP foreign policy elites as defined in the beginning of this paper. Interviews were conducted in a semi-structured format. The used questionnaire comprised questions on the following issues: first, administrative practice at the domestic and EU-level of decision-making, second, substantive policy issues including reference to recurrent CFSP issues such as relations with Russia, third, the EU's position towards Iran's nuclear program, fourth, the EU's engagement in the Democratic Republic of Congo as well as fifth, the member states' respective positions on EU-UN relations and political representation. The list of interviewees and interview transcriptions are on file with the project.

<sup>10</sup> In this the CFSP setting is different from another major EU policy area which is also essentially based on intergovernmental policy coordination – the field of budgetary policy under the Stability and Growth Pact. In the latter field frequent reference to fundamental norms and organising principles specified in the Treaty and European Council and Council resolutions and decisions is quite common (Puetter 2006).

respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

Moreover, Article 21.2 (TEU Lisbon) continues by emphasising that through its external actions the EU aims to 'consolidate and support democracy, the rule of law, human rights and the principles of international law', conflict prevention, 'sustainable economic, social and environmental development' are also mentioned. The European Security Strategy (ESS)<sup>11</sup> adopted in 2003 is another formal policy document which outlines the key objectives of the EU's external actions including reference to the Union's relations with other international organisations such as the UN, NATO and the OSCE as well as with core EU partner countries and regions. The ESS was even subject of an implementation report five years after its initial adoption.<sup>12</sup> Again, the vast majority of our interviews with senior CFSP policy makers<sup>13</sup> show that there is a general awareness of both the Treaty provisions on CFSP and the ESS. However, policy makers attach little or no relevance to these documents when it comes to actual CFSP decision making. At the same time, it is difficult to find explicit resistance or disagreement to/with any of the CFSP provisions in the Treaty or the ESS among CFSP policy makers. On a practical level, decisions in the main CFSP decision-making forums and networks such as the PSC, the External Relations Council and the network of Political Directors, are taken on a case-by-case basis and not in a principled manner. This does not mean that CFSP policy makers have no orientation when they enter specific decision making scenarios. Many of our interviewees claim to 'know roughly where the others stand on this issue'<sup>14</sup> in beforehand. This enables them to think about possible strategies for reaching a common position – knowing that agreement is often very difficult.

The way how core CFSP elites relate to formalised CFSP norms and principles and how they relate to the experience of being part of a collective and reiterated decision making process suggests that there is anything but a shared understanding of fundamental norms and organising principles in CFSP.<sup>15</sup> This is noteworthy as a formal quasi-constitutional reference frame is in place and is emphasised through specific procedures such as for example the ESS implementation report which reviews a number of core foreign policy and international security developments and the EU's role in relation to them in the light of CFSP priorities and objectives specified in the original ESS. The topics covered include policy developments on the Western Balkans, Iran's nuclear program, the Middle East as well as terrorism, climate change and energy security. Despite the existence of such formal resources our interviews with senior CFSP policy-makers suggest that social practices in the CFSP field largely inform decisions of individual policy makers when they look for ways of accommodating different policy priorities in specific decision making scenarios. In other words, in the current CFSP context, the constitutive role of social practices, i.e. the actual process of policy makers enacting meaning-in-use, are more important with

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<sup>11</sup> 'A Secure Europe in a Better World', European Security Strategy, Brussels, 12 December 2003.

<sup>12</sup> Report on the Implementation of the European Security Strategy, 'Providing Security in a Changing World', Brussels, 11 December 2008.

<sup>13</sup> Anonymous interviews conducted with CFSP policy-makers in Berlin, Brussels, London, Stockholm and Warsaw in 2009 (as specified above).

<sup>14</sup> Ibid.

<sup>15</sup> For a more detailed elaboration of the three different types of norms, see Wiener (2008, 2009); for the application of this concept to CFSP see Puetter and Wiener (2009).

a view to guiding policy makers in their decisions then providing a reference to a formally established quasi-constitutional order. We therefore suggest that informal elite dialogue is indeed a key, arguable the central, source of institutional dynamics within the CFSP field.

Moreover, the social practices in the CFSP field studied by this project imply that the process of enacting meaning-in-use that is encompassed by 'informal policy dialogue' (Puetter 2006) functions both as a source for structuring the decisions of individual policy makers and, at the same time, it also reveals prevailing divergence with regard to the interpretation of fundamental norms and organising principles that inform these CFSP decisions. Depending on the issues under discussion we observe that the emergence of shared practices in CFSP which are relatively stable over time remain often fragmented and temporary or only apply to specific groups of countries.<sup>16</sup>

Another example related to the process of drafting the above mentioned ESS may help to illustrate this further. In this particular case differences in the understanding of the overall orientation and political relevance of the CFSP framework arose between representatives belonging to the group of old and new member states respectively.<sup>17</sup> While we found in our interviews no indication that there is a general and more permanent divergence between old and new member states in CFSP forums, specific issues relating to divided European historical experiences may reveal such differences. An episode reported by one PSC member<sup>18</sup> illustrates this very well. In this case the PSC discussion on draft versions of the ESS revealed a very different understanding of the role of the EU and its predecessors in providing peace and stability on the European continent. While representatives from Western European member states wanted to describe the EU as an anchor of peace and stability for more than half a century, representatives from Eastern European member states expressed that they can hardly relate to this notion of European integration as they were totally excluded from this process until 1989.<sup>19</sup> The adopted final text of the ESS eventually emphasised that:

Europe has never been so prosperous, so secure or so free. The violence of the first half of the 20<sup>th</sup> Century has given way to a period of peace and stability unprecedented in European history. The creation of the European Union has been central to this development.<sup>20</sup>

While this formulation seems to circumvent the problem of highlighting a particular Western European notion of European integration interviews with CFSP policy makers from Eastern and Western Europe quite clearly reveal different notions of the role the 'creation of the European Union' has played with regard to the foreign and security policy in Europe. As a result policy makers from these two groups of countries are likely to relate differently to the historic experience of European

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<sup>16</sup> See the above mentioned notion of 'pockets' of shared practices (Wiener 2008).

<sup>17</sup> The distinction between old and new member states here means the member states forming the EU-15 prior to the 2004 enlargement (old) and the member states which joined the EU in 2004 and 2007 (new).

<sup>18</sup> Anonymous interview conducted with PSC member in Brussels in 2009 (as specified above).

<sup>19</sup> Anonymous interviews conducted with CFSP policy-makers in Berlin, Brussels, London, Stockholm and Warsaw in 2009 (as specified above).

<sup>20</sup> See 'A Secure Europe in a Better World', European Security Strategy, Brussels, 12 December 2003, paragraphs 1 and 2.

integration when identifying core objectives of CFSP and its historical development path. Collective discussions in CFSP forums bring these divergences to the fore and increase awareness of them among core CFSP elites. The practical experience with CFSP decision making is likely to vary among delegates as our interviews suggest as well, thus highlighting the relevance of how long individual decision makers operate in these contexts and in how far the agenda and institutional setting of CFSP forums allow the latter to function as venues for contestation (Puetter 2007; Wiener 2007).

The above illustrations confirm the paradoxical thought that roots of the principle of premordiality might be identified within intergovernmentally organised policy fields, which has been advanced by previous research. Such research has demonstrated that the more informal social practices are, the more trustworthy the 'other' appears in inter-national encounters (Puetter 2006). And the more frequent the encounters, the more transnational the shared reference frame of normative meaning in use. In the process, the relation between 'us' and 'them' which international relations theory would traditionally take as a distinctive description of foreign policy has turned into a relation of 'us-us' in the process of European integration (Preuss 2009). Now, foreign policy makers increasingly refer to normative structures in the process of enacting and hence constituting meaning-in-use. If we are to assess changes (read: an update) of the constitution of democracy in Europe, studying social practice in the foreign and security policy field is a powerful starting point.

## Conclusion

The constitutional quality of the CFSP setting is in flux. The repercussion for democratic control is that the formal constitutional order for CFSP decision making is being manifest in the Treaty provisions on EU external action and documents like the ESS are revealing relatively little about the actual meaning of fundamental norms and organising principles which are considered to be at the core of the EU's external actions. This finding underlines the relevance of core elites for the main institutional dynamics in this policy field as well as the limitations of democratic scrutiny procedures. Scrutiny procedures located at the supranational level are faced with the difficulty of scrutinising joint decisions which are adopted on the basis of diversity, i.e. not all actors backing a decision will have a similar understanding of the related consequences evoked by this decision even if they support the formal validity as defined by fundamental norms, organising principles or standardised procedures indicating specific practical measures implementing such a decision. At the national level, scrutiny procedures face the danger of interpreting CFSP decisions exclusively through 'national lenses'. At the supranational level, there is the risk that the relevance of formal reference frameworks such as the Treaty provisions and policy documents like the ESS is overstated and the reality of diverging interpretations ignored.

Given that CFSP is, still formally organised, yet not necessarily carried out in all of its practices, an intergovernmental policy field, one would expect that the challenge to democratic quality to be negligible (see e.g. Moravcsik 2002). Subsequently, the constitutive impact on constitutional quality within the EU context would be insubstantial and of little significance. After all, following such a purely formal perspective, CFSP policy decisions are expected to be covered by democratic processes embedded in and regulated by domestically established constitutional

institutions, principles and norms. However, as our emphasis on social practices in the CFSP field shows, CFSP policy making is far more diverse and complex than neither established scrutiny procedures at the national level nor new and more straightforwardly organised supranational scrutiny procedures are in a position to adequately grasp CFSP decision making dynamics. Again, we would expect that whatever the evolution of new scrutiny procedures at both the national and supranational level is that it will be informed through practice rather than through a one-off creation of a (new) formal constitutional arrangement.

In the light of other research findings on divergence with regard to interpretation of norms in different political arenas e.g. domestic arenas of EU member states (UK and Germany) and transnational arenas (Brussels) (Wiener 2008), we would therefore expect that a comparative analysis of social practices with regard to the interpretation of fundamental norms such as democracy, the rule of law and human rights would confirm distinct normative structures of meaning-in-use according to the respective domestic context. Proceeding with this project we were less interested in eventual convergence or divergence of normative interpretation, than in the constitutive impact of social practices on potentially emerging contours of democratic constitutionalism in Europe.

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