

## The European Union - a '*Sui Generis*' International Diplomatic Actor: Challenges Posed to the International Diplomatic Law

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**Abstract:** *It has often been argued that the European Union has a sui generis status by being less than a nation-state, but more than an international organization, which is also reflected in its conduct of diplomatic relations with third states and international organizations. Since its inception, the European Union has managed to set a wide bi- and multilateral diplomatic network – which is subject to the provisions of the 1961 Vienna Convention on Diplomatic Relations (VCDR). This paper`s purpose is to analyze some of the main challenges posed to the international diplomatic law by the EU`s emergence on the diplomatic scene, in the light of the significant transformations brought by the Lisbon Treaty.*

**Keywords:** *European Union, international diplomatic law, Vienna Convention on Diplomatic Relations, Lisbon Treaty, European External Action Service, High Representative for Foreign Affairs and Security Policy, EU Delegations*

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### Introduction

Following a conference held in Vienna in 1961 aiming to codify and clarify the customary international law on diplomatic agents and diplomatic missions, and especially their related privileges and immunities, the Vienna Convention on Diplomatic Relations<sup>1</sup> entered into force in 1964 with virtually all sovereign states becoming signatory parties to it; a major point of interest has remained the application of international diplomatic law by non-state actors such as the European Union conducting its international relations through a worldwide bi- and multilateral diplomatic network which is subject to the provisions of the Vienna Convention.

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<sup>1</sup> Vienna Convention on Diplomatic Relations adopted on April 18, 1961, entered into force on April 24, 1964, United Nations, Treaty Series, vol. 500, p. 95.

The structure of the present paper unfolds as follows. The first section briefly discusses four main innovations introduced by the Lisbon Treaty which have significantly contributed to the reinforcement of EU's international 'actorship': the conferral of legal personality to the EU; the establishment of the positions of High Representative of the Union for Foreign Affairs and Security Policy and of President of the European Council; and at last, the creation of the European External Action Service (EEAS). Without being exhaustive, the second section examines several challenges posed to the international diplomatic law by the EU's diplomatic relations with third countries.

The approach of this paper is mainly analytical, applied, qualitative and finally, conceptual, as it strongly relates to existing theory. The research efforts have been based on two general categories of material: primary sources - comprising official documents issued by the EU institutions - and secondary sources, which in turn can be divided into two categories: first, literature reviewing the specificity of the EU as a diplomatic actor and the challenges it poses to the diplomatic law; and second, literature covering more general aspects of diplomatic law.

### **The EU on the Diplomatic Scene: A Post-Lisbon Review**

The principle of conferral of powers by the Member States to the EU<sup>2</sup> has generated both internal and external effects. Internally, a new legal order of international law was created – for the benefit of which the States have limited their sovereignty, which forms an integral part of national laws and which is essentially characterized by the supremacy<sup>3</sup> and direct effect<sup>4</sup> doctrines 'relating in turn to the overriding character of the EU over domestic legal demands and the ability of individuals to rely upon or invoke EU legal demands before domestic courts'<sup>5</sup>. Externally, this was reflected in EU becoming an increasingly prominent international actor during a lengthy process and the subsequent endeavors of adjusting its intricate diplomatic machinery to new international challenges.

The Lisbon Treaty continued this process and introduced several innovations aimed at improving the coherence of EU's foreign policy, out of which four will be discussed in this section of the paper: the explicit provision on the EU's legal personality; the creation of the positions of High Representative of the Union for Foreign Affairs and Security Policy and of President of the European Council; and finally, the establishment of the European External Action Service (EEAS).

The formal recognition of EU's legal personality under Article 47 TEU 'simplifies its status and appears as an important step towards legal certainty'<sup>6</sup>. According to Article 1(3)

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<sup>2</sup> Consolidated Version of the Treaty on European Union Article 5(1), 2010 O.J. C 83/01.

<sup>3</sup> European Court of Justice, Case 6/64, *Costa v. ENEL*, [1964] ECR 585.

<sup>4</sup> European Court of Justice, Case 26/62, *Van Gend en Loos* [1963] ECR 1.

<sup>5</sup> Timothy Moorhead, 'European Union Law as International Law', *European Journal of Legal Studies*, vol.5, no. 1, 2012, p.107.

<sup>6</sup> Ingolf Pernice, 'The Treaty of Lisbon: Multilevel Constitutionalism in Action', *Columbia Journal of European Law*, vol.15, no.3, 2009, p.396.

TEU the EU replaces and succeeds the European Community. Thus, the EU sent a series of *notes verbales* to third countries and international organizations to communicate them that, beginning with the date of the entry into force of the Treaty of Lisbon, it exercises all rights and assumes all obligations of the European Community while continuing to exercise its existing rights and assume its corresponding obligations.<sup>7</sup> As a result, the EU indisputably became a subject of international law which may act in international fora, conclude international agreements, is legally responsible according to the norms of international law and possesses a right of legation (*ius legationis*) – within the limits of the competences conferred to it by the Treaties. Specifically, according to Article 220 TFEU the EU shall ‘establish all appropriate forms of cooperation’ with the UN and its specialized agencies, the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE) and the Organization for Economic Co-operation and Development (OECD) and other international organizations, these provisions being carried out by the Commission and the High Representative.

Moreover, the former Commission Delegations in third countries and at international organizations became the Union’s Delegations under the authority of the High Representative and were included in the structure of the EEAS<sup>8</sup>. The implementation abroad of the EU’s new diplomatic system following the Lisbon Treaty seems to have received less attention than the evolution of the EEAS headquarters in Brussels, which may be surprising considering the long history of the Delegations going back to the 1950s<sup>9</sup>, which far precedes the EU’s decision to establish the EEAS in Brussels<sup>10</sup>.

According to Article 221 TFEU these act in close cooperation with the Member States` diplomatic and consular missions and are mainly tasked to ensure that decisions defining the EU positions and actions are complied with and implemented; to exchange information and carry out joint assessments; and finally, to contribute to the implementation of the right of citizens of EU to protection on the territory of third countries<sup>11</sup>. By establishing a direct

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<sup>7</sup> Ricardo Gosalbo Bono, The Organization of the External Relations of the European Union in the Treaty of Lisbon, in Panos Koutrakos (ed.), *The European Union`s External Relations a Year after Lisbon*, Centre for the Law of EU External Relations, The Hague, Cleer Working Papers no. 3, 2011, p.13.

<sup>8</sup> Council of the European Union, ‘Presidency Report to the European Council on the European External Action Service’, Brussels, 23 October 2009, 14930/09.

<sup>9</sup> The first Delegation was opened in 1954 in Washington D.C. as an information office of the European Coal and Steel Community (ECSC). During the 1960s and 1970s most of them were opened in Africa - which reflected both the national interests of several post-colonial Member States and the focus on implementing the European development policy. Later on, offices were opened in the capitals of the main EU`s trading partners as a result of the increasing European integration. The Delegations` staff increasingly became more professional and their tasks extended to traditionally diplomatic tasks. However it was not until the Treaty of Maastricht that the Delegations were officially institutionalized which implied ‘a genuine political upgrade’. – Frauke Austermann, ‘Towards Embassies for Europe? EU Delegations in the Union`s Diplomatic System’, Policy Paper 8, Jean Monnet Multilateral Research Network on ‘The Diplomatic System of the European Union’, 2012, pp.1-4. For an in-depth history of Delegations, see the booklet issued by the European Commission DG External Relations, ‘Taking Europe to the world. 50 Years of the European Commission`s External Service’, 2004.

<sup>10</sup> Austermann, p.4.

<sup>11</sup> Consolidated Version of the Treaty on European Union Article 35, 2010 O.J. C 83/01 and Consolidated Version of the Treaty on the Functioning of the European Union Articles 20 and 23, 2008 O.J. C 115/47 [hereinafter TEU and TFEU].

and permanent connection between the EU and third countries, these Delegations have become key instruments in 'endowing Europe with a greater voice and more influence in international affairs'<sup>12</sup>. Their global outreach is *per se* a great asset for the Union, with 141 EU Delegations and Offices around the world; only the five largest EU Member States have more Embassies abroad compared to the EU<sup>13</sup>.

The Delegations' role has been extended and has become more political as they have come to assume a set of duties which were previously carried out by the rotating presidency, especially those referring to the representation and coordination of the EU positions in third countries and in international fora.<sup>14</sup> This results in a 'better institutional memory' allowing the EU Delegations to 'emerge as true information and coordination hubs'<sup>15</sup>. A higher degree of continuity and coherence considerably impacts EU's representation abroad, enhancing its capacity to promote its foreign policy objectives, to influence and engage with a multitude of foreign policy actors: 'third countries thus have a single interlocutor to discuss not just trade and aid, but also political relations, security, energy, natural resources, and migration issues'<sup>16</sup>.

Nevertheless, the EU Delegations face several important challenges. First, the EEAS's establishment was delayed due to the difficulties arising from the Lisbon Treaty's ratification and the negotiations of the new Service<sup>17</sup>. This phase of transition was mainly received in host countries with confusion and disappointment 'by the Lisbon promise of a more united European Union'<sup>18</sup>. Some voices have even argued that because of the EU traditional focus on development in many third countries, it is highly likely that EU Delegations will continue to be regarded simply as 'donor organizations'. Second, the EU Delegations still lack trained diplomatic personnel, which increases their political and diplomatic dependence on the expertise of the staff of national Ministries of Foreign Affairs. Third, other difficulties may stem from the Delegations' relations with national Embassies under different aspects. For instance, in key locations such as Washington, Beijing, New Delhi, Moscow, Cairo, or Tokyo 'it is most challenging for the EEAS to be more than the 28th member state. It is also in these locations, where each member state prioritizes national representation and reporting, that the coordinating role of the EEAS is most vital'<sup>19</sup>. Moreover 'diplomatic representation still touches very sensitively on member states' sovereignty'<sup>20</sup>. To a certain degree, the consolidation of the EU Delegations may occur at the expense of the visibility of national Embassies, especially in the case of

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<sup>12</sup> Timo Behr, Aaretti Siitonen and Johanna Nykänen, 'Rewriting the Ground Rules of European Diplomacy', Finnish Institute of International Affairs, Briefing Paper no.57, 31 March 2010, p. 3.

<sup>13</sup> EEAS, 'EU Delegations', <http://eeas.europa.eu/delegations/>, accessed April 10<sup>th</sup> 2013.

<sup>14</sup> For instance, EU Delegations are responsible for organizing and hosting regular meetings held at different levels for achieving a better coordination, which was previously the task of the Embassy of the Member State which held the Council Presidency.

<sup>15</sup> Austermann, p.5.

<sup>16</sup> Rosa Balfour and Kristi Raik, 'Equipping the European Union for the 21<sup>st</sup> century', The Finnish Institute of International Affairs, FIIA Occasional Report, no. 1, MultiprintOy, Helsinki, 2013, p. 43.

<sup>17</sup> Graham Avery, 'The EU's External Action Service: new actor on the scene', European Policy Center, 2011, p.1.

<sup>18</sup> Austermann, p.7.

<sup>19</sup> Balfour and Raik, p.46.

<sup>20</sup> Austermann, p.8.

smaller Member States for which the system of rotating presidency provided an important opportunity to raise their profile. Yet, EU Delegations bring major political benefits due to their greater outreach, access to local stakeholders and reporting and information-sharing functions. Other difficulties stem from the fact that foreign services have generally managed financial cuts guided solely by national considerations, without taking into account the existence of the EEAS, mostly because the creation of EU Delegations had remained uncertain until the ratification of the Lisbon Treaty<sup>21</sup>. However, EU Delegations allow Member States to focus their resources on key national priorities and rely on EU networks in locations where they have no representation or which are less sensitive for them. Also, further progress can be made in co-location for diplomatic missions or sending national 'laptop diplomats' on the premises of the EU Delegations.

The High Representative has the mission of taking the lead in the EU's Common Foreign and Security Policy (CFSP) and a more general role of ensuring the consistency of the Union's external action. This position incorporates the formerly known 'Troika'<sup>22</sup> as the High Representative simultaneously chairs the Foreign Affairs Council while also being one of the Vice-Presidents of the Commission<sup>23</sup>. Appointing a High Representative aimed to address the previously perceived incoherence and ineffectiveness of the EU which, with a fragmented representation in international relations, lacked a 'common voice'<sup>24</sup>. According to some views, the 'triple hat' of the High Representative would ensure a higher degree of cohesiveness by 'combining in one person the European and the Member States' lines of interest'<sup>25</sup>. Yet, critics have noted the exceptional status due to the High Representative's appointment by the European Council and the general coordination role may sometimes lead to tensions between the High Representative and certain Commissioners or the President of the Commission – in the latter case, mostly because the High Representative might somehow 'challenge the President's primus inter pares position within the Commission'<sup>26</sup>.

Another important novelty advanced by the Lisbon Treaty refers to the formal introduction of the European Council as one of the EU's institutions and the creation of the position of President of the European Council which significantly increases the continuity of the European foreign policy. After the reforms of the Lisbon Treaty, the President is elected by the European Council by qualified majority for a period of two and a half years, renewable once<sup>27</sup>. Although the contribution of the Presidency of the European Council to enhancing the coherence of European foreign policy has been acknowledged, the provisions of the Lisbon Treaty remain ambiguous on certain aspects. For instance, according to Article 27(2) of the TEU the High Representative represents the Union for matters of CFSP, conducts political dialogue with third parties on the Union's behalf

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<sup>21</sup> Balfour and Raik, p.46.

<sup>22</sup> 'The Troika' previously comprised the High Representative for CFSP, the Commissioner for External Relations and the Minister for Foreign Affairs of the rotating Presidency-in-Office.

<sup>23</sup> Article 18 (4) of the TEU.

<sup>24</sup> Kateryna Koehler, 'European Foreign Policy after Lisbon: Strengthening the EU as an International Actor', *Caucasian Review of International Affairs*, vol. 4, no.1, 2010, p. 67.

<sup>25</sup> Pernice, p.399.

<sup>26</sup> Koehler, p.68.

<sup>27</sup> Article 15 of the TEU.

and expresses the Union's position in international organizations and at international conferences. Yet, Article 15 (5) of the TEU tasks the President of the European Council to ensure the external representation of the Union on issues regarding CFSP at Head of State level gatherings. Although the President of the European Council undertakes this role without prejudice to the powers of the High Representative, tensions may arise nevertheless between the two offices and their corresponding staffs. Moreover, matters may be further complicated by the fact that under Article 17 TEU, the President of the Commission shall ensure the EU's external representation in areas outside of the CFSP. As a result, it remains uncertain whether the Lisbon Treaty has provided 'a satisfactory answer to Henry Kissinger's often quoted concern: <Who do I call when I want to speak to Europe?>' <sup>28</sup>.

One of the major objectives of the Lisbon Treaty was to enhance the visibility, coherence and efficiency of EU's external action; for this purpose, the EEAS – 'a historical innovation' – was established and was officially launched on 1 December 2010 as a 'functionally autonomous body' separate from the Commission and Council<sup>29</sup>. Undeniably, the Service unites EU officials from the Commission, the General Secretariat of the Council as well as diplomats from Member States and it integrates distinct EU external relations policies and instruments into a single structure under the authority of the High Representative of the Union for Foreign Affairs and Security Policy<sup>30</sup>. Selecting staff in approximately the same proportions from the Council Secretariat, Commission and Member States provides the advantage of creating a 'real pool of external relations expertise' but it has nevertheless raised the question of how EEAS would 'blend these different elements into a cohesive force with a united philosophy, outlook and *esprit de corps* whilst maintaining budget neutrality'<sup>31</sup>. The structure of the EEAS reflects the 'double-hatted' approach: its main task is to assist the High Representative in fulfilling his/her mandate but the EEAS also assists other actors in EU foreign policy, namely the President of the European Council and the President and Members of the Commission. This arrangement may entail risks of friction and rivalry between the EEAS and the services of the Commission<sup>32</sup> while the actual way in which the EEAS will manage to coordinate and fulfill simultaneously these demands for support remains unclear<sup>33</sup>.

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<sup>28</sup> Ivan Smyth, 'EU External Action After the Entry into Force of the Lisbon Treaty: Coherence at Last?', in Panos Koutrakos (ed), *The European Union's External Relations. A Year after Lisbon*, TMC Asser Instituut, The Hague, p. 64.

<sup>29</sup> Article 1(2) of the Council Decision 2010/427/EU of 26 July 2010 Establishing the Organization and Functioning of the European External Action Service, OJ 2010, L.201/30, 3 August 2010.

<sup>30</sup> Article 27(3) of the TEU.

<sup>31</sup> Smyth, p.64.

<sup>32</sup> Graham Avery, 'The EU's External Action Service: new actor on the scene', *European Policy Center*, 2011, p.2.

<sup>33</sup> Simon Duke, 'The European External Action Service', Policy Paper 2, Jean Monnet Multilateral Research Network on 'The Diplomatic System of the European Union', 2010, p.2.

## The Emergence of a New Diplomatic Actor: Challenges Posed to the International Diplomatic Law

The EU lacks particular competences which have remained a privilege and a monopoly of sovereign states and as a result, it often faces constraints in conducting diplomatic relations.

Firstly, the exclusive competence to recognize other states and/or governments *de jure* or *de facto* – which represents a preliminary condition in order to enter diplomatic relations<sup>34</sup> – has been retained by EU Member States. The international law distinguishes between the distinct (yet occurring simultaneously or immediately) steps of the recognition of a state, the establishment of diplomatic relations and of the establishment of permanent diplomatic missions<sup>35</sup>. Recognition refers to ‘a state’s acknowledgement of a situation, with the intentions of admitting its legal implications’; according to the Montevideo Convention (1933), the recognition of a state should be granted if the aspirant state proves it possesses a permanent population, a defined territory, and a government which is capable of maintaining effective control over its territory and of conducting international relations with other states. The recognition of a state is different from and a prerequisite of the establishment of diplomatic relations; unlike the latter, recognition is a unilateral act and a breach of diplomatic relations does not automatically trigger a withdrawal of recognition; moreover, recognition cannot be withdrawn if the facts do not change<sup>36</sup>. In exchange, the establishment of diplomatic relations, considered a usual and direct means of maintaining permanent contact between two states, takes place by mutual agreement – be it explicit or implicit. Similarly, the establishment of permanent diplomatic missions requires the consent of both states; even when diplomatic relations have been established, it is not obligatory for permanent diplomatic missions to be set up – or at least not in both states<sup>37</sup>.

The process of establishment of diplomatic relations between states implies the formal request issued by the Minister of Foreign Affairs of the sending state to the receiving state, the decision on the opening of a diplomatic mission being taken by the head of state or government. The EU employs a similar process for establishing diplomatic relations. According to the provisions of Article 5 (1) ‘the decision to open or close a delegation shall be adopted by the High Representative, in agreement with the Council and the Commission’. For this purpose, the High Representative ‘shall enter into the necessary arrangements with the host country, the international organization, or the third country concerned’ and shall guarantee that the EU delegations, their staff and property are granted privileges and immunities equivalent to those stipulated in the Vienna Convention on

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<sup>34</sup> Eileen Denza, *Diplomatic Law: A Commentary on the Vienna Convention on Diplomatic Relations*, Oxford University Press, Oxford, 2008, p. 31.

<sup>35</sup> Ivor Roberts, *Satow’s Diplomatic Practice*, Oxford University Press, Oxford, 2009, p.71.

<sup>36</sup> G.R. Berridge and Alan James, *A Dictionary of Diplomacy*, Palgrave Macmillan, New York, 2001, p. 202.

<sup>37</sup> Berridge and James, p.74.

### Diplomatic Relations<sup>38</sup>.

Secondly, another question raised was how the EU would manage to grant a full-fledged diplomatic status for its diplomats in third countries if it could not guarantee equal privileges and immunities on its territory for foreign diplomats accredited to the EU<sup>39</sup>. According to Article 2 of the Vienna Convention on Diplomatic Relations, states agree to establish diplomatic relations with their equals by mutual consent. Reciprocity relies on the states' mutual interests in ensuring that their own diplomats accredited in another country receive equal protection to that offered by them to foreign diplomats on their own territories<sup>40</sup>. The appointment of diplomatic representatives by the head of the sending state is announced to the host state in a letter of credence signed by the head of the sending state or government and addressed to the head of the receiving state- the '*agrément*', which is firmly requested under the provisions of the Vienna Convention on Diplomatic Relations. A solution is stipulated in Article 16 of Protocol No.7 on the privileges and immunities of the EU according to which the Member State in whose territory the Union has its seat – therefore, Belgium – 'shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Union'<sup>41</sup>.

Additionally, the Council's Decision on establishing the organization and functioning of the EEAS does not provide an insight into the legal status of EU Ambassadors to third countries; what is more, even the use of the title of 'Ambassador' by the EU delegations has been vividly disputed: despite of the European Commission's reiterated references to a 'Courtesy Title of Ambassador' in its letters of credence, more recently it has been suggested that actively using this title should be avoided, due to diplomatic sensitivities in Member States and third countries.<sup>42</sup> A related problem concerns the position of EU Ambassadors and their staff in the *corps diplomatique*<sup>43</sup>. According to Article 37 of the Vienna Convention the diplomatic staff other than ambassadors is grouped into members of the mission's administrative and technical staff, members of the mission's service staff, and private servants of members of the mission; each sending state advances its own proposition on the classification of its staff, which is subsequently subjected to the receiving state for acceptance.

The EEAS has its own, distinct classification system for diplomatic staff which reflects the internal administrative grades, and which is transposed into corresponding diplomatic titles to be sent to receiving states. The specific arrangements EU has established with host

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<sup>38</sup> Council Decision 2010/427/EU of 26 July 2010 Establishing the Organization and Functioning of the European External Action Service, OJ 2010, L.201/30, 3 August 2010, Article 5.

<sup>39</sup> During an '*incremental process*' began in the mid-1970s, the European Commission's Delegations have managed to obtain full diplomatic privileges and immunities from their host countries, in accordance with the 1961 Vienna Convention – See Véronique Dimier and Mike McGeever, 'Diplomats Without a Flag: The Institutionalization of the Delegations of the Commission in African, Caribbean and Pacific Countries', *Journal of Common Market Studies*, vol.46, no.3, 2006, p. 496.

<sup>40</sup> Alain Plantey, *Principes de Diplomatie*, Editions A. Pédone, Paris, 2000, pp.207-208.

<sup>41</sup> Protocol No.7 on the Privileges and Immunities of the European Union, OJ 2010, C 83/266, 30 March 2010.

<sup>42</sup> Jan Wouters and Sanderijn Duquet, 'The EU and International Diplomatic Law: New Horizons?', *The Hague Journal of Diplomacy*, vol. 7, 2012, p. 40.

<sup>43</sup> *Ibid.*

countries on the ranking of EU heads of delegation accurately reflect the *sui generis* status of EU as an international diplomatic actor. In the diplomatic practice, the ambassadors of states are first on the diplomatic lists encompassing all the ambassadors present in a capital, while the representatives of international organizations are listed in the second part of this classification. The EU Delegations have expressed their reluctance about being listed in the second part of the diplomatic list and have requested instead to be registered after the list of states' missions, particularly due to the *sui generis* position of the EU<sup>44</sup>. According to Article 16 of the Vienna Convention, the heads of mission should take precedence in their respective classes in the order of the date and time of taking up their functions, which may be the date of presentation of credentials or the date of presentation of a true copy of their letters of credence according to the practice of the receiving state. In contrast, the head of the EU delegation is listed after the heads of states' missions holding the rank of ambassador, but before the heads of mission of lower rank, which implies that EU delegations are exceptions from the 'seniority rules' of the Vienna Convention. Also, the application of the Vienna Convention on Diplomatic Relations to the EU's diplomatic network in particular agreements with the receiving state may raise difficulties in some cases. As previously mentioned, the High Representative is tasked to enter into the necessary arrangements with the receiving state, which may lead to a certain degree of variety in the application of the Vienna Convention.

One of the practical difficulties concerns EU's *laissez-passer*, an alternative to the diplomatic passport, the common travel document for diplomats.<sup>45</sup> For the EU, the legal basis for this travel document is provided by Article 6 of Protocol No.7 on the Privileges and Immunities of the European Union<sup>46</sup> stipulating that the *laissez-passer* 'shall be recognized as valid travel documents by the authorities of the Member States' and 'may be issued to members and servants of the institutions of the Union by the Presidents of these institutions'. The European Commission is responsible for negotiating and concluding with third states agreements for recognition of the EU *laissez-passer*.

Although states generally recognize the *laissez-passer* as a valid travel document it is questionable whether all foreign authorities acknowledge EU's *laissez-passer* and what travel documents should be used by family members of EU delegation. In exchange, seconded national diplomats which work for the EEAS are unlikely to face the same difficulties given that they receive diplomatic passports from their state's government; as such, these legal inequalities are susceptible of further enhancing tensions within EU delegations.

Another challenge in applying the Vienna Convention on Diplomatic Relation to the *sui generis* position of EU is reflected in the case of diplomatic asylum which refers to 'granting refuge in diplomatic (and by extension in consular) premises to fugitives from the authority of the receiving state where they are deemed by the sending state to have

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<sup>44</sup> Ibid.

<sup>45</sup> Berridge and James, p.69.

<sup>46</sup> Art 6 of Protocol No. 7 on Privileges and Immunities of the European Union, attached to the consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2008] OJ C115/01.

given political rather than criminal offense<sup>47</sup>. In the international community no general agreement has been reached on the legal content of this concept: essentially, 'states are uneasy about agreeing to such a right (because of its reciprocal implications), but do not wish to impede their freedom to grant diplomatic asylum in exceptional circumstances'<sup>48</sup>.

In this context EU delegations may face a difficult situation: on the one hand, they have to comply with Article 41(1) of the Vienna Convention on non-interference in the internal affairs of the receiving state; while on the other hand, they must uphold humanitarian rules and act to support the values and principles the EU actively promotes<sup>49</sup>, when they are confronted with persons seeking diplomatic asylum in life-threatening situations. The Vienna Convention does not directly cover the issue of diplomatic asylum; instead, Article 22 (1) stipulates that the premises are inviolable and officials of the receiving state may not enter them except with the consent of the head of mission or of the consular post, respectively<sup>50</sup>: 'thus, inviolability is set forth in such a way as to leave open the possibility of asylum'<sup>51</sup>. As a result, it may be argued that temporarily, a person seeking protection could have a refuge in the EU delegation until a settlement is concluded with the receiving state<sup>52</sup>.

### Concluding Remarks

To conclude, the EU exhibits a *sui generis* character, which is also reflected in its diplomatic relations: on the one hand, the EU's external role exceeds in many respects that of any other international organization, but on the other hand the EU lacks the features of a sovereign state which impedes the development of a 'full-grown legal framework for establishing, maintaining and terminating inter-state relations'<sup>53</sup>. Obviously, the Lisbon Treaty's entry into force brought important innovations which aimed to add more consistency and visibility to EU's external action. To a great extent, this endeavor was successful; yet, building a global EU diplomatic service is 'work in progress' and numerous challenges still arise from the present institutional and legal framework.

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<sup>47</sup> Berridge and James, p.63.

<sup>48</sup> Ibid.

<sup>49</sup> See for instance Article 3(5) of the TEU and Article 21 of the TEU.

<sup>50</sup> Article 22 (1) Vienna Convention on Diplomatic Relations 1961.

<sup>51</sup> Grant V. McClanahan, *Diplomatic Immunity*, Hurst&Co, UK, 1989, p.54.

<sup>52</sup> *Haya de la Torre Case (Colombia v. Peru)*, International Court of Justice (ICJ), 13 June 1951.

<sup>53</sup> Wouters and Duquet, p. 46.

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