

## 9. The position of the European Union in (other) international organizations: confronting legal and political approaches

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### INTRODUCTION

The European Union is increasingly engaged in multilateral diplomacy and continuously stresses its ambitions in relation to, what it calls, ‘effective multilateralism’.<sup>2</sup> Apart from its participation in international regimes in various policy fields,<sup>3</sup> the institutionalization of the role of the EU in the world is reflected in its position in a number of other international organizations.<sup>4</sup> Whereas the legal and political dimensions of the EU’s external relations in general have been given much attention in academic writings, this is less true for the position of the EU in formal international institutions. Yet, it is at these fora that a *structural* role of the EU in global governance becomes most visible. And it is this role that has become more interesting now that it becomes

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<sup>2</sup> See for instance the ‘Report on the Implementation of the European Security Strategy: Providing Security in a Changing World’, Council of the EU, 11 December 2008, p. 1: ‘At a global level, Europe must lead a renewal of the multilateral order’; and the European Security Strategy of 12 December 2003, p. 1: ‘In a world of global threats, global markets and global media, our security and prosperity increasingly depend on an effective multilateral system. The development of a stronger international society, well functioning international institutions and a rule-based international order is our objective.’

<sup>3</sup> For instance non-proliferation and export control regimes.

<sup>4</sup> Whether the EU itself is an international organization is still open to debate. For arguments pointing to an affirmative answer based on the Union’s legal personality see Wessel, R.A., ‘The Legal Status of the European Union’, (1997) 2 *European Foreign Affairs Review* 109; Wessel, R.A., ‘Revisiting the International Legal Status of the EU’, (2000) 5 *European Foreign Affairs Review* 507.

clear that many EU (and national) rules find their origin in decision-making processes in other international organizations.<sup>5</sup>

With the entry into force of the Lisbon Treaty, the EU has entered a new phase. No longer is the world confronted with both the European Community and the European Union as actors on the international stage; since 1 December 2009 the European Union acts as the legal successor of the European Community,<sup>6</sup> while maintaining one of its original policy fields: the foreign, security and defence policy. The EU has thus also replaced the Community in international institutions. In addition, the Lisbon Treaty increased the number of references in the new EU Treaty to the role of the Union in the world and to its relationship with the United Nations.

Both the position of the EU in other international institutions and the different academic approaches to the study of the EU's engagement in this area form the source of the questions raised by this contribution. Over the years the EU has obtained a formal position in some international organizations, either as a full member or as an observer. It is generally held that the participation in an international organization relates to the participation in its organs, that is, the right to attend the meetings, being elected for functions in the organ and exercising voting and speaking rights. In that sense the term 'position' is related to a formal influence on the output of the international organization: decisions (often recommendations, on some occasions binding decisions) and conventions (international agreements prepared and adopted by an organ of an international organization).<sup>7</sup> The Lisbon Treaty heralds an increase of the engagement of the EU in other international institutions, including the future membership of additional international organizations.<sup>8</sup>

Both lawyers and political scientists have shown an interest in the role of the EU in other international institutions and fora. Their approaches, however, seem to have been quite different, which may be a reason why combinations of legal and political approaches in this field are scarce. Lawyers have a tendency to focus on formal competences and have mainly restricted them-

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<sup>5</sup> See Follesdal, A., Wessel, R.A. and Wouters, J. (eds), *Multilevel Regulation and the EU: The Interplay between Global, European and National Normative Processes* (Leiden, Boston: Martinus Nijhoff Publishers 2008).

<sup>6</sup> See Article 1 Treaty on European Union: 'The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union [...]. Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.'

<sup>7</sup> Cf. Frid, R., *The Relations between the EC and International Organizations* (The Hague: Kluwer Law International 1995).

<sup>8</sup> See Article 6 TEU, which provides that the EU shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which in the current situation calls for a membership of the Council of Europe.

selves to the external competences of the (former) European Community.<sup>9</sup> At the same time political analyses have focused on the EU and multilateralism in a broader context, with a particular focus on the role of the Member States.<sup>10</sup> So far, the different approaches and main findings have not been compared, which in our view would be a first step in a possible search for a confrontation of research outcomes. We believe that such confrontation of legal competences and political performance may offer new insights into the (dis)advantages of a separate position of the EU in international organizations. This contribution therefore aims to answer the question how lawyers and political scientists study the position of the EU in other international institutions and to what extent legal competences related to the position of the EU in another international institution have an impact on its political performance. With the further development of the EU's external relations (for instance reflected in the newly established EU External Action Service<sup>11</sup>), this confrontation of legal and political findings may be helpful in understanding the structural position and role of the EU in global governance.

The following section first of all aims to cover the main legal provisions in relation to the position of the EU in international organizations. It thus reveals the main questions raised by lawyers who study this part of EU external relations law. The third section gives an overview of the key perspectives offered by political science on the position of the EU in international organizations and of the questions studied by that discipline. Thus, both sections also address the substantive issues related to the topic. They end with a summary of the main findings, which are subsequently confronted in the fourth section. That, concluding, section is also used to present some themes for a possible multi-disciplinary research agenda in this area.

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<sup>9</sup> See for instance Frid, *op. cit.*, p. 120; Sack, J., 'The European Community's Membership of International Organizations', (1995) 32 *Common Market Law Review* 1127.

<sup>10</sup> See for instance Elgström, O. and Smith, M. (eds), *The European Union's Roles in International Politics: Concepts and Analysis* (London: Routledge 2006), Laatikainen, K. and Smith, K. (eds), *The European Union at the United Nations: Intersecting Multilateralisms* (Basingstoke: Palgrave 2006).

<sup>11</sup> See for instance Crowe, B., *The European External Action Service: Roadmap for Success* (London, Chatham House 2008); and Vanhoonacker, S. and Reslow, N., 'The European External Action Service: Living Forwards by Understanding Backwards', (2010) 15 *European Foreign Affairs Review* 1.

## A LEGAL PERSPECTIVE ON THE POSITION OF THE EU IN OTHER INTERNATIONAL ORGANIZATIONS

### **Treaty Competences Related to the Participation of the EU in International Organizations**

As indicated above, legal analyses in the area of the EU's external relations show a strong focus on formal competences. Thus, studies related to the position of the EU in other international organizations mainly aim to investigate – on the basis of an analysis of Treaty provisions, international agreements and decision-making procedures – what the EU and its member states can or should do. Quite often, case law is needed to interpret unclear or conflicting rules and principles.<sup>12</sup>

For lawyers, the Treaties are the alpha and the omega: they started the whole process of European integration and ultimately define its limits in terms of competences. The Treaties are therefore also the starting point for an analysis of the EU's engagement in international institutions. The two new (post-Lisbon) EU Treaties – the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) – deal with the position of the EU in other international organizations in various ways. Generally, the possibility or need for the EU to occupy a separate position in another international organization depends on two factors: first, the division of competences between the EU and its Member States in the particular issue area; and, second, the statute of the international organization. As only few international organizations allow for other international organizations to become a full member, one would assume the second factor in particular to stand in the way of an extension of the Union's role based on the further development of its external relations. At the same time, however, internal struggles between Member States or between Member States and EU institutions may form an obstacle to the accession of the EU to an international organization. Thus, even in areas where the EU has extensive competences, the EU may be barred from full participation in the global decision-making process (cf. the International Maritime Organization (IMO), the International Civil Aviation Organization (ICAO), the River Rhine Commissions, the International Energy Agency, the executive board of the UN High Commissioner for Refugees (UNHCR)) or in bodies under the UN Convention on the Law of the Sea (UNCLOS).<sup>13</sup>

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<sup>12</sup> An extensive analysis of external relations (case) law may be found in Koutrakos, P., *EU International Relations Law* (Oxford: Hart Publishing 2006), and Eeckhout, P., *External Relations of the European Union: Legal and Constitutional Foundations* (Oxford: Oxford University Press 2005).

<sup>13</sup> See for more complete surveys of the participation of the EU in international

Nevertheless, from a legal perspective, the need for a formal role of the EU in other international organizations is obvious whenever the EU has a competence related to the objectives and functions of the other international organization. This holds true in particular for areas in which the EU enjoys an exclusive competence, but seems equally valid when the competence is shared with the Member States. However, despite an active role of the EU in international organizations in practice, one will look in vain for an explicit legal competence in the treaties. The absence of a clear and explicit competence means that the participation in (and the membership of) international organizations is based on implied powers only, which find their source in the general competences the Union enjoys in the different policy fields. Thus, the Union's membership of the Food and Agricultural Organization (FAO) is based on the Articles 43 TFEU (agriculture and fisheries), 207 TFEU (commercial policy) and 209 TFEU (development cooperation).<sup>14</sup> What comes closest to a competence-conferring provision is Article 211 TFEU: 'Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations.' That this 'cooperation' may also lead to the establishment of legal relationships can be derived from the provisions creating a competence for the Union to conclude international agreements. Thus, Article 216(1) TFEU provides for international agreements to be concluded 'with one or more third countries or international organizations' and Article 217 TFEU allows for association agreements to be concluded with both states and international organizations.<sup>15</sup> So-called 'constitutive agreements' by which new international organizations are created, or accession agreements to acquire membership of an international organization, are not excluded. In fact, the European Court of Justice established that the European Community's competences in the field of external relations included the power to create new international organizations.<sup>16</sup> Both the

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organizations: Hoffmeister, F., 'Outsider or Frontrunner? Recent Developments under International and European Law on the Status of the European Union in International Organizations and Treaty Bodies', (2007) 44 *Common Market Law Review* 41; also Hoffmeister, F. and Kuijper, P.J., 'The States of the European Union at the United Nations: Institutional Ambiguities and Political Realities' in Hoffmeister, F., Wouters, J. and Ruys, T. (eds), *The United Nations and the European Union: An Ever Stronger Partnership* (The Hague: T.M.C. Asser Press 2006) p. 9.

<sup>14</sup> See in general on EU-FAO relations: Pedersen, J.M., 'FAO-EU Cooperation: An Ever Stronger Partnership', in Hoffmeister, Wouters and Ruys, *op. cit.*, pp. 63-91.

<sup>15</sup> See for the procedure Arts. 218 and 219(3) TFEU.

<sup>16</sup> Opinion 1/76 [1976] ECR 1977. The binding force of decisions of those organizations within the EU legal order raises a number of interesting legal questions. See on this issue for instance Martenczuk, B., 'Decisions of Bodies Established by International Agreements and the Community Legal Order', in Kronenberger, V. (ed.), *The European Union and the International Legal Order* (The Hague: T.M.C. Asser Press 2001) p. 141.

European Economic Area (EEA) and the 'associations' created by association agreements serve as examples of international organizations created by (at that time) the European Community.<sup>17</sup>

Apart from these more general indications of a competence to engage in other international organizations, the Treaties explicitly refer to a number of policy terrains or even specific international organizations. Thus, Article 37 TEU allows for international agreements to be concluded 'with one or more states or international organizations' in the area of the common foreign and security policy. Similar provision may be found in relation to environmental policy (Art. 191 (3) TFEU), development cooperation (Art. 209(2) TFEU),<sup>18</sup> economic, financial and technical cooperation (Art. 212(3) TFEU) and humanitarian aid (Art. 214(4) TFEU). In the latter area, the Treaty refers to the coordination of operations with 'international organizations and bodies, in particular those forming part of the United Nations system' (Art. 214(7) TFEU). The United Nations (and its Charter) is also mentioned quite frequently in relation to a number of other policy areas of the Union.<sup>19</sup> More generally, Art. 220(1) TFEU provides that the Union 'shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialized agencies, the Council of Europe, the Organization for Security and Cooperation in Europe and the Organization for Economic Cooperation and Development' and that it 'shall also maintain such relations as are appropriate with other international organizations'. All in all, however, the competences of the EU in relation to its relationship with other international organizations are fragmented and scattered all over the Treaties. Apart from the competences of the EU itself, many of the provisions relate to 'cooperation' or to the role of Member States. Thus, the idea of fostering cooperation with third countries and competent international organizations returns in fields of education and sport (Art. 165(3) TFEU), vocational training (Art. 166(3) TFEU), culture

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<sup>17</sup> Cf. Schermers, H.G. and Blokker, N.M., *International Institutional Law* (Leiden: Martinus Nijhoff Publishers 2003), pp. 1137–9.

<sup>18</sup> In relation to development cooperation a number of provisions have been included to strengthen commitments in that area. Thus, Art. 208(2) TFEU provides: 'The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.' And 210(1) TFEU: 'In order to promote the complementarity and efficiency of their action, the Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Union aid programmes.'

<sup>19</sup> See Arts. 3(5) TEU, 21(1–2) TEU, 34(2) TEU, 42(1 and 7) TEU, 208(2) TFEU, 214(7) TFEU, and 220(1) TFEU.

(Art. 167(3) TFEU) and public health (Art. 168(3) TFEU). A similar promotion of cooperation with other international organizations is mentioned in relation to social policy (Art. 156 TFEU) and Union research, technological development and demonstration (Art. 18(b) TFEU).

In addition, the Union's foreign and security policy includes a number of rules on the way in which the EU wishes to present itself in international organizations. In line with his (or in fact her) upgraded position,<sup>20</sup> the Union's High Representative for Foreign Affairs and Security Policy 'shall express the Union's position in international organisations and at international conferences' (Art. 27(2) TEU). She is also responsible for organizing the coordination of the actions by Member States in international organizations and at international conferences (Art. 34(1) TEU).<sup>21</sup> The need for coordination between the Union and its Member States (and their diplomatic missions and delegations) in international organizations arises also in the obligation for the diplomatic missions of the Member States and the Union delegations to cooperate and to contribute to formulating and implementing a common approach (Arts. 32 and 35 TEU). Interestingly enough, the treaty for the first time also mentions 'Union delegations in third countries and at international organizations' which shall represent the Union (Art. 221(1) TFEU). However, Member States seem to be somewhat anxious about the developments in this area. In a special declaration to the Treaty (No. 13) they stated that: '[...] the creation of the office of High Representative of the Union for Foreign Affairs and Security Policy and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations'.

Apart from some references in relation to the European Central Bank and the European Investment Bank,<sup>22</sup> this completes the list of provisions related

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<sup>20</sup> See Blockmans, S.F. and Wessel, R.A., 'The European Union and Crisis Management: Will the Lisbon Treaty Make the EU More Effective?', (2009) 14 *Journal of Conflict and Security Law* 265; also as *CLEER Working Papers* 2009/1. The first person appointed to this job was Baroness Catherine Ashton.

<sup>21</sup> Cf. also the obligations of Member States in Art. 34: '1. [...] 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. 2. In accordance with Article 24(3), 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.'

<sup>22</sup> Cf. Protocol No. 4 (on the Statute of the European System of Central Banks and of the European Central Bank), Arts. 5(1), 23 and 31(1); and Protocol 5 (on the Statute of the European Investment Bank), Art. 14.

to the position and role of the Union in international organizations. However, ever since the 1971 *ERTA* case, the European Court of Justice also acknowledged the treaty-making capacity of the Community in cases where this was not explicitly provided for in the Treaty: 'Such authority arises not only from an express conferment by the Treaty [...] but may equally flow from other provisions of the Treaty and from measures adopted, within the framework of those provisions, by the Community institutions.' In fact, 'regard must be had to the whole scheme of the Treaty no less than to its substantive provisions'.<sup>23</sup> This means that international agreements, including the ones whereby the EU becomes a member of another international organization,<sup>24</sup> may also be based on the external dimension of an internal competence.

In a legal approach the quest for competences is important, but the question how and to what extent the EU makes use of these extensive competences is also relevant and will be addressed next.

### **International Organizations in which the EU has a Legal Position**

Part of the legal approach in this area is devoted to the way in which the EU makes use of its external competences. Research then reveals that the EU can have a legal position in another international organization or other international body either through full membership or through an observer status with a variety of legal rights and duties. Full membership is mainly found in areas where the EU has extensive competences (such as trade, fisheries and largely harmonized dimensions of the internal market).

The EU is a full member of a limited number of international organizations only, including the Food and Agricultural Organization (FAO), the World Trade Organization (WTO), the European Bank for Reconstruction and Development (EBRD), Eurocontrol, the Energy Commission, the Codex Alimentarius Commission and the Hague Conference on Private International

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<sup>23</sup> ECJ, Case 22/70 *Commission v. Council (ERTA)* [1971] ECR 263, paras 15–16. Cf. also ECJ, Opinion 1/76 *Draft Agreement establishing a European laying-up fund for inland waterway vessels* [1977] ECR 741, in which the Court argued that the external power can be used even in the absence of the actual exercise of the internal competence. See for the impact of this line of reasoning on subsequent case law and practice e.g., Koutrakos (2006), *op. cit.*, pp. 77–134; Eeckhout (2005), *op. cit.*, Chapter 2; and Ott, A. and Wessel, R.A., 'The EU's External Relations Regime: Multilevel Complexity in an Expanding Union', in Blockmans, S. and Lazowski, A. (eds), *The European Union and its Neighbours* (The Hague: T.M.C. Asser Press 2006), pp. 19–60.

<sup>24</sup> This competence was explicitly acknowledged by the Court in Opinion 2/94 *WTO* [1994] ECR I-5267, in which the Court recognized the Community competence to create the World Trade Organization. See Frid, *op. cit.*, pp. 119–32 and pp. 345–59 as well as the references in the previous footnote.

Law. In addition it is a de facto member of the World Customs Organization (WCO), and also its participation in the Organization for Economic Cooperation and Development (OECD) comes quite close to full membership.<sup>25</sup> Accession to the Organization on International Carriage by Rail (OTIF) is pending.<sup>26</sup> In these cases there is often a situation of so-called ‘mixity’, based on the fact that many competences are shared between the EU and its Member States.<sup>27</sup> But, as in external relations law in general, the ‘principle of sincere cooperation’ (Art. 4(3) TEU<sup>28</sup>) or as it is often referred to ‘the duty of cooperation’, may restrain Member States in their actions, irrespective of the unclear practical implications of the principle in relation to the actions of the EU and its Member States in other international organizations. As Eeckhout holds: ‘The [...] case law on the duty of co-operation and the Community’s experience with work in international organizations suggest that the principle’s effectiveness is limited if it is not fleshed out. There is an obvious case for creating some EC (or EU) treaty language on this crucial principle for mixed external action. There is also an obvious case for basic legal texts on how to conduct co-operation in the framework of international organizations.’<sup>29</sup> As we have seen, the Lisbon Treaty did not repair this deficiency.

Observer status implies that the EU can attend meetings of a body or an organization, but without voting rights. Furthermore, the presence of an observer can be limited to formal meetings only, after all formal and informal consultations have been conducted with members and relevant parties. In addition, formal interventions may only be possible at the end of the interventions

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<sup>25</sup> According to Art. 13 of the 1960 Paris Convention in conjunction with Protocol 1, the Commission (by then representing the European Communities) ‘shall take part in the work’ of the OECD. In the view of the OECD itself, ‘this participation goes well beyond that of a mere observer, and in fact gives the Commission quasi-Member status’ ([www.oecd.org](http://www.oecd.org)).

<sup>26</sup> More extensively: Hoffmeister, *op. cit.*

<sup>27</sup> Sack, *op. cit.*, pp. 1232–3. See in general on ‘mixity’: Hillion, C. and Koutrakos, P. (eds), *Mixed Agreements Revisited: The EU and its Member States in the World* (Oxford: Hart Publishing 2010).

<sup>28</sup> Art. 4(3) TEU: ‘Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union. The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives.’

<sup>29</sup> See on the ‘duty of cooperation’ Eeckhout, *op. cit.*, p. 214–15; Hillion, C., ‘Mixity and Coherence in EU External Relations: The Significance of the Duty of Cooperation’, (2009) *CLEER Working Papers*, 2. That this principle is relevant as well in relation to the membership of international organizations seems to follow from the WTO Opinion (*op. cit.*), paras. 106–9.

of formal participants, which may have an effect on the political weight of the EU.<sup>30</sup> In areas where the EU does have formal competences, but where the statutes of the particular international organizations do not allow for EU membership, this may lead to a complex form of EU involvement. A good example is formed by the International Labour Organization (ILO). The 1919 ILO Constitution does not allow for the membership of international organizations. The existence of Community competences in the area of social policy nevertheless called for participation of the Community in ILO Conferences. The Community was officially granted an observer status in 1989.<sup>31</sup> The observer status allows the EU (represented by the Commission) to speak and participate in ILO Conferences, to be present at the meeting of the Committees of the Conference and to participate in discussions there. The status also allows for presence at the ILO Governing Body, where the Commission may participate in the Plenary as well as in the committees.<sup>32</sup> However, it cannot become a party to any of the ILO Conventions.<sup>33</sup>

The complex division of powers between the EU and its Member States in the ILO was addressed by the Court in Opinion 2/91, where – at that time in relation to the European Community – it held that ‘its external competences may, if necessary, be exercised through the medium of the Member States acting jointly in the Community’s interest’.<sup>34</sup> Thus in this case the Member States are used to act as agents of the European Union to allow the latter to make use of its external competences in this field. Obviously, coordination issues arise, although both the EU and its Member States increasingly see the need of a joint approach.<sup>35</sup>

The extensive observer status enjoyed by the EU in the ILO is not unique and can be found in many Specialised Agencies and programmes of the United Nations, including the UNCTAD, UNEP, UNICEF, UNDP, UNHCR, WFP,

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<sup>30</sup> See Hoffmeister and Kuijper, *op. cit.*

<sup>31</sup> See exchange of letters of 21 and 22 December 1989 between the European Commission and the International Labour Organization, OJ 1989, C 24/8, renewed by an exchange of letters of 14 May 2001, OJ 2001, C 165/23. Cf. also F. Hoffmeister, *op. cit.*, at 51–2.

<sup>32</sup> See the ILC Standing Orders, Arts 14(9) and 56(7). Also Delarue, R., ‘ILO–EU Cooperation on Employment and Social Affairs’, in Hoffmeister, Wouters and Ruys (eds), *op. cit.*, pp. 93–115 at 102.

<sup>33</sup> Cf. ECJ Opinion 2/91 *Re Convention no. 170 of the ILO* [1993] ECR I-1061, para 37, where the ECJ held that the Community ‘cannot, as international law stands at present, itself conclude an ILO convention and must do so through the medium of the Member States’.

<sup>34</sup> ECJ Opinion 2/91, para. 5.

<sup>35</sup> Cf. Delarue, *op. cit.*, who argues that coordination on ILO matters ‘is slowly gaining ground both in Brussels and in Geneva and the Community raises its profile in ILO discussions on a political level’.

UNRWA, HRC, UNESCO, WHO, ICAO and WIPO, as well as in the UN's General Assembly and in ECOSOC. With regard to a number of international organizations (including the ICAO, UNESCO, OECD, and the Council of Europe) the arrangements have been referred to as 'full participant' status, indicating that the only element that separates the EU from membership is related to the voting rights.<sup>36</sup>

The FAO and the WTO are the obvious examples of organizations in which the EU participates as a full member. While as a rule EU membership is still excluded both in the UN itself and in the Specialised Agencies,<sup>37</sup> the Community did join the FAO in 1991, after the provisions of the FAO Constitution had been amended.<sup>38</sup> From the outset, the division of competences was a difficult issue to handle and was to be based on a declaration of competence that had to be submitted by the Community at the time of its application. In addition, EU competences need to be established before each FAO meeting and for each item on the agenda. Without that statement, Member States competences are presumed.<sup>39</sup> In cases where the EU is entitled to vote, its vote equals the number of votes of the Member States.<sup>40</sup> The requirement of constant statements of competences seems to form an obstacle to an efficient functioning of the EU in the FAO.<sup>41</sup> In addition, the EU is excluded from the organizational and budgetary affairs of the FAO. Thus the EU is 'not eligible for election or designation' to bodies with restricted membership, which include the Constitutional, Legal, Financial and Planning Committees.<sup>42</sup> The actual and potential problems which this state of affairs raises will be addressed below. Following up on its FAO membership, the Community joined the Codex Alimentarius Commission in 2003. The CAC was established by the FAO and the WHO and provides almost equal voting and participation rights to the EU as the FAO.<sup>43</sup>

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<sup>36</sup> Hoffmeister, *op. cit.*, at 54.

<sup>37</sup> See for the UN Art. 4(1) of the UN Charter.

<sup>38</sup> Art. II FAO Constitution was modified to allow for the accession of regional economic organizations. See also R. Frid (1993), 'The European Economic Community: A Member of a Specialized Agency of the United Nations', 4, *EJIL*, 239.

<sup>39</sup> Cf. CFAO, Art. II, para. 6.

<sup>40</sup> CFAO, Art. II, para. 10.

<sup>41</sup> See also Eeckhout, *op. cit.*, at 205.

<sup>42</sup> CFAO, Art. II, para. 9. Cf. also Sack, *op. cit.*, at 1245.

<sup>43</sup> See on the role of the EU in the CAC also Pederson, *op. cit.* See in general on bodies established by international organizations E. Chiti and R.A. Wessel (2010), 'The Emergence of International Agencies in the Global Administrative Space', in White, N. and Collins, R. (eds), *International Organizations and the Idea of Autonomy* (London: Routledge, forthcoming).

The EU's membership of the WTO<sup>44</sup> differs in the sense that the Community was one of the founders of the WTO and a major partner in the Uruguay Round that led to its establishment.<sup>45</sup> No difference is made between EU and state membership, although here also voting rights may be used either by the EU (in which case the EU vote has the weight of the number of its Member States) or by the individual EU Member States. However, due to the fact that voting rarely takes place in the WTO, the voting rules remain rather theoretical.<sup>46</sup> Nevertheless, competence problems remain a source for a complex participation of both the EU and its Member States in the WTO. In Opinion 1/95 the Court held that the Community did not have an exclusive competence to conclude agreements in the area of trade in services and trade related aspects of intellectual property rights,<sup>47</sup> two areas which in the form of the Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) form part of the WTO system (next to the modified General Agreement on Tariffs and Trade – GATT). This has not prevented the EU from playing an active role also in relation to these areas. Billet pointed to two reasons for an active role of the Commission even in cases where competences are (mainly) in the hands of the Member States: first, the strongly institutionalized setting of the WTO, in particular in relation to the system of dispute settlement strengthens the position of the Commission 'both internally – vis-à-vis the member States – as well as internationally'; second, the EU's own decision-making procedure (already implying a strong role for the Commission) as well as the Commission's expertise in the area.<sup>48</sup>

The participation of the EU in international organizations reflects the flexibility of the EU's external relations regime. As legal competences are divided between the Union and its Member States the actual use of these competences to a large extent depends on the possibilities offered by the organization.

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<sup>44</sup> See Art. XI, para. 1 of the 1994 Marrakesh Agreement by which the WTO was created.

<sup>45</sup> Eeckhout, *op. cit.*, at 205.

<sup>46</sup> *Ibid.*

<sup>47</sup> ECJ, Opinion 1/94 WTO [1994] ECR I-5267. See for an extensive analysis e.g. Frid, *op. cit.*, pp. 119–32 and 345–59; Bourgeois, J.H.J., 'The EC in the WTO and Advisory Opinion 1/94: An Echernach Procession', (1996) 36 *Common Market Law Review* 763; Billet, S., 'From GATT to WTO: Internal Struggle for External Competences in the EU', (2006) 44 *Journal of Common Market Studies* 899.

<sup>48</sup> Billet, *op. cit.*, at 901–5.

**Main Findings offered by the Legal Perspective**

The legal approach reveals a strong focus on competences. The main findings are therefore related to what the EU can do, how it can do this (and has done it) and what the division of competences is in relation to its Member States. In that respect, it can be concluded that the Treaties do allow for the EU to be engaged in international institutions and even to become a full member of other international organizations. The EU makes full use of its possibilities, but is often hampered by either the rules of the international organization or reluctance by its own Member States to allow the EU to act on their behalf. Answers to questions are sought by studying and interpreting both Treaty provisions and decisions and by analysing case law of the European Court of Justice. The result of the legal approach is that we know to what extent the EU is (legally) allowed to be engaged in international institutions. This is not to say that law has nothing more to offer. On a day-to-day basis the legal services of the Council and the Commission answer legal questions which also relate to the existence of a legal basis for external actions of the EU, the conclusion of international agreements with other international organizations or third states or the division of competences with the Member States. With the increasing international role of the Union, the question of which rules of international law are applicable, both in relation to external actions and within the EU's own legal order, has also gained more attention. Thus general international rules on the responsibility of international organizations or on the division of international responsibility between the EU and its Member States become increasingly relevant. Internally, this may also call for possibilities for the EU to oblige its Member States to keep the international commitments.<sup>49</sup>

Irrespective of its valuable contribution to the visibility of the institutional legal framework which defines the EU's role in other international organizations, the limitations of the legal approach are obvious. It has no answer to the question why the EU would opt to use a certain competence, or why Member States are reluctant to hand over powers. These are questions that are raised by political scientists in particular.

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<sup>49</sup> Sack, *op. cit.*, at 1235–6.

## ANALYSING THE POLITICS OF EU ENGAGEMENT IN INTERNATIONAL ORGANIZATIONS

### Key Distinctions

Unlike the legal approach, *the* political approach does not exist. Research on the politics of the EU's engagement in international organizations is characterized by the cultivation of several avenues of inquiry. Significantly, the approaches share a relatively broad understanding of 'the EU', consisting of both the EU in a narrow sense (one or more EU institutions) and the collective of EU Member States, including the complex interplay between the two levels of political authority and governance. In order to briefly review this research, we use two foundational analytical distinctions: we make a distinction between research characterized by implicit and by explicit theoretical reflection, respectively. The former approach – implicit theoretical assumptions – characterizes many policy studies. Concerning theoretically explicit approaches, we make a distinction between material-functionalist and cultural-sociological approaches.<sup>50</sup> In other words, research on the politics of the EU's engagement with international organizations is clustered around three major perspectives, representing different theoretical assumptions and different research interests. In the following, we briefly summarize each of these perspectives and their main findings regarding both the nature of the EU and the relationship between the EU and international organizations.

It should be emphasized from the very beginning that the topic – the EU and/in international organizations – short-circuits several standard political science conceptions. Thus, while some analysts regard the EU as an international organization itself, other analysts consider this status a feature of the past and therefore explore the degree to which the EU has developed genuine policies towards international organizations or the possible impact the EU might have on these institutions. This analytical short-circuit might reflect the bifurcated politics of the issue under investigation. Indeed, the EU seems to enjoy a split personality or identity: is the EU a (European) Union of States in international organizations or do Member States give priority to the joy flowing from the power, pride and prestige of individual membership of international organizations.

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<sup>50</sup> March, J.G. and Olsen, J.P., *Rediscovering Institutions: The Organizational Basis of Politics* (New York: Free Press 1989). See also Barnett, M. and Finnemore, M., *Rules for the World: International Organizations in Global Politics* (Ithaca: Cornell University Press 2004).

## Different Political Perspectives

### Policy studies perspectives

The policy studies approach is available for analysts who do not have an interest in how the EU is formally or informally *represented* in international organizations, but do have an interest in the *policies* the EU is pursuing and in policy-making processes.<sup>51</sup> Policy studies are often less theory informed and more *ad hoc* explanation oriented. A certain over-emphasis on current affairs tends to characterize this type of studies, implying that contemporary policies are given priority over historical cases or long term processes and trends. However, a research interest in policy can be handled in both descriptive and analytical fashions. When opting for the former, policies or their changing characteristics are simply described without much further ado. When analysts are more ambitious, explanations – whether interpretive, normative or causal – enter the picture. When they explain policy, analysts point at various explanatory factors, such as interests or identity, or they apply the cascading argument that identity explains interests, which in turn explain policy.<sup>52</sup> Some studies are informed by the generic new institutionalist argument: institutions matter! As law is an integral part of institutions, this is one of the nodal points where law and politics are closely intertwined. The ways in which institutions (and thus law) matter vary according to the specific form of new institutionalism, whether rational, historical or sociological.

Finally, it should be emphasized that policy studies can be different from studies of decision-making processes, a distinction which is important in order to understand the different logics of law and politics. While law might play a part in for the allocation of decision-making roles, it is presumably less directly important in policy-making processes. By contrast, the origin of *policies* might be found in EU member states, in EU institutions (whether the Commission, Council Secretariat or Council Presidency), or in international organizations downloading policies to the European level.<sup>53</sup>

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<sup>51</sup> Ortega, M. (ed.), 'The European Union and the United Nations: Partners in Effective Multilateralism', (2005) Chaillot Paper, 78; Biscop, S., *The European Security Strategy: A Global Agenda for Positive Power* (Aldershot: Ashgate 2005).

<sup>52</sup> See e.g. Katzenstein, P. (ed.), *The Culture of National Security: Norms and Identity in World Politics*, (Ithaca: Cornell University Press 1996). For an application of the framework within the field reviewed here, see Jørgensen, K.E. and Laatikainen, K., 'The EU at the UN', paper presented at the Second ECPR Pan-European Conference on EU Politics, Bologna in 2004.

<sup>53</sup> Fernández, O.C. and Jørgensen, K.E. (eds), *The Influence of International Institutions on the European Union* (forthcoming).

### Material-functionalist perspectives

This grouping of perspectives comprises four rather different materialist-functional perspectives. First, according to analysts applying balance of power approaches, the EU is a mere international organization and thus does not hold anything but false promises.<sup>54</sup>

International organizations are assumed to reflect the (changing) balance of power or experience institutional decay. In the latter case they become empty organizational shells, having the fate of the League of Nations during the 1930s or the Western European Union 1954–1984. In the former case, institutions reflect and serve instrumentally the interests of powerful members. As regards the EU, the general claim is that the EU is not an international actor and certainly not a constitutive unit of the international system. What appears to be EU policy is really just a coincidental consensus of the policies of larger member states. In this perspective, it is not surprising that the EU did not have an ESDP until 1998, that is until the UK government redefined British interests and joined the German and French governments in the shared understanding that developing an ESDP might be useful.<sup>55</sup> It is equally unsurprising that the EU-3 grouping prefers to engage in exclusive diplomatic interaction with Iran and only uses the EU for the provision of diplomatic carrots and to amplify the policy of the EU-3. Finally, it is not surprising that the EU has experienced severe problems towards international organizations, because especially the larger EU member states enjoy their individual membership and only use the EU channel as a potential and sometimes convenient add-on mechanism.

The second approach, neoliberal institutionalism, shares much of the argument just described: international organizations serve functional needs and reflect state preferences. However, analysts of this breed nonetheless conclude that international institutions do matter. They make a difference because they reduce problems of collective action, contribute to limit transaction costs and, generally, contribute to institutionalizing world politics. In this perspective, the EU is part of a general trend towards an increasingly institutionalized world, yet the fate of this trend depends crucially on state strategies.<sup>56</sup>

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<sup>54</sup> Mearsheimer, J.J., 'The False Promise of International Institutions', (1995) 19 *International Security*, 5.

<sup>55</sup> Posen, B., 'European Union Security and Defense Policy: Response to Unipolarity?', (2006) 15 *Security Studies* 149. Hyde-Price, A., *European Security in the Twenty-First Century: The Challenge of Multipolarity* (London: Routledge 2007).

<sup>56</sup> Keohane, R.O., *International Institutions and State Power: Essays in International Relations Theory* (Boulder, San Francisco and London: Westview Press 1989). Keohane, R.O., Nye, J. and Hoffmann, S., *After the Cold War: International Institutions and State Strategies in Europe, 1989–1991*, (Cambridge, MA.: Harvard University Press 1993).

The third approach within the material-functionalist grouping, bureaucratic politics, is usually more material than functional. The general idea is that policy is the outcome of bureaucratic in-fights and that policy therefore is determined by the winner of such conflicts or reflects some messy compromise between different bureaucratic interests. In a world of hundreds of international organizations there are perpetual coordination problems between different organizations with overlapping functions and usually resources are scarce. Analysts emphasizing cooperative features usually opt for an inter-organizational approach, describing the evolving networks of organizations engaged in 'knitting' together political and bureaucratic ends and means within specific issue areas. Thus, the EU and the UN engage in jointly updating doctrines of peacekeeping.<sup>57</sup> The EU and NATO define potential mission overlap and identify ways in which the military forces of states might be shared.<sup>58</sup> Other analysts emphasize features of conflict, for example competition for budgets, attention of Member States and demands of military missions. They note how the EU has gradually drained the Council of Europe and the OSCE for missions, the EFTA for members and WHO-Europe for a *raison d'être*. Moreover, they analyse factors causing potential conflicts among international organizations, for instance the parallel development of crisis management capabilities in the EU and NATO.<sup>59</sup>

Finally, principal-agent model analysts take their point of departure in the formal settings and then prioritize formal relations between principals (usually Member States) and agents (usually EU institutions).<sup>60</sup> According to this approach, the EU is analytically 'allowed' to be an actor, cultivating its own conceptions of means and ends in world politics and pursuing its own interests.

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<sup>57</sup> See Kuehne, W., 'Peace Operations and Peacebuilding in the Transatlantic Dialogue', (2009) *ZIF Analysis* 08/09.

<sup>58</sup> Warwick, J. and Koops, J., 'The European Union and NATO: "Shrewd inter-organizationalism" in the making?', in Jørgensen, K.E. (ed.), *The European Union and International Organizations* (London and New York: Routledge 2009), pp. 101–30.

<sup>59</sup> Biermann, R., 'Towards a Theory of Inter-organizational Networking: The Euro-Atlantic Security Institutions Interacting', (2007) 3 *The Review of International Organizations* 151; Guigner, S., 'The EU's role(s) in European Public Health: The Interdependence of Roles Within a Saturated Space of International Organizations', in Elgström, O. and Smith, M. (eds), *The European Union's Roles in International Politics: Concepts and Analysis* (London: Routledge 2006); van Ham, P., 'EU-OSCE relations: Partners or Rivals in Security?' in Jørgensen, K.E. (ed.), *The European Union and International Organizations* (London: Routledge 2009).

<sup>60</sup> For the general argument, see Hawkins, D.J., Lake, D.A., Nielson, D.L. and Tierney, M.J. (eds), *Delegation and Agency in International Organizations* (Cambridge: Cambridge University Press 2006). For an application of the approach in studies of relations between the EU and international organizations, see special issue of *Journal of European Public Policy* (forthcoming, 2011).

It is because of such actor-qualities that principals need to specify mandates for delegation and establish mechanisms for monitoring their agents. The topic of EU performance in international organizations implies that issues of collective principals, incomplete contracting and double delegation (to both the EU and international organizations) characterize the field of study. In principal–agent models, the issue of stakeholders’ perceptions of the relevance of EU institutions plays a particularly important role.

### Cultural-sociological approaches

Cultural-sociological arguments emphasize the importance of habit, informal norms and dysfunction thereby raising some severe doubts about the value of material-functionalist approaches. In the present context, we limit our review to just four major approaches. The first, the bureaucratic culture approach, draws on organizational theory and emphasizes the importance of bureaucratic culture factors internal to the organization. This implies that causes of both dysfunction and change are found within the organization in question. Michael Barnett and Martha Finnemore argue that organizational success often is deeply contested and they propose a so-called de-centric analysis, that is they suggest that relevant stakeholders within and outside the organization are used to inform our analysis of performance.<sup>61</sup> Obviously, we find bureaucracies in international organizations, but also in ministries of foreign affairs and in major NGOs. Hence, if we relax the reified conception of states and ministries as special sites, the inter-organizational model suggests that multilateral politics consists of encounters of different bureaucracies, an image that is far from the traditional state-centric model that only to a limited degree allows other bureaucracies to influence multilateral dynamics.<sup>62</sup>

The second approach, focusing on world culture, emphasizes how a world environmental structure causes identity- and interest-formation processes which in turn cause policy-making.<sup>63</sup> Hence, it is a structural, causal approach. Part of the environmental structure is constituted by multilateralism, that is, an increasingly important institution of international society. Research on intersecting multilateralism is less structural, yet explores how different varieties

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<sup>61</sup> Barnett, M. and Finnemore, M., *Rules for the World: International Organizations in Global Politics* (Ithaca: Cornell University Press 2004).

<sup>62</sup> Jönsson, C., ‘The Inter-organizational Approach’, (1992) *International Social Science Journal* 138; Koops, J.A., ‘Towards Effective and Integrative Inter-Organizationalism’, in Brockmann, K., Hauck, H.B. and Reigeluth, S. (eds), *From Conflict to Regional Stability: Linking Security and Development* (Berlin: German Council on Foreign Relations 2008).

<sup>63</sup> Katzenstein, P.J. (ed.), *The Culture of National Security, Norms and Identity in World Politics* (New York: Columbia University Press 1996).

of multilateralism interact.<sup>64</sup> The EU's aim to promote effective multilateralism is likely to encounter contending ideas about what counts as 'effective', just as the emphasis on 'effective' suggest that the EU does not support all kinds of multilateral institutions. The keyword within this analytical orientation is clearly multilateralism, a notion that traditionally has been used to designate international cooperation among three or more states.<sup>65</sup> Others employ a more demanding definition, for instance that the international cooperation in question should be guided by generalized principles and expectations about diffuse reciprocity.<sup>66</sup> The notion of 'intersecting multilateralism' tells us that the EU itself is seen as an important example of multilateralism. In other words, the idea is that the EU is built on a multilateral edifice, implying that multilateral principles define the working of EU institutions. This idea corresponds to the reasoning of politicians and officials claiming that multilateralism defines part of the EU's genetic predispositions, that is, that the EU is bound to promote (effective) multilateralism both at home and abroad. In this context, abroad refers to the many international organizations, the United Nations not least (and not only), constituting the international multilateral system. Hence, 'abroad' should not be seen as a geographical category as many international organizations are based in Europe, for example in Geneva, Vienna, Paris, Brussels and Rome. If we combine the two levels – EU and international – we will be able to analyse the specific ways in which EU multilateralism 'intersects' with different types of international multilateralism.

The second-image-reversed approach represents a third distinct approach,<sup>67</sup> focusing on how international organizations might have an impact on EU institutions and policy-making processes. In other words, it is a top-down approach, the opposite of second image approaches and therefore taking off in the international realm and subsequently investigating flows of influence and their impact on the EU. The approach has some similarity to studies of how international organizations teach states about their interests and studies of the increasing impact of major NGOs on the dynamics of world politics. While a considerable share of contemporary research on the politics

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<sup>64</sup> Laatikainen, K.V. and Smith, K. (eds), *The European Union at the United Nations: Intersecting Multilateralisms* (Basingstoke: Palgrave 2006).

<sup>65</sup> Keohane, R.O., 'Multilateralism: An Agenda for Research', (1990) 45 *International Journal* 731.

<sup>66</sup> Ruggie, J.G. (ed.), *Multilateralism Matters: The Theory and Praxis of an Institutional Form* (New York: Columbia University Press 1993).

<sup>67</sup> Gourevitch, P., 'The Second Image Reversed', (1978) 32 *International Organization* 881. In research on the European Union, this approach has been promoted under the heading of Europeanization, that is, the degree to which the European governance has an impact on member states' institutions and policy-making processes.

of EU–international organizations relations focuses on EU actor characteristics, policies, institutional characteristics and aspirations, some studies take the opposite avenue of inquiry. They take their point of departure in the observation that although so-called ‘second images’ – that is state characteristics and behaviour having an impact on the nature of international relations – generally are important, there are also ‘second image reversed’ dynamics that are worth exploring.<sup>68</sup> Basically, they apply this approach in research on relations between international organizations and the EU, asking questions about the specific conditions under which the EU is likely to be influenced by international organizations, rather than having an impact on them. They point out that in some policy fields the EU is a newcomer rather than a frontrunner. This applies to the hard end of security and defence matters, in which NATO is the experienced teacher and the EU a motivated (to a point) student. In the field of international health, the WHO has been the experienced organization and the EU has only for some years aimed at building similar professional competence.<sup>69</sup> In general, analysts within this category of research on the politics of EU–IO relations ask questions that are similar to Martha Finnemore exploring how international organizations teach states about their interests.<sup>70</sup> While Finnemore acknowledges the importance of formal arrangements, she is keen to point out that informal arrangements should also belong to our research agenda. Analysts within this tradition also ask questions that are similar to how some principal–agent analysts approach the topic, strongly emphasizing the dimension of agency, that is they allow agents to act like actors.<sup>71</sup> In this fashion, they relax both principal and agent attributes and they upgrade features that make agents independent-minded actors.

Because the Europeanization literature is characterized by a starting point that is similar to the second-image-reversed dynamics – the structural top-down pressure – it is potentially interesting that Europeanization analysts draw fundamentally different conclusions. One set of conclusions can be labelled ‘convergence’ because analysts expect that ‘stimuli’ (structural pressures) will determine increasingly identical responses (convergence). According to a

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<sup>68</sup> *Ibid.* See also Fernández, O.C. and Jørgensen, K.E. (eds), *The Influence of International Institutions on the EU* (forthcoming in 2011).

<sup>69</sup> Guigner, S., ‘The EU’s Roles in European Public Health: The Interdependence of Roles within a Saturated Space of International Organizations’, in Elgstrøm, O. and Smith, M. (eds), *The European Union’s Roles in International Politics* (London: Routledge 2006).

<sup>70</sup> Finnemore, M., ‘Norms, Culture and World Politics: Insights from Sociology’s Institutionalism’, (1996) 50 *International Organization* 325.

<sup>71</sup> Hawkins, D.G., Lake, D.A., Nielson, D.L., and Tierney, M.J., *Delegation and Agency in International Organizations* (Cambridge: Cambridge University Press 2006).

second set of conclusions, the expected outcome is not convergence but 'diversity', that is different actors experience a common stimulus, yet respond differently. As usual when we confront a dilemma, three options are available: the two representing the dilemma and a third, which is rejecting it, in the specific case pointing out that the outcome might depend on a number of different conditions. Hence, specification of conditions might represent a third avenue of inquiry. In summary, this category of research is characterized by a highly interesting and relevant research agenda, a number of single-study beginnings, but is waiting for more comprehensive, comparative, focused and structured contributions.

According to the fourth approach, the logic of bureaucratic politics should not be defined exclusively in terms of budgets and personnel resources. Collision of world views and norms is an equally important feature of bureaucratic politics. In the context of the break-up of former Yugoslavia, the UN Secretary General Boutros Boutros-Ghali and EC representatives clashed concerning the prime purpose of the UN: an institution for the Global South or a global institution with responsibility for peace and security also in wealthy Europe. Similarly, NATO and EU rapprochement was characterized by clashes regarding security cultures, including issues of confidentiality. Moreover, European Commission and OECD officials have proved to represent significantly different ideas of appropriate development strategies. We can also observe that within foreign affairs ministries of Member States, officials cherishing autonomous and EU pooled sovereignty, respectively, clash as to whether to be represented in international organizations independently or via supervised (or not) EU delegation. Finally, officials in the UNHCR do not necessarily share the securitization-of-immigration processes that for some time have preoccupied EU officials.<sup>72</sup> In short, different mindsets, world-views, self-images, and values trigger an ideational version of bureaucratic politics.

### **Main Findings offered by Political Science Perspectives**

In the previous sections we have seen that research on the politics of the EU's engagement in international organizations is characterized by considerable diversity in terms of approaches. In this section we will focus on the outcome of political science approaches, specifically five main findings. First, the very dynamic institutional development that have characterized the EU since the mid-1980s, not least the process of continuous treaty-reform, have redefined

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<sup>72</sup> Van Munster, R., *Securitizing Immigration: The Politics of Risk in the EU* (Basingstoke: Palgrave 2009).

EU multilateralism. In turn, this ever-changing nature of the EU has had a significant impact on the EU's relations with international organizations. Thus, rather than describing the specifics of each successive treaty-reform, conclusions are synthesized into more general features and analysts subsequently explore the possible effects of these features in relation to international organizations. The EU has consequently become less of an international organization itself, aiming instead to become an actor – state-like – in international organizations. As such a status clearly collides with traditional European conceptions of statehood in general and European states' membership of international organizations in particular, there have been very difficult waters to navigate, characterized by several Scylla and Charybdis dilemmas.

Second, research is frequently based on the implicit or explicit assumption that if only the EU could enjoy formal representation or be speaking with one voice, its performance in a given international organization would be significantly improved. However, studies of the EU's membership of the FAO and the WTO reach markedly different conclusions, specifically that EU performance within the WTO is significantly better than in the FAO, and studies of the EU's formal membership of the Codex Alimentarius Commission conclude that performance is somewhere in between.<sup>73</sup> Studies of the EU speaking with one voice in the WTO and the UN also reach diverse conclusions. Whereas single (re-)presentation works very well in the WTO, the same cannot be said about the UN.<sup>74</sup> While the ability to reach joint positions is remarkably high, the EU frequently encounters fierce opposition to its political objectives in the UNHRC and in other UN fora. Moreover, joint EU statements are typically characterized by the opaque characteristics that can only emerge from long consensus-seeking sessions.<sup>75</sup> Often, these statements do not enjoy the persuasive character that is a precondition for leadership. These

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<sup>73</sup> Studlar, D.T., 'Tobacco Control Policy Instruments in a Shrinking World: How Much Policy Learning?', (2006) 29 *International Journal of Public Administration*, 367.

<sup>74</sup> Rasch, M.B. *The European Union at the United Nations: The Functioning and Coherence of EU External Representation in a State-centric Environment* (Leiden/Boston: Martinus Nijhoff Publishers 2008). In this empirical study on the role of the EU in the UN in the area of foreign and security policy Rasch concludes that 'national interests are the main driving forces behind the policies of the EU countries and the processes within the CFSP at the UN. In New York, the CFSP-regime is simply an instrument for intergovernmental dealings between the EU MS, aimed at pursuing the individual national positions. There is little room for a single European voice on the East River, i.e. for a truly *common* foreign policy' (p. 301).

<sup>75</sup> Smith, K.E., 'Speaking with One Voice? European Union Co-ordination on Human Rights Issues at the United Nations', (2006) 44 *Journal of Common Market Studies* 113.

findings suggest that ‘formal membership’ and ‘speaking with one voice’ should not be seen as sufficient conditions for successful performance.

Third, given the prime objectives and professional-administrative competences of the EU, one would expect the EU to be particularly influential in international organizations of a political-economic nature and less influential in organizations within the defence and security field. However, despite frequent statements about aspirations to play a more significant role within the international financial organizations, that is the IMF and the World Bank, studies consistently reach the conclusion that the EU plays a rather limited role within these organizations.<sup>76</sup> It seems that Member States do not find the EU’s organizational performance relevant for these policy fields and not even the global financial crisis has been able to change this. By contrast, studies show that the EU plays an unexpectedly significant role within security organizations and regimes such as OSCE, non-proliferation, and export control regimes as well as within security fields such as crisis management.<sup>77</sup>

Fourth, political research shows that while a high degree of coordination should lead to higher impact within a given policy field, this is not necessarily the case. Within UN General Assembly committees, the ILO and the Non-Proliferation Treaty review conferences, coordination is usually high, yet impact varies a great deal. Within majoritarian institutions such as UNGA committees, the EU has proved quite capable of coordinating national positions, yet nonetheless remains and is bound to be in a minority position.<sup>78</sup> Given that the EU has been a co-designer of the UNHRC, the argument that we witness a newcomer to a well-established institutional context does not apply. Some scholars argue that it is precisely coordination that triggers unintended opposition to EU positions.<sup>79</sup> Moreover, when coordination processes

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<sup>76</sup> Bin i Smaghi, L., ‘A Single EU Seat in the IMF’, (2004) 42 *Journal of Common Market Studies* 229; Baroncelli, E., ‘The EU at the World Bank: Institutional and Policy Effectiveness’, paper presented at the ECPR General Conference, Potsdam, September 2009.

<sup>77</sup> Van Ham, P., ‘EU–OSCE Relations: Partners or Rivals in Security?’, in Jørgensen, K.E. (ed.), *The European Union and International Organizations* (London: Routledge 2009); Portela, C., ‘The EU and the NPT: Testing the New European Non-proliferation Strategy’, (2004) 78 *Disarmament Diplomacy* July/August, available at <<http://www.acronym.org.uk>>; Gross, E. and Juncos, A.E., *EU Conflict Prevention and Crisis Management Institutions, Policies and Roles* (London: Routledge forthcoming).

<sup>78</sup> Gowan, R. and Brandtner, F., *A Global Force for Human Rights? An Audit of European Power at the UN* (London, European Council on Foreign Relations 2008).

<sup>79</sup> Smith, K., ‘Speaking with One Voice? European Union Coordination on Human Rights Issues at the United Nations’, (2006) 44 *Journal of Common Market Studies* 113, and Verlin Laatikainen, K. and Degrand-Guillaud, A., ‘Two Logics, One Treaty: The Lisbon Treaty and EU Foreign Policy in Brussels and at the United Nations’, paper presented at the ISA Annual Convention, New York, February 2009.

consume most of the energy of EU diplomats, little is left for outreach or engagement in processes of persuasion that involve third parties. As regards coordination within the ILO and NPT review conferences, the problem is different, in concrete terms that especially two larger EU member states – France and the United Kingdom – tend to forget common EU positions coordinated prior to meetings in the respective international institutions.<sup>80</sup> It follows that though the notion of ‘international organizations’ suggests similarity, the fact is that these organizations are different, characterized by very different objectives, governance structures and organizational cultures. Hence, the options for the EU’s performance in or impact on these organizations depend not only on EU characteristics but also on the defining features of these different international organizations. Some of the studies within this category focus specifically on the notion of ‘effective multilateralism’, a notion that can be traced back to the EU’s European Security Strategy, adopted in 2003. In the European Security Strategy, the EU declares that one of its main strategic security objectives is the promotion of ‘effective multilateralism’, a short-hand expression for contemporary efforts at reforming a number of international organizations, making them more ‘effective’.

Fifth, political studies consistently conclude that both actor and venue characteristics are crucially important for the EU’s performance in international institutions. However, because international institutions are significantly different in terms of membership, objectives, organizational cultures and governance structures, actor and venue characteristics are important in different ways; this explains, in turn, why attempts at generalization almost always fail.

While the five main findings neatly summarize contemporary research in the field, they also demonstrate that more research remains to be done. Despite a few early studies, research on the politics of the EU’s engagement in international organizations is still a relatively new field of study. In order to consolidate findings, it is crucially important that issues regarding the competitive or complementary nature of the different perspectives and approaches are addressed. Moreover, further conceptualization and theory-building, theory-informed studies and adequate research designs will potentially contribute to further consolidating the field.

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<sup>80</sup> Kissack, R., *Pursuing Effective Multilateralism: The European Union, International Organizations and the Politics of Decision-making* (Basingstoke: Palgrave forthcoming); Tertrais, B., ‘The European Union and Nuclear Non-proliferation: Does Soft Power Work’, (2006) 40 *The International Spectator*, 45.

## CONFRONTING RESEARCH ON LEGAL AND POLITICAL DIMENSIONS OF THE EU AND/IN INTERNATIONAL ORGANIZATIONS

In the previous sections, we have outlined how the topic of the EU and international institutions can be analysed on the basis of both legal and political science perspectives. The dominant approach used in legal studies concerns the division of competences between the EU and its member states. Most studies raise the question to what extent the EU is legally empowered to act within an international organization. They do that by analysing the treaty provisions and the case law of the European Court of Justice. In contrast the political science perspectives, despite their differences, begin from a particular theoretical notion, which is then (sometimes) empirically tested.

One of the questions raised by this contribution has been to what extent legal competences related to the position of the EU in another international institution have an impact on its political performance. When confronting both perspectives, one of the main conclusions could be that the strict legal analysis of competences on the basis of treaty provisions and case law may be necessary for the legal discipline itself and, indeed, to establish the division of legal competences between the EU and its Member States, but that there is no direct correlation between these legal competences and the political performance of the EU. So we cannot conclude that strengthening the formal representation on the basis of treaty provisions or agreements with other international organizations (for instance leading to full membership or the possibility for the EU to 'speak with one voice') will significantly improve the performance of the EU. Similarly, the (non-)existence of extensive external competences in a particular field (an obsessive focus in legal research) does not tell us too much about the actual influence of the EU. The same holds true for degrees of coordination: rules to enhance EU coordination may lead to a higher impact within a given policy field, but that is not necessarily the case. And, finally, actor and venue characteristics – which are studied by lawyers in terms of the institutional legal framework (role of the institutions, voting modalities, etc.) – have a different effect in different arenas. In fact, findings by political scientists seem to reveal that the effect of legal institutional improvements related to the performance of the EU in international institutions is at best doubtful. Thus, to give one striking example, it remains questionable whether the long-term legal institutional development of the EU's foreign and security policy allowed the Union to surpass the national interests of its individual Member States.

It follows from the above that a new agenda for research emerges. With the increasing ambitions of the EU in relation to global governance it has become

more important to combine legal and political perspectives. This would imply that legal scholars would take into account the political impact of the legal arrangements they invent and study and that political scientists would be more aware of the legal framework which to a certain extent defines the political options. On the basis of the above analysis, we propose that at least the following themes appear on this new research agenda:

1. An empirical investigation into the influence of particular legal arrangements related to external competences of the EU on the political performance in a given area;
2. The effect of the legal position of the EU in an international organization (full membership, observer status, participation by Member States only) on the influence of the EU in that particular policy area;
3. The question to what extent the EU external relations legal framework (as laid down in the treaties and in case law) enables or restrains the EU and its Member States in their activities in relation to international organizations.

Lawyers know the rules, political scientists know the practice; but rules and practice are hardly confronted. Only when legal and political insights are combined, will we be able to know what to do to attain one of the main EU objectives in accordance with Article 3(5) TEU:

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.