

The European Union and Global Multilateral Governance - An Interdisciplinary Research Project: Research Notes (Part 3)

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In previous editions of the Journal of Contemporary European Research, we reported on the set-up and progress of the interdisciplinary research project “The European Union and Global Multilateral Governance” (see Vol. 4, No. 1; Vol. 5, No. 1). This third and final research note presents some of the key-results of the project and suggests future areas for research.

Making sense of the EU's participation in multilateral governance fora

To examine the role of the European Union (EU) in multilateral governance, an earlier phase of the project was dedicated to developing an interdisciplinary conceptual framework to bridge existing gaps between legal and political science approaches to this subject (see Schunz *et al.* forthcoming). The framework combines analyses of the Union's external representation, internal coordination, foreign policy instruments, as well as treaty and political objectives. It also accounts for the EU's recognition as a foreign policy actor by others, while paying special attention to the formal and informal processes of global policy-making that its external activities are embedded into. Employed as a descriptive analytical tool, the conceptual framework allows for gaining a better understanding of the Union's capacity to be an actor in global governance in function of its legal status. It is predestined to compare the Union's performance across cases to examine, e.g., whether the EU is really the champion of multilateralism and leading player that it is characterised to be in many governance arenas.

After completing a broader mapping exercise involving a range of cases and applying the framework in depth to two cases of EU participation in multilateral governance (its involvement in global human rights fora and in the global climate regime), the final phase of the project was to compare the results of the two case studies.

The EU in the global human rights machinery

In examining the EU's participation and performance in the global human rights machinery, the interdisciplinary framework was applied to two of the newest additions to the international human rights family, namely the Human Rights Council (HRC) and the International Criminal Court. The EU was a strong advocate for the establishment of both bodies and from the offset declared its commitment to ensure that they function effectively as channels for protecting and promoting human rights globally. Following a systematic analysis of the EU's contributions to achieving this goal, the application of the framework shed light on how and why its actual performance does not always measure up to its aspirations on the global human rights stage. For the purpose of this article, only the EU's participation in the United Nations (UN) Human Rights Council will be addressed.

Like in most international fora, the EU holds observer status in the Human Rights Council. With the current geographical distribution of the 47 members of the Council, only 7 to 8 are EU member states per term. This would make one assume that there is little space for the Union to manoeuvre especially in light of the constrictions attached to such a *legal status* (observers have, for example, no right to vote). This assumption however does not hold true. Legal status is not the sole element determining the EU's capacity to be a competent human rights actor. Other components of the analytical framework appear to be of equal importance when examining the EU's performance in the Human Rights Council.

With the Lisbon Treaty recently entering into force, a shift in the EU's legal order with reference to human rights and in its external action in the Human Rights Council could be witnessed. The Treaty further enhances and reinforces the EU's *treaty and policy objectives* to consolidate and support human rights and the principles of international law in its relations with the wider world. On the one hand, the EU's more explicit commitment to human rights as observed through the incorporation of the Charter of Fundamental Rights into the Treaty and by the Union's eventual accession to the European Convention on Human Rights does not alter the powers or competences of the Union itself. However, recent practice shows on the other hand that the Lisbon Treaty does play a significant role for the Union's representation in the HRC. During the times of the Council's predecessor, the UN

Commission on Human Rights, it was always the Presidency speaking on behalf of the EU with subsequent member state interventions aligning themselves with the statements of the former, with almost no interventions by the European Commission. Although this logic largely continues to be maintained in the HRC, more recent practice shows that the EU is at times being represented by the Permanent Delegation of the EU in Geneva on certain agenda items such as UN Special Procedures.

Like for most governance fora it is involved in, the EU's *decision-making and coordination processes* can become arduous, especially in those that address sensitive issues areas, such as human rights, where the Union does not hold exclusive competence. The number of coordination meetings that take place in preparation for and during Human Rights Council sessions is plentiful. Yet, via its burden-sharing mechanism, the EU has been able to better follow and contribute to each initiative discussed in the HRC (e.g. resolutions). This has yielded some positive results: the EU has sponsored four special session initiatives and has made over 420 statements and interventions since the inception of the HRC. Moreover, there have only been three split votes among EU members (on resolutions addressing the Occupied Palestinian Territories). All this has contributed to making the Union a visible actor, one that is also fully *recognised* by other HRC members.

Arguably, EU member states spend too much time coordinating amongst each other, and not enough time outreaching to third countries. The drawbacks that have been faced by the EU in the Human Rights Council are mainly due to not receiving the endorsement needed to push through initiatives that address pressing situations, as was the case in the 2009 Special Session on Sri Lanka where the EU's resolution was immediately dismissed and the resolution tabled by Sri Lanka itself was adopted. The Union's financial, legal and diplomatic *foreign policy instruments* could be used more widely and effectively in this regard. Only more recently has it started to integrate 'reinforcing cooperation in the Human Rights Council' as part of its bilateral dialogues with third countries (e.g. with India). Markedly, it still does not take full advantage of instruments at its disposal to further its relationships in terms of concrete cooperation within the HRC. The embedded bloc mentality in the practices of the latter adds an additional layer of challenges and furthermore has a direct impact on the *global governance processes* in the area of human rights. With the African Group and the Organisation of Islamic Countries (OIC) taking a front-runner role on many occasions, the EU is often left on the periphery with other like-minded states. As a result, the majority of the resolutions passed in the HRC have soft and dampened language, which essentially undermines the very purpose of the human rights body.

Despite not possessing full membership status in the HRC and with only few of its member states as full members per term, the EU has - through its Presidencies and burden-sharing mechanism - demonstrated that it possesses the capacity to translate its treaty and policy objectives on the global human rights stage. The primary reason why the Union has not always been successful in achieving its goals has little to do with its internal set-up or legal status and more with the external environment it faces and with the inability of the EU to deal with the evolving and increasingly problematic external context of this particular global human rights forum.

The EU in the UN climate regime

To study the Union's participation in global multilateral climate governance, the analytical framework was applied to its involvement in the United Nations regime that has developed around the Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. In this regime, the EU has regularly been regarded as a defender of multilateralism and a leader, based primarily on its internal policies. A thorough examination of its actual

performance reveals that this leadership assumption has to be strongly qualified, not only since the - for the EU - very unsuccessful 15th Conference of the Parties (COP) in Copenhagen.

When examining the internal dimensions of the EU's capacity to act, it is first of all interesting to note that it has undergone major transformations since the European Community first participated jointly in global climate negotiations in the early 1990s. The European Community was - through actions of individual member states - rather an *ad hoc* participant in early negotiation rounds. Since the entry into force of the Maastricht Treaty, the Union possesses the (shared) *legal competence* to act in the climate regime. Shared competence implies necessary and at times difficult *decision-making and coordination processes* in a complex Working Group structure under the Environment Council that involves both member states and the Commission. Final decisions on the Union's external climate policy positions have always had to be taken by consensus by the Environment Ministers. They even required the endorsement by the European Council in recent years.

Despite these intricate processes, the EU has regularly proven capable of translating relevant *treaty objectives* regarding sustainable development into common *policy objectives* in the climate domain: ever since the 1990s, it has argued for stabilising global greenhouse gas emissions at a level that would assure that global mean temperature rise does not exceed 2°C above pre-industrial levels. To reach this aim, the EU has argued for ambitious mitigation policies. During talks on the Kyoto Protocol, for example, it was the first industrialised player to formulate a comparatively high quantified emission reduction target, while its proposals for the post-2012 regime reform process were also formulated very early and remained among the most ambitious ones during the talks until late 2009.

Once the EU had forged a position, its *representation* was assured, in the past, by the Troika (former, present and future Council presidency) or, since 2000, the specific Climate Troika (former and present Council presidency, Commission). Since 2004, a particular representation system, involving a thematic division of labour between "lead negotiators" from any member state or the Commission, supported by "issue leaders", has developed. In practice, this system has proven its worth, as it has given the Union's external representation activities greater continuity. In these external climate activities, the EU can rely on a tool-box composed of diplomatic and economic *foreign policy instruments*. In practice, it has clearly preferred the use of diplomatic instruments by submitting proposals to the UN process, reaching out via demarches, etc. At the same time, economic incentives were employed notably in relations with developing countries to rally these behind its mitigation objectives.

The Union's remarkable evolution as a foreign policy player in this domain also implies that it has, ever since the mid-1990s, been *recognised de facto* as a fully-fledged actor in the UN climate negotiations. In legal terms, regional economic integration clauses in both the UNFCCC and the Kyoto Protocol grant the Union full member status and it thus has the right to table proposals, speak and vote in all negotiation sessions. Despite these positive developments for the EU's capacity to act in the UN climate regime, the *global governance processes* in this arena have become increasingly complex. Decisions on regime reforms require consensus, and long-standing cleavages have implied frequent stalling of the negotiations. For one, the historically largest emitter US has regularly (successfully) resisted other parties' calls for ambitious and binding emission reduction targets. The persistent North-South divide between industrialised countries and the G-77/China has not facilitated decision-making either. On many occasions, the EU has found itself caught between these two blocs.

Turning to the evaluation of the Union's performance on the basis of these elements of its capacity to act, its defence of the multilateral arena is quite striking. At all times during the

history of the climate regime, the EU geared its policies toward the UN, even when the US withdrew from the Kyoto Protocol ratification process in 2001. At the same time, the Union frequently tried to lead by example by making early proposals and employing its regional climate regime as a model for third countries. This leadership approach, however, has not systematically resulted in favourable outcomes. Despite full actor capacity, the EU was regularly incapable of mobilising followers for its positions, which are consequently not reflected in successive regime reforms. Where it was able to shape the magnitude of the Kyoto Protocol emission reduction targets, it had no leverage over the regulatory (flexible) approach chosen through that treaty. Moreover, it had no significant impact on the latest significant round of negotiations that culminated in the adoption of the Copenhagen Accord in late 2009, reflecting the emergence of a new external context in which new constellations of power begin to overshadow and marginalise the EU (see Keukeleire and Bruyninckx forthcoming).

Cross-case comparison and an agenda for future research

The application of the interdisciplinary framework to the EU's participation in these two distinct multilateral governance arrangements yielded many insights that would have been overlooked should we not have accounted for both legal and political science aspects of the Union's performance in these fora. Although the two bodies have different compositions and represent two quite distinct policy areas, the comparison was worthwhile. Human rights and climate change governance are of paramount importance to the EU's foreign policy and both epitomise where the Union aspires to export its internal values to the wider world. These similarities taken in conjunction with the differences set out in the legal and institutional intricacies at the UN and EU levels lay the foundation for an interesting cross-comparative study (see Wouters *et al.* forthcoming).

When trying to account for the paradoxical situation of the EU's actor capacity, insofar that its expanding capacity is not matched by better external performance, it quickly becomes evident that neither legal competences and status nor the internal coordination and representation arrangements seem to have much explanatory power for the Union's external performance (see Jørgensen/Wessel forthcoming). Rather, a thorough analysis of its actions suggests that the EU's predominant challenge in both bodies is related to the external environment and the Union's difficulties to adjust to an external context in which new competing powers and coalitions of countries emerge who do not necessarily perceive the Union as a model that is to be followed. With the North-South divide deeply embedded into and impacting the governance processes in both the HRC and the UN climate regime, the often comparatively ambitious EU positions simply stand little chance of acceptance by third countries. One central difference in the Union's approach in this regard is, however, the utilisation of instruments that rest at its disposal. The EU has recently more fervently resorted to economic instruments in the climate regime, while its actions in the Human Rights Council remain purely diplomatic. Another area of divergence concerns the way the Union is perceived as an actor. In the climate regime, it is often still regarded as a front-runner. In the HRC, by contrast, it is frequently criticised for not being able to assume a leadership role.

These findings provide some food for thought for future research on the EU's implication in multilateral governance, mainly in the following areas:

1. **Wider application of the interdisciplinary framework:** The application of the framework to the Union's participation in other domains within and beyond the UN system would shed further light on the EU as a foreign policy actor. Such research appears as particularly interesting to assess the Union's actual capacity and foreign

policy behaviour against its self-perception and the way it is viewed as an actor in other parts of the globe. As a next step, it could be especially interesting to employ the framework to the EU's participation in bodies where it holds exclusive competence and full membership such as the WTO and in arrangements with limited membership such as the G-8/G-20.

2. **External environment:** Future research on the Union's role in multilateral governance also needs to transcend discussions about the EU's actorness and pay greater attention to the extent to which the EU takes into account these changing international contexts and, consequently, how its positions and actions as a *de facto* global player fit into the specific international contexts it operates in. Research is also required on how its positions and policies are perceived and on whether and why these are appreciated and/or dismissed by other major international actors.
3. **EU bilateral and (inter)regional relations:** In light of the long-standing cleavages in many multilateral governance fora, the examination of EU strategic relations with key-global actors such as the United States, other regional organisations like the African Union, and particularly emerging powers like the 'BRIC' countries (Brazil, Russia, India, China) requires greater attention. It would allow for the assessment of how and what the EU can do to better collaborate with third countries and to better take into account their positions in order to advance its objectives in multilateral settings.
4. **Building EU (strategic) capacity:** One of the main findings of this project concerned the variation in - and the EU's limited strategic use of - foreign policy instruments, notwithstanding the fact that it has a portfolio of financial, legal and diplomatic tools at its disposal to advance its objectives in both fields. Exploring the extent to which there is any cross-fertilisation between EU and member state diplomats on the one hand and human rights, environmental and other experts on the other hand sets the groundwork for interesting future research about the extent to which the EU is willing and able to develop internal strategic and intellectual capacity-building. In this context, the potential (and necessary) exchanges that are bound to take place in the framework of the newly instituted European External Action Service merit specific scholarly attention.

Conclusion

With these key-results, this - in many ways exploratory - interdisciplinary research project reaches its end. By tackling a range of empirical and conceptual research gaps that existed in political and legal sciences, it advances not only our knowledge of EU participation in global human rights and climate governance, but also contributes to the necessary interdisciplinary thinking about the Union's implication in these and comparable fora. At the same time, the project has served to generate a plethora of new questions. Given the EU's continuous high level of activity in global governance fora of all types, ample cases remain for further interdisciplinary investigation.

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