

Journal of Contemporary European Research

Volume 8, Issue 2 (2012)

The Rotating Presidency and the EU's External Representation in Environmental Affairs: the Case of Climate Change and Biodiversity Negotiations

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Citation

Delreux, T. (2012). 'The Rotating Presidency and the EU's External Representation in Environmental Affairs: the Case of Climate Change and Biodiversity Negotiations', *Journal of Contemporary European Research*. 8 (2), pp. 210-227.

First published at: www.jcer.net

Abstract

This paper examines the role of the rotating Presidency in the external representation of the EU in international environmental negotiations after the entry into force of the Lisbon Treaty. Focussing on two negotiation sessions under the 2010 Belgian Presidency, the biodiversity negotiations in Nagoya (October 2010) and the climate change negotiations in Cancún (December 2010), the paper's aim is fourfold. First, it explains why the entry into force of the Lisbon Treaty has not changed the existing practices with an important role for the rotating Presidency. Second, the paper discusses the developments in the debates on the EU's external representation on environmental matters. Third, it empirically analyses the way the EU was represented in the biodiversity and climate change conferences of 2010. Here, the paper also points at the increasing importance of the so-called 'practical arrangements' that settle the external representation of the EU on the floor, often in a very ad hoc manner. Fourth, the paper describes how the European negotiators in Nagoya and Cancún have dealt with their representation task that generates a tension between expectations coming from the international level and pressures originating at the EU level.

Keywords

Belgian Presidency; biodiversity negotiations; Cancún climate COP; climate change negotiations; external representation; Nagoya biodiversity COP; rotating Presidency; Treaty of Lisbon

This paper examines the role of the rotating Presidency of the Council of Ministers in the external representation of the European Union (EU) in international environmental negotiations. It argues that even after the entry into force of the Lisbon Treaty the rotating Presidency is still to be taken into account if one wants to understand how the EU conducts international environmental negotiations. This becomes clear from the paper's analysis of the EU's representation in two important international environmental conferences in the second half of 2010, the biodiversity talks in Nagoya and the climate change negotiations in Cancún, where it was the then Belgian Presidency of the Environment Council that led the EU negotiation delegation.

The observation that the Presidency still plays an important role in the EU's external representation in environmental negotiations may come as a surprise, since the intent of the Lisbon Treaty was to diminish the role of the rotating Presidency and to streamline the EU's external representation along the Commission and the newly established actors such as the permanent president of the European Council (Article 15 TEU), the High Representative of the Union for Foreign Affairs and Security Policy (Article 27(2) TEU), the European External Action Service and even the EU delegations (Article 221 TFEU) (Laatikainen, 2010). The Lisbon Treaty was politically meant to let the EU "speak with a clearer voice on external relations" and in this way "fulfil its potential as global player" (Degrand-Guillaud, 2009, p. 408). Reducing the external role of the rotating Presidency was not only one of the political rationales behind the Lisbon Treaty, nor can any legal reference to the rotating Presidency be found in the external action chapter of the Lisbon Treaty. In this respect, Antonio Missiroli concludes that the Lisbon Treaty "assigns virtually no role in the domain of external action" to the Presidency (2010, p. 430).

This paper, however, argues that the rotating Presidency still matters in the EU's external relations, inter alia in the environmental area. To make this claim, it examines the role of the Belgian Presidency of the second half of 2010 in two major international environmental conferences, the 10th Conference of the Parties (COP10) to the Convention on Biological Diversity (CBD) in Nagoya (18-29 October 2010), and the 16th Conference of the Parties (COP16) to the United Nations Framework Convention on Climate Change (UNFCCC) in Cancún (29 November-10 December 2010). Guiding the EU through these international biodiversity and climate change conferences was one of the main challenges faced by the Belgian Presidency (see Delreux and Crieckemans, 2012).

The empirical data in the paper is primarily based on interviews with officials who were closely involved in the EU decision-making processes with regard to the biodiversity and climate change conferences, especially from the Belgian Presidency. Furthermore, some semi-confidential documents used in these processes were analysed and the reconstruction of the negotiation processes in Nagoya and Cancún is largely based on the Earth Negotiation Bulletin reports (Earth Negotiation Bulletin 2010a; 2010b).

The paper is structured as follows. It identifies the context within which the Belgian Presidency had to assure the representation of the EU in the environmental domain. It explains why this context was characterised by difficult discussions and interinstitutional tensions in the EU, which ultimately led to a continuation of the existing practices and thus preserved a role for the rotating Presidency. Subsequently, the paper identifies the main negotiation dilemma with which a Presidency is confronted when it represents the EU in international environmental negotiations: how to reconcile the external pressure from the international negotiations to make compromises and the internal pressure from the Member States to defend their interests? The paper then empirically describes the way the EU was represented in Nagoya and Cancún. It shows that the Presidency is not the only EU negotiator, but that the EU's representation maintains being organised under its umbrella. The paper then answers the question how the Belgian Presidency dealt with the two-level-game dilemma in Cancún and in Nagoya, before finally presenting some conclusions.

Setting the scene: The preservation of the status quo as a result of an interinstitutional deadlock

The question of the EU representation in Nagoya and Cancún was part of a more general debate in the EU on its representation in international environmental negotiations, which was influenced by four factors: (1) the aftermath of the climate change conference in Copenhagen in December 2009; (2) the lack of clarity of the Lisbon Treaty on certain aspects of external representation and the resulting battle between the Council and the Commission; (3) the EU's failure in the beginning of 2010 to reach an agreement on the negotiation arrangement for negotiations on a new mercury treaty; (4) and tensions between generalist decision-makers in the external relations departments and the specialised negotiators in the environmental departments. These four context factors made that the interinstitutional relations in the EU on the question of the external representation in international environmental negotiations were too tense to be able to change the status quo.

The aftermath of Copenhagen

The climate conference of Copenhagen (COP15) of December 2009 resulted in clear disillusion for the EU, which left Copenhagen with the feeling of being “completely sidelined” (Missiroli, 2010, p. 428), both substantively and procedurally. Substantively, the EU had to accept a deal that was far below its ambitions and expectations. As the EU is traditionally one of the most demanding parties in climate change negotiations, asking for strong – and legally binding – emission reduction targets and for a solid multilateral institutional framework (see Schmidt, 2008; Parker, and Karlsson, 2010), it could not be pleased with the Copenhagen Accord.

Procedurally, the EU was completely left out of the final talks during the last Friday afternoon of the COP, when the US and the major emerging economies drafted the Copenhagen Accord. The EU was indeed “marginalized” at those decisive moments of the COP (Curtin, 2010, p. 1). This is often related to the multiplicity of European leaders who wanted to play a role in these negotiations (Emerson et al., 2011). Indeed, neither the President of the European Commission, José Manuel Barroso, nor the – at that time still rotating – Swedish President of the European Council, Fredrik Reinfeldt, were able to play their role as sole European spokespersons. Hence, the image that left from the Copenhagen COP was one of too many European politicians hampering each other and preventing the EU from speaking in a coherent way. It is in this situation of “post-Copenhagen blues” (Spencer et al., 2010, p. 3) that the EU faced new international environmental negotiations on biodiversity and climate change in the second half of 2010, and that the question on the EU representation popped up again.

The Lisbon Treaty, grey zones and inter-institutional battles

As mentioned, the Treaty of Lisbon introduces a couple of institutional innovations, aiming to streamline the EU’s external action. However, many of the provisions on the EU’s external relations representation remain rather vague. For example, Article 218(3) TFEU mentions a “Union negotiator” or the “Union’s negotiating team” without detailing the exact composition of such a negotiation arrangement. Particularly in areas of shared competences such as environmental policy, the Treaty of Lisbon – just like its predecessors – does not tackle the question of EU representation. European Treaties (currently the Lisbon Treaty) only deal with the decision-making and the representation of the EU as far as matters of EU competences are concerned. However, the entirety of the EU representation understood as “the representation of the EU and its Member States”, in cases of shared competences and mixed agreements leaves room for political interpretation. These are the grey zones of the Treaty of Lisbon.

They have led to interinstitutional battles between the Commission and the Council in which these institutions attempted to specify the practical implications of the new legal framework. The main reason is that European institutions, after the entry into force of a new treaty, aim to maximise their powers by claiming those areas that leave room for political interpretation. Against that background, the Commission considered the underlying idea that the Lisbon Treaty should increase the coherence of the EU’s external relations as an argument to claim a larger role for itself, even when shared competences are at stake. In addition, it argued that giving more representation power to the Commission was the only way to establish what the EU was said to have missed in

Copenhagen: a more coherent voice at the international level. In the first months of 2010, the Commission not only recommended full negotiation mandates to the Council for international environmental negotiations, but also proposed practical negotiation arrangements that left practically no room for the rotating Presidency. Moreover, the Commission is said to have done so in a very dogmatic and assertive way, which generated a reaction among the Member States going in the opposite direction (Corthaut and Van Eeckhoutte 2012). The Commission's request backfired, Member States reacting in an equally dogmatic way, and wanting to avoid any area of that grey zone being occupied by the Commission. This all led to a complete standstill in the beginning of 2010 under the Spanish Presidency. The Belgian Presidency during the second half of the year had to overcome this battle in order to achieve a successful Presidency bringing the Nagoya and Cancún conferences to a good end.

The mercury experience

The toughest interinstitutional battle in the field of the external representation of the EU in international environmental affairs was certainly the debate on a negotiation mandate for the Commission for the negotiations of a new legally binding instrument on mercury under the auspices of UNEP (United Nations Environmental Programme). Not so much the fact that the Commission made recommendations for a mandate led to highly tense institutional relations, but rather the scope of the proposed mandate. The Commission recommended the Council to grant it a mandate so that the Commission would be the sole EU negotiator on all issues, as it was an international negotiation session touching upon exclusive EU competences (European Commission, SEC (2009) 983 final; followed by other "restricted", i.e. not public, Commission documents in which the Commission's request to be the sole negotiator for all issues was made even much stronger). The coherence argument substantiated the Commission's claim.

The Member States, which were definitely opposed to the competence claim by the Commission, prepared a counterproposal in which they made use of an innovation – and grey zone – of the Lisbon Treaty, namely the possibility to appoint a "Union's negotiating team" (Article 218(3) TFEU, see above). "Restricted" Council documents show that the Council, building on this grey zone, proposed that the Commission and the rotating Presidency would jointly form such a "negotiating team". A consequence of this option was that the Presidency would also be able to negotiate issues falling under EU competences. The Commission interpreted this as a loss of the powers it had won many years ago (namely to be the sole negotiator for the issues falling under EU competences). This interinstitutional battle culminated in the Commission withdrawing its recommendation and leaving the EU without any negotiating mandate for the first Intergovernmental Negotiating Committee (INC) on the new mercury treaty in June 2010. This led to embarrassing situations at the international level in the INC, where the internal division in the EU was extremely clear for its external partners and where coherence seemed to be further away than ever.

Although climate change and biodiversity negotiations are not conducted on the basis of negotiation mandates for the Commission, but on the basis of Council Conclusions (van Schaik, 2010) and without formal authorisation of the Commission, the mercury dossier made the context in which the Belgian Presidency had to guide the EU through the Nagoya and Cancún conferences extremely nervous.

Tensions between foreign affairs generalists and environmental negotiators

The final context-determining elements are the tensions between, on the one hand, generalist decision-makers in the field of external relations and, on the other, the specialised negotiators from the environmental domain. Interview data demonstrates that both in the Commission and in the Belgian Presidency, this tension was clearly present. The generalists (i.e. the entourage of the President and the Secretary-General in the Commission, and the Foreign Affairs Ministry in Belgium) strictly followed a “pro-European”, even orthodox path, basically saying that the external representation of the EU should be the Commission’s prerogative and that a general cross-sectorial arrangement should be put in place to assure the external representation of the EU on the international scene. Both Commission President Barroso and Belgian Foreign Affairs Minister Steven Vanackere have repeatedly argued for such an arrangement in public interventions (e.g. Barroso in speeches before the European Parliament, or Vanackere in press interviews). With regard to the external role of the rotating Presidency, the Belgian Permanent Representative at the EU stated: “Our ambition is to make sure that the working Presidency no longer has anything to do with external relations by the end of the term” (EUobserver, 20/05/2010).

By contrast, the officials participating in the Council’s Working Party on International Environmental Issues (WPIEI), which are the experts conducting the international negotiations on the floor, emphasised that the international reality of international environmental negotiations did not fit within the aspirations of their superiors and that the EU needed pragmatic and flexible negotiation arrangements in order to negotiate effectively. In practice, this means that those environmental negotiators preferred a Presidency-led negotiation arrangement, in which the other Member States and the Commission can be informally involved. Moreover, they argued that a set of general cross-sectorial rules for the EU’s external representation was not going to work and that the environmental area was better suited with specific arrangements.

These diverging opinions generated tensions in the Presidency and in the Commission between the world of the negotiators and that of the generalist decision-makers and politicians. The former accused the latter of not understanding how international environmental negotiations work in practice, whereas the latter criticised the former about not being able to give up the status quo and their own specific tasks and jobs. This fourth element originated at the beginning of the Spanish Presidency, but continued to exist during the Belgian Presidency. Interviewees confirm that the fact that, in the run-up to the Belgian Presidency, Belgian politicians and Foreign Affairs officials clearly communicated in favour of the Commission approach which created distrust among the environmental experts of the other Member States, who even openly asked what would happen in the international negotiations on the floor when the Belgian Presidency would leave the negotiations to the Commission.

Negotiating on behalf of the EU: Finding a balance between external pressure and internal instructions

When representing the EU internationally, an EU negotiator – here the rotating Presidency – is faced with the challenges that emerge from representing the EU internationally. Indeed, when taking up a representation role, the rotating Presidency must find a balance between two dynamics that may reveal contradictory expectations.

On the one hand, the external representation of the EU in international (environmental) negotiations has an external component, namely being the spokesperson for the EU at the international level. On the other hand, representation also has an internal dimension, as it implies that the EU negotiator acts on behalf of the Member States. Indeed, in biodiversity and climate change negotiations, Member States delegate negotiation authority to a common representative, the Presidency. This delegation is a political choice, since the Treaty does not explicitly foresee a role for the rotating Presidency in representing the EU externally when shared competences are at stake (see above).

The Member State that occupies the rotating Presidency seat of the Council is expected to act loyally and neutrally vis-à-vis the other Member States and thus not to use its “power” as Presidency to realise its own interests. Research on the rotating Presidency indeed shows that Member States tend to put aside their national preferences during the course of their Presidency (e.g. Schout and Vanhoonacker, 2006). The fact that the Presidency is usually characterised as a rather impartial actor – and even an “honest broker” – in the institutional set-up of the EU relates to the fact that its political behaviour is subject to unspoken and informal norms that guide policy-making in the Council (Niemann and Mak, 2010).

Since the Presidency – and with it the task to negotiate on behalf of the other Member States at the international environmental scene – rotates six-monthly, it is likely that the Presidency’s behaviour will be influenced by a feeling of reciprocity (Tallberg, 2003): the Belgian Presidency was likely to be aware that one year later another Member State (in casu Poland) would have the same responsibility to conduct the climate change negotiations of Durban and that the next biodiversity conference in 2012 in Hyderabad would be negotiated by the Cypriot Presidency. This awareness reduces the chance that Member States “(mis)use” the Presidency responsibility for their own interests and make that they are supposed to be a rather truthful representative vis-à-vis the Member States. However, this does not mean that the Presidency is always able to do exactly what the other Member States want because the Presidency is also confronted with expectations originating from the international negotiations.

This leads to a situation in which the Presidency is involved in two simultaneous negotiations within the framework of a two-level-game: external negotiations with the international partners and internal negotiations with the EU Member States. The fact that the Presidency finds itself at the crossing of two negotiations generates different – often contradictory – expectations about its behaviour (Delreux, 2011). On the one hand, being involved in the negotiation dynamics at the international level, the Presidency experiences the pressure coming from negotiation partners to agree – and thus to compromise – on an outcome of the COPs on which the EU has to make some concessions on its initial position. On the other hand, the Presidency represents the Member States and their common position. What matters here is that the Presidency ultimately has to get the approval of the Member States on the deal(s) reached at the

international level. Indeed, above all, the Presidency aims to avoid being called back by its Member States, which would imply a loss of face vis-à-vis its external negotiation partners and place blame on the balance of the whole Presidency.

Consequently, the Presidency faces a Janus-like role, as it connects two political processes at different levels, which generate different expectations (Putnam, 1988; Damro et al., 2008). The key question is then how the Presidency deals with such a situation: how far is the Presidency able to engage in the international negotiation process, while still reasonably expecting that Member States will not reject its international commitments afterwards? The delicate trade-off that it constantly has to make is to satisfy the international negotiation partners by making commitments in order to reach an international agreement, while ensuring that the Member States will not blow the whistle on it afterwards.

Practical negotiation arrangements in Nagoya and Cancún

Before answering the two-level-game question empirically in the next section, the current section first looks at the practical negotiation arrangements used in Nagoya and Cancún. As argued earlier in this paper, the context in the EU on the issue of its external representation in international environmental negotiations at the beginning of the Belgian Presidency in July 2010 was rather tense. Consequently, it quickly became clear that changing the status quo in one or another direction (such as giving a larger role to the Commission, making use of the Union's negotiating team, etc.) was politically not feasible if the EU wanted to avoid a new mercury scenario where its international position and effectiveness was largely put at risk. Therefore, the approach of the Belgian Presidency (at least at the expert level), which had to bring two major international environmental conferences to a good end, was one of a careful continuation of existing practices. Indeed, the highly sensitive context paved the way for an EU negotiation arrangement in Nagoya and Cancún driven and guided by the Presidency. This means that the four context factors, outlined earlier in the paper, meant that even under the Belgian Presidency the existing external role for the Presidency was maintained, although one of the driving principles of the Belgian Presidency was to realise both "the letter and the spirit of the [Lisbon] Treaty", as Belgian Prime Minister Yves Leterme announced in the European Parliament (Belgian Presidency, 2010, p. 6). As the "letter" does not contain anything on the role of the rotating Presidency and the "spirit" calls for more coherence in the external representation, it is clear that this approach of the Belgian Presidency could not be realised because the question was politically too sensitive to be able to change the status quo.

The EU as negotiating party at the biodiversity conference in Nagoya

Besides taking decisions on about 40 technical issues (e.g. on marine environment, biofuels or the link between biodiversity and climate change), the main aim – and achievement – of the 10th biodiversity COP in Nagoya was to reach a package deal consisting of three issues (see Earth Negotiation Bulletin 2010a for an overview of the negotiation process and the outcomes of the Nagoya conference). First, after years of negotiations, COP10 resulted in a legally binding agreement on the Protocol on Access and Benefit Sharing ('ABS Protocol' or 'Nagoya Protocol'). This Protocol is about the

equitable access to and distribution of the benefits of the use of genetic resources, setting up a mechanism through which countries that profit from genetic materials (e.g. by making products of it) have to share those profits with the countries where those genetic resources were exploited (see Buck and Hamilton, 2011). Second, a new strategic plan to stop the loss of biodiversity in the ten next years has been adopted. Third, a plan on resource mobilisation, which was closely connected to the strategic plan, has been agreed upon.

Like most international environmental negotiations, the biodiversity COP first met at the level of experts and officials, who were then joined by their ministers for the final days of the second week of the conference. Most day-to-day negotiations take place in so-called "contact groups" at the level of the officials and in "informals" at the level of the ministers. The plenary meetings, by contrast, are usually reserved for making statements and for adopting the final deals at the end of the conference. However, these plenary meetings have the largest visibility, which explains why the practical arrangements settling the EU representation for these sessions is a sensitive issue for the Member States, as will be discussed further. Table 1 gives an overview on who represented the EU during CBD's COP10 in Nagoya.

Table 1: EU representation at the biodiversity COP in Nagoya

| | Plenary | contact groups/informals |
|--------------------------|-------------------------|---|
| official's level | Presidency | <ul style="list-style-type: none"> • ABS: Commission • other (40+) agenda items: most by the Presidency, some by the Commission |
| ministerial level | Presidency + Commission | <ul style="list-style-type: none"> • ABS: Commission, supported by Presidency • strategic plan and resource mobilisation: Presidency, supported by Commission |

Generally speaking, the Belgian Presidency represented the EU during the Nagoya conference. There was, however, one exception. In 2009, when it had become clear that the ABS negotiations would lead to a legally binding Protocol, the Commission had been granted a negotiation mandate by the Council to negotiate this Protocol on behalf of the EU. Indeed, according to the general interpretation of Article 218 TFEU, negotiation mandates are only granted to the Commission if the outcome of the international negotiations is meant to be legally binding. The mandate covered the 8th and the 9th meetings of the 'Ad Hoc Working Group on ABS', which took place in November 2009 and March 2010. It did not include some issues that fell beyond EU competences, such as traditional knowledge and capacity building. Consequently, these issues were negotiated by the Presidency. However, since ABS Ad Hoc Working Groups 8 and 9 – as well as '9 resumed' (in July 2010) – failed to reach an agreement in 2010, the ABS issue was moved to the COP. As the negotiation mandate only covered the ABS Ad Hoc Working Groups, the Council has extended the existing mandate for the Commission to the COP.

Hence, at the contact group and informals level, where the negotiations are issue-specific, ABS was negotiated by the Commission. The majority of the other issues, including the strategic plan and resource mobilisation, were negotiated by the Presidency. The Belgian Presidency appointed for each of the more than 40 issues a Belgian expert as a "lead" and another one as a "co-lead". Only on a number of issues where the EU had competences and the Commission had expertise were Commission officials appointed as lead or co-lead (e.g. on biofuels and agricultural biodiversity).

When the ministers arrived in Nagoya, the large majority of technical issues were already settled. The final negotiation days could thus focus on the three elements of the package: ABS, the strategic plan and resource mobilisation. On these three issues, informal contact groups were established. The contact group on ABS was deadlocked on the final Thursday evening, which inspired the Japanese COP Presidency to present a compromise proposal on Friday morning. This text was then discussed at ministerial level, with only European Environment Commissioner Janez Potočnik and Flemish Environment Minister Joke Schauvliege (who held the Belgian Presidency) representing the EU. Simultaneously, the strategic plan and resource mobilisation were discussed at the level of the officials in open negotiation sessions and with the Presidency speaking for the EU. Once the ABS group had reached an agreement, the Belgian Presidency engaged in an informal deal-making in the corridors with the G77 (mainly Brazil), coupling the strategic plan to the resource mobilisation, which is in fact a "commitments for money" deal. After having obtained the support of the Member States for this deal, it was then settled in a joint working group on the strategic plan and resource mobilisation, and afterwards adopted during the closing plenary.

The discussion on who negotiated on behalf of the EU is only half of the story. Additionally, the question on the practical arrangements of that representation has to be tackled in order to fully understand the whole picture. Since the beginning of 2010, it was the practice in biodiversity negotiations that the EU negotiator spoke from behind the EU flag, irrespective whether he/she came from the Commission or the Presidency. In the run-up to the Nagoya conference, the Belgian Presidency wanted to continue this system at COP10 as well. However, during the first EU coordination meeting sur place (i.e. the Sunday before the start of the Nagoya meeting), a group of Member States, led by the UK, opposed this system, arguing that they wanted the Belgian Presidency to speak from behind the Belgian nameplate, and not from behind the EU one. This development seems to be linked with the climate change negotiations in Tianjin (a preparatory meeting for the Cancún COP two weeks before the Nagoya conference), where the nameplate question led to a clash in the EU (discussed below). This generated a spill-over from the climate change to the biodiversity negotiations. Moreover, all these events occurred within the general – and already tense – context of the EU's external representation. Given the high time pressure (the EU had to speak at the international level the next day), the Presidency proposed an unseen and unprecedented ad hoc arrangement, which met the UK instructions. The arrangement consisted of putting the Belgian and the EU nameplates together and all European negotiators spoke from behind both nameplates, but through a single (European) microphone. Using this arrangement, which was described as "unexplainable and hallucinatory, but a solution" by one interviewee from the Belgian Presidency, the EU was represented in plenary by the Presidency before the ministers arrived, and by the Presidency and the Commission jointly at ministerial level.

In order to avoid additional spill-over (or even “contamination”, as another interviewee phrased it) from the biodiversity to climate change negotiations, the Belgian Presidency team in Nagoya tried to hide this “double nameplate, single microphone” arrangement as much as possible for the people in Brussels. This again points at the tensions between the negotiators on the field and the generalists in Brussels. In this way, the Belgian biodiversity negotiators aimed to avoid that their ad hoc practical arrangements affected the ongoing debate in Coreper on the practical arrangements that would be used in the climate change negotiations in Cancún.

The EU as negotiating party at the climate conference in Cancún

The Cancún COP on climate change succeeded in reaching its (modest) ambitions to agree upon a well-balanced set of COP decisions (see Earth Negotiation Bulletin 2010b for an overview of the negotiation process and outcomes of the Cancún conference). Those decisions basically import many of the elements of the 2009 Copenhagen Accord into the UN(FCCC) framework, such as the “two degree target” (i.e. the target to keep global warming below two degrees compared to pre-industrial levels) or the financial architecture (e.g. with the establishment of the Green Climate Fund) (Oberthür, 2011). In this way, COP16 saved the multilateral and UN-led negotiation process on climate change. However, some of the most sensitive issues, such as the legal form(s) of the future climate change agreement(s) and a possible second commitment period of the Kyoto Protocol, were left for COP17, which took place a year later in Durban.

Just like the negotiations in the biodiversity COP, the climate change negotiations were also organised in various, often simultaneous, contact groups, each dealing with one particular (set of) issue(s). In addition, plenary settings were also convened, serving as both the Conference of the Parties of UNFCCC and the Meeting of the Parties of the Kyoto Protocol. Another similarity with the Nagoya conference is that negotiations in the Cancún conference were conducted at the level of officials and at ministerial level (during the second week of the COP). Table 2 shows the EU representation during UNFCCC’s COP16 in Cancún.

Table 2: EU representation at the biodiversity COP in Cancún

| | Plenary | contact groups/informals |
|--------------------------|---|--|
| official’s level | Presidency | lead negotiators : <ul style="list-style-type: none"> • AWG-LCA: from UK, Germany, France and Poland • AWG-KP: from the Commission |
| ministerial level | Presidency + Commission, <i>de facto</i> Commission | Presidency + Commission + in some instances lead negotiators |

A specific characteristic of the EU representation in climate change negotiations is that the EU uses since 2004 a system of “lead negotiators” and “issue leaders” (Delreux and Van den Brande, 2013). It is an informal system that takes place under the formal authority of the Presidency, whereby the negotiation task is informally divided among a couple of negotiators, each negotiating on behalf of the EU for a longer period than the

six-monthly rotating Presidency and for a particular set of issues. This allows the Presidency to share the burden of the negotiation task, since climate change negotiations are often too complex and too dense to be appropriately handled by a single Presidency. Moreover, in this way, the available expertise, know-how and experiences of many actors are pooled and made use of optimally. Finally, this system guarantees continuity, since neither the preparation of EU positions nor the representation of the EU changes every six months when a new Member State holds the Presidency.

In Cancún, as in the previous years, the climate change negotiations followed a double track. The first track was negotiated with all UNFCCC parties in the institutional framework of the AWG-LCA (Ad Hoc Working Group on Long-term Cooperative Action under the Convention), whereas the second track implied negotiations only among those parties that ratified the Kyoto Protocol within the institutional setting of the AWG-KP (Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol). The lead country system of the EU was adapted to those two-track negotiations, as the EU used lead negotiators for AWG-LCA and lead negotiators for AWG-KP. In all contact groups of the AWG-KP, the EU was represented by a lead negotiator coming from the Commission. In the contact groups under AWG-LCA, by contrast, there were four EU lead negotiators, coming from the UK, Germany, France and Poland. When negotiating in the contact groups, the lead negotiators are usually accompanied by a group of experts from the Member States and the Commission, as well as by an official from the Presidency, who supports (and controls) the lead negotiator on the spot.

From the moment that ministers arrived in Cancún and attended the negotiations, the EU statements were made jointly by the Presidency and Commission. At a couple of meetings before the Cancún conference, e.g. at the informal Environment Council of Ghent (July 2010) or in a joint meeting with the European Parliament, Belgium's Minister Schauvliege and European Climate Action Commissioner Connie Hedegaard had made clear they would speak with "one voice" (European Parliament, 2010). The speaking time allocated to the EU was properly divided in two separate time slots, one for the Presidency's Minister and the other for European Commissioner. Interviewees indicate, however, that during the final night of the negotiations, when the outcome of the COP was discussed in plenary before the decisions were adopted, the minister from the Presidency had de facto left the final negotiation work to the Commissioner. The same dynamic can be observed as far as the informal meetings at ministerial level were concerned. Moreover, even at ministerial level, the EU has made use of the negotiation skills, experience and networks of its lead negotiators, who continued negotiating even in ministerial settings.

Just like in the EU decision-making process with regard to biodiversity negotiations, and to climate change negotiations, the question on the practical arrangements for the EU representation arose. Mirroring the biodiversity case, the nameplate question appeared to be very sensitive. In recent years, European climate negotiators spoke from behind the nameplate of the rotating Presidency, the reasoning being that the lead negotiators acted under the Presidency's authority and umbrella. However, during the preparatory climate change meeting in Tianjin (4-9 October 2010), the Belgian Presidency proposed to speak from behind the EU nameplate. This not only caused tensions (some interviewees even call it "chaos") in the EU coordination meeting sur place in Tianjin, but had two other consequences. Firstly, it spilled over into the biodiversity arena, since

some Member State representatives in Nagoya received stricter instructions on the nameplate question, which ultimately led to the “double nameplate, single microphone” arrangement in Nagoya (discussed previously). Secondly, the practical arrangements for the climate negotiations were placed on the agenda of Coreper, aiming to determine a practical arrangement for the Cancún COP. A few days before the start of COP16, on 19 November 2010, Coreper agreed upon such practical arrangements. They were very limited, basically stipulating that the Commission and the Presidency would take the floor from behind the EU nameplate, that the existing system of lead negotiators would continue to be the practice throughout these negotiations, that the EU coordination meetings would be chaired by the Presidency (indeed, the question on the chairing of coordination meetings had now been added to the “grey zone” and the range of issues dominated by the interinstitutional battle), and that these practical arrangements did not establish a precedent. Hence, these arrangements for the climate change negotiations were confirmed on paper (by Coreper), whereas those for the biodiversity negotiations were agreed upon on the spot without any backing from the Brussels-based circuit or the capitals. Substantively, the practical arrangements for Cancún changed the existing practice, since EU negotiators (the Presidency, the Commission and the lead negotiators) spoke from behind a single EU nameplate at COP16.

The two-level game played by the Belgian presidency in Nagoya and Cancún

As explained earlier in this paper, the actor who negotiates on behalf of the EU in international environmental negotiations faces a two-level-game dilemma since it has to reconcile the external pressure to reach an agreement in the COP and the internal pressure not to deviate from the EU position established in the Council. During the biodiversity and climate negotiations in the second half of 2010, the Belgian Presidency was confronted with such a situation.

In this respect, the most delicate issue that the Belgian Presidency had to deal with during the biodiversity conference in Nagoya was definitely the resource mobilisation dossier. Basically, resource mobilisation is about financial support from developed to developing countries to help the latter with realise the objectives of the strategic plan that aims to stop the loss of biodiversity. In the economic, financial and budgetary circumstances at the end of 2010, most Member States had a red line not to make any financial commitments at COP10. However, since resource mobilisation was closely connected to the strategic plan, and since adopting a strong strategic plan was the top priority for the EU in Nagoya (Council of the EU, 2010a), the Presidency was confronted with a two-level-game dilemma: how to reach an attractive deal on the strategic plan without giving in on the red lines of the Member States regarding the financial commitments (internal pressure), while the external partners – mostly developing countries – could only accept a strategic plan if money was put on the table (external pressure)?

In the informal package deal on the strategic plan and resource mobilisation that the Belgian Presidency had reached with Brazil at the final day of the conference (discussed previously), the Presidency received a satisfactory strategic plan, but in exchange it had to make concessions on resource mobilisation, resulting in a commitment to “adopt targets at its eleventh meeting” (i.e. COP 11 in 2012) (CBD COP 10 Decision X/3, point 8.i). Before this corridor deal could be made public to the major players in the COP, the

Presidency first had to convince the Member States. Therefore, it convened a coordination meeting, where it had to convince the Environment ministers of the Member States that this deal was the best possible one given the international negotiation dynamics.

The Belgian Presidency succeeded in gaining the support of the coordination meeting by combining three strategies. First, it effectively transferred the pressure from the international negotiations, making clear that this trade-off (developing countries' commitments in the strategic plan for the sentence "adopt targets at its eleventh meeting" by the EU) was the only feasible way to end the two-week negotiation session in Nagoya successfully. Second, in the EU coordination meeting, the Presidency stressed the importance of all other European achievements in the COP (e.g. a strong strategic plan, the adoption of the ABS Protocol, technical decisions in line with the European position). This way, the Presidency aimed to increase the weight of the benefit side of the cost-benefit analysis that all Member States had to make at such a moment (Delreux and Kerremans, 2010). Third, the Presidency has persuaded the Member States that the wording of the EU concession ("adopt targets at its eleventh meeting") leaves room for interpretation, since the deal does not specify what kind of targets the EU would have to accept at COP11. In other words, this wording allows for adopting targets other than Official Development Assistance (ODA) targets. In that regard, by leaving open the interpretation of that sentence, the Presidency tried to sell what was presented as a concession externally as being not necessarily a concession internally. Moreover, by emphasising this open interpretation, the Presidency offered to the Environment ministers the arguments they needed to sell this outcome on resource mobilisation in their own governments, and specifically to their Finance Ministers. In this way, the Presidency helped the representatives of the Member States in Nagoya not to be called back when they returned to their capital.

In the climate change negotiations at COP16 in Cancún, the EU negotiators – under the guidance of the Belgian Presidency – have not been confronted with a difficult situation where externally generated expectations contradicted with their internally determined room for manoeuvre. In other words, the Belgian Presidency was not faced with difficulties to sell external commitments to the Member States in Cancún. The main reason for this is related to the developments of the international negotiations in the COP and to the way the Mexican COP Presidency handled those negotiations. COP16 passed the most difficult and politicised issues to future COPs (Durban 2011, Doha 2012). In that respect, the approach of the Mexican COP Presidency facilitated the task of the Belgian EU Presidency, since the former avoided that the latter had to persuade the Member States to accept certain (painful) concessions.

Although the international negotiation context was beneficial for the Belgian Presidency to deal with its two-level-game tension, the Presidency had also actively contributed to prevent it from being confronted with contradictory expectations from the international level and from the EU level. First of all, the EU arrived in Cancún with moderate ambitions, namely to achieve a well-balanced set of COP decisions (and not an all-encompassing climate change treaty, like in the run-up to COP15 in Copenhagen in 2009) (Council of the EU, 2010b). From the beginning of its Presidency, the Belgian strategy had been to temper the ambitions among the Member States, this way also assuring that the Presidency was not blamed by the Member States for not being able to realise the EU objectives. Second, the European approach, driven by the Presidency, was

to actively contribute to the strategy of the Mexican COP Presidency. Indeed, the Mexican strategy was to collect as much input as possible during the COP. According to the interviewees, the Mexican COP Presidency has listened to the negotiation parties for most of the two weeks and only tabled a proposal at the end of the COP. That Mexican proposal was then politically “to take or to leave”. The fact that it was ultimately taken by the COP is most probably due to the fact that all parties could find their points in that proposal, and – even more important – that the Mexican proposal crossed no red lines of the major players. This was, of course, facilitated by passing the most politically sensitive issues to the next COP. The EU negotiators, under the guidance of the Belgian Presidency, actively participated in this “input gathering” strategy of the Mexican COP Presidency, decreasing the likelihood of being blamed – or called back – by the Member States.

Conclusion

This paper has shown that there is still a role for the rotating Presidency in the external representation of the EU under the rules of the Lisbon Treaty. In other words, the status quo of the EU representation in international environmental negotiations has largely been maintained. The empirical analysis revealed that this was certainly the case in 2010, but the question remains as to whether the rotating Presidency will continue to play a major role in international environmental conferences in the future or whether the second half of 2010 was rather a transitional period with the EU not (yet) having its house in order.

Whereas there are no indications that the role of the rotating Presidency is diminishing in biodiversity negotiations, the picture may be different in climate change negotiations. Indeed, the Climate Action Commissioner Hedegaard seems to have played a bigger role at the international scene at the expense of the Polish Environment Minister of the rotating Presidency at the 2011 Durban climate conference, suggesting that the balance may tip to the advantage of the Commission in the near future at the cost of the Presidency (and thus the Council). Also Sijbren de Jong and Simon Schunz find that the Commission took a stronger stance in representing the EU in Durban, but they explain this by referring to the personality of the Climate Action Commissioner, “the charismatic former Danish Minister Connie Hedegaard” (de Jong and Schunz, 2012). Stressing her key efforts in bridge-building between developed and developing economies in the endgame of the Durban negotiations, Commissioner Hedegaard was even called “the hero of the Durban meeting” (The Guardian, 11/12/2011). This contributed to the diplomatic success of the EU in Durban.

However, this does not mean that climate negotiations are now exclusively conducted by the Commission on the EU side. Two reasons now indicate that the rotating Presidency still matters in international climate negotiations and that the main argument of this article still holds true. First, if the growing role of the Commission is indeed confirmed, it is mainly the case at ministerial level in the final days of the conference, when the European Climate Action Commissioner enters the scene. Her experience in climate change politics is often stronger than that of the minister from the rotating Presidency. However, at the officials’ level, in contact groups and working groups, the informal division of labour between lead negotiators, who function under the Presidency’s umbrella, is still used (although the Commission also takes up a lead negotiator position)

and the Presidency still occupies a central position in the EU. One should not underestimate the importance of these contact and working groups, as a lot of technical and preparatory work is already done there. Second, there are today no indications that, in the near future, climate change negotiations will be completely left to the Commission, with the Commission for instance negotiating on the basis of a mandate by the Council, as occurs in international trade negotiations. As long as this legal path is not followed, there will remain some room for the rotating Presidency.

Returning to the main argument of this paper, the main reason why the status quo was not changed in 2010 – even with new rules and with a player in the driving seat wanting to implement those new rules – was the fact that the EU was internally deadlocked on the question. There was no room to move existing practices into the direction of the intentions behind the Lisbon Treaty because of the highly tense interinstitutional relations in the EU, caused by the aftermath of Copenhagen, the grey zones initiated by the Lisbon Treaty, the experiences with the mercury mandate and the divisions on those questions between external relations generalists and environmental negotiators. As a result, the Belgian Presidency led the EU representation at the biodiversity COP in Nagoya and at the climate COP in Cancún. However, certainly in the climate negotiations, the existing practice to informally leave most of the negotiation work to other EU actors continued. Indeed, also as far as the informal dynamics were concerned, the status quo was maintained. This probably ensured that the external damage of the internal struggling was relatively limited.

The only area where 2010 brought some changes in the external representation of the EU in international environmental negotiations was in the practical arrangements used to organise the EU representation on the floor. In particular, the question on the EU nameplate was extremely sensitive, leading to tense discussions. In that context, it seems that the EU will have to leave these internal discussions, either by pragmatically determining flexible arrangements that are considered appropriate and effective on the floor, or by a Court case clarifying the grey zones, if it wants to concentrate again on the substance and on its impact on international environmental negotiations.

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