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Pursuing Effective Multilateralism: The European Union, International Organisations and the politics of decision making

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List of Abbreviations

AI	Amnesty International
ASEAN	Association of South East Asian Nations
BWI	Bretton Woods Institutions
CAS	Committee on the Application of Standards
CFSP	Common Foreign and Security Policy
CoE	Council of Europe
CONUN	Coordination United Nations (EPC Working Group)
DDR	Doha Development Round
DSU	Dispute Settlement Understanding
EC	European Community
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOSOC	Economic and Social Council
ED	Executive Directors
EEA	European Economic Area
EEC	European Economic Community
EEG	Eastern Europe Group
EESC	European Economic and Social Committee
EFC	Economic and Finance Committee
EMU	European Monetary Union
EP	European Parliament
EPC	European Political Cooperation
ESDP	European Security and Defence Policy
ESS	European Security Strategy
EU	European Union

EURIMF	EU Coordination on IMF (Washington)
FAO	Food and Agriculture Organization
G-11	Group of 11
G-7	Group of Seven
G-77	Group of 77
GATT	General Agreement on Tariffs and Trade
GB	Governing Body
GRULAC	Group of Latin American Countries
HRC	Human Rights Council
HST	Hegemonic Stability Theory
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development (World Bank)
ICC	International Criminal Court (ICC)
ICCPR	International Covenant on Civil and Political Rights
IEE	Independent External Evaluation
ILC	International Labour Conference
ILO	International Labour Organization
IMF	International Monetary Fund
IPA	Immediate Plan of Action
IR	International Relations
ISNT	Informal Single Negotiating Text
JHA	Justice and Home Affairs
LGBT	Lesbian, Gay, Bisexual and Transgender
MDG	Millennium Development Goals
MEP	Member of the European Parliament
MERCOSUR	Mercado del Sur
MLC	Maritime Labour Convention
MO	Multilateral organisation

NAM	Non-Aligned Movement
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organisation
NIEO	New International Economic Order
NSS	National Security Strategy
OECD	Organization for Economic Cooperation and Development
OIC	Organization of the Islamic Conference
OSH	Occupational Safety and Health
R2P	Responsibility to Protect
SCIMF EFC	Sub-committee on IMF (Brussels)
SDG	Social Dimension of Globalization
SEA	Single European Act
TEC	Treaty on the European Community
TEU	Treaty on European Union
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNCLOS III	Third UN Conference on the Laws of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNGA	United Nations General Assembly
UNO	United Nations Organization
UNSC	United Nations Security Council
US	United States
USSR	Union of Soviet Socialist Republics
WEOG	Western Europe and Other Group
WP	Working Party
WTO	World Trade Organization

WWII Second World War

Chapter One
The European Union, multilateralism, and the heterogeneous multilateral system

> In the years ahead, therefore, Europe's attachment to multilateralism – and to the United Nations, as the pivot of the multilateral system – will help determine whether, and how, the institutional architecture established in the years after World War II can continue to serve as the bedrock of the international system. (COM 2003 526 Final: 3)

> The EU is committed to strengthening the UN in line with the shared objective of building an international order based on effective multilateralism, well functioning international institutions and a rule-based approach to global issues. (Council of the European Union, 2003a: §1)

The attacks of 9/11 that sent the United States spiralling into a neo-conservative vortex of pre-emptive warfare, regime change and unilateral military action had a well-documented spill-over into the European Union (Peterson & Pollack 2003, Calleo 2004). The (in)famous reference by US Defence Secretary Donald Rumsfeld to 'new Europe' and 'old Europe' became the shorthand notation for the divisions in Europe over the 2003 invasion of Iraq[1], led by the US and including among its 'coalition of the willing' the United Kingdom and Poland. Philip Gordon and Jeremy Shapiro sum up the complex web of political negotiations that took place across Europe and in the United Nations Security Council in New York during the months leading up to the war (Gordon & Shapiro 2004). They conclude that the divisions that emerged inside Europe and across the Atlantic were in no way inevitable. By the end of 2003, the European Union, only a few months away admitting ten new members (many of whom had openly sided with the US and 'new Europe' in two open letters[2]), agreed the final text of the European Security Strategy (ESS), published a little over a year after the 2002 US National Security Strategy redefined the role of America in the post 9-11 world. In 30 pages it sets out the threats facing Europe and the Union's responses to them. Among them was a

[1] http://news.bbc.co.uk/2/hi/europe/2687403.stm (accessed 24 November 2009)

[2] The text of the 'Letter of Eight' (30/01/03) see http://news.bbc.co.uk/2/hi/europe/2708877.stm (accessed 24 November 2009) while on the 5 February 2003 the 'Vilnius Ten' published their own open letter in the Wall Street Journal in support of the US.

clearly articulated goal of supporting the United Nations, the rule of international law and promoting 'effective multilateralism'.

During the intervening years much has been written about the European Security Strategy (ESS), its purpose and strategic goals, its ability to unite disparate European member states and demarcate a clear distinction between European multilateralism and American unilateralism (Berenskoetter 2005, Berenskoetter & Giegerich 2006, Shepherd 2006). Robert Kagan captured the zeitgeist of the immediate aftermath of the Iraq invasion in *Of Paradise and Power*, his 2003 book explaining why Europeans were from 'Venus' while Americans were from 'Mars'. Elsewhere academic interest turned to assessing the ability of the EU to put its support for the UN into practice, not only looking at how it performs in different UN bodies, but also its role in the 60th Session of the General Assembly (2005). Secretary General Kofi Annan claimed that the UN had reached a 'fork in the road', raising expectations that major institutional reform could be agreed, possibly reaching the structure and composition of the Security Council. The final outcomes were more modest, the most noticeable being the creation of the Human Rights Council and the Peacebuilding Commission. Prins (2005) and Luck (2006) both agree that evolution has always been preferred to revolution in the UN system, and Annan's decision to attempt shock therapy was never likely to succeed. Perhaps more realistically, the focus of EU-UN relations has turned its attention to ways in which the EU can help to strengthen the UN through increasing funding, accountability, transparency and legitimacy, as well as placing EU military capabilities at the disposal of UN peacekeeping operations. In the midst of this pragmatic reappraisal of the partnership, 'effective multilateralism' has come to signify a drive for efficiency, closer synergies and greater cooperation (Ortega *et al* 2005).

What does 'effective multilateralism' mean? Does it mean the same as it did in 2003 when it was placed at the heart of a document with the express purpose of

bandaging a badly haemorrhaging patient? After all, 'the end of the transatlantic alliance' and the 'death of the West' were the subject of serious academic debate (Cox 2005, Anderson *et al* 2008). Will the Democratic Presidency of Barack Obama signal a full-scale policy reversal by the United States back towards support for multilateralism, or will it go further and use its honeymoon period to try and push its own reform agenda? How much damage did the Bush Administration do to the reputation of the US and how quickly can it restore its credibility as an influential actor in the UN? Turning back to focus on Europe, where does all of this leave the EU? Has it passed by the opportunity to become a stronger actor in the multilateral system in the vacuum left by the US? Alternatively, was the proposition that the EU could deputise as a leader of the West always a speculative one, and a more engaged US in the multilateral system is the necessary catalyst for a more concerted European effort? If this is so, does it mean that the EU's aspirations of having a strong and influential foreign policy, its inherent 'comparative advantage' at multilateralism, and the growing institutional sophistication of the policy-making apparatus in the second pillar, will all amount to nothing? In the final reckoning will Kagan be vindicated: does Europe still rely on American leadership? This book explores the actual working practices of the EU in the multilateral system, and by doing so is able to provide a critical and comprehensive appraisal of the EU efficacy in the multilateral system, its ability to deliver effective multilateralism – and on whose terms.

Core issues and key questions

This book is structured around four core arguments that inform, and are informed by, the case studies and analysis of the following chapters. The arguments are crosscutting and every chapter speaks to each argument in part, meaning that after firstly articulating the central components of each one here, we will return to them in the conclusion in order to generate answers to the questions set. There are four sets of questions that this book sets out to answer.

Unintended and harmful consequences of EU multilateral policy

The first argument made in this book is that EU policies promoting effective multilateralism can do harm to the multilateral institutions they are designed to assist, however benign the intentions of the EU may be. Multilateral organisations are assumed to have sufficient agent-like capacity in the international system that their interests can be identified and assessed, to the extent that a given outcome can be described as either beneficial or detrimental to a multilateral organisation. The relationship between multilateral organisations and the EU (either its member states, the European Community or post-Lisbon Treaty, the European Union) is conceived as a two-way street, with each side having clearly identifiable interests that can be furthered or hindered by a given policy. Much of the work on effective multilateralism does not take into account the effects of EU policies on the multilateral arena, instead assuming that what is good for the EU is good for the multilateral system in general, and that cooperation between the two leads to a win-win situation. But why should this be so? Provided that we accept that multilateral organisations have goals, and that the actions of states may either help or hinder their realisation, the win-win scenario between the EU and any multilateral organisation is one of only four possible outcomes of their interaction. All four are presented in the following two-by-two matrix.[3]

[Insert Table 1 here].

Assessing the impact of an EU policy on a multilateral organisation in which it is operating according to their separate (and distinct) interests reveals the location of that relationship on the matrix. The widely held assumption that there are natural synergies between the EU and multilateral organisations and that a harmony of interests between the two guides policy finds a home in the northwest quadrant – a win-win scenario. Yet we must be intellectually open to the possibility

[3] The four combinations of winning and losing, despite their appearance, are not game theoretical. Rather, they simply show four possible outcomes of an interactive relationship, and that effective multilateralism has two dimensions, one of the EU as policy actor and one of the multilateral organisation in which it is acting.

that outcomes lie in the other three quadrants as well, all of which offer interesting empirical evidence to refute the natural synergy assumption. The EU can be said to be harmful when it gains at the cost of the multilateral organisation (northeast). Moving diagonally into the bottom left corner (southwest) corresponds to the inverse outcome when the EU loses but the multilateral organisation benefits. In such cases, the furtherance of effective multilateralism is an unintended consequence EU policy 'failure', leading to the counter intuitive conclusion that the EU sometimes promotes effective multilateralism through what it does *not* do, of fails to do, rather than what it does do. Multilateralism may become more effective when EU power and influence *decreases*.

The final quadrant in the matrix in the bottom right hand corner represents a lose-lose outcome, where neither the objectives of the EU, nor those of the multilateral organisation, are furthered (southeast). The case studies to come provide us with entries into every quadrant, demonstrating that one cannot assume that EU policies designed to promote effective multilateralism will result in wins for multilateral organisations. Critics will argue that this is a parsimonious model that attempts to capture dynamic relations in a static snapshot. This is undoubtedly true, and as we will see the position of multilateral organisations move between quadrants over time, and can exist in two quadrants simultaneously depending on the criteria of assessment used. The following chapters provide evidence of every type of relationship, demonstrating empirically the underlying argument that we cannot assume that a harmony of interests between the EU and the multilateral system exists.

Heterogeneity and the multilateral system

Claiming that the multilateral system is a heterogeneous political space should properly be described as stating the obvious. Given the vast array of different institutions, their continually growing memberships and changes to the structure of power and influence among members, it should be regarded more as fact that

the multilateral system is highly diverse and pluralistic. Any serious study into the EU's activity in the multilateral system must take into account this diversity in order to gauge EU behaviour in light of its operating environment. Similarly, it should stand to reason that there can be no generalised statements about how well (or badly) the EU pursues its goal of effective multilateralism in the multilateral system without specifying the specific details of cases studies. Yet there has been little, if any, systematic attention paid to the question of how the character of the multilateral system influences, constrains or enables the EU to act. In the same way that this book considers the EU and multilateral organisation interests when judging policy success, it explores the two-way interaction between the EU acting in a multilateral organisation and the multilateral organisation acting (albeit often passively by imposing institutional practices) on the EU.

There are a variety of ways in which we can see evidence of how the heterogeneity of the multilateral organisations impacts on the EU and how it behaves. The most important is that EU representation differs considerably between multilateral organisations (Jørgensen 2009), which to scholars of a legal persuasion is seen as a source of considerable frustration. They fret that the EU does not conform to the treaty stipulations (for example over the role of the Presidency and the European Commission) and that these are symptoms of the real problem, which is that EU member states are less bound to pursuing collective action when coordination through intergovernmental mechanisms. But EU member states have been coordinating their positions in many UN bodies for over 35 years since the creation of the CONUN working group in European Political Cooperation (EPC) in 1973 (Nuttall 1992, Luif 2003). While at first it was more informal than formal, and was limited to fewer areas of policy, they have nevertheless accumulated considerable experience concerning which working practices are best suited to a particular multilateral organisation. Diplomats working in the field have developed coping mechanisms for bridging the gap between the need for EU coordination and common representation on the one hand, and the need to operate according to the institutional practices of a

multilateral organisation on the other. Over time this has led to an individual tailoring of representation according to the political and institutional environment the EU is operating in. Following this argument to its logical conclusion, we should expect to find as many different tailored forms of EU representation as multilateral organisations, rather than a homogeneous mechanism of EU representation across all organisations.

In this book I argue that the one way of capturing the heterogeneity of multilateral organisations and analysing its impact on the behaviour of the EU is to concentrate on processes of decision making. The advantage of this method is that it is fundamental to the multilateral character of an organisation, as shall be explained in more detail below. I borrow a typology from Inis Claude's *Swords into Plowshares: The Problems and Progress of International Organization* (1984, 1st ed. 1956). He distinguishes between three ideal types of decision-making processes (majoritarian, consensus and privilege) drawn from distinct intellectual traditions. Majoritarianism reflects efforts to make international affairs more like domestic politics, consensus reflects international law and privilege reflects the acceptance of power in the international system and the responsibilities of Great Powers to operate in concert. EU representation is fashioned by the decision making environment it operates in, for example encouraging cohesive voting in majority voting or speaking with one voice in organisations where consensus is required. In the following chapters comparative case studies cut across different multilateral organisations using the same decision-making process, as well as across different ideal types. This paints a picture of how well the EU promotes its goal of effective multilateralism in different multilateral settings, thus generating generalisable statements how we expect the EU to act in other multilateral organisations. One criticism of this approach is that having made the case for a heterogeneous multilateral system, I should not immediately compartmentalise it into three ideal types. This is true, and for this reason I pay special attention to the composite nature of decision making in multilateral organisations, where, for example, decisions are first made by consensus and the adopted by majority in a plenary

meeting. Understanding the relationship between the parts of the process, their hierarchy, chronology, and predictability, all help to understand how EU member states have tailored their representation accordingly.

The focus on decision-making processes is important because it allows us to understand in far greater detail why, for example, the EU sometimes does harm while pursing policies geared to the promotion of effective multilateralism. As we shall see, there are no hard-and-fast rules dictating what sort of outcome emerges from each sort of decision-making process (nothing less than is expected from a heterogeneous system). What is important is that as a result of the case studies, a number of policy recommendations and refinements to the study of the EU in the multilateral system are suggested. Of these, the most important concerns the analysis of voting behaviour. I argue that the study of voting behaviour is highly problematic, not only with regard to the question in intentionality and volitional and non-volitional cohesion (Kissack 2007), but also because of institutional behavioural norms, predictability of outcome and position within a composite decision-making process. In one example (the International Labour Organization[4]) I demonstrate how non-cohesive voting by EU member states is fully compatible with successful EU coordination and representation. When EU representation in a given multilateral organisation does not fit our existing models, we should begin questioning the utility of our models, rather than immediately doubting the efficacy of EU member states coordination.

The role of the EU: bridge builder, front-runner, or imperialist?

What are the strengths and weaknesses of the EU's role in the multilateral system? The Union has built a self-identity as a bridge between the increasingly polarised ends of the political spectrum – the US at one end and the G-77 at the other. Over

[4] I follow UK spelling convention in the text, but use US spelling in direct quotations and in the proper names of the organisations discussed, specifically the FAO, ILO, and WTO.

the eight years of the Bush administration the US became increasingly willing to resort to unilateralism and disengage from multilateral organisations when its interests were compromised. The EU has positioned itself as a moderator between the two on a number of issues, including budget growth, development aid, and the Israel-Palestine conflict. Yet on other issues such as environmental protection, human rights promotion and the 'Responsibility to Protect', the increased legalisation of relations between states (including penetration into national legal codes), and the inclusion of social welfare in trade and aid agreement, the EU *is* the polar extreme and the US and Global South are closer allies. In these policy areas, the EU chooses to portray itself as a front-runner, leading by example in emerging fields of global governance, and cloaks what the Global South regard as blatant self-interest as a universal good and universal goal.

Opponents see these as a veiled attack on national sovereignty, an infringement of the norm of non-intervention in the domestic affairs of the state, and an attempt to meddle in the affairs of third states. The EU walks a thin line between the roles of friend and foe to the Global South, depending on the issue area in question. What it cannot shake off is the air of distrust felt by some states among the Global South. Interviews by the author with diplomats from the Africa Group and from the Organisation of the Islamic Conference (OIC) based in the United Nations in New York concur in the opinion that the EU is a very difficult partner to negotiate with.[5] Policies change depending on whom one talks to, both within a Presidency and between Presidencies. Bilateral channels with member states produce different messages that official EU channels. The ratification of the Lisbon Treaty and the appointment of Lady Ashton to the new position of EU foreign minister will not necessarily help rectify the situation, given the complexity of EU representation in the UN (Laatikainen & Degrand-Guillaud 2009). The interests and goals of the EU are distrusted because they are proclaimed as being

[5] Ten semi-structured interviews with EU, non-EU (OECD), and G-77 diplomats working on UNGA Third Committee Affairs, 16-20 February 2009, New York. All interviews were held under the Chatham House rule, hence their identities cannot be revealed.

for the common good. This was summed up by one African diplomat who said that their national position, and that of their regional partners, was often 'disagree first [with the EU] and decide why later'. By contrast, the US is viewed as tough but fair negotiator, guided by clearly articulated and predictable national interest. States use the multilateral system as a vehicle for promoting national interests, or as Wolfers (quoted in Smith 2003) described them, 'possessive goals'. The EU's ambition of promoting 'milieu goals' – i.e. those that are to the benefit of all – is viewed with suspicion by other actors because they do not behave in this way themselves and doubt EU claims that it does. Milieu goals should yield win-win outcomes, but as we have already noted this is not always the case. When evidence if found of the EU winning and the multilateral system losing, the claim that the EU serves the interests of all must be interrogated. In such cases the suspicions of the third parties appear justified.

The question arises of how the EU can overcome the suspicions of others towards it. If the EU wants to be a mediator between divided constituencies, negative perceptions will seriously limit its capabilities. One problem exacerbating this handicap is the tendency until recently for the EU to spend too long fine-tuning its common positions and not enough time outreaching its message to others. The input of close allies was foregone because EU positions could not be altered one jot. The inflexibility of the EU was not a hurdle to gaining the support of states in the European neighbourhood in various stages of accession or candidacy, nor those states anxious to demonstrate their candidate credentials. But partners in the OECD, Latin America and those sympathetic to the EU's policies in other regions were less satisfied with the working relationship with the Union. In recent years the EU in New York has adopted a number of strategies to improve its outreach, through genuine efforts to include the input of like-minded states into collective actions (discussed in more detail in Chapters 2 and 5). Also, there has been a realisation that a *lower* EU profile is at times advantageous to the support of policy proposals, especially in order to shield from the automated hostile reactions of opponents.

The elephant in the room: the United States of America

The final consideration is the role of America on defining what the EU is, what it can do, and how well it does it. As has already been mentioned, the EU's goal of effective multilateralism can be seen in part as a response to the unilateral turn of the US during the period 2000-2004. A window of opportunity was perceived to exist in which the multilateral system was in need of a new leader, and the EU as the largest donor was ready to capitalise on its benevolence and become the benign hegemon. The US has been at times the other by which the EU defined itself and it has also been one of the two poles the EU at times sought to bridge. Yet to the world beyond the OECD, the two look surprisingly similar, both advocating on market expansion, trade liberalisation, the promotion of democracy and individual freedoms, and both as Puchala *et al* (2007) note, firmly rooted in the western liberal capitalism camp. During the last 60 years, Western European states have been part of the privileged inner-core of 'minilateral' decision-makers alongside the United States (Kahler 1992). To what extent does this limit the ability of the EU to escape association with the US through the generic labels of 'western', 'developed world', or 'North'? Furthermore, to what extent is the EU capable of leading in the multilateral system when the US is unwilling to follow? Over the last decade, the Rome Statute of the International Criminal Court (ICC) and the Kyoto Protocol curbing greenhouse gas emissions have both entered into force without US participation (nor in both cases other major powers, such as China and India). Does the stark reality remain that without the involvement of the hegemonic power of the US, any multilateral initiative will be deemed, at best, only partially successful? The Obama administration has already signalled a change of policy to the UN, beginning with their election to the Human Rights Council. In key policy areas where the EU claimed leadership such as the reduction in green house gas emissions, there are signs that the US is willing to become more assertive too. While these changes may have deflated the EU's bridge-building role, effective multilateralism will hopefully step up a gear with the US pulling in the same direction. Given the central role of the US in creating the multilateral system it is

unsurprising that it continues to play such an important role within it. Throughout the book the US will continue to appear as a reference point to the discussion of the EU's capacities to act.

Multilateral institutions and the institution of multilateralism

There is a clear lineage through the major debates in the disciple of International Relations (IR) in the 1980s and 1990s woven into the study of multilateralism. The study of regimes was preoccupied with explaining why states continue to cooperate in the absence of a hegemonic power to either coerce compliance, or foot the bill for free-riders (Krasner 1983). Explanations broadly focused on material factors, such as sunk-costs or the gains from cooperation that states were unwilling to forego. John Ruggie argued that the post World War II institutional order embodied in the Bretton Woods Institutions and the General Agreement on Trade and Tariffs (GATT) established *social* practices of behaviour between states that could not be easily altered thereafter, calling this 'embedded liberalism' (Ruggie 1983). In 1986 Kratochwil and Ruggie developed a critique of regime theory based on Krasner's distinction between norms, practices, rules and decision-making procedures. Krasner argues that there is a hierarchical distinction between the first pair and the second pair, allowing the social scientist to differentiate between a change *of* regime and a change *in* regime. Changes of regime take place with the norms and practices are altered, most likely when the hegemonic power that established the regime is displaced. By contrast, changes in a regime take by altering rules and decision-making procedures, most likely when new powers need to be accommodated but nevertheless remain committed to the original goals of the hegemon that created the regime. Kratochwil and Ruggie argued that the norms of a regime cannot be known *a priori* to its creation, and that the primary independent variable in Krasner's positivist methodology was only understandable through a sociological methodology. This division, between

rational positivism and sociological constructivism, remains the central cleavage in IR scholarship today.

The study of multilateralism has been no different, with the two approaches having made important contributions to its understanding. Robert Keohane's (1990) call for a systematic programme of research on multilateralism built on his earlier neoliberal institutional scholarship (Keohane 2005), in which he explained how cooperation between states can take place without the need for a hegemon. His work also argues that 'state behaviour can only be understood in the context of international institutions, which both constrain and make their actions intelligible to others' (Keohane 1990: 734). Over time, increased levels of cooperation between states allow them to engage in further cooperation in pursuit of absolute gains, against neo-realist concerns for long-term destabilisation caused by reordering the hierarchy of states (Grieco 1988). This approach has been further by Lisa Martin, who treats 'multilateralism as a means rather than a goal' in order to explore why states pursue their interests through multilateralism and 'inquire into the instrumental value of multilateral norms' and their 'comparative utility' (Martin 1992: 767). She finds that under different cooperative games between rational actors what serves to strengthen multilateral institutions oftentimes weakens the institution of multilateralism, and vice versa. At around the same time, Ruggie published what has become one of the most widely cited articles on multilateralism (Ruggie 1992), in which he defines the three central tenets of multilateralism as 'indivisibility, generalised principles of conduct, and diffuse reciprocity' (Caporaso 1992: 601). He also laid down the analytical framework for a sociological approach to the study of multilateralism, and his work forms the central theoretical framework of this book and is discussed in greater detail below.

Multilateralism has been revisited a number of times since by a range of IR scholars. Robert Cox's edited volume sought to introduce non-state actors into the state-centric definitions of multilateralism that prevailed at the time (Cox 1997).

More recently, Newman, Thakur and Tirman have edited a lengthy volume exploring the extent to which multilateralism is under being challenged by emergent forces in the international system (Newman *et al* 2006). Contributions are both theoretical and empirical in nature and result in the conclusion that while the 'fundamental *principle* of multilateralism, with all its limitations, is not in crisis' the 'values and institutions of multilateralism as currently *constituted* – and with them, the conceptual tools and presumptions with which multilateralism has been approached hitherto – are arguably under serious challenge' (Newman & Thakur 2006: 531). Finally, Christian Reus-Smith takes a constructivist approach to the study of multilateralism, conceptualising it as one of the two 'fundamental institutions' that structure modern international society, the other being contractual international law (Reus-Smit 1997: 555). However, he advances two criticisms of Ruggie's approach. The first asks why multilateralism only emerged 150 years *after* the modern Westphalian system emerged. His second is that in order to explain the type of multilateralism designed in the post-1945 world, Ruggie resorts to 'a "second image" argument about the institutional impact of American hegemony' that at the end of the day 'elaborated institutional principles that were first embraced and implemented by the great powers almost a century earlier' (Reus-Smit 1997: 563). To solve this he proposes a detailed explanation of why multilateralism is one of the fundamental institutions of modern international society, based on an analysis of the 'constitutional structure of international society'. His argument is informed by the observation that 'fundamental institutions differ from one society of states to another' and that ancient Greek city-states 'developed a sophisticated and successful system of third-party arbitration to facilitate ordered interstate relations', which he characterises as "authoritative trilateralism" (Reus-Smit 1997: 555).

In this book the analytical approach is most heavily influenced by Ruggie (1993) and too a less extent Reus-Smit (see Chapter 5). The theoretical orientation of this research is, broadly speaking, informed by sociological institutionalism and, to a lesser extent, historical institutionalism (Hall & Taylor 1996) and therefore in

keeping with Ruggie's ontological position. This should pose no problem for the study of EU foreign policy, given the extensive literature using constructivist approaches (*inter ali*a Bretherton and Vogler 2005, Checkel 2004, Lucarelli and Manners 2006, Tonra 2001).

Defining multilateralism

Ruggie's edited volume (1993) is titled *Multilateralism Matters: The Theory and Praxis of an Institutional Form* and it is striking how seldom the secondary literature pauses to consider the significance of the entire title of the work. The subtitle substantiates Ruggie's premise that 'we can better understand the role of multilateral norms and institutions in the current international transformation by recovering the principled meanings of multilateralism from actual historical practice' (Ruggie 1992: 567). Historical practices remain relevant because '[m]ultilateralism is a generic institutional form of modern international life, and as such it has been present from the start' (Ruggie 1992: 567). Collaborator on the project James Caporaso sums up the difference between institutions in any historical period and the organising principles in the system in the distinction between 'multilateral institutions' (in a given era) and the 'institution of multilateralism' (the generic institutional form) (Caporaso 1992: 602). Multilateralism as a theory can be described in a set of propositions about how states conduct their relations, while multilateralism as praxis is concrete actions reflecting the propositions about state conduct. Praxis is not the same as putting propositions about state conduct *into* action, which presupposes having existing knowledge of the theory in order to guide practice. As we shall come to presently, one of the important consequences of this subtle but significant difference is that it allows Ruggie to claim that the core elements of multilateralism are socially constructed, as well as that a multilateral outcome does not always come about through a multilateral process. Ignoring the praxis dimension of multilateralism means overlooking the possible existence of a wide variety of institutional arrangements resulting from new interpretations of the institution of multilateralism. Let us unpack this argument in greater detail.

The most widely cited aspect of Ruggie's 1992 article *Multilateralism: the Anatomy of an Institution* is his theoretical definition, which begins with the observation that multilateralism has quantitative and qualitative elements.

> [M]ultilateralism is an institutional form which coordinated relations between three or more states on the basis of "generalized" principles of conduct – that is, principles which specify appropriate conduct for a class of actions, without regard to the particularistic interests of the parties or the strategic exigencies that may exist in any specific occurrence. (Ruggie 1992: 571)

Adding substance to this are two more qualitative elements, namely that 'generalized organising principles logically entail an indivisibility among members' and that 'successful cases of multilateralism in practice appear to generate among their members what Keohane has called expectations of "diffuse reciprocity"' (Ruggie 1992: 571). The 'qualitative' elements are not merely characteristics describing particular interstate relations, rather they reflect a deeper ontological position held by Ruggie that relations between states need to be understood through a social theory instead of an individual-rationalist perspective. He makes this clear when he goes on to say that indivisibility between members is a '*social construction,* not a technical condition: in a collective security scheme, states behave as if peace was indivisible and thereby make it so' [emphasis in original] (Ruggie 1992: 571). Summing up, the 'concept of multilateralism here refers to the constitutive rules that order relations in given domains of international life – their architectural dimension' (Ruggie 1992: 572). A second important claim is that his definition 'depicts the character of an overall order of relations among states; as a definition it says nothing about *how* that order is achieved' (Ruggie 1992: 572). This statement is important because it grounds one of the central claims of Ruggie's argument, which is that the institution of multilateralism (as an outcome) can be found historically through non-multilateral – and even explicitly unilateral – processes. This was the case in the international trading regime under the 19th century *Pax Britannica* or hegemonic dominance during the mid 20th century *Pax Americana*.

Ruggie describes multilateral as 'an adjective that modifies the noun of institution' according to the generalised principles discussed above (Ruggie 1992: 574). The noun "institution" is used in IR as a collective term for three different forms of interstate relations, those of orders, regimes and organisations. Accordingly, multilateral as an adjective can modify each of these (e.g. multilateral organisations) provided that the same generalised principles are present. Ruggie warns against treating 'international organisations' and 'multilateral organisations' as synonyms, and that 'definitionally, "multilateral organization" is a separate and distinct type of institutionalized behaviour, defined by such *generalized decision-making rules as voting or consensus procedures*' [emphasis added] (Ruggie 1992: 574). Building on this definition, one way of conceptualising the enormous array of multilateral organisations is differentiate them by decision-making procedures. Inis Claude provides an ideal type schema of decision making in multilateral organisations by distinguishing between three forms drawn from three distinct intellectual histories of international relations, labelled majoritarian, consensus, and privilege-based systems. These ideal types form the basis of the analytical framework of the book, with case studies contributing empirical evidence of EU behaviour in each type of multilateral environment in the following three chapters. The major strengths of this approach are that they capture the diversity of the multilateral system on the one hand, while also locating the analytical variable at the heart of Ruggie's definition of multilateralism.

The study of the EU and the multilateral system

The study of the EU in the multilateral system in general, and the United Nations in particular, has progressed in four phases since the early 1970s, each time responding to changes from within the EU. This has led to a bias within the literature to focus almost exclusively on European actors and overlook third party states and multilateral institutions themselves, reducing them to the role of a stage upon which the EU acts.[6] This book aims to redress the balance by concentrating on the way decision making in institutions has influenced the representation mechanisms developed by the EU, and ask whether these tailored solutions have evolved in isolation or through institutional learning across the multilateral system. Only by focusing our attention on the institutional design and functioning of multilateral organisations can we answer such questions.

The early years of coordination

The departure point for survey work on the EU in the UN system is 1973, when the CONUN (Coordination United Nations) working group was set up within the European Political Cooperation (EPC) structure to coincide with the admittance of the Federal Republic of Germany and the German Democratic Republic into the United Nations Organisation (UNO). Although both had been members of other UN agencies for many years (for example, entering the ILO in 1957), West Germany's entry into the General Assembly in the same year as the accession of Denmark, Ireland and the UK to the European Community, greatly increased the EC's presence in the UN. Upstream political coordination in CONUN was expected to produce more cohesive voting between the member states, and this was duly tested by Hurwitz (1975), Foot (1979), and Lindemann (1982) who measured the frequency the Nine voted together in the General Assembly over a number of sessions. They also identified which member states were most likely to break cohesion and which policy areas created disagreement. The two permanent

[6] Important work has taken external actors into account, such as work on the EU's 'presence' by Allen and Smith (1990), as well as Bretherton and Vogler (2005).

Security Council members (France and the UK) were quickly identified as most willing to pursue national interests over European ones, while decolonisation, the Middle East and nuclear proliferation were the most contentious issues for EU coordination. This small body of work set out to empirically appraise European efforts to put forward a united voice in the UN General Assembly, and in effect 'test' the outputs of CONUN. The project lay dormant for 20 years until it was revisited by Luif (2003, 2008) and Johannson-Nogués (2004, 2006), each of who advanced the study in different directions. Luif's empirical survey of voting records in the UNGA between 1979 and 2002 tracks voting cohesion between the EU member states, and between the EU15 and other major powers (including Russia and the US) during and after the Cold War. While convergence has taken place, many political issues remain divisive inside the EU. Johannson-Nogués maps the convergence of Central and Eastern European accession states' voting records in the UNGA with the EU15, concluding that their entry has had little detrimental impact on either EU voting cohesion or the length of time spent in coordination meetings. In summary, the first phase of the study of the EU in the UN has been to assess coordination efforts towards voting cohesion.

External representation, negotiation and Europeanization

The second phase of the study of the EU in the multilateral system is a response to the external representation of the European Community as a result of the integration process on intra-EU legal competencies. The first and most obvious example of this was the creation of the external tariff for the common market in the Treaty of Rome, necessitating the representation of the European Community in international trade negotiations, firstly in the General Agreement on Tariffs and Trade (GATT) and later in the World Trade Organization (WTO) and is discussed in greater detail in Chapter 3. The study of EU external representation in different multilateral settings has also focused on the EU as a negotiator, developing theories to explain the relationship between the legal basis of EU competence and who the negotiating parties are (EU member states, Presidency, European Commission on behalf of the European Community), the type of decision-making

system used, and the outcome. Jupille's case study in environmental policy (1999) and theoretical framework contribution (Caporaso & Jupille 1998) are early work in this field. More recently, negotiation has been linked to the ability of the EU to perform across different multilateral organisations (Oberthuer 2009). External representation of the EU in multilateral organisations has become of interest to students of Europeanization as well. The uploading of interests from the member states into the negotiating mandates of the Presidency in multilateral arenas, as well as the downloading of collective EU positions informed by multilateral negotiations into member states, provide rich empirical pickings for the study of socialisation and communicative action (Riddervold 2008, Riddervold 2009). Scholars have recently turned their attention to the role of multilateral institutions in shaping European law, such as in trade and environmental protection (Costa 2008). Across all cases, the internal legal competencies that dictate the nature of external representation between the EU and multilateral organisations have provided a stimulus for research.

Effective multilateralism

The third phase of the study of the EU in the multilateral system came as a response to the 2003 European Security Strategy that proclaimed effective multilateralism to be a goal of the EU, and has been by far the most important stimulus to the growing body of literature on EU external action in the UN system. Four clusters of research emerge from this body and for the sake of clarity they will be mapped in their respective groups. The first cluster seek to appraise the EU's ambition of effective multilateralism by scrutinising the evidence it provides for its success, such as the widely circulated headline statements that 'more than 1000 internal EU coordination meetings are conducted each year' and that EU voting cohesion 'which has stood at around 95 per cent of all resolutions passed by the UNGA since the mid-1990s' (European Commission 2004: 11-12). Laatikainen (2004) shows that the inclusion of consensus votes where all UN members are in agreement greatly distorts the picture of EU cohesion. Removing these votes reduces the figure to around 70-75 per cent during the 1990s (as shown by Luif,

2003 and discussed in Dedring 2002). The second cluster of research addresses the issue of 'effective multilateralism' from a pragmatic perspective with a focus on policy application. A key example of this is the EU-ISS Challiot Paper Number 78 *The European Union and the United Nations: Partners in Effective Multilateralism* (Ortega *et al,* 2005). It is interesting to note that of the five authors asked to summarise their contributions to a conference titled 'The EU and the UN: Implementing effective multilateralism', only two define 'effective multilateralism' in their work. The first was Sven Biscop, who defines multilateralism as 'an intricate web of states, regimes, treaties and organisations, i.e. multilateral governance' (Ortega *et al*, 2005: 21). The second was Kennedy Graham, who says 'effective multilateralism implies participation in international decision making and compliance procedures by the largest and most representative countries' (Ortega *et al*, 2005: 43). The same authors have elaborated on their views elsewhere, Biscop stating 'Effective Multilateralism = Global Governance' and the provision of global public goods (Biscop 2004:27, also see FPC 2004). However, it is clear that his view has evolved over time with a revised definition in 2006, stating that 'for the EU, "effective multilateralism" seems to imply *enforceable* multilateralism [emphasis in the original]' (Biscop & Drieskens 2006: 273) Graham's reflections on the subject have developed too, articulating a contest between 'three fundamentally-opposite beliefs over the legitimacy of global policy and action' (Graham 2006: 286), which are secular universalism, democratic liberalism, and divine revelation. Since there is no agreement among the members of the United Nations on which belief system to base UN legitimacy on, its ability to operate is severely hampered. By contrast, 'the European Union reflects essentially one cultural viewpoint on world affairs … unlike the UN, the EU evinces no cultural schizophrenia' (Graham 2006: 287-288). Graham doubts that pursuing effective multilateralism will be possible without tackling the question of legitimacy at the level of the multilateral system.

The third cluster approaches the study of effective multilateralism from a comparative angle, through edited volumes looking at different spheres of

multilateral activity and assessing EU performance by a set of project-wide measures. Three recent contributions stand out; Laatikainen and Smith (2006), Wouters, Hoffmeister and Ruys (2006) and Jørgensen (2009). Laatikainen and Smith set out three ways of defining 'effectiveness'; (i) the EU as an actor, (ii) the EU in the UN, and (iii) the EU's contribution to UN effectiveness (Laatikainen and Smith 2006: 9-10), and invite their fellow contributors to consider these points. Wouters *et al* (2006) is a different sort of project, with many contributions from EU staff active in policy fields with an international dimension. The practitioners' viewpoints are informed by a wealth of experience and inside knowledge of the complex coordination and representation system, and they provide a useful guide to the documentation and legislation generated by the EU and the UN system. However, if there is a shortcoming, it is that engagement with the wider academic literature analysing the same processes is patchy, and there is little critical appraisal of competing points of view and the overall successfulness of the EU. Knud Erik Jørgensen's edited volume is a collection of papers by academics and gathers the most recent research into a wide range of multilateral organisations. The analytical framework of the volume asks how the EU uses international organisations as foreign policy tools, and how this has changed over time (Jørgensen 2009: 4), thus focusing on EU capacity to act.

The final cluster partly overlaps with the third, centred on an interrogation of effective multilateralism using the tools of International Relations theory. Laatikainen and Smith (2006) raise a central issue in their introductory chapter distinguishing between European and United Nations style multilateralism as the intersection of supranationalism and intergovernmentalism. More recently, Elgström, Gerlach and Smith (2007) chose to explore effective multilateralism through the lens of the EU's existing and considerable ongoing interaction with international regimes. They draw on work by Ruggie to point to the constructed nature of regimes and the role of sociological institutionalism in explaining the performance of regimes over time. Moreover they explicitly unpack the word 'effective' and hypothesise as follows:

> Is the word 'effective' more than a rhetorical device, and if so what can we conclude about the key elements of 'effectiveness' as pursued by the EU? Does 'effectiveness' for the EU mean effectiveness for a regime in general, or is it best cast in terms of the collective interests of the EU alone? (Elgström, Gerlach and Smith 2007: 3)

Two European Commission funded projects have also begun studying the EU and multilateralism, evidencing the increased interest at the European level of policy-relevant and theoretically informed work that can assist in the promotion of effective multilateralism.[7]

The normative dimension to multilateralism

Moving on to the fourth and final phase of research into the EU in the multilateral system, it is immediately apparent that this approach is different from the rest. While still responding to changes within the European Union structure, the focus here is on the way the EU implements its stated goals of human rights promotion, sustainable development, good governance, and multilateralism. Most influential in this approach has been the work of Ian Manners on normative power Europe (2002, 2006, 2007). Manners original argument stated that the EU had the ability to shape global norms of behaviour that conduct relations in the post Cold War international society, where ideas have been demonstrated to be more influential that material power. By promoting a set of normative values through its law, external relations, the exportation of the *acquis communautaire* in the enlargement process and through the example demonstrated to the world by its own practice, the EU possessed a new form of power, not based solely on material capabilities. His co-edited book with Sonia Lucarelli gives a number of authors a chance to consider the impact of values and principles on EU foreign policy, and many have taken the opportunity to assess the performance of the EU as a normative power in various multilateral institutions (Lucarelli and Manners 2006). Helene Sjursen's edited volume *Civilian or Military Power?* (2007) also critically engages with the normative power thesis, including cases related to the multilateral system.

[7] Mercury – Multilateralism and the EU in the Contemporary Global Order http://www.mercury-fp7.net and Changing Multilateralism: The EU as a Global-Regional Actor in Security and Peace http://www.eugrasp.eu (both accessed 01 November 2009).

Why multilateralism as foreign policy?

One lingering question is why has the EU chosen to place multilateralism so centrally in its foreign policy strategy? There are two answers to this question, based on the distinction between multilateralism as a means and as an end. Multilateralism as a means implies a specific process of interaction between states, with formal and informal norms of behaviour. When the EU uses multilateralism as a channel for promoting another, distinct goal (such as reducing the emission of greenhouse gases) it is clearly treating multilateralism as a means. The decision to use multilateral channels (such at the G-7, UNGA, and the specific environmental forums) is dictated by the nature of the problem and the type of results favoured by the EU. This is not to say that multilateralism is the only channel – bilateral talks with China, India or the US could be equally important. But effective multilateralism also contains a manifesto for making the institutions of multilateral diplomacy more robust in and of themselves. This equates to the promotion of multilateralism as an end, in the knowledge that when the EU seeks to use those institutions for an explicit purpose (arms reduction, poverty reduction, human rights promotion, trade liberalisation, etc.) they will operate with greater efficacy. There is also a normative element to the foreign policy of supporting multilateralism as an end, which is that it suggests a predisposition to use multilateral institutions wherever possible. The investment of resources into multilateralism is an indemnity promising that they will be the first choice, not last resort, of European Union foreign policy. Multilateralism is seen as a more transparent, more equitable and more stable form of international relations, and thus qualitatively better than bilateralism or unilateral behaviour. It is also hoped to play dividends in the long term. By building up trust and reliance in multilateral institutions in the short and medium term, other states will become institutionalised into their practices too, making multilateralism the first choice of other states in the long-term, a policy objective referred to by Keukeleire as 'structural diplomacy' (2003).

Case study selection and plan of the book

Although the completion of the Lisbon Treaty ratification process paves the way for the creation of a European Union international legal personality (previously only the European Community had one), ambiguity still remains when talking about the 'European Union' in multilateral organisations. In this book 'the EU' is shorthand for the 27 EU member states and 'EU positions' are common positions agreed by the 27 and articulated through a member state speaking on behalf of the Union, most often the Presidency. 'EU interests' are in the first instance the interests being promoted by a common position, but can also be inferred from past practice and policy, other legal and authoritative texts (Commission Communications, Council meeting minutes and reports, or treaties), or the secondary literature. As with all studies into EU foreign policy, varying degrees of intergovernmentalism and integration theory exist side by side. The multilateral environment tempers some aspects and accentuates others. For example, the role of the Presidency can become more important when negotiating on behalf of the EU when it assumes a principal role to the other 26 member states as agents, with access to privileged information and serving as a gatekeeper (Pollack 1997, Kerremans 2006). The multilateral arena inflates the actual power capacity of leading EU member states such as Germany, France and the UK in organisations such as the IMF, and for the latter two in the UN Security Council. The legal basis of EU participation in multilateral organisations is undoubtedly important, but it is argued here that it rarely accurately reflects actual EU behaviour. Since the pursuit of effective multilateralism cuts across all three EU pillars (European Community, Common Foreign and Security Policy – CFSP and Justice and Home Affairs – JHA) and often spans two or three pillars in a single multilateral organisation, the actual operating procedures used to coordinate representation – coping mechanisms – are politically determined, not legally.[8] The focus of this volume remains on the

[8] The most important articles in the Nice Treaty relating to EU action in multilateral organisations set out European Community (EC) membership of the WTO (article 113), as well as providing for relations between the EC and the UN (article 300). The coordination of EU member states through

politics of multilateral organisations and how EU member states have evolved formal and informal practices to cope with representing the EU, and legal issues shall be returned to only occasionally in the following chapters.

The 2003-04 Yearbook of International Organization contains details of 250 international governmental organisations (Rittberger and Zangl 2005: 3). This book contains case studies on just eight – the United Nations General Assembly (UNGA), Security Council (UNSC), Commission on Human Right (UNCHR), and Human Rights Council (HRC), the International Monetary Fund (IMF), the International Labour Organization (ILO), the Food and Agriculture Organization (FAO), and the World Trade Organization (WTO).[9] The grounds upon which they have been chosen are imperfectly scientific, but nevertheless defensible. Where possible the most influential multilateral organisations have been selected because if the EU is to successfully promote effective multilateralism it must be capable of acting in the most important parts of the system. The UNGA, UNSC, IMF and WTO all fit the bill as members of the "premier league" of multilateral organisations, and in time the HRC might probably belong among them too. The ILO and FAO are UN specialized agencies that each have important reasons for inclusion; the FAO is the only UN organisation to allow EC membership, while the ILO has become increasingly important to the EU in its attempt to promotion global social welfare protection through upholding labour standards. The final consideration was how best to incorporate my existing research with the existing literature. The sections on the ILO, FAO and UNGA are based on my own research, while in the other areas I have relied on secondary literature. A number of important issue-areas have been

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the CFSP is set out in Articles 18-20 of the Treaty of the European Union (TEU), requesting states to 'coordinate their action in international organisations and at international conferences' (TEU Art. 19).

[9] The correct names for the various parts of the United Nations Organization studied here are Principal Organs (General Assembly and Security Council), the HRC is a Permanent Council of the General Assembly (HRC) and the CHR is a sub-committee of the Economic and Social Council (ECOSOC). Throughout the book they are referred to as organisations even thought they are technically parts of the UNO.

excluded because of a lack of space, such as the protection of the environment, development, global health, conflict resolution and peacekeeping.

Chapter 2 examines the behaviour of the EU in four cases where majority voting is used for decision making. The literature tells us that the EU's 27 votes give it a numerical advantage, although this must be mitigated against the fact that outputs are usually either of low salience or non-binding on states. The four cases are from all focused on human rights and social rights, and cover large and small number membership bodies. The case of the ILO is used to demonstrate how voting behaviour by EU member states that appears at first to support a thesis of national interests triumphing over European unity cannot be sustained. Contrary to the current literature focusing on voting cohesion as a measure of EU actorness, we will see how the unique institutional arrangements of the ILO make non-cohesive voting entirely compatible with a strong commitment to European and international cooperation. The key to this lies in the predictability of voting outcomes in the annual plenary and the need to satisfy European and domestic constituents. The chapter also charts the coordination strategy used by the EU in the Third Committee (Social, Humanitarian and Cultural) of the UN General Assembly to pass the landmark resolution in 2007 calling for a moratorium on the death penalty, giving insight into new tools for coalition building at the Union's disposal. The third case study is into human rights promotion in the UNCHR and HRC. As well as helping to explain the EU's forum shopping away from the HRC and into the UNGA in search of a more favourable multilateral setting to promote its progressive human right promotion agenda, Karen Smith's work on the HRC shows how a single EU voice and cohesive voting fail to give the Union sufficient leverage to promote its interests. In combination, each questions different aspects of the way we currently measure the efficacy of EU actions in multilateral majoritarian arenas.

Chapter 3 turns attention to consensus decision making and Barry Buzan's study of the theoretical lessons learnt from the UN Conference on the Laws of the Sea during the 1970s (1981). His distinction between active and passive consensus is used as a framework for the chapter. The first case study is from the WTO, and it is argued that the breakdown of the Cancun summit led to two significant changes; the removal of the controversial Singapore issues from the Doha Development Round agenda and the enlargement of the core coordination group to include the leading developing economies. On both issues the EU has been a loser; it championed the Singapore agenda and its influence has been reduced with the inclusion of more members into the inner decision-making circle. However, the WTO is minimally no worse off than before, and potentially a winner in terms of a more manageable agenda and a more representative inner core. In the second case study, the ability of the EU to upload parts of the *acquis communautaire* into ILO labour standards is explored. The EU has sought to make ILO standards compatible with EU law for many years, by a mixture of promoting best practice and issuing threats. However, many ILO standards drafted with a high degree of EU input receive very few ratifications and thus have little impact in the wider world, leaving the ILO worse off that without EU input. There is also an illustration of composite decision-making processes between consensus and majority voting in the ILO. Finally, the FAO case study demonstrates how the EU has succeeded in using active consensus mechanisms to its advantage in the negotiations over the reform of the FAO. Overall, in consensus decision-making organisations the EU has a mixed record, being both a help and a hindrance to effective multilateralism from the viewpoint of the multilateral organisations considered.

Chapter 4 begins by demonstrating how multilateralism and privileged-based decision-making institutions can be compatible, focusing on constitutional orders (Ikenberry 2001) and minilateralism (Kahler 1992). The first case study is the UNSC, and drawing on the work of scholars and practitioners concludes (unsurprisingly) that EU member states remain jealously possessive of their privileges when serving on the Security Council, and efforts to streamline EU

representation have amounted to very little. The suggestion that the EU raised its profile through speaking at open sessions is dispelled with the claim that more than ever decision making takes place in the private corridors behind the scenes. Socialisation into institutional practices is strong and EU member states willingly conform. The story of the IMF has a number of similarities. The privileged status of an Executive Director's chair on the Board of the Fund is a prestigious position that those EU member states that have them are unwilling to give up easily. However, the euro currency is a strong reason for consolidating the European role in the Fund, either into a single seat constituency, or through the creation of a eurozone membership to replace nation states. In both the IMF and UNSC, the most serious doubt about EU effectiveness in privilege-based multilateral settings is that the Union lacks the political apparatus to generate common positions fast enough in times of crisis. An EU that is unable to speak because it does not have an agreed position will be left behind when the pace of decision making quickens.

Chapter 5 discusses the role of argumentation, persuasion and rhetoric in all three ideal-type decision-making processes, as well as the issue of legitimacy. The chapter explores the relationship between negotiation and outcomes, and the importance of representation and outreach from the EU into the wider multilateral system in order to build cross-regional coalitions in support of progressive human rights protection. The chapter demonstrates how argumentation can help the EU act as a leader in the multilateral system across three concentric circles of influence. The first is the European neighbourhood, and Manners' (2002) normative power Europe thesis is tested and shown to be useful in understanding the influence of the EU. The next circle consists of 'swing states' that are not adverse to the same human rights policies of the EU, but weigh up the pros and cons of support carefully and their decision is analysed through the logic of argumentation (Risse 2000). Finally, the least receptive states that are unwilling to accept such standards can nevertheless lower their objections when engaged in a process of rhetorical entrapment (Schimmelfennig 2001). The chapter ends with a consideration of the importance of legitimacy, and why argumentation is an

important mechanism for ensuring states remain engaged with the UN political process. Improving EU efficacy in this area will help it pursue its goal of effective multilateralism.

Finally, Chapter 6 concludes the book, summarising the lessons from studying the ability of the EU to promote effective multilateralism in each of the three ideal-type decision-making processes and there location in the two-by-two matrix presented at the beginning of the chapter. It answers the questions raised in this chapter, as well as looking forward to a new research agenda. Drawing on Reus-Smit's theoretical work exploring the linkage between multilateralism and the foundational order of the Westphalian system, future studies should investigate whether the model of politics found in the EU – described by some as 'post-Westphalian' – has wider implications for the multilateral system as a whole.

Table 1: Four outcomes of EU and multilateral organisation interaction

		European Union	
		Win	Lose
Multilateral Organisation	Win	W-W	W-L
	Lose	L-W	L-L

Chapter Two
Majoritarianism in Multilateral Institutions

> Voting systems, once central in the study of international organizations, have been regarded as superfluous in most recent analyses of international institutions. … The fact that governments bitterly contest voting rules suggests that these institutional devices are more important than currently scholarly opinion allows. (Kahler 1992: 703)

As Miles Kahler has stated, the fact that states 'bitterly contest voting rules' implies that states care greatly about them and how they operate in practice. This is the first of three chapters that explore in detail the ideal-type decision-making processes of consensus intergovernmentalism, majoritarianism, and privilege-granting. Inis Claude identifies these as the three primary competing principles for the making of decisions in international relations.

> Should voting arrangements be determined by legal assumptions about the nature of the state, paying respect to the concept of sovereignty? Should they be governed by the ideal of making international agencies conform to the normative patterns of democratic institutions, adopting the principle of majority rule? Should they be designed to reflect the configuration of power in the real political world, giving special status to the great powers? (Claude 1984: 118)

These three approaches originate from 'the equalitarianism of traditional international law, the majoritarianism of democratic philosophy, and the elitism of European great power diplomacy' (Claude 1984: 118) and have behind them considerable intellectual histories substantiating their application. The purpose of this chapter is to look at three case studies from different international organisations in which majoritarian decision making takes place and frame a comparative analysis around three issues; the representation of the EU, the structure of the organisation it is working in, and the success of the EU in achieving its goal of 'effective multilateralism' in each one. The three cases are the International Labour Organization (ILO), the UN General Assembly Third Committee (Social, Humanitarian and Cultural Rights), and the UN Committee on Human Rights (UNCHR) and its replacement the UN Human Rights Council (HRC). Before looking at these in detail, we will begin by clarifying what majoritarianism

means in international organisations, and its relationship to the institution of multilateralism.

Majoritarianism explored

Are international organisations ready for democracy?

According to Rittberger and Zangl, 'decision-making by majority vote emphasizes the interests of actors affected by the decision [and…] is thus characterised by attempts to form majorities through coalition building' (2006: 89). The decisions made 'do not have to reflect the interests of all the powerful actors involved but rather the interests of a majority of these actors' (Rittberger and Zangl 2006: 89). In its essence, any system by which the interests of the majority are heard over the interests of the powerful stands squarely against realist assumptions about the international system. As such, voting

> is a concept alien to the traditional system for the management of international relations, imported into this sphere as a result of the development of international organization. [Majoritarianism is the] domestification of international relations… [bringing] about the progressive assimilation of international processes to those characteristic of national societies in their domestic political operations. (Claude 1984: 118)

Claude eloquently presents the case for and against majoritarianism in detail and there is only sufficient space to provide an overview of his main points. The central claim is that while arguments can be made in favour of majoritarianism on either pragmatic-efficiency grounds, or political-moral grounds, ultimately 'in the final analysis the two considerations cannot be separated' and both fall by virtue of the failings of the moral case (Claude 1984: 125). Majoritarianism can only work when the voting constituents, in this case states, come from a political community that is as developed as those found at the domestic level. The international system does not fulfil this criterion, although we must bear in mind that Claude's original appraisal took place over 50 years ago.

The pragmatic argument for majoritarianism is that 'the repudiation of unanimity is an essential step towards endowing international organizations with the capacity to act effectively. From a purely practical point of view it seems desirable not to permit the world to be held to the lowest common denominator of cooperation' (Claude 1984: 124). The moral argument for majoritarianism is based

on it being better than minority rule, but 'if moral legitimacy rests upon the "consent of the governed" principle, unanimous decision certainly has the edge of majority consent' (Claude 1984: 125). Hence majoritarianism appears to be a compromise between something worse (minority rule by Great Powers) and something better (unanimity of all states). This, however, is a false dichotomy because minority rule and unanimity blur into the same thing.

> [Unanimity] confers upon a minority of one the procedural competence and the moral authority to determine policy in a negative fashion. … Unanimity is the best guarantee of a "just decision", but it carries the danger of the imposition of "no decision" by a minority; majority rule increases the probability of "some decision" and invests that decision with a moral force intermediate in strength between that afforded by unanimous and minority actions. (Claude 1984: 125).

For majoritarianism to be acceptable to those inside and outside of the winning coalition requires an acceptance of a set of broader political principles within the community beyond those of the immediate, partisan decision. 'Majority rule works only when the minority has confidence in the ultimate reasonableness of the majority … this condition exists only to a very limited extent in the international community' (Claude 1984: 125). What is absent internationally is what Lijphart (1975) identified in his consociational theory of domestic political systems in heterogeneous states like the Netherlands and Switzerland. Rival political parties self-impose limits on their policy-making while in power to take into account the interests of the opposition, knowing that they will benefit from similar restrain in the future while out of government. Paul Taylor (1983, 1996) has shown how this works too at the European level within the Council of Ministers, where diffuse reciprocity and the long-term commitment to cooperation demanded by supranationalism proved to the be the decisive factor making it viable beyond the nation state. Within the UN, argues Claude,

> majority decisions in the equalitarian General Assembly are likely to be undemocratic in the sense that they do not represent a majority of the world's population, unrealistic in the sense that they do not reflect the greater portion of the world's real power, morally unimpressive in the sense that they cannot be identified as expressions of the dominant will of the genuine community, and for all these reason ineffectual and perhaps even dangerous (Claude 1984: 126).

Despite Claude's damning and blunt conclusion, the idea behind majoritarianism, that if a majority of states agree on a policy then it should be accepted carries an

appear to the European Union. This is in part due to assumption that democratic values can be replicated in multilateral organisations (although in Claude's view this is an erroneous assumption). This is also due to the numerical advantage of the EU in terms of votes – the mustering of 27 member state votes in the name of the EU – a single voice with greater amplification.

The EU and its single voice

There is a commonly held belief among the scholarly and practitioner communities that European foreign policy begins with a single voice in international affairs. The 'widespread assumption in the literature is that, if the EU agrees on common positions and speaks with one voice, it will have influence' (Smith 2006b: 116). The European Commission has been keen to promote the level of voting cohesion achieved by EU member states in the UN General Assembly (EC 2004), although their claim of 95 per cent has been criticised for including consensus votes where *all* UN members are in agreement (Laatikainen 2004). EU member state voting cohesion in the General Assembly has been widely studied (Hurwitz 1975, Foot 1979, Lindemann 1982, Luif 2003; 2008, Johannson-Nogués 2004; 2006), yet one point overlooked in this analysis is to question why we should be so concerned with voting cohesion in *majoritarian* forums. Does this form of decision making particularly suit the EU, either in its *modus operandi* or the outcomes it produces? The most obvious reason for seeking voting cohesion in majoritarian institutions is that without it, the aggregate weight of the EU is lessened by cancelled-out votes. If 14 EU members vote for a resolution and 13 against, the net EU contribution is one vote in favour, clearly a reduction of the collective influence of the 27. What is conveniently forgotten in studies of voting cohesion is that this might be a fair reflection of the opinions of EU states, and as such an appropriate representation of reality. Putting this point aside, it is fair to argue that the EU is trying to lead through 'democratic' means by using its collective (and necessarily cohesive) voting mass to influence the outcome of majoritarian votes in its favour. By being democratic, this approach is consistent with the normative values of the EU of promoting multilateralism, good governance and democracy. It appears to be a

silver bullet to the quandary of how to exert influence in an international organisation without appearing to resort to brutish manifestations of power, such as threats, bribes or unilateralism. There are, however, some major flaws with this approach. The most important is that the types of decisions taken by this method are usually legally non-binding resolutions and therefore do not substantively impact on the direction of the international organisation. Secondly, because the EU can only 'tip the balance' (its 27 members requires around 70 like-minded states to win a simple majority vote and 100 to win a 2/3 majority vote) it can only influence decisions where a substantial group of states already are already in agreement. Majoritarianism is best able to defend the *status quo* within an international organisation, not instigate change as an advocate of 'effective multilateralism' would perhaps be expected to do.

The remainder of this chapter examines majoritarian decision making in practice through three case studies. The first, the International Labour Organization (ILO), has one of the largest plenary bodies in any multilateral organisation thanks to the tripartite representation of the 181 members, (each with four voting delegates) giving a *potential* maximum size of 724. The second example is the Third Committee (Social, Humanitarian and Cultural Rights) of the UN General Assembly in which 192 states participate, and the third combines the UN Commission on Human Rights (UNCHR) with 53 members and its successor the UN Human Rights Council (HRC) with 47 members. In all of them decisions are taken either on the basis of a show of hands, or as a recorded vote of all members under a majority principle (although the treatment of abstentions varies and will be discussed below). The UNGA case studies focus on the passing of General Assembly resolutions in the 62nd and 63rd sessions establishing a moratorium on the use of the death penalty and a statement on human rights and sexual orientation prepared for the 63rd session. The UNCHR – HRC case highlights the behaviour of the EU in bodies where there is limited membership and elections to fill regional quotas. All are related to human rights issues (broadly understood to include labour rights too), which after the maintenance of international peace and

security 'forms the second original area of responsibility for the United Nations' (Gareis & Varwick 2005: 134). However, despite a clear mandate for this work in the preamble of the UN Charter, 'the way a state or society deals with its individuals' is intrinsically linked to the realm of domestic affairs, meaning that 'the discussion of human rights and their protection … has taken place precisely along the fault line between collective regulatory competence and the sovereignty principle' (Gareis & Varwick 2005: 135). The unwillingness of states to allow human rights to be robustly upheld at the international level has been assisted by the frequent appeal to Article 2(7) of the UN Charter, which states that '[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state'. It is therefore unsurprising that human rights issues are approached through a majoritarian logic, high on the rhetoric of indivisibility and principled conduct but low on binding qualities that make promotion more likely.

The International Labour Organization

Purpose, history, structure

The International Labour Organization was created in the 1919 Treaty of Versailles during the founding of the League of Nations. Following the Second World War its constitution was amended in 1945 to allow it to become a specialised agency of the United Nations. It is unique among international intergovernmental organisations because it demands that the national delegations from its member states consist of government and non-government representatives from employers' federations and trade unions. While NGOs have been slowly gaining influence elsewhere in the UN system, within the ILO they have been present from the start and have considerable power at their disposal. Distributed in a ratio of two government representatives for every one employer and one worker, seats on the executive Governing Body and at the legislative plenary International Labour Conference (ILC) are thus shared equally between government and non-government actors. Employers and workers have

independent transnational caucuses within the ILO that grants them freedom to elect their own representatives to the Governing Body, and can coordinate their representation in the plenary independently from their national groups too. In a time when NGO participation in multilateral institutions is being increasingly called for as a way to improve legitimacy, the ILO appears to be highly contemporary, despite the fact it is over 90 years old. Its radical structure can be understood as a reflection of western states' concern about the rise of communism and its political power among working classes in the period directly after the Russian Revolution and the end of the First World War. Accordingly, the ILO was designed to allay such fears, providing an institutional framework to solve two problems associated with the 'race for the bottom' in an international economy, those of agreeing minimum common labour standards and ensuring transparent scrutiny to verify adherence. The ILO's purpose was to prevent a vicious circle of reduced labour standards seeking to promote comparative advantages, which in turn would make necessary the relaxing of standards in rival economies. Industrialists argued that they must compete or go out of business, thus putting pressure on workers to accept lower standards or lose their jobs. Communism's answer was revolution; the ILO's answer was mediation, cooperation and institutionalisation to provide a body of labour standards capable of ensuring acceptable practices globally. As stated in the 1944 Annex to the ILO constitution (the Declaration of Philadelphia), 'poverty anywhere constitutes a danger to prosperity everywhere' (Article 1c).

The ILO has two important roles; one is to create labour standards and the other is to ensure that existing standards are enforced. When a state ratifies an ILO convention, it agrees to incorporate the principles of the standard into its national law and allow independent ILO legal experts to periodically scrutinise domestic observance of the law. Unlike some other UN human rights conventions that are praised for their lofty ambitions but criticised for their ineffective enforcement mechanisms, ILO standards rely on national law to enforce their content, making them substantially more robust. When standards are violated, the ILO names in

order to shame, and if this does not work and provided the violating state is cooperative, the ILO can provide technical assistance to the government to improve the effectiveness of its institutions in upholding the law. Failing this, or when a state refuses to accept technical assistance, the ILO turns to other member states to take punitive action against the recalcitrant state, which justify their actions (be it diplomatic demarches, political dialogue or economic sanctions) on the basis of the transparent and neutral appraisals by ILO experts.

Creating labour standards

In this case study, we will examine the political process through which labour standards are created during the annual International Labour Conferences. New conventions and recommendations are drafted in dedicated committees meeting many times during the three-week conference and often over two consecutive years. Conventions are binding legal agreements signed by member governments which 'promise' compliance and permit ILO expert scrutiny, while recommendations are non-binding documents that serve as templates for national law to follow, meaning that conventions and recommendations are often drafted together when relating to the same issue. Drafting committees attempt to work by consensus, occasionally resorting to record votes over contentious issues. The finalised text is then placed before the conference plenary to be accepted by a record vote of all delegates in which workers, employers and governments from the same state are allowed independent ballots.[10] The vast majority of these record votes are adopted; indeed of the 107 instruments (conventions, recommendation and protocols amending existing conventions) put before the plenary between 1973 (the first year of EU coordination) and 2007, only one failed to be passed and this was by a margin of one vote.[11] However, despite the appearance of overall

[10] Government representatives cast two votes, thus granting them twice the voting weight of either workers or employers, in accordance to the 2:1:1 allocation.

[11] The Work in the Fishing Sector Convention (2005) failed because the record vote did not reach the necessary quorum of 298 votes due to the high number of abstentions (288 for, 9 against and

harmony between the tripartite membership suggested by such consistent results, voting blocs often develop with transnational employers being the most likely to register dissatisfaction with a convention by choosing either to abstain or vote against its adoption. Oftentimes they are more supportive of recommendations in line with their ideological position favouring softer regulation over the binding commitments of conventions. By contrast, workers are more likely to vote for the adoption of conventions and recommendations, seeing all such measures as in the interests of their constituents. Given that each non-governmental group contains one-quarter of the total number of delegates, governments hold the 'balance of power' within the plenary. Voting rules in the plenary stipulate that instruments are adopted by a simple majority, provided a two-thirds quorum of registered delegates is reached, with abstentions not counted towards the quorum. The blocking minority in the ILO is therefore a 50 per cent vote against, or a 33.4 per cent abstention rate. In many international organisations, casting an abstention is seen as the 'neutral' option, or cast when a delegate has not received instructions from their superiors on what to do. In the ILO however, they can be strategically used as the easiest way to reach a blocking minority. As we shall see below, this point, combined with the historically very high tendency to adopt labour standards, gives delegates the option to free ride during a record vote, confident that their individual support is not necessary for the overall successful passage of an instrument.

EU representation inside the ILO

The EU member states began issuing statements representing their common interests in the ILO in 1973 and have been doing so ever since, albeit inconsistently and depending on the issue area in question, the preferences of the rotating

139 abstentions). Had only one more of the abstentions been cast as a vote either for *or* against (i.e. *not* an abstention) the quorum would have been reached and convention adopted. The quorum is calculated based on the total number of delegates registered to vote after a scrutiny of credentials at the start of the Conference, intended to prevent governments sending 'fake' workers or employers delegates. The quorum of 298 was calculated on 447 registered delegates.

Presidency of the Council and the changing national interests of the member states.[12] The fact that the EU member states remain to this day members of the ILO would come as a shock to the MEPs that wrote the 1977 Geurtsen report, who predicted that Community membership of the ILO would replace those of the national governments in the near future (EP 1977). Neo-functional spill-over has not been proven correct in the area of social policy, despite considerable progress towards closer integration, first in the 1986 Single European Act and more recently in the 2000 Lisbon Process (Johnson 2005, Orbie and Torrell 2008). The high watermark for EU cooperation in the ILO was in the late 1980s to mid 1990s, after which levels of common statements and voting coherence dropped to those not seen since the 1970s (Kissack 2008b). One reason for the decline in common representation during the mid 1990s was the publishing of a European Court of Justice opinion (2/91) in 1993 at the request of the European Commission. The Commission argued that it should have a more influential role in the ratification process of labour standards relating to the *acquis communautaire*. While the ECJ was sympathetic to these demands in areas of shared competence, its ruling sided with those member state calling for a limiting of the European Commission's role on the grounds that only they were ILO members. National workers' and employers' delegates put further pressure on EU member states to curb the role of the European Commission in the coordination and representation process, who were worried that their influence would be diminished if more EU-level coordination took place in the Council away from their auspices exercised domestically (EESC 1995).

If this ruling weakened the European voice in the ILO, it was perhaps no bad thing as far as the interests of the ILO itself are concerned. In a survey of the 51 ILO conventions adopted since the EU member states began speaking collectively,

[12] The first reference to the European Economic Community (EEC) was made in 1973 in the second discussion on *Minimum Age for Admission to Employment*, when 'the Government members of the European Economic Community countries represented on the committee' were mentioned twice (ILO 1973: 485 §26, 487 §48).

there is a clear (and statistically significant) inverse relationship between the frequency with which the EU speaks during a drafting session and the number of ratifications that instrument will ultimately receive (Kissack 2008a). The explanation for this is that the more the EU talks during a drafting session, the closer the final document is to its own interests which favour higher levels of social protection and the uploading of EU law to the ILO. The consequence of maximal ILO labour standards is that they remain unratified by the majority of ILO members, making them ultimately less effective, and is a powerful counter-argument to observers who claim that the EU and the ILO have a natural synergy (Delarue 2006). My argument is made based on surveying the minutes of every drafting committee held at the annual ILCs between 1973 and 2007, running into thousands of pages. By counting the number of interventions made in the name of the EU (and previously the EC) by its member states (either general statements proposing an amendment or sub-amendment, or speaking in favour or against a proposal by another party), the frequency with which the EU participated in the drafting process was measured. Correlating the frequency of interventions with the overall ratification rate of all conventions between C138 (1973) to C188 (2007) provides irrefutable evidence showing that the more the EU intervenes during the drafting process, the lower the subsequent ratification rate of the convention. The data gathered by surveying the minutes greatly improves our knowledge about EU representation in other ways too. It helps to overcome the problem that arises when voting behaviour is not cross-correlated with EU representation, which is that no distinction between volitional and non-volitional cohesion ca be made (Kissack 2007). Differentiating between volitional and non-volitional voting cohesion also draws our attention to a puzzling result that appears on first impressions to point toward hypocritical and cynical behaviour by certain EU member states. However, through a more nuanced understanding of the ILO decision-making structure, a closer look at the particular workings of the ILO's plenary conference voting system and knowledge of the effectiveness of EU common representation during the drafting sessions (evidenced by their uploading skills), a very different picture is painted.

Hypocritical and cynical member state behaviour

Let us begin by presenting the puzzle. EU member states have a very high tendency to adopt any instrument subjected to a record vote in the plenary sessions of the annual ILC. From the survey of 107 recorded votes in technical issues between 1973 and 2007,[13] only 51 out of 1301 (3.9 per cent) votes cast by EU member states were against adoption of an instrument or as abstentions. During that same period only one instrument failed to be adopted by the ILC was the 2005 fishing convention (ILO 2005b). Looking in more detail at EU member state voting, we notice that despite 96.1 per cent of votes being cast for the adoption of an instrument, overall cohesion was only 69.1 per cent (which is surprisingly low compared to the claimed figure of 95 per cent in the UNGA by the European Commission in 2004). A very small number of votes caused a disproportionally large amount of disruption. Very often these votes were cast singularly (i.e. only one member state) by the following states (in order of frequency): the UK, France, the Netherlands, Germany, Luxembourg, Denmark, Portugal and the Czech Republic. However, of the 32 recorded votes where EU cohesion was broken, 21 (66 per cent) were *after* the EU member states had issued common statements during the drafting phase. Why do countries sign up to common statements shaping the content of an instrument and then not support it when it is time to adopt it? This is the behaviour that *prima facie* appears hypocritical and cynical.

Given the lack of space for a detailed analysis of all cases, let us consider three alternative explanations for voting against an instrument or abstaining from voting. The first is the defence of sovereignty by rejecting an international standard that infringes upon national autonomy. Article 19 of the ILO constitution clearly states that government members are only obliged to report to the ILO secretariat within 18 months on the intention to ratify a new convention, and need

[13] This section draws on published work that includes a full appendix of the data being used here (Kissack 2009b).

take no further action beyond that report. Thus, how a state votes in the plenary does not bind them to any future action concerning that instrument, and is therefore not a credible reason for non-acceptance. The second is more credible, and is an ideological objection to the instrument, either by preferring laissez-faire neoliberal economic policies to state intervention and regulation, or disagreeing with the content of a particular instrument. In both cases, domestic lobbies may play an important role influencing the position of a government, which knows that its voting will be scrutinised by national level actors such as politicians, trade unions and employers' federations. Finally there are political reasons for abstaining or casting votes against an instrument, where votes are cast to register a protest against the ILO in general, and about issues unrelated to the content of the instrument. The UK provides a good demonstration of this behaviour in action. The majority of UK abstentions and votes against conventions and recommendations were cast during the mid-1990s, when the UK government was constantly reprimanded for breaking ILO conventions on freedom of association (C87 and C98). In 1995 the Minister for Employment (Rt Hon. Michael Portillo) threatened to withdraw from the ILO if the UK government was singled out for its poor record on compliance in the annual conference report.[14] One of these instruments, the 1996 Seafarers' Hours at work convention (C180), was rejected at the time by the UK government but subsequently ratified in 2001, while other instruments were acceptable to both other EU governments *and* to UK employers' and workers' delegates, convincingly ruling out an 'ideology' based reason.

Strategic voting and free riding

Governments practise both ideological and political protests because they are under pressure from domestic political actors scrutinising their voting record, be they trade unionists, industrialists or national parliaments. However, they are also

[14] The Committee on the Application of Standards (CAS) assesses the performance of all ILO members' compliance with ILO standards. The persistent breaches of core conventions C87 and C98 are recorded in a 'special paragraph', reserved usually for gross violates of human rights.

aware that if they are too successful and scupper the adoption of an instrument (such as the 2005 fishing convention) they risk damaging relations with states at the international level, who may punish recalcitrant behaviour by blocking cooperation in other organizations. To remove themselves from this domestic 'rock' and international 'hard place', they use a flexible solution that allows enough protest to satisfy domestic constituents on the one hand, while not damaging international cooperation on the other hand. In the ILO, the conference plenary offers calculating EU member states (or indeed any strategically voting actor) the opportunity to satisfy their national, European and international goals without having to compromise between them thanks to a constellation of particular circumstances. The first is the very high expectation that the record vote on an instrument will be adopted by the ILC. Secondly, the plenary vote is more conspicuous to outside observers scrutinising behaviour than the 'upstream' coordination taking place during the drafting sessions, thus making a symbolic vote in the plenary more visible to national audiences. Thirdly, supporting EU representation during the drafting sessions ensures that European interests are served, both collectively and in the form of each state appearing to be a "good European" and facilitating median common positions (Nuttall 1992). Finally, through active participation during the coordination process an EU member state also fulfils its internationalist credentials by being seen by the ILO membership as playing a cooperative role. Reducing these last three factors down to a simple binary, European and international level demands for cooperation face potentially conflicting national demands for non-cooperation with politically contentious standards. This scenario is similar to Putnam's (1988) two-level game with regard to separate domestic and international games. The crucial difference is that the ILO's composite decision-making structure of consensus during the drafting state (discussed in Chapter 3) and majoritarianism in the plenary adoption allows a government to win at both levels if it cooperates during drafting and only shows its non-cooperative side in the plenary. By free riding on an expectation of a successfully passed record vote, a government that decides to abstain or vote against the adoption of an instrument satisfies their domestic constituency while also *not dissatisfying* the European and international level by casting a token vote

to block its passage, assuming that it will have no overall effect.[15] EU member state governments vote strategically in the majoritarian arena based on additional information about expected outcomes that an appraisal of EU voting cohesion alone cannot measure.

By considering the interaction of these two phenomena, it is possible to turn a key assumption about the EU as an actor in international affairs on its head, namely that the EU appears to be good at agreeing common statements but bad at following them up with cohesive voting. The commonly assumed explanation for this apparent inconsistency is that 'declaratory diplomacy' is straightforward and relatively easy to achieve, but EU member states pursue national interests at the first available opportunity, resulting in the pronouncement that the EU is a 'political dwarf'. Underpinning this explanation is the assumption that the EU should graduate from declaratory cohesion to voting cohesion as the external representation of the EU becomes more robust over time. Yet the evidence from the EU in the ILO plenary does not fit this model, instead appearing to demonstrate hypocritical and cynical behaviour by some member states. The explanation proposed here is that EU member states have established a practice of promoting their common interests collectively during the drafting negotiations through a strong collective presence evidenced by their declaratory output. As will be demonstrated in detail in the following chapter, they are able to exert a high degree of influence over the final document, and each government, regardless of particular *national constituency* preferences that may be against stronger EU coordination or constructive input into ILO standard setting, is able to fulfil its

[15] An example from the 2005 fishing convention further substantiates this argument, the only instrument to fail to be adopted in the last 35 years. Many Asian states regarded the convention as too constraining on their lucrative tuna fishing fleets, and in order to demonstrate solidarity with their fishing industries many governments joined employers in abstaining. However, there was no concerted effort led to block the convention (the author was present during the vote and consulted delegates), demonstrated also by the fact two years a revised convention was adopted with 94.8 per cent of the vote, suggesting that delegates had learnt the dangers of excessive free riding.

commitments to the EU and the ILO. The side payment made for acquiescence at the upstream negotiation is a 'free vote' in the plenary session where a national government may voice dissent on ideological or political grounds to satisfy their domestic audience, free riding on an expectation that the majority of ILO delegates will pass the vote. In effect, upstream declaratory cohesion is bought at the price of downstream voting non-cohesion in a rational response to two opposing forces; European integration and common representation on the one hand, and placating domestic constituents that can be hostile to EU and ILO cooperation on the other hand.

Majoritarianism in the ILO has a number of special characteristics that EU member state governments, as well as all ILO actors, use to their advantage. The most significant is the very high degree of predictability of voting outcomes, which grants up to one-third of delegates an opportunity to voice dissatisfaction in the form of abstentions without disrupting the overall work programme of the organisation.[16] Additionally, real influence over the content of the instrument is exerted in the earlier drafting stage, and once the instrument reaches the plenary floor for the majority vote, it is no longer open for modification, thus further diminishing the significance of such a vote in terms of leverage over outputs in achieving one's stated policy goals. Majoritarianism in ILO technical standard setting is, in effect, a rubber-stamping exercise and all plenary actors realise this and use the ILC vote accordingly. A straightforward analysis of EU voting cohesion suggests a lack of strategic actorness, whereas I argue the opposite. EU member states use the same strategic voting system that is open to all ILO actors, whereby

[16] This argument is only applicable to technical standards. In political issues brought before the plenary session, groups of delegates will seek to block a motion and will therefore attempt to solicit the necessary one-third of abstentions. However, in standard setting (functional) issues too much disruption becomes counter productive, since criticisms about institutional inefficiency are ultimately blamed on the tripartite members (and especially governments) rather than the secretariat. Private interview with Lord Brett, former workers Vice President of the Governing Body and former ILC Chairman, July 2004, London.

contradictory demands on governments can be reconciled through different behaviour in the drafting and plenary stages. For EU states the strategy is even more important because their long-term commitments to EU cooperation means that persistent obstruction of EU coordination in Geneva will likely spill over and effect cooperation in other policy areas in the UN or in Brussels.

The UN General Assembly

The Third Committee: Social, Humanitarian and Cultural Rights

'The UN's two most important human rights bodies are the General Assembly Third Committee, which meets every autumn in New York, and the Commission on Human Rights, which meets every spring in Geneva' (Smith 2006b: 154). The next section will look in detail at the Commission on Human Rights (CHR) and its successor, the Human Rights Council (HRC), while here we will examine two specific examples of the EU working to promote human rights in the Third Committee of the General Assembly. The first is toward the abolition of the death penalty and the second is the promotion of human rights regardless of sexual orientation. On the 18 December 2007, the UNGA in New York adopted a resolution calling on all states still using capital punishment to establish 'a moratorium on executions with a view to abolishing the death penalty'.[17] The resolution was hailed as a 'landmark' by both the United Nations (2007a) and Amnesty International (2007) because it recalibrated the balance in the UNGA between 'abolitionist' and 'retentionist' states firmly in favour of the former. The dividing lines are drawn, not only according to a state's preference or not for executing criminals, but also on whether the death penalty is 'perceived as a prerogative of domestic jurisdiction' or as being an affront to fundamental human rights (Bantekas & Hodgkinson 2004: 24). Retentionists argue that using the death penalty is an issue for national governments to decide according to their domestic criminal legal system, and is thus beyond the purview of the UN in accordance with Article 2(7) of the UN Charter. Abolitionists seek to locate the death penalty within the established body of international human rights law, to which end the new resolution cites the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child.

[17] United Nations document A/62/439/Add.2. Resolution adopted in a record vote in the UNGA 18 December 2007, (76th & 77th Meetings) by a 104 in favour to 54 against, with 29 abstentions. See Press briefing GA10678.

The EU played a major role in coordinating the supporters of the resolution, who in order to ensure the resolution's adoption in the UNGA first had to navigate it through a simple majority vote in the Third Committee. Since the same states participate in both record votes, passing through the Third Committee makes it highly likely that it will pass in the UNGA too, provided no states change their voting preference in the intervening period. Amnesty International has campaigned for many years for an outright ban on the death penalty, but regards a moratorium as a significant first step. Following two failed attempts in 1994 and 1999 when the draft text did not make it out of the Third Committee, in 2006 the Finnish EU Presidency began circulating a draft statement to be read out in the UN General Assembly, setting out the reasons for seeking to abolish the death penalty. The decision to pursue this policy in the UNGA was a result of difficulty passing a resolution in the HRC, discussed in detail below. The statement read out by Finland in the General Assembly was on behalf of 84 other states, demonstrating that there was sufficient concern for the issue to place it on the agenda of the Third Committee the following year.[18] The German Presidency of the first semester of 2007 held preliminary discussions on how to maintain momentum, but progress was limited and there was still no agreement on a common position as Portugal assumed the Presidency in July 2007 and preparations for the 62nd Session began in New York. Against the advice of Amnesty International (which demanded

[18] http://www.un.org/News/Press/docs/2006/ga10562.doc.htm (Accessed 8 April 2009) The 84 states were: Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Canada, Cape Verde, Chile, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, France, Georgia, Germany, Greece, Guatemala, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Tuvalu, United Kingdom, Ukraine, Uruguay, Vanuatu and Venezuela.

evidence of at least 100 states willing to co-sponsor the resolution as a sign of certain success), and from a very slow start, the EU member states began establishing a common position between the staunch abolitionists (led by Denmark, the Netherlands, Sweden) and the pragmatists willing to accept greater compromises with retentionists (led by Italy). Importantly, however, the decision was made to form a group of ten co-authors consisting of two states from each of the five UN regions.[19] By the time the Third Committee met in New York the 27 EU member states and nine non-EU co-authors (Albania, Angola, Brazil, Croatia, Gabon, Mexico, New Zealand, Philippines, Timor-Leste) were supported by another 51 abolitionist states, bringing the total number of co-sponsors to 87, still thirteen short of the number recommended by Amnesty International. Despite ferocious criticism from retentionists, the resolution was passed in the Third Committee by 99 votes in favour to 52 against and 33 abstentions (UN 2007b). One month later, when presented to the General Assembly, it was passed by 104 votes to 54 against with 29 abstentions. Four questions follow from this example. Firstly, what contribution did the EU make to the process? Secondly, what credit does the EU deserve? Thirdly, what can be learnt about the EU's multilateral ambitions? Finally, how does this case inform our understanding of the EU acting in a majoritarian decision-making system?

The EU's role and the credit it deserves

The role of the EU can be broken down into two parts: the drive of the Italian government and the skill of the Portuguese Presidency. Working towards the abolition of the death penalty has long been a goal of Italian foreign policy, with its first manifestation in the UN being their 1994 effort to reframe it as a human rights issue, rather than a question of domestic legal practice. They were instrumental in passing the first resolution in the UNCHR in 1997 that became an EU-sponsored resolution in 1999 (Smith 2006b: 160), and they also drove forward the efforts to

[19] The ten states were: Angola and Gabon (Africa), Philippines and Timor-Leste (Asia), Albania and Croatia (Eastern Europe), Brazil and Mexico (South America) New Zealand and Portugal (WEOG).

pass a resolution in the UNGA Third Committee in the same year. The 1999 effort was aborted in committee stage when an Egyptian amendment to the text was accepted, inserting language to the effect that the principle of non-intervention in state sovereignty took precedence over the content of the resolution. Diplomats refer to this as a 'wrecking' amendment, effectively handing over victory to retentionists by making the amended text unacceptable to abolitionists.[20] Roberto Toscano (cited in Bantekas and Hodgkinson 2004: 29) has argued that the failed attempts of 1994 paved the way for UNCHR success in 1997, framing setbacks as nevertheless necessary cumulative steps towards the final acceptance of the death penalty as a human rights issue. Bantekas and Hodgkinson take a more critical line, questioning the Italian willingness to have a resolution at any cost in the Third Committee, despite the disruption it caused, labelling it 'maverick' and regarding it as a 'setback and not an advance' (Bantekas and Hodgkinson 2004: 29). Amnesty International is more critical still, claiming that Italian readiness to bring the issue to the UN before a concrete majority of states was ready to support it risked setting the project back 20 years (Kissack 2008d).

Support for Italian foreign policy action towards the international prohibition of the death penalty is found across the Italian political spectrum, contrary to the partisanship usually associated with domestic politics there. On the left, Emma Bonino's appointment in 2006 as Minister for International Trade in Romano Prodi's winning coalition brought into the government an election manifesto promise to pass an international resolution against the death penalty.[21]

[20] This view is expressed by EU and non-EU diplomats working in the UNGA Third Committee. I would like to thank the 22 diplomats and NGO representatives who talked to me during the weeks 31 March - 4 April 2008, and 16-20 February 2009, New York. Personal interviews were carried out under the Chatham House Rule, and thus to maintain their anonymity no references to their nationalities are made.

[21] Personal interviews with EU and non-EU diplomats, 31 March - 4 April 2008, and 16-20 February 2009, New York. Bonino also worked on the 1994 Moratorium on the death penalty in the UNGA. See her statement on the UNGA 2007 resolution: http://www.radicalparty.org/it/node/5074912 (Accessed 24 November 2009).

On the right, Franco Frattini of the Forsa Italia party and EU Commissioner responsible for Justice, Freedom and Security at the time of the vote in December 2007, attended shortly before the crucial UNGA vote a conference titled 'Europe against the death penalty' and said:

> We must take advantage of the trend worldwide towards the abolition of the death penalty to call on all "de facto" abolitionist African States to full-fledged legislation ruling out death penalty. We should also call on those African States which still apply the death penalty to join a universal moratorium as a strategic move towards the abolition of the death penalty in all countries.[22]

The reference to Africa is extremely important because its 53 states constitute the 'swing' region that ultimately held the key to the successful passing of the resolution. The cross-party support evidenced here is consistent with Fabbrini and Piattoni's (2008) argument that Italy is able to achieve its foreign policy goals when there is domestic consensus, as well as identifying the need for strong individual entrepreneurship (evidenced in the actions of Bonino). Securing an international agreement outlawing the death penalty is an example of the foreign policy of a 'post "national-interest" paradigm' (Fabbrini and Piattoni 2008: 13-18; 252). We should also bear in mind that Italy's case for permanent or semi-permanent Security Council membership in a reformed UN system is boosted by demonstrating a strong commitment to human rights.

The second component of the EU role was the skill of the Portuguese Presidency of the Council coordinating the position of 27 EU member states and those of the nine additional co-authors, two from the four other UN regional groups (Albania and Croatia from Eastern Europe, Angola and Gabon from Africa, the Philippines and Timor-Leste from Asia, Mexico and Brazil from Latin America) as well as New Zealand from the WEOG. The purpose of this elaborate co-authorship was to have an active outreach into every region and demonstrate that this was a globally constituted majority, rather than from a limited number of

[22] Frattini, Franco. Speech 'Europe Against the Death Penalty' Lisbon, 9 October 2007. See: http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/07/612&format=HTML&aged=0&language=EN&guiLanguage=en (Accessed 24 November 2009).

regions which opponents would quickly label 'Western'. The cost of the diverse co-authorship was a highly laborious coordination process, effectively played out on three levels: (i) intra-EU, (ii) co-authors and (iii) Third Committee. The relatively small size of the Portuguese mission in New York led many EU member states to wonder beforehand if a postponement for 12 months until the French Presidency in 2008 would be necessary in order to have much larger French diplomatic resources behind it, as well as the political network of Francophone Africa. The Portuguese compensated for this by calling on its own colonial history to incorporate three members of the Lusophone world (Brazil, Angola and Timor-Leste) as co-authors, as well as their own individual strength of being perceived as a neutral arbitrator, in contrast to France's role as a permanent member of the UN Security Council and *primus inter pares*.

The Portuguese Presidency had successful strategies for all three levels of coordination. During the primary stage of drafting a resolution acceptable to all EU states, it had to balance the demands from Sweden, Denmark and the Netherlands for an instrument calling for abolition with those led by Italy calling for a moratorium, given that it was easier to achieve. This reflected the long-standing divide in Europe between those preferring to wait for a maximal standard to be acceptable, and those wanting a less ambitious standard in the short term. This took a couple of months to achieve but finally a compromise was reached. On the second level the Portuguese entered co-author talks as one of ten states, and here had to demonstrate to the other nine that they were equals, rather than them having to bend to accommodate an inflexible EU position. Through acting as the sole intermediary between the EU27 and the co-authoring group, the Portuguese used their information advantage over the other EU member states to gain concessions, as theorised in the Principal-Agent model (Pollack 1997). Finally, at the level of the Third Committee, the Portuguese Presidency overcame one of the key failings identified in 1999 EU resolution, which was that 'there was little or no oratory in defence of the draft resolution from within the EU camp' (Bantekas & Hodgkinson 2004: 33). In preparing the defence of the resolution against

retentionist amendments designed to derail its passage, the Portuguese drafted detailed arguments countering as many conceivable criticisms as possible to rebuff those seeking to reaffirm national sovereignty over human rights. The responses were highly choreographed and well orchestrated, with co-authors and EU member states briefed on their contributions and when to make them. As interviews with EU and non-EU diplomats involved have shown, all praised the Portuguese for the way they organised the defence of the resolution.[23] In summary, the EU put a considerable amount of resources into the drafting and passing of the moratorium resolution and to their credit, it proved successful. While it would be mistaken to attribute credit solely to the EU, its institutional momentum acted as the catalyst to allow other actors (such as the co-authors, the co-signature states, and Amnesty International[24]) to play their parts too.

In 2008 the process was repeated, with a view to consolidating support rather than upping the pressure on retentionist states by calling for an outright ban in the place of a moratorium, contrary to the expectations of some retentionists. One unexpected difference was the relatively minor role played by the French Presidency, at times seeming almost invisible to both EU and non-EU states.[25] Chile assumed the role of coordinator for the co-authors, chosen on the grounds of a deep personal commitment to the issue by the diplomatic staff involved. When called upon to deflect hostile amendments once again, many EU diplomats were surprised that the retentionist states did not offer any new

[23] Personal interviews with EU and non-EU diplomats, 31 March - 4 April 2008, and 16-20 February 2009.

[24] Amnesty International was instrumental in the drafting of some responses to retentionist amendments used in defence of the resolution, based on their considerable advocacy expertise on the issue.

[25] This is put down to the fact that shortly before the beginning of the 63rd Session the experienced diplomat dealing with human rights was recalled to Paris to become Chef du Cabinet for Rama Yade, the Minister of State with responsibility for Foreign Affairs and Human Rights. His replacement was a young diplomat with little field experience, and according to other diplomats interviewed, was 'thrown in at the deep end'.

arguments and the same responses sufficed as in 2007. Once again, the resolution was passed, with a slightly larger vote in favour, and a noticeable shift from votes against to abstentions.[26] Key to our analysis is the strategy of EU action, from UNGA statement to resolution, and then the consolidation of the majority behind it in the following year. To what extent is this a model for future action, and how does it work?

[26] The resolution before the plenary (A/63/430/Add.2) was adopted on 18 December 2008 by a recorded vote of 106 in favour to 46 against, with 34 abstentions.

From statement to resolution: a model for the future

At the 63rd Session of the UNGA in 2008 a group of 66 states (including all EU member states, many WEOG and GRULAC members, as well as a few African and Asian states)[27] presented a statement to the General Assembly calling for the full implementation of fundamental human rights irrespective of sexual identity.[28] The statement was intended to raise awareness of the discrimination against Lesbian, Gay, Bisexual and Transgender (LGBT) people around the world, and presented this as a failure to respect the human rights of *all* people and as such a failing of the universal aspirations of human rights norms. In a manner similar to that of the death penalty, the promotion of a distinct LGBT resolution was initiated by Brazil in 2003 in the Commission on Human Rights, and more recently New Zealand and Norway have coordinated statements in the HRC. Building on this initiative, a core group of states (France, the Netherlands, Argentina, Brazil, Croatia, Gabon and Norway) began drafting a statement for the 2008 UNGA with the intention of canvassing co-signatures from like-minded states from the five UN regions. The EU was 'represented' by the French and the Dutch but diplomats who worked on the statement note that the EU presence was barely noticeable at times, and the project was driven forcefully by the French from Paris and Rama Yare, the Minister of State with responsibility for Foreign Affairs and Human Rights, as well as the Dutch Minister for Foreign Affairs Maxima Verhagen.[29] The statement was read to

[27] Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Central African Republic, Chile, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Poland, Portugal, Romania, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, United Kingdom, Uruguay, and Venezuela.

[28] http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/826.html (accessed 31 March 2009).

[29] The French Presidency set up a website dedicated to this: http://www.droitslgbt2008.fr/acueil/index.php (accessed 31 March 2009). It was followed up with a World Congress on Human Rights and Gender Identity in Paris, May 2009.

the General Assembly by the Argentine Ambassador and minimised the visibility of the EU in the process.[30] This is a fair reflection of the actual drafting process; EU involvement was insufficient for this to be accurately described as an EU initiative in the way that the death penalty resolution can be. This is partly due to non-EU co-authors learning from the death penalty drafting experience that they must be fully active from the beginning, and partly also due to the political capital invested in this issue by France and the Netherlands granting them a high-profile role.

Is the LGBT statement of 2008 where the death penalty was in 2006? Given the successful adoption of the resolution in 2007, will the EU and the like-minded co-authors choose to follow the same pathway and present a resolution in the Third Committee in 2009? Two factors at present suggest that this will not be the case, at least this year. Firstly, there are nearly twenty fewer signatures on the LGBT statement than there were for the death penalty statement in 2006. It should be remembered too that the original statement called for an abolition of the death penalty but made a significant concession in the form of an insistence on a moratorium, making it easier for wavering states to accept it. The 2008 sexual orientation statement does not contain an obviously comparable compromise, other than universal decriminalisation. Secondly, the IOC coordinated a very strongly worded counter statement setting out their objections to the LGBT statement that took its supporters by surprise; although they expected a response they did not envisage it to be so blunt.[31] For pragmatic states within the LGBT coalition, some wonder if it is worth spending the political capital on fighting this battle if it will raise such ill will among UN members.[32] Diplomats involved in the core-drafting process are non-committal about the prospects of a resolution in the

[30] http://webcast.un.org/ramgen/ondemand/ga/63/2008/ga081218am.rm (accessed 31 March 2009).

[31] Syria read the 'counter' statement, while Ethiopia, Russia and the Holy See all spoke against the statement too http://www.un.org/news/Press/docs/2008/ga10801.doc.htm (accessed 8 April 2009).

[32] Personal interviews with EU and non-EU diplomats, 16 -20 February 2009, New York.

64th Session (2009), while opponents are firmly of the opinion that this is the beginning of another drive towards a resolution and that the incremental 'death penalty process' will be repeated. Despite the similarities in the process, there remains a categorical difference between the death penalty and LGBT rights, with the latter framed as ensuring universal application of existing, accepted human rights norms (and targeting discrimination leading to systematic violation of those rights of the LGBT minority). By contrast, the former has been presented by retentionists as an intrusion into the domestic legal affairs of a state and a contravention of UN Charter Article 2(7), and as such challenges the legitimately of norm of state sovereignty of UN members. The long-term success of both cases depends on establishing in the first instance a majority of states willing to adopt a resolution, and in the second instance a gradual increase in the level of support beyond the simple majority needed to pass a resolution in the UNGA towards consensus. Thus the question turned to in the following section is why are non-EU states willing to support an EU-sponsored resolution,[33] and how can we explain the increasing willingness of more states to support it over time?

[33] As discussed, the LGBT statement cannot be fairly labelled 'EU-sponsored', not least because it is disingenuous to the actual authors. However, opponents find it convenient to label statements and resolutions as EU-sponsored because it makes organising a unified position against it easier, as noted above in the comments concerning oppose first, reason why later.

Multilateral ambitions and majoritarian strategies

Ian Manners (2002) used the example of the abolition of the death penalty to illustrate the normative power of Europe by demonstrating how the EU exports the norm to the European neighbourhood through the *acquis communautaire* in enlargement negotiations, and through conditionality further afield. The death penalty is seen as a violation of the fundamental human right of the right to life, and thus is located at the core of the EU's identity as an international actor that defends human rights, found repeatedly in the treaties and statements issued by the EU at all levels. The 2007 UNGA resolution not only establishes a truly international dimension to this norm, but also achieves it through the complementary norm of promoting multilateral agreements and the UN system. On face value, it appears to be a clear manifestation of the EU's stated aim of 'effective multilateralism'. However, if we recall Claude's earlier comments on the shortcomings of majoritarianism, a number of questions arise. Firstly, while the resolution was passed with 104 votes, this amounts to only 54 per cent of the total UN membership, and only two of the ten most populous countries in the world voted for it.[34] The combined population of these eight countries against it already amounts to 53.79 per cent of the world population, before one begins to count the populations of the other 46 that voted against the resolution. As such, a majority of states may support the resolution, but governments representing a majority of people do not. One retort to this argument is that states with a poor record of human rights promotion cannot legitimately pass judgement on others and should not be able to scupper the furthering of human rights protection. Taking this criticism on board, one could consider differentiating between democratic states and non-democratic states and by assuming that the former are more likely to respect human rights that then latter, recalibrate an assessment of global support for the death penalty moratorium accordingly. Proceeding in this manner, of the ten most populous states in the world considered above, India, the US, Brazil, and Japan would gain automatic entry into the sub-category of democracies, while

[34] In size order they are: China, India, the US, Indonesia, (Brazil), Pakistan, Bangladesh, Nigeria, (Russia) and Japan (countries in parentheses voted for the resolution).

China would presumably be excluded. However, Indonesia, Russia, Pakistan, Nigeria, and Bangladesh all have varying degrees of democratic credentials depending on how far into the past and on what criteria one decides. Even using the stricter entry standards India, US, Brazil and Japan still constitute 26.24 per cent of the *world* population disagreeing with the death penalty moratorium, and an even larger share of democratic population.

The UN is not a proportional representational system dependent on populations, and the views of citizens about the death penalty do not always align with their governments, so the EU might claim to speak for the global moral majority in a UN system that remains fundamentally intergovernmental in design and operation. This need not even matter as long as the EU can use coordination and outreach to win the necessary number of votes in a state-based majoritarian system, even though without convincing sceptical governments there will remain more people living in the world under the threat of execution by their government than are free of it. The example nonetheless raises a more fundamental consideration, which is whether the values that the EU seeks to promote are as universal as it claims, or whether the EU is promoting norms that are accepted only by the *minority*. How can the EU reconcile this with its commitment to engage and support multilateral organisations, if an organisation is captured by critics of the EU position who then seek to impose contradictory norms more widely? It is to this issue that we now turn.

The UN Commission on Human Rights and UN Human Rights Council

Human rights promotion in limited membership arenas

Majoritarianism as a principle is widely used in different multilateral institutions but its practical form can vary greatly, depending on the number of participants, the proportion of votes required to win, and its placement within a larger decision-making structure. One similarity between the majoritarianism found in the ILO and

the UNGA is that they are both universal organisations in which all states have an opportunity to vote. There are differences too, such as in the sequence of consensus and majoritarian voting in the ILO, and the highly predicable outcomes that make it easier for actors to engage in strategic voting in order to satisfy different constituencies. By contrast in the UNGA examples, coalitions are unstable, majorities are slim and outcomes unpredictable, meaning that states take fewer risks and seek to muster all available allies to their position. We are now going to finish this chapter by considering a third UN human rights promoting institution, the Commission on Human Rights (UNCHR) and its successor the Human Rights Council (HCR), and the impact the changing institutional design has had on the ability of the EU to operate in them.

The UNCHR was set up as a sub-committee of the Economic and Social Council (ECOSOC) with a rotating membership of 53 states proportionally representative of the UN and selected by voting within the regional caucuses of the UN Organisation (Asia, Africa, Latin America, Eastern Europe and Western Europe and Other Group). The Human Rights Council, established during the 60th Session of the General Assembly in 2005 as part of the package of reforms adopted in response to Secretary General Annan's *In Larger Freedom* report, sought to address a number of systemic failings of the UNCHR. These included politicisation, double standards, and that there 'was no bar to human rights-violating states serving on it' (Smith 2008: 3). The HCR is now a permanent Council of the General Assembly, and in an effort to make the selection process of member states less risible, states are now elected by the General Assembly in a secret ballot by simple majority according to revised regional weightings. The reduced membership of 47 has been redistributed among the regional caucuses resulting in a reduction in the number of seats given to Latin America and WEOG by 4 per cent each, increases for Eastern Europe (4 per cent) and Asia (5 per cent), while Africa remains the same. Put into a crude simplification of voting positions, a combined Latin America, Eastern Europe and WEOG could mobilise 26 out of 53 votes in the UNCHR; today

the same group can mobilise only 21 out of 47 votes in the HCR.[35] While Africa and Asia group states are not inherently opposed to European initiatives, the majority of the Global South belong to these regions and have a human rights agenda based on anti-imperialism, non-intervention, and question the universality and definition of human rights offered by the North.[36] In order to form a majority bloc in the UNCHR the EU (or any state in the EEG, WEOG or Latin America) needed one vote from Africa or Asia, while in the HRC they need three. As shall be discussed below, this small step has proven very hard for the EU to climb, made more difficult by the increased coordination of other regional blocs and the failure of the EU to hold onto its 'natural' allies in majoritarian logic of the HRC.

United Nations Commission on Human Rights

The EU member states have been coordinating in the UNCHR since 1990 (Smith 2006b: 156) and during this time developed into a prominent actor in the Commission. One of the key differences between this multilateral institution and the others we have looked at is that its reduced membership (53) means that not all EU member states serve on the Commission at any time. Nevertheless, a 'coordination reflex' (Smith 2006b: 170) developed between the diplomatic staff of the permanent missions in Geneva to seek out areas for common resolutions. The

[35] Working on the assumption that the EU seeks to gain a group to support its human rights goals, the inclusion of Eastern Europe states is relatively uncontroversial given the strong commitment to human rights found in the Council of Europe and the EU's sphere of influence through its neighbourhood policy. The WEOG group is far from homogeneous on all points (see especially the position of Japan and the US on the death penalty) but on many issues can be mobilised into a cohesive block. Latin America states have generally put ideological differences along a North-South division to one side in a promotion of human rights, in part due to their own histories of dictatorships and domestic human rights abuse.

[36] For example, Saudi Arabia abstained during the vote on the adoption of the Universal Declaration of Human Rights (UDHR) in 1948 because of concerns about its compatibility with Islamic teaching; the debate during the 1990s of 'Asian values' that placed emphasis on the community rather than the individual, as well as recent efforts by the Organisation of the Islamic Conference to affirm religious freedom over freedom of expression (Smith 2008: 15).

obvious benefit for all EU member states was that they were able to upload their national preferences into the EU common position and on into the UNCHR even when not holding a seat on the Commission itself. However, the cost of this intra-EU position was high, needing up to five hours of coordination meetings daily, leaving little time for outreach into the wider UNCHR membership to canvass support of EU positions. The tendency to 'navel gaze' has been recognised as a problem for the EU elsewhere in the UN system and attempts are underway to rectify this through the development of outreach networks in New York.[37]

Smith identifies three outputs from the EU's coordination process that impact upon the UNCHR; the issuing of statements, the tabling of resolutions and exercising voting cohesion (Smith 2006b: 157). How do her findings fit into the larger picture of majoritarian decision-making systems and the insights learnt from the previous two cases? Firstly, given the high political salience of human rights policy, both in civil society and in governments, and inside the EU and beyond it, the voting behaviour of the EU member states is under scrutiny. Smith notes three consequences of this cutting across all forms of EU outputs. Voting cohesion averaged around 80-85 per cent between 1995-2005 in the UNCHR, but has sunk to 55 per cent as recently as 1997, reiterating that there are some issues which EU member states will remain divided on for many years, such as prostitution or indigenous peoples' rights (Smith 2006b: 165). National governments are unwilling to compromise on certain key issues for the sake of a common EU position, given their high domestic saliency. In order to concentrate on achieving results, the resolutions tabled by the EU are often conservative in nature and as a whole the Union is risk-averse in its promotion of new issues (Smith 2006b: 162). The UNCHR is seen as a last resort option and a consideration of previous failures weighs heavily when deciding whether to table a resolution. Smith calculates that in 2004 eight of the ten EU-sponsored resolutions were passed by the UNCHR, while in 2005 it tabled seven but withdrew one when it

[37] Personal interviews with EU and non-EU diplomats, 31 March - 4 April 2008, and 16-20 February 2009, New York.

became apparent that it would not be accepted. Finally, EU statements explaining its actions (including reasons for split votes) provide a narrative of its performance in the UNCHR. Overall, the EU took a cautious approach to the promotion of human rights in the UNCHR, choosing its battles carefully and was reluctant to push resolutions it was unlikely to win. Within the parameters of the majoritarianism of the UNCHR, it was often able to gather a sufficiently large majority to adopt its own resolutions, but at the cost of being highly preoccupied with coordination to the detriment of proactive outreach.

The drafting of 'country resolutions' deserves special attention. They were deemed to be one of the gravest shortcomings of the UNCHR because of the inconsistency with which they were issued, and the 'politicisation' of the Commission that they entailed. The EU must plead guilty to inconsistency too, having shelved statements concerning Russia, China and Iran at different times despite no apparent change in ongoing domestic violations (Smith 2006b: 162). The creation of the Human Rights Council (HRC) with the express intent of returning credibility to the UN's HR monitoring institutions has included an explicit attempt to avoid specific country resolutions, something that the EU would seemingly benefit from, given its patchy record and risk-adverse nature. Smith's (2008) assessment of the EU in the HCR is an interesting account of how the outputs from the EU that served to moderate effect in the UNCHR have been rendered far less effective by the altered structure of the new Council. As noted above, the HRC's reduced membership and revised proportional weighting to African and Asian states, makes the majority needed by the EU to pass its resolutions and promote its interests less easy to form. Yet most striking is the fact that on the three main criteria of assessment (statements, resolutions and voting cohesion) the EU is performing well. In the six sessions surveyed by Smith, it has issued more statements, tabled fewer resolutions (six) but had them all passed, and its voting cohesion over regular and special sessions combined has been split once in 29 record votes (Smith 2008: 11-12). Conventional wisdom tells us that demonstrating this kind of cohesive actorness will enhance the efficacy of the EU in

the multilateral system. In reality, the EU is anything but an effective actor in the HRC, and is actually becoming increasingly marginalised. Despite its voting cohesion, it was in the losing minority in 21 of the 24 regular session record votes, and its resolutions are becoming more conservative as the EU seeks to work with other regional groups that make hefty demands on the final text. Despite finally demonstrating the qualities that were deemed lacking for so long and which it was assumed would serve as a panacea for the EU's problems, these are not doing the job in the HRC. It should be noted that these findings are repeated elsewhere in the multilateral system. Meunier (2000) identified conditions when speaking with a single voice has helped and hindered the EU to negotiate favourable outcomes in the WTO.

What's gone wrong in the HRC and what has majoritarianism got to do with it?

Smith observes that the EU has lost the initiative in the HRC, and the Organisation of Islamic Conference (OIC), the African Group and the Group of Arab States are all significantly better organised and able to promote their two main agendas successfully: the situation in the occupied territories and 'promoting tolerance and respect for freedom of religion and belief' (Smith 2008: 15) This is undoubtedly in part due to the shifting balance of power between the different regional groups inside the HRC, and the tipping of the majoritarian balance in the favour of the Global South. Indeed, 'the EU and other Northern states are often isolated in the HRC' and the North-South split 'appears to be a deep and serious one' (Smith 2008: 17-18). This is further evidenced by the failure of the EU to attract support from its allies in Latin America, who previously put HR promotion above South-South solidarity. This finding depressingly revisits Claude's assessment 50 years ago that the divisions between regional constituencies in international organisations were too large to apply a democratic model of politics to, and by extension too large to work along majoritarian grounds. In the HRC a more organised group of states holding the majority of votes is pushing their interests through multilateral channels.

Three questions arise from this which will be addressed in subsequent chapters and relate to the fundamental concerns about the EU and the multilateral system. The first is whether the EU should be willing to seek agreement with other parties in the UNHRC in order to pass resolutions. While negotiation is a necessity in international organisations, should the EU be willing to accept common denominators so low that they represent a step backwards for the EU? Are there values that the EU should be unwilling to compromise over, even if it means becoming further marginalised in the HRC? What is gained by participating in the drafting of resolutions that from an EU position are blatantly insufficient? On the one hand the pragmatic response is to work with other states and within the existing structure in order to change it from the inside, while the other is to take a clear ethical line and stand firm with European values. This leads to the difficult question of what to do when the support for multilateralism and support for human rights become conflicting values. Should the EU continue to support the work of the HRC even if it begins to reshape human rights norms according to IOC preferences in which 'free speech must be limited to avoid harm to religious sentiment' as evidenced in the HRC resolution of March 2007 that stated 'freedom of expression should be "exercised with responsibility"' (Smith 2008: 15)? Finally, Smith notes the absence of American leadership both to highlight the shortcomings of the EU in the vacuum left behind, and to point to a way forward in which the HRC might become more supportive of the EU's preferred agenda. By noting the success with which the US was able to canvass support for EU resolutions in the UNCHR, the question arises of whether the EU needs a strong US presence to act in the HRC. What impact will the election of the USA to the Council for the first time in 2009 have on its outputs? Once again, we are required to reflect on the role of American hegemony in shaping the direction of the multilateral system, and the extent to which the EU has, or has not, been able to take advantage of the period of US disengagement during much of the last decade.

Large and small majorities

Does the size of a majority matter?

Claude's objection to majoritarian decision making in multilateral institutions was based on an insufficiently developed political community between states that guarantees support from those outvoted. An additional consideration is the size of the majority. How large does a majority have to be in order to overcome Claude's concerns? Consider the impassioned plea made by H.E. Vane Gopala Menno, the Ambassador of Singapore to the United Nations General Assembly (UNGA) Third Committee. His intervention on 18 November 2008 (42nd meeting) was part of a larger process in which Singapore, along with Egypt and Antigua and Barbuda (as Chair of the G-77 group), spearheaded the efforts to prevent a second death penalty resolution being passed. It read as follows:

> The death penalty is not a human rights issue but more a criminal justice matter allowed under international law. […] The basic issue in question before us today is not capital punishment per se. That is not at all what this resolution is about. It has nothing to do with the merits or demerits of the death penalty, which is a question too complex to be resolved easily. *It is about whether a country has the right to decide on this matter for itself.*' (Emphasis added)[38]

> This is a divisive and controversial issue that should not be taken up by the General Assembly. As with last year's resolution, the votes this year in the Third Committee, *where almost half the entire membership voted against, abstained or did not participate in the vote on this resolution* have reaffirmed this fact. More fundamentally, Singapore believes that each country has the sovereign right to decide on this matter for itself. (Emphasis added)[39]

As we saw in the previous section, it is certainly true that there was no consensus on the moratorium on the use of the death penalty resolution. But neither was there consensus on 19 other of the 59 other resolutions and reports recommended by the Third Committee in the 63rd session, all of which also went to a vote and were passed by a majority. Why on this issue is there an appeal against 'taking up the issue of the death penalty', and not for the other issues? Is it because of the narrow margin of victory, and if so this leads to the question: are slender majorities less valid that large majorities? In other words, are there qualitative

[38] Statement by Ambassador Vanu Gopala Menon, Permanent Representative of Singapore to the United Nations, at the Third Committee meeting on agenda item 64(b) to discuss human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms, 18 November 2008 (42nd meeting).

[39] Draft statement by the Singapore Permanent Mission to the UN prepared for the General Assembly, 18 December 2008 (70th and 71st meetings).

differences between majoritarian decisions? Claude argues that 'a unanimous decision of the [General Assembly] deserves and receives more attention than a narrowly passed resolution' (Claude 1966: 375). This may have been the case in 1966, but is it still the case today? Majoritarian decision making exists because in highly heterogeneous political communities unanimity is unrealistic and gives every state the potential to veto every decision. How should we judge the significance of narrowly adopted resolutions? If the tendency for lowest common denominator agreements is accepted, a resolution intended to promote action and inspire progress may not be worth the paper it is written on, so low will be the commonality (Moravcsik 1998). Alternatively, resolutions that pass by small majorities may be very important if they signify the tipping point associated with norm cascading in the life-cycle of norm promotion (Finnemore and Sikkink 1998). After the hard work of norm entrepreneurs establishing new normative practices, resolutions incorporating those norms adopted in the UNGA, even the slimmest margins, mark substantial victories.

This question is important because despite the aggregated voting weight of 27 enjoyed by the EU, which increases to between 35 and 40 votes when countries in the European neighbourhood are aligned with it, it cannot do much more than tip the scales on delicately balanced issues in an organisation with 192 members.[40] In Chapter 5 we will look in detail at the construction of coalitions around the EU, such as the one built for the death penalty moratorium resolution criticised by Ambassador Menon. If the claim being made that majority decisions should not be binding on states is valid, then the influence of the EU in majoritarian decision making organisations is open to question. As the Ambassador said, a

> resolution can be forced through by sheer numbers. But this is not the way to change a State's views or to promote a genuine respect for human rights… In the absence of an international

[40] A simply majority required 97 votes in the UNGA, meaning that the EU bloc must align with at least 70 other states in order to adopt a resolution.

> consensus, countries on either side of the argument have no right to impose their opinions on others.[41]

However, the complaints being made may equally be simply a case of 'sour grapes' on behalf of states accustomed to being in the majority. Supporters of the EU's actions to promote human rights through the UN dismiss such remarks as a backlash from those who know their position is becoming unsustainable as the international community's opinion turns against their national practices. In order to gauge the variation in record voting outcomes, let us consider the outputs from the UNGA Third Committee 63rd Session (2008). 53 resolutions were passed and 6 reports adopted,[42] of which 37 were by consensus (no recorded vote), two were by unanimous recorded vote, and 20 were by varying degrees of majority. For the sake of clarity, I have grouped these twenty decisions into five distinct clusters according to the degree of agreement.

[Insert Table 1 here]

The first two resolutions were both adopted with only a single vote against, in both cases cast by the US. The next three are similar, with the US leading a small group of states (often the micro states of Palau and Micronesia and depending on the issue, Israel and Canada) that voice dissent, either by abstaining or voting against a resolution. The following ten have a much lower level of acceptance across the UN membership, typically around the 60-65 per cent level, and all but one of these was a G-77 sponsored resolution, the exception being extrajudicial executions, led by Sweden with a very broad coalition of supporting states. The abstentions were made by predominantly G-77 members, as well as some notable OECD states such as the US and Israel. Standing alone is the death penalty resolution, which while clearly enjoying support from more than half the UN membership, is not at a level comparable to that enjoyed by G-77 sponsored resolutions. Lastly, we find four resolutions that did not command the support of a majority of UN members, but thanks to high levels of abstention were nevertheless

[41] Statement by Ambassador Menon, as above.

[42] The UN press document GA/10801 headlines the passing of 52 resolutions, but actually lists 53 in the substantive detailing of proceedings (UN 2008a).

adopted. Three of the four were country-specific resolutions, while the fourth was drafted by the OIC, and passed due to many abstentions by Central and Latin American states. Returning to the views of the Singapore Ambassador, perhaps consensus is in the eye of the beholder. Of the 20 recorded votes, Singapore voted with the 'winning' side on 14 occasions, abstained twice (No. 7 and 15 as listed) and only 'lost' on the death penalty and the three country resolutions. Put differently, would the gaining of 10 or 15 more votes in favour of a death penalty resolution render the position of Singapore and her allies untenable, or is the number of votes less important because the issue hinges on more fundamental issues, such as non-intervention in the domestic affairs of member states?

Opponents of the death penalty resolution argue that it takes an issue that rightfully belongs in the realm of national judicial systems (and in the UNGA, the Sixth Committee on Legal Affairs) and re-casts it as a human rights issue, thereby giving the UN the right to scrutinise the domestic practices of member states and renouncing their right of non-intervention under Article 2(7) of the UN Charter. Within the well-rehearsed positions of IR theory, it seeks to place concerns for justice over order (by bringing into question the extent to which pluralism is acceptable in the UN) and asserts a solidarist account of human rights. The so-called retentionist states (who defend the right to apply the death penalty in their national courts) couch their position in defence of international pluralism rather than a bloodthirsty lust for executions.[43] However, as noted in the Singapore Ambassador's comments, if the issue of the death penalty is seen as a triumph of solidarism over pluralism with all of the ramifications for international order that it brings, his appeal for consensus on such a fundamental change to international

[43] Other defences include the will of their citizens to maintain the penalty, the deterrence of crime that it offers, the collective rights of communities to live in societies free of violent crime, the rights of victims of crimes with the death penalty and on religion grounds (in countries where Islamic teaching informs national judicial codes).

relations would be welcomed by many.[44] It is for this reason also that it deserves special attention. Not only does it signal the beginning of a shift in the parameters of international society (used according to the English School definition) but also the erosion of one of the most important lynchpins holding the heterogeneous G-77 bloc together. With the gradual weakening of this principle, will it be easier in future for UN members with interests in the promotion of human rights over classically understood Westphalian state-rights to get momentum on their side? Suspicion of this sort of change being ushered in by majoritarian voting led Claude to the opinion, noted earlier that they were 'undemocratic, unrealistic, morally unimpressive, ineffectual and perhaps dangerous' (Claude 1984: 127).

[44] Robert Jackson has considered the classic English School question of order over justice and came down on the side of order, which in this case means pluralism.

Conclusion

There are four points to sum up by way of conclusion, concerning what we have learnt from the three case studies into human rights promotion in the multilateral system, how effective the EU has been in different international organisations using majoritarian decision making, the divisions that continue to undermine majoritarianism in the multilateral system, and the promotion of norms and values. Despite the significance of human rights promotion in the UN system, the unwillingness of states to open their domestic practice to international scrutiny has meant that traditionally the 'competencies of the UN human rights committees were consequently essentially limited to normative work' (Gareis & Varwick 2005: 155).

How effective has the EU been in operating in the various majoritarian decision-making structures considered here? Given that all are different the examples illustrate how the EU has adapted its representation and coordination according to each particular institution. From each one something can be learnt about the how the expectations found within the literature, that through a single voice and cohesive voting the EU can assume a political significance in the multilateral system commensurable with its economic weight, are problematic. The example from the ILO initially seemed to indicate that the EU member states were willing to coordinate common statements during drafting meetings, but when given the chance to vote as separate states in the plenary made use of it and broke cohesion. The European malaise of failing to graduate from declaratory cohesion to voting cohesion was evident once again. However, a closer examination of the decision-making process reveals, as will be elaborated in greater detail in the next chapter, that EU representation in the influential drafting sessions was effective in uploading European preferences into ILO standards, while the plenary record vote carries no significance in determining the content of the instrument. In the ILO, EU declaratory cohesion is more important than voting cohesion, and EU member states use this to satisfy their commitments to European and international partners on the one hand, and their domestic constituents on the

other hand (even when the two are antagonistic to each other), by free riding on the assumption of a plenary adoption of the instrument in question. In the UNGA, the EU guided the resolution calling for a moratorium on the death penalty through the Third Committee using tools that are most often be associated with the EU foreign policy; diplomacy, negotiation, organisation. In this sense 'one voice' and voting cohesion appear to have yielded results. Yet the 'one voice' was actually a careful orchestration of many voices, 27 EU members (who spoke during the defence of the resolution) and the nine co-authors. The EU is usually criticised for spending too much time navel gazing, and this example demonstrates what can be achieved through outreach and engagement with the international community, proving that a common position alone is not enough. As will be explored further in Chapter 5, the EU used rhetoric and persuasion to *win* the argument that its normative view of the world was better than the retentionists, to the extent that it convinced a sufficiently large group of states to join the abolitionist core and swing the vote in their favour. The significance of this cannot be overlooked because the UNGA has traditionally been a bastion of the Global South, yet a policy decidedly 'Northern' in nature was exported widely and accepted.

The UNGA example contrasts strongly with the UNCHR and HRC case, in which the EU has pursued a policy of conservatism that has seen its influence decline in an arena traditionally accommodating to Northern states thanks to the favourable distribution of seats. In contrast to the UNGA case studies where the EU actively promoted its view of human rights as being better and argued its case assertively, raising the hackles of retentionists but winning the support of undecided states, the EU has shied away from stirring controversy in the CHR and HRC. Yet its risk aversion has not prevented it becoming marginalised as more assertive groups push their interests. More importantly, Smith has shown in the Human Rights Council that even when the EU does demonstrate the two attributes of voting cohesion and a single voice considered necessary for effective action, it is left isolated and ineffective (Gowan & Brantner 2008, 2009). Taken in combination, these findings suggest that the benchmarks currently used to gauge

the effectiveness of EU foreign policy in the multilateral system are not always enough, or even necessarily correct. Speaking as one and voting cohesively is not a silver bullet in majoritarian institutions. The heterogeneity of the multilateral system requires more nuance in the articulation of successful coordination output goals after taking into account the structure of the institution the EU is working in. Luckily, the 'coping mechanisms' developed by the EU member states over time through practice often exemplify such subtlety, as evidenced in the ILO example. We need to be far more accommodating of such examples before discarding them as evidence of poor quality EU coordination and representation.

Moving on to look at the structure of the international society, there appears to remain only a thin normative framework shared by states in both the North and Global South, making majoritarian decision making a contest between competing camps as Claude described. The North-South divide in the UN has been an enduring political schism of the organisation, manifested in the Non-Aligned Movement (NAM) in geopolitical issues and the Group of 77 (G-77) in social and economic matters, and has seen the South use its numerical majority to exert influence where possible, in the UNGA, UNCTAD and in efforts to create a New International Economic Order (NIEO) in the early 1970s. Through the reweighting of the representation of regions in the Human Rights Council and the emergence of new and assertive coordination groups, the South is in ascendancy in the primary body protecting human rights in the UN. This leads onto the final set of issues to consider, concerning the relationship between the EU and multilateral institutions. In the UNGA, the moratorium against the death penalty was accepted by a majority of states but did not accurately reflect the views of the most powerful states or the most populous. Although the direction the HRC will move in is still unclear, it is conceivable that a shift takes place away from focusing on individual rights and toward collective rights, contrary to the values held by the EU. The EU uses multilateral institutions to promote its own interests as much as other states do. The logic of majoritarianism lends itself to this sort of behaviour and the EU takes advantage when it can, noted too by Jørgensen and Laatikainen (2009). The

converse of this is to recognise that other states do likewise, and when they do the EU must be prepared to choose between its commitment to multilateralism and to human rights, because the two do not have to go hand in hand.

Table 1: UNGA 63rd Session Third Committee Resolutions adopted in Plenary (Source UN 2008a, 2008b)

1. Rights of Child (180:1:0)
2. Right to food (180:1:0)
   All except one state (in both cases the USA).

3. Right to development (177:1:2)
4. Palestinian self-determination (175:5:5)
5. Programme Planning (167:2:2)
   Very high level of acceptance (<85%), with less than a total of 10 votes against and/or abstentions.

6. Total elimination of racism (130:11:35)
7. Globalisation and its impact on full enjoyment of HR (125:53:3)
8. HR and unilateral coercive measures (124:52:0)
9. Racism (122:1:54)
10. Use of mercenaries as a means of violating human rights (122:51:5)
11. Equitable distribution in the membership of HR treaty bodies (122:53:4)
12. Extrajudicial Executions (121:0:57)*
13. HR Council report (121:7:58)
14. Promotion of a democratic and equitable international order (120:52:7)
15. Universal freedom of travel and family reunion (118:3:60)
    *With the exception of No. 12 Extrajudicial Executions (see *) all resolutions sponsored and voted in favour by G-77 bloc, which commands 120±10 votes, putting it at about the 2/3 majority level.*

16. Death Penalty (105:48:31)
    Clearly above simple majority, (97) but not yet at the level enjoyed by G-77.

17. North Korea (95:24:62)
18. Myanmar (89:29:63)
19. Combating defamation of religion (85:50:42)
20. Iran (69:54:57)
    None of these commanded a simple majority (97 votes). Adoption made possible by large number of abstentions.

* This is the only resolution in this cluster than was not G-77 sponsored.

Note: Numerical ordering is by number of votes in favour, and then by *lowest* number of votes against. When identical, it is the first resolution to have been voted on.

Chapter Three
Consensus in Multilateral Institutions

> The key problem in contemporary international decision-making is the divorce of power from voting majorities resulting from the expansion of membership in the international system. This renders majority voting increasingly useless for lawmaking decisions because of the danger of powerful alienated minorities. [...] The need is for a technique that will ensure very broadly based support for decisions in a highly divided system, and it is on this ground that consensus exercises its appeal. (Buzan 1981: 326)

The second of Inis Claude's three ideal types of decision making in international organisations is the egalitarianism of international law in which 'every state has equal voice in international proceedings, and that no state can be bound without its consent' (Claude 1984: 119). The logical implications of giving equal weight to 'sovereign equality and sovereign immunity from externally imposed legislation' imply demanding unanimity in all decisions taken between states (Claude 1984: 119). Both in the European Union and in multilateral organisations more generally, unanimity equates to an effective veto power by each state over the others. In a perversion of the principle that unanimity means the rule of all by all, in effect 'it confers upon a minority of one the procedural competence and the moral authority to determine policy in a negative fashion' (Claude 1984: 125). The literature applying rational choice modelling to states bargaining in a unanimity-based decision-making system is divided into two camps, one asserting a pessimistic view that lowest common denominators tend to favour the status quo position, while the more optimistic suggest median outcomes are possible in the long-term (Koenig & Slapin 2006). The critics of unanimity have been around for a considerable length of time, dating back at least as far as Politis who stated that in international organisations, 'the rule of unanimity many lead to paralysis and anarchy' (Politis 1928, quoted in Claude 1984, 120). Avoiding institutional paralysis is necessary to ensure the effective working of international organisations, and there are three pathways toward achieving the 'progressive emancipation from the tradition-based rule of equality and unanimity' (Claude 1984: 120). The first is to introduce majority voting and democratise as we saw in the previous chapter, the second is to introduce hierarchical differentiation among

states and allow more powerful states to assume greater responsibility for decision making, which is the subject of the following chapter. In this chapter, we will look at the third alternative, consensus, which is in effect a middle way between the two. Without prejudicing the debate about the most appropriate definition of 'consensus' that we will come to presently, in order to sketch out the basic contours of the concept it is enough to use Vignes' definition, which is that 'consensus differs from unanimity, even though each requires that there be no dissenting voice. However, while contrary views prevent consensus, abstention or silence allows it' (Vignes 1975: 120). It blunts the edges of unanimity by either softening the necessity for all parties to be in affirmative agreement (as opposed to choosing not to voice disagreement), or by reaching its decision without the resorting to a roll-call vote.

The significance of consensus

Consensus is important in international relations for at least two broad reasons. To begin with, the most cursory glance over the multilateral system shows that states remain closely guarding of their sovereignty and are unwilling to be bound by international laws and treaties they have not freely agreed to be party to. The outputs of majoritarianism that were discussed in the previous chapter were, at the end of the day, non-binding and unable to influence the behaviour of states unless they voluntarily accept them. While UNGA resolutions have a significant normative value in the development of standards of behaviour among the society of states, they are ineffective when it comes to implementing concrete policy change in the short-term. The more robust documents in international law that are negotiated between states in a multilateral setting require all parties to accept the final text produced by the drafting process. The third UN Conference on the Laws of the Sea (UNCLOS III) that took nearly a decade to conclude is described by Barry Buzan as 'a major international experiment in decision making by consensus'. Its significant achievement is the way in which the divergent and at times seemingly irreconcilable interests of four distinct groups of states (maritime powers, coastal states, landlocked states and developing countries) were wrapped into a 'package

deal' acceptable to all. No state got everything that it wanted, but the interests foregone were matched like-for-like by the other negotiating parties, leaving the final agreement equitable. As will be discussed in more detail below, resorting to majority voting would have resulted in gridlock as the negotiating text spiralled into a vortex of blocking and counter-blocking votes.

The second reason why consensus is important is because of changes to the structure of the international system as a consequence of decolonisation from the late 1950s onwards. As the number of African and Asian states in the UN system grew, the US and its allies in Western Europe and South America became the minority, unable to count on majoritarianism to deliver their policy preferences. The Group of 77 (G77) in economic issues and the Non-Aligned Movement (NAM) in political issues (although effectively the same constituents) have over time evolved into what is referred to today as the Global South. This group, although extremely heterogeneous and potentially riddled by internal divisions, has nonetheless been able to unify on a number of core issues.[45] According to Miles Kahler, who has argued that many supposedly multilateral institutions of the post-WWII era were really governed by 'minilateral great power collaboration', the expansion of the UN membership eroded 'the ability of minilateralism to produce satisfactory cooperative outcomes' by the 1980s (Kahler 1992: 707). The costs of small states free riding, as well as the dubious legitimacy of a clique of powerful states dressing their self-interests in multilateral clothes, forced the adoption of 'large-number' multilateral negotiations. Consensus decision making allowed the interests of large and small states to be reconciled without small states having to

[45] During the Cold War these were referred to as 3Ds – disarmament, decolonisation and development. The issue of decolonisation was effectively resolved in the African continent after the independence of Namibia in 1992 and democratic elections in South Africa in 1994, although the Palestinian claims to statehood is still linked to this discourse. Disarmament is no longer a unifying issue when two key members are nuclear powers (India and Pakistan), Russia and the USA are reducing their nuclear stockpiles and the superpowers are no longer facing off by proxy in the developing world. However, economic development remains a unifying issue, and among many African and Asia states the vigorous defence of sovereign non-intervention is also important.

resort to using their numerical advantage in voting, and large ones having to resort to costly and ineffective bilateral agreements outside of the common framework. Kahler identifies international trade, maritime law, and environmental protection as three examples of issue areas in which multilateralism was the only viable option for all states concerned. Buzan identifies the same sort of collective action problems as the 'politics of international interdependence' (Buzan 1981: 330), which in his view justify the assertion that consensus-based decision making will continue to be of primary importance in international politics as states are forced to cooperate ever more closely in the future.

If the EU is to promote its goal of effective multilateralism it must be able to perform well in consensus-based decision-making arenas. Unlike in the previous chapter where the logic of majoritarianism meant that the EU27 had a substantial foundation of votes to build a winning coalition upon, consensus cannot be achieved by counting votes alone. Moreover, since the outputs of consensus are oftentimes more robust international legal texts accompanied by more demanding obligations, states opposed to the EU are less likely to acquiesce to EU views because there is no escape option for ignoring the final output. The ability of the EU to participate in consensus negotiations and influence the final agreement is more important than its ability to influence the voting outcomes in majoritarian decisions. Although bargaining and negotiations are harder in a consensus environment, the EU has a number of strengths it can call upon. Firstly, the EU has at its disposal experienced negotiators and technical experts who are able to influence the political process of negotiation. Secondly, the EU has the stamina and resources to participate in protracted negotiations over long periods of time. Finally, EU common positions agreed through a process of internal coordination could be useful entry points into wider negotiations, having already been softened and moderated by intra-EU bargaining into something more likely to be accepted by third parties.

Unfortunately for the EU, it is also encumbered with a number of negative attributes that are detrimental to its performance. These include the flipside of a moderated common EU bargaining position, which is that the EU enters negotiations with an already compromised set of demands. When the EU makes concessions on a median or (worst still) lowest common denominator position, it is likely to walk away with less that what *any* EU member state wished for. This equates to shooting oneself in the foot before beginning the marathon. Linked to this is the EU's self-image of a 'bridge-builder' between North and South. The extent to which the EU can really serve as an arbitrator between opposing sides is questionable, given its own preferences, power and its perceived role in the world. Critics argue that the EU should fight its own corner first and foremost and let parties with genuine neutral credentials mediate. In defence of this position is evidence from interviews with senior diplomats from developing countries working in the UN in New York. The widely held view is that the EU is distrusted for cleverly masking its true interests in universal language and rhetoric, and summed up with the strategy to 'disagree first and decide why later'.[46] While in some multilateral negotiations a limited win-set is a strategic advantage (Putnam 1988), this relies on third parties preferring EU agreement over satisfying domestic interests, something less like multilaterally when the EU does not have the asymmetrical power advantage it enjoys in its bilateral relations.

This chapter includes three case studies of the EU in different multilateral organisations operating under the consensus principle. Two come from the realm of social welfare, the International Labour Organization (ILO) and the Food and Agricultural Organization (FAO), and one from political economy, the World Trade Organization (WTO). The latter two are especially interesting because the European Community has membership of both, in addition to the memberships of the 27 member states. The central focus is on when the organisations rely on

[46] Ten semi-structured interviews with EU, non-EU (OECD), and G-77 diplomats working on UNGA Third Committee Affairs, 16-20 February 2009, New York. All interviews were held under the Chatham House rule, hence their identities cannot be revealed.

consensus decision making and how it works, what sort of outputs it produces and what role the EU plays in facilitating their agreement (or not). The examples also illustrate another central theme in the book, which is to be intellectually and empirically open to the possibility that firstly, some EU policies intended to promote its foreign policy objective of effective multilateralism instead do harm to the multilateral organisation in some form or another. Secondly, that some policies improving the efficacy of multilateralism are simultaneously against EU interests. In short, contrary to much of the existing literature, we should entertain the idea that the EU does not always act in a way that best promotes effective multilateralism when viewed from the perspective of the multilateral organisation itself.

Consensus explored

Active and passive consensus

Barry Buzan's detailed study of the third UN Conference on the Laws of the Sea (UNCLOS III) is both an investigation of the negotiating process of a particular UN legal instrument and a set of theoretical observations about the 'innovations in negotiating by consensus that have been developed at UNCLOS' (Buzan 1981: 325). He argues that the lessons learnt from UNCLOS are important because 'consensus represents an important and necessary development in international negotiating technique' and that 'the innovations being tried out at UNCLOS are both useful and generalizable' (Buzan 1981: 325). On these grounds, Buzan defends UNCLOS from those who criticise it for being slow and ineffective by stating it should be seen instead as a prototype fashioned by circumstances and streamlined for future reproduction. He begins by loosely defining consensus as 'some form of decision making by consent that does not involve recourse to voting' and notes that according to this definition, it has been widely used in many multilateral organisations (Buzan 1981: 326). UNCLOS developed some elaborate rules (known as the 'Gentleman's Agreement') determining when voting could take place, operationalized in Rules 37-40 that 'define voting rights, required majorities, and a variety of procedures by which voting may be deferred in order to ensure that all efforts at reaching a consensus have been exhausted' (Buzan 1981: 331). However,

> Resort to voting on substantive matters would mean a failure to accommodate some important interests. It would not only jeopardize the package-deal-building enterprise, but also weaken the creation of a harmony sufficient for the effective management of a highly interdependent issue area. The condition of high interdependence thus necessitated the conduct of business by consensus. (Buzan 1981: 332)

However, the scope and ambition of UNCLOS was greater than any previous consensus negotiation, due to the increased number of participants, greater interdependence and a wider diffusion of power across the system making it more difficult for hegemons to force their preferences on the majority. The structural trends underpinning Buzan's assumption that consensus negotiations would become increasingly necessary in the future have been borne out, thus making the

theoretical framework set out highly relevant in our survey of the EU in the multilateral system a generation later.

What sets UNCLOS apart from other examples of consensus decision making according to the loose definition of consent without voting are the qualitative changes that took place during the protracted rounds of drafting meetings between 1973 and 1980 (Miles 1977). Buzan posits a distinction between 'active consensus' and 'passive consensus', where the former engages in a series of new techniques designed to dynamically seek consensus formation, and the latter decays into a war of attrition where the rational strategy is to hope the other party will concede first (Buzan 1981: 333). 'Passive consensus is often used to avoid voting when there is a fear that a destructive polarization will result from a vote. By itself, however, it poses the danger that discussion will drag on interminably and that the outcome may be no decision at all' (Buzan 1981: 329). This characterised the early years of the convention, and even when progress seemed to be made it was usually on the basis of sidelining controversial issues rather than finding consensual resolutions for them. 'By the middle of the 1975 session, it was abundantly clear that continued use of passive consensus procedures would not produce a ISNT [informal single negotiating text] by the end of the session, and perhaps would never do so' (Buzan 1981: 333). In order to break the impasse a radical new direction was proposed by the Conference chair, who proposed that 'the delegations agreed to transfer to the Chairmen their collective right and responsibility to draft the ISNT' (Buzan 1981: 334). The delegation of drafting responsibility to a third party who was able, through incremental revision to the text, to concretise areas of agreement and suggest reformulated wording for areas of disagreement. Through the incremental redrafting by the committee chairs, a text was transformed from being under negotiation to negotiated. This process also opened the door for a second innovation, which was the incorporation of small working party texts into the chairs' revisions.

> The function of the power vested in the Chairmen was thus much more to serve as a stimulus to others, than it was to enable the Chairmen to act as authors themselves. Their most useful roles were as selectors, prompters, and legitimizing agents for compromises worked out by private groups of delegates. It might almost be said that the more the Chairman had to draft himself, the less successful he was. (Buzan 1981: 335).

The essence of active consensus is the delegation of drafting responsibility over to trusted third parties, who provide a range of 'moving targets' for states to gravitate towards and who have the incentive to take something that looks appealing for fear of the next draft being something inferior (in this respect they are somewhat like the European Commission under the Community Pillar of the EU, which enjoys the sole right of initiation over the Council agenda). They also provide the mechanism for uploading the outputs of small working groups representative of the wider constituency who are better able to reach consensus. Following the process through to the end means that successive components in the package deal are locked in, and allow delegates to focus on the remaining areas of difficulty, until the entire process has been bought to a successful conclusion.[47]

Minilateralism, multilateralism, and consensus

A decade after Buzan, Miles Kahler turned again to the UNCLOS III negotiations to draw lessons about the (in)ability of a large number of states to conclude a multilateral agreement. Kahler situates his departure point in the neoliberal institutionalism, which to recap sought to demonstrate according to the internal logic of realist IR theory that a hegemon was not needed to explain the formation and sustaining of cooperative regimes and organisations (Keohane 2005, Snidal

[47] Buzan published his article in April 1981, unaware of the U-turn in American policy on the UNCLOS after Republican Ronald Reagan was elected President and withdrew support for the final document. Kahler, on the same subject says that the 'failure of UNCLOSIII in its final stage, however, could not be attributed to the impossibility of large-number multilateral governance in an issue area of considerable complexity' (Kahler 1992: 696). Buzan's argument does not fall down on the failure of the US to accept the deal because of shifting domestic interests, since he is the first to point out that the key issues to analyse are the innovations of active consensus. As he states: 'Even if UNCLOS were now to fail, its achievements up to ICNT/Rev.3 would still be sufficient to indicate that consensus procedure can be used to produce hard legal outcomes' (Buzan 1981: 346).

1985). Kahler builds on the their rejection of hegemonic power to undergird international institutions, instead focusing on the role of a small number of important states to foster and sustain collective action, to the point that '[m]inilateral cooperation may successfully supplant hegemonic power' (Kahler 1992: 686)

> Even in the early years of the postwar era when the power of the United States in most issue-areas was at its peak, the United States sought collaborators, particularly in Western Europe. Where multilateral institutions flourished, they were typically supported by minilateral cooperation among the Atlantic powers, a "disguised" minilateralism that provided the essential frame for a multilateral order. (Kahler 1992: 686)

While we will return to the full implications of Kahler's minilateralism for the role of privilege in decision making in the multilateral system, in this chapter we are interested in the direction taken as a result of the increased number of states in the international system as decolonisation took place in Africa and Asia. The structural changes noted by Buzan are significant for Kahler too, as issue areas previously managed through the minilateral 'club of industrialised countries' required readdressing (Kahler 1992: 690). The laws of the sea, trade and the environment were identified as cases illustrative of the 'declining efficacy of minilateralism as a basis for multilateral regimes' and in there place required the development of methods of cooperation between a large number of states, pessimistically viewed by neoliberals as difficult or even impossible (Kahler 1992: 682, 691).

Kahler's conclusions about the success and failure of large number multilateralism in the policy areas that require recasting in a truly multilateral mould are twofold. The first is that in each of this three case studies 'the principal barriers to cooperation appear to be great power deflection rather than any inherent inability to organize cooperation among a large number of states' (Kahler 1992: 683). The second is that in the UNCLOS III, Uruguay Round of the GATT, and the Vienna Convention on Protection of the Ozone Layer (1985) and the Montreal Protocol on Substances That Deplete the Ozone Layer (1987), institutional innovations emerged that facilitated agreement, oftentimes 'using a combination of past experience and trial and error' (Kahler 1992: 703). The institutions were:

voting systems, delegation, representation, and reduction in numbers. In all three case studies the voting system was important, insofar as it served to limit the length of time the search for consensus could viably continue until recourse to a vote was threatened. As Buzan noted, in passive consensus the rational strategy is to wait for your opponent to blink first. In all three cases, the consensus had to cope with North-South divisions, as well as South-South and Great Powers-small powers divisions too. Vignes concurs with Kahler, stating that a majority vote is 'a threat, an inducement to achieve consensus', and insightfully notes that consensus emerges as 'a transition occurring during discussion' (Vignes 1975: 120, 125). This seemingly vague idea actually posits that the search for consensus is triggered by the realisation that continuing in the present vein will lead to the calling of a formal vote, which all parties have agreed not to want.[48]

The second institutional innovation is delegation, and is integral to the functioning of consensus, which 'implies a high degree of delegation to the consensus builder, whether it be the head of a committee or a permanent member of a secretariat' (Kahler 1992: 705). While noting that Mitrany's functionalist working peace system was based on the delegation of administrative duties to technical experts, they have not played a significant role in minilateralist institutions. However, 'the role of a broker in achieving consensus becomes increasingly important as numbers grow' and in the case studies given, 'delegation was often a crucial part of successful collection action' (Kahler 1992: 706). The third and fourth institutions (representation and reduction in numbers) can be taken together, since engineering representation through regional or interest groups is necessary to facilitate a reduction in numbers. In keeping with the rationale inherent in minilateralism, negotiation and decision making are easier and faster when carried out in smaller groups and then fed back to the whole group. For Buzan, these small groups provided input into the chairperson's

[48] Voting rules are the 'scope conditions' for seeking consensus, as the demarcated the boundaries of legitimate exploration accepted by all. In Zartman's words, they are part of the 'referent principles' agreed at the beginning (Buzan 1981: 343).

redrafted text, thereby concretising their informal work. Kahler refines their role, contrasting the former presentation of minilateral as a hierarchical distinction between Great Powers and other privileged "club members" and those outside, with two new forms of horizontal collaboration. The first is the "broker" group that forms around a pivotal issue of contention, (for example the Cairns Group has played in the GATT/WTO). The second is the 'two-track' model in which a small number of progressive states proceed with maximal standards while consensus among the whole group forms around lower standards. (Kahler 1992: 706). In the case of the environment the EU's adoption of a carbon credit trading scheme exemplifies such a move, demonstrating how the EU can help to promote the viability of certain ideas through their own practice.

Active consensus and the EU

Buzan is confident that active consensus negotiations have an important role to play in the drafting of international law, since they 'point the way to a major advance in international decision-making procedures beyond the standard UN majority rules, which no longer fit the needs of an expanded international community' (Buzan 1981: 346). The insights learnt from Buzan's work point to a number of important considerations for the assessment of the impact of the EU in consensus-based decision-making organisations. Firstly, the EU has promoted itself as a bridge-builder and intermediary between the opposing camps of the USA and its like-minded allies and Global South. Yet active consensus includes the delegation of arbitration responsibilities over to third parties, and any chairperson serving as a facilitator of active consensus would surely rival the EU's self-identity. To what extent can the EU let go of its role and concentrate on presenting the chair with a set of demands for 'processing', as well as resisting the temptation to intervene and potentially undermine the capacity of the chair to do their job? Can the EU step back and give the chair the space and support they need to function effectively? Secondly, we have the issue of how the EU (and the EU member states in multilateral organisations where they collectively represent the EU through the Presidency) respond to the revised texted presented by the chair. When the EU is

working according to a fixed and inflexible mandate from the Council, will it be able to consent to a proposal quickly enough? Will the cohesion of the member states decline when faced with various proposals? In short, how will the EU perform in an active consensus environment in which a third party is delegated to set the agenda and the EU must *react* to it? We would expect the EU to thrive in a passive consensus negotiation where the slow pace of events, the extensive support network of experts and the tendency to be more reactive than proactive in international affairs suit it. By contrast, active consensus negotiations present a unique set of demands upon the EU.

In the following three case studies the ability of the EU to influence consensus-based decision making in the WTO, ILO and FAO will be considered. Since the mid 1980s, the EU and the US have been the two central actors in the international trading regime. However, as WTO membership has increased in size (something the EU has actively promoted) and leading economies in the Global South have become increasingly involved in negotiations, the EU has found itself marginalised when promoting its own interests during the early years (2001-2003) of the Doha Development Round. The inability of the EU to promote social policy through the WTO has made the ILO an important arena for the EU, although it is unclear whether the EU and the ILO have the natural synergy often attributed to them. The EU has shown aptitude in influencing the outputs of passive consensus negotiations and uploading elements of the *acquis communautaire,* but at the cost of bequeathing the ILO a legacy of unratified conventions. Finally, we will look at one example of consensus decision making in the FAO over its root-and-branch reform plan, instigated after the 2007 Independent External Evaluation. The initial appraisal pointed toward the EU being a sub-optimal negotiator that pursued its bridge-building aspirations at the cost of selling short non-EU OECD states and the FAO. However, through the strategic positioning of EU member state diplomats in key positions within the active consensus mechanisms and coordinated action, the EU has performed considerably better that first assumed.

The World Trade Organization

'We don't vote here'

The first case study in the use of consensus decision making is the World Trade Organization (WTO), which at first sight appears to be a rather odd choice, given that the agreement establishing the WTO makes explicit provision for the use of voting according to majoritarian principles. This makes it very different from the Bretton Woods Institutions (BWI) where privilege is the key. As we shall see in the next chapter, the International Monetary Fund (IMF) is dominated by the Group of Seven (G-7), which undergird their position through weighted voting systems and coordinate on crucial issues in advance of formal BWI meetings in Washington. 'The finance ministers and central bank governors of the G-7 meet the day before the spring and annual meetings of the IMF and World Bank to discuss the main issues on the agenda and try to reach common positions' (Bini Smaghi 2009: 64). Although the IMF has 185 members, decision-making power is concentrated in the hands of very few states. The WTO, at least in theory, is much more democratic insofar as each member has one vote of equal worth. However, as we have seen, decisions that are taken by majority vote are often only of low salience to powerful states, which protect their interests in high salience policy-areas by demanding consensus-based decision making. The WTO makes 'hard law' insofar as trade rounds are binding and there are extensive policing mechanisms in place to ensure state compliance, with the Dispute Settlement Understanding at its pinnacle. Voting procedures are codified in the Marrakesh Agreement Establishing the WTO set out that

> The WTO shall continue the practice of decision making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at consensus, the matter shall be decided by voting. (Article IX)

This being said, 'in the history of the WTO, with the exception of the accession of Ecuador in 1996, no decision has been made voting' (Steger 2009: 8), a point bluntly made by one WTO diplomat who simply said: 'we don't vote here' (Elsig 2006: 11).

Yet what is gained in terms of democracy from seeking consensus comes at the price of efficacy, with no new trade round agreed during the first 15 years of the organisation's existence. Supporters of the WTO point to the successful operation of the Dispute Settlement Understanding (DSU) in arbitrating trade disputes, whose rulings the two most important WTO members – the US and the EU – have thus far adhered to. Van de Hoven has argued that this constitutes a success for the EU, which sought to replace the trade liberalising GATT with the trade regulating WTO (Van de Hoven 2006). For others, the failure of the EU to promote 'managed globalisation' (Meunier 2007) and its 'post modern trade policy agenda' (Falke 2005) has resulted in it backtracking towards a more traditional policy of reciprocal trade liberalisation. To understand the significance of this U-turn, and the reasons why the EU has been forced to accept a redistribution of power in the global economic system and correspondingly in WTO decision making, we must examine its predecessor, the General Agreement on Trade and Tariffs (GATT). Following that, we will look at three reasons why consensus has become harder to reach in the WTO; (i) the growth in membership, (ii) the 'post-modern trade policy agenda' pushed by the EU, and (iii) the mercantilist turn recently taken. To conclude we will consider how these changes have affected the EU's ability to influence decisions. Given the limited space available and the already exhaustive literature on the issue, no time will be spent considering the complex interaction between the EU member states and the European Commission delegation representing the European Community. Using either the Principal-Agent model (Pollack 1997, Kerremans 2006), or Putnam's two-level game (Meunier 2007), specific hypotheses concerning the scope for autonomous Commission action have been generated. For the sake of brevity the EU is assumed to be a unitary actor when operating in the WTO.

The GATT has always been an important field of study for EU scholars because it was the first international institution in which the European Community undertook common external representation. 'The Community was a core

participant in multilateral trade rounds, such as the Kennedy (1964-67), Tokyo (1973-79) and Uruguay Rounds (1986-93)' (Duer and Zimmermann 2007: 772). During the 1960s and 1970s, the US encouraged its trading partners in Western Europe, Japan and Canada to liberalise their markets for American goods, while they doggedly attempted to keep as many non-tariff barriers in place for as long as possible (Mortensen 2009: 84). By the early 1980s, there was a new impetus for further liberalisation, which combined with the Single Market initiative in Europe led in 1986 to the opening of the Uruguay Round. Here for the first time, the European Community entered negotiations with the US roughly as equals. Throughout the rounds, trade negotiations were exclusive affairs, both in terms of which national representatives were party to negotiations (shielding them from domestic scrutiny), and in terms of the number of states participating. 'They operated as clubs of negotiators, often technically trained, bargaining with one another within specified issue areas' (Keohane and Nye 2001: 2). The 'club model' is therefore very similar to Kahler's minilateralism discussed earlier. Keohane and Nye argue that even though successive rounds became more complex and contained more sensitive issue-areas, a virtuous circle was created in the domestic sphere of participating states, where 'liberalizers were playing a winning game, in which each round of liberalization strengthened their own coalitions, and weakened their opponents, for the next round' (Keohane and Nye 2001: 6). The opening of the world economy in the years after the fall of the Berlin Wall led to pressure from developing countries to allow them to participate in GATT too, as well as demanding greater access to rich world markets for their agricultural and textile goods.

> LDCs do not want to destroy the club; they want to join it and have more power within it. […] They are happy to have an intergovernmental club of trade ministers. The problem they pose is their number. As Harlan Cleveland once put it, how do you get everyone into the action and still get action? (Keohane and Nye 2001: 8)

Within the 'club' there remain hierarchical structures of influence restricted to few members at the top, and those of most importance are by definition most exclusive. The Quad of the US, EU, Japan and Canada was central for many years, with groups of states networking into the top echelon. The 'G-10' represents major food importing states and is chaired by Japan, while the Cairns Group coordinated the

major food exporting nations and is closely linked to Canada (although Canada remains a non-member). The transition from GATT to WTO did not greatly disrupt this power structure, although the failure of the Seattle ministerial meeting in November 1999 was an early indication that the developing world would not accept being treated as bystanders, force-fed a fully formed agreement by a minilateral elite. The Cancun ministerial meeting of 2003 was closed prematurely by Mexican chairman Derbez when he decided it was obvious no agreement would be reached (Falke 2005: 354), but it did bring to light a number of other interesting shifts in the international trading regime. Firstly, the G-20 emerged as a powerful lobby group capable of challenging the leadership of the North, spearheaded by India, Brazil and South Africa. Secondly, US and EU efforts to patch up their differences on agriculture and move the process forward were no longer what the international trade regime was waiting for (Elsig 2006: 16). While in previous meetings a framework between the 'G-2' would have kick-started negotiations, this time it was not enough. Consensus no longer began solely as agreement between the European Union and the US, but instead required the participation of a wider constituency.

From G-2, to Quad, to G-6

With 150 members and an institutional commitment to consensual agreement, the structure of decision making in the WTO has altered greatly in the aftermath of the Cancun setback. 'In previous trade rounds, the EU-US axis was crucial in terms of agenda-setting and determining the final outcome, with agriculture usually being the sticking point' (Falke 2005: 345). 'Whereas in the past rounds, the G-2 (US and the EU) and the Quad were the key platforms where decisions were "pre-cooked", new market capacities as well as new alliances have led to a redesign of the decision-making process' (Elsig 2006: 21). Manfred Elsig identifies three concentric circles of influence radiating outwards from a core group of six states ('G-6'), through a 'Green Room' of around 25-30 participants, and finally to the whole WTO membership.[49] This informal decision-making structure has been created to find consensus in what has always been one of the most divisive issues on the trade agenda – agriculture.[50] In this respect the negotiations are evolving in a similar fashion to UNCLOS after the deadlock reached in the Caracas session of 1974, although it has not yet sought anything as radical as the active consensus method of allowing a chair to draft a negotiating text. The G-6 comprises of the US, EU, Brazil, India, Japan and Australia, with Brazil representing the G-20, India the G-20 and G-33, Japan the G-10 and Australia the Cairns Group (Elsig 2006: 21). Meetings are held without minutes being taken and members speaking on behalf of the coalitions they represent, chosen specifically to gauge a spectrum of opinions across the WTO. The canvassing of wider interests continues at the next level, the 'Green Room' of between 25-30 states, where 'big economies, representatives of coalitions and a number of middle-sized economies are represented' (Elsig 2006: 22). The outermost circle incorporates the whole WTO membership and allows very little scope to modify the text prepared by the upper circles.

[49] The inner-core that has replaced the old 'Quad' (US, EU, Japan and Canada) takes a number of forms, including the 'new Quad' (US, EU, India and Brazil), the Five Interested Parties or 'Quint' (US, EU, India and Brazil and Australia) and the G-6 as concentrated upon here (Narlikar 2009: 3).

[50] The Singapore issues were equally contentious but these were removed from the Doha Development Agenda after Cancun, and resulted in a change in direction in EU trade policy, discussed in detail below.

The important change to have taken place is in the widening of the initial consultation process beyond the traditional Great Powers of the EU and the US. It remains the case that 'any proposed agreement has to have the support of these two actors to stand a chance of success' (Elgström 2007a: 955), but they must now seek coalitions beyond the Quad to get a positive result. How has this affected the EU and the WTO? Put bluntly, the 'influence of the EU in the WTO negotiations diminished' as a result of the EU's own policy of promoting WTO membership to the widest possible number of states (Meunier 2007: 919). Previously, the elite core was responsible of determining the consensus position of the whole organisation because 'important decisions were actually negotiated by the Quad, when not by the EU and the US exclusively' (Meunier 2007: 919). This has become unacceptable in an organisation with 150 members, and consequently the inner core has grown and correspondingly diminished the influence of the EU. For the WTO, while it remains minilateral at its heart, it is at least accessible from a wider constituency base. Normatively this would appear to be an improvement, although this judgement must be weighed up against any costs associated with increased difficulties at reaching decisions.

Trade policy meets social policy

If we inquire a bit deeper into the circumstances surrounding why the G-6 was formed in the first place, we see that EU is heavily implicated as a consequence of the breakdown at Cancun, partly because of continued protection of European agriculture, and partly because of zealous advocacy of the 'Singapore issues' (competition policy, investment, government procurement and trade facilitation) concerning the liberalisation of many service sector industries. The lack of consensus to date inside the WTO on a new trade round has been in a large part due to the fact that from 1999 to 2003 the EU promoted an agenda opposed by many developing world states as well as by the US. The strains on consensus decision making have come, therefore, not only from the enlarged membership of

the WTO, but also from the greatly differing interests of WTO members, polarised at one extreme by the EU's 'post-modern trade policy agenda', a term first coined by Dymond and Hart (Falke 2005). The term captures

> the shift from negative prescription with regard to restrictive border measures to positive rule-making. Under positive rule-making, governments are not only obliged to remove border trade barriers and discrimination, but adopt specific policies and regulations that may only indirectly be relevant to market access, encroach deeply on national regulatory regimes and institutions and thus interfere with domestic political arrangements and the different legal orders of the negotiating parties. (Falke 2005: 340)

Elsewhere in the literature the EU's attempts to link environmental and labour standard protection to its trade agenda has been labelled the 'trade and' issues, which became a coherent policy strategy during Pascal Lamy's incumbency as EU Trade Commissioner. Under the banner of 'managing globalisation', EU trade policy from 1999 to 2004 was guided by a 'broad and encompassing doctrine that subordinated trade policy to a variety of trade and non-trade objectives, such as multilateralism, social justice and sustainable development' (Meunier 2007: 906). 'Values, not economic interest, predominate' Falke explains, pointing out how the 'rationality of economic interests is relegated to second rank, and identity issues […] are being pursued in trade policy' (Falke 2005: 341). Surveying EU trade policy over the last decade, Alasdair Young identifies three strands of trade policy (Young 2007: 790). 'Traditional trade policy' focuses on 'at-the-border' measures and is usually framed around reciprocated tariff reductions that yield gains from trade in the short-term. Secondly, 'commercial policy' is intended to expose the domestic market 'behind-the-borders' to regulation that facilitates greater competitiveness from overseas companies (the Singapore issues). Finally, 'social trade policy' is intended to deal with market failure 'behind-the-borders', including environmental and labour standard regulation. Young argues that EU trade policy characterises all three strands simultaneously, to varying degrees of success. The EU's traditional trade policy advocates increased liberalisation and on this note is in tune with the rest of the WTO, albeit differing over which sectors to liberalise. Regarding commercial trade policy, the story is more complicated. Young bundles into this category both the Singapore issues advocating increased liberalisation, and European agricultural protectionism that increasingly takes the form of direct payments to farmers rather than production subsidies. On the former 'the EU is

demanding too much,' while on the latter 'it is offering too little' (Young 2007: 804). The EU has been equally out on a limb regarding its social trade policy, which was supported in the late 1990s by American Democrats and in Europe by left leaning governments, but fell out of favour in the US after the election in 2000 of President George W. Bush. In the wider WTO membership, linking trade to human rights and environmental issues is not appreciated, with diplomats insisting that 'these issues do not belong to the WTO agenda, but should be dealt with in other fora and furthermore denounce such initiatives as confrontational and as potentially undermining the WTO' (Elgström 2007a: 958). The 'post modern trade policy agenda' pushed by the EU had its 'actual burial' in Cancun (Falke 2005: 352), where the 'four Singapore issues […] proved to be the stumbling block that caused the collapse of the talks' (Falke 2005: 354). The EU pushed the consensus decision-making apparatus of the WTO too far, but in the process galvanised the G-20 into a powerful negotiating bloc and also led to the creation of the G-6 inner-circle intended to overcome the Cancun impasse. Post-Cancun, the EU has altered its multilateral negotiating strategy, but it 'has not abandoned its commercial and social trade policy agendas, pursuing them instead through commitments in preferential trading arrangements' (Young 2007: 806).

How has the EU responded to the breakdown of Cancun, and with it a forceful demonstration by the WTO membership that they are not interested in the EU promoting its 'blend of market integration, common rules and social safety net mechanisms' globally (Meunier 2007: 906)? In 2004, Lamy was replaced by Peter Mandelson, and with it came a change in the EU's trade policy strategy. The 'doctrine of managed globalisation had been all but abandoned by the EU, officially replaced in 2006 by the shorter-term, more trade-centred and mercantilist objectives laid out in the communication *Global Europe*' (Meunier 2007: 906). Meunier's research interest is in explaining how the policy change took place and to what extent the European Commission was instrumental in bringing it about. What interests us is what impact this shift had on the EU's behaviour in the WTO, and how it has affected the decision-making process there. The new direction

expounds a 'mercantilist, market-opening strategy with immediate political and economic rewards' that retains a commitment to multilateralism as the primary channel of trade policy, yet nevertheless 'ending the moratorium on bilateral trade agreements' (Meunier 2007: 917). This moratorium was informally imposed by Lamy and intended to run until the completion of the Doha round, signalling to the world that the EU was 'really committed to making multilateralism work' (Meunier 2007: 912). In this respect the EU has belatedly gotten on the same bandwagon as the US, which by 2001 was intent on making market access its primary goal in the WTO, while pursuing bilateral treaties in parallel. The EU watched its rival successfully complete free trade agreements with Chile, Singapore and Jordan while the WTO became mired in deadlock (Falke 2005: 255), and since 2006, the EU has begun negotiations with ASEAN, South Korea and India, with Russia and Ukraine to follow (Meunier 2007: 917).

Describing the EU's new policy as a 'mercantilist turn' is based on reading into it two driving forces, the first 'a return to the roots of trade policy – trade negotiations used to achieve economic, not foreign policy, objectives' (Meunier 2007: 917), and the second a pursuit of relative gains. Hubert Zimmermann makes this argument the basis of his attempt to show how realist IR theory can help understand EU trade policy (Zimmermann 2007: 824). His focus is exclusively on the WTO membership accession talks of China and Russia, about which he hypothesises that if EU trade policy is 'motivated by the goal to enhance the EU's competitiveness vis-à-vis other great powers' this will demonstrate the prioritisation of relative gains over absolute gains as predicted by neo-realism (Zimmermann 2007: 818). What does this alleged mercantilist turn by the EU mean for decision making in the WTO? The willingness of the EU to seek bilateral deals that start yielding returns in the short-term suggests that it has lost patience with the WTO Doha round, both with its inability to upload it policy preferences, and in the time taken to conclude it. The unambiguous support offered by Lamy is gone and the EU is now 'forum shopping' in pursuit of its interests, but this does not necessarily mean that the WTO is worse off now than before. One could make

the case that the WTO has benefitted from the EU removing from the table many of the issues that caused most conflict prior to 2003, and is focusing its efforts on resolving differences over agriculture tariffs that have been the sticking point in previous rounds too. Moreover, the mercantilist case has been overstated for two reasons. Firstly, the EU is doing nothing more than actively pursuing economic gains through trade policy, something which all WTO members accept as the *appropriate* behaviour within the organisation (Elgström 2007a: 958). Secondly, Meunier concludes that the shift from managed globalisation to Global Europe is small, and more a result of the Commission acting as a 'norm entrepreneur and idea repackager' (Meunier 2007: 921). At the very least, the normalisation of behaviour by the EU cannot worsen the chances of agreement on the Doha Round in the WTO, beyond the strained relations of Cancun.

Weakened EU, strengthened WTO?

In this section, we have looked at three EU policies that have directly influenced the capacity of the WTO to reach decisions by consensus. The first is the EU supported drive to increase WTO membership from the 'club model' of GATT to a near-universal organisation. Reaching consensus among a greater number of participants is harder, but as Kahler noted, it is often great powers that block agreement, not the plethora of small states that join collective bargaining agreements to gain from them, rather than ruin them. The inclusion of India and Brazil has rendered gone forever the days of the EU and the US deciding the most important issues between them and presenting the other members with a done deal. In this respect, the most extreme form of minilateralism – bilateralism – is no longer possible in the international trade regime and it has certainly made the WTO more multilateral. The EU's climb-down on the Singapore issues and social trade policy was either a victory for national sovereignty or a failure to protect human rights and the environment depending on one's political viewpoint; however from the perspective of WTO negotiations, taking these issues off the agenda removed the most contentious stumbling blocks toward reaching consensus. Lastly, the 'mercantilist turn' of the EU has not done much harm to the

prospects of agreement in the future. Post-Cancun negotiations are characterised by a number of features that result directly from these points. Most obviously, the new constituents of the minilateral core come from the OECD states and the Global South. The revised agenda is focused on traditional liberalisation and resolving the age-old dispute over agricultural subsidies, with the EU limiting its pursuit of 'deep trade' policy behind-the-borders to its bilateral and regional trade agreements (Orbie and Torrell 2008), as well as boasting support for the ILO (see next section). These two points culminate in the G-6 negotiating group focusing on agricultural issues, replacing both the G-2 and the Quad as the minilateral elite of the WTO.

Is the emergence of the G-6 an evolution or a revolution in the WTO? To substantiate the claim that it is evolutionary, Steinberg's observation that trade rounds are initiated by law-based bargaining and finalised through power-based bargaining appears to be holding (Steinberg 2002, in Elsig 2006: 17). The G-6 is a concert system that has expanded to include new powers (and excluded Canada in the process), but is merely a reconfiguration to reflect the current international system. Elsig's own reading of the situation is more nuanced, and while he might not go so far as to call it 'revolutionary', he has identified three forms of power that must be disaggregated in order to reveal more clearly the dynamics at play. While the US and the EU continue to belong to the core thanks to their structural power (i.e. economic size in the global economy), the other members are present because of other reasons, chiefly coalition building as a procedural tool.

> Procedural power has helped Brazil, India, Japan and Australia, through the use of coalitions, to borrow sufficient, albeit different, power to credibly negotiate as quasi-equal partners at the negotiation table. Other actors have also "borrowed power" through coalition building to gain an ear in the G-6 negotiations and actively engage in the Green Room processes and in other negotiations committees. (Elsig 2006: 32)

The EU and the US are no longer able to be *primus inter pares* due to their economic size alone, and must now accept procedural power as an acceptable entry pass into the top circle. While agreement between six may be more difficult than between two or four, it does increase the likelihood of decisions reached being widely accepted across the WTO. However, assessing any success of the G-6

initiative runs into difficulties due to the exogenous variable of the removal of the Singapore issues off the agenda. Yet this debate remains largely academic because six years after the failure of Cancun there is still no breakthrough from the G-6, suggesting that this has not shifted the rules of the game sufficiently to bring about consensus. Looking back to Buzan's study of the UNCLOS III negotiations and similarities appear. It would seem that the failure of the G-6 to reach agreement is analogous to the 1974 Caracas session, when variations to the passive consensus model were tried but promised only further stalemate (see Footer 2009 for a legal application of Buzan's model to the WTO). In desperation, chairpersons were empowered to draft negotiating texts that reflected the consensus present at the time. States quickly became willing to accept proposals on the table because they became fearful that future proposals might be further from their interests. The possibility of active consensus being taken up in the WTO seems further than ever, especially in the light of Elsig's empirical evidence demonstrating that the role of the Secretariat in chairing meetings and helping to broker deals has declined in recent years (Elsig forthcoming). Multilateralism in the WTO has increased in the quantitative sense, but remains the preserve of an elite group of states in the qualitative sense. The EU and the US have already seen their influence in the WTO diluted, going further down that road may be easier thanks to the initial steps taken, or harder to swallow in light of those steps. The newly minted G-6 members may also be especially unwilling to cede influence after so short a time after their elevation. But that, surely, is what will be required if (consensus is to be finally reached by 150 states in such a highly salient issue.

The International Labour Organization

Drafting labour standards by consensus

In the previous chapter on majoritarianism, the ILO was discussed in detail, and in particular the puzzling empirical evidence suggesting that EU member states were cynically supporting EU common statements during the drafting of labour standards, only for some of them to vote against or abstain in the recorded vote on

adoption in the plenary session. To students of EU actorness, this is taken as evidence of non-cohesion and the dominance of national interests over promoting a European single voice. If, however, we turn our attention to the politics of the ILO, the EU and national constituencies in the member states, the same evidence is reinterpreted as a complex bargain between interests on three levels, taking into account the relative political importance of different stages in the decision-making process in the ILO, as well as expectations about the final result in the plenary vote. In this chapter, we return to the ILO to complement our initial findings with a greater understanding of the particular workings of consensus-based politics in the ILO. To this end, it serves as the first of two case studies looking at the EU in multilateral organisations principally focusing on social and human welfare policy issues. Kahler argues that these policy areas are more likely to demonstrate a successful transition from minilateral to multilateral decision making. However, the ILO has also been a repository for policies intended to 'manage globalisation' that have been removed from the trade agenda of the WTO.

The normal procedure for drafting an ILO labour standard is to begin with a meeting bringing together ILO secretariat, national government and workers' and employers' experts from a given industrial sector. Existing ILO standards are considered and the meeting makes a recommendation on the scope and direction of new standards, taking into consideration technological change and global employment trends. The secretariat drafts a working document that is circulated to all ILO members prior to the annual conference, who return comments on the draft to the ILO. On the basis of this, a draft negotiating text is discussed in committee meetings held during the annual labour conference in Geneva. The majority of standards are then put back into the consultation system for a second round and finalised the following year, although a few instruments (usually protocols or 'urgent' conventions such as the Seafarers Identity Documents Convention 185 in 2003) are drafted in a single year. From this short synopsis, it is already apparent that delegation to technical experts plays an important role in the initial drafting stages. Decision making in drafting committee meetings is by

consensus, although there is a formalised voting procedure that can be resorted to as a threat,[51] and voting weight is split equally into thirds between the three constituents; governments, employers and workers.[52] Reflecting the prediction of Buzan, the more votes that take place during drafting, the lower the likelihood of widespread support for the final instrument, confirming that voting occurs when there are substantial differences that have not been reconciled through the consensus process. The best example of this in the ILO in recent years are the discussions held in 1997 and 1998 on contract labour, which ultimately broke down due to an inability of the sides to agree on the scope of the instrument (ILO 1997, 1998a). Small working parties are also often used to resolve disputes, corresponding to Kahler's institutional practices of representation and reduction in numbers. Finally, a chairperson, two vice chairs and a reporter in charge of minuting proceedings form a core group responsible for interpreting the discussion process (in the place of verbatim records). The most contentious issues of an instrument are handed over to informal sub-committees that then present their compromise to the drafting committee as a whole, replicating Buzan's active consensus method of delegating to informal groups. In summary, the drafting of technical instruments in the ILO is endowed with passive and active consensus methods and for the most part appears to produce negotiated texts acceptable to the entire organisation.

The recent literature focusing on EU-ILO relations often mention the shared social agendas of both actors, on the one hand noting the Lisbon Strategy and the EU's social agenda, and on the other hand the ILO's concern for the social

[51] Unlike the examples given by Kahler and Buzan, it is usually the *losing* side that calls for a record vote. Since most contentious issues are a split between employers and workers, governments hold the balance of power (literally because the two non-government camps have one-third of the vote each). The record vote is called to publicise the positions taken by governments in the official minutes, as well as excessive absenteeism among government representatives.

[52] This is a unique arrangement in the ILO governance structure, which in all other votes is weighted 2:1:1 favouring governments.

dimension of globalisation (Johnson 2005, Novitz 2008, Orbie & Torrell 2008).[53] Furthermore, they share a concern for using multilateral regulation to legislate against its most adverse consequences, because globalization makes 'multilateralism both indispensable and inevitable' and that it 'provides a time-tested framework to guide the process of globalization in accordance with the international rule of law' (ILO 2004: 6). Based on these key points, the case is made for a natural synergy between the EU and the ILO, which at the rhetorical level makes them appear ideal partners. Much of the evidence in support of this focuses on the positive incentives given by the EU in the form of preferential trade access to the common market in return for ratification of core ILO labour standards. The EU has certainly had a positive effect on promoting the ratification of ILO core labour standards, although its current laxness in penalising states that subsequently fail to implement them greatly reduces its overall impact on improving working conditions globally. The stepping up of efforts to link access to the European market to labour standards can be seen as a response to the rejection by the developing world of incorporating them into the WTO agenda as we have just seen.

Child Labour Convention and Active Consensus

In the ILO, there are in practice two types of conventions, those that are highly salient politically and all states take an interest in their drafting because they that they will be expected to ratify them (and could be costly not to), and greater majority that are of low salience and ratification is discretionary. Both are drafted under the same consensus decision-making process, but we can observe two different outcomes. An example of a high salience convention is the 1999 Convention concerning the prohibition and immediate action for the elimination of the worst forms of child labour (C182) (ILO 1998b, 1999b). In 1998, the ILO drafted a Declaration on the Fundamental Principles and Rights at Work, which set out four basic freedoms, from slavery, discrimination, preventing minors from

[53] The following discussion is an elaboration of an argument made in Kissack 2009a.

working, and allowing freedom of association (although all were originally found in the Universal Declaration of Human Rights (UDHR) drafted in 1948, Alston 2005: 3). Most importantly, the Declaration obliged ILO members to observe and implement the spirit of the conventions regardless of *whether they had ratified them or not*. Seven core labour standards codified these four freedoms, and an eighth (C182) was accepted as a core labour standard as part of a large 'composite proposal' brokered to break deadlock between developing and developed states during the crucial second year of drafting in 1999.[54] This was significant because from the moment this was decided, states negotiated the remainder of the convention under the shadow of pseudo hard law, knowing that they would be expected to adhere to it regardless of whether they ratified it or not. In this respect, C182 was different from all other ILO conventions and the search for consensus under the time constraints of the closing of the conference led to a number of major compromises.

> The Committee decided to allow time for extensive group meetings and an informal tripartite working group to work toward consensus on a number of key issues […] in particular, the age of children to which the Convention would apply, the definition of hazardous work, the determination of hazardous work, […] the explicit inclusion of children in armed conflict, the role of education, […] and the role of NGOs or other members of civil society. As a result of the consultations, the Government member of Australia presented a comprehensive proposal which included amendments agreed upon by many Government members and by the Employer and Worker members. (ILO 1999: 130)

[54] India, Pakistan, Bangladesh and Sri Lanka, with the support of the African Group and other Asian states pushed strongly for a reference to poverty as the root of child labour in the instrument's preamble (ILO 1999: §99-101). Workers' and Employers' representatives, and the group of industrialised states (IMEC) did not accept this position, fearing that poverty could be used to condone child labour. Only three countries explicitly considered making C182 into a core labour standard at the beginning of negotiations (France §30, South Africa §39, and Russia §44), making the 'composite proposal' (§107) that included a reference to poverty *and* a reference to the *Declaration on the Fundamental Principles and Rights at Work* (§106) a surprise outcome. It is explained as follows: 'The Government member of India presented a proposal which incorporated a number of changes that had been agreed upon by *many Government members*, and by the Employer and Worker members *as a result of consultations*' [emphasis added] (§106). The informal working of the small group putting the package together is illustrated by the fact that Mexico was unaware of the final deal, as well as Pakistan's reluctance to accept the inclusion of the reference to the Declaration (§109).

The convention was drafted using the classic techniques of informal group work and reduced negotiating size to foster active consensus. The result, while acceptable to all, fell short of what many European states wanted (ILO 1999: §395-8, §402, §409, §410, §413). The promotion of core labour standards is important, but they constitute only a small proportion (8 out of 188 or 4.3 per cent) of all conventions, so we should look closer at the actual practice of the EU member states during the instrument drafting process, and gauge their commitment to the ILO in what constitutes the vast majority of ILO conventions.

Natural synergy between the EU and the ILO

What are the objectives the EU pursues in the drafting committees of the ILO, and are they mutually compatible with the objectives of the ILO? Broadly defined, there are two competing agendas that can be used to provide the overarching direction for EU interventions in the consensus-based decision-making process. The first is to vigorously support ILO's own social dimension of globalization programme, which aims to provide a counterweight in the international system to the process of trade liberalisation taking place under the auspices of the WTO. Such an approach makes sense for the EU as it remains committed to multilateral regulation, but realises that its 'trade and' policies of linking labour standards enforcement to trade policy was seen by many other states as a veiled form of protectionism (Falke 2005). The second is for the EU to upload its own European social model into ILO conventions, which includes not only a strong social security system but also integrates occupation health and safety, environmental protection, education and training. The second agenda, that of the European social model, is a maximal version of the ILO's own ambitions for the promotion of the social dimension of globalisation, and as such are not incompatible. The compatibility question only arises when the disparity between income levels in EU member states and other ILO member states is taken into consideration. There is a far higher degree of homogeneity within the EU, while the universal membership of the ILO requires standards at an appropriate level accommodating much greater

variance. The question therefore arises of whether EU promotion of higher standards is a help or a hindrance to the ILO.

Let us turn to look at how the EU exerts influence over negotiations and promotes the European social model. EU member states (or occasionally European Commission delegates) speak during committee meetings preparing new labour standards and may take the opportunity to promote compliance with EU law, or even propose to propose the *acquis communautaire* as a template for the ILO, which initially appears a sensible application of existing 'best practice'. Novitz argues that the EU uses 'labour standards to serve an internal market agenda by setting fair terms of competition, promoting freedom of contract and enhancing labour market productivity' (Novitz 2008: 71). Empirical evidence demonstrates that the more involved the EU member states are in the drafting process, the fewer ratifications the resulting convention receives from ILO members (Kissack 2008a). The underlying assumption to this work was that EU member states most readily agree on common interventions based on existing policy, thus uploading the *acquis communautaire* is the path of least resistance for the Presidency coordination team. One element to this is path-dependent, but it is also important to remember that EU member states send to the ILO meetings in Geneva technical experts from the national capitals that frequently have limited experience of EU coordination. With little patience for the lengthy discussions familiar to those who are accustomed to EU institutions, national experts are tempted to forgo EU coordination and instead seek out like-minded colleagues from across the whole ILO membership. The *acquis communautaire*, agreed at Council level in Brussels, is easily convertible into acceptable EU interventions by the Presidency. What is the impact of this uploading process? It is important to differentiate between low levels of ratification due to excessively high standard setting, and low levels of ratification due to an underlying lack of consensus between ILO members. In the former, exporting the EU model into the ILO creates a lose-lose scenario, where the ILO gets a widely ignored maximal standard, and the EU gets a negligible extension of its own standards internationally. In the latter, a broad coalition of ILO members

recognise and support EU best practice and attempt to upload it, yet ultimately fail to create enough consensus to see it widely ratified.

Uploading EU interests into ILO standards

The EU Presidency began issuing common interventions in the name of the European Communities in 1973 and by the end of 2008, 107 instruments had been adopted onto the ILO statue, of which 77 have been drafted with some degree of common EU input (Kissack 2009b). The levels vary greatly, and for illustrative purposes four different instruments will be discussed, although for each example others could have been chosen to make the same point. Let us firstly take the case of an EU objective to upload elements of the *acquis communautaire* into ILO standards. There are two ways to do this; one is to appeal to reason and offer EU law as an example of best practice, and the other is to appeal to power and threaten non-ratification by EU states.[55] Examples of uploading were rife in the Health and Safety in Agriculture Convention, 2001 (No. 184), when two EU framework directives on health and safety (Directive 2000/54/EC and Directive 1994/33/EEC) were mentioned by name (ILO 2000b: §78, §88; 2001: §366, §423).[56] In the Promotional Framework for Occupational Safety and Health Convention 2006 (No. 187), EU Directives were mentioned in passing in both drafting sessions, but not explicitly cited nor their contents elaborated upon (ILO 2005: §80). What may come as a surprise is that this practice is not new, with evidence of this happening in the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153) through a number of references to EEC Regulation No. 543/69 (ILO 1979: §18).

[55] EU member states have ratified a large number of conventions out of the total of 188 (of which some are now obsolete). The EU27 average is 68, ranging between 109 (Spain) and 32 (Estonia), while by contrast the US has ratified 14, Canada 28 and Japan 41, while China and India have ratified 22 and 40 respectively (ratification data 10 August 2009).

[56] The Norwegian government referred to the Directive to illustrate existing practice elsewhere, discussed below.

The second strategy of using threats to ensure that ILO conventions are congruent with existing EU law also has a long history of use. Primarily this has the purpose of ensuring that EU member states encounter no problems in the ratification process, but this has the useful side effect of ensuring that all states ratifying the convention share similar labour laws (and associated costs) with EU states. To give a recent example of this, in the first year of drafting the Promotional Framework for Occupational Safety and Health Convention in 2005, the Luxembourg Presidency wanted to insert a reference to 'non-binding collective agreements', 'explaining that in the European Union many other agreements were used as part of national systems for occupational safety and health' (ILO 2005: §161). While acceptable to the workers, it was not to employers, nor the government members of MERCOSUR. Yet after two sub-amendments attempting to resolve the wording dispute,

> The Government member of Luxembourg, after consulting with the Government members of the Committee Member States of the European Union, opposed the new text, as it was necessary to have the term "collective agreement" in the Convention for it to be ratified by European Union Member States. (ILO 2005: §162)

A third sub-amended text was finally agreed, and the text was accepted by the EU member states. Likewise in 1978 and 1979, the drafting of Convention No. 153 was often framed as an exercise in reconciliation with EU law. Phrases such as 'it would be difficult for the countries of the European Communities to ratify', and 'incompatible with the provisions of the regulation of the Communities' were used (ILO 1978: §186, §238). Most audaciously:

> [EEC governments] did not claim that the provisions of Regulation No. 543/69 of the European communities should be applied on a world-wide scale. Their concern was rather to help in the framing of an ILO Convention which they could subsequently ratify and which could be applied on a wider scale that that constituted by their nine countries'. (ILO 1979: §18)

These three conventions (C153, C184, and C187) all share a high level of EU member state input in the drafting process, yet none have received much support from *any* ILO members, with just nine, ten, and eleven ratifications respectively (by comparison the Forced Labour Convention, 1930 (No. 29) has 172 ratifications out

of a possible 181).[57] While two are relatively new, the lack of support for the Road Transport Convention can only be explained by the fact that its content has been deemed unreasonable by the vast majority of ILO members. While consensus is used to agree the text of the instrument, the instruments themselves are non-binding on ILO members unless they choose to ratify them. Therefore, unlike the UNCLOS III example in which all states had an interest in maximal ratification, consensus in the ILO enables the EU to influence the content of an instrument to suit its own interests when it chooses to, but at the cost of leaving the ILO with a largely irrelevant convention.

While there is a statistically significant association between high levels of EU member state involvement in the drafting of ILO standards and low levels of ratification (Kissack 2008a), the EU does not always act in a malevolent manner. Non-EU negotiators attempted to shape the Maternity Protection Convention 2000 (No. 183) by citing the *acquis communautaire* as an example of best practice. Transnational workers' and employers' representatives referred to it to substantiate their claims over suitable content (ILO 1999b: §115-116, §279). By contrast, the EU member states seldom spoke collectively (five times in 19 sittings in 1999 and not at all in 2000) despite the relevance of two EU Council Directives (92/85/EEC and 96/34/EC), instead preferring to intervene individually.[58] In contrast to the earlier example, workers representatives (with minimal promotion by EU member states and Presidency) attempted to increase the content of an ILO labour standard by appealing to EU best practice. Nevertheless, the ratification picture is poor: Convention No. 183 has received only 17 ratifications, of which eleven are EU member states. To explain this, we have to recognise that the ILO as a whole was deeply divided on the issue. A number of OECD and South American (GRULAC) states supported greater standard setting, while many developing states

[57] Only Spain has ratified C153; Luxembourg, Finland, Sweden and Slovakia have ratified C184, and seven have ratified C187. All ratification data correct on 3 August 2009.

[58] The Netherlands, Italy and the UK referred to these Council Directives. France referred to Council Directive 97/80/EC regarding discrimination (ILO 2000a: §355).

opposed it, including some Arab states citing religious reasons. The wider constituency of support from European and South American states illustrates that EU practice does have the capacity to lead international labour standards through example, something recognised by non-EU countries as well as trade unions. In this case, the majority of Asian and African states did not agree with them, and consequently the decision to increase the minimum length of maternity leave by a fortnight to 14 weeks was taken by a vote in the drafting committee and passed with 51.7 per cent. Put into perspective, the first maternity convention adopted in 1919 (C3) made provision for twelve weeks (ILO 2000: §154-164). Given that the ILO is subject to the broader political divisions found in all international organizations, most importantly between developed and developing states, the conclusion that the entire ILO membership is not ready to adopt EU-level standards is inescapable.

The examples of Conventions 153, 184 and 187 illustrate the pitfalls of uploading the EU social model into ILO standards, with conventions remaining un-ratified and therefore irrelevant to actual global working practices. It would seem, therefore, that the ILO is not ready to adopt EU standards, and vertical coherence between the EU and the ILO does not appear possible because implementing complementary policies is detrimental to the objectives of the ILO. However, we should pause to reflect before assuming that there is a homogeneous ILO that is unready for such coherence, illustrated by the discussion of Convention 183. Despite the EU playing a less prominent role in the drafting process, workers and GRULAC states were forceful advocates of high standards, illustrating that like-minded non-EU actors (states and tripartite representatives) also upload the *acquis communautaire* and achieve vertical coherence as they do so. Within the ILO there is a spectrum of opinions on whether standards should be minimal or maximal, and those favouring the latter are not solely EU states. Although congruence between the European social model and ILO standards often means that ILO conventions will be sparsely ratified, EU member states are not solely responsible for this.

In summary, although all ILO labour standards are drafted under the same rules of consensus decision making, the salience of the instrument must be taken into account to determine the influence of the EU. The EU has repeatedly invested considerable effort in promoting core labour standards, firstly through the WTO, then through its own trade preference system. Yet when faced with the stern test of shaping consensus among ILO members on an instrument that all states would be expected to ratify (C182), it was forced to accept many concessions. By contrast, in the low salience issue areas typical of most ILO conventions, the EU has on many occasions sought to upload parts of the *acquis communautaire* into the ILO standard. Its objective is to lock in to all future international agreements that make reference to ILO standard a compatibility with EU law, as well as raising global standards to help protect European firms from cheap competitors abroad. This has been done either through an appeal to follow best practice (something used by non-EU actors too) or as a threat of non-ratification. Past practice amply illustrates the hollowness of these threats because EU member states have a poor record ratifying the conventions they raise compliance concerns about. The reason why the EU still manages to get its way is because other negotiating parties have an exit option of non-ratification that does not bind them to the consensus agreement. Bargaining resembles the passive consensus techniques described by Buzan; deadlock is broken by one side (non-EU) conceding to the more assertive side's demands (EU). The EU excels in the passive consensus arena of the ILO due to its tenacity, but the ILO pays a heavy price, because ultimately if the ILO is to have any impact on regulating working conditions around the world, it will come through ratified minimal standards instead of unratified maximal ones.

The Food and Agriculture Organization

Functional Agency and Political Battlefield

The Food and Agriculture Organization (FAO) is the second UN specialized agency case study of a social welfare orientated multilateral organisation. The FAO is of

considerable interest to students of the EU in the multilateral system thanks to European Community membership of the organisation since 1991. Alongside the WTO (which is outside the UN system), this is the only other example of Community membership to an international organisation and is the result of a constitutional reform to the FAO to allow regional organisations membership, as well as a series of particular rules that formally specify when the European Community and when the EU member states will speak, as well as barring the EC from all issues concerning organisational and budgetary matters in the organisation.[59] As Pedersen describes in detail, in nearly two decades of membership the European Community has established itself as one of the leading donors to FAO field programmes, as well as fostering closer cooperative ties in specific policy and country areas (Petersen 2006: 64). In 2003, the European Community also became a member of the Codex Alimentarious Commission, a standard-setting body that determines international food safety regulations and is used by the World Trade Organization to regulate when foods can be legitimately banned from import by a state. Pedersen paints a picture of harmonious relations between the FAO and the EU, albeit seen from the perspective of a functional agency concentrated on technical issues. Indeed, he describes the FAO as a 'neutral forum where all nations meet as equals to negotiate agreements and debate policy' (Pedersen 2006: 63). From Pedersen's perspective, decision making in the FAO ought to be an uncontroversial affair. Indeed, one might even wonder what a case study into EU-FAO relations has to offer, since the impression given is that things are running smoothly in Rome.

There is a less rosy side to the FAO. Despite the fact that elevating hunger is the first Millennium Development Goal (MDG), and therefore it would seem that feeding the world's population is of utmost significance in international politics, the FAO has been drifting in the doldrums for many years. Despite the fundamental

[59] The European Community pays a yearly fee to cover the costs arising inside the FAO for its membership, (currently around €500,000 per annum) while the member states continue to pay their regular contributions, in line with UN system norms.

humanitarian purpose of its mandate, it is a highly politicised organisation with deep fracture lines between the rich, Northern states that 'pay', and the poorer Global South that through their numerical advantage in majoritarian voting have a louder 'say'. A number of diplomats from EU and non-EU states working with the FAO, as well as staff inside the organisation, suggest a third crucial element explaining the dysfunctional nature of the FAO; the Director General Jacques Diouf.[60] The primary reason for this was the way in which he has consolidated his control over the FAO through a mixture of highly politicised appointments to the organisation secretariat, as well as working hard to maintain the support and patronage of the Global South to ensure his re-election through strategic politicking. The costs to the FAO have been a systematic decline in influence in the UN system and a continued worsening of relations with the major donor states of the North. In order to substantiate these claims, consider the following passage:

> The Organization is today in a financial and programme crisis that imperils the Organization's future in delivering essential services to the world. […] There is, however, no consensus on broad strategy that delineates how the Organization is to address the crisis and to respond to challenges and opportunities, on what is a high priority and what not, on which programmes to retain and which to shed, on resource needs and how these are to be provided. […] The Organization has been conservative and slow to adapt, slow to distinguish areas of genuine priority from those which are the latest fad. […] FAO currently has a heavy and costly bureaucracy characterized by: excessive transaction control processes, high levels of overlap and duplication and low levels of delegated authority relative to comparator organizations. This heavy bureaucracy creates and reinforces a rigid, risk-averse and centralised organizational culture, with weak horizontal communication and linkages. […] The main factor inhibiting effective governance of the FAO is a low level of mutual trust and understanding within the membership and between some parts of the membership and the Secretariat. (FAO 2007a: 3-4)

The tone suggests these are the words of a strong critic of the FAO and perhaps international organisations in general. However, they are from the executive summary of a report commissioned by the FAO itself. In April 2006, work began on an Independent External Evaluation (IEE) of the FAO, which in the words of the authors was 'probably the largest and most ambitious evaluation ever attempted of a global intergovernmental organization' (FAO 2007a: 6). The IEE team were called in because of the dire situation of the organisation, the result of a protracted

[60] Six semi-structured interviews with EU, non-EU (OECD), EC and FAO staff between 15-16 January 2009, Rome. All interviews were held under the Chatham House rule, hence their identities cannot be revealed.

political power struggle between donor states, the Global South, and the upper echelons of the Secretariat. It came at the end of a decade of political wrangling between 1994 and 2005 during which budget contributions declined 31per cent, and dissatisfaction with the ability of the FAO to deliver in core policy areas had increased dramatically. Arguably the donors' criticisms were partly their own making, since it is disingenuous to expect the FAO to work effectively while simultaneously cutting its budget. However, their concerns were justified over the vexing issue of the allocation of resources. 'In several Country Offices, administration costs now exceed programme expenditures. In some cases regional technical specialists and FAORs are unable to travel to meet work obligations due to shortage of travel funds' (FAO 2007a: 4)

This example highlights a particular problem that is pervasive across many international organisations, that of agreeing the budget. Funding international organisations is a prime example of the need for consensus between all parties and is therefore an interesting case study into the politics of consensus decision making. Recipient states that gain most from the technical assistance and aid offered by organisations like the FAO seek the largest budget possible, while donors are interested in seeing their money used efficiently, and oftentimes in areas that are particularly relevant to their foreign and development policy objectives. In the FAO, the secretariat, and in particular the Director General, had a third set of competing interests which was to increase the budget while retaining maximum control over policy, aid, and appointments in order to consolidate his position. The declining budget was a result of donors increasing frustration with a lack of reform, to the point where the IEE bluntly states that the '*FAO is in a serious state of crisis which imperils the future of the Organization*' (emphasis in original) (FAO 2007a: 9). The rationale of passive consensus to hold out indefinitely until one's opponents capitulate was destroying the FAO. The IEE is equally blunt with the reason for the crisis, saying that 'the largest contributing factor to the FAO's crisis is *the low levels of trust and mutual understanding* between Member Nations themselves and between some Member Nations and the Secretariat' (emphasis in

original) (FAO 2007a: 9). If the Independent External Evaluation report is 'the largest and most ambitious evaluation ever attempted' as the team say it is, it is also the most important example of pursuing active consensus through external delegation to neutral third parties. It goes much further than the responsibilities delegated to chairpersons in the UNCLOS III negotiations, which was to break deadlock in a treaty negotiation. The IEE was embarked upon as a way of saving the FAO from ruin. Buzan notes 'an important and neglected point: namely, that delegates have a right to agree as well as disagree' (Buzan 1981: 334). By this he meant that empowering the chairperson to draft the UNCLOS III text was a rational action on the part of delegates because they had a right to expect a treaty *could* be negotiated. In this case, states share a desire to keep the FAO in existence, but simply cannot agree how. In summary, while Pedersen has chosen to focus on the broad sway of technical cooperation between the EU and the FAO and has noted a number of successes, we will concentrate solely on the EU's behaviour during the period after the IEE report publication and in the negotiations over adopting its recommendations. To some this may seem an unduly narrow focus and an unfair case study for assessing the EU in the FAO. However, at the end of the day this is the most important political process determining the future existence of the FAO, and more generally the boldest application of active consensus through delegation. If the EU cannot contribute to the 'rescue' of the FAO through this ambitious use of delegation, this must have serious ramifications for the EU's ambition of effective multilateralism and for working in consensus negotiations.

The EU as 'bridge builder'

The IEE delivered their report to the FAO in September 2007, two months before the biennial FAO conference scheduled for November that year (FAO 2007b). One of the most important decisions taken at the conference is the fixing of the budget for the following biennium, and is a perennial confrontation between the 'payers' from OECD states and the G-77 'sayers' who hold the majority of votes and advocate a 'maintenance level' budget with contributions rising by inflation and offsetting the decade of decline. Active consensus mechanisms have not spread to

the issue of budget negotiations, which instead continue in two stages, beginning with passive consensus mechanisms and followed by a formal conference vote by two-thirds majority. OECD states are in a permanent minority and cannot block the passing of the budget through their collective voting weight,[61] leading them to rely on G-77 moderation that in reality broke down years ago. To complicate matters further for the OECD states, the group is split between those urging zero real growth and those seeking zero nominal growth, while their opponents are relatively homogeneous in their demands for a 21 per cent budget increase totalling approximately $162 million (EU 2007d: 2).

The bottom line recommendation from the IEE about the budget shortfall of the FAO was 'Reform with Growth', and the sticking point came over the timing of the budget negotiations and the process of implementing the reform programme outlined in the IEE, which had to be accepted line-by-line by three working groups meeting over following year (2008).[62] The recommendations from the three groups were to be synthesised into an Immediate Plan of Action (IPA) presented in November 2008 and a Medium Term Plan for the years 2010-2013 (FAO 2008). In short, the cycle of FAO business meant that a budget deal had to be agreed before any negotiations began on accepting the reforms proposed by the IEE (which it should be remembered the OECD states were far keener on promoting than the G-77). The IEE proposal of 'Reform with Growth' offered a compromise to both sides, but fate dealt the G-77 the upper hand by granting their request first, rather than simultaneously to the demands of the OECD. The dilemma faced by the EU was as follows: its natural inclination was to favour the OECD position of zero real nominal growth, but it wanted to see FAO reform through the blueprint set out in

[61] According to the Rules of the Organization, a blocking minority of 33 votes would be sufficient provided that only 96 member states voted, the smallest number constituting a quorum of the 191 member states.

[62] The three groups areas of competence were: Working Group I: FAO vision and programme priorities; Working Group II: Governance reform; and Working Group III: Reform of systems culture change and organizational structure. (FAO 2008: 14)

the IEE. Failing to heed the IEE recommendation of 'Reform with Growth' in the budget discussions would be a serious sign of bad faith and would give grounds to the G-77 to stall on reform. However, conceding a budget increase before reaching a reform deal gave concessions to the G-77 without any concrete guarantees of reciprocation. How then did the EU deal with this tricky situation?

The EU began preparations for their response to the IEE in April 2006 in the Coordination Working Party (FAO) of the Council in Brussels (EU 2006). Diplomats based in Rome holding FAO folios attended these Working Party (WP) meetings, and these related information about the formal and informal negotiations taking place with the IEE team during its preparation work. Under the Finnish Presidency of 2006 (second semester) and the German Presidency of 2007 (first semester), the WP drafted a document outlining the EU's 'strategic vision of the future of the FAO', which was circulated to all FAO members at the June 2007 Council meeting (EU 2007a, EU 2007b: 22). As we shall come to presently, this document served a more important role in guiding EU interventions in the three FAO Working Groups charged with implementing the IEE. However, what is clear from the Council records is that the EU member states were clearly anticipating how to proceed collectively so as to maximise their influence over the adoption of the IEE reform proposals. The WP meeting of 13 September 2007 is important because it highlighted the impending problem facing the EU member states concerning the budget-reform bargain.

> [The President] underlined the importance of the financial aspects of the 110 recommendations and noted the tendency of the G-77 countries to accept the proposals if connected with a budget growth. It appears already that the EU will have a major role to play as a mediator and bridge builder between FAO members. (EU 2007c: 1)

EU member states were reluctant to agree an EU common position in advance of the FAO budget proposal being released, and the following month the WP meeting opened with a reiteration of the divide between OECD and G-77 states. In keeping with practices elsewhere, small-group coordination was frequently used to broker deals on contentious issues through the 'Friends of the Chair' arrangement where all regional groups were represented. However, since 'OECD countries did not

really form a group, it was necessary and expected for the EU to be actively present at every meeting' (EU 2007d: 5). While *prima facie* this statement implies that the EU is positioning itself to represent the interests of OECD states during negotiations over budget matters, diplomats close to the EU argue that the EU wanted to maintain its distance from Canada, Japan and the US. By doing so, it hoped to enhance it self-identity of the EU as a 'bridge builder' by positioning itself as distinct from the more stringent supporters of zero nominal growth. Later in the same WP meeting it was noted that the EU must 'present a position at the November session of the Conference […] in a very cautious way in order to be accepted as bridge builder' (EU 2007d: 6). Despite the extensive preparations in Brussels dating back over 18 months, the EU entered the November 2007 Conference with two roles to play that were incompatible with each other, on the one hand to ensure the interests of the OECD states were listened to, while on the other hand it sought to bridge the gap between the US and Japan and the G-77.

Snatching victory from the jaws of defeat

Diplomats holding the FAO folio from non-EU OECD states talk of the ill feeling felt in Rome after the vote on the budget in November 2007.[63] Four non-EU OECD states (Canada, Japan, Switzerland, US) voted against the budget agreement, and two more (Australia and South Korea) abstained (EU 2007e: 1). The EU had lost the support of the other major donors to the FAO and the Union's claim to have been speaking on behalf of OECD states does not stand up to empirical scrutiny. These countries thought that the OECD had a strong hand to play in order to extract concessions from the G-77 but the EU capitulated too readily by agreeing the 'Reform and Growth' package. It is interesting to note that the EU does not have a common position on UN funding in general because member states are divided between those supporting the zero nominal real growth approach and those in support of maintaining funding levels in real terms. A senior diplomat involved with the negotiations was of the opinion that neither Britain nor Germany was in

[63] Personal interviews, 15-16 January 2009, Rome.

support of the common position as agreed, and that the Portuguese Presidency had worked closely with other Lusophone states to secure a deal in which the G-77 would get the budget increase they wanted. Furthermore, the observation was made that the G-77, led extremely ably by Brazilian and Pakistani diplomats, had outmanoeuvred the EU in terms of their negotiation strategy. The EU had agreed a common position that was already compromised in a number of areas, meaning the concessions granted to the G-77 further undermined European interests. By contrast the G-77 had inflated their initial demands, meaning their concessions were not nearly as costly to them as those of the EU. In an organisation such as the FAO, in which its very survival is potentially at stake, the failure of the EU to drive a harder bargain in solidarity with the other major donors risked destabilising the necessary equilibrium between donors and benefactors. The EU's tipping of the balance in favour of the G-77 jeopardised the whole reform process as it alienated major donors while failing to lock in reforms from the Global South. Promoting the EU's self identity as a bridge builder was put above its more important role in the multilateral system of anchoring a durable equilibrium between developed and developing states.

Short-term analysis immediately after the November 2007 budget vote pointed toward the conclusion that the EU had bargained away its advantage to a smarter, more savvy and better organised G-77. However, the reform process was underway with three thematic Working Groups focusing on (i) priorities and programmes of the organization, (ii) governance reform and (iii) reform of systems, programming and budgeting cultural change and organizational restructuring (FAO 2008: 13) dividing between them the task of discussing each of the 110 recommendations from the IEE. According to EU Presidency calculations from the French Government, an astounding total of 6000-person-*days* of negotiations took place (100 meetings each with 60 people, lasting one day) between the publication of the report and the release of the Immediate Plan of Action in November 2008. Throughout the year, the EU Working Party in Brussels was regularly informed on progress in each Working Group by the diplomats from

EU member states serving on each one. Council Conclusions from June 2007 and the *Strategic Vision* paper published in 2007 were guidelines for each EU member (EU 2008). What emerges over the course of 2008 is that the EU exerted considerable influence across the whole reform process, doing so by employing to its advantage a number of active consensus mechanisms. Firstly, complicated issues were broken down into separate bargaining arenas, and small groups were engaged in solving them. Secondly, the chair of the Committee overseeing the process was a distinguished independent expert, Professor Mohammad Saeid Noori-Naeini, with whom the EU had a good working relationship, not least based on EU commitment to implementing fully IEE recommendations. Using active consensus favoured those with influence over the interpretation of consensus and how to piece a grand bargain together, which put the EU is a strong position. The scope conditions in which the G-77 would be able to put the brakes on reform had been altered through the use of active consensus tools, and the EU had secured its positions of influence very early on in the proceedings, inter alia the UK serving as chair of the WG1, Austria as vice-chair of WG2, and Italy vice-chair of WG3, (EU 2007e: 2). The apparent haphazard nature with which the EU trusted the G-77 not to cheat on the budget-increase for reform deal in November 2007 was not nearly as risky as it appeared at the time. The capacity of the G-77 to block proceedings was greatly reduced through the transition to active consensus techniques, meaning that in the medium term, the EU strategy served its own interests, those of the FAO, and those of the OECD. The picture from November 2007 was turned on its head by November 2008 with an IPA in place that was broadly in line with EU objectives.

The reform process is still ongoing, and a number of issues have yet to be resolved (such as the size of the FAO Council and the allocation of seats the European Regional Group). It is premature to credit the EU with successfully transforming the FAO, not least because the IPA still needs to be implemented in practice, followed by the medium-term plan for the four years from 2010. We cannot underestimate the depth of institutional reform needed, given that the

original stimulus for the external evaluation was the chronic failings of the FAO. What can be said with certainty is that trying to achieve consensus across a constituency as divided as the FAO is a stern test for accessing the applicability of active consensus tools. The EU, be it by design or good fortune, has been well placed to take advantage of those tools and has thus far done so. The EU has turned what at first glance appeared to be an act of weakness (conceding budget growth before institutional reform) into a confidence-winning first step on the reform process.

Conclusion

It has been argued that, following Buzan, consensus is an important and necessary development in the multilateral system as the 'politics of international interdependence' become more pervasive over time. Its emergence is all the more significant because the structural forces identified by Buzan (1981) and Kahler (1992), namely increased number of states in the international system and increased demand for multilateral agreements, have been amplified since the end of the Cold War. Consensus decision making has cemented its centrality in the multilateral system because majoritarianism is unacceptable to the Global North. Consistent with the predictions of both authors, the salience of the issue area is an important determinant not only of ultimate success, but also the type of consensus – active or passive – employed. If active consensus techniques are to be successfully employed, the question is raised as to how well the EU will be able to cope in such a situation. Its self-image of bridge builder and consensus broker is taken away from it, and it must react to the initiatives proposed by genuine third parties possessing those qualities. Given the centrality of consensus in the present multilateral system, the EU must be able to demonstrate its capacities in this arena of decision making if it is to live up to its own billing as the primary promoter of effective multilateralism.

The WTO trade agenda is of high salience to all members, but has traditionally been dominated by the US and, since the 1980s, the EU too in an exclusive inner-core that took primary responsibility for fashioning the basis of each GATT trade round. The extreme minilateralism of the GATT has been loosened in the WTO, especially after the failure of the Cancun Ministerial Meeting and the formation of the G-6. It is unsurprising that the deviation away from minilateralism has been only small, and in principle the same consensus seeking system is employed through concentric circles of influence. The EU has conceded power in the WTO both in terms of opening up the inner core (in Elsig's terms it has had to accept the 'procedural power' of India and Brazil), and in terms of conceding defeat over the inclusion of the Singapore issues on the Doha agenda. The continuing gridlock illustrates that the EU was not the only obstacle to agreement, but allowing negotiators to focus on resolving the dispute on agricultural subsidies has lightened the load. Paradoxically, the 'mercantilist turn' of the EU after 2004 has probably benefitted the WTO insofar as all states accept as legitimate a purely trade-focused strategy in place of the previous 'trade and…' agenda. As yet, WTO members have not employed enough active consensus techniques to facilitate agreement, which is in part due to the salience of the issue, in part due to the EU and the US being happy to continue with the status quo of the existing agreement for some time, and the unwillingness of the most powerful members of the inner core to cede control.

The ILO case study illustrated that variation in the degree of salience determined by whether states were expected to ratify the convention or not was an important consideration. The majority of ILO conventions are of low salience and we saw how the EU *acquis communautaire* has on a number of occasions been uploaded into the ILO through a mixture of best practice and threats of non-ratification. The EU has been most successful in negotiations relying predominantly on passive consensus mechanism, capitalising on the fatigue of other parties and the escape option of non-ratification for other states. The legacy left to the ILO is an awkward one because it has yielded maximal standards that

remain unratified. By contrast, in the one case of a high salience convention (C182), time pressures forced the introduction of active consensus mechanisms and the EU made considerable concessions weakening the content of the convention to satisfy developing countries. However, the result is a very widely ratified instrument that the ILO can begin monitoring the implementation of. In terms of assessing the impact of EU policy on effective multilateralism in the ILO, one needs to decide where the payoff between standard setting and ratification lies. Taking a pragmatic view that ratifications should be prioritised, the efficacy of multilateralism in the ILO is increased when the EU has less ability to shape the final outcome. Active consensus, made necessary by the realisation that all states would have to ratify C182 and thus increasing the salience of the convention for developing states, curtailed the ability of the EU to press for higher labour standards. Nevertheless, consensus was reached and the standard is widely ratified.

Finally, the FAO example looked at the most important set of negotiations taking place in the FAO, the response to the Independent External Evaluation (IEE). Labelled 'make-or-break' for the future of the organisation, the need for this arose out of the breakdown of relations among groups of member states, and between some member states and the secretariat. The IEE is an example of active consensus building at the grandest level, while the laborious process of agreeing an action plan based on the recommendations of the IEE was also driven by a number of active consensus mechanisms. Accepting the report called for consensus between states on how to proceed and how to fund the FAO while undergoing reform. Donor confidence in the FAO was at an all time low, and the minority of donor states from the OECD were in a position of strength going into negotiations. During the November 2007 budget negotiations, it appeared that the EU weakened the position of the OECD by agreeing a 'Reform with Growth' deal without a guaranteed agreement on reform. Non-EU OECD members either voted against the budget or abstained. It appeared to many that the EU had put its image as a 'bridge builder' between the OECD and G-77 before the best interests of the FAO. However,

over the course of the following year the EU demonstrated coordinated leadership in the smaller working groups intended on implementing the reform programme. The active consensus techniques used here meant that it was far harder for G-77 states to block reform that it would have been in a passive consensus arena. While the reform process is still underway and it is too early to give a definitive appraisal, the EU has dispelled the impression of negligence circulating in late 2007, and is at the forefront of facilitating FAO reform.

Chapter Four
Privilege in Multilateral Institutions

> Small nations ought therefore to cease carping on about the unfairness of the veto and be grateful that the Great Powers were now going to take their international responsibilities seriously. (Kennedy 2006: 29)

This quotation from Paul Kennedy's *The Parliament of the Man* refers to the constitutional arrangements of the United Nations Security Council (UNSC), where the victorious powers of World War II sought to institutionalise their privileged position as *primus inter pares* among sovereign states. Permanent membership of the Security Council, and the ability to veto resolutions potentially damaging to national interests, is the exclusive privilege of China, France, Russia, the United Kingdom and the United States of America. More than sixty years later, the Great Power status of every member is questioned, albeit on different grounds. Britain and France are better considered upper-medium powers rather than Great Powers in the 21st century, as well as skewing the composition of the UNSC drastically in favour of Europe. Russia's inheritance of the Soviet seat is justifiable through its possession of a considerable amount of the Soviet Union's military capability. The necessity of the arsenal, coupled with only middling economic clout, are marks against it. China qualifies by population, geographic size, economic might, and is developing ever more sophisticated military capabilities, but critics challenge the legitimacy of an authoritarian government wielding a veto, especially to prevent the UN fulfilling its obligations with respect to human rights (Gowan and Brantner 2008). Finally, even though the United States remains the sole global superpower and is thus truly befitting of the title 'Great Power', its unilateral turn during the Presidency of George W. Bush, epitomised by the 2003 invasion of Iraq, invites opponents to question its leadership role in the UN. Yet despite all of the these doubts, any reform of the UN Organization requiring an amendment to the UN Charter must be approved by the five, giving them a *de facto* veto over proposals to remove their veto powers.[64] The 2005 *High Level Panel on Threats and Challenges*

[64] As stipulated in Article 108 of the UN Charter.

responsible for proposing feasible reforms to the UNSC acknowledged this, with both of its models of reform (as well as the third 'Green model' proposed afterwards) expanding the membership but not altering the privileges granted to the Permanent Five members.[65]

This snapshot of the most obvious and contentious example of privilege in an international organisation leads to four questions. The first is whether 'privilege' and 'multilateralism' can be talked about in the same sentence, other than to point out that on first appearances the former appears to be the antithesis of the latter. Given the importance of 'generalized principles of conduct' in Ruggie's definition (Ruggie 1992: 571), surely the privileging of Great Powers over other states is a violation of such principles. The second question is how much influence does the EU have in the arenas of Great Powers that are tightly bound up with the essence of sovereign statehood: power, national interest, and global prominence on the world stage. Thirdly, how credible is it to expect EU member states to willingly accept a more prominent role for the EU at the cost of their own visibility? Finally, is a single EU representation in the place of the member states at all times and in all organisations the best option for maximising EU influence? Our focus on privilege limits our study to just a few international organisations in which the norm of sovereign equality has been foregone and hierarchy explicitly exists, specifically in the UNSC, IMF, and World Bank (this chapter is limited to the first two). For Kennedy, this is because they are the most important institutions in the UN system, undergirding peace and security and economic stability. Their fundamental significance to global order is too great to risk majoritarian decision making, and instead the architects of post-WWII international organisation locked in privileged status for a select few states. More than sixty years later, despite challenges to their legitimacy based on unfair representation, they remain the most important parts of the UN system. In the context of the overall purpose of this

[65] For the 2005 report see: http://www.un.org/secureworld (accessed 12-08-09).

book, if the EU is to be a force for effective multilateralism, it must surely have some leverage in the most important parts of the multilateral system.

Power and Privilege

The immiscibility of privilege and multilateralism

One reason for the seeming incongruence between privilege and multilateralism is the association of privilege with power, and by extension, with realist theories of International Relations. Classical realists such as E.H. Carr and Hans Morgenthau wrote about international organisations, but regarded them as little more than tools of the Great Powers. Carr's criticism of the League of Nations in *The Twenty Years' Crisis* is based on the fact that it never accurately reflected the real distribution of power in the international system, most significantly the absence of the United States (Carr 2001). As soon as the revisionist powers of Germany, Japan and Italy realised that it was a hollow shell after their series of challenges to it (Manchuria, Abyssinia, Saarland and the Anschluss), the League lost the last of its credibility when it became clear that France and the United Kingdom were prioritising peace in Europe above all else. More recently, Robert Gilpin has developed the idea that cooperation through institutions can take place during periods of sustained hegemony by a Great Power (Gilpin 1981), inspired by the work of Charles Kindleberger on the interwar depression. The economic crises in the years between the two world wars were due to the fact that Britain was unable to continue underpinning the global economic system, and the US was unwilling to do so. The stability, growth, and relative global order during the *Pax Britannica* (1815-1914) returned after World War II thanks to the emergence of a *Pax Americana*. Based on only two cases, regardless of the *actual* degree of hegemony of either power, irrespective of the uncertainty over when (and if) US hegemonic dominance began declining, Hegemonic Stability Theory (HST) was developed (Hasenclever *et al* 1997: 86-104; Keohane 2005: 32-46). Robert Keohane in *After Hegemony* sought to demonstrate from within the logic of realism that cooperation between states could be initiated and sustained without a hegemonic presence in the system (Keohane 2005). In direct response to Keohane's project, Joseph Grieco sought to recast the realist lens on cooperation in a narrower and less optimistic light, arguing that concern for relative gains was the overwhelming preoccupation with states because of their interest in maintaining their position in the hierarchy

of states (Grieco 1988). Power relations determine whether cooperation is entered into. According to realism, the extent to which multilateralism exists in the international system is at the discretion of a hegemonic power.

As noted in Chapter 1, Ruggie argues that the current multilateral system has come about because it was 'an *American* hegemony that was decisive after World War II, not merely American *hegemony*' (Emphasis in original) (Ruggie 1992: 593). If multilateralism and hegemony are not, therefore, the antithesis of each other, power can in theory have a role to play in multilateralism. G. John Ikenberry has written extensively about the changes that take place in the international system after major wars, and what role the victorious powers play in that process (Ikenberry 2001). In *After Victory,* he seeks to understand how victorious states sought to reconfigure the institutional framework of the international system in the aftermath of five periods of systemic collapse (1648, 1713, 1815, 1919 and 1945). The magnitude of the preceding war testifies to the extent the previous international order was broken, and in need of change. Likewise, the comprehensiveness of victory yielded to the victors 'windfall power asset', an excess of power over other states that granted unprecedented scope for reconfiguring the institutional architecture of the system. The intention is to secure a longer lasting and more stable international order, and the necessity for change (manifest in the destructive war) and the capacity to act (manifest in the windfall power asset) coincide. Through a discussion of each period in history, Ikenberry identifies three courses of action for the victorious power; dominate, abstain and transform. Under the first the victor seeks to capitalise on their position by maintaining their superiority for as long as possible, and perpetuating hegemony by institutionalising a hierarchical international order. When a victor abstains, it seeks to retreat as quickly as possible from a position of power in order to avoid the formation of a new coalition of defeated powers attempting to balance it. In this scenario, order is arrived at through the balance of power, and anarchy prevails among states. The final option is for the victor to exercise 'strategic restraint' and mute the power asymmetries resulting from their windfall asset. It

achieves this by transforming the international system through the introduction of rule-based institutions that govern the behaviour of victor and vanquished alike. Institutionalising international relations creates a 'constitutional order' that fosters a more durable peace over time. Ikenberry argues that over time victors have learnt that constitutional orders are more robust and successive redefining moments have incrementally expanded the constitutional domain. This explains why the breakdown of the bipolar system in 1989 did not result in another reconfiguration of international order, as previous shocks had done. He concludes that the constitutional order built in 1945 was sufficiently strong to withstand the change, thus supporting his argument that constitutional orders are the best way of managing asymmetrical power relations in the international system.

The privilege of Great Power status is recognised more widely than in realism alone. Great Powers are one of five institutions of international society as described by Hedley Bull in *The Anarchical Society* (Bull 1995). The historical orientation of the English School tradition of IR and the favouring of 'understanding' over 'explanation' (Smith & Hollis 1990) differentiates the English School from realism. From an English School perspective, states in an international society share a collective understanding of what Great Power status entails, namely additional responsibilities for maintaining order in international politics, thus making it a norm of the society. Friedrick Kratochwil has interrogated 'Great Power' status from a thick-constructivist perspective as part of an argument that links sovereignty and Great Powers to 'multilateralism's grammar' (Kratochwil 2006: 143). He begins by looking at the relationship between sovereignty and multilateralism, arguing that state sovereignty is a form of multilateralism because it is a 'status, that is, as an ascription by others' (Kratochwil 2006: 144). The representation of sovereignty as an societal norm rather than an *a priori* attribute of the units of the system as assumed by realist theory has been one of the primary lines of argument advanced by English School scholars and constructivists alike, but Kratochwil here posits that the societal element of intersubjective norms and values is an early form of multilateralism: 'To that extent "multilateralism" in its

earliest manifestations was part of the "politics of recognition" that characterized the "sovereignty" game subsequent to the Westphalian settlement' (Kratochwil 2006: 141). The international relations of the Westphalian state system incorporating mutual recognition and non-interference in domestic politics were the first example of multilateralism in the modern era. The Concert of Great Powers initiated with the 1815 Congress of Vienna was the second. At this point multilateralism changes 'from a minimalist to a more institutionalized form: the notion of a "great power". Thus while multilateralism still retains in a way its counter-hegemonic dimension, it is now a multilateralism of a somewhat restricted scope' (Kratochwil 2006: 148). Great powers met frequently and performed particular roles that helped maintain the overall system stability, which while not bringing about an end to unilateralism, at least 'entailed some subsequent vetting of policies within the club for legitimization purposes' (Kratochwil 2006: 148). By taking a broader definition of multilateralism than the one used by Ruggie, albeit one from the same social constructivist approach, Kratochwil shows that the Great Powers are consistent with multilateral discourse.

Despite the finesse of Kratochwil's argument, it may be insufficient to convince those of a more sceptical disposition that Great Power politics sits comfortably with multilateralism as it has been defined throughout this book. In this case, let us briefly turn back to Inis Claude, for whom 'the elitism of European great power diplomacy' is the third of this three ideal types of decision making used in international institutions (Claude 1984: 118). According to this logic, voting arrangements are 'designed to reflect the configuration of power in the real political world, giving special status to the great powers' (Claude 1984: 119). Kennedy's history of the drafting of the UN Charter emphasises the importance given to securing the participation of the United States and the Soviet Union at whatever cost to the lofty ideals of sovereign equality.

> the potentially isolationist Great Powers, the United States and the USSR, had to be kept inside the camp and not allowed to bolt into distant mistrust and obstructionism. […] If the "Big Two" had to be enticed to remain on board, whether it be through guarantees to the U.S. Senate about sovereignty or special voting privileges to the Great Powers, then so be it. If they

> could be "embedded" by post-war military coordination or some negative control over how things might go, that was also worth the price. (Kennedy 2006: 27-28)

The drafters of the Charter were aware that the best efforts of their predecessors in 1918-19 failed to prevent the outbreak of war again only twenty years later, and with the advancement in nuclear technology the primary objective was to prevent war at all cost – international peace and security was the absolute priority. Upon a foundation of peaceful relations between states, the UN could pursue its other goals, but inclusion of the US and USSR in the political institution, and tying the US into the western liberal capital governance mechanisms of the Breton Woods Institutions were regarded as the fundamental goals. Claude, ever the pragmatist, suggests that

> If the General Assembly is considered, not in isolation, but in the larger context of the United Nations, it is apparent that the disproportionate weight given to small states in that organ is counterbalanced by the special importance assigned to great powers elsewhere in the system. Viewed as a whole, the United Nations represents not the triumph of the unrealistic concept of equality, but a compromise between the claims of great and small states for status and formal power to participate in decision-making processes. (Claude 1984: 133)

In summary, by looking beyond realism to understand how power has shaped in the international system, it has been shown that multilateralism can sit comfortably within the rule-based constitutional orders designed by states intent on transforming the international system when they are at the zenith of their power. Beyond that, the institution of Great Powers in the international system implies an intersubjective understanding between social actors that is, at its heart, the essence of multilateralism. Even taken at a more minimal level, Great Power privileges can be seen as part of a grand bargain across the whole UN system between respecting the notion of sovereign equality between all states on the one hand, and accepting existing power relations in the international system on the other hand. Far from being immiscible, privilege and multilateralism can complement each other.

Privilege as minilateral membership

Positions of privilege in the multilateral system are not limited exclusively to permanent seats on the UNSC or the Executive Board of the IMF and World Bank.

Looking beyond Great Power status reveals a stratum of states that have enjoyed privileged relations with the United States through institutionalised security guarantees ('security communities') and economic assistance. Hegemonic Stability Theory was premised on the assumption that cooperation was possible because the hegemon was prepared to turn a blind eye to the free riding of states within the cooperative regime for the sake of overall gains. 'However, hegemonic leadership is a wasting asset which creates the conditions of its own downfall. The hegemon is required to play fair […] its rivals are not so hampered' (Brown with Ainley 2005: 132). America supported economic development in Western Europe and Japan after 1950 through providing large aid packages designed to rebuild their ruined economies while all the time allowing their manufactured goods access to the US market. This tied Western Europe and Japan into a trade relationship with US that became institutionalised in the GATT regime, but required the US to accept domestic protectionism by its partners. Coupled to economic development aid were guarantees of military protection, initially to reduce the likelihood of rearmament taking place by the defeated powers of Germany and Japan. As the Soviet threat grew in Europe in the years after 1945, the whole of Western Europe was incorporated into a security community underwritten by the US through NATO. This had the additional effect of reducing the necessity for European government spending on defence and allowed a greater allocation of resources to economic and social development.[66] Seen from this perspective, privilege can manifest itself in the opportunities to participate in the rule-based institutions that concretise the constitutional order established by a victorious power. American allies in Western Europe were given the chance to participate in the OECD, GATT and NATO in the postwar period, which as Miles Kahler has argued, despite appearing to be examples of multilateral institutions, are better described as 'minilateral' (Kahler 1992). The offer of membership was extended to only a

[66] Robert Kagan (2003) points to the deeply embedded reliance on the US nuclear umbrella in Europe, and chronic inability of many EU states to contribute any meaningful military resources to promotion of security in the post Cold War world. His opponents argue that the emerging capacity of the EU to deploy combined civilian and military missions that integrate peacekeeping, rule of law and state-building functions is an important contribution.

privileged few, something that greatly influenced the ability of these regimes and organisations to come to collective decisions. The number of constituents relatively small and all parties were relatively homogeneous and tied into a system of interdependence with the United States of America. 'Minilateral cooperation may successfully supplant hegemonic power' (Kahler 1992: 686).[67]

Kahler cites Duncan Snidal's critique of hegemonic stability theory in explaining the perseverance of the postwar international economic order despite the apparent decline of American hegemony. He takes the argument further, positing that the crucial explanatory variable is not American hegemony, but a wider group of America and her allies in Western Europe and Japan. 'The obstacles to multilateral institution building were often dealt with not by American hegemony but by creating a core of minilateral cooperation among the economic powers' (Kahler 1992: 686). Therefore, much of what we today think of as being the historical antecedents of the present day multilateral system were not multilateral at the time of their inception, indeed 'multilateral principles were violated far more often that allowed in conventional accounts' (Kahler 1992: 686). Looking specifically at the GATT regime, although the terms of agreement stipulated multilateral principles, by the 1960s it was clearly organised around a minilateral core. As Gilbert R. Winham described, in the Tokyo round of negotiations a 'pyramidal' structure had emerged 'where agreements were initiated by major powers at the top and then gradually multilateralized through the inclusion of other parties in the discussions' (Winham 1986: 34). From this description, we can see that membership of the minilateral core of an institution gave states privileged access to the *positive* decision making, rather than the *negative* decision breaking that privilege implies as a veto or blocking minority in a weighted voting system.

[67] Another example of minilateralism that could be included here is the Group of Seven (G-7) comprised of the US, Japan, Germany, France, the UK, Italy and Canada.

As we saw in the previous chapter, minilateralism was challenged by the expansion of the international system in the 1960s and 1970s through independence for former colonies in Africa and Asia, so much so that the ability of minilateralism to produce satisfactory cooperative outcomes had eroded by the 1980s' (Kahler 1992: 707). Buzan concurs, stressing that in a world of interdependence politics 'the nature of the issues at stake was such that states could only reap maximum advantage in the context of an internationally agreed regime' (Buzan 1981: 329). Both Buzan and Kahler agree that the way forward was signposted by the UNCLOS III negotiations in which a large number of states moved slowly but surely towards a grand bargain agreement. For Kahler it symbolised the truly *multi*lateral negotiations could yield outcomes, while Buzan chose to emphasise the evolution of the drafting process from passive to active consensus building. Kahler suggested in 1992 that in 'certain issue-areas, such as international monetary affairs and economic policy coordination, it is likely that great power minilateralism will continue to dominate' and in this he is certainly correct, although today powers beyond the US, Japan and EU are involved (Kahler 1992: 707). The post-Cancun reconfiguration of the inner core of WTO negotiations shifted from the G-2 to G-6 (Elsig 2006), as well as the G20 meetings in Washington in November 2008 and London in April 2009 in response to the global economic crisis originating in the sub-prime mortgage market of the US, both illustrate this shift toward the inclusion of major powers from the Global South too.

The United Nations Security Council

Privilege sine qua non

No survey of the EU in the multilateral system would be complete without considering the United Nations Security Council (UNSC). Of the six principal organs of the UN, it is the most powerful both in terms of mandate – maintaining international peace and security – and in terms of its authority to confer legitimacy on the use of force in the international system. Council membership comprises of

five permanent members and ten non-permanent members elected for two years on a non-renewable basis, distributed among the five UN regions.[68] Permanent members have the capacity to prevent the UNSC reaching a decision through vetoing resolutions, a concession made to the Great Powers in 1945 in order to ensure that they remained inside the collective security architecture of the UN. Today, the privileges granted over 60 years ago are seen as antiquated relics of a bygone era for a number of reasons. Firstly, the UNSC is geographically unrepresentative of the UN membership, exemplified by the fact that there are regularly six European states serving on the Council (three permanent and three non-permanent), while Africa and Asia-Pacific have only three members each, and the Americas are represented by normally three, and occasionally four states.[69] The original nine-member UNSC was an executive-like body for a United Nations of 51 states, while the UNSC of today has 15 members drawn from 192 thanks to the 1963 decision to enlarge the UNSC, effective from August 31 1965 (Prantl 2005: 570). Over the years of growing UN membership and Security Council stasis, the Council is far less representative than it previously was. Secondly, the privileged status of the permanent members is a snapshot of power relations taken immediately after World War II and bears little resemblance to the current state of world politics. Britain and France belong to the rank of medium powers, ranked 'amongst the most significant players in world politics after the US, while awaiting the rise to power of China, India, and other large developing nations', who differentiate themselves from other states with equal or greater claims permanent membership by retaining 'nuclear weapons as an emblem of power' (Hill 2006: 50).

[68] The five permanent members (P-5) are China, France, Russia, the UK and the US, and in this chapter the EU permanent members are referred to as 'P-2'. The ten regional seats are allocated as follows: Africa 3, Asia 2, Western Europe and other Group (WEOG) 2, Latin America 2, Eastern Europe 1. The groups have existed since 1963 – see Fassbender (2004: 877) for discussion.

[69] Variations in the numbers stem from the composition of the WEOG group, which is predominantly Western European but also includes Canada, Australia, New Zealand and Turkey.

Privilege must be retained in some form or another if one accepts the fundamental premise of the Security Council design, which is that it should reflect the underlying reality of power relations in the international system. Enlarging membership, reweighting the regional balance, and incorporating the power reality of the 21st century are the recommendations of advocates of reform. UNSC reform has been on the agenda since the early 1990s when the Council was unshackled from its bipolar impasse and charged with responsibility for coping with the consequences of a disintegrated Cold War global order (Keohane 2006: 63). Jochen Prantl describes this period as one where the 'quantity and quality of crisis settings widened and, for a certain time, overstrained the role of the UN Security Council leading to the problem of overload' (Prantl 2005: 566). The structure of the UNSC was fixed by the Charter and therefore alternative coping mechanisms were required, the principal one being the increased use of informal groups, recourse to which 'appears as the "cheaper option" than a complete overhaul of the organization's foundations, that is, the revision of the UN Charter' (Prantl 2005: 588). Nevertheless, on the 60th anniversary of the UN in 2005, reform was at the top of the agenda (Luck 2006; Prins 2005), and in line with the December 2003 publication of the European Security Strategy that placed the UN at the heart of the EU's blueprint for international relations, practitioners and academics alike turned their attention toward the question of the EU in the UNSC. In this section, we will survey this new literature, and consider too the specific working of the UNSC as a unique institution with its own set of norms of behaviour for those states who are privileged to participate in its politics, both permanently and on two-year rotation. We will look at the arguments for and against closer EU cooperation and the possibility of representation through a single seat, as well as the politics behind veto usage.

Between integration and intergovernmentalism: the possibility of a single EU seat

Studies into the role of European Union member states in the UNSC inevitably fall between two theoretical poles that can be labelled, for the sake of simplicity, as 'integration' and 'intergovernmental'. The integrationist perspective is found in

documents from the European Commission and European Parliament, and was also articulated by Javier Solana in an interview in the German newspaper *Die Welt* in March 2003 where he 'alluded to the creation of a permanent seat for the EU in the UNSC' (Biscop and Drieskens 2006a: 118). Johan Verbeke points out two formidable stumbling blocks: the EU's lack of legal personality and the fact that only States may become members of the UN (Verbeke 2006: 51 fn3). Even if ratification of the Lisbon Treaty surmounts the first obstacle, the second will only be resolved through a revision to the UN Charter permitting regional organisations membership. Diametrically opposed to the idealist hope for a single EU seat in the future is a realist-inspired view of current practice. Maximillian Rasch's detailed empirical investigation of EU member states' behaviour in the UNSC is informed by field experience in New York and expert interviews, making it a unique insight behind the scenes of the formal façade of the Security Council. His assessment is blunt:

> The UNSC with its power-political disposition is therefore the case in point of the limitations of communitised EU policies within foreign affairs in general and at the UN in particular. Within the [Security] Council EU member states are egoistic benefit-seekers, which is also true for EU member states previously 'good Europeans', who change their patterns of behaviour once they are temporary members. (Rasch 2008: 5)

Rasch systematically pours scorn on many of the mechanisms that advocates of closer EU member states cooperation in the UNSC see as paving the way for a more coherent single voice from Europe and eventual membership. His overall appraisal is that EU coordination in the UNSC 'is very similar to the processes and the disposition that characterised the EPC regime', and echoes Allen and Wallace when he says that 'procedure is a substitute for policy' (Rasch 2008: 32). Johan Verbeke and Christopher Hill share his scepticism, arriving separately at the conclusion that the intergovernmental character of EU coordination in the UNSC is nothing more than is to be expected.

There are three commonly given reasons for why intergovernmentalism is so pervasive among EU member states in and around the UNSC. The first is that it is an important platform for pursuing national foreign policies, especially for

France and the UK as permanent members (P-2), who still aspire to play a global political role. Rasch notes that while Germany appeared acquiescent towards a stronger role for a collective European actor, as illustrated in their offer to 'incorporate an official from the Council Secretariat and a diplomat of the EU Presidency into its delegation for the coverage of UNSC matters' (Rasch 2008: 11), this must be contrasted to its ambition since 1993 to become a permanent Council member. The second reason is the central theme of this chapter: the privilege of Council membership, both as a permanent and non-permanent member. It is 'exactly the influential and prestige-giving role of the UNSC that prevents formalised policy-harmonisation and cooperation among the EU member states in the [Security] Council' (Rasch 2008: 5). According to Hill, for France and Britain the UNSC is a 'key platform for promoting their foreign policy priorities' and that 'the position of ambassador to the UN is one of the most important and prestigious in their respective diplomatic corps' (Hill 2006: 54). What is true for France and the UK is also true for other states that less frequently have the chance to take their place in the Council. The third reason is more of a consequence of the first two: the poverty of substance constituting a common policy. Solana bemoaned the absence of a unified EU position in the weeks before the 2003 invasion of Iraq, asking us to 'imagine what influence Europe could have had if it had spoken with one voice. The lesson we learnt is that Europe is losing influence when it does not speak with one voice' (Die Welt 24 March 2003, quoted in Biscop and Drieskens 2006a: 118). Verbeke's response to this is unequivocal: 'the strength of the EU voice is dependent on the strength of the EU policy that it is called upon to articulate, not the other way round' (Verbeke 2006: 53). Without an upstream mechanism capable of producing a common position of substance, the EU will have a 'lame voice' (Verbeke 2006: 53). Rasch does not mince his words either, categorically stating that 'at present there is no political role for the EU in the [Security] Council' and 'the idea of further deepening the EU cooperation mechanism on UNSC affairs is currently not realistic' (Rasch 2008: 14).

Evidence of progressive EU representation

The weight of evidence presented so far favours the intergovernmental explanation of EU representation in the UNSC. However, the supporters of a more coherent EU representation do not expect it to occur overnight and instead seek evidence to substantiate their claim from incremental changes. One could say that for them the glass of EU representation in the UNSC is half-full, rather than half-empty, as observers with a realist disposition are inclined to view it. The evidence to support this appraisal is twofold; increased commitment by EU member states to coordination meetings in New York fulfilling the Treaty commitments of Article 19, and the number of common statements issued by the EU during UNSC meetings, including those presented by EU officials (including Javier Solana) on behalf of the Union. These are seen as the nascent steps toward the necessary coordination mechanisms for greater EU member state cohesion and eventual membership of the Council itself. Let us consider each of these in turn.

The Treaty on European Union (TEU) calls upon EU member states serving on the Council to coordination with the EU-27, and this has incrementally grown over the last decade. Marchesi dates the 'major breakthrough' in coordination to the French Presidency during the second semester of 2000 (Marchesi 2008: 10), echoing Rasch who says that the establishment of 'Article 19 Meetings' took place in 2001 (Rasch 2008: 7). Currently, meetings take place weekly in New York at the level of Ambassadors and also at the level of councillors responsible for UNSC affairs (Verbeke 2006: 55). All observers agree that these meetings have developed over time, becoming more informative, more forward-looking than merely retrospective, and now put expert knowledge from among EU member states at the disposal of current-serving Council members. An interesting example of the institutionalisation of the coordination-reflex occurred during the Iraq crisis, when meetings were 'organised on a daily and even hourly basis in an attempt to settle the intra-European disputes' (Biscop and Drieskens 2006a: 123). For all but the P-2, these coordination and briefing meetings allow non-serving members to retain a foot in the door of UNSC affairs while outside the hallowed circle. Yet despite the progress made, those with first-hand experience of the process point to a number

of shortcomings. Most significantly, membership of the UNSC and participation in its long negotiating sessions fosters a 'club-atmosphere' in which EU states prioritise their working relationships with other Council members over those with EU non-UNSC members (Rasch 2008: 10). Verbeke agrees, warning that one should not expect UNSC members to 'lay all their cards open on the table' to their non-UNSC member European colleagues, because 'they have loyalties, and perhaps obligations too, towards the other Security Council members that they must respect for the sake of being and continuing to be trusted fellows within that principal organ of the United Nations' (Verbeke 2006: 55). Edith Drieskens makes an important counterpoint to these views, also based on personal experience working in the Belgium mission during its 2007-2008 incumbency. Critics

> tend to focus on the information that is not shared and the coordination that is not taking place. However, when looking from a UN perspective, these weekly meetings are unique: no other group of countries is briefed on such a systematic basis on what is happening in the UNSC, including by permanent members. (Drieskens 2009: 180)

The TEU also obliges EU member states to coordinate their actions in international organisations, and uphold common positions. In specific reference to the UNSC:

> Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter. (TEU Article 19 §2)

The final sentence referring to UNSC permanent members was 'included at the behest of Britain and France who wanted to ensure there was no room for misunderstanding over the freedom of national manoeuvre which they intended to continue enjoying in the UNSC' (Hill 2006: 57). This was a successful coup for the P-2 since the UN Charter does not distinguish between the responsibilities of UNSC members (Rasch 2008: 7, Verbeke 2006: 51 fn2). The text of the Lisbon Treaty has removed references to permanent members but retains the subclause concerning non-prejudice of UN Charter provisions (Article 34 §2). Verbeke differentiates between a 'narrow, legalistic' reading of TEU in which the obligation on UNSC members to respond quickly to maintain international peace and security in the

absence of a EU common position. The 'broader, political' reading concerns the obligation on UNSC members to act on behalf of the entire UN membership, rather than exclusively promote the interests of EU member states (Verbeke 2006: 54). Integrationists argue that the removal of the references to permanent members has taken away their 'permission slip' to pursue their national interest when it suited them, paving the way for a more coherent UNSC representation. Intergovernmentalists see this differently, regarding it as an extension of privileges to *all* EU member states (P-2 and non-permanent) serving on the Council, thus redoubling the intergovernmental nature of EU member state behaviour there. The weight of available evidence points towards the latter interpretation when measured through the yardstick of concertation, the obligation placed on permanent and non-permanent EU member states serving on the Council to coordinate their positions. Verbeke notes an informal agreement made in June 2002 between France, Germany, Spain and the UK to meet monthly at ambassadorial level to 'identify subjects where, working together, they could have most impact' (Verbeke 2006: 56). Regardless of whether concertation began and then fell victim to the Iraq crisis of 2003, or simply never began at all, Rasch claims that only very rarely do 'EU member states on the UNSC meet to concert their positions' (Rasch 2008: 9). Instead, EU member states are more likely to concert with close, long-standing allies such as the UK and US, or simply with other UNSC members serving simultaneously.

The second body of evidence in support of a greater EU role in the UNSC is the growing list of EU statements read out in the Council. Mary Farrell calculates that between 2000 and 2005, there were 185 EU statements in the UNSC (Farrell 2006: 35) while Rasch totals 213 between 2000 and 2006 (with no data for the first semester of 2000 nor the second semester of 2006) (Rasch 2008: 13). Between the middle of 2006 to the end of the Slovenia Presidency of 2009, there

were 63 more statements.[70] Statements are most often read out by the EU member state holding the Presidency (regardless of whether they are serving on the Council) through an invitation 'to participate in Security Council deliberations' (Biscop and Drieskens 2006a: 122). Additionally, Javier Solana, Peter Feith (ESDP Deputy-Director-General), Gijs de Vries (EU Counter-Terrorism Coordinator) and Louis Michel (Commissioner for Development and Humanitarian Aid) have all spoken on behalf of the EU in the Council during the last five years (Biscop and Drieskens 2006a: 123; Rasch 2008: 14). The European Commission has enthusiastically trumpeted that 'awareness of the EU's political role has been heightened by the frequent participation of the Presidency – and on some occasions, the High Representative for the CFSP – in open meetings of the Security Council' (EC 2003: 16). However, as this quotation from the Commission tacitly acknowledges, therein lies the rub too. 'Open meetings' of the Council were intended to make politics more transparent, but in reality 'the majority of negotiations on draft resolutions are conducted by UNSC members in the caucusing sessions or in informal meetings outside the formal UNSC sessions' (Biscop and Drieskens 2006a: 123). Bardo Fassbender concurs, saying that the open sessions are 'largely ceremonial and cannot be regarded as active forms of participation' (Fassbender 2004: 876). The Security Council is a 'Janus-faced structure of both an open system and a closed shop' (Prantl 2005: 562). In 'the Council's informal consultations, where the decisions are taken' and away from the 'ceremonial politics' of the open meetings, 'the EU has no voice at all', leading Rasch to conclude that the appraisal of the European Commission is 'not only overly optimistic, but simply not true' (Rasch 2008: 14). The examples given for an increased role for the EU in the UNSC – namely statements made by the Presidency and other individuals of high rank in the EU – are little more than window dressing. As an exercise in canvassing opinions or as a gesture toward increasing transparency, these meetings serve their purpose, but no actual politics relating to the crucial issues of the day are negotiated there because 'decisions have already

[70] EU@UN website, figure from 1 July 2006 (beginning of Finnish Presidency) to 30 June 2009 (end of Czech Presidency). http://www.europa-eu-un.org

been taken and the states are just formalising their positions' (Marchesi 2008: 13). Rasch takes the European Commission's appraisal to task over the claims made about the EU's *political* role, on the grounds that these open meetings are about public relations and not politics. Through participating, the EU raises its profile, but it is not a participant in the 'sancta sanctorum' where politics is done (Fulci cited in Marchesi 2008: 13). Participation in this sphere of influence is a matter of privilege, currently limited to, and closely guarded by, EU member states.

Assessing the EU in accordance to the logic of UNSC decision making

Let us examine how the EU currently works through the logic of the Security Council's own predominantly informal decision-making processes. We will focus on EU member states serving on the Council in permanent and non-permanent seats, and from the preceding survey of the literature, it is clear from both integration theory and intergovernmental theory that the degree of concert between members is the most important and interesting variable. On the side of the UNSC, the primary consideration is whether a resolution was produced or not. As will be elaborated on below, there are three possible outcomes; a resolution is passed, a resolution is voted on but failed (either by being vetoed or not receiving the nine necessary affirmative votes), or a draft resolution is not put to a vote. This can be summarised in a 2 x 3 matrix as follows.

[Insert Table 1 Here]

Filling the cells on the table is difficult because of the informal nature of negotiations and the seldom instances in recent years when the EU member states have been split in formal votes. The top row is the most challenging to complete because little information leaks out about resolutions withdrawn before being voted on. The first entry in this row is the attempt by Britain and the US to secure a second UNSC resolution mandating the use of military force against Iraq in March 2003, and second is the recognition of Kosovo as a sovereign state. UNSC resolutions on Kosovo have been avoided because of certain veto by Russia. Kosovo currently is in the top right cell since the three EU member states on the

UNSC (Austria, Britain and France) have all established diplomatic ties with it.[71] In the future, it could move into the top left cell if an EU state that does not recognise Kosovo is elected to the Council.

Entries into the middle row are failed resolutions and are invariably due to the casting of vetoes (although technically could be due to a failure to secure nine affirmative votes). In the right column two recent examples have been entered. Firstly, in 2007 'China and Russia jointly vetoed a US-UK sponsored resolution on human rights abuses in Burma', and 'China's support for the junta ensured that the Council response was limited to a relatively mild statement' (Gowan and Brantner 2008: 51). In July 2008, Russia, China and three African states voted against a joint European and US resolution to impose sanctions in Zimbabwe following the escalation of political violence there (Gowan and Brantner 2008: 52). Examples for the middle-left cell are more difficult to find. Because the vast majority of resolutions fail because of a veto (or threat of one, discussed in more detail below), an entry here would take the form of one of the EU P-2 voting against the other, or both voting against a non-permanent member. Since neither Britain nor France has used their veto since 1989, there are no examples since the end of the Cold War. Hypothetically, if a second resolution concerning weapons of mass destruction in Iraq had been attempted in 2003, it would have been entered here. Finally, the bottom row is the easiest to complete, since it regards passed resolutions, and thus is the fullest too. The majority belong in the right column because on very many issues EU member states are in agreement, and by definition both P-2 members must have accepted the resolution in order for it to pass, meaning that examples of a split EU could only occur if a non-permanent EU states took a different line from that of Britain and France.

[71] In the 2009 UNSC membership included Austria, Turkey and Croatia from the WEOG and Eastern Europe regions, giving only three EU member states on the Council. In 2008 there were four (P-2, Italy, Belgium); in 2007 five (P-2, Italy, Belgium and Slovenia). In 2006 there were also five: (P-2, Denmark, Greece and Slovakia).

The six cells of the matrix appear to cover every conceivable output from the UNSC, with regard to the position of the EU member states. However, three levels are blurred when we consider two additional political phenomena tied up to the workings of the Council. The first is the impact on decision making (and the output of resolutions) by the threat of a veto, which is not uniformly effective and depends on who is making the threat, and which sponsoring states are involved. The second challenges the assumption that vetoed resolutions are 'failures'. Forcing an opponent into vetoing a resolution can leave them isolated in the eyes of the international community, or can endow the drafters with a 'moral majority' for whom the unacceptability of a resolution by the vetoing state is, in fact, a 'badge of honour'. Before turning to the Iraq crisis of March 2003 to illustrate these points, let us very briefly recap some important features of the veto.

The politics of the veto

Firstly, and somewhat surprisingly, the UN Charter makes no explicit reference to the 'veto'. Instead, as Kennedy points out, it is codified in the guarded language of Article 27 (3):

> Decisions of the Security Council on all other matters [not procedural] shall be made by an affirmative vote of nine members including the concurring votes of the permanent members.

Casting a veto is a negative action that prevents the Council from reaching a formal decision. The delivery of positive decisions from the Council requires a two-stage process of negotiation, ensuring firstly the agreement of all five permanent members (or at least an abstention), and then winning the support of enough non-permanent members. Secondly, through informal bargaining in closed sessions the P-5 learn in advance of a final vote the positions of other Council members. This knowledge is necessary if threats are to be credible and therefore heeded, but this also informs the strategy of states that are determined to push resolutions even when a veto is inevitable. Thirdly, the frequency with which the veto is used

gauges the overall level of cooperation between Council members. The veto has been used 219 times since 1945,[72] of which 197 were cast between 1945 and 1990, and only 23 times since then up until August 2009. The veto was used frequently during the Cold War, initially by the Soviet Union as it fought a rear-guard action against the pro-American majority of member states, but as newly independent African and Asian states swelled the UN membership during the 1960s and began to campaign for recognition of Palestinian concerns, the US found increasing reason to use its veto power in support of Israel (Kennedy 2006: 52-55). The declining use of the veto suggests that the Security Council has become a more harmonious place since the end of the Cold War. This may have been true in the decade after 1990, but a group of states led by China and Russia that are indifferent to the promotion of human rights and reaffirm the principle of non-intervention, labelled the 'Axis of Sovereignty' by Gowan and Brantner, is reasserting its control of the UNSC (Gowan and Brantner 2008: 47-53). It is in this increasingly fractious Council that we will now turn to look at the events leading up to the invasion of Iraq in 2003, which was one of the bleakest moments in the history of EU foreign policy and the UN Security Council.

Shapiro and Gordon have documented in great detail the steps leading up to the stand-off between France and Germany (with Russia and China in the wings) and the UK and US in the Security Council in March 2003, as efforts were made to secure a second resolution building on SCR 1441, concerning alleged Iraqi possession of weapons of mass destruction and the repeated obstruction of International Atomic Energy Agency (IAEA) inspectors (Shapiro and Gordon 2004). Neoconservative hawks within the United States government of President George W. Bush were intent on toppling Saddam Hussein as part of the 'War on Terror', despite it being widely known that Saddam had played no part in the 9-11

[72] http://www.globalpolicy.org/security-council/tables-and-charts-on-the-security-council-0-82/subjects-of-un-security-council-vetoes.html (accessed 08 June 2009). The decades break down as follows: 1946-49: 47; 1950-59: 45; 1960-69: 19; 1970-79: 36; 1980-89: 50; 1990-99: 9; 2000-08: 13.

attacks and that he and al-Qaeda were ideologically opposed. The four EU member states (Britain, France, Germany and Spain) were split over support for US action to force Iraq compliance. Germany took a staunch anti-war stand while British Prime Minister Tony Blair was politically and morally determined to support America despite huge public protests against war. France was initially prepared to join US forces, and as late as January 2003 had plans ready to send 100 planes and 15,000 troops to Gulf. France also played a key role in drafting Resolution 1441, described by former US ambassador to the UN under the Clinton administration Richard Holbrooke as 'one of the best resolutions ever crafted by the UN'. Unfortunately, the French saw the resolution as a penultimate step toward military action, while the US regarded it as a *de facto* green light when the time was right. Saddam Hussein's stuttering concessions to the international community between January and March 2003 were enough to satisfy the French that progress was being made through the multilateral approach, while the US became increasingly frustrated. When French Foreign Minister de Villepin indicated in public that France would be willing to veto any resolution seeking an immediate use of force, it galvanised the Franco-German anti-war position. In Britain, Blair had staked his case for war on a second UN resolution that was not forthcoming. He had become so desperate that the UK considered pushing for a resolution that they knew would be vetoed on the grounds that eleven of the 15 UNSC members could constitute a 'moral majority' if not a legal authorisation. No such resolution was tabled because the US lost patience and instead Bush gave Iraq a 48-hour ultimatum to disarm or face war.

This example highlights two particular characteristics of the working of the UNSC. The first is that the *threat* of veto can be as effect as casting the veto itself, and counting the number of actual uses does not capture the whole story. Thus while France may not have cast a veto since 1989, in this case it did not need to have the same effect. A threat alone is not always sufficient (clearly this is so as 219 vetoes demonstrate), so what other factors are important? The first is which country is using the veto, and which country has drafted the resolution being

vetoed. The UK and France have only once vetoed a US-drafted resolution (in 1956) concerning the demand of a cease-fire after their invasion of Egypt to retake the Suez Canal (Hill 2006: 50; Kennedy 2006: 57). Thus the historical precedent in the action of vetoing is significant. The second factor concerns domestic political audiences' opinion on the vetoing state. A veto by China or Russia is categorically different to one by France, in the eyes of the UK electorate (although, in 2003, arguably *not* in the eyes of US citizens). On the contrary, a veto on a human rights issue (such as the deployment of peacekeepers to protect civilians in Darfur) by an authoritarian state such as China may paradoxically lend credibility to the cause. Certainly a veto by China or Russia against intervention in Iraq would have been far less politically damaging to Blair than a French one. This example also included a potential political dilemma for the non-permanent members of the UNSC serving at the time. Should they have sided with the UK and US in return for political and financial rewards despite the knowledge that the resolution would be vetoed?[73] How much could they extract out of the UK government, knowing the extent of its desperation? In summary, not only can the threat of a veto be as effective the casting of a veto in certain circumstances, the vetoing of a resolution is not necessarily always a political failure, if the process succeeds in marginalising one state by blocking action accepted by the other 14 members of the Council, and thus obstructing the collective will of the whole UN membership. The distinction between the first two rows in the table is blurred, and can only be assessed once the policy objectives of the Council members have been taken into account.

Is the EU capable of bridging divides between the members of the UN Security Council and forge consensus around resolutions? Some European diplomats working in the UN system favour this strategy, whereby the EU acts as a 'political bridge, drawing together the isolated US and its opponents in the UN to overcome their current polarisation, and manage the power shifts in the UN' (Gowan and Brantner 2008: 55). In the previous chapter, the politics of consensus

[73] For linkages between UNSC voting and IMF loans, see below and Dreher and Vreeland (forthcoming).

were discussed in detail, including the pros and cons of bridge building. It was argued that while the EU may willingly take on this role as part of its identity and believe it to be part of its effective multilateralism policy, it is structurally disposed to making too many concessions because it begins bargaining from a median position, aggregated across the diverse EU membership. The price for cutting a bargain may be extremely high and this can be detrimental to the wider UN membership as well as the organisation itself. This risk is no less in the UNSC, where 'bridging risks reducing the EU to amiable impotence, emphasising consensus over substance - and courting irrelevance' (Gowan and Brantner 2008: 55). Arguing against this is the case outlined by Solana above, which is that a strong EU is able to build bridges but also exert influence when it demonstrates leadership. There are examples of this working, seen most prominently in the combined diplomatic efforts of Britain, France and Germany in the 'E-3' directoire.[74] The 'Security Council was able to unite behind a resolution on Iran in 2006. But fear of a Russian veto prevented the Council approving a sanctions regime strong enough to change Iranian policy' (Gowan and Brantner 2008: 51). The pivotal issue is how to weigh up the compromise between making enough concession to win the backing from the P-5 and enough additional non-permanent members on the one hand, and retaining sufficiently strong language to ensure that the resolution is meaningful and in accordance to the foreign policy objectives of the sponsoring EU states on the other hand. Gowan and Brantner conclude that the EU member states in many of their recent 'successes' in brokering agreement on resolutions in the UNSC has come at the cost of acquiescing to the non-intervention preferences of the 'Axis of Sovereignty'. The EU should be at the vanguard of a progressive human rights movement throughout the UN system, and in the UNSC in particular it should be taking concrete action against serious HR violations and

[74] The continued working of the E-3 after Germany left the UNSC is similar to the Western Contact Group established in 1977 as an informal group focused on Southern Africa. The group comprised of Canada and the Federal Republic of Germany (rotating members), and France, the UK and the US (permanent members) and continued long after Canada and FRG left the Council in 1978. Prantl concludes that informal groups give privileged participants a say in UNSC work even if they are not Council members (Prantl 2005: 575).

promoting the Responsibility to Protect (R2P). These arguments are valid ones, but based on the assumption that human rights promotion is the primary objective of the UN system, something contested by those who would say instead that the maintenance of international peace and security is the primary purpose of the organisation. There is no straightforward answer, not least because the UN Charter appears torn between the two when contrasting the lofty language of the preamble with the duties of the Security Council laid out in Chapters VI and VII, as well as Article 2(7) stipulations on non-intervention. Solidarists advocating human rights protection recall the changing nature of the international system since the end of the Cold War, in which the UN has been called upon to intervene more frequently and more intrusively in the affairs of failing and post-conflict states. Pluralists emphasis the need for stability in the system, and would agree with Kennedy's assessment that the measure of Council success is less in the nature of the resolutions produced, and more in the fact that for over 60 years the major powers have remained inside the collective decision-making apparatus of the UN.

The opinions of those who have worked longest inside the UNSC coordinating domain are unanimous; on the whole, EU member states prioritise their UNSC seat over EU common representation. While too much plurality between EU member states is damaging to the EU (as seen in the Iraq case), a polyphony of voices is not necessarily bad. 'European influence in the Security Council would gain by having multiple spokesmen (sic)' (Verbeke 2006: 52), chiming with the 2005 UK Presidency initiative to boost the impact of the EU in confrontational UN arenas by shifting emphasis from a single Presidency statement to 'one message, many voices'. But what should the EU message be? In the UNSC the message must be geared to the promotion of international peace and security, and where possible to highlight how serious violations of human rights are credible threats thereto. Gowan and Brantner assert that HR promotion should be the EU's objective in the Council, assuming that the intermediate waypoint of a threat to peace can be bypassed. The EU must bend to accommodate the UNSC and not vice versa, not only in terms of its method of representation but also in terms

of how it goes about pursuing its objectives. The EU needs to take note of the lessons from the UNGA death penalty moratorium resolution of 2007. Acting too quickly and ambitiously risks enraging opponents and alienating moderate states that would otherwise be willing to lend support. The danger is that more harm than good is done by overzealousness, especially in an arena as resistant to change as the Security Council. A pragmatic approach to pursuing its aims begins by working with the UNSC as it currently is, and with the members there. Distancing EU member states from the Union itself may be no bad thing, given the distrust that is felt by some groups of states towards it.

The International Monetary Fund

Maintaining international economic stability

The International Monetary Fund (IMF) was founded at the same time as the International Bank for Reconstruction and Development (IBRD – which is better known as the World Bank) in Bretton Woods, New Hampshire, in 1944. Representatives from 45 countries gathered to design 'an improved financial, banking and commercial architecture that would, positively, advance international prosperity and interdependence, and negatively, head off any dire threats to instability in currency and stock markets' (Kennedy 2006: 30). It forms the 'second leg' of the 'three-legged stool' of global organisation; complementing the collective security arrangements institutionalised in the UNSC, and efforts to improve 'political and cultural understanding among peoples' (Kennedy 2006: 32). Since the USSR remained outside of the capitalist system, American and Britain took primary responsibility for designing what would become the IMF. The final choice was between rival plans put forward by Briton John Maynard Keynes and American Harry Dexter White, the former proposing an 'international clearing union', while the latter advocated a 'currency pool to which members would make specific contributions only, and from which countries might borrow in order to help themselves over short-term balance of payment deficits' (Bøås and McNeil 2003: 28). White's design was adopted and the IMF began managing exchange

rates via gold, underwritten by the US government to be convertible at $35 an ounce, and providing credit to countries with short-term balance of payments deficits. The system was built on American economic hegemony (although the abandonment of the fixed dollar value of gold in 1971 shook the system), and the US retains the largest allocation of votes in the weighted voting quota system. With 16.73 per cent it is the only single state with enough power to veto a decision under the 85 per cent majority rule, which was raised from 70 per cent as a condition for the US government reducing its far higher original quota (Woods 2003: 99, 111). Today, the IMF is responsible for surveillance of the international economic system, financial crisis response, and the making of conditional loans. Two characteristics stand out over the lifetime of the IMF; the ability to reinvent its role in the global economy, and the centrality of the US for the management, funding, and political direction of the Fund.

The IMF is a universal membership organisation with (as of June 2009) 185 members, who meet annually as the Board of Governors at the Fund's headquarters in Washington. Day-to-day running of the IMF is handled by 24 Executive Directors under the chairmanship of the Managing Director of the Fund. The five largest donors to the IMF are allocated one Executive Director seat each (US, Japan, Germany, France and the UK) and the other 19 seats are divided between the remaining 180 members by congregating into constituencies represented by one director. Many groups incorporate large and small members, and in some the largest member is the permanent incumbent in the Executive Director's seat (for example Italy, Belgium, the Netherlands). In other groups, the larger members rotate the directorship among them, such as among the Nordic states, or as Spain does with Mexico and Venezuela (Bini Smaghi 2009: 62). What is immediately clear from this is that the EU member states are dispersed across a number of constituencies, with other EU and non-EU countries among them, and we shall discuss the merits and failings of this presently. Constituencies vote as blocs, with the Executive Director casting a single vote with the combined weight of their constituency. This means that each constituency must decide on how it will

cope with divergent views between its members, and what instructions are given to its Executive Director when disagreements arise. The number of votes given to each state is 'calculated on the basis of a set of formulae combining the ability to contribute, that is, national product, and the need for Fund resources, calculated on the basis of countries' vulnerability to external shocks linked, in particular, to openness to international trade' (Bini Smaghi 2009: 64). With 16.73 per cent, the US has the largest quota allocation of votes, and singularly has the capacity to veto decisions that require an 85 per cent majority.[75] However, as Jean Pisani-Ferry observes, the IMF board 'very rarely go[es] to vote. Rather, the chair proposes conclusions based on its reading of the majority view, and decisions are then adopted by consensus' (Pisani-Ferry 2009: 28). Given this, why are we considering the IMF in a chapter on privilege and not on consensus?

The IMF is another example of 'composite' decision making in an international organisation, which like previous examples requires us to look deeper below the surface and see the 'real' processes taking place. In this section, it shall be argued that the US enjoys formal decision-making privileges (such as its voting share) and informal decision-making privileges (based on its location, staffing, etc.) that give it an unassailable advantage in exerting influence over the IMF. Many observers have noted that EU states have a combined IMF voting share nearly twice the size of the US, and express the hope that once the EU channels its dispersed influence across a number of constituencies through a single EU voice, a rival to the US will emerge. Such thinking is based on looking only at formal decision making in the IMF, which sees a 15 per cent plus voting share as the benchmark for privileged status in the IMF. After presenting briefly the current mechanisms for EU coordination in the IMF, we will move on to look at the most

[75] Bini Smaghi (2005: 243) provides a list of issue areas requiring 50 per cent, 70 per cent and 85 per cent majorities. The issues which the US retains veto power over concern the governance of the IMF, including *inter alia* amendments to the Articles of Agreement, allocations of Special Drawing Rights, decisions on the number of Executive Directors, quota changes, and withdrawal of members from the Fund.

frequently found arguments in the literature favouring common EU representation in the IMF. We will then see how the US uses its privileged informal channels of influence, and the extent to which the EU lacks the capacity to challenge the US here. Extrapolating from this analysis, it is argued that consolidating EU representation and coupling it to a more coherent upstream decision-making process inside the EU will not yield a noticeable power shift in the IMF.

Current EU representation in the IMF

Article 111 §4 of the Treaty on the European Community (TEC) sets out the decision-making framework for issues relevant to the European Monetary Union (EMU) at the international level. It says that:

> The Council shall, on a proposal from the Commission and after consulting the ECB, acting by qualified majority voting decide on the position of the Community at international level as regards issues of particular relevance to EMU, and acting unanimously, decide on its representation in full respect of competences of the actors involved. (Cited in Garnier *et a*l 2006: 116)

As with the UNSC, the gulf between the treaty text and daily practice remains considerable. The essence of the problem with regard to the EU, the euro currency and the IMF is that 'EMU creates a fundamentally new type of political entity which does not fit into the "one money, one nation" system of international politics' (McNamara and Meunier 2002: 854). EU member states of the 'eurozone' are, at present, forced by the IMF's structure into 'one money, separate nations, and divided constituencies', but given the prestige associated with seats on the Executive Board larger states are unlikely to be in any hurry to alter the present situation. The European Central Bank has been an observer at the IMF since December 1998 but the European Commission remains excluded from the IMF decision making, information circulation, and lobbying. Coordination between EU member states, and the subset of eurozone members, is progressing on an *ad hoc* basis. Lorenzo Bini Smaghi (2009) provides an insider's view of the progress made in Washington and Brussels over recent years. EURIMF is the Washington-based coordination group for EU member states, which speaks on behalf of the EU and the eurozone in a number of IMF meetings (but not in regular Board meetings).

Since 2007, the presidency of EURIMF has been a two-year position (held initially by the German Executive Director) with the aim of improving 'the visibility and the continuity of relations of the European Union in the Fund', including 'establishing direct links with the Fund management and staff, with a view to contributing to the Fund and to pushing forward EU views' (Bini Smaghi 2009: 67). In 2003, a permanent sub-committee (SCIMF) dedicated to IMF coordination was established in Brussels, reporting to the Economic and Finance Committee (EFC) which is composed of senior official from Member State finance ministries and central banks. Although all EU member states belong to SCIMF and EURIMF, it is likely that a two-speed Europe will emerge between eurozone and non-eurozone members, since the former have 'recognised that there might be a case for closer euro area coordination on IMF-related matters beyond the core set of issues that are directly and exclusively related to euro area common policies' (Bini Smaghi 2009: 67). Bini Smaghi concludes that there is considerable evidence illustrating greater cooperation between all EU member states, and especially the eurozone members. However, the ability to act in the Executive Board cohesively when spread across multiple constituencies is the crucial limiting factor. For this reason, and in order to increase Europe's influence in the IMF, more radical changes to the way EU member states coordinate and are represented are called for.

Improving EU representation in the IMF

Scholars and practitioners who write about the EU and the IMF have made a number of observations concerning the shortcomings of the current system of *ad hoc* representation, and have made a number of recommendations for improvements. This work can best be summarised through clustering various positions around four broad issues areas; (i) the EU as a rival to the US, (ii) the commensurability of EU economic power and EU influence in the IMF, (iii) the aggregation of voting shares, and (iv) completing the European integration project. Let us turn to consider each issue area in turn.

Without doubt, the benchmark for assessing the power of all actors in the IMF is the United States, which has not only the largest share of the voting quota (16.73 per cent). Critics say that US control of the IMF is considerably deeper than this, with the institution being dominated by its close proximity (geographically and ideologically) to the US Treasury department, which together with Wall Street serve to propagate liberal capitalist markets globally (Wade and Veneers 1998). Some authors are explicit in what the ambition of the EU should be, such as Garnier, Dado and di Mauro who claim that there is a 'widespread feeling that Europe, despite its number of seats and voting power in the BWI, is unable to offer a proper counterweight to the United States' (Garnier *et al* 2006: 120). Clearly the implication here is that the EU should be able to offer an alternative set of policies to the US, which until now has not been the case. Their argument is that the EU has reached the point at which it is strong enough to be a credible challenger to the hegemony of the America. Others are coyer on the need for direct competition with the US, but remain focused on it as the measure of EU aspirations. 'A single European constituency would enable the EU member states to have a strong impact on IMF policies, potentially as strong as that of the United States' (Bini Smaghi 2009: 77). The representation of the EU in the IMF, and in particular the eurozone countries, is part of the larger picture of the launch, consolidation, and projection of the euro as a global currency. In 2002, McNamara and Meunier speculated that

> the euro could offer an alternative to the hegemony of the US dollar and transform the international system from a unipolar, American-dominated structure into one in which Europe constituted a power equal to the US. Currency may be, after all, one instrument of international power. (McNamara and Meunier 2002: 849)

All of the authors cited here recognise the fact that the EU needs to have a coherent set of policies about how the IMF should to be run in order to have any substance to their challenge. There are two broad avenues a more robust EU policy could take. The first is to offer something qualitatively different from the US that is closer to the interests of the majority of IMF members, a 'bridge' between the current US-driven agenda and the demands of those states that do not have the

power to promote their own interests. This casts the EU in the role of a more benevolent hegemon than the US, and rests on the assumption that the US at the present time is capable of driving through the IMF policies that a substantial number of states are unhappy with. The second avenue sees the EU promote its own interests regardless of those of other members, and seeks to oust the US from its privileged position of using the IMF as its exclusive foreign policy tool. Of the two options, the latter is ruled out as a credible scenario on the grounds that the EU is unable to unify to the extent necessary that it could single-mindedly implement such a policy, and nor would other IMF members (least of the all the US) tolerate such a policy. The first option appears more credible insofar as it fits the EU's self-identity as an intermediary between the position of the US and that of the Global South, as it has done elsewhere in the multilateral system. However, it is an exaggeration to say that the US imposes policies on other IMF members against their will.

> The formula of weighted voting in the Bretton Woods organizations [...] appeared to be a clear indicator of predominant American influence in these organizations. Special majorities (greater than a simple majority) also ensured a continuing American veto over many changes, even as the formal voting weight of the United States declined. [...] Nevertheless, even in the years of its maximum influence, the United States had to bargain to a greater extent than its predominance may have predicted. (Kahler 1992: 687)

The US still requires a majority of states to support its position (its veto blocks policy rather than passing it), and does so by lobbying hard among the Executive Directors, meaning that America is able to 'influence decisions before they are presented to the Board' (Bini Smaghi 2009: 73). Furthermore, since the EU member states belong to ten constituencies controlling 43.84 per cent of IMF votes, all US-sponsored decisions must have a considerable amount of acceptance from EU member states, raising the question of exactly where is the clear blue water between the EU's alternative agenda and the one currently promoted by the US? In short, what added value does the EU have to offer to existing policy proposals?

The second argument put forward in favour of more EU coordination is that European influence in the IMF should be commensurable with its economic

superpower status. Once again, Garnier *et al* speak for those inclined towards a greater EU role in the IMF who believe that there is a 'widespread perception, both inside Europe and outside, that the EU/euro area does not play a role in the international economic, financial and monetary sphere commensurate to its economic weight' (Garnier *et al* 2006: 115). McNamara and Meunier ask where EU representation in the IMF fits into the architecture of global economic institutions by contrasting it to the WTO, where the EU enjoys parity with the US. How well do the 'economic giant' credentials of the EU serve it in the IMF, and how damaging is the 'political dwarf' label that it also wears (McNamara and Meunier 2002: 849)? They question whether the WTO model of representation can be duplicated in the IMF. A number of differences between the specific decision-making procedures in the two organisations rule out the possibility of replicating the successful WTO model in Washington. Most importantly, the timeframe of decision making and the cost of non-agreement are diametrically opposed. Failure to reach a trade agreement results in the maintenance of the status quo that may be sub-optimal but does not do great harm to the EU. By contrast, the IMF is occasionally called upon to rapidly react to financial crises, much the same way as the UNSC is called upon to act against breaches of the peace. In such cases, taking no action is costly and without the mechanisms to quickly coordinate EU member states may find themselves unable to contribute to the debate if no common position has been agreed. Until the EU has established an internal decision-making system that is capable of acting faster, the EU will remain a less influential actor than its larger member states with the capacity to act in such situations currently do.

Countering this is the argument that EU member states will only set in place such mechanisms after agreeing to act collectively, thus creating a Catch-22 situation in which no rapid decision-making capabilities are developed without firstly creating the collective representation system that demands them. McNamara and Meunier's central argument is that neither the Commission nor the European Central Bank are capable of representing the eurozone (or the whole EU) adequately if the goal is to become a credible equal to the US. The reason for this is

that the IMF has a profoundly political dimension to its work, and the incumbent responsible for representing the EU in the IMF must be supported politically by the Council, in much the same way the CFSP High Representative operates. Indeed, their key policy recommendation is the establishment of a 'Mr/Ms Euro', 'a political heavyweight of sufficient international stature both to facilitate the forging of a consensus within the EU and to negotiate forcefully with other countries' (McNamara and Meunier 2002: 864). The US does not dominate the IMF because of the size of its economy alone; the US understood during the Bretton Woods conference that the IMF would be at the nexus of political and economic power. As we shall see below, it devotes considerable political resources to augment its economic primacy, to the extent that its *political* influence is the critical variable in explaining why it has maintained its unrivalled position so long. Expecting a greater role for the EU in the IMF as an automatic consequence of its passage towards economic prosperity is based on a naïve understanding of what the US does to influence the political decision-making process in the Fund.

In an organisation that rarely votes and takes the most of its decisions by consensus, what is the purpose of considering voting weights? In fact, voting quotas *are* taken into account, since the 'board secretary keeps a tally of the extent of agreement, in voting power terms, making the voting structure a key "behind-the-scenes" element in decision-making' (Woods 2003: 111). The informal tallying process (as opposed to a formal vote in the Executive Board) is illustrative of the 'composite' nature of decision making between a *prima facie* consensus model and an opaque weighted voting system built on behind-the-scenes networking and bargaining. One incentive for EU states to regroup in a single constituency is that they will be able to articulate a clearer set of demands in a bargaining situation, which is hindered by the divisions between constituency groups including non-EU states whose interests must also be considered. This is the case with Spain and a number of Latin American countries, and with the Dutch and Belgian

constituencies that include debtor and creditor members.[76] Ireland (as part of the constituency permanently chaired by Canada) and Poland (as part of the constituency permanently chaired by Switzerland) face the possibility that they might not be able to voice EU common positions at all when in the minority of their respective groupings. Two counterpoints are worth briefly noting. Firstly, given the EU tendency for 'navel-gazing', spreading the EU member states across ten constituencies provides an opportunity for outreach to a wider audience of Fund members. Secondly, the mixed constituency system offers in theory additional voting leverage by adding non-EU states' voting quotas to the EU member states.

> The votes that can be mobilised by constituencies where EU countries participate sum to 43.84% of the total, nearly 12 percentage points more than the sum of EU countries' votes alone. However, excluding the constituencies that are led by non-EU countries or where the latter have fewer than one-third of the votes (those of Ireland, Spain and Poland), the sum of EU countries' votes fall to 32.95%, only around 1 percentage point higher than the sum of EU countries' votes. (Bini Smaghi 2009: 72)

Contrary to the opinion of Garnier *et al* that the EU should play a greater role in the IMF are those who argue that the EU is overrepresented, not only in terms of the number of Executive Directors from EU member states, but also in voting share, 'considered excessive by other members' (Bini Smaghi 2009: 74). The EU27 currently enjoy a voting share of 31.98 per cent and the eurozone alone 22.68 per cent (Bini Smaghi 2009: 75). These quotas would decrease if the effect of the single currency on reducing eurozone members' exposure to exchange rate fluctuation were taken into consideration. Bini Smaghi calculates a drop of about 3 per cent for eurozone members (19.65 per cent for the eurozone, and consequently 29.09 per cent for the EU).[77] However, there is a paradox in any steps designed to streamline EU representation and make it more influential in the IMF.

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[76] Mahieu *et al* suggest that mixed constituencies 'which include both creditor and debtor countries, are considered to play a special role in the IMF as they contribute to reinforcing the cooperative nature of the Fund' (Bini Smaghi 2009: 72). Bini Smaghi finds little evidence to bear this statement out, instead emphasising the role of Fund management in finding compromise solutions.

[77] In 2005 Bini Smaghi calculated reductions to the EU quota by using a scaling device based on GDP to align EU and eurozone voting shares with the US, starting from a baseline of the previous IMF voting shares in which the US had 17.08 per cent and the eurozone 22.91 per cent. The GDP

> The more EU countries try to coordinate, the more they are seen by non-EU countries as being overrepresented because the voting power of a consolidated EU seat leaves other constituencies with little power. Thus, non-EU countries are calling for a reduction in the European Union's overall weight. (Bini Smaghi 2005: 241)

In summary and bearing in mind that all remarks are made under the caveat that the important informal channels of influence in IMF decision making have yet to be taken into account, the EU appears to be between a rock and a hard place. Retaining the existing vote shares for its member states requires it to keep a low profile and not flex its collective muscle, because doing so ignites the reform agenda debate, leading to a call for reduced EU voting shares. Yet on reflection, how much power does the EU need? Conceding three per cent of its quotas would demonstrate EU willingness to recognise the economic reality of the 21st century,[78] but coupled with a single Executive Director seat would substantially increase EU influence through better internal coordination and better working relationships with other constituencies. Within the parameters of the voting weight question, a win-win scenario appears feasible.

The fourth and final broad issue area is completing the European integration project. The euro can be seen as a strengthening of the 'golden handcuffs' securing unified Germany to Europe (Garton Ash 1993), justified on economic grounds as a logical extension of the single market (for an overview and critique see Risse *et al* 1999: 150), or as part of an identity-building project (Risse 2003). These competing explanations for why the euro was created focus on European-level factors, but in every case, the international representation of the euro is an externality that has arisen as a consequence. Bini Smaghi maps out two alternative pathways for improved EU representation in the IMF, 'through an

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scaling reduced the eurozone voting share to 16.00 per cent, and after reallocating EU votes across all IMF members in proportion to their existing shared, saw the US voting share rise to 18.61 per cent.

[78] Based on the calculations of Kelkar *et al* (2005), the combined quotas of Italy, Belgium and Netherlands are 20 per cent greater than those of Brazil, China, and India. (Pisani-Ferry 2009: 24)

intergovernmental agreement between the member states, or through a change in the EU treaty' (Bini Smaghi 2009: 74). Path one emphasises retaining member state sovereignty while the other pools sovereignty at the EU level in a new policy area, in the spirit of 'ever closer union'. The intergovernmental approach sees the 27 members joining one constituency group under the representation of a single Executive Director. Since only Germany, France and the UK have independent seats, the other 24 member states are familiar with constituency membership, although Belgium, Italy and the Netherlands would be called upon to give up their quasi-permanent Directors' seats too. While the EU Executive Director would hold the largest number of votes in one block, the US would retain the largest individual voting share and the IMF and World Bank could remain located in Washington.[79] Path two sees member states replaced by the European Union in the IMF, which would require the development of new institutional practices for generating EU common positions from Brussels, as well as installing European Central Bank and European Commission officials on the team of EU Executive Director. The second path in Bini Smaghi's opinion is a long-term possibility, especially if the EU wants to have a 'strong impact on IMF politics, potentially as strong as that of the United States' (Bini Smaghi 2009: 77).

The largest stumbling block is the unwillingness of EU member states to give an inch of leeway to the European Commission, whose role 'was downgraded to assisting the euro area Presidency in the IMF Board' by the European Council (Garnier *et al* 2006: 116). The sticking point is member states' attachment to the trapping of prestige and privilege granted to Executive Board membership, which gives 'visibility to national representatives' (Bini Smaghi 2009: 77). The larger member states 'resist pooling sovereignty in international settings' because although they 'arguably gain from pooling sovereignty within the EU itself, where they continue to be dominant, they are less confident in their ability to influence outcomes in other international organizations' (McNamara and Meunier 2002:

[79] Article XII states that the IMF must be 'located in territory having the largest quota'.

858). It would seem, therefore, that intergovernmentalism and the interests of the large member states trump those of the smaller ones. Jean Pisani-Ferry comes to the same conclusion from his analysis of the EU in global economic governance institutions, based on three ideal-type forms of delegated power (Pisani-Ferry 2009: 31). EU states in the IMF currently rely exclusively on coordination amongst themselves and do not delegate any responsibilities to EU institutions. He asks why they do not adopt a 'supervised delegation' model that allows 'member states to internalize externalities while retaining control of the mandate given to their agent in international institutions' (Pisani-Ferry 2009: 32). The answer is clearly illustrated in a graph plotting the positions of EU member states according to their percentage share of all EU IMF votes, and of their percentage share of votes on the EU Council. The six member states represented on the Fund Board all enjoy proportionally more voting power in the IMF than then do in the Council of the European Union.[80]

> [T]he prestige attached to chairing a constituency is a further obstacle to a consolidated EU representation. This helps explain why the situation has remained unchanged until now. Summing up, the transfer of international representation to the European Union would involve an internal redistribution of power, not only from the states to the EU level – this could be lessened through an appropriate supervision mechanism that would leave control rights in the hands of the member states – but among the member states. This internal dimension of the power game certainly plays a significant role in the maintenance of the status quo. (Pisani-Ferry 2009: 34)

There are, on reflection, similarities and differences between the privilege of UN Security Council membership and a seat on the Executive Board of the IMF. Both confer prestige on the incumbent, whether they be a permanent seat/single constituency entitlement or as a fixed-term period on rotation. The two institutions are also cornerstones of the institutional framework promoting peace

[80] The four member states with 29 votes out of 345 (8.40 per cent) in Council have the following respective shares of the entire IMF voting quota of the EU27: Germany: 18.36 per cent, France / UK: 15.13 per cent, Italy: 9.97 per cent. States with 27 votes (7.82 per cent) in the Council: Spain: 4.32 per cent, Poland: 1.97 per cent. Conversely, the Netherlands controls 7.29 per cent of the total EU voting share in the IMF but has only 13 votes (3.77 per cent) in the Council, while Belgium has 6.50 per cent and 12 votes (3.48 per cent) in the Council.

and stability in the international order, and both are under pressure to reform and reflect the current distribution of power in the world. Such reforms would reduce the influence of EU member states, and while in the UNSC this would likely reduce the level of European representation, in the IMF such changes *could* improve the promotion of EU interests, based on the assessments made above. However, what is largely absent from this work is a consideration of the informal channels of influence developed and honed by the United States over the last 60 years. As will be shown, this is much more subtle than simply a question of voting power and the capacity to veto decisions. Unless the EU can compete with the US on this level too, European ambitions will be overstretched again.

Informal channels of US influence in the IMF: Lessons for the EU

'The United States enjoys a special position in the International Monetary Fund (IMF) and the World Bank. When the institutions were created, their structure, location, and mandate were all pretty much determined by the United States' (Woods 2003: 92). Critics of the Fund are quick to label it as another instrument of American power, yet Ngaire Woods argues this is too simplistic a view because it fails to explain how the IMF has been able to maintain its legitimacy as an multilateral organisation, which comes from a 'visible degree of political independence from interference by the United States' (Woods 2003: 95). In order to make her case, Woods asks 'how much influence does the United States wield in the institutions and through what mechanism?' and her answers will be used to provide a framework for assessing whether or not the EU is up to the challenge of exerting influence through the same mechanism (Woods 2003: 95). What will become apparent from the following comparison is that decision making in the IMF is influenced by informal channels open to the US thanks to its privileged position are equally or more important than bargaining between states. Woods brackets US influence into four categories – financial, use of resources, management and staffing, and formal voting – and we shall briefly consider some of the points raised in each one based on their pertinence to the EU ambitions for greater influence.

With regard to finance, Woods notes that the IMF (and World Bank) differ from other UN bodies because they are able to generate their own income from the loans they make, and only periodically request additional deposits from the member states. Since they cannot be held to ransom on a yearly basis by states withholding dues, this gives them increased autonomy. However, when requests are made the final decision of the US government rests with the Congress, and officials in the Fund 'have grown used to placating not just the powerful Departments of State and Treasury, but also the feisty US Congress' (Woods 2003: 102). It is especially telling that NGO groups campaigning for IMF reform have lobbied Congress, recognising that 'it has the power – and uses it – to impose conditions for […] any increase in IMF quotas' (Woods 2003: 112). At present, no other national parliament exerts influence over the IMF to any comparable degree. In fact, many EU states would most likely raise increase deposits on request from the IMF without question, seeing it as a sign of their commitment to the international organisation.[81] If the EU were to reform its representation in the IMF along an integrationist line of a single seat and one voting share, it would have to specify the role played by the European Parliament in the co-decision process. Conceivably it could wield the same influence as Congress does today, although doing so would raise new questions about the legitimacy of the IMF when it has to placate two parliamentary bodies demanding concessions.

US control over the lending decisions of the IMF have been widely researched, under the hypothesis that the US uses loans from the Fund to support governments that are either allies of the US, or of strategic interest for US foreign policy. James Vreeland and Axel Dreher have expertly demonstrated that countries

[81] In much the same way as France and the UK refrain from using their veto in the UNSC for fear of drawing too much attention to their continued possession of it, publicly questioning compliance with IMF requests could trigger a demand for decreasing European representation on the grounds that they cannot complete their duties because of their over-inflated weighting.

from Africa, Asia, and South America that become UN Security Council members received substantial increases in IMF loans during their membership (Dreher and Vreeland, forthcoming). Their argument is that the IMF offers two significant advantages to the US over a policy of bilateral aid distribution; it is considerably cheaper because costs are spread between the entire IMF membership and the loans are ultimately repaid (with interest), and it has a greater veil of legitimacy. Vreeland and Dreher demonstrate that this have been taking place for 50 years, illustrative of how integrated the UNSC and the IMF have been into US foreign policy. Vreeland claims that France and Britain exert influence over the conditionality of some loans too, in particular to former colonies, done with the acquiescence of the US. Beyond this statistically grounded analysis linking IMF loan agreements to UNSC membership, the preoccupation with US interests prevails across all areas. Senior managers in the IMF

> would virtually never present a recommendation which risked US disproval. Indeed, if the issue is a sensitive one, any recommendation will be 'run past' the US Treasury as it is being prepared for presentation to the board. The implications of this run deep: because senior managers will be unwilling to take recommendations to the board, their staff know that they are wasting their time preparing recommendations of which the US may not approve. (Woods 2003: 107)

The degree of control exerted by the US over which countries receive loans, as well as the conditions attached to them is far greater than simply measuring its capacity to vote on the Board. The continual consideration of US interests that has been institutionalised in the mindset of IMF staff is enormously significant, and something that will take years to erase, if at all possible. Any process of challenging the ideological hegemony of the US will have to begin with a relocation of the IMF away from Washington, which according to the Articles of Agreement would be required if the eurozone or EU as a whole pooled their membership and collectively acquired a larger quota than the US. However, EU membership would require an amendment to the Articles, something that the US has veto power over at present. Part of any grand bargain paving the way for EU membership would likely include a payoff to the US allowing the Fund to stay located in Washington. In such a scenario, it is difficult to see how the EU could challenge current US control over IMF resource allocation.

The Bretton Woods Institutions have different staff-hiring criteria than other UN agencies, which use national quotas to ensure a diverse international staff. The IMF has no such restrictions, and over 40 per cent of staff are nationals of 'English-speaking industrialised countries', namely the US, Canada, the UK, Australia and New Zealand. Moreover, 90 per cent of staff with Ph.D.s received them from American or Canadian universities (Woods 2003: 109). Not only do US citizens and people trained in US universities make up a large proportion of the Fund's staff, but also the US government oversees all senior appointments, and approval is 'de facto necessary' before hiring (Woods 2003: 109). It is now easy to understand why the mindset of Fund staff becomes trained on satisfying the interests of the US government, because anyone seeking promotion to the senior management level will need to have demonstrated that they are acceptable to the US administration. The structural forces behind US control stem not only from the political oversight and threat of funding cuts by Congress, nor the geographical location of Washington, although of course this is very important. In addition, there is the enormous amount of intellectual capital invested in US universities that are capable of attracting the high calibre students and steering them into jobs in the IMF. While Europe has universities capable of competing, their graduates have made little impact on the North American dominance at the Fund.

The final channel of US influence is negotiations taking place on the fringes of the Executive Board. While the US has the ability to veto decisions requiring an 85 per cent majority that are against its interests, it must still work toward building consensus for its preferred policies, even acknowledging its capacity to influence the policy-making of Fund staff. Woods estimates that 'the United States has at least three-dozen US Treasury officials regularly involved in working with, thinking about and offering advice concerning the IMF', while 'many countries have only one or two' (Woods 2003: 111). The US team makes 'frequent direct contacts with the management, staff and Offices of Executive Directors within the Fund, either individually or in groups' to promote its policies among the wider

membership (Woods 2003: 111). 'What matters in an institution like the IMF […] is the strength and cohesion of coalition agreements, rather than the overall size of a constituency voting power. That is the reason why the United States and the G-11 tend to have more impact on IMF decisions that the European Union' (Bini Smaghi 2009: 72). More generally speaking, the EU is widely criticised in for being more concerned with generating a common statement than it is with outreach in international organisations, something which the US spends considerable time doing in the IMF. For the EU to rival the US it would need a comparable network of staff working on liaison duties with other members, in addition to the internal coordination teams. However, given that all 27 member states currently employ staff in Washington, the economies of scale from an integrated representation would almost certainly cover the costs of the necessary staffing. What remains unclear is whether the prestige associated with the separate missions to the Fund will be willingly given up by the member states.

The poverty of EU informal influence in the IMF

As we have seen, much that is written about the future prospects of an enhanced role for Europe in the IMF centre on the debate about coordinated representation, single constituency seats, and the possibility of either a eurozone or EU membership of the IMF. Whether stated implicitly or explicitly, the United States is the target to emulate, the power to balance, or the rival to replace. Regardless of which viewpoint is taken, reforming the representation of the EU in the IMF will almost certainly be accompanied by a reweighting of voting shares, with a number of emerging markets (China, India and Brazil among them) waiting in the wings to increase their influence in the Fund too. As Kennedy argues in the context of the UNSC, the fact that emerging powers are seeking a place in the existing institutional order, rather than choosing to turn their backs on it, should be taken as a sign that the IMF is in overall good health. Additionally, it lends weight to Ikenberry's claim that the post-1945 constitutional order is robust. However, any hopes that the Europeans have about sharing the centre stage with the US must surely be tempered by the crowding in of these new powers. What I have sought to

do is go beyond the existing literature by exploring the informal channels of US influence that supplement its formal voting share. The 16.73 per cent share capable of vetoing changes to the governance of the IMF is an example of privilege through voting, but any coalition of constituencies could theoretically achieve the same result. Much more important are the channels open to the US through its privileged position as host nation, largest donor, ideological hegemon, as well as structural reasons such as the success of US universities in seeing their graduates employed at the Fund. These go 'to the heart of the subtle and invisible way in which political influence affects the work of both the IMF and the World Bank' (Woods 2003: 107). Neither the European Union, nor any other country, is capable of denting America's grip on these informal privileges, but working towards challenging them should be a priority of equal importance to the one of reforming their representation on the Executive Board and membership arrangements in general.

Conclusion

This chapter began by justifying the inclusion of decision making based on privilege in a broader discussion on multilateralism. It was shown through the work of Ikenberry that Great Powers and multilateralism are compatible when it is the preferred institution of 'strategy restraint' intended to mute unstable power asymmetries in the international system. Through multilateralism, a 'constitutional order' fosters durable peace that is resilient to subsequent change in the system. Ruggie's own definition is very much open to such arguments, recalling its distinction between *American* hegemony and American *hegemony*. The overlap between consensus-based and privilege-based decision making (something to be expected since they are ideal types) comes to the fore in minilateralism, which makes decision making easier because of the small number of participants and 'club-like' atmosphere. The select few privileged to be among the core deciders enjoy a considerable amount of power to influence the rules of multilateralism. EU member states have collectively enjoyed this in the WTO (although as we saw in Chapter 3, it is now diminished), and continue to enjoy privileges in the IMF.

In the UN Security Council, the permanent membership of Britain and France places them at the pinnacle of privilege and prestige in the multilateral system. Their entitlement is more questionable that any of the other three members, and because of this they have not used their veto powers since the end of the Cold War for fear of drawing too much attention to themselves. Their privilege is limited to inside knowledge and political influence, and that the 'UN is a club that if you play it properly it will reinforce your interests' as one British diplomat put it (Puchala *et al* 2007: ch. 5). With Europe's over-representation on the UNSC, up to five EU member states realistically have a chance of being members simultaneously, meaning the Union's one-eighth share of UN membership is transposed into a one-third share of UNSC membership. Evidence of how this presence is turned into influence came from the number of EU statements made in the open sessions, as well as the weekly meetings between EU member states held in New York. However, insiders with first hand experience of UNSC politics tell a very different story. They speak of national interests and a tendency to become socialised into the inner circle of UNSC decision making behind closed doors. Talk of a single EU seat seems very distance, especially because the necessary coordination apparatus to provide a coherent policy to the seat's incumbent is absent. Gowan and Brantner (2008) urge the EU to be a more forceful defender of human rights in the UNSC, one that Puchala, Laatikainen and Coate (2007) see as being untenable given the ongoing contestation of the entire human rights regime in the UN at the moment (discussed in detail in the following chapter). Kennedy would add to this the original drafters' concern for ensuring all powers remain within the system, and thus while China and Russia continue to block human rights protecting and R2P missions, at the very least all the 'elephants' remain inside the ring. We should not forget either the increasing use of the UNSC to put together peacebuilding missions that in the future might rely heavily on EU expertise with civilian and military integrated missions. While the EU member states might not be able to push the UNSC in the direction it wants, the

natural direction being taken should mean a greater role for the EU, albeit on UNSC terms.

Finally, we looked at the IMF and the call for either an EU or a eurozone single representation. This could take the form of a single Executive Director's chair, pooling the votes of the 27 member states, or in a reformed Fund a single EU personality in the place of the member states. Once again, the literature called for the EU to punch its weight in an important multilateral organisation. But as Bini Smaghi noted, the EU is faced with a paradox in which greater coordination and common purpose raises the hackles of other states, demanding a re-appraisal of global economic power nested in the developing world. Better self-promotion by the EU will likely speed up the process of reducing its voting weight. However, given that the EU27 have about twice the voting weight of the US at the present time but are still nowhere near challenging it, one is left wondering how big a voting quota the EU actually needs. Perhaps better representation, albeit with a small total number of votes, would still lead to an aggregate increase in influence. In the final part of the chapter, we looked at the informal channels of US influence in the IMF, and on all counts found the EU to be seriously lacking, and in some areas the lead of the US appeared unassailable.

In the opinion of the architects of the UN system, the UNSC, the IMF, and the World Bank were its most important institutions and America was not prepared to let these organisations fall under the control of states hostile to US interests. As a result, their constitutional order was structured so as to grant privilege to the US and those most important to it (both friend and enemy alike). 60 years on there is little sign of this changing, and despite the superficial evidence of EU progress, in the informal decision-making structures at the UNSC and the Fund the US is very powerful. In the UNSC Russia and China are too, pointing to the conclusion that states are very much in control still, and the UN is still the 'last bastion' of Westphalian sovereignty (Puchala *et al* 2007: ch.4).

Table 1: Possible EU positions in response to the tabling of UNSC Resolutions

	EU Position (among Member States on UNSC)	
	EU Split	**EU in concert**
UN Resolution		
Not Attempted	Iraq 2003 ('2nd Resolution)	Recognition of Kosovo 2007
Attempted and Failed	N/A	Zimbabwe 2008, Myanmar 2007*
Passed	N/A	Iran 2003-2009** Iraq 2002 SCR 1441

* Zimbabwe: UN document: S/PV.5933; Myanmar: UN document: S/PV.5619

** The majority of UN resolutions passed fall into this category. As will be discussed later, the interesting question is to what degree the EU is able to influence these outcomes through contributing to the drafting of the resolution to make it acceptable to a majority of states, as well as applying pressure to accept more ambitious resolutions. The case of Iran will be discussed below.

Chapter Five
Negotiation, Rhetoric, and Legitimacy in Multilateral Institutions

> The argument that the voice of the Assembly may be regarded as an expression of the selfish will of an irresponsible majority, organized into a monolithic bloc, is the first resort of a permanent minority and the last resort of a majority which feels itself slipping into minority status. (Claude 1984: 137)

Over the previous three chapters, the representation, influence, and power of the European Union in different international organisations of the multilateral system has been explored. Using Claude's three ideal types of decision making (majoritarianism, consensus, and privilege) as a prism to see multilateral organisations at work, we have generated important new evidence on the behaviour of the EU and its member states across the multilateral system, to show that it cannot be seen as a benign and positive influence in all circumstances and cases. Its report card has been mixed, and there are a number of lessons to be learnt from the exercise that we shall come to presently. As with any framework built on ideal types, actual practice often differs greatly, and without doubt it is impossible to think of a one-size-fits-all approach to studying the EU in the multilateral system. Frequently, international organisations employ composite decision-making structures that make their decision-making procedures highly varied according to their institutional evolution. In the ILO the composite is between consensus drafting of instruments and the majoritarian adoption of them. In the WTO, although there is a formal provision form voting, consensus decision making around concentric circles of influence and power is the norm. In the IMF, there is an informal practice of consensus decision making based on powerful states coordinating their positions in advance, reinforced by the US lobbying Executive Director constituencies, oftentimes the G-11. The common denominator in every case we have looked at is negotiation, either through argumentation, persuasion or bargaining, and oftentimes coupled with carrot-and-stick side payments across the multilateral system as well as bilaterally. In a majoritarian arena it is about winning votes, in a consensus arena it is about turning objection into abstention, while in institutions based on privilege, negotiation is needed to

generate positive outputs because veto privileges block action rather than facilitating it. The oil that lubricates the wheels of multilateral organisations is diplomacy, and is intrinsically political in nature.

If the EU is to be an influential actor in the multilateral system, it must demonstrate the capability to work successfully through diplomatic channels. The widely promoted goal of speaking with one voice is an important one, but it must be assessed in conjunction with the diplomatic arena in which it is projected. For example, in a 'hostile' environment such as the Human Rights Council where opponents of the EU are numerous, reducing the collective presence of the EU to one voice gives more time over to those wanting to drown out its message. In response, the British Presidency (2005) began promoting 'one message, many voices' to counter this tendency and amplify the EU to its proportional weighting among the Council membership. Another consideration is the length of time spent coordinating a common EU position in proportion to the time spent communicating it to like-minded states and those sympathetic to the EU agenda. For a number of years and across much of the multilateral system, natural allies of the EU were frustrated by its tendency to 'talk up to the bell' when producing its own statement and preclude input from others. In recent years, in the UN in New York this has changed thanks to the establishment of contact groups of three or four states to whom each EU member out reaches in parallel to formal institutions (Degrand-Guillard 2009, Laatikainen & Degrand-Guillard 2009). This is a method of information dissemination rather than active cooperation, although the recent examples in the UN General Assembly of the death penalty moratorium resolution (2007, 2008) and the statement on human rights and sexual orientation (2008) progressed beyond this to become co-authorship relations. Countering this argument is the example of the ILO recalled in Chapters 2 and 3, where EU member states voted against each on the adoption of labour standards that only shortly before they had worked together on drafting through common interventions. The puzzling and apparently hypocritical behaviour of some states seemed to underline intergovernmental claims that ultimately national interests drive EU

member states' policies. We saw instead a different picture in which all ILO members (not only EU member states) free ride on expected voting outcomes in order to satisfy difficult domestic constituents. Thus plenary votes are an unreliable benchmark for EU coordination, and it is better to consider the leverage the EU can exert over the content of ILO labour standards by uploading elements from the *acquis communautaire.* By and large, an EU single voice is an important starting point for diplomatic action, but its absence is not in all situations, nor at all times, a liability. As we shall come to presently, equally important are the content of the message and the tone EU interlocutions taken with other states.

This chapter looks in greater detail at two crosscutting themes raised by the preceding discussion, that of negotiation and of legitimacy. The chapter begins by returning to the central questions engaged with in the book, concerning the compatibility of EU goals and objectives with those of the multilateral organisations they act in, and how the two sets do (or do not) coincide within the rubric of 'effective multilateralism'. It moves on to look in detail at the way the EU successfully built a cross-regional coalition in favour of a moratorium on the death penalty in the UNGA, and what lessons this provides for future action. The key themes explored are those of leadership and of argument and rhetoric, and to what extent these facilitate coalition building. The chapter then turns to look at legitimacy in the multilateral system, questioning whether the increasingly fractious relations over human rights could critically weaken the 'community' underpinning system legitimacy (Franck 1988, Clarke 2003). The chapter concludes with the claim that there is a universally recognised principle of argumentative discourse in UN politics that originates in classical Greek philosophy, and as such the pursuit of open politics through argument will strengthen the multilateral system, regardless of its outputs.

Effective multilateralism and EU leadership

Effective multilateralism is a two-way street, where both EU interests, and those of the particular multilateral organisation in which the EU is acting, get realised. We are now able to return to the matrix presented in Chapter 1 and complete the four quadrants with examples from the case studies.

[Insert Table 1]

There are four alternative outcomes from this two-way interaction distributed across the four quadrants of Table 1. In the northwest quadrant both the EU and the multilateral organisation gain from their interaction, yielding a win-win scenario, such as in the FAO reform process initiated after the Independent External Evaluation (IEE) discussed in Chapter 3. It is a widely held view in a substantial amount of the literature that this quadrant is the natural habitat of EU-UN relations. Straying outside it brings into question the ability of the EU to pursue its goal of effective multilateralism. The purpose of this book is to draw attention to the other three quadrants, where there is not a win-win relationship. The northeast quadrant (EU-lose, MO-win) is filled with three examples drawn from the preceding discussion; Post-Cancun WTO, IMF reform and UNSC reform. The removal of the Singapore issues from the WTO Doha Trade round agenda and the expansion of the core group (G-6) point to the objective weakening of the EU while the multilateral organisation becomes stronger by being more representative of the current global order and potentially better able to make decisions around a narrower agenda. The IMF example is more ambiguous depending on one's view of the current arrangement. A lower voting quota suggests an EU loss, but if it is in return for a more coherent EU voice and greater involvement from powerful Southern economies, the gains would yield a win-win scenario. The same argument stands for the UNSC, where the over-representation of the EU (five out of 15 seats) would be lost in any reform deal. However, if in return the UNSC became empowered to tackle serious human rights violations, the price would be worth paying. The southwest quadrant (EU-win, MO-lose) is exemplified by pre-Cancun WTO, where the EU agenda of beyond-the-border liberalisation was not widely accepted. Alternatively, the uploading of maximal standards into ILO labour conventions, allowing the EU to export the *acquis communautaire* internationally,

but oftentimes leaving the subsequent standard unratified and of little relevance to the ILO. The southeast quadrant is the most alarming – a lose-lose scenario for the ILO and the multilateral organisation it is working in. Gowan and Brantner (2008) describe the UN human rights regime regressing, as a result of a core of anti-Western states challenging the universal human rights regime. Puchala *et al* (2007: 185) make a similar argument, but date the beginning of the debate to the UN conference on human rights in Vienna, 1993. Here, EU inability to act, in addition to the 'will' of the majority of states seeking to claw back state sovereignty at the price of human rights protection, could be described as a lose-lose scenario for the EU and the UN (awkwardly assuming that the UN makes human rights protection a higher priority than representing the collective views of the majority of its members). The confrontation over human rights protection in the international system is an example of how legitimacy, understood as a socially 'nested' phenomenon (Clark 2003), can seep from a community when the community's membership begins to question common fundamental values. This issue is addressed in more detail below.

An important consideration that should not be overlooked is the fact that national interests are not static and fixed, but able to change over time. Non-EU states that object to EU positions today may change their policy in the future. Moreover, at any specific time there is also a significant undecided group, which while not as malleable as a 'swinging voter' in the domestic analogy, is nevertheless a target for persuasion. Recalling the table in Chapter 2 showing the votes cast for the 20 UNGA Third Committee resolutions passed by recorded vote in 2008, the three country resolutions (Iran, Myanmar and North Korea) were passed by a *minority* of states, with over a quarter of the UN membership abstaining. In the case of the 2007 and 2008 death penalty resolutions, the incremental progress made on acceptance was by securing the affirmative vote of states that had previously abstained. The core of retentionist states remained constant at around 55, proportionally only a little more than one quarter of the total membership. Gowan and Brantner refer to the key states intent on rolling

back human rights norms as an 'Axis of Sovereignty', and chart the prominence of key states such as China, Cuba, Indonesia, Iran, Russia, Saudi Arabia, Sudan and Zimbabwe in the UNSC, UNGA and HRC (Gowan and Brantner 2008: 11). These states share a common interest in protecting respect for pluralism in the international system and ground their claims in a narrow legal and political interpretation intervening in 'matters which are essentially within the domestic jurisdiction of any state' in Article 2(7) of the UN Charter.[82] The accepted exception is the implementation of UN Security Council resolutions passed under Chapter VII of the UN Charter, in response to threats to international peace and security. However, deciding what constitutes such a threat is a *political* decision taken by the members of the UNSC. Chinese refusal to sanction UNSC action in the wake of the floods in Myanmar in 2008, or in the civil war in Sudan, exemplify the behaviour that Gowan and Brantner have in mind when they place it in the axis. Countering this is the challenge facing the EU, and, it should be added, the great majority of states that do subscribe to the view that gross human rights violations are of international concern. How should the EU act to in order to galvanise the support of a broad coalition in favour of consolidating, and incrementally extending where appropriate, human rights in the UN system? Its goal is to avoid the lose-lose scenario of the 'Axis of Sovereignty' gaining ascendency.

Puchala *et al* in their analysis of the United Nations distinguish between three types of leadership; structural, entrepreneurial, and intellectual (Puchala *et al* 2007: Ch.5). Structural leadership comes from states and groups of states that have the capacity to influence outputs according to their preferences. Three such leaders compete at present, the US, the EU and the G-77, in that order of significance. Entrepreneurial power has traditionally been the preserve of 'middle powers' not strong enough to threaten the great powers, but with enough

[82] The article reads: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.'

resources to make a significant contribution to funding and staffing requirements. Canada, Australia and the Nordic states have traditionally played this role, although the latter less so since all but Norway and Iceland now belong to the EU. Finally, intellectual leadership is provided by the secretariat staff of international organisations. 'Leadership requires followership' (Puchala *et al*. 2007: 136) and the question arises of what form of leadership should the EU offer in order to maximise its followership? The EU's self-identity as a bridge builder and as a multilateral alternative to American unilateralism is similar to what middle powers promise, who credibly claim not to be working solely in the pursuit of national interests. Instead, the EU insists its foreign policy seeks to strengthen multilateralism and facilitate consensus between the US and its opponents from the G-77. The problem for the EU, as Puchala *et al* map out in detail, is that from the perspective of much of the developing world, the EU is not that much more of an attractive partner than the US. Both share worldviews based on western liberal philosophy and liberal capitalist economics. Both put primary emphasis on the individual as the focal point of the international human rights regime, as opposed to family, community or religious group. Where the two differ is in the perception of third parties towards them. The US is seen as straight talking and predictable in pursuit of its own interests, which are clearly articulated making negotiations tough but honest. The EU, by contrast, has a reputation for being difficult to negotiate with due to its opaque internal decision making and the mixed messages coming from different member states. Moreover, it is distrusted by some states because of the way it proclaims to seek universal goals but is (in the eyes of third parties) simply pursing its own policy objectives. It was summed up in an interview with a diplomat responsible for chairing a cross-regional grouping frequently opposed to a number of EU human rights positions, as a reflex of 'disagreeing first and deciding why later'. The breakdown in trust illustrated here resonates with an issue raised by Puchala, Laatikainen and Coate (2007), as well as Jørgensen and Laatikainen (2009), which is the EU often dresses European values up as universal ones to be promoted through the multilateral system. This is a critical blind spot that severely limits its potential followership because other states in the multilateral system see through the claims of universalism to a

European/'Western' set of norms and values beneath. Now that the problem faced by the EU has been articulated, let us turn and look at some recent attempts to promote progressive human rights norms in the UN General Assembly.

Learning from action on the death penalty and LGBT rights

Promoting progress human rights in the UNGA

This section considers how the EU entered into dialogue with the wider membership of the UN in order to build a broad coalition in support of two progressive human rights norms, the first action against the use of the death penalty, and the second to promote greater protection of human rights for members of the Lesbian, Gay, Bisexual and Transgender (LGBT) community. The intricate details of the drafting process for the 2007 resolution on a moratorium on the death penalty were outlined in Chapter 2, so there is no need to recount them in detail here. It is more important to build up a picture of an emerging process, by comparing the 2007 action and the 2008 follow up, with the preparations for a statement read out in the 2008 General Assembly concerning human rights and sexual orientation.[83] Starting with the preparation of an EU common position (in itself oftentimes a laborious process), the closest circle consists of neighbourhood states, either in some form of formal relationship (accession or candidate countries) from whom association is expected as a demonstration of their commitment to the Common Foreign and Security Policy (CFSP). The next circle is comprised of like-minded European (EEA members such as Norway, Switzerland, Iceland and Lichtenstein) and non-European OECD states with whom the EU share many common interests,[84] yet failure to reach out to them in coordination meetings is well documented (Smith 2006a, 2006b). South and Central American states are often closely aligned with the EU on human rights issues. Beyond that, Asia and Africa individual states are individually targeted according to the

[83] http://webcast.un.org/ramgen/ondemand/ga/63/2008/ga081218am.rm (accessed 31 March 2009).

[84] On the issue of the death penalty, Japan and the US do not support the EU moratorium.

likelihood they will be supportive, and as such are 'cherry-picked'. In each successive circle the marginal returns of outreach grow smaller, insofar as more effort is needed to convince each new member to join the coalition. But coalition building is not atomistic; attracting the support of key members can lead to a cascading effect within a region, and there is a degree of momentum associated with this method as the first-mover dilemma is overcome.

Building these large coalitions is important for two reasons. The first is that they chisel away at the traditional regional constituencies that pitch 'western' resolutions supported by the Global North against the 'rest'. Where Latin America stands depends on the issue area, being 'Western' in terms of individual human rights but belonging to the 'South' on economic issues. By contrast, resolutions and initiatives that have support from all five UN regions cannot be painted in partisan colours and make it more difficult to mobilise the constituency of the Global South in opposition. Secondly, in majoritarian arenas the Global North is unable to construct a winning coalition even with the support of Latin America, it requires too states from the Africa and Asia regions. Building a coalition of 97 brings the simple majority, and once achieved the second concern is how to move towards 130+ states' support constituting a two-thirds majority. While legally unimportant, minority opponents find it harder to cry foul with this margin or support. With each step to attract new supporters to expand the coalition, the potential for a 'dialogue with the deaf' increases, but to bring about significant improvement to human rights protection globally there must be more done than simply winning majority votes in the UNGA.

The death penalty resolution revisited

The European Union first attempted to pass a resolution in the UNGA for the worldwide abolition of the death penalty in 1999, one year after successfully passing such a resolution in the Commission on Human Rights (Bantekas & Hodgkinson 2004, Kissack 2008b). That effort degenerated into an unmitigated

failure in the eyes of everyone bar a few optimistic Italian commentators, whose opinion was coloured by the fact that Italy was not only the major driving force behind the drafting process, but also the reason why it came so close to being counterproductive and damaging abolitionists' plans. In the UNGA Third Committee (Social, Humanitarian and Cultural), a group of retentionist states attempted to insert an amendment into the text of the resolution asserting the primacy of Article 2(7) of the Charter. Such amendments, referred to colloquially by diplomats as 'wrecking amendments', seek to secure the primacy of state sovereignty and deny that there is a human rights element to the issue. In the words of a leading Amnesty International campaigner, this would set their death penalty project back ten years.[85] Italy, according to Bantekas and Hodgkinson's account, were on the cusp of agreeing to such an amendment when the resolution was suddenly dropped and there was no further discussion in the committee (Bantekas & Hodgkinson 2004: 29). In their defence, the supporters of Italian actions argue that putting the item on the agenda on the Third Committee was an important achievement. However, the EU retreated to the relatively permissive environment of the UNCHR and continued authoring resolutions against the death penalty until the Commission's reform in 2005. These events evidenced the widely held view that the UNGA has been under the sway of the Global South, while the numerical skew on UNCHR membership towards Europe and Latin America gave the EU and its closest circles of allies the ability to win recorded votes (Smith 2006b, Smith 2008; Gowan and Brantner 2008: 5) However, when the newly formed Human Rights Council emerged with its reweighted regional representation favouring Asia and Africa over WEOG, Eastern Europe and GRULAC, the EU has found itself repeatedly in the minority.

[85] This view is also expressed by EU and non-EU diplomats working in the UNGA Third Committee. I would like to thank the 22 diplomats and NGO representatives who talked to me in New York during the week 31 March - 4 April 2008, and 16 -20 February 2009. Personal interviews were carried out under the Chatham House Rule, and thus to maintain their anonymity no references to their nationalities are made.

In 2006, the Finnish EU Presidency began circulating a draft statement to be read out in the UN General Assembly setting out the reasons for abolishing the death penalty. The statement read out by Finland in the General Assembly was on behalf of 84 other states, establishing that there was sufficient concern for the issue to place it on the agenda of the Third Committee the following year.[86] The German EU Presidency of the first semester of 2007 held preliminary discussions on how to maintain momentum, but progress was limited and there was still no agreement on a common position when Portugal assumed the Presidency and preparations for the 62nd Session began in New York. Against the advice of Amnesty International (who asked for evidence of at least 100 states willing to co-sponsor the resolution as a sign of certain success), and from a very slow start, the EU member states began establishing a common position between the staunch abolitionists (led by Denmark, the Netherlands, Sweden) and the pragmatists willing to accept less (led by Italy). Importantly, however, the decision was made to form a group of ten co-authors consisting of two states from each of the five UN regions.[87] Firstly, this demonstrated that lessons had been learnt from the 1999 episode because draft resolutions are received with greater hostility when they are perceived as being authored exclusively by the EU. Secondly, the decision that only Portugal would participate in the co-authorship meetings gave important leverage

[86] http://www.un.org/News/Press/docs/2006/ga10562.doc.htm (Accessed 8 April 2009) The 84 states were: Albania, Andorra, Angola, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Canada, Cape Verde, Chile, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Estonia, France, Georgia, Germany, Greece, Guatemala, Guinea-Bissau, Haiti, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Marshall Islands, Mauritius, Mexico, Federated States of Micronesia, Moldova, Monaco, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Palau, Panama, Paraguay, Philippines, Poland, Portugal, Romania, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Slovakia, Slovenia, Solomon Islands, Spain, Sweden, Switzerland, former Yugoslav Republic of Macedonia, Timor-Leste, Turkey, Tuvalu, United Kingdom, Ukraine, Uruguay, Vanuatu and Venezuela.

[87] The ten states were: Angola and Gabon (Africa), Philippines and Timor-Leste (Asia), Albania and Croatia (Eastern Europe), Brazil and Mexico (South America) New Zealand and Portugal (WEOG).

to the Presidency to galvanise agreement within the EU. Early co-authors meetings left the nine non-EU states frustrated by the negotiation constraints placed on the Portuguese and unconvinced about their actual authorship of the resolution. Uppermost in their minds was avoiding the accusation of being 'puppets' of the EU and consequently asserted their own impression on the text of the resolution, changing Portugal's role from that of a highly constrained intermediary between two authorship groups into an equal player among the ten and more of a messenger back to the 27. Some diplomats amongst the EU27 felt that the EU lost control of the authorship process; however, what cannot be denied is the ultimate success of the resolution. EU and non-EU diplomats agree on which factors contributed to the successful passing of the resolution. The first was the cross-regional co-authorship that framed the resolution as a universally acceptable human rights norm, rather than allowing detractors to portray it as Western. Secondly, the Portuguese Presidency orchestrated a choreographed and comprehensive defence of all conceivable amendments that the retentionist states could have tabled, preparing the interventions for a wide spectrum of co-authoring and co-sponsoring states. The pitfall of 1999 was avoided and when put to a recorded vote in the General Assembly the resolution was passed.[88]

Sexual orientation and universal human rights

The following year at the 63rd Session of the General Assembly in 2008, the EU took up the promotion of progressive human rights norms on two fronts. The death penalty was on the agenda of the Third Committee again because the 2007 resolution requested the UN Secretariat write a report on the use of the death penalty around the world. In addition to voting to accept the report, a new resolution was tabled asking for the issue to be considered again in 2010 (two years henceforth). Once again, retentionist states tried to wreck the resolution

[88] The resolution calling for a moratorium on the death penalty (A/62/439/Add.2) was adopted by a recorded of vote of 104 in favour to 54 against, with 29 abstentions. 18 December 2007, (76th & 77th Meetings). See UN press document GA10678.

during the drafting process and again the co-authors coordinated their defence and saw the resolution tabled before the General Assembly unaltered. Chile stood in the place of Portugal as the diplomatic mission charged with responsibility for coordinating the authoring group. The importance of passing the baton from Europe to Latin America is as yet unclear. Chile was not part of the original group of ten co-authors and its elevation to the role of coordinating state might be taken as a sign of further widening the burden sharing between human rights promoting states. Moreover, it could also be seen as an important step toward reducing the visibility of the EU inside the death penalty authorship group, deflecting hostility and enhancing the multi-regional dimension. However, diplomats involved in the negotiation process were not aware of any strategic reasoning behind the shift, and when pressed for an explanation of why Chile took the role, point to the dedication of the diplomatic team and their willingness to shoulder the extra burden of work.[89] Their dedication was rewarded with a successful passing of the resolution with a slightly higher vote than in 2007. This was mainly a result of states that had abstained in 2007 voting in favour in 2008.[90]

Another important consideration for why the EU played a smaller role in the death penalty resolution in 2008 is because the French Presidency was occupied with the second HR issue being promoted, a statement to the General Assembly calling for the full implementation of fundamental human rights irrespective of sexual identity.[91] The statement was intended to raise awareness of the discrimination against LGBT people around the world, and was framed as a call to ensure universal rights were applied universally. France was one of seven states (France, the Netherlands, Argentina, Brazil, Croatia, Gabon and Norway) in a drafting group that was seeking to build on promotional work in the Commission

[89] Personal interviews, 16 -20 February 2009, New York.

[90] The resolution before the plenary (A/63/430/Add.2) was adopted on 18 December 2008 by a recorded vote of 106 in favour to 46 against, with 34 abstentions.

[91] http://www.iglhrc.org/cgi-bin/iowa/article/pressroom/pressrelease/826.html (accessed 31 March 2009)

on Human Rights and Human Rights Council.[92] By the time the statement was read out before the General Assembly by the Argentine Ambassador on 18 December 2008, 66 states (including members from each of the five UN regions) had added their signatures.[93] At the March 2009 Human Rights Council meeting in Geneva, the United States of America aligned itself with the document, bring to a total of 67 supporting states. Non-EU states within the core group also claim that they had learnt lessons from death penalty drafting process in 2007 and knew that from the first day they had to demand ownership of the document and not let the EU representatives claim special privileges based on their need to stick closely to EU common positions. The low profile of the EU in the drafting process may have made the core group feel more involved, but it does not appear to have lessened the hostility toward the issue. Immediately after the statement was presented, a 'counter statement' coordinated by the Organisation of the Islamic Conference was read out by Syria, supported by 57 states that accepted universal human rights but did not accept that states were obliged to protect the rights of LGBT peoples because such 'behaviours' are not genetic and should not be linked to existing human rights instruments. The statement also claimed that the notion of sexual orientation 'could possibly legitimize many deplorable acts, including paedophilia'.

[92] This statement came after five years of action to promote the issue in the UN system. In 2003, Brazil attempted to pass a resolution in the UN Commission on Human Rights but failed. In 2005, New Zealand drafted a statement and received 32 signatures in support, and in 2006 Norway drafted another statement in the Human Rights Council and received 54.

[93] Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Cape Verde, Central African Republic, Chile, Colombia, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mauritius, Mexico, Montenegro, Nepal, Netherlands, New Zealand, Nicaragua, Norway, Paraguay, Poland, Portugal, Romania, San Marino, Sao Tome and Principe, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Timor-Leste, United Kingdom, Uruguay, and Venezuela.

Instead, more work should be done on making the family the main unit of society.[94] While a response against the sexual orientation statement was expected, diplomats from the signatory states were genuinely taken aback by the forcefulness of the 'counter statement'.

The crucial question is how these two efforts are related, and to what extent they constitute a model for future action. The process begins with a statement to demonstrate a sufficiently high number of states take the view that an issue should be discussed in the Third Committee of the UNGA. The following year, a draft resolution is presented with the aim of achieving a narrow victory relying on the fact it is a majoritarian decision-making process. Interestingly, while the diplomats in New York who worked on the sexual orientation statement are non-committal when asked whether a resolution will be presented in 2009 at the 64th Session, opponents are fully expectant that it will, and have started to prepare accordingly. The 2008 'counter statement' is the first step in their offensive campaign. Promotion of the sexual orientation statement is certainly hampered by its position in the wake of the death penalty resolution. Two overlapping but distinct constituencies are inclined to oppose a resolution on this issue at any cost. The first are the signatories of the 'counter' statement and other states that spoke against the issue itself. The second are states that happily accept enhancing the protection of LGBT communities and ensuring their human rights are respected, but are extremely wary of the precedent being set. They fear that a conveyor belt of progressive human rights resolutions (starting out as statements) will undermine the principal of non-intervention. South Africa is an example of such a state, which while having some of he most progressive law on gay rights in the world, does not want to jeopardise its leadership and influence among other African states and the G-77. This is particularly galling for supporters of the sexual orientation statement since they have intentionally pitched their demands firmly

[94] The 'counter' statement was read by Syria, while Ethiopia, Russia and the Holy See also spoke against the sexual orientation statement.
http://www.un.org/news/Press/docs/2008/ga10801.doc.htm (accessed 8 April 2009).

within the parameters of accepted universal human rights. Their demand is that universal means universal, and every speaker on the 18th December 2008 accepted the existence of universal human rights – including those against the issue. Critics focused on two points. The first is that sexual orientation is not genetic and therefore cannot be considered as grounds for identification as a group entitled to a dedicated rights declaration. The second justifies the primacy of national law and the right to criminalise homosexuality, arguing that *choosing* one's sexual identity in a country where homosexuality is forbidden is tantamount to *choosing* to break the law. In contrast to the death penalty debate, where the central issue has been over non-intervention in national law verses the right to life, the sexual orientation debate is grounded in cultural issues, and as such likely to be much more protracted. The first lesson from the death penalty transition from the 2006 statement to 2007 resolution is that a major concession is going to be needed to gain enough support for the text. The original demand for the abolition of the death penalty was tempered into a call for a moratorium, a significant climb down and enough to secure an extra 20 votes (the difference between the number of signatories in 2006 – 84 and the number of votes in favour in 2007 – 104). What concession can be made to secure the 30+ needed to pass a sexual orientation resolution? Decriminalisation of homosexuality is one possibility, while another is to work on the existing consensus around universal rights. Arguably neither is as large a concession as the abolitionists made for their 20 votes, because the strategy of non-confrontation and seeking common ground has left few large bargaining chips to concede. However its supporters choose to proceed, the shadow of the death penalty process will continue to influence the decisions of states to support this issue or not.

Sophistry and the promotion of EU values and norms

The promotion of universal values need not be an act of trench warfare. While there is a clearly identifiable group of states both for and again, the middle ground is open for 'capture' due to the dynamic and changing nature of politics in the UN system. There are, however, a few basic conditions that the EU should bear in mind and they require it to change its behaviour towards other states in the UN. The first recommendation to be made is that argumentation is extremely important, both during the drafting and revision process at the committee stage, and in the regional outreach process. In 1999, the attempt to secure enough support for a death penalty resolution failed because the co-sponsors were unable to maintain a coherent position in the face of aggressive amendments from the retentionist camp. The success in 2007 came in part because this failing did not reoccur. The stage management of a number of counter arguments, both in terms of content and spokesperson, prevented the dissolution of the co-sponsors and demonstrated that support for the resolution was resolute. It would be erroneous to claim that during the debate, wavering states in the 'middle ground' decide how to cast their vote on the basis of the better argument alone. Diplomats have clear instructions from their national capitals on which way to vote. However, states in the Africa and Asia regions must decide whether the costs associated with subsequent sanctions by regional retentionist powers are outweighed by the gains from supporting a progressive human rights norm. Gains may take the form of carrots promising additional aid, but equally there is anecdotal evidence that abolitionists wielded sticks too (one interviewee claimed that a large European member state threatened to reduce aid to a recipient if it voted against the death penalty resolution). Into this calculus must be factored too the fate of the resolution, and the extent to which a successful adoption alters the costs of supporting it. Why squander favour with a regional power for the sake of a failed human rights resolution? The ability to demonstrate that a resolution is likely to succeed and project the impression of 'backing the winner' is an important consideration. Moreover, the development of powerful and convincing arguments is an important tool for co-authors and co-sponsors in the African and Asian regional groups who

must defend their participation against hostile critics intent on casting them as pawns of their former colonial masters. The EU leadership is improved when it is able to demonstrate why other should follow it through clearly articulating why it believes its position is *better*.[95] If it is able to convince other states too, it deserves its leadership credentials.[96]

The second claim being made is that the process of arguing is an important characteristic of the politics of the multilateral system. Puchala *et al* discuss the erosion of universal values within the UN system, which since its conception has been rooted in the liberal tradition (Puchala *et al* 2007: 179). Their concern for the questioning of human rights is important, but it should be pointed out that the *mode* of questioning remains Western and liberal. This is seen at the individual and system level. The defence of sovereignty and non-intervention is the assertion of equality among states, and is a *de facto* acceptance of the expansion of the Westphalian system to the global level (Buzan and Little 2000). At the individual level, diplomats are socialised into the working of the UN system and learn how to use it to best achieve their aims. Evidence of this can be found in the numerous examples of 'small' states having gifted and respected ambassadors whose personal influence is disproportional to the size of the country they represent.[97] The 'rules of the game' are not being challenged, and the basic template for engagement remains a view of politics based on the ancient Greek polis, where

[95] The term 'better' is an awkward one because it implies either moral relativism or subjective assessment. I have chosen it because I wish to highlight the uncomfortable dilemma of liberalism when faced with the problem of engaging with others that do not share its foundations in equality and freedom of expression. The most obvious examples of this are giving freedom of expression to those who advocate non-liberal beliefs (such as 'preachers of hate'), or of democratic elections including parties intent on establishing non-democratic societies upon victory.

[96] In the context of the death penalty this was made easier because the debate was partially framed around legal issues. The 'counter statement' read out immediately are the 2008 sexual orientation statement framed its rejection much more heavily in cultural terms.

[97] In the FAO in Rome, Zimbabwe is one example; while in the WTO in Geneva, Ghana fits the same profile (Elsig 2006: fn 64).

citizens (or specifically free men) gathered to take decisions and debate action. The politics of the polis and the art of speaking are interrogated by Plato in *Gorgias* in his account of a meeting between Socrates and the sophists to debate the purpose of argumentation. Socrates maintains that argument should be used in pursuit of the truth, while the sophists are skilful orators practised in the art of convincing large audiences to support their position, regardless of motive. Their 'art' is rhetoric and it is described as a form of power because it gives them the capacity to control other men. While Socrates claims to be the only one to actually seek truth, he is unable to convince the sophists he is right. Anecdotally, this provides a useful insight into the EU's role in promoting human rights. While it may claim to be serving the greater good by promoting human rights protection, in the pragmatic world of multilateral organisations far from the ideals of ancient Greece, an inability to convince others of the worthiness of one's position is a major shortcoming. The EU must become a more influential actor with the ability to convince other states of its capacity to lead. In short, it needs to become less like Socrates and a more like the sophists, who used their powerful command of rhetoric to convince others to accept their arguments.[98] In the UN system in particular, as well as elsewhere in the wider multilateral system more generally, this is an important tool in any leader. The question to turn to now is how this could work in practice.

Argumentation and circles of influence around the EU

A case has been made for why the ability to influence negotiations through skilful use of argument and rhetoric is important for leadership in the multilateral system. But how would this work in practice? In order to answer this question we will focus on the way in which the EU constructs its coalition of support for its actions, from a core of like-minded EU and non-EU states across the UN regions, to

[98] Plato warned that sophistry was bad because it was not used in pursuit of the truth, the primary virtue. I am using the example here to illustrate that the EU risks being ineffective if it forsakes the delivery of its message for concern for the message itself.

which is added additional members starting with those most receptive to its message – in this case human rights. Regardless of where states sit in the concentric circle model, we cannot overlook the fact that the primary reason why non-EU states are willing to support EU-sponsored human rights resolutions is because they are in their own national interest. The concentric circles model of relations between EU and non-EU states is based on the assumption that those in nearest circles are 'like-minded' and national interests are *more* likely to be complementary and shared. For example, Mexico's keen advocacy against the death penalty is partially explained by the disproportionally high number of Mexicans on death row in the United States, as a percentage of the total population of those sentenced to death. Similarly, the top five destinations for Filipinos working abroad are Saudi Arabia, Japan, Hong Kong, the UAE and Taiwan, of which only Hong Kong has abolished the death penalty. Both Mexico and the Philippines were among the ten co-authors of the 2007 death penalty resolution. But how are others convinced to join, and what is the limit of coalition building as it becomes progressively harder to add more members? Using the work of Ian Manners, Thomas Risse, and Frank Schimmelfennig we will look at the mechanisms of argument over three circles of influence.[99]

The inner circle of influence and normative power

Analysis of the death penalty would not be complete without consideration of Ian Manners seminal essay *Normative Power Europe: A contradiction in terms*, which not only explores the ability of the EU to shape norms by having the 'ability to define what passes for "normal" in world politics' but also specifically addresses promoting the abolition of the death penalty (2002: 253). To recap the central tenets of the thesis, Manners argues firstly that the debate between civilian power

[99] There is insufficient space to analyse the role of the death penalty and LGBT rights in the bilateral relations between the EU and third states, or the linkages between national foreign, development and aid policies and these issues, which are considered in Balfour (2006) and Lerch and Schwellnus (2007).

(championed by Duchêne) and military power (championed by Bull) that has polarised the study of the EU in international relations actually have some important commonalities. These include their 'shared interest in the maintenance of the *status quo* in international relations which maintained the centrality of the Westphalian nation-state', their shared valuing of 'direct physical power in the form of actual empirical capabilities' and finally they 'both saw European interests as paramount' (Manners 2002: 238). The civilian-military power debate also has a natural tendency to slide into a discussion about the EU's state-like qualities, or lack thereof. The second stage of the thesis argues that in the post-Cold War world in which victory over the USSR was due to the 'collapse of [Soviet communist] norms rather than the power of force', and we should reflect 'on what those revolutions tell us about the power of ideas and norms' (Manners 2002: 238). The study of normative power Europe in the international system is appropriate in the post-Soviet world, and leads beyond the discussion of state-like qualities inherent in the civilian-military debate towards assessing the unique identity of the EU. Thus, the third stage of the thesis considers how the unique constitution of the EU lends itself to being a normative power. Through the identification of five core norms and four subsidiary norms located within the legal texts of the Union,[100] the EU is able to 'present and legitimate itself as being more than the sum of its parts' and this is manifested in its intra- and inter- national relations (Manners 2002: 244). Manners presents the abolition of the death penalty as an example of the EU's normative power agenda, arguing that while it is based on UN and Council of Europe norms, the EU took ownership of the norm itself and started promoting it in reference to its own moral and legal framework after it 'was legalized through the Amsterdam declaration' (Manners 2002: 252). He goes on to show how the abolitionist norm was firstly internalised among member states, then incorporated in the accession agreements of Central and Eastern states, and later adopted by states in the EU's neighbourhood amidst the milieu of intensifying institutional dialogue. In the wider world, the EU 'contributes towards raising the issue to the

[100] These are: peace, liberty, democracy, the rule of law, respect for human rights, and the subsidiary norms: social solidarity, anti-discrimination, sustainable development and good governance (Manners 2002: 242-243).

international level' (Manners 2002: 248). Does this help to explain how the EU attracts support among the wider UN membership?

Normative power Europe can certainly help explain why Europe is one of the densest spheres of support for the moratorium resolution, based on the fact that many states have already ratified the relevant Council of Europe's (CoE) European Convention on Human Rights (ECHR) Protocol 6 to abolish the death penalty. Manners argues that accession to the CoE was insufficient to bring about state ratification of Protocol No. 6, and only subsequent EU pressure to do so brought compliance, thus attributing the adoption of CoE laws to EU influence.[101] Within the European neighbourhood, support for the UNGA resolution is likely to come as a result of prior normative action by the EU. Beyond the geographic scope of the CoE, the EU has promoted its abolitionist norm through its bilateral and regional dialogue and 'through its engagement with the "super-executioners", China and the USA', although he concedes that what 'is self-evident about this engagement is the extent to which the EU is clearly not going to change the minds of the governments concerned' (Manners 2002: 248). The ambitions of the EU have been tempered in the UN system, as seen in the shift in focus from abolition to a moratorium. One of the biggest hurdles faced by the abolitionist camp is that the death penalty is not illegal under international law and is tackled in an optional Protocol (No.2 of 1989) of the International Covenant on Civil and Political Rights. This is all the more a problem for Manners argument given the centrality of law within it, both in codifying norms at the European level that enables the EU to promote those norms externally, and in the EU's demands upon neighbouring states that they demonstrate their commitment through accession to the ECHR protocol. What remains unexplained is whether *arguing* the EU position in the UNGA is a strategy worthy of pursuit. Perhaps this is no more than should be expected given the fact that, according to Manners, 'the most important factor shaping the international role of the EU is *not what it does or what it says*, but what

[101] Russia is one of the examples discussed by Manners, and it has voted in favour of the UNGA resolutions both years, despite being in Gowan and Brantner's 'Axis of Sovereignty'.

it is' [emphasis added] (Manners 2002: 252). While the 'ontological quality' of normative power provides ontological security to the EU (Manners 2002: 252), it exposes the Union to hostility from other UN members who cite its 'holier than thou' approach to politics as a reason for distrust and resentment. For this reason, we must look elsewhere for a useful theoretical framework to understand the EU's argumentative strategy in the UNGA beyond its closest spheres of allies.

Swing states and the logic of argumentation

Thomas Risse has theorised the 'logic of argumentation' in which

> processes of argumentation, deliberation, and persuasion constitute a distinct mode of social interaction to be differentiated from both strategic bargaining – the realm of rational choice – and rule guided behaviour – the realm of sociological institutionalism. (Risse 2000: 1)

He demonstrates how March and Olsen's 'logic of consequentialism' and 'logic of appropriateness' are complemented by the 'logic of argumentation'. Risse uses Habermas' critical theory of communicative action as a meta-theoretical framework and shows how some of the core assumptions of a 'common lifeworld' and 'ideal speech situations' can be relaxed to the extent that is applicable to world politics (Risse 2000: 14-19). Risse tackles the first criticism by rehearsing the constructivist explanation of the anarchical international system as an intersubjectively understood and experienced phenomenon. He also articulates a second line reasoning that 'dense interaction patterns within highly regulated international institutions' help construct common lifeworlds, of which the diplomat networks working on Third Committee issues in the UN is just such an institution. The second criticism is also dealt with by arguing that although power relations intervene to disrupt the assumption of an ideal speech situation, they do not explain outcomes of argumentation. Risse asserts that we can 'still maintain that truth-seeking behaviour leading to a reasoned consensus is possible in international affairs' (Risse 2000: 19). He moves on to illustrate his example with an analysis of how human rights norms are socialised into domestic practice, noting three stages. Initially, 'norm-violating governments not only deny the

validity of the international norms but also ridicule their accusers as ignorant "foreigners"… [and] [m]any Third World governments engage in an anti-colonial and anti-imperialist as well as nationalist discourse at this stage' (Risse 2000: 29). We have seen examples of this in the arguments presented by retentionist states. Over time and under pressure norm-violating governments are forced into making tactical concessions and change their rhetoric to 'no longer deny the validity of the international norm. … The more norm-violating governments accept the validity of international norms, the more they start arguing with their critics over specific accusations (Risse 2000: 29). The sexual orientation and human rights debate is currently taking place at this level, with arguments about how to promote universal human rights, rather than challenging the rights themselves. During this second stage, 'a discursive opening is created for their critics to challenge them further: If you say you accept human rights, then why do you systematically violate them?' (Risse 2000: 32). Risse notes that the discourse shifts from being focused on validity claims toward being focused on interpreting law, and in our case it is the interpretation of international law around the UN Charter and existing human rights law. Ultimately, this results in a final stage in which state behaviour changes to accommodate the norm domestically, leading Risse to conclude that this demonstrates 'a process of argumentative "self-entrapment" that starts as rhetorical action and strategic adaptation to external pressures but ends up as argumentative behaviour […] as if they were engaged in a true moral discourse' (Risse 2000: 32). In summary, for Risse, argumentation matters because it does bring about a change in national policymaking and leads to substantial and robust human rights protection through an internalisation of the norms. This provides a means to understand the changing interests and identities of the states that are in the 'middle ground' of the UN system, and open to being convinced of the worthiness of progressive human rights norms.

Rhetorical entrapment or dialogue with the deaf?

Frank Schimmelfennig has written extensively on 'rhetorical action' and 'rhetorical entrapment' as a way of bridging the explanation gap between rational choice and

sociological institutional approaches to the study of decision making in international organisations. As he says in relation to the EU enlargement from 15 to 27 states:

> Although rationalism can explain most actor preferences and much of their bargaining behaviour, it fails to account for the collective decision for enlargement. Sociological institutionalism, in turn, can explain the outcome but not the input. To provide the missing link between egotistic preferences and a norm-conforming outcome, I introduced "rhetorical action", the strategic use of norm-based arguments. (Schimmelfennig 2001: 76)

Behind the puzzle of the decision to enlarge the EU that provides his case study, Schimmelfennig wants to bring the role of norms and legitimacy into the equation without buying the idea that actors interests and identities change as a result of debate. He wants to explain why actors are forced to behave *against* their interests, *contra* Risse who sees argument leading to a change in interests. Schimmelfennig's 'rhetorical actors do not engage in a "cooperative search for truth" but seek to assert their own standpoint and "are not prepared to change their own beliefs or to be persuaded themselves by the 'better argument'"' (Schimmelfennig 2001: fn.55 quoting Risse 2000: 8). The binding commitment on states to act against their self-interest is derived from membership of a community that has its own legitimate normative framework, and when state action is demonstrated to be at odds with community norms, deviant states are said to become 'rhetorically entrapped'. All members of the community seek to frame their own interests in accordance with community norms and their opponents in contravention, resulting in 'the strategic use of norm-based arguments' (Schimmelfennig 2001: 62).

To what extent is this model applicable to the EU's argumentation in the UNGA? The much lower level of socialisation of member states to the norms and principles of the UN than the 15 EU member states to European institutions is not the problem that it would initially appear to be. According to Schimmelfennig, 'rhetorical action presupposes weakly socialized actors' and the theoretical purchase of the theory is that socialisation is insufficiently strong to influence state interests because 'it is not expected that collective identity shapes concrete preferences' (Schimmelfennig 2001: 62). Shifting focus from the EU to the UN does

not undermine the application of the argument. However, in order for entrapment to take place and for naming and shaming to affect behaviour 'actors are assumed to belong to a community whose constitutive values and norms they share' (Schimmelfennig 2001: 62). The community places obligations on members (states) to behave in accordance to its 'standard of legitimacy', although they

> do not take the standard of legitimacy either for granted or as a moral imperative that directly motivates their goals and behaviours. They confront the standard of legitimacy as an *external institutional resource and constraint*' [emphasis in original]. (Schimmelfennig 2001: 63)

Within the UN the standard of legitimacy is more minimal than in the EU where, for example, state sovereignty is the primary determinant of membership but not on the type of political regime inside the state, or its geographic location, as in the EU. In the case of the death penalty, the debate between abolitionists and retentionists centred upon whether the issue belonged within the Third or the Sixth Committees, i.e. whether it was a human rights issue or a domestic legal question. By differing over the relationship between the death penalty and the UN Charter, states sought to 'argumentatively back up their selfish goals and delegitimize the position of their opponents' (Schimmelfennig 2001: 63). The extent to which legitimacy matters is seen through the effectiveness of 'shaming' those states that have 'declared their general support of the standard of legitimacy at an earlier point in time' (Schimmelfennig 2001: 64). Schimmelfennig carefully constructs his argument so as to demonstrate that 'even if community members only use the standard of legitimacy opportunistically to advance their self-interest, they can become entrapped by their own arguments and behave *as if they had taken them seriously*' [emphasis added] (Schimmelfennig 2001: 65). In short, successful 'rhetorical action silences opposition to, without bringing about a substantive consensus on, a norm-conforming policy' (Schimmelfennig 2001: 65).

Rhetorical action is an important tool for understanding the interaction between the EU and those states on the periphery of its circle of influence and those outside its sphere of influence all together. These states are not likely in the short term to change their national positions regarding progressive human rights

standards such as the death penalty or LGBT rights. There is weak socialisation to the extent that the preservation of plurality between states (and differences on HR issues is an important loci of pluralism) *is* the primary social norm, manifested in sovereign autonomy and non-interference. However, for rhetorical action to work there must be an opportunity cost to being shamed in order for the community to have leverage over dissident members. The ability to label community norms as 'imperialist' or 'Western' is an escape clause from rhetorical entrapment, thus making the regional constellation of co-authoring and co-signing states is important. Overall, Schimmelfennig contributes to understanding how the EU can build a 'big tent' that while unable to accommodate all states, nevertheless has a reliable way of silencing those who in the short and medium term will not adhere to the standard in practice as it is against their interests. This is the best that can be reasonably hoped for given the non-binding nature of UNGA resolutions on the law and practice of the member states. Nevertheless it provides the majority with the opportunity to pursue a progressive agenda unimpeded by the petitions of the minority.

Each of these three theoretical perspectives sheds light on one part of the coalition assembly process, Manners with the innermost circle, Risse applied to those predisposed to be generally sympathetic to arguments about HR norms, and Schimmelfennig explaining the more peripheral states that change neither their interests or identities, but become rhetorically entrapped. In combination, they explain in more detail the mechanisms through which argumentation can foster leadership in the multilateral system, which lies at the heart of all three ideal types of decision making. So far, we have presented evidence supporting the claim that a universal set of values underpins politics in the UN system, through which other values such as human rights are contested. EU leadership in second-order values disputes rests on maximising its capacity to attract followers through rhetoric and persuasion. However, this argument is itself based on assuming that diplomats in the multilateral system remain committed to the politics of argument, and that it remains legitimate. We shall now turn to explore the question of legitimacy in the

multilateral system in the specific context of binding states into a single, universal normative system.

Legitimacy, the United Nations and the International Community

'What motivates states to follow international norms, rules, and commitments?' asks Ian Hurd (Hurd 1999: 379). His answer is that there are three broad, accepted reasons why a social actor complies with the rules of the society that they belong to; coercion, self interest, and legitimacy. Sociologists have long understood this about societies of individuals and their relationship to the authority of the state. Hurd asks why International Relations scholarship is replete with work rooted in the first two reasons but conspicuously light on the third. His goal is to show that

> there is no obvious reason, either theoretically or empirically, why the study of the international system should be limited to only two of these three mechanisms and that to do so is to means missing significant features of the system. (Hurd 1999: 380)

Hurd argues that while he does not expect all scholars to embrace a sociological methodology in their work, he claims that even

> if one believes that legitimacy is in fact absent or impossible in the international system, then some reasoned justification should be provided for why a social system at the international level is limited to fewer kinds of social control than one at the domestic level. (Hurd 1999: 380)

Hurd's willingness to use 'international system' and 'social system at the international level' as apparent synonyms puts his usage of the former on a fundamentally different level from many realist or neo-liberal institutional scholars, suggesting that his argument may fall on a considerable number of deaf ears. However, for our purposes it has served as a useful introduction to three contributions from Inis Claude, Robert Keohane, and Ian Clark on the role of legitimacy and the international community. Claude's focus takes a pragmatic view on power and is thus closest to the realist tradition, Keohane is focused on interests and domestic political and democracy, while Clark is informed by a sociological (Weberian) approach.

In his assessment of United Nations Organisation after twenty years of existence, Claude defended the working of the UN from critics' derisions that it was merely a 'contemptible talk-shop' (Claude 1966: 372). His argument, greatly paraphrased, amounted to retorting 'so what?' He demonstrated the utility of the UN as a catalyst for collective decision making capable of providing political legitimacy. Ever careful to straddle the divide between realism and idealism, Claude argued that political legitimacy is a useful adjunct to power, where 'power and legitimacy are not antithetical, but complementary. […] Legitimacy, in short, not only makes most rulers more comfortable but makes all rulers more effective' (Claude 1966: 368). Furthermore, he was careful to defend his stance from claims of being overly idealistic, carving out his position vis-à-vis the national interests as follows:

> A state may hesitate to pursue a policy that has engendered the formal disapproval of the Assembly not because it is prepared to give the will of that organ priority over its national interest but because it believes that the adverse judgement of the Assembly makes the pursuit of that policy disadvantageous to the national interest (Claude 1966: 375).

With the Cold War well underway, Claude urged an end to castigations of UN failure predicated upon utopian aspirations of delivering world peace, and appealed to a more realistic set of benchmarks derived from the application of its ability to confer collective legitimacy. 'Collective legitimisation is an answer not to the question of what the United Nations can *do* but the question of how can it be *used*' [emphasis in original] (Claude 1966: 373). The plea for pragmatism is based on an instrumental understanding of the UN as an intergovernmental organisation, where states are in competition for the limited goods generated. In the example given by Claude, the good in question is political legitimacy and its distribution assumes zero-sum characteristics along a scale of six stages,[102] across which the UN is 'a dispenser of politically significant approval and disapproval' (Claude 1966: 367).

[102] 1. Approval of A's position; 2. Disapproval of B's position; 3. Acquiescence of A's position; 4. Acquiescence of B's position; 5. Disapproval of A's position; 6. Approval of B's position. (Claude 1966: 374).

Democracy and input legitimacy

For all the merits of Claude's argument, there are two flaws that we must consider. The first, as Keohane points out, is that it presumes 'that if there is sufficient consensus by states, acting collectively according to established supermajority rules, legitimacy follows' (Keohane 2006: 58). In the 21st century, such a statist view is no longer tenable. The second flaw is the rationalist framework for understanding the political legitimacy bestowed by the UN membership, which does not consider the origins of legitimacy nor the authority by which the UN membership bestows it. In short, it lacks a sociological perspective on legitimacy. Keohane's argument is addressed to Claude's article, but by extension it also questions the validity of the retentionists' central claim that non-intervention in state sovereignty is the primary norm the UN must uphold. In a world where 'democracy has become more widely accepted as the best form of government domestically… multilateral organisations will need to find new bases for their claims of legitimacy in the 21st century' (Keohane 2006: 58). For Keohane, legitimacy has a normative and a sociological component, with the former referring to practices that 'meet a set of standards that have been stated and defended', and the latter referring to an institution being 'accepted as appropriate, and worthy of being obeyed, by relevant audiences' (Keohane 2006: 57). Legitimacy is contested when the two concepts do not overlap, for example when the normative practice of allowing sovereign states to judge each other's human rights records (as the Human Rights Council provides in the peer review mechanism) jars with the sociological aspect of legitimacy that states with proven histories of human rights violations should not serve as judge and jury to others. Keohane introduces the 'output' and 'input' legitimacy in order to judge the performance of institutions, arguing that the justification for UN legitimacy must come from its inputs rather than its outputs.

> Since multilateral institutions are not notably efficient organisations, if they are to be effective their processes of decision-making must be legitimate. That is, for multilateral institutions, output legitimacy depends on input legitimacy (Keohane 2006: 59).

On this point, Claude would agree, since collective legitimisation comes from peer acceptance in unanimous agreement. It assumes that if 'more voices are heard,

more objections will be expressed, deliberation may be enhanced and decisions more widely accepted' (Keohane 2006: 59). Keohane argues against this, saying that the spread of democracy, and the expectations for input legitimacy which have increased proportionally, cannot be reconciled with 'doctrine of sovereignty that has profoundly anti-democratic origins' (Keohane 2006: 65). The inclusiveness of all states is not a 'sufficient basis for legitimacy' because it 'means that non-democracies can express preferences that are not desired by, or in the interests of, most people residing within their territories' (Keohane 2006: 74).

Community and legitimacy

Keohane's contribution shows the limitations of Claude's argument through its comparison of 20th and 21st century multilateralism. But despite his distinction between normative and sociological legitimacy, there is no substantial engagement with the sociological aspect once the focus has been shifted to input and output legitimacy. In order to explore where legitimacy comes from, we must turn away from the limited vistas of rationalist approaches toward sociology. Clark's investigation of legitimacy (2003) led him to Max Weber and a sociological perspective on the concept. As Clark explains, legitimacy is 'a social fact that is meaningful only to the members of the community who accept it, and, in turn, a fact that testifies to the existence of a particular community' (Clark 2003: 80). Thus legitimacy can only exist within a community, but 'it can equally be held that a community does not exist without its own sense of legitimacy: both give rise to each other in mutual formation' (Clark 2003: 80). Collective legitimisation by the United Nations is nested within the society of member states, and as such is the 'community' in international community. Given their mutual interaction, explaining how legitimacy 'begins' is difficult. Clark returns to Weber and subsequent writing by Franck (1988) to explore two areas in which legitimacy has purchase: 'one is that of authority and focuses upon commands; the other is the broader normative order within which the nexus of command may exist' (Clark 2003: 89). For the purposes of greater clarity, the two dimensions are given the labels of 'authority' and 'order'.

> The first is the authority structures of that order and the legitimacy of its system of rules. The second is the normative principles that define membership and inclusion within that order, and the entitlement to consultation and participation, but are not yet (fully) articulated in a system of commands' (Clark 2003: 89).

As a result, legitimacy is both constituted by a community, and constitutes the membership of the community. Critics of global governance structures (including the institutions of the UN system) regard state sovereignty as an insufficient criterion for exclusive membership. An enlarged but also selective community of global society is needed. But while the membership of this order remains contested, it will not be able to confer legitimacy.

In summary, are the recent resolutions on the death penalty to be regarded as legitimate, endorsed as they are by a majority of the international community through the UNGA? From the opinions consulted above, the answer is 'no', for a number of reasons. From Claude comes the double-pronged critique, firstly challenging majoritarianism as a decision-making mechanism in international organisations on the grounds that states do not possess a sufficiently 'thick' set of common norms to make the losing minorities accept their position for the greater good of the whole, as assumed in domestic politics. Secondly, he defends a '20th century view' (Keohane) that collective legitimisation can only take place when consensus is reached between states. Keohane takes issue with this second point, arguing that supermajority legitimisation is not possible between a group of states which justify their inclusion into the legitimisation process on their sovereignty. Output legitimacy is too greatly compromised by the 'anti-democratic' nature of sovereignty, 'whose origins lie in monarchy not democracy' (Keohane 2006: 74). It is not the winning margin of the recorded vote at question, but the very fact that many voting states are undemocratic, that renders the process illegitimate. His argument is made from a positivist epistemology, as an observer looking in on the UN membership and taking issue with the criteria for membership that accepts unacceptable states. By contrast, Clark reaches a similar position from a hermeneutic epistemology, informed by Weber's sociology. Because legitimacy is nested within a community (such as the membership of the UN), the authority with

which the group speaks is dependent upon a stable and cohesive community (order). The death penalty resolutions challenge the founding principles establishing order concerned with balancing state sovereignty, non-intervention, and human rights protection. It also challenges the defence of the existing order by splintering the previously stable coalition (G-77) that had defended that order, as well as the ruling-making norms of searching for consensus. As a result, the cohesion of the international community is being placed under strain from the dissatisfaction of 'abolitionists' and 'retentionists' alike, one side pushing forward with a resolution that the other side feels is an affront to their core values. In such an unstable community, where core values are in flux, any legitimacy nested within it will be weak on authority.

Conclusion

In all three ideal types of decision making explored in the previous chapters, the ability to negotiate was of the utmost importance. The business of doing business in the multilateral system depends on states being able to reach agreement on policy outputs. Regardless of the formal voting structures and the institutionalised power privileges built in, diplomats discuss issues and attempt to persuade (and perhaps later bribe or threaten) their opposites to minimally accept, and maximally agree. Influence in the multilateral system is a product of an actor's capabilities as a negotiator, and more specifically, the capacity to lead others. It was argued that we need to focus on argument as an important tool of EU foreign policy that can help it overcome a number of the problems that have arisen recently, centred around the perception other states have of it. The most important is a limited understanding of its internal decision-making system and consequently a reputation as an untrustworthy partner, one that is libel to change position either over time or with different interlocutors. The colonial history is still used against it indirectly among states in the Global South when they labelled those that followed the EU as still obeying their colonial masters. The EU needs new strategies to overcome these hurdles.

Relying on voting weight or economic power to get what the EU wants is problematic because they use the two mechanisms that have always been the most divisive in the multilateral system. Divisiveness is dangerous because it weakens the community in which legitimacy is nested. When members of multilateral organisations begin to question why they are bothering to participate, the whole system becomes less stable. In this chapter, the case was made for argumentation as a solution to some of these problems. It is the foundation for building large coalitions with cross-regional membership that can break the cycle of 'West verse non-West' or OECD verses G-77 divisions. It also appears to be a promising place to root a set of universal values pervasive throughout the *politics* of the multilateral system, those of rational debate and the triumph of the better argument. This opens up a space to discuss why differences exist and how they might be overcome on the one hand, but this strategy must also be recognised as potentially risky, insofar as arguments that are uncomfortable for the EU might be widely voiced. Assuming that the EU has confidence in its own positions, this 'risk' should not be a cause for concern.

In order to demonstrate this in action, the cases of the 2007 and 2008 death penalty resolutions were considered, as was the statement prepared for the 63rd session of the UN General Assembly on human rights and sexual orientation. The process of coalition building was analysed in detail, and the extent to which the sexual orientation statement is following in the pathway of the death penalty moratorium was explored. Opponents of both see it as the thin end of the wedge of progressive human rights promotion in the UNGA. This may be true in the medium term but the process cannot proceed at the speed opponents fear. Nevertheless, the significance of argument, persuasion and rhetoric cannot be denied in this case. In order to make clearer the mechanisms at work, the influence of the EU over states in three concentric circles around it was demonstrated using the work of Manners (2002), Risse (2000) and Schimmelfennig (2001). In combination, they mapped the impact of argumentation over states in the multilateral system. Given

the centrality of negotiation in the politics of the multilateral system, the EU's best chance of promoting its agenda is through outreach and articulation to broad coalitions, while at the same time allowing partners to argue for the incorporation of their own ideas into EU-initiated proposals. Not only does this imply the EU being bound by the same rules of argument that it seeks to convince others by (and not preaching its message while remaining deaf to the appeals of others), but it also ensures ownership of the final document by the entire cross-regional co-authoring group. On these grounds, this is a template effective engagement with the multilateral system.

Table 1: Four outcomes of EU and multilateral organisation interaction

		European Union	
		Win	Lose
Multilateral Organisation	Win	FAO Reform *(IMF Reform)** *(UNSC Reform)**	WTO (Post-Cancun) IMF Reform UNSC Reform
	Lose	WTO (Pre-Cancun) ILO	HRC

* IMF Reform (and to a lesser extent UNSC reform) can be shifted into the North-West quadrant if one accepts that reduced EU voting quotas in return for better representation in a more effective IMF is a price worth paying, thus yielding win-win returns. In the UNSC, the over-representation of EU member states would be lost, but the gain promised is a more effective Council in which the EU could pursue its goals with the backing of the UNSC.

Chapter Six
Conclusion

> Viewed from the minority position, effectiveness is a euphemism for majority domination. From the vantage point of the majority, the protective tactics of the minority represent perverse obstructionism. In the present international system, states are not so much committed to supporting or opposing a strong and active United Nations, or the majoritarian principles of the United Nations, as to enhancing their ability to promote international action favourable to their interests, and to prevent action unfavourable to their interests. (Claude 1984: 139)

Is effectiveness, like beauty, in the eye of the beholder? In a multilateral organisation, Inis Claude suggests that it is, and the viewpoint of the beholder is determined by how well national interests converge with the views of other member states. In the case of majoritarian and consensus decision-making processes, the interests of the majority are important, while in privilege-based organisations, it is interests of the powerful, minilateral minority. However, this view sees the outputs of multilateral organisations as merely goods to be consumed by states, conferring legitimacy on, and allocating resources to, policies that are deemed favourable to a national government. Ruggie argues that multilateralism is much more than this; it is a generic institutional form that has been present in the modern Westphalian state system from the beginning in some expression or another. In assessing the EU's capacity to promote effective multilateralism, we must distinguish between effective multilateral outputs congruent with EU interests on the one hand, and EU policies that are congruent with effective decision making in multilateral organisations on the other hand. Our focus is exclusively on multilateral organisations as the third 'expression' of multilateral inter-state relations (orders and regimes being the other two), and on 'generalized decision-making rules [such] as voting or consensus procedures', which is the 'distinct type of institutionalized behaviour' (Ruggie 1992: 572-4). In Chapter 1 and Chapter 5 a two-by-two matrix correlating the interests of the EU and the interests of specific multilateral organisations in a win or lose binary was used, designed to highlight examples where the two dimensions of effective multilateralism are non-compatible. In this chapter, we will firstly explore the four quadrants in more detail through the lens of the four core questions raised in

Chapter 1, which will provide a set of answers about the EU's promotion of effective multilateralism in practice. The chapter then considers the EU's promotion of multilateralism from a theoretical perspective through the lens of the three ideal types of decision making – majoritarianism, consensus and privilege. The third section consolidates practice and theory into a set of policy recommendations for the EU in improving its pursuit of effective multilateralism, while the final section sketches out some areas of future research into the role of the EU in shaping the generic form of multilateralism in a post-Westphalian system.

The EU and multilateralism in practice

Unintended and harmful consequences of EU multilateral policy

The first assumption introduced in Chapter 1 was that if a multilateral organisation could be regarded as having interests that were broadly describable as furthering its capacity to act in promotion of its core aims and objectives, and that these were independent of the policies of member states (and in our case EU), then a two-by-two matrix detailing the winners and losers of various scenarios in the EU-ILO relationship. It was then hypothesised that each of the four quadrants corresponded to a *possible* outcome of EU policy (win-win, win-lose, lose-win, and lose-lose), and that these policies could be detrimental to multilateral organisations. It also generated a second variant of this hypothesis, which was that the interests of a multilateral organisation could be furthered even when the EU 'lost'. In short, even when EU policy appears to have failed, counter-intuitively the goal of effective multilateralism may be furthered. Both hypotheses were demonstrated to be correct, albeit among the limited sample of eight case studies, by virtue of each quadrant including at least one example. As a reminder, here is the matrix with the case studies entered.

[Insert table 1 here].

Chapter 2 looked at majoritarian decision making in the ILO, UNGA, UNCHR and HRC, and the cases are distributed across all four quadrants. The recent work of the UNGA Third Committee in preparing progressive human rights resolutions concerning the death penalty and sexual orientation was analysed. Since both actions further the EU's policy objective of human rights promotion, they lie in the left-hand column of the matrix denoting an EU 'win'. The outcome for the UNGA is less clear-cut because of the ill will created in the process of winning the votes (or in the case of sexual orientation, the 'counter statement'). Concretely, from the point of view of the losing minority (incidentally containing the greater majority of the global population), the slender margin of victory on an issue regarded as challenging the norm of non-intervention in the domestic affairs of sovereign states sets a dangerous precedent. While the resolution represents a victory for the UN as a human rights promoting organisation, if the cost paid is a poisoning of North-South relations that spills over into other policy areas, the UNGA as a whole will be worse off. The same issues regarding legitimacy and community (discussed in Chapter 5) concern the UN Commission on Human Rights (UNCHR) and the Human Rights Council. The CHR was regarded as a politicised body by both the North and the South – the former found the membership of human rights violating states objectionable, while the latter regarded the targeting of Southern states in country resolutions biased. While the EU member states were able to pass many of the resolutions they drafted thanks to a favourable distribution of regional seats, the general dissatisfaction left the UN without a credible HR promoting forum. The analysis of Karen Smith (2008) of the reformed Human Rights Council paints a bleak picture in which the reallocation of seats in favour of the Asia and African regions, coupled with an assertive Organisation of the Islamic Conference (OIC) group, has handed the initiative over to conservative states favouring the protection of national sovereignty (referred to by Gowan and Brantner (2008) as the 'Axis of Sovereignty'). The EU is unable to promote its interests in the face of numerical superiority, the HRC falls into the bottom right quadrant – a lose-lose scenario.

Case studies from the ILO were included in Chapter 2 and Chapter 3 as an example of composite decision making, whereby consensus is used to negotiate the text of labour standards and majoritarianism is used to adopt the instrument in a plenary by record vote. The location of the ILO in the northeast and southwest quadrants signifies that there is always a loser and a winner in the EU-ILO relationship with regard to the drafting of labour standards and bringing into doubt claims of a harmony of interests. High and low salience instruments are differentiated according to whether ILO members expect to have to ratify the instrument before it is drafted. In cases that they do (only one in recent years – C182), a number of active consensus mechanisms are used in order to agree a text within the limited time space of the annual conference. Small groups are used and the results of informal negotiations are uploaded into the draft text, resulting in compromises that are lower than EU preferences but leave the ILO with widely ratified and enforceable instruments. On low salience issues, the drafting process uses more passive consensus mechanisms that rely on perseverance and reward recalcitrance. In these cases, the EU succeeds in uploading higher standards when it chooses to, but leaves the ILO with largely ignored instruments (EU win, ILO lose).

The case of the WTO illustrates informal composite decision making, which although officially allowing some decisions to be taken by majority vote, is in practice strictly run according to consensus principles. However, consensus is based on minilateral (Kahler 1992) spheres of influence around a core group of members. In the matrix, the WTO occupies the same northeast and southwest quadrants as the ILO, except the differentiation is temporal, before and after the Cancun ministerial meeting in 2003. Prior to the meeting, the core group of consensus builders consisted of the US and the EU, with Canada and Japan oftentimes also involved. The agenda of the meeting was controversial because it contained the Singapore issues related to behind-the-border government policy, trumpeted by the EU as part of Pascal Lamy's 'managed globalization' strategy but widely contested by most other members. Following the premature ending of the

meeting when it was clear no agreement could be reached, new efforts were made in 2004 to re-start negotiations with two crucial changes. Firstly, the 'Quad' of leading decision-makers had become the G-6 with India and Brazil included, and the Singapore issues were dropped. The EU has had its decision-making influence diluted and its policy preferences dropped, hence the migration across the matrix from the winning to losing column. From the WTO perspective, the situation has certainly not deteriorated; the widening of the core group *should* make consensus easier (although persistent use of passive methods may hinder progress) and the most contentious agenda items have been shelved. On reflection, if these changes make the WTO more likely to reach an agreement, we can justify its move from the bottom row to the top row.

Finally, the Food and Agriculture Organization (FAO) demonstrates a win-win relationship with the EU. The case study focused on efforts to implement an ambitious reform agenda designed by external consultants called in to salvage the FAO from impending ruin. The case study demonstrated a number of active consensus tools in operation, beginning with third-party agenda setting and continuing with neutral chairing, parallel negotiations and drafting teams. Despite early concerns that the EU had conceded too soon to G-77 demands for budget increases without guarantees of reform, EU member states occupied positions of influence in the active consensus mechanisms and have, thus far, guided the reform agenda through the committee stages and into an acceptable Immediate Plan of Action.

The UN Security Council and IMF case studies into privilege have both been entered into the matrix based on an assessment of the change in relations between the two according to planned reform efforts. In the case of the UNSC, proposals to increase the size of the Council will reduce the proportion of EU member states serving at any time (presently oftentimes 5 out of 15) although additional non-vetoing permanent or re-electable positions would increase the prominence of

Germany (and perhaps Italy) on the Council. In the IMF, the reform plans considered centred on a reduction of voting quota allocations to EU member states based not only on a more equitable share of global output but also factoring in decreased exposure to system shocks thanks to the euro currency. In both cases, the most likely pathway to reform is through a reduction in the weighted influence of EU member states. In their place, states from the Global South will assume greater say and more leverage over outcomes. Seen from this perspective, both reform efforts leave the EU worse off, although it may be assumed that reform efforts are gains for the organisations concerned. It would seem that the EU must accept a smaller role for its members in the multilateral system in the 21st century in return for improving the organisations within it. As was argued in Chapter 4, it is difficult to defend the position that a drop in combined weighted voting from 30 per cent to 27 per cent constitutes a major loss for the EU member states, especially when the United States manages to exert considerable influence with less than 17 per cent. Certainly in the IMF, and quite probably in the UNSC, gains in efficacy, legitimacy, and authority yielded by a more equitable membership far outweigh the costs of decreased representation, and as such belong in the northwest quadrant corresponding to win-win.

Heterogeneity in the multilateral system

Much evidence was gathered in support of the claim that there is a considerable degree of heterogeneity between multilateral organisations and that the tools used to analyse the EU need to become more sophisticated. Drawing conclusions about EU actorness by measuring voting cohesion in isolation from an analysis of the decision-making process in operation, the predictability of outcomes, or other norms of behaviour, may lead to misleading results. The HRC case study exemplified this point, while the utility of the single voice of the Presidency has be questioned in hostile environments where the EU fails to occupy its entitled speaking allocation. Heterogeneity can be seen from four other indicators. The first is composite decision-making structures incorporating two of the ideal types of majority, consensus or privilege. The ILO example combines consensus and

majority in its standard-setting procedure, as does the WTO in theory and according to its rules, but in practice has voted on only one issue (the accession of Ecuador in 1996) and used consensus for all others (Steger 2009: 8). In the IMF the privilege of weighted votes is complemented by Fund staff keeping accounts on the level of support for a particular policy to see whether it has reached the 50 per cent, 70 per cent or 85 per cent majority required, depending on the policy in question. Thus composite procedures are further nuanced by institutional norms of behaviour such as the free riding identified in the ILO plenary.

The second indicator is forum shopping, seen in as the EU policy of promoting progressive human rights resolutions in the UNGA instead of the HRC in 2006. Both operated under majoritarian logic but changes to the constituency members in the HRC made it more hostile to EU proposals. The success gained in the Third Committee and UNGA illustrates the variety within a single issue are in the multilateral system. It was also seen in the greater attention paid to the Social Dimension of Globalization efforts of the ILO after the EU failed to convince WTO members that it was the most appropriate venue for its 'trade and…' agenda. The decision to pursue a policy goal firstly in one multilateral organisation and then afterwards in another is indicative of the heterogeneity within the multilateral system.

Thirdly, understanding the coping mechanisms intended to facilitate the coordination and representation of the EU in multilateral organisations is another indicator of heterogeneity, as well as a source of learning from best practice. Coordination has been taking place in many multilateral settings for over thirty years, dating back to the CONUN working group in the EPC architecture. Simon Nuttall's work on EPC illuminates a number of examples of coordination in the UN system (1992), and often the stimulus for developing new mechanisms comes from closer integration. For example, coordination between eurozone countries in the IMF began as a result of the creation of the single currency. EU representation in

the WTO and FAO is partly carried out by the European Commission as a result of European-level competencies and provisions within the founding articles of each organisation to allow regional organisations as members. The stimulus for using new mechanisms has also come as a response to the demands of multilateral organisations, such as the way in which the UNGA has become a site for new and experimental forms of EU outreach and coordination (Chapters 2 and 5). The effort by EU member states to include a wide range of co-authors into the drafting process in order to overcome criticisms of regional bias has gone hand in hand with a realisation that association with the EU can be a drawback rather than bonus, and a lower profile for the EU is sometimes a boon. One consequence of this, seen in the 2007 drafting of the UNGA death penalty moratorium resolution, was that the EU member states lost a considerable amount of control over the content. Co-authors demanded parity with the EU Presidency in terms of negotiation weighting, or more accurately demanded that the Presidency receive no special treatment with regard to its negotiating mandate. This elevated the co-authors to a level status with the Presidency, and demoted the other 26 member states from being the power beyond the door, calling the shots.

The final indicator is the EU's ability to adapt to new forms of decision making emerging from the multilateral system. The best illustration of this is the way in which the EU was able to snatch success from the jaws of failure in the FAO, as discussed in Chapter 4. During the November 2007 budget agreement, the EU appeared to have sold short the OECD position demanding guarantees from the G-77 of a willingness to accept institutional reform in return for increases in the FAO budget. However, over the following year EU member states occupied positions of influence in the active-consensus mechanisms used and succeeded in overseeing a successful adoption of the majority of recommendations through careful coordination with each other. This last indicator is an extremely positive sign for the EU, since it shows its ability to adapt to innovations in the multilateral system quickly, and capitalise on making them work in pursuit of their own interests. In the case of the FAO, reform was also in the interest of the organisation.

The role of the EU: bridge builder, front-runner, or imperialist?

'European peoples and governments alike are convinced of their "UN virtuousness". In comparison with the United States, China and Russia, Europeans view themselves as the "better peoples of the United Nations"' (Fassbender 2004: 857). This observation on the self-identity of the EU in the UN has been a common theme throughout the book, often taking the form of a desire to build bridges between opposing sides in order to reach agreement. In the various ideal types of decision making, the EU has had a varying degree of success. In consensus-run organisations the difference between passive and active consensus is important. In the examples of passive consensus found in the ILO and the WTO, the EU was prepared to doggedly pursue its interests and dig its heels in where necessary. In many ways, the EU is ideally designed for this approach, since it has experience of protracted negotiations and in many situations is fairly happy with the existing arrangement and not in a hurry to alter the status quo. By contrast, active consensus has the potential to threaten the role of the EU. The job of bridge building is passed to a third party that is genuinely impartial, through the role of agenda setting, chairpersonship, or responsibility for interpreting the outcome of negotiations and the concrete form of consensus. In the ILO the EU was forced into accepting many concessions, while the FAO example showed that the EU can also perform well when operating in an active consensus environment. Undoubtedly significant was the proximity of EU interests with the content of the third party's proposals, allowing the EU to advocate reform while neither claiming ownership of the ideas, nor tarring them with a "made in EU" brush.

In majoritarian-based organisations the EU is ever keen to publicise the numerical strength of its 27 members voting together. Undergirding this is the argument that the EU controls a substantial number of votes and provided it can gain the 70 or so additional votes needed to win a simple majority, this would suffice. It would be an exaggeration to say that this attitude is incompatible with

one of a bridge builder, but it does suggest that a bridge only need be built sufficiently far to capture the 50 per cent of votes needed. The case study from the UNGA and the discussion of the EU's influence in concentric circles in Chapter 5 illustrated the extent to which there is a growing realisation that the EU is not universally welcome as a force for progress and good. Interviews reveal that diplomats with experience of negotiating with the EU and who are opposed to the Union's progressive human rights agenda are increasingly suspicious of EU proposals. They worry about the underlying strategy of picking apart the G-77 through regional outreach, as well as the tendency to increasingly favour the UNGA as a campaign site, given it was for so long a bastion of the Global South. The reaction of key players among the G-77 should be taken as a sign of success from the EU perspective, because there is genuine concern for the new political allegiances formed. It also shows that the EU has become more savvy towards the politics of multilateral organisations, and while still referring to itself as a front-runner in some issue areas, there is an awareness that this can be construed as an exportation of the European model globally. This has been rejected in the WTO with the Singapore issues resulting in the 'mercantilist turn' after 2005, and it brings little joy to the ILO when it yields standards that are too high for many members to ratify. However inaccurate it may be, the claim that Europe pursues an imperial project through multilateral organisations is used by its critics to discourage support for EU initiatives. Therefore reducing the visible presence of the EU in multilateral organisations is increasingly becoming a strategic decision.

The role of the United States of America

The role of the US in multilateral organisations has always been an important waypoint for orienting the position of the EU. As Ruggie argues, it was the unique attributes of *American* hegemony that fashioned the institutional arrangements of the multilateral system, and the US engineered its own place at the centre. For many years, Western European states were part of the minilateral core that shared in some decision making and made considerable gains from their membership of the multilateral system. While the end of the Cold War stress-tested the post WWII

constitutional order (Ikenberry 2001) and found it to be robust, the US gradually became disengaged with the multilateral system during the 2000s. The 2003 invasion of Iraq epitomises the 'unilateral turn' of the US government, while later that year the EU member states attempted to patch up their differences by proclaiming their solidarity with each other and with multilateralism in the European Security Strategy. The US was the 'other' that consolidated a European notion of self, while elsewhere it serves as a benchmark for measuring the capacities of the EU.

In the literature on the IMF, the question is often asked why the EU is an equal of the US in the WTO but not in the Fund. The objective measures such as voting quotas and directors' seats do not sufficiently capture the informal channels of influence described by Woods (2003) in Chapter 4. Yet behind this is the assumption that the EU has a qualitatively distinct position from the US, either as a promoter of a more socially aware capitalism, or as a more benign hegemon supporting the system. In the IMF, the 85 per cent majority required to pass decisions concerning the direction of the Fund *must* include a substantial number of EU states because collectively they hold over 30 per cent of the total votes. All major issues are agreed in advance through G-7 coordination, leaving unanswered the question of what substantive difference between the EU and the US actually exists. In the WTO, evidence was found to show that the US and EU were out of synchronisation during the early years of the Doha Development Round over the question of promoting market liberalisation or trade regulation, realigning post-Cancun with an agreed prioritisation of the former. When clear blue water between the EU and the US does exist as it did in the WTO, the EU did not manage to assert its interests over those of the US. Finally, in the UNSC, the reason why France and Britain have used their vetoes infrequently is because they have been very often aligned with the US, which was prepared to use it whenever necessary. As noted in Chapter 4, the only time France and Britain vetoed an American proposal was over their ill-fated Suez military deployment in 1956. French threats to veto a second US-sponsored resolution authorising military intervention in Iraq

in March 2003 were backed up by the knowledge that Russia and/or China would cast their vetoes if France did not. In summary, the US remains hugely influential in the most important multilateral organisations, and the position of EU member states is very often aligned with America.

If attention is turned to the other case studies here, the story is different. The US does not support EU-led action against the death penalty, although it (like Japan) has kept a low profile during the canvassing of support for the issue. In the FAO, the US, alongside Japan, Canada and to a lesser extent, Australia and South Korea has taken a stricter line than the EU on reducing the organisation's budget. In the ILO, the US has ratified the least number of conventions of any OECD member (14 out of 188), while by comparison the highest number of ratifications by an EU member state is Spain with 109. If the case studies had included policy areas such as curbing greenhouse gas emissions, increasing overseas development assistance, or support for the International Criminal Court (ICC), the differences between America and Europe would be more pronounced. The shadow cast by America varies according to which multilateral organisation we look at, and more so across multilateral orders and regimes. Nevertheless, the research presented in this book agrees with the assessment of Puchala *et al* (2007) that the perspective of the majority of states is that the similarities between the EU and the US are far greater than the differences. The intellectual foundations of their political and economic models are western, and the architecture of the multilateral system is geared towards consolidating and universalising these models.

The EU and multilateralism in theory

How much have we learnt from the study of the EU in the three ideal types of decision making in multilateral organisations? Does the EU cope better in one type of decision-making environment than others? The literature on EU foreign policy making in general, and that on the EU in international organisations in particular, would point to the following key variables. Firstly, areas of 'high politics' such as

national security are likely to remain intergovernmental in character, with only minimal EU integration. Secondly, the division of competencies inside the EU between the Community and the member states will influence external representation. Finally, the EU will be most able to act when it speaks with one voice and its member states vote cohesively. By and large, these predictions are proven sound, although particular cases can be pointed to that challenge their universal validity. However, what is missing is a set of predictions based on the nature of the multilateral organisation and how that can affect the ability of the EU to act. This section is structured around Ruggie's qualitative dimensions of the institution of multilateralism: generalised principles of conduct, indivisibility, and diffuse reciprocity. As we will see, majoritarian, consensus, and privilege based decision-making systems incorporate these qualities to varying degrees.

Majority

In majoritarian decision making, the generalised principles of conduct of members are found in the rules of voting and the agreement on the sovereign equality of all states. This is socially constructed insofar as states behave as if the vote of the United States and Vanuatu carry equal weight and significance, thus making it an accepted reality. Indivisibility is grounded in the participation of all states and that decisions are an aggregate of all votes, and the legitimacy of the decision comes from accepting the societal norms. Diffuse reciprocity is more difficult to ensure in majoritarian systems because it is underpinned by a material element of calculating costs and benefits of participation. Diffuse reciprocity develops as states interact with each other more frequently and a rational decision on whether to cooperate in a single transaction becomes influenced by expectations concerning subsequent transactions (the shadow of the future). States do not 'insist on being equally rewarded on every round' because they factor in assumptions concerning future gains (Ruggie 1992: 594). Since many of the outputs of majoritarian decisions are non-binding on states, making concessions in the present in return for favours in the future is more of a risky business. Moreover, as discussed in Chapter 5, the diffuse reciprocity found in a domestic

majoritarian political system is lacking at the international level. Consociational theory explains how majority parties curb their interests in recognition of minority concerns in national governments (and has been applied to the EU by Paul Taylor). The example of the death penalty resolution are based in part on a concern by a sizable minority of states that human rights issues are being pushed too hard and undermine the community of states in which legitimacy is nested (Clark 2003). In short, from the perspective of states concerned about eroding the norm of non-intervention in the affairs of sovereign states, there is no sign of reciprocal concessions being made toward their interests, diffused neither temporally nor across issue areas.

Diffuse reciprocity is undermined by playing the numbers game in a majoritarian system too rigidly. The 97 votes needed to pass a resolution by simple majority in a United Nations of 192 members is too slim a majority on controversial issues. Of course, opponents of a resolution have an incentive to portray an issue as controversial in order to claim that simple majorities cannot be used to challenge established norms, and instead consensus is required. In the case study of the death penalty, the EU is aware of this and in 2008 attempted to reduce the flammability of the issue by delaying its return to the Third Committee agenda until 2010. By then, it is hoped that there will be more states willing to vote in favour of the issue and the resemblance of a 'norm cascade' will follow (Finnemore and Sikkink 1998). In summary, majoritarianism is structurally disposed towards having weak diffuse reciprocity, and the EU's forum shopping for an arena to push its progressive human rights agenda risks straining it further. If the EU does not restrain its ambitions, it could potentially undermine the multilateral nature of the UNGA majoritarian system.

Consensus

Consensus lies somewhere on the continuum between unanimity and majoritarianism. It occurs, not when everyone is in agreement, but when those

who are not in favour choose to remain silent rather than protest. The outcome is not in everyone's best interest, but it is not in anyone's disinterest. As Buzan discusses in detail in his investigation of the UNCLOS III negotiations (1981), one of the most important aspects of consensus is agreeing the rules determining when voting will occur, yet when successful, parties never resorts to voting. The reason why agreeing the rules on when to use something you hope not to need is important is because voting serves as a fixed point on the horizon, and as it looms closer the need of consensus becomes greater. Voting serves to fix the limits of negotiation and focus attention on how to agree. In terms of the qualitative elements of multilateralism, the generalised principles of conduct are set out formally in voting rules, but exist in parallel in a multitude of informal mechanisms used in order to avoid recourse to the formal rules. Diffuse reciprocity is much stronger in consensus-based organisations because outputs are oftentimes binding on members (or produce an output that states have an expectation to be bound by). Moreover, large scale negotiations often lock in agreements reached in various working parties and do not allow side payments to be included once negotiations have ended.[103] The final quality, indivisibility, varies according to whether passive or active consensus mechanisms are used. In the former, indivisibility is manifested in the inclusion of all parties to the negotiations, while in the latter, the tendency to convene small groups representing all constituencies and mandating them to reach agreement leaves many states further removed from the decision-making process. Examples include the WTO G-6 and 'Green Room', as well as the negotiations for the ILO Child Labour convention (C182), both discussed in Chapter 3. Here there is divisibility between states, but indivisibility in terms of accepting the agreed package is retained.

[103] The closing of negotiations could be argued to make diffuse reciprocity more difficult because it limits the opportunities to balance costs and benefits across negotiations. The argument here is that by preventing the re-opening of agreements states are better able to decide on how far to compromise within a specific issue area strictly within the parameters of negotiations taking place.

In the case studies, we found examples of passive consensus in the WTO and ILO in the drafting of low salience labour standards, and active consensus in the FAO and ILO in the drafting of high salience labour standards. The EU's capacity to act varied across all cases, making generalisations hard. In the WTO, the EU is happy with the slow pace of negotiations in the search for passive consensus. It has followed the US lead of negotiating bilateral trade agreements with key partners outside of the system and is thus able to capitalise on its strength and size. Additionally, the EU is not unsatisfied with the status quo situation and has no reason to overburden itself with concessions in order to push towards an agreement. In the ILO case study, the EU was able to upload elements of the *acquis communautaire* when it chose to, and against the objections of other states provided its opponents knew they were not ultimately bound by the standard nor have to ratify it. The story changes when an instrument is of high salience, defined here as knowledge during the drafting process that all states will be expected to ratify the completed labour standard. The EU found it much harder to push for the maximal limits and was forced to compromise on a number of points. Delegates employed active consensus techniques, including small working groups drafting large sections of text to be directly inserted into the final document. While the EU was party to these small groups, its influence was limited by the much greater resistance fronted by other ILO members. In this example, the EU was hampered in the pursuit of its goals when active mechanisms were employed. The use of active consensus tools in the FAO yielded the opposite outcome, with EU member states appearing adept at utilising the tools in order to promote the reform programme recommended by external consultants.

What explains this variation? One plausible answer is that the EU does well in passive consensus negotiations because it is has a number of strengths that make it predisposed to this type of environment; stamina, diplomatic expertise, and large bureaucratic backup in both legal and technical issues. The problem is that they do not yield results, and thus are not effective in terms of producing multilateral outputs. But how can we explain the difference between the ILO and

FAO active consensus cases? Active consensus mechanisms are occasionally employed in the ILO and therefore all diplomats have experience using them, while in the FAO case this was a new application with regard to the reform process. One answer is that EU member states were quicker to adapt to the new negotiating model. More likely is that the bureaucratic capabilities of the EU member states working in cooperation were better able to process the enormous amount of information generated by the 6000-person-days of negotiations over the year. Finally, in the FAO case, the G-77 had already gained a payoff in terms of an increased FAO budget, and accepting reforms to the operation of the FAO were less costly than, by contrast, a labour standard that would directly impinge on national law.

Privilege

As discussed in the introduction to Chapter 4, privilege does not immediately appear to sit comfortably alongside majority and consensus as a decision-making process of multilateral organisations. Most obviously, it would seem that there are two sets of general principles of conducts, one for the privileged few (such as permanent members of the UNSC) and another for the rest. Similarly in the IMF, the weighted voted system, the allocation of the 24 Executive Director positions and the pre-agreements made between G-7 members all point to two sets of rules. However, if we turn instead to consider what the UNSC is designed to deliver – collective security – (and leaving aside the question of how realistic this is in practice) then we return to one of Ruggie's primary examples of multilateralism (Ruggie 1992: 569-70). Collective security exhibits the qualities of indivisibility and diffuse reciprocity very clearly, while a single set of generalised principles of conduct govern the behaviour of all states in the event of an international breach of the peace occurring. Furthermore, Ruggie points out that multilateralism is a depiction of 'the character of the overall order of relations among states; definitionally it says nothing about how that order is achieved' (Ruggie 1992: 572). Paul Kennedy draws attention to the distinction between 'security providers' and 'security consumers', with the former having their status recognised through permanent membership of the UNSC. Kennedy regards the IMF as serving an equivalent role in the realm of global economic stability. Thus the Fund delivers a multilateral end, even if it is through imperfect multilateral means.

Privilege is the domain in which there is the least to say about the EU because the member states are most preoccupied with maintaining their role and identity. More progress is being made on coordination in the IMF than UNSC, in part brought about by necessity through the creation of the euro. In the long term, supporters of greater European integration foresee single seats for the EU in both the Fund and Council. Sceptics point out that the present EU-level machinery capable of delivering common positions takes days to set in motion, and both the IMF and the UNSC have important crisis-response roles. Until such time as the EU

can convene and agree common positions as quickly as national governments, closer cooperation and common representation will diminish the capabilities of the EU to play a role in emergencies. If the EU wants to be part of the solution, it must be so through the channel of its member states. This is, of course, a chicken-and-egg scenario, since without the demand for more rapid Brussels-based decision making, the institutional arrangements will not be put in place. Yet demand will not be created unless the EU takes bold steps forward toward a single seat. The likelihood of this happening is greater in the IMF than UNSC, especially because an intermediary stage between the current dispersed representation and a single seat is a single EU (or eurozone) constituency exists in the form of the single Executive Director seat for all EU (or eurozone) members. Such a change would be accompanied by a review of voting quotas, in part because the voting weight of a single EU would highlight the grossly disproportional allocation of votes, and also because the availability of four or five seats on the Board would require the formation of new constituencies around the new Executive Directors.[104]

Policy recommendations for enhancing *Effective Multilateralism*

Studying the practice of the EU in multilateral organisations and complementing it with our theoretical understanding of the generic qualities of multilateralism results in a number of broad policy recommendations across the three decision-making types. Their aim is to enhance the capability of the EU to support the qualities of multilateralism expressed through multilateral organisations. One of the problems raised by the term 'effective multilateralism' is that it begs the question 'effective for whom?' It has been demonstrated that 'effective in promoting the interests of the EU' and 'effective in promoting the interests of a given multilateral organisation' need not, and often do not, overlap. It has been

[104] A single eurozone seat would replace France and Germany's permanent seats, and the seats of Belgium, the Netherlands and Italy (quasi-permanently held as the largest members of their constituent groups). Britain would give up the sixth chair if a EU seat were created.

argued that it is preferable to favour the interests of a multilateral organisation over those of the EU, i.e. always favouring the top row of the matrix above. What follows are a series of recommendations for ensuring that the EU works with the grain of multilateralism rather than against it, and by doing so is more likely to find its policies located in the north-west quadrant of the matrix.

Majority

The most important recommendation here is to recognise that the most fragile of the three multilateral qualities in majoritarian decision-making organisations is diffuse reciprocity. Ruggie identifies diffuse reciprocity as one of the most robust elements of multilateralism that helps explain its longevity (Ruggie 1992: 594). However, as discussed in Chapter 5, states in an international community[105] such as the UN General Assembly have a far weaker commitment to the social collective than is found at the domestic level, making the strains placed on a persistently losing minority much greater. The legitimacy of an institution is based on the acceptance it receives from the actors whom belong to it; in the words of Franck legitimacy is nested in a [social] community. The UN Commission on Human Rights suffered this fate and was replaced by the Human Rights Council, which has faced its own legitimacy problems. The EU has in recent years unlocked the key to breaking the monopoly of the G-77 over the UNGA by its strategy of regional coalitions. This is an exciting breakthrough that offers new possibilities for collective action and may also help raise the importance of the UNGA within the architecture of the multilateral system. This process should be one of evolution and not revolution in order to prevent a fragmentation of UNGA into new divisions, the 'EU and friends' verses Gowan and Brantner's 'Axis of Sovereignty'.

The second policy recommendation concerns the method by which the EU attempts to win over support for its policies in majoritarian arenas. Hostility

[105] Here 'community' is used in the sociological sense following Franck (1988) and Clark (2003).

toward the EU is entrenched among some groups because of the opaque nature of its internal decision making and a perception that it presents its self-interests as universal values. As Jørgensen & Laatikainen (2009) point out, this is underlined by the assumption that western values *are* universal values. A lesson learnt from the successful drafting of the 2007 death penalty moratorium resolution is that successfully articulating the reasons for supporting a given policy and deflecting criticism with well-reasoned arguments is still an important skill in the UN. Puchala *et al* (2007) emphasise the *political* nature of negotiations in the UN, and the essence of politics in the western tradition is to use a process of argument and debate to arrive at the best policy option. While the various constituents of the UN might reject western values as universal in the spheres of individual freedoms or economic models, the western origins of international state system, the norm of state sovereignty, and the practice of politics along diplomats *are* accepted. Although diplomats from the Global South are first and foremost responsible for representing their governments, they are also socialised into the political practices of the UN system. Winning an argument in a debating chamber in New York will not, obviously, bring about a 180-degree turnaround in a political opponent. However, it does strengthen the support of wavering states weighing up the costs of supporting the EU against the interests of a regional power that is opposed to a particular policy. Self-belief in the worthiness of one's own position without having the ability to convince a wider audience was the downfall of Socrates. The EU has proven it has the rhetorical skills in to convince others of the worthiness of its policies, and it should continue to hone them for use in the future. To ancient Greeks rhetoric was an art because it was the power to shape opinion in the polis. Since it could hinder the pursuit of truth it was regarded with suspicion; however, in the pragmatic world of multilateral organisations it belongs in the universally accepted political toolbox and its usage should be within EU capabilities.

Consensus

Consensus-based multilateral organisations are the most important arena for the EU to operate in as the level of complexity in international relations continues to

increase. More and more often negotiations over collective action problems will take on a consensus based decision-making process because they cannot afford to leave any parties outside of their final agreement. Equally, states realise that the final agreements must be binding and are therefore unlikely to accept majoritarianism. Ever larger numbers of participants and issue areas that cannot wait a decade for agreement will make active consensus mechanisms invaluable. Despite the EU's natural strengths in passive consensus negotiations, it must seek wherever possible to promote the use of active consensus tools. As we have seen, this does challenge the self-identity of the EU as a bridge builder because it delegates responsibility for this to neutral third parties. More concerning for EU policy makers is the mixed record of the EU in promoting its interests in the active consensus case studies considered here. Reflecting on the larger picture, however, and in both the ILO and FAO, agreement was reached and an output produced, and if concessions were necessary then so be it; that is required in the search for consensus.

The active consensus mechanism of small, informal group consultation does potentially undermine the indivisibility of multilateralism because it excludes the majority of states from being present during negotiations, and empowers their principals with additional information not available to state agents. However, it is almost inconceivable that the EU and its member states would *not* be party to any relevant small group delegation and therefore such a worry should not concern the EU. In the case of the FAO, the influence of the EU increased because its members were able to "parallel process" across different working groups through their strategic positioning of staff and coordination meetings. Although the FAO reform process is still ongoing and it is too soon to give a definitive answer on the EU's success, early signs suggest that it is a model for future EU action and that active consensus should be promoted wherever possible in multilateral organisations.

Privilege

In the review of the literature on the EU in the International Monetary Fund, it is striking the extent to which the formal voting power of the US is the focus point of attention when gauging the how (in)effective the EU currently is. It is too often forgotten that the veto power of the US is simply the ability to prevent a decision from being taken, and ignores how the US goes about ensuring that it has the support of up to 68 per cent of voting quota to carry out its preferred policies. Woods (2003) presented evidence of the informal channels used by the US, and on all counts, the EU was found to be fall considerably short by comparison; on some it seems almost impossible to catch up. For example, the de facto control of the US Treasury over all senior appointments and its spill-over effect of creating a tier of early-career staff anxious not to ruin their promotion prospects through suggesting a policy unfavourable to US interests appears to be locked in for a generation at least. It seems foolish to think that the EU could oust the US from its network of informal influence, and a more sensible policy would be to try and bring pressure to bear on the US with the help of leading states from the South (Brazil, India) as well as China. In the medium term a review of weighted voting quotas is likely and these powers will be elevated above their current standing (most likely at the cost of the EU). The argument that the EU infatuation with voting size is misplaced holds to a lesser extent for India, Brazil and China, but together with the EU they all share a common interest in reducing US informal power in order to capitalise on their gains on the Executive Board.

Future research: multilateralism and post-Westphalian politics

Christian Reus-Smit also takes a constructivist approach to the study of multilateralism, conceptualising it as one of the two 'fundamental institutions' that structure modern international society, the other being contractual international law (Reus-Smit 1997: 555). He advances two criticisms of Ruggie's approach to the study of multilateralism. The first asks why multilateralism only emerged 150 years *after* the modern Westphalian system emerged. His second is that in order to explain the type of multilateralism designed in the post-1945 world, Ruggie resorts to 'a "second image" argument about the institutional impact of American

hegemony' that at the end of the day 'elaborated institutional principles that were first embraced and implemented by the great powers almost a century earlier' (Reus-Smit 1997: 563). In Chapter 4, we saw how Kratochwil (2006) answers the first critique by arguing that mutual state recognition during the 150 years of absolutism after 1648 constitutes a form of multilateralism preceding the period considered by Ruggie. Yet for Reus-Smit these answers are insufficient and instead he presents a more detailed explanation of why multilateralism is one of the fundamental institutions of modern international society, based on an analysis of the 'constitutional structure of international society'.

> Constitutional structures are coherent ensembles of intersubjective beliefs, principles, and norms that perform two functions in ordering international societies: they define what constitutes a legitimate actor, entitled to all the rights and privileges of statehood; and they define the basic parameters of rightful state action. (Reus-Smit 1997: 566)

Reus-Smit identifies 'three intersubjective normative elements: a hegemonic belief about the moral purpose of centralized, autonomous political organization; an organizing principle of sovereignty; and a norm of pure procedural justice' (Reus-Smit 1997: 566). As Reus-Smit goes on to demonstrate in his comparison of ancient Greece and the modern state system, the three elements are linked because the moral purpose of the state, as defined by the principle of sovereignty, generates particular norms of procedural justice. The 'raison d'être undergirding the sovereignty of ancient Greek city-states involved a "discursive" norm of justice, whereas the moral purpose sustaining the sovereignty of modern states has involved a "legislative" conception of justice' (Reus-Smit 1997: 568). He characterises political life in ancient Greece as revolving 'around public speech and debate, the principal aim of which was the rational pursuit of justice', which led to an approach to dispute settlement in international affairs between sovereign units through arbitration by a third party embodying 'the same discursive norm of procedural justice that informed city-states' domestic legal processes' (Reus-Smit 1997: 572). By contrast, in the modern state system the hegemonic domestic norms spread through the Enlightenment were liberal political theory and capitalism production, broadly definable as C. B. Macpherson's 'possessive individualism' (1962). 'As the nineteenth century progressed, the state's moral purpose was increasingly identified with augmenting individuals' purposes and

potentialities. This, in turn, generated a new legislative norm of procedural justice' (Reus-Smit 1997: 577). Thus Reus-Smit arrives at his two fundamental institutions that structure modern international society: multilateralism and contractual international law.

To what extent is it possible to reformulate the intersubjective normative elements that make up the constitutional structure and by doing so imagine future expressions of multilateralism? By showing that in ancient Greece all three elements took different forms we are made aware of their temporality, although Reus-Smit does not offer any thoughts on how they might change in the future. He does demonstrate how the 'norm of pure procedural justice' is derived from domestic legal orders and the concept moral purpose that underpins their political organisation. In ancient Greece, it was a process of justice through rational discourse towards the truth, while in the modern state is centred on the protection of property rights and liberal values of individual freedom. As advocates of a more just and equitable world order have long argued, there must be a recalibration of the notion of justice to become global in focus and solidarist in purpose. Such an intention to promote a new norm of procedural justice among the intersubjective constitutional structures will have repercussions for the other two components; the moral purpose of political organisation and the organising principle of sovereignty.

The European Union is pushing the boundaries of at least two of these three constitutional structures. Regarding the norm of justice, Manners has shown there are a core of norms at the centre of the Union that reflect solidarist principles beyond its borders, *inter alia* the Petersburg Tasks, human rights and core labour standard promotion, commitment to legislation combating climate change (Manners 2006). Thus European Union foreign policy and the international identity of the Union itself are geared toward a solidarist interpretation of justice. Secondly, the EU is widely recognised as in the vanguard redefining the

Westphalian concept of state sovereignty, to the point of being 'contra-Westphalian' (Manners and Whitman 2003: 399).

> This observation should come as a surprise to no one – the mega-regionalism of the EU, together with its willingness to pool sovereignty, enter into supranational legal agreements both within and without the EU, and generally act in a very un-state-like way, all signify the extent to which the EU represents the antithesis of the state in the post-Cold War world. (Manners and Whitman 2003: 399)

What do both of these changes mean for the third – namely the moral purpose of political organisation? Within the European Union, efforts to overcome the "democratic deficit" has led to increased channels of accountability between citizens and the governmental organisations that serve them. On all three counts, *within* the EU there would appear to be a reconfiguration of the constitutional structures found in societies of states. However, the foundational institutions identified by Reus-Smith of the modern state system, namely multilateralism and contractual international law, are at the heart of the EU's political system. More research must be done on the foundational institutions emerging from the EU's constitutional structure and how they are (or are not) integrating with those of the modern state system. The interaction between the two will give an insight into the dynamic processes at work when foundational institutions are in flux, and show how transitions from one set of institutions to another takes place. Such work will complement the growing interest in the way multilateral institutions are influencing the development of the EU and vice versa, as well as the dynamic interaction between them. The ultimate objective is to see which set of foundational institutions prevails. Will the EU have to yield to the hegemonic institutions of the Westphalian system beyond its borders and be content with its post-modern structure internally but play by the 'rules of the game' abroad? Robert Cooper (2000) argued this when he talked about the Westphalian (modern) and failed state (pre-modern) worlds the EU must engage with. Alternatively, can the EU transform international relations more generally, substituting realpolitik and the rule of force with the rule of law, as Mark Leonard (2005) argues? How will the post-1945 constitutional order (Ikenberry) adapt in the face of pressure to incorporate a new form of political actor – the regional organisation? Finally, what

form will multilateralism take in the future, and must it remain wedded to the institutional forms through which it is currently expressed? Answering these questions will help in further elucidate the pursuit of effective multilateralism in the years to come.

Table 1: Four outcomes of EU and multilateral organisation interaction

		European Union	
		Win	Lose
Multilateral Organisation	Win	FAO Reform *(IMF Reform)** *(UNSC Reform)** UNGA	WTO (Post-Cancun) IMF Reform UNSC Reform ILO (High Salience)
	Lose	WTO (Pre-Cancun) ILO (Low Salience) UNCHR *(UNGA)*	HRC

* IMF Reform (and to a lesser extent UNSC reform) can be shifted into the North-West quadrant if one accepts that reduced EU voting quotas in return for better representation in a more effective IMF is a price worth paying, thus yielding win-win returns. In the UNSC, the over representation of EU member states would be lost, but the gain promised is a more effective Council in which the EU could pursue its goals with the backing of the UNSC.

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